

**CHAPTER 515: MANAGEMENT, USE AND OCCUPANCY OF THE RIGHT-OF-WAY****ARTICLE I. USE AND MAINTENANCE OF RIGHT-OF-WAY****SECTION 515.010: APPLICABILITY**

To the extent permitted by law, this Chapter shall apply to all persons desiring to construct, operate, or maintain facilities in, along, across, under or over public rights-of-way within the City.

**SECTION 515.020: PURPOSE**

The purpose of this Article shall be:

1. To recognize the City's primary role as chief steward of the right-of-way (ROW) and its duty to its citizens to recover the costs of managing the right-of-way and incursions into it;
2. To clarify and regulate conditions of occupancy and construction for those ROW-users occupying space within the City's right-of-way given the anticipated increased use of the right-of-way by various ROW-users throughout the country;
3. To recognize the necessity of sound management practices in light of the increased use of the right-of-way and the fact that the right-of-way is a limited resource;
4. To treat each ROW-user equitably and in a competitively neutral manner with considerations that may be unique to the technologies and situation of each particular ROW-user;
5. To minimize disruption, visual impact or inconvenience to the public, and to preserve the public health, safety and welfare; and
6. To comply with State and Federal regulations.

**SECTION 515.030: DEFINITIONS AND USAGE**

For the purposes of this Chapter, the following terms, phrases, words and abbreviations shall have the meanings given herein, unless otherwise expressly stated in Section 100.080 of the City Code.

*ABANDONED FACILITIES:* Those facilities owned by the ROW-user that are not in use and will not be utilized by the owner in the future.

*ADMINISTRATIVE FEE:* The fee charged by the City to recover its costs incurred for right-of-way management including, but not limited to, costs associated with registering applicants; issuing, processing and verifying right-of-way permit applications; inspecting job

sites and restoration improvements; determining the adequacy of right-of-way restoration; revoking right-of-way permits and other costs the City may incur in managing the provisions of this Article.

*AFFILIATE*: Any person controlling, controlled by or under the common control of a "service provider."

*APPLICANT*: Any person requesting permission to occupy, lease or operate facilities using the right-of-way, or to excavate the right-of-way.

*AREA OF INFLUENCE*: That area within one (1) foot around a street excavation where the pavement and subgrade are impacted by the excavation and are subject to more rapid deterioration.

*CITY*: The City of Raymore, Missouri, a municipal corporation, and any duly authorized representative.

*CITY ENGINEER*: The City Engineer, Raymore, Missouri, or the authorized representative.

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

*DAY*: A day of twenty-four (24) hours, beginning at 12:00 Midnight.

*DEGRADATION*: The accelerated depreciation of a street caused by excavation in or disturbance of the street, resulting in the need to reconstruct such right-of-way earlier than would be required if the excavation did not occur.

*DEGRADATION FEE*: The fee charged by the City to recover the cost to the City and the public at large associated with a decrease in the useful life of a street caused by excavation.

*DEPRECIATION RATE*: The rate at which the useful service life of a public street deteriorates over time.

*EMERGENCY*: A condition that

1. Poses a clear and immediate danger to life or health or of a significant loss of property;  
or
2. Requires immediate repair or replacement in order to restore service to a user.

*EXCAVATE*: Means and includes any cutting, digging, excavating, tunneling, boring, grading or other alteration of the surface or subsurface material or earth in the right-of-way.

*FCC*: Federal Communications Commission.

*FACILITY*: Lines, pipes, irrigation systems, wires, cables, conduit facilities, poles, towers, vaults, pedestals, boxes, appliances, antennas, transmitters, gates, meters, appurtenances or other equipment.

*FACILITY BASED SERVICE PROVIDER*: A service provider owning or possessing facilities in the right-of-way.

*GOVERNING BODY*: The Mayor and the City Council of the City of Raymore, Missouri.

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

*PARKWAY*: The area between a property line and the street curb; sometimes called boulevard, tree-shelf or snow-shelf.

*PAVEMENT*: Includes Portland cement concrete pavement, asphalt concrete pavement, asphalt treated road surfaces and any aggregate base material.

*PERMITTEE*: Any person to whom a right-of-way permit is issued to excavate a right-of-way.

*PERSON*: Any individual, firm, association, group, partnership, limited liability company, corporation or any combination thereof.

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

*PUBLIC LANDS*: Any real property of the City that is not right-of-way.

*REGISTRATION*: The application process of a service provider, the approval of the application by the City and the authorization of the service provider to use any portion of the right-of-way within the City to provide service both within and beyond the City limits.

*REPAIR*: The temporary construction work necessary to make the right-of-way useable.

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

*RESTORATION*: The process by which an excavated right-of-way and surrounding area, including pavement and foundation, is returned to the same condition, or better than, that which existed before the commencement of the work.

*RIGHT-OF-WAY*: The area on, below or above the present and future City streets, alleys, bridges, bikeways, parkways and sidewalks.

*RIGHT-OF-WAY PERMIT*: The authorization to excavate for the construction, installation, repair or maintenance of any type of facility within the right-of-way.

*ROUTINE SERVICE OPERATION*: A work activity that makes no material change to the facilities and does not disrupt traffic.

*ROW-USER*: A person, its successors and assigns, that uses the right-of-way for purposes of work, excavation, provision of services, or to install, construct, maintain, repair facilities thereon including, but not limited to, landowners and service providers. A ROW-user shall not include ordinary vehicular or pedestrian traffic or a reseller service provider that does not own its own facilities in the right-of-way.

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

*SERVICE PROVIDER*: Any person that is a provider of a service for or without a fee that has the requisite certifications and authorizations from applicable governmental entities, including the FCC, to provide such service. "Service provider" includes both facility-based service providers and reseller service providers.

*STREET*: The pavement and subgrade of a City roadway.

#### **SECTION 515.040: POLICY**

- A. It is the policy of the City to authorize any service provider to utilize the right-of-way in a competitively neutral, non-discriminatory manner that maximizes the efficient use of and



conserves the right-of-way and minimizes the burden on the right-of-way, physically and aesthetically. Any use of the right-of-way by an ROW-user shall be subject to the terms and conditions of this Chapter in addition to other applicable Federal, State or local requirements.

