

**ORDINANCE NO. 980**

**AN ORDINANCE OF THE CITY OF WESTWOOD, KANSAS, RELATING TO THE USE AND OCCUPANCY OF THE PUBLIC RIGHT-OF-WAY; AMENDING AND REPEALING EXISTING WESTWOOD MUNICIPAL CODE SECTIONS 13-102 – 13-104, 13-106, 13-107, 13-109 – 13-111, 13-113 – 13-115, 13-119, 13-120, 13-125, 13-128, 13-131, 13-134, AND 13-142, AND PROVIDING SUBSTITUTE PROVISIONS THEREFOR.**

**BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WESTWOOD, KANSAS:**

**Section 1.** Chapter XIII, Article I, Section 13-102 of the Westwood City Code entitled “PURPOSE”, is hereby repealed, and replaced by the following provisions:

13-102. DEFINITIONS. For purposes of this Article, the following words and phrases shall have the meaning given herein:

(a) **Abandoned Facilities** means those facilities owned by the ROW-user that are not in use and will not be utilized by the owner in the future.

(b) **Affiliate** means any person controlling, controlled by or under the common control of a service provider.

(c) **Antenna** means communications equipment that transmits or receives electromagnetic radio signals used in the provision of Services.

(d) **Applicant** means any person requesting permission to occupy, lease or operate facilities using the right-of-way, or to excavate the right-of-way.

(e) **Area of Influence** means that area around a street excavation where the pavement and sub-grade is impacted by the excavation and is subject to more rapid deterioration.

(f) **Base station** means a station that includes a structure that currently supports or houses an antenna, transceiver, coaxial cables, power cables or other associated equipment at a specific site that is authorized to communicate with mobile stations, generally consisting of radio transceivers, antennas, coaxial cables, power supplies and other associated electronics. “Base station” does not mean a tower or equipment associated with a tower and does not include any structure that, at the time the relevant application is filed with the authority, does not support or house wireless communication equipment or facilities.

(g) **City** means the City of Westwood, Kansas, a municipal corporation and any duly authorized representative.

(h) **Collocation** means the mounting or installation of communication facilities on a building, structure, wireless support structure, tower, utility pole, base station or existing structure for the purposes of transmitting or receiving radio frequency signals for Services.

(i) **Construct** means and includes to construct, install, erect, build, affix or otherwise place any fixed structure or object, in, on, under, through or above the right-of-way.

(j) **Day** means calendar day unless otherwise specified.

(k) **Eligible Facilities Request** means any request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station involving:

- (1) collocation of new transmission equipment;
- (2) removal of transmission equipment; or
- (3) replacement of transmission equipment.

(l) **Emergency** means a condition that (a) poses a clear and immediate danger to life or health, or of a loss of property; or (b) requires immediate repair or replacement in order to restore service to a user.

(m) **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.

(n) **Excavation Fee** means the fee charged by the City for each street or pavement cut which is intended to recover the costs associated with construction and repair activity of the ROW-user and its contractors and/or subcontractors.

(o) **FCC** means Federal Communications Commission.

(p) **Facility** means lines, pipes, irrigation systems, wires, cables, conduit facilities, ducts, poles, towers, vaults, pedestals, boxes, appliances, antennas, transmitters, gates, meters, appurtenances, wireless communication facilities, or other equipment.

(q) **Governing Body** means the Mayor and the City Council of the City of Westwood, Kansas.

(r) **Governmental Entity** means 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 Kansas or of any other state of the United States and any agency or instrumentality of the State of Kansas or of any other state of the United States or of the United States.

(s) **KCC** means the Kansas Corporation Commission.

(t) **Pavement** means and includes Portland cement concrete pavement, asphalt concrete pavement, asphalt treated road surfaces and any aggregate base material, including, but not limited to, any material used or approved by the City in street resurfacing.

(u) **Permit and Inspection Fee** means the fee charged by the City to recover its cost 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 of 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.

(v) **Permittee** means any person to whom a right-of-way permit is issued to excavate a right-of-way.

(w) **Person** means any natural or corporate person, business association or business entity including, but not limited to, a partnership, a sole proprietorship, a political subdivision, a public or private agency of any kind, a utility, a successor or assign of any of the foregoing, or any other legal entity.

(x) **Public Improvement** means 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, streetlights, public facilities, parks, public easements, recreational facilities, irrigation system, public improvements, public buildings or public lands.

(y) **Public Lands** means any real property of the City or any interest therein that is not right-of-way.

(z) **Public Works Director** means the Public Works Director of the City or his or her authorized representative.

(aa) **Registration** means 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.

(bb) **Repair** means the temporary construction work necessary to make the right-of-way or any public improvement therein useable.

(cc) **Repair and Restoration Costs** means those costs associated with repairing and restoring the public right-of-way because of damage caused by the ROW-user and its contractors and/or subcontractors in the right-of-way.

(dd) **Restoration** means the process by which an excavated right-of-way and surrounding area, including pavement and foundation, is returned to the same condition, or better, that existed before the commencement of the work.

(ee) **Right-of-Way or Rights-of-Way (herein also "ROW")** means the area on, below or above public streets, alleys, bridges and parkways and the areas immediately adjacent thereto dedicated to public use or in which the City has acquired right-of-way interest in the real property, e.g. dedicated roadway area.

(ff) **Right-of-Way Permit** means the authorization to excavate for the construction, installation, repair, or maintenance of any type of facility within the right-of-way.

(gg) **Routine Service Operation** means a work activity that makes no material change to the facilities and does not disrupt automobile or pedestrian traffic.

(hh) **ROW-User** means 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 any governmental entity that has entered into an agreement pursuant to K.S.A. 12-2901, *et seq.*, with the City regarding the use and occupancy of the City's right-of-way.

(ii) **Service** means a commodity provided to a person by means of a delivery system 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, wireless services, alarm systems, steam, electric, water, telegraph, data transmission, petroleum pipelines, or sanitary sewers.

(jj) **Service Provider** means any person owning, possessing or having an interest in facilities in the right-of-way that are used for the provisions of a service for or without a fee; provided, that this definition shall also include persons owning, possessing or having an interest in facilities in the right-of-way that are used by, may

be used by or are intended for use by another person, in whole or in part, to provide a service for or without a fee, regardless of whether the actually facility owner provides any service as defined herein.

(kk) **Small cell facility** means a wireless facility that meets both of the following qualifications:

(1) Each antenna is located inside an enclosure of no more than six cubic feet in volume, or in the case of an antenna that has exposed elements, the antenna and all of the antenna's exposed elements could fit within an imaginary enclosure of no more than six (6) cubic feet; and

(2) primary equipment enclosures that are no larger than seventeen (17) cubic feet in volume, or facilities comprised of such higher limits as the FCC has excluded from review pursuant to 54 U.S.C. § 306108. Accessory facilities may be located outside the primary equipment, and if so located, are not to be included in the calculation of equipment volume. Accessory facilities includes, but are not limited to, any electric meter, concealment, telecommunications demarcation box, ground-based enclosures, back-up power systems, grounding equipment, power transfer switch, cut-off switch and vertical cable runs for the connection of power and other services.

(ll) **Small Cell Network** means a collection of interrelated small cell facilities designed to deliver wireless service.

(mm) **Stealth or Stealth Technology** means using the least visually intrusive facility by minimizing adverse aesthetic and visual impacts on the land, property, buildings and other facilities adjacent to, surrounding and generally in the relative area as the requested location a communications facility. This means ensuring that all antenna arrays, cables, and other accessory facilities used for the provision of wireless service or other service incapable of underground placement are not obtrusive or noticeably visible from adjacent properties or adjacent rights-of-way. Any accessory facilities mounted onto a tower or structure shall not project greater than one (1) foot, measured horizontally, from the surface of the tower or structure and shall be painted or screened with materials that are a conforming or complementary color to the tower or structure. Cables shall be contained within the interior of the tower or structure. In light of the ongoing and anticipated development of new technologies likely to change the components of communication facilities of all sorts, the Public Works Director may reasonably determine if communications facility or the components thereof are reasonably designed to meet the stealth guideline. All such determinations shall be made in a competitively neutral, non-discriminatory manner in light of the public health, safety and welfare.

(nn) **Substantial modification** means a proposed modification to an existing wireless support structure or base station that will substantially change the physical dimensions of the wireless support structure or base station under the objective standard for substantial change, established by the FCC pursuant to 47 C.F.R. 1.40001.

(oo) **Street** means the pavement and sub-grade of a City residential, collector or arterial roadway, excluding curbs, gutters, and portions adjacent to the pavement and sub-grade of a road way that lie in a right-of-way.

(pp) **Tower** means any structure built for the sole or primary purpose of supporting any FCC licensed or authorized antennas and their accessory facilities including structures that are constructed for wireless services and the associated site.

(qq) **Transmission Equipment** means equipment that facilitates transmission for a wireless service licensed or authorized by the FCC including, but not limited to, radio transceivers, antennas, coaxial or fiber optic cable, and regular and backup power supply. The term includes equipment associated with wireless services including, but not limited to, private, broadcast, and public safety services as well as unlicensed wireless services and fixed wireless services, such as microwave backhaul.

(rr) **Wireless support structure** means a freestanding structure, such as a monopole, guyed or self-supporting tower or other suitable existing or alternative structure designed to support or capable of supporting wireless facilities. Wireless support structure shall not include any telephone or electrical utility pole or any tower used for the distribution or transmission of electrical service.

**Section 2.** Chapter XIII, Article I, Section 13-103 of the Westwood City Code entitled “DEFINITIONS”, is hereby repealed, and replaced by the following provisions:

13-103. **PURPOSE.** The purposes of this Article include, but are not limited to, the following:

(a) To recognize the City’s primary role as chief steward of the right-of-way and its duty to its citizens to recover all or part of the costs of managing the right-of-way and incursions into it;

(b) 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 this county;

(c) To recognize the necessity for 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;

(d) To treat each ROW-user equitably and in a competitively neutral and nondiscriminatory manner with considerations that may be unique to the technologies and situation of each particular ROW-user;

(e) To minimize disruption, visual impact or inconvenience to the public, and to preserve and promote the public health, safety and welfare;

(f) To balance the needs of all users of the City’s rights-of-way, and to make sure that traditional users such as vehicular and pedestrian traffic may continue to operate safely, that the rights of those whose property adjoins or is part of the rights-of-way are respected, and to consider input from property owners adjoining the right-of-way affected by right-of-way users;

(g) To balance the rights and interests of all who use or derive benefit from the rights-of-way, but not to create rights or privileges for any particular interests group;

(h) To comply with all laws, including state and federal legislation;

(i) To identify the location of users and uses within the right-of-way to assure that different users not interfere with each other, that construction does not damage uses, and that safe and proper construction techniques are employed in the right-of-way;

(j) To avoid the problems the City has found whereby users in the right-of-way install facilities without notifying the City and using improper or dangerous construction methods, thereby rendering future construction unsafe or more difficult;

(k) To recognize that the City is in an older part of the metropolitan area, with numerous uses in the right-of-way, warranting a need for mapping and allocation of the space in the right-of-way; and,

(l) To recognize that the rights of right-of-way users' and service providers' use of the right-of-way shall in all matters be subordinate to the City's use of the right-of-way.