- B. The right granted to the ROW-user to use the right-of-way shall be for the sole use of the ROW-user and is limited to the use that the ROW-user has filed with the City in accordance with this Article. Except as otherwise expressly permitted by State or Federal law, no other person may use the ROW-user's right unless authorized by the City.
- C. This Article also is designed to regulate occupancy and excavations in the right-of-way by providing, among other things, for the issuance of permits which grant the authority to utilize and occupy the right-of-way within the City.
- D. All ROW-users shall be subject to all rules, regulations, policies, resolutions and ordinances now or hereafter adopted or promulgated by the City in the reasonable exercise of its Police power and are subject to all applicable laws, orders, rules and regulations adopted by governmental entities now or having jurisdiction. In addition, the ROW-users shall be subject to all technical specifications, design criteria, policies, resolutions and ordinances now or adopted or promulgated by the City in the reasonable exercise of its Police power relating to permits and fees, sidewalk and pavement cuts, utility location, construction coordination, surface restoration and other requirements on the use of the right-of-way.

#### **SECTION 515.050: ADMINISTRATION**

- A. The City Engineer is the principal City Official authorized to administer right-of-way permits for work and excavations made in the right-of-way. The City Engineer may delegate any or all of the duties of this Chapter.
- B. The City Engineer is the principal City Official responsible for administration of the registration of a service provider. The City Engineer may delegate any or all of the duties of this Chapter.
- C. The City Engineer shall prepare, maintain and update schedules of planned road construction and overlay with proposed start dates. These schedules shall be available for inspection by service providers and the public in City offices.

#### **SECTION 515.060: REQUIREMENTS OF SERVICE PROVIDER**

- A. Any existing service provider must register within ninety (90) days of the effective date of this Article (August 28, 2000).
- B. Any person who is not an existing service provider prior to August 28, 2000, and who wishes to become a service provider must first register with the City.
- C. The service provider shall report any changes in its registration information within thirty (30) days.

- D. No service provider shall be authorized to utilize the right-of-way in any capacity or manner without registering and obtaining the necessary right-of-way permit from the City.
- E. The information required for registration includes the following:
1. Identity and legal status of service provider, including related affiliates.
  2. Name, address, telephone number, fax number and email address of officer, agent or employee responsible for the accuracy of the registration statement.
  3. Name, address, telephone number, fax number and email address of the local representative of the service provider who shall be available at all times to act on behalf of the service provider in the event of an emergency.
  4. Proof of any necessary permit, license, certification, grant, registration, franchise agreement or any other authorization required by any appropriate governmental entity, including, but not limited to, the City or the FCC.
  5. Description of the service provider's intended use of the right-of-way.
  6. Information sufficient to determine whether the service provider is subject to franchising by Missouri law.
  7. Information sufficient to determine that the service provider has applied for and received any permit or other approvals required by the FCC.
  8. Information which identifies reseller service providers.
  9. Such other information as may be required by the City to complete the registration statement.
- F. Each service provider shall designate a local person familiar with the facilities that will act as a local agent for the service provider and will be responsible for satisfying information requirements of this Article. The service provider shall present to the City the agent's name, address, telephone number, fax number and email address. The agent shall be the person to whom relocation notices and other such notices shall be sent and with whom rests the responsibility to facilitate all necessary communications. The service provider shall be responsible for all costs incurred by the City due to the failure to provide such information to the City.
- G. The service provider shall participate in any joint planning, construction and advance notification of right-of-way work, including coordination and consolidation of street cut work as directed by the City Engineer. In addition, the service provider shall cooperate with other service providers and the City for the best, most efficient, most aesthetic and least obtrusive use of the right-of-way, consistent with safety, and to minimize traffic and other disruptions, including street cuts.

- H. To the extent allowed by law, the City may limit the number of registrations in a competitively neutral manner based upon, but not necessarily limited to, specific local considerations such as:
1. The capacity of the right-of-way to accommodate service facilities;
  2. The impact on the community of the volume of facilities in the right-of-way;
  3. The disruption arising from numerous excavations of the right-of-way;
  4. The financial capabilities of the service provider and its guaranteed commitment to make necessary investments to erect, maintain and operate the proposed facilities; or
  5. Any other consideration based upon the interests of the public safety and welfare.
- I. The City shall not exercise its authority under this provision to in any way deter competition or discriminate against any service provider.

**SECTION 515.070: SERVICE PROVIDER'S RIGHT TO SELL, TRANSFER, LEASE, ASSIGN, SUBLET OR DISPOSE**

In the event a service provider shall sell, transfer, lease, assign, sublet or dispose of its facilities that are located in City right-of-way, or any right, title or interest in the same, or transfer any rights granted by the City to any person either by forced or involuntary sale, or by ordinary sale, consolidation or otherwise, it shall notify the City of same. In such case, the buyer, transferee, lessee or assignee shall be subject to the terms and conditions of this Article, including the requirement to register as provided in the preceding Section. This provision shall not apply to the sale of property or equipment in the normal course of business. No notice to the City shall be required for a transfer in trust, mortgage or other similar instrument, in whole or in part, to secure an indebtedness, or for a pro forma transfer to a corporation, partnership or other entity controlling, controlled by or under common control with the service provider.

**SECTION 515.080: RESELLER SERVICE PROVIDERS**

A service provider may permit and has the authority to sell, sublet or lease any use of excess capacity and sell services for resale to any reseller service provider providing service within the City, including the service provider's subsidiary or affiliate. The reseller service provider shall first register and obtain any necessary permit, license, certification, grant, registration, franchise agreement or any other authorization required by any appropriate governmental entity, including but not limited to, the City or the FCC. Unless otherwise prohibited by law or regulatory authority, the service provider shall use all reasonable efforts to provide the City on an annual basis the identity of entities with which the service provider has entered into an interconnection and/or resale agreement within the City. This notice will not relieve the reseller service provider from its own obligation to register and obtain any necessary franchise with the City. Nothing in

this Article shall prevent a facility-based service provider from providing to any reseller service provider the use of the facility-based service provider's facilities in the right-of-way as authorized by Federal or State law.

**SECTION 515.090: USE OF THE RIGHT-OF-WAY**

- A. The ROW user's use of the right-of-way shall in all matters be subordinate to the City's use or occupation of the right-of-way. Without limitations of its rights, the City expressly reserves the right to exercise its governmental powers now and hereafter vested in or granted to the City.
- B. The ROW user shall coordinate the placement of facilities in a manner that minimizes adverse impact on any public improvement as reasonably determined by the City. Where placement is not regulated, the facilities shall be placed with adequate clearance from such public improvements so as not to impact or be impacted by such public improvement as defined in the City's Manual of Infrastructure Standards available in the office of the City Engineer.
- C. The ROW user shall consider any request made by the City concerning placement facilities in private easements in order to limit or eliminate future street improvement relocation expenses.
- D. All facilities shall be located and laid so as not to disrupt or interfere with any pipes, drains, sewers, irrigation systems or other structures or public improvements already installed. In addition, the ROW user shall, in doing work in connection with its facilities, avoid, so far as may be practicable, disrupting or interfering with the lawful use of the streets, alleys, sidewalks or other public lands of the City.
- E. All facilities of the ROW user shall be placed so that they do not interfere with the use of right-of-way and public lands. The City, through its City Engineer, shall have the right to consult and review the location, design and nature of the facility prior to installation.
- F. The ROW user shall not interfere with the facilities of the other ROW users without their permission. If and when the City requires or negotiates to have a service provider cease using its existing poles and to relocate its facilities underground, all other service providers using the same poles shall also relocate their facilities underground at the same time. The cost of such relocation shall be in accordance with this Article and the applicable tariff governing that service provider.
- G. The City Engineer may assign specific corridors within the right-of-way, or any particular segment as may be necessary, for each type of facility that is currently or, pursuant to current technology, the City Engineer expects will someday be located within the right-of-way. All right-of-way permits issued by the City Engineer shall indicate the proper corridor for the ROW user's facilities. Any ROW user whose facilities are currently in the right-of-way in a position at a variance with the designated corridors shall, no later than at the time of next reconstruction or excavation of the area where its facilities are located, move the facilities to its assigned position within the right-of-way, unless this agreement is waived by the City Engineer for good cause shown, upon consideration of such factors as the remaining economic life of the facilities, public safety, user service needs and hardship to the ROW user.

- H. If, in the preparation and planning of a right-of-way project, the City Engineer deems it appropriate for a conduit to be constructed along, across or under the right-of-way, the City Engineer shall contact all appropriate ROW users for their input on the planning and design of such conduit. If a ROW user desires to construct, maintain or operate facilities along such right-of-way, the City Engineer may require the ROW user to use such conduit and to contribute to the expense of such conduit; provided however, the ROW user's use of the conduit is reasonable and appropriate under the circumstances.
- I. All earth, materials, sidewalks, paving, crossings, utilities, other public improvements or improvements of any kind damaged or removed by the ROW user shall be fully repaired or replaced within five (5) working days by the ROW user at its sole expense and to the reasonable satisfaction of the City. Upon determination by the City Engineer that such repair or replacement is a public safety matter, all such repair or replacement shall be corrected within twenty-four (24) hours of notice from the City, or the City Engineer may direct the City to make such repair or replacement and bill the ROW user for the City cost. The City Engineer has the authority to inspect the repair or replacement of the damage and, if necessary, to require the ROW user to do any necessary additional work.
- J. All technical standards governing construction, reconstruction, installation, operation, testing, use, maintenance and dismantling of a ROW user's facilities in the right-of-way shall be in accordance with applicable Federal, State and local laws and regulations, including those promulgated by national trade associations commonly associated with the service provided by the ROW user. A ROW user shall not construct or reconstruct any of its facilities located upon, over, under or within the City right-of-way without first having submitted in writing a description of its planned improvements to the City Engineer and having received a permit for such improvement. The City Engineer may require that any drawings, plans and/or specifications submitted be certified by a qualified professional stating that such drawings, plans and/or specifications comply with all applicable technical codes, rules and regulations, unless such plans are based directly on nationally recognized codes.
- K. The ROW user shall cooperate promptly and fully with the City and take all reasonable measures necessary to provide accurate and complete on-site information regarding the nature and location of its facilities within the right-of-way, both underground and overhead, when requested by the City or its authorized agent for a public improvement. Such location and identification shall be at the sole expense of the ROW user without any expense to the City, its employees, agents or authorized contractors.
- L. Unless otherwise permitted by law, it shall be unlawful for any person to place or maintain any object, platform, structure or obstruction, such as, but not limited to, a basketball goal, skateboard ramp, trampoline, fence, flagpole, dumpster, yard ornament, sump pump discharge pipe, or similar item, either temporarily or permanently, over any street or sidewalk or in any part of the City's right-of-way except by written approval of the City Engineer.
- M. No unauthorized person shall, in a commercial or industrial zoned district, deposit or cause to be deposited any snow or ice on any public roadway or right-of-way.

**SECTION 515.100: FACILITY RELOCATION**

- A. The ROW-user shall promptly remove, relocate or adjust any facilities located in the right-of-way as directed by the City for a public improvement or when reasonably required by the City by reason of public safety. Such removal, relocation or adjustment shall be performed by the ROW-user at the ROW-user's sole expense without expense to the City, its employees, agents or authorized contractors, and shall be specifically subject to rules, regulations and schedules of the City pertaining to such. The ROW-user shall proceed with relocations at due diligence upon notice by the City to begin relocation.
- B. The ROW-user shall promptly remove, relocate or adjust any facilities located in private easement, at the City's cost and as directed by the City, for a public improvement, by moving such facilities to areas within the expanded right-of-way or within remaining private easements or remaining portions of such easements not condemned by nor disclaimed to the City to avoid conflict with City construction and improvements. The ROW-user shall disclaim those parts of its easements which lie within the expanded right-of-way. Should the City, in the future, elect to require the ROW-user to again relocate its facilities to other areas within the expanded right-of-way, the cost of any such future relocation shall be borne by the City.
- C. As soon as working drawings are available for public improvements that will require the ROW-user to relocate its facilities, the City shall provide the ROW-user with written notice of relocations and the anticipated bid-letting date of said improvement. The ROW-user shall respond with any conflicts and a proposed construction schedule within thirty (30) days.
- D. Following notice by the City in the form of the delivery of final design plans for such public improvements, the ROW-user shall remove and relocate its facilities in accordance with the mutually agreed upon schedule, provided the project is not delayed by adverse weather conditions and other factors beyond the control of the ROW-user. The ROW-user shall certify to the City, in writing, that its facilities have been relocated or adjusted to clear construction in accordance with project plans provided by the City.
- E. Any damages suffered by the City, its agents or its contractors to the extent caused by ROW-user's failure to timely relocate or adjust its facilities, or failure to properly relocate or adjust such facilities, shall be borne by the ROW-user.
- F. In the event the ROW-user is required to move its facilities in accordance with this Section, any ordinary right-of-way permit fee shall be waived.
- G. It is the intent of this Section for both the City and the ROW-user to cooperate with one another so that the need for facility relocation is minimized and, when required and feasible, relocations may be completed prior to receipt of bids by the City for a public improvement.