**Section 3.** Chapter XIII, Article I, Section 13-104 of the Westwood City Code entitled "POLICY", is hereby repealed, and replaced by the following provisions:

13-104. POLICY.

(a) It is the policy of the City to authorize any ROW-user to utilize the right-of-way in a competitively neutral, non-discriminatory manner that maximizes the safe and efficient use of the right-of-way, conserves the right-of-way, minimizes the burden on the right-of-way, physically and aesthetically, promotes the public health, safety and welfare, and fully consider the input from adjoining property owners affected by the use of or placement of facilities or equipment in the right-of-way. Any use of the right-of-way by a ROW-user shall be subject to the terms and conditions hereof, in addition to other applicable federal, state or local requirements. Registration hereunder does not relieve any person of any other obligation or duty to the City or that the City may from time to time lawfully impose.

(b) The right granted to the ROW-user to use the right-of-way is limited to the use that the ROW-user has filed with the City in accordance with this Article. These rights are for the exclusive use of the ROW-user except where otherwise provided herein, or when 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 hereafter having jurisdiction. In addition, the ROW-users shall be subject to all technical specifications, design criteria, policies, resolutions and ordinances now or hereafter adopted or promulgated by the City in the reasonable exercise of its police power relating to permits and fees, sidewalk and pavement cuts, utility location, construction coordination, surface restoration, and other requirements on the use of the right-of-way, all other lawful exercise of the City's police power.

(e) The right of ROW-users and service providers to use and occupy the right-of-way shall always be subject and subordinate to the City's reasonable public health, safety and welfare requirements and regulations. Nothing contained within this Article is intended to abrogate or limit the City's reasonable exercise of such home rule powers.

**Section 4.** Chapter XIII, Article I, Section 13-106 of the Westwood City Code entitled “REQUIREMENTS OF SERVICE PROVIDER”, is hereby repealed, and replaced by the following provisions:

13-106.        **REQUIREMENTS OF SERVICE PROVIDER.**

(a) Any existing service provider must register within sixty (60) days of the effective date of this article.

(b) Any person, who is not an existing service provider prior to the effective date of this ordinance 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 e-mail address of officer, agent or employee responsible for the accuracy of the registration statement.

(3) Name, address, telephone number, fax number and e-mail 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, collocation agreement, or any other authorization required by any appropriate governmental entity, including, but not limited to, the City, the FCC or the KCC.

(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 Kansas law.

(7) Information sufficient to determine whether the service provider has applied for and received any certificate of authority required by the KCC.

(8) Information sufficient to determine that the service provider has applied for and received any permit or other approvals required by the FCC.

(9) Information sufficient to determine that the service provider has registered the location of any of its facilities with “Kansas One Call” or any other central registry, to the extent applicable.

(10) Such other information as may be reasonably required by the City to complete the registration statement.

(f) Each service provider shall designate a local person familiar with the facilities who 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) Prior to construction, reconstruction, repair, maintenance, or relocation of facilities owned by the service provider in the right-of-way, the service provider shall first obtain the necessary right-of-way permit as provided hereafter.

(h) Prior to providing service to the City and its residents, the service provider shall first obtain the necessary franchise agreement, if any, from the City.

(i) The service provider shall participate in any joint planning, construction and advance notification of right-of-way work, including attending a pre-application meeting conference prior to submission of an application hereunder, unless waived by the Public Works Director, and coordination and consolidation of street cut work as directed by the Public Works Director. 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 the public health, safety or welfare, and to minimize traffic and other disruptions.

(j) The service provider shall furnish maps showing the location of facilities of the service provider within the City as provided hereafter.

(k) The City shall not exercise its authority under this provision unreasonably, to in any way deter competition, discriminate against any service provider, or violate any applicable state, federal law, rule or regulation.

**Section 5.** Chapter XIII, Article I, Section 13-107 of the Westwood City Code entitled “MAPPING REQUIREMENT OF SERVICE PROVIDER”, is hereby repealed, and replaced by the following provisions:

13-107. MAPPING REQUIREMENT OF SERVICE PROVIDER.

(a) The service provider shall keep and maintain accurate records and as-built drawings depicting accurate location of all its facilities constructed, reconstructed or relocated in the right-of-way, and may be required to file the same with the City; provided that, the service provider shall not be required to disclose any proprietary information, confidential or related business information to justify the need for additional or upgraded facilities in the course of the application process.

(b) In any event, within ten (10) days of a request by the City, the service provider will provide to the City information concerning such facilities as may be reasonably requested.

(c) When available to the service provider, such information will be submitted electronically in an AutoCad® format to the extent compatible with the City's Geographical Information Systems (GIS) and Johnson County Automated Integrated Mapping Systems (AIMS) provided, however, that nothing herein shall be construed to require the service provider to acquire or modify any electronic mapping system.

(d) Underground facilities shall be differentiated from overhead facilities.

(e) Such mapping and identification shall be at the sole expense of the service provider.

**Section 6.** Chapter XIII, Article I, Section 13-109 of the Westwood City Code entitled “USE OF THE RIGHT-OF-WAY”, is hereby repealed, and replaced by the following provisions:

## USE OF THE RIGHT-OF-WAY.

(a) The ROW-users use of the right-of-way shall in all matters be subordinate to the City's use or occupation of the right-of-way. The City may reserve sufficient space within the right-of-way for future public improvements. Without limitation of its rights, the City expressly reserves the right to exercise its governmental powers now and hereafter vested in or granted to the City to the fullest extent permitted by law.

(b) The ROW-user shall coordinate the placement of facilities in a manner that does not interfere with any public improvement and does not compromise the public health, safety or welfare, 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 Public Works Director. Said standards shall be competitively neutral and neither unreasonable nor discriminatory.

(c) The ROW-user shall consider any request made by the City concerning placement of 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. All such work shall be subject to existing legal and regulatory restrictions, including, but not limited to, all zoning and traffic laws. 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 right-of-way or other public lands of the City or any private property.

(e) All facilities of the ROW-user shall be placed so as to minimize interference with the use of right-of-way and public lands or private property. The City, through its Public Works Director, shall have the right to consult and review the location, design and nature of the facility prior to its being installed, and approve the same prior to installation.

(f) Consistent with the 2008 amendment of this Article, all facilities constructed, replaced, or relocated in the rights-of-way after the date hereof shall be placed underground unless otherwise agreed to by the City. Where there are obstructions in the rights-of-way such as trees, shrubs, other utilities, commercial signs, man-made structures, or other like obstruction which makes the cost of such underground burial unreasonable, the ROW-user or Franchisee may request a waiver of this requirement, in which event the City will not unreasonably withhold consent to such waiver. Whenever reasonably possible, all newly constructed facilities or substantial modifications shall be located underground. The ROW-user shall comply with all requirements of the City relating to underground facilities. This requirement may be waived by the Public Works Director at his or her discretion for public health, safety or welfare concerns, or some other good cause under the condition that the exercise of such discretion does not cause discrimination among ROW-users. If this requirement is waived, the facilities shall be located as directed by the Public Works Director, including, but not limited to, requirements regarding location and height. Above ground facilities shall comply with the City's Manual of Infrastructure

Standards and all applicable zoning regulations, and be located in a manner that does not compromise the public health, safety or welfare; above ground facilities shall utilize reasonable stealth design techniques for facilities incapable of underground placement as described herein, utilizing designs, structures, and finishes aesthetically and architecturally compatible with the environment, or in the instance of collocated facilities consistent with such pole, street light, or other facility upon which said facility is located or placed. No newly-constructed above-ground facilities shall be located directly in front of any single-family home (or in front of where a single-family home could be constructed, in the case of a vacant lot), provided that if the Public Works Director deems it necessary or appropriate, such facilities may be located in the front yard, at or along the property line between two adjacent properties. Underground placement of facilities shall comply with all existing City standards as well as the standards contained herein, unless waived in writing by the City in its sole discretion for safety concerns, or some other good cause under the condition that the exercise of such discretion does not cause discrimination among ROW-users.

(g) The ROW-user shall not interfere with any private property rights or 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, except wireless transmission equipment as defined in 47 CFR 1.40001; provided that, any such relocations shall be subject to the appeal process contained herein.

(h) The Public Works Director may assign specific corridors or spaces within the right-of-way, or any particular segment thereof as may be necessary, for each type of facility that is currently or, pursuant to current technology, the Public Works Director expects will someday be located within the right-of-way. All right-of-way permits issued by Public Works Director 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 requirement is waived by Public Works Director for good cause shown, upon consideration of such factors as the remaining economic life of the facilities, public health, safety or welfare, user service needs, and hardship to the ROW-user.

(i) If, in the preparation and planning of a right-of-way project, the Public Works Director deems it appropriate for a conduit to be constructed along, across or under the right-of-way, the Public Works Director 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 Public Works Director may require the ROW-user to use such conduit, and to contribute to the expense of such conduit, provided that, the ROW-user's use of the conduit is reasonable and appropriate under the circumstances.

(j) All earth, materials, sidewalks, paving, crossings, utilities, other public improvements, or improvements on private property of any kind damaged or removed by the ROW-user shall be fully repaired or replaced promptly by the ROW-user at its sole expense and to the reasonable satisfaction of the City. Upon determination by the

Public Works Director that such repair or replacement is a public safety matter, all such repair or replacement shall be commenced within twenty-four (24) hours of notice from the City, or the Public Works Director may direct the City to make such repair or replacement and bill the ROW-user for the City cost. The Public Works Director 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.

(k) 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 the Manual of Infrastructure Standards and all applicable federal, state and local law and regulations, including those promulgated by national trade associations commonly associated with the service provided by the ROW-user. It is understood that the standards established in this paragraph are minimum standards and the requirements established or referenced in this Ordinance may be in addition to or stricter than such minimum standards. 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 improvement to the Public Works Director and having received a permit for such improvement. The Public Works Director may require that any drawings, plans and/or specifications submitted be certified by a Kansas registered professional engineer 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, which are appropriately cited, and attested to on the plans by the signature of an authorized official of the organization applying for the permit.

(l) 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 horizontal and vertical location of its facilities located 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.

(m) The City shall have the authority to prohibit the use or occupancy of any specific portion of the right-of-way by a ROW-user due to public health, safety, or welfare considerations.

(n) ROW-users shall contact all public safety agencies before beginning work to advise of any lane or road closures, or any other public safety or traffic issues.

(o) The maximum height which may be approved for facilities, tower and related transmission equipment in the public right-of-way is: fifty (50) feet along an arterial; forty (40) feet along a collector; and twenty (20) feet along a residential street.

(p) ROW-users shall comply with the provisions of traffic control plan consistent with the City's requirements, as described within the application for permit described herein, and subject to the approval of the City and amendments required thereby for the flow of traffic and the public health, safety or welfare.