**SECTION 515.110: PROTECTION OF THE PUBLIC**

- A. It shall be the responsibility of the ROW-user to take adequate measures to protect and defend its facilities in the right-of-way from harm and damage.



- B. The City shall be liable for any damage to or loss of any of the ROW-user's facilities within the right-of-way as a result of or in connection with any construction, excavation, grading, filling or work, including public improvements by or on behalf of the City, to the extent caused by the negligent, willful, intentional or malicious acts of the City.
- C. The ROW-user shall be responsible to the City and its agents, representatives and authorized contractors for all damages including, but not limited to, delay of any kind arising out of the failure of the ROW-user to perform any of its obligations under this Article.
- D. The City or its authorized contractors shall be responsible for taking reasonable precautionary measures including calling for facility locations.
- E. Any ROW-user who for any purpose makes or causes to be made any excavation in, upon, under, through or adjoining any street, sidewalk, alley or other right-of-way and shall leave any part or portion of open, or shall leave part or portion of disrupted with rubbish, building or other material during construction and/or the night time, shall cause the same to be enclosed with good substantial and sufficient barricades or drums equipped with the appropriate type warning lights and orange safety fencing material which is properly secured around the excavation or the disruption.
- F. Whenever a ROW-user shall excavate the full width of any street, sidewalk, alley, driveway approach or other right-of-way, it shall be its duty to maintain an adequate passage for vehicles and pedestrians across or around the excavation until it is refilled as specified.
- G. Any excavation left open overnight on any arterial or collector type street shall be securely covered. The ROW-user assumes the sole responsibility for maintaining proper barricades, plates, safety fencing and/or lights as required from the time of opening of the excavation until the excavation is surfaced and opened for travel.
- H. In the event the ROW-user severely disturbs or damages the root structure of any tree in the right-of-way to the detriment of the health and safety of the tree, the ROW-user will be required to remove and replace the tree at the ROW-user's cost. Further, in review of the ROW-user's plan, City Engineer, in his discretion, may require the ROW-user to directionally bore around any tree in the right-of-way.
- I. Upon the appropriate request of any person having satisfied City procedure and ordinances, the ROW-user shall remove, raise or lower its facilities temporarily to permit the moving of houses or other structures. The expense of such temporary removal, raising or lowering shall be paid by the person requesting the same, and the ROW-user may require such payment in advance. The ROW-user must be given not less than thirty (30) days' written notice from the person detailing the time and location of the moving operations.

#### **SECTION 515.120: RIGHT-OF-WAY VACATION**

- A. If the City vacates a right-of-way which contains the facilities of the service provider, and if the vacation does not require the relocation of the service provider's facilities, the City shall reserve,

to and for itself and all service providers having facilities in the vacated right-of-way, an easement for the right to install, maintain and operate any facilities in the vacated right-of-way and to enter upon such vacated right-of-way at any time for the purpose of reconstructing, inspecting, maintaining or repairing the same.

- B. If the vacation requires the relocation of facilities, and
1. If the vacation proceedings are initiated by the service provider, the service provider must pay the relocation costs, or
  2. If the vacation proceedings are initiated by the City, the service provider must pay the relocation costs unless otherwise agreed to by the City and the service provider, or
  3. If a person other than the service provider or the City initiates the vacation proceedings, such other person must pay the relocation costs.

#### **SECTION 515.130: ABANDONED AND UNUSABLE FACILITIES**

- A. The City Engineer may allow underground facilities or portions of to remain in place if the City Engineer determines that it is in the best interest of public safety to do so. If the ROW-user proceeds under this Section, the ROW-user shall submit to the City a proposal and instruments for transferring ownership of its facilities to the City.
- B. Facilities of a ROW-user who fails to comply with this Section, and whose facilities remain unused for two (2) years, shall be deemed to be abandoned. The City may take possession and ownership of the facility.

#### **SECTION 515.140: PERMIT REQUIREMENT**

- A. Except as otherwise provided, no ROW-user may excavate any right-of-way or conduct any repair, construction or reconstruction of facilities located within the right-of-way without first having obtained the appropriate right-of-way permit.
- B. There are two (2) exemptions to this provision:
1. Contractors working on the construction or reconstruction of public improvements.
  2. ROW-users performing routine service operations which do not require excavation in the right-of-way and do not disrupt traffic for more than four (4) hours.
- C. No person owning or occupying any land abutting on a public right-of-way shall construct, maintain or permit in or on the portion of this public right-of-way to which such land is adjacent, any fixed structure, material or object other than a U. S. mailbox without having obtained the appropriate right-of-way permit.