**Section 7.** Chapter XIII, Article I, Section 13-110 of the Westwood City Code entitled "FACILITY RELOCATION", is hereby repealed, and replaced by the following provisions:

13-110. 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 health, safety, or welfare. Such removal, relocation, or adjustment shall be performed by the ROW-user at the ROW-user's 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 any private easement, as directed by the City, for a public improvement, at City expense, 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; provided that, wireless service providers or wireless infrastructure service providers shall be provided advance written notice of one hundred eighty (180) days to comply with such relocation or adjustment, unless circumstances beyond the City's control require a shorter notice period. 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 which 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 the 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.

(h) In the event that a ROW-user is required to move its Facilities for a private benefit, the ROW-user shall not bear the cost of the relocation or adjustment to the

extent of such private benefit and the ROW-user shall not be obligated to commence the relocation or adjustment until receipt of funds for such relocation or adjustment.

**Section 8.** Chapter XIII, Article I, Section 13-111 of the Westwood City Code entitled “PROTECTION OF THE PUBLIC”, is hereby repealed, and replaced by the following provisions:

13-111. 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 not 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 of any kind, including public improvements by or on the behalf of the City, except to the extent caused by the negligent, willful, intentional, or malicious acts or omissions of the City.

(c) The ROW-user shall be responsible to the City and its agents, representatives, and authorized contractors for all damages suffered by them including, but not limited to delay damages, repair costs, construction delays, penalties or other expenses of any kind arising out of the failure of the ROW-user to timely perform any of its obligations under this Article to the extent caused by the acts or omissions of the ROW-user.

(d) The City or its authorized contractors shall be responsible for taking reasonable precautionary measures including calling for facility locations when constructing its public improvements.

(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 thereof open, or shall leave any part or portion thereof 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) The Public Works Director, upon the review and approval of a plan and details for trimming trees in the right-of-way, may grant permission by permit to any ROW-user to trim trees upon and overhanging the right-of-way so as to prevent the branches of such trees from coming in contact with the facilities of the ROW-user.

(i) In the event the ROW-user severely disturbs or damages the root structure in the right-of-way to the detriment of the health and safety of any 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, Public Works Director, in his or her discretion, may require the ROW-user to directionally bore around any tree in the right-of-way.

(j) 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 fifteen (15) days' written notice from the person detailing the time and location of the moving operations, and not less than twenty-four (24) hours advance notice from the person advising of the actual operation. To the extent applicable, the ROW-user shall also comply with any requirements of Westwood City Code, including, but not limited to, any relevant building codes.

(k) The Public Works Director may cause to be removed any encroachment in the right-of-way that creates a hazard to public health, safety, or welfare, and the cost of such removal and restoration of the right-of-way shall be borne by the ROW-user.

**Section 9.** Chapter XIII, Article I, Section 13-113 of the Westwood City Code entitled "ABANDONED AND UNUSABLE FACILITIES", is hereby repealed, and replaced by the following provisions:

13-113 ABANDONED AND UNUSABLE FACILITIES.

(a) A ROW-user owning abandoned facilities in the right-of-way must provide and send to the City the location and nature of any abandoned facilities and either:

(1) Remove its facilities and replace or restore any damage or disturbance caused by the removal at its own expense. The Public Works Director may allow underground facilities or portions thereof to remain in place if the Public Works Director determines that it is in the best interest of public health, safety, or welfare to do so. At such time, the City may take ownership and responsibility of such vacated facilities left in place;

(2) Provide information satisfactory to the City that the ROW-user's obligations for its facilities in the right-of-way have been lawfully assumed by another authorized ROW-user; or

(3) Submit to the City a proposal and instruments for transferring ownership of its facilities to the City. If the ROW-user proceeds under this section, the City may, at its option purchase the equipment, require the ROW-user, at its own expense, to remove it, or require the ROW-user to post a bond in an amount sufficient to reimburse the City for reasonable anticipated costs to be incurred to remove the facilities.

(b) Facilities of a ROW-user who fails to comply with this section, and whose facilities remain unused for two years, shall be deemed to be abandoned after the City has made a good faith effort to contact the ROW-user, unless the City receives confirmation that the ROW-user intends to use the facilities. Abandoned facilities are deemed to be a nuisance. The City may exercise any remedies or rights it has at law or in equity, including, but not limited to, (a) abating the nuisance, (b) taking possession and ownership of the facility and restoring it to a useable function, or (c) requiring the removal of the facility by the ROW-user.

**Section 10.** Chapter XIII, Article I, Section 13-114 of the Westwood City Code entitled “PERMIT REQUIREMENT”, is hereby repealed, and replaced by the following provisions:

13-114 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 exemptions to this provision:

(1) Contractors working on the maintenance, 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 hours, except that such activities or operations on Rainbow Boulevard, Shawnee Mission Parkway, Mission Road, W. 47th Street, or State Line Road shall not be exempt from this provision.

(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 the public right-of-way to which such land is adjacent, any fixed structure, material, or object without having obtained the appropriate right-of-way permit.

(d) A right-of-way permit is ordinarily 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 Public Works Director, other City employees, and the public.

(g) Prior to the commencement of excavation, the permittee shall identify and locate any buried facilities to be spray painted according to the Uniform Color Code required by Kansas One Call.

(h) All excavations by the permittee shall have a metal marker inserted into the excavation of the restored pavement, which shall identify the ROW-user.

(i) 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, the FCC, or the KCC.

(j) 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 as described in this Article.

(k) 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 City's the Manual of Infrastructure Standards.

**Section 11.** Chapter XIII, Article I, Section 13-115 of the Westwood City Code entitled "PERMIT APPLICATIONS", is hereby repealed, and replaced by the following provisions:

13-115. PERMIT APPLICATIONS.

(a) Application for a right-of-way permit shall be submitted to the Public Works Director by either the ROW-user or by the person who will do the work and/or excavation in the right-of-way. Before an application may be submitted, the Applicant must attend a pre-application conference, unless waived by the Public Works Director.

(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 a descriptive statement of the proposed facility, all required permit attachments, and scaled drawings, including elevation drawings, showing the location and area of the proposed project and the location of all existing and proposed facilities at such location noting specific colors and materials used and proposed;

(3) Certificate of liability insurance as required herein;

(4) Performance and Maintenance Bond;

(5) A traffic control plan to be used during construction and during any anticipated future access for maintenance or other work on the facility, consistent with the City's requirements, if excavating, cutting, impeding, or working on a paved surface for vehicular or pedestrian traffic, parking vehicles or equipment or storing materials on a paved surface for vehicular or pedestrian traffic, or when required by the latest edition of the Federal Highway Administration's Manual of Uniform Traffic Control Devices;

(6) 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;

(7) For the placement of new communication facilities, including small cell facilities on an existing tower, utility pole or street light, collocation of communication facilities, including small cell facilities, or placement of a new tower or utility pole for the use of communication facilities in the right-of-way, completion of structural analysis from a licensed professional engineer which describes the facility, tower, utility pole, or street light's structural capacity, including that said facility can safely accommodate all antennas, transmission equipment, and accessory equipment. Said analysis shall be submitted with the application and shall be stamped by a Kansas registered professional engineer. Said report and analysis shall also reflect that the facility or pole is capable of withstanding standard wind loads for applications of the

type requested, in compliance with all City codes, nationally recognized street and highway safety codes, and the City's Manual of Infrastructure Standards;

(8) For above ground facilities, digital photo simulations of the site providing "before and after" views demonstrating the true visual impact of the proposed facility;

(9) An engineer's certification that any proposed communication facility on the site complies with all FCC standards regarding provisions and regulations for radio frequency emissions or exposure and anticipated levels of electromagnetic radiation to be generated by the facility; provided that, nothing within this Article requires or is intended to hold service providers or ROW-users or to exceed the requirements issued or promulgated by the FCC;

(10) Applicants for communication facilities in the right-of-way shall submit an affidavit affirming that the applicant has provided notice by first class mail, postage prepaid, to the owners of record of all property within two hundred (200) feet of the proposed location (hereby considered to be adjoining property). The notice shall provide: (A) a description of the proposed facility; (B) the location of the proposed facility; (C) a plan sheet displaying proposed location and showing the facility improvements; (D) the applicant's contact information; and, (E) a statement that the owner shall have twenty (20) days from the date of the notice to provide the City with input regarding the application;

(11) Applicants for use, construction, excavation, modification, or conducting repairs in or on the State Highway right-of-way also within the City's right-of-way shall first obtain a permit from the Kansas Department of Transportation prior to submission of an application for permit to use the right-of-way to the City and shall include a copy of such permit with the submission of the application;

(12) 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, the FCC or the KCC;

(13) For the use of City-owned facilities within the right-of-way, including but not limited to poles and street lights, a copy of the executed agreement with the City and/or Special Use Permit for the use of, attachment to, or collocation in, on or within said pole or street light;

(14) For the use of, attachment to, or collocation in, on or within facilities, poles, towers, or other equipment or devices within the right-of-way owned or operated by other governmental entity, corporate entity, person, public or privately held utility, or other service provider, a copy of the executed agreement with said governmental entity, corporate entity, person, public or privately held utility, or other service provider for the use of, attachment to, or collocation in, on or within such facility, pole, tower, or other equipment or device;

(15) Information sufficient to determine whether the permittee, ROW-user, service provider, or service is subject to the payment of franchise fees and/or execution of a franchise agreement; and,

(16) Any other requirement that the Public Works Director deems reasonable to protect the health, safety, and welfare of the public.

(c) All applications for use of the right-of-way by communication systems, wireless support networks, or wireless service providers shall be processed within the timeframes required by state and federal law.

(1) Applications for a new wireless support structure as defined by state and federal law shall be processed within one hundred fifty (150) days of submission of a complete application including all required submissions.

(2) Applications for a substantial modification to an existing wireless support structure or base station or any other application for placement, installation or construction of transmission equipment that does not constitute an eligible facilities request as defined by state and federal law shall be processed within ninety (90) days of submission of a complete application including all required submissions.

(3) Applications for a small cell network, small cell facility, or eligible facility request as defined by state and federal law shall be processed within sixty days (60) days of submission of a complete application including all required submissions.

(4) The City shall, within thirty (30) days of receipt of an application for use of the right-of-way by communication systems, wireless support networks, or wireless service providers, including but not limited to the use, construction, modification, or installation of small cell facilities, review the application for completeness. An application will be deemed complete if it includes the applicable permit review fee(s) and contains all of the applicable submittal requirements set forth herein, unless waived by the Public Works Director. The determination of completeness shall not preclude the City from requesting additional information or studies either at the time of the determination of completeness or subsequently if new or additional information is required, substantial changes in the proposed use, construction, modification, or installation of wireless support systems or facilities occurs, or the proposed installation or modification is modified by the applicant, as determined by the City, or as required for protection of the public health, safety, or welfare.

(5) If the application is incomplete, the City shall notify the applicant within thirty (30) days of receipt of the application that the application is incomplete, identify any and all missing information or documents, and specify the ordinance, article, code provision, or infrastructure standard that requires submission of the document or information.