- D. A right-of-way permit is required for emergency situations. If due to an emergency it is necessary for the ROW-user to immediately perform work in the right-of-way and it is impractical for the ROW-user to first get the appropriate permit, the work may be performed, and the required permit shall be obtained as soon as possible during the next City working day.
- E. No permittee may excavate the right-of-way beyond the date or dates specified in the right-of-way permit unless the permittee:
1. Makes a supplementary application for another right-of-way permit before the expiration of the initial permit, and
  2. A new right-of-way permit or permit extension is granted.
- F. Right-of-way permits issued shall be conspicuously displayed by the permittee at all times at the indicated work site and shall be available for inspection by the City Engineer, other City employees and the public. In lieu of the display of the permit, the City may issue a sign, stake or other device to confirm the issuance of the permit that shall be conspicuously displayed at the work site.
- G. Before receiving a right-of-way permit, the applicant must show proof of any necessary permit, license, certification, grant, registration, franchise agreement or any other authorization required by any appropriate governmental entity including, but not limited to, the City or the FCC.
- H. Any ROW-user who is found to be working in the public right-of-way without a permit will be directed to stop work until a permit is acquired and properly posted at the work site. The only exception allowed is for emergency repair work. Refusal to comply with a stop work order is punishable as provided in Section 515.330 of this Chapter.
- I. Any permittee found to be working without providing for required safety and traffic control will be directed to stop work until the appropriate measures are implemented in accordance with the current edition of the Manual on Uniform Traffic Control Devices. Refusal to comply with a stop work order is punishable as provided in Section 515.330 of this Chapter.

#### **SECTION 515.150: PERMIT APPLICATIONS**

- A. Application for a right-of-way permit shall be submitted to the City Engineer by the person who will do the work and/or excavation in the right-of-way.
- B. Right-of-way applications shall contain and be considered complete only upon receipt of the following:
1. Compliance with verification of registration;
  2. Submission of a completed permit application form, including all required attachments and drawings showing the location and area of the proposed project and the location of all existing and proposed facilities at such locations;

3. A traffic control plan;
4. Payment of all money due to the City for permit fees and costs, for prior excavation costs, for any loss, damage or expense suffered by the City because of the applicant's prior excavations of the right-of-way or for any emergency actions taken by the City, unless the payment of such money is in dispute and timely appealed as provided hereafter;
5. A commitment from the applicant to contact the Missouri One Call program or comparable successor program;
6. Valid proof that the applicant has obtained a current City business occupation license.

**SECTION 515.160: LIABILITY INSURANCE, PERFORMANCE AND MAINTENANCE BOND REQUIREMENT**

- A. The permittee shall file with the City evidence of liability insurance with an insurance company licensed to do business in Missouri. The amount will be in an amount up to the current City's sovereign immunity level as established by RSMo. The insurance will protect the City from and against all claims by any person whatsoever for loss or damage from personal injury, bodily injury, death or property damage to the extent caused or alleged to have been caused by the negligent acts or omissions of the permittee. If the permittee is self-insured, it shall provide the City proof of compliance regarding its ability to self-insure and proof of its ability to provide coverage in the above amounts.
- B. The permittee shall at all times during the term of the permit, and for two (2) years thereafter, maintain a performance and maintenance bond in a form approved by the City Manager. The amount of the bond will be five thousand dollars (\$5,000.00) or the value of the restoration, whichever is greater, for a term consistent with the term of the permit plus two (2) additional years, conditioned upon the permittee's faithful performance of the provisions, terms and conditions conferred by this Article. An annual bond in an amount of fifty thousand dollars (\$50,000.00) automatically renewed yearly during this period shall satisfy the requirement of this Section. In the event the City shall exercise its right to revoke the permit as granted herein, then the City shall be entitled to recover under the terms of said bond the full amount of any loss occasioned.
- C. A copy of the liability insurance certificate and performance and maintenance bond must be on file with the Finance Department.
- D. No performance and maintenance bond or liability insurance will be required of any governmental entity, or of any residential property owner working in the right-of-way adjacent to their residence, who does not utilize a contractor to perform the excavation.

**SECTION 515.170: RIGHT-OF-WAY PERMIT FEES**

- A. The right-of-way permit fee shall be recommended by the City Engineer, approved by the Governing Body and listed in the Schedule of Fees maintained in the Finance Department.

- B. The right-of-way permit fee may include an administrative fee and a degradation fee. The degradation fee shall be calculated upon the area of the excavation in the public right-of-way and the area one (1) foot around the perimeter of the excavation.
- C. Fees paid for a right-of-way permit which is subsequently revoked by the City Engineer are not refundable.
- D. In the event the scope of the project is revised during the course of the work, the City Engineer may recalculate the fee based on the actual size of the excavation and may require an additional administrative fee.
- E. The City Engineer may waive the degradation fee for any excavation in the public right-of-way undertaken within the twelve (12) calendar months immediately preceding the scheduled improvement or reconstruction of the street.

#### **SECTION 515.180: ISSUANCE OF PERMIT**

- A. If the City Engineer determines that the applicant has satisfied the requirements of this Article, the City Engineer shall issue a right-of-way permit.
- B. The City Engineer may impose reasonable conditions upon the issuance of a right-of-way permit and the performance of the permittee in order to protect the public health, safety and welfare, to ensure the structural integrity of the right-of-way, to protect the property and safety of other users of the right-of-way and to minimize the disruption and inconvenience to the traveling public.
- C. When a right-of-way permit is requested for purposes of installing additional facilities, and a performance and maintenance bond for additional facilities is reasonably determined to be insufficient, the posting of an additional or larger performance and maintenance bond for the additional facilities may be required.
- D. Issued permits are not transferable.
- E. If work is being done for the ROW-user by another person, a subcontractor or otherwise, the person doing the work and the ROW-user shall be liable and responsible for all damages, obligations and warranties herein described.
- F. A right-of-way permit shall have an effective date and an expiration date. Establishment of the expiration date shall be in the discretion of the City Engineer, which discretion shall be reasonably exercised to achieve the City's policy of minimizing disruption of public right-of-way.

#### **SECTION 515.190: PERMITTED WORK**

- A. The permittee shall not make any cut, excavation or grading of right-of-way other than excavations necessary for emergency repairs without first securing a right-of-way permit.

- B. The permittee shall not at any one (1) time open or encumber more of the right-of-way than shall be reasonably necessary to enable the permittee to complete the project in the most expeditious manner.
- C. The permittee shall, in the performance of any work required for the installation, repair, maintenance, relocation and/or removal of any of its facilities, limit all excavations to those excavations that are necessary for efficient operation.
- D. The permittee shall not permit such an excavation to remain open longer than is necessary to complete the repair or installation.
- E. The permittee shall notify the City no less than three (3) working days in advance of any construction, reconstruction, repair, location or relocation of facilities which would require any street closure or which reduces traffic flow to less than two (2) lanes of moving traffic for more than four (4) hours. Except in the event of an emergency as reasonably determined by the permittee, no such closure shall take place without notice and prior authorization from the City.
- F. Non-emergency 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.
- G. All work performed in the right-of-way or which in any way impacts vehicular or pedestrian traffic shall be properly signed, barricaded and otherwise protected at the permittee's expense. Such signage shall be in conformance with the latest edition of the Administration's Manual on Uniform Traffic Control Devices, unless otherwise agreed to by the City.
- H. The permittee shall be liable for any damages to underground facilities, or for any damage to underground facilities that have been properly identified prior to excavation. The permittee shall not make or attempt to make repairs, relocation or replacement of damaged or disturbed underground facilities without the approval of the owner of the facilities.
- I. Whenever there is an excavation by the permittee, the permittee shall be responsible for providing adequate traffic control to the surrounding area as determined by the City Engineer. The permittee shall perform work on the right-of-way at such times that will allow the least interference with the normal flow of traffic and the peace and quiet of the neighborhood. In the event the excavation is not completed in a reasonable period of time, the permittee may be liable for actual damages to the City for delay caused by the permittee pursuant to this Article.
- J. All facilities and other appurtenances laid, constructed and maintained by the permittee shall be laid, constructed and maintained in accordance with acceptable engineering practice and in full accord with any and all applicable Engineering Codes adopted or approved by the parties and in accordance with applicable statutes of the State of Missouri, as well as the rules and regulations of any local, State or Federal agency having jurisdiction over the parties.
- K. Following completion of permitted work for new construction, the permittee shall keep, maintain and provide to the City accurate records and as-built drawings, drawn to scale and

certified to the City as accurately depicting the location of all utility facilities constructed pursuant to the permit. When available to the permittee, maps and drawings provided will be submitted in AUTOCAD.DXF, AUTOCAD.DWG, MICROSTATION DGN (or comparable, as allowed by the City Engineer) automated formats if available, or in hard copy otherwise. The City Engineer may waive this requirement.

- L. The City may use the as-built records of the service provider's facilities in connection with public improvements.

#### **SECTION 515.200: RIGHT-OF-WAY REPAIR AND RESTORATION**

- A. The work to be done under the right-of-way permit and the repair and restoration of the right-of-way as required herein must be completed within the dates as specified in the permit. However, in the event of circumstances beyond the control of the permittee or when work was prohibited by unseasonable or unreasonable conditions, the City Engineer may extend the date for completion of the project upon receipt of a supplementary application for a permit extension.
- B. All earth, materials, sidewalks, paving, crossing, utilities, public improvement or improvements of any kind damaged or removed by the permittee shall be fully repaired or replaced promptly by the permittee at its sole expense and the reasonable satisfaction of the City. The City Engineer has the authority to inspect the repair or replacement of the damage, and if necessary, to require the permittee to do the additional necessary work. Notice of the unsatisfactory restoration and the deficiencies found will be provided to the permittee and a reasonable time not to exceed fifteen (15) days will be provided to allow for the deficiencies to be corrected.
- C. After any excavation, the permittee shall, at its expense, restore all portions of the right-of-way to the same condition, or better than, that it was prior to the excavation.
- D. If the permittee fails to restore the right-of-way in the manner and to the conditions required by the City Engineer, or fails to satisfactorily and timely complete all restoration, the City may, at its option, serve written notice upon the permittee and its surety that, unless within five (5) days after serving of such notice, a satisfactory arrangement can be made for the proper restoration of the right-of-way, the City shall immediately serve notice of failure to comply upon the surety and the permittee, and the surety shall have the right to take over and complete the work; provided however, that if the surety does not commence performance within ten (10) days from the date of notice, the City may take over the work and prosecute the same to completion, by contract or otherwise, at the expense of the permittee, and the permittee and its surety shall be liable to the City for any and all excess cost assumed by the City by reason of such prosecution and completion.
- E. The permittee responsible for the excavation who leaves any debris in the right-of-way shall be responsible for providing safety protection in accordance with the latest edition of the Manual of Uniform Traffic Control Devices and any applicable Federal or State requirement.

- F. If an excavation cannot be back-filled immediately and is left unattended, the permittee shall securely and adequately cover the unfilled excavation. The permittee has sole responsibility for maintaining proper barricades, safety fencing and/or lights as required, from the time of the opening of the excavation until the excavation is surfaced and opened for travel.
- G. In restoring the right-of-way, the permittee guarantees its work and shall maintain it for twenty-four (24) months following its completion. During the twenty-four (24) months the permittee shall, upon notification from the City Engineer, correct all restoration work to the extent necessary, using any method as required by the City Engineer. Said work shall be completed within a reasonable time, not to exceed thirty (30) calendar days, of the receipt of notice from the City Engineer (not including days during which work cannot be done because of circumstances constituting Force Majeure or days when work is prohibited as unseasonable or unreasonable). The City Engineer shall have the authority to extend the guarantee period for up to an additional twenty-four (24) months from the date of the new restoration, if the City Engineer determines any overt action by the permittee not to comply with the conditions of the right-of-way permit and any restoration requirements. The foregoing shall not apply to living materials restored in the right-of-way, but living materials in the right-of-way shall be replaced and all reasonable efforts shall be taken to ensure their survival.
- H. The twenty-four (24) month guarantee period shall be applicable to failure of the pavement surface as well as failure below the pavement surface.
- I. Payment of a degradation fee shall not relieve the permittee of the obligation to complete the necessary right-of-way restoration.

#### **SECTION 515.210: JOINT APPLICATIONS**

- A. Applicants may apply jointly for permits to excavate the right-of-way at the same time and place. All joint applicants must jointly execute all required documents and shall be jointly and severally liable for all duties and obligations hereunder.
- B. Applicants who apply jointly for a right-of-way permit may share in the payment of the permit fee. Applicants must agree among themselves as to the portion each shall pay.