(6) The application review period begins to run when the complete application is submitted and shall be tolled if the City determines that the application is incomplete and provides notice as set forth herein. The timeframe for review begins running again when the City receives the applicant's supplemental submission in response to the City's notice of incompleteness. Following a supplemental submission, the City shall have ten (10) days to notify the applicant that the supplemental submission did not provide the information identified in the original notice delineating missing information and shall be tolled in the case of second or subsequent notices. Except as may be otherwise agreed to by the applicant and the City, second or subsequent notices of incompleteness may not specify missing documents or information that was not delineated in the original notice of incompleteness.

(7) The application review period may also be tolled by mutual agreement of the City and the applicant.

(d) An application for a small cell network involving no greater than twenty-five (25) individual small cell facilities of a substantially similar design within the City shall be permitted, upon written request set forth within or prior to the submission of an application for a right-of-way permit, to file a consolidated application and receive a single permit for the use of the right-of-way for the installation, construction, maintenance and repair of a small cell network in lieu of filing separate applications for each small cell facility; provided that, the City may require a separate application for any small cell facilities that are not of a substantially similar design. Nothing within this subsection is intended to exempt the applicant from compliance with the remaining provisions of subsection (b) or the other requirements of this Article.

(e) If an applicant has submitted an application for a permit for the installation, construction, maintenance, or repair of multiple facilities, that applicant may not submit another application for a permit for the installation, construction, maintenance, or repair of multiple facilities until the first application has been approved or denied. The Public Works Director may waive this provision.

(f) In the event the applicant modifies the proposed Facilities installation or modification description in the initial application after the initial submittal of the application, or as a result of any subsequent submittals, the application as modified will be considered a new application subject to commencement of a new application review period; provided that, applicant and the City may, in the alternative, enter into a mutually agreeable tolling agreement allowing the City to request additional submittals and additional time that may be reasonably necessary for review of the modified application.

**Section 12.** Chapter XIII, Article I, Section 13-117 of the Westwood City Code entitled “RIGHT-OF-WAY PERMIT FEES AND COSTS”, is hereby repealed, and replaced by the following provisions:

13-117. RIGHT-OF-WAY PERMIT FEES AND COSTS.

(a) The right-of-way permit fee shall be recommended by the Public Works Director, approved by the Governing Body and listed in the Schedule of Fees maintained in the City Clerk’s office. An application shall not be deemed submitted unless the permit fee is paid. The permit fee shall be subject to all state and federal fee limitations.

(b) The right-of-way permit fee may include a permit and inspection fee, and an excavation fee.

(c) Fees paid for a right-of-way permit, which is subsequently revoked by the Public Works Director, are not refundable.

(d) Except as provided for in an emergency situation, when a ROW-user is found to have worked or is working in the right-of-way without having obtained a permit, the fee for the permit will be double the amount had the ROW-user obtained a permit prior to beginning work.

(e) The City may also charge and collect any necessary replacement, repair, and restoration costs.

(f) The City may also charge and collect the cost to the City of any consultants, experts, engineers, or other professionals engaged by the City to assist in connection

with any right-of-way permit; provided that, the City may not include travel expenses incurred in the review of an application for more than one trip to the City per application, any travel expenses charged to the applicant shall be reasonable and directly related to the application, and consulting fees shall not be established on a contingency-based or results-based arrangement.

**Section 13.** Chapter XIII, Article I, Section 13-119 of the Westwood City Code entitled “PERMITTED WORK”, is hereby repealed, and replaced by the following provisions:

13-119. 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 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 lanes of moving traffic for more than four 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, except upon the express written approval of the City.

(g) All work performed in the right-of-way or which in any way affects 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 City’s Manual of Infrastructure Standards, unless otherwise agreed to by the City.

(h) The permittee shall identify and locate any underground facilities in conformance with the Kansas Underground Utility Damage Prevention Act “Kansas One Call” system, and notice shall be provided directly to Water District No. 1, to Kansas City Power and Light (KCPL), Johnson County Wastewater, and to the Public Works Department with respect to any municipal traffic signal and street light systems, as appropriate.

(i) The permittee shall be liable for any damages to underground facilities due to excavation work prior to obtaining location of such 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.

(j) 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 Public Works Director. 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 any damages to the City for delay caused by the permittee pursuant to this Article, in addition to any other remedies or penalties provided herein or as provided by law or at equity.

(k) 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 Kansas, as well as the rules and regulations of the KCC or any other local, state or federal agency having jurisdiction over the parties.

(l) 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 or AUTOCAD.DWG automated formats if available, or in hard copy otherwise. The Public Works Director may waive this requirement. Such information shall be subject in all respects and shall have the benefit of protection as set forth in the section entitled "Mapping Requirements of Service Provider" contained herein.

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

**Section 14.** Chapter XIII, Article I, Section 13-120 of the Westwood City Code entitled "RIGHT-OF-WAY REPAIR AND RESTORATION", is hereby repealed, and replaced by the following provisions:

13-120. 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 Public Works Director 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 Public Works Director 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 condition than it was prior to the excavation thereof.

(d) If the permittee fails to restore the right-of-way in the manner and to the condition required by the Public Works Director, 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 that, if the surety does not commence performance thereof within ten (10) days from the date of notice, the City may take over the work and prosecute 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 City's Manual of Infrastructure Standards and any applicable federal or state requirement.