#### **SECTION 515.220: SUPPLEMENTARY APPLICATIONS**

- A. A right-of-way permit shall only be valid for the area of the right-of-way specified within the permit. No permittee may cause any work to be done outside the area specified in the permit, except as provided herein. Any permittee who determines that an area greater than that which is specified in the permit must be excavated must do the following prior to the commencement of work in that greater area:
  - 1. Make application for a permit extension and pay any additional fees required; and
  - 2. Receive a new right-of-way permit or permit extension.



- B. A right-of-way permit shall be valid only for the dates specified in the permit. No permittee may commence work before the permit start date or, except as provided herein, may continue working after the end date. If a permittee does not complete the work by the permit end date, the permittee must apply for and receive a new right-of-way permit or a permit extension for additional time. This supplementary application must be submitted to the City prior to the permit end date.

#### **SECTION 515.230: OTHER OBLIGATIONS**

- A. Obtaining a right-of-way permit under this Article shall not relieve the permittee of its duty to obtain any necessary permit, license, certification, grant, registration, franchise agreement or any other authorization required by any appropriate governmental entity, including, but not limited to, the City or the FCC, and to pay any fees required by any other City, County, State or Federal rules, laws or regulations. A permittee shall perform all work in full accord with any and all applicable Engineering Codes adopted or approved by the parties and in accordance with applicable statutes of the State of Missouri, and the rules and regulations of the FCC or any other local, State or Federal agency having jurisdiction over the parties. A permittee shall perform all work in conformance with all applicable Codes and established rules and regulations and shall be responsible for all work done in the right-of-way pursuant to its permit, regardless of who does the work.
- B. Except in cases of an emergency or with approval of the City Engineer, no right-of-way work may be done when conditions are unreasonable for such work.
- C. A permittee shall not disrupt a right-of-way such that the natural free and clear passage of water through the gutters or other waterways is interfered with. Private vehicles may not be parked within or next to the permit area.

#### **SECTION 515.240: DENIAL OF PERMIT**

- A. The City Engineer may deny a permit to protect the public health, safety and welfare to prevent interference with the safety and convenience of ordinary travel over the right-of-way or when necessary to protect the right-of-way and its users. The City Engineer, at their discretion, may consider one (1) or more of the following factors in denial of the permit:
1. The extent to which the right-of way space where the permit is sought is available;
  2. The competing demands for the particular space in the right-of-way;
  3. The availability of other locations in the right-of-way or in other right-of-way for the facilities of the applicant;
  4. The applicability of any ordinance or other regulations that affect location of facilities in the right-of-way;

5. The degree of compliance of the applicant with the terms and conditions of its franchise, this Article and other applicable ordinances and regulations;
  6. The degree of disruption to surrounding communities and businesses that will result from the use of that part of the right-of-way;
  7. The condition and age of the right-of-way which was constructed or reconstructed within the preceding five (5) years;
  8. The balancing of costs of disruption to the public and damage to the right-of-way against the benefits to that part of the public served by the construction in the right-of-way;
  9. Whether the applicant maintains a current occupational license with the City;
  10. Whether the applicant has failed within the last three (3) years to comply, or is presently not in full compliance with, the requirements of this Article;
  11. Whether the applicant has delinquent debt owed to the City;
  12. Whether the issuance of a right-of-way permit for the particular dates and/or time requested would cause a conflict or interferes with an exhibition, celebration, festival or any other event. In exercising this discretion, the City Engineer shall be guided by the safety and convenience of anticipated travel of the public over the right-of way.
- B. Notwithstanding the above provisions, the City Engineer may in their discretion issue a right-of-way permit in any case where the permit is necessary to:
1. Prevent substantial economic hardship to a user of the applicant's service;
  2. Allow such user to materially improve the service provided by the applicant.

#### **SECTION 515.250: REVOCATION OF PERMIT**

- A. Permittees hold right-of-way permits issued pursuant to this Article as a privilege and not as a right. The City reserves the right to revoke any right-of-way permit, without refund of the permit fee, in the event of a substantial breach of the terms and conditions of any law or the right-of-way permit. A substantial breach shall include, but not be limited to, the following:
1. The violation of any material provision of the right-of way permit;
  2. An evasion or attempt to evade any material provision of the right-of-way permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the City or its citizens;
  3. Any material misrepresentation of any fact in the permit application;
  4. The failure to maintain the required bond or insurance;
  5. The failure to complete the work in a timely manner;



6. The failure to correct a condition indicated on an order issued pursuant to this Article;
  7. Repeated traffic control violations; or
  8. Failure to repair facilities damaged in the right-of-way.
- B. If the City Engineer determines that the permittee has committed a substantial breach of any law or condition placed on the right-of-way permit, the City Engineer shall make a written demand upon the permittee to remedy such violation. The demand shall state that the continued violation may be cause for revocation of the permit or legal action if applicable. Further, a substantial breach, as stated above, will allow the City Engineer, at his discretion, to place additional or revised conditions on the right-of-way permit, specifically related to the manner in which the breach is cured by the permittee. Within five (5) calendar days of receiving notification of the breach, permittee shall contact the City Engineer with a plan, acceptable to the City Engineer, for correction of the breach. Permittee's failure to contact the City Engineer, permittee's failure to submit an acceptable plan or permittee's failure to reasonably implement the approved plan shall be cause for immediate revocation of the right-of-way permit.
- C. If a right-of-way permit is revoked, the permittee shall also reimburse the City for the City's reasonable costs, including administrative costs, restoration costs and the costs of collection and reasonable attorneys' fees incurred in connection with such revocation.

#### **SECTION 515.260: WORK REQUIREMENTS AND INSPECTIONS**

- A. Any excavation, backfilling, repair and restoration, and all other work performed in the right-of-way shall be done in conformance with the City's standards as promulgated by the City Engineer.
- B. The permittee will notify the City Engineer to schedule an inspection at the start of backfilling. Upon completion of all right-of-way restoration activities, the permittee will schedule a closeout inspection. In the event a permittee fails to obtain any interim inspections, the City Engineer may require re-opening of the excavation to allow such inspections.
- C. The permittee shall notify the office of the City Engineer upon completion of the authorized work permit.
- D. When any corrective actions required have been completed and inspected to the City Engineer's satisfaction, the two (2) year maintenance period will begin.
- E. In addition to the required scheduled inspections, the City Engineer may choose to inspect the ongoing permitted work in the right-of-way at any time to ensure that all requirements of the approved permit are being met by the permittee.
- F. At the time of any inspection the City Engineer may order the immediate cessation of any work which poses a serious threat to the life, health, safety or well-being of the public. The City

Engineer may issue a citation to the permittee for any work which does not conform to the applicable standards, conditions, code or terms of the permit. The citation shall state that failure to correct the violation will be cause for revocation of the permit.

#### **SECTION 515.270: APPEALS PROCESS**

- A. Whenever a permittee shall deem themselves aggrieved by any decision or action taken by the City Engineer, the person may file an appeal to the City Manager within ten (10) calendar days of the date of notice of such decision or action.
- B. The permittee shall be afforded a hearing on the matter before the City Manager within thirty (30) days of filing the appeal.
- C. In cases of applicability or interpretation of the rules, the City Manager may revoke such decision or action taken by the City Engineer.
- D. Unless the aggrieved order is revoked, such order, decision or action shall remain in force and be complied with by the permittee forthwith.
- E. In cases where compliance with such decision or action taken by the City Engineer would cause undue hardship, the City Manager may extend the time limit of such decision or action, or may grant exceptions to, or waive requirements of, or grant a variance from the specific provisions of rules. The City Manager shall give due consideration to the purposes of the rules in preserving public safety and convenience, integrity of public infrastructure and the operational safety and function of the public right-of-way.
- F. If a permittee still deems themselves aggrieved after the appeal to the City Manager, such permittee shall have thirty (30) days after the effective date of the City Manager's final decision to appeal the decision to the City Council in writing.
- G. If a permittee still deems themselves aggrieved after the appeal to the City Council, such permittee shall have thirty (30) days after the effective date of the City Council's final decision to institute an action in the Circuit Court of Cass County, Missouri.

#### **SECTION 515.280: INDEMNIFICATION**

A permittee operating under the provisions of this Article shall fully indemnify, release, defend and hold harmless the City and agents of the City when acting in their capacity as municipal officials, employees and agents, from and against any and all claims, demands, suits, proceedings and actions, liability and judgment by other persons for damages, losses, costs and expenses, including attorney fees, to the extent caused by negligent acts or omissions of the permittee in the performance of the permitted work. The City agrees to timely notify permittee of such claim, demand, suit, proceeding and/or action by providing written notice to permittee. Nothing herein shall be deemed to prevent the City, or any agent, from participating in the defense of any

litigation by their own counsel at their own expense. Such participation shall not under any circumstances relieve the person from the duty to defend against liability or its duty to pay any judgment entered against the City, or its agents.

**SECTION 515.290: RESERVED**

**SECTION 515.300: FEDERAL, STATE AND CITY JURISDICTION**

This Article shall be construed in a manner consistent with all applicable Federal, State and local laws. Notwithstanding any other provisions of this Article to the contrary, the construction, operation and maintenance of the ROW-user's facilities shall be in accordance with all laws and regulations of the United States, the State and any political subdivision, or any administrative agency having jurisdiction. In addition, the ROW-user shall meet the most stringent technical standards set by regulatory bodies, including the City, now or hereafter having jurisdiction. The ROW-user's rights are subject to the Police powers of the City to adopt and enforce ordinances necessary to the health, safety and welfare of the public. The ROW-user shall comply with all applicable laws and ordinances enacted pursuant to that power. Finally, failure of the ROW-user to comply with any applicable law or regulation may result in a forfeiture of any permit, registration or authorization granted in accordance with this Article.

**SECTION 515.310: SEVERABILITY**

If any Section, Subsection, sentence, clause, phrase or portion of this Article is for any reason held invalid or unconstitutional by any court of administrative agency of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

**SECTION 515.320: CITY'S FAILURE TO ENFORCE**

The City's failure to enforce or remedy any non-compliance of the terms and conditions of this Article or of any permit granted hereunder shall not constitute a waiver of the City's rights nor a waiver of any person's obligation as herein provided.

**SECTION 515.330: PENALTIES**

- A. Upon conviction or a plea of guilty, any person, firm or corporation violating or failing to comply with any of the provisions of this Chapter shall be subject to the penalty provisions provided for in Section 100.220 of the City Code. Every day that this Article is violated shall constitute a separate offense.
- B. The violation of any provision of this Article is hereby deemed to be grounds for revocation of the permit and registration to operate with the City.

- C. The City shall have the authority to maintain civil suits or actions in any court of competent jurisdiction for the purpose of enforcing the provisions of this Article. In addition to any other remedies, the City Attorney may institute injunction, mandamus or other appropriate action or proceeding to prevent violation of this Article.

#### **SECTION 515.340: RESERVATION OF RIGHTS**

- A. In addition to any rights specifically reserved to the City by this Article, the City reserves unto itself every right and power which is required to be reserved by a provision of any ordinance under any registration, permit or other authorization granted under this Article. The City shall have the right to waive any provision of this Article or any registration, permit or other authorization granted thereunder, except those required by Federal or State law, if the City determines as follows:

1. It is in the public interest to do so; and
2. The enforcement of such provision will impose an undue hardship on the person.

To be effective, such waiver shall be evidenced by a statement in writing signed by a duly authorized representative of the City. Further, the City reserves to itself the right to intervene in any suit, action or proceeding involving the provisions herein.

- B. Notwithstanding anything to the contrary set forth herein, the provisions of this Article shall not infringe upon the rights of any person pursuant to any applicable State or Federal Statutes including, but not limited to, the right to occupy the right-of-way.

### **ARTICLE II. FEES**

#### **SECTION 515.350: SCHEDULE OF FEES**

- A. *Administrative/Management Fee.* The Administrative/Management fee as approved by the Governing Body and listed in the Schedule of Fees and Charges maintained in the Finance Department.
- B. *Degradation Fee (Applicable to street cuts).* Equal to the cost per square yard for streets, overlays, and sealcoats x depreciation rate x area of influence. This will be calculated by the City Engineer based on the information provided in the permit application.