(f) If an excavation cannot be back-filled immediately and 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 or for the length of the contract entered into or any Special Use Permit issued for a greater period, whichever is greater. During the twenty-four (24) months, or for the duration of the contract period or the duration of the Special Use Permit referenced above, if longer, the permittee shall, upon notification from the Public Works Director, correct all restoration work to the extent necessary, using any method as required by the Public Works Director. The work shall be completed within a reasonable time, not to exceed thirty (30) calendar days, of the receipt of notice from the Public Works (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), unless a greater period is required by applicable state or federal law or regulation. In the event the permittee is required to perform new restoration pursuant to the foregoing guarantee, the Public Works Director shall have the authority to extend the guarantee period for such new restoration for up to an additional twenty-four (24) months from the date of the new restoration, if the Public Works Director determines any overt action by the permittee not to comply with the conditions of the right-of-way permit and any restoration requirements. All determinations and requirements issued by the Public Works Director pursuant to this subsection specifically and this Article generally shall be competitively neutral, reasonable and nondiscriminatory.

(h) The twenty-four (24) month guarantee or, if applicable greater, period shall be applicable to failure of the pavement surface as well as failure below the pavement surface.

(i) Payment of an excavation fee shall not relieve the permittee of the obligation to complete the necessary right-of-way restoration.

**Section 15.** Chapter XIII, Article I, Section 13-125 of the Westwood City Code entitled “STATE HIGHWAY RIGHT-OF-WAY”, is hereby repealed, and replaced by the following provisions:

13-125. STATE HIGHWAY RIGHT-OF-WAY. Any persons making any excavations or modifications or repairs in or on the State Highway right-of-way shall first obtain a permit from the Kansas Department of Transportation prior to submission of an application for permit to use the right-of-way to the City. However, public utilities may make any such excavations or modifications or repairs in the event of an emergency which would prohibit compliance with this article or other legal requirement, but any such public utility must notify the Police Department before commencing any such cut or excavation, and further must comply with all other requirements contained in the article and all other legal requirements within seventy-two (72) hours of making any such emergency excavations, modifications, or repairs.

**Section 16.** Chapter XIII, Article I, Section 13-128 of the Westwood City Code entitled “JOINT APPLICATIONS”, is hereby repealed, and replaced by the following provisions:

13-128. JOINT APPLICATIONS.

(a) Applicants may apply jointly for permits to excavate the right-of-way at the same time and place and are encouraged to jointly apply for collocation and implementation of small cell facilities or small cell networks utilizing existing facilities used, owned, leased, or operated by other permittees.

(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.

(c) Joint applicants shall be jointly and severally liable for any and all obligations and duties described in the Westwood Municipal Code.

**Section 17.** Chapter XIII, Article I, Section 13-131 of the Westwood City Code entitled “DENIAL OF PERMIT”, is hereby repealed, and replaced by the following provisions:

13-131. DENIAL OF PERMIT.

(a) The Public Works Director may deny a permit or prohibit the use or occupancy of a specific portion of the right-of-way 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 Public Works Director, at his or her discretion, may consider all relevant factors, including but not limited to:

(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 portions of 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, including City zoning regulations, that affect location of or other standards for 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 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;

(8) Whether the applicant maintains a current registration with the City;

(9) 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 Public Works Director shall be guided by the safety and convenience of anticipated travel of the public over the right-of-way.

(10) Whether the application complies with the City's Manual of Infrastructure Standards.

(11) The adverse impact of the facilities or the facilities' proposed location on any reasonable public interest and in light of public health, safety or welfare.

(b) Notwithstanding the above provisions, the Public Works Director may in his or her 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.

(c) The Public Works Director shall not issue a right-of-way permit for encroachments in the right-of-way for private purposes that create a safety hazard, would be deemed a nuisance, or endanger the public health, safety, or welfare.

(d) Denial of a right-of-way permit for wireless communications antenna, tower, small cell network or facility, wireless facility, or related facilities or equipment shall, in accordance with federal and state law, be made in writing and supported by substantial evidence contained in a written record issued contemporaneously with the determination.

**Section 18.** Chapter XIII, Article I, Section 13-134 of the Westwood City Code entitled “APPEALS PROCESS”, is hereby repealed, and replaced by the following provisions:

13-134. APPEALS PROCESS.

(a) Whenever a person shall deem themselves aggrieved by any decision or action taken by the Public Works Director, the person may file an appeal to the Governing Body within ten (10) calendar days of the date of notice of such decision or action; provided that, this section shall not apply to any person who avails themselves of the appeal provisions set forth under K.S.A. 66-2019 (h)(6).

(b) The persons shall be afforded a hearing on the matter before the Governing Body within thirty (30) days of filing the appeal, unless the parties agree to an extension of time.

(c) In cases of applicability or interpretation of the rules, the Governing Body may revoke such decision or action taken by the Public Works Director.

(d) In cases where compliance with such decision or action taken by the Public Works Director would cause undue hardship, the Governing Body may extend the time limit of such decision or action, or may grant exceptions to, or waive the requirements of the specific provisions of rules. The Governing Body 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. Pending a decision of the Governing Body, the order of the Public Works Director shall be stayed, unless the Public Works Director determines that such action will pose a threat to public safety or the integrity of the public infrastructure.

(e) If a person still deems himself or herself aggrieved after the appeal to the Governing Body, such person shall have thirty (30) days after the effective date of the Governing Body’s final decision to institute an action in the District Court of Johnson County, Kansas.

**Section 19.** Chapter XIII, Article I, Section 13-142 of the Westwood City Code entitled “INTERPRETATION”, is hereby repealed, and replaced by the following provisions:

13-142. INTERPRETATION. The provisions of this Article shall be liberally construed to effectively carry out its purposes which are hereby found and declared to be in furtherance of the public health, safety, or welfare.

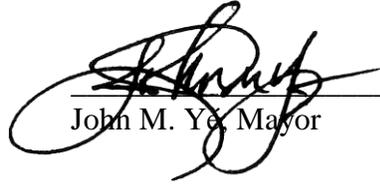
**Section 20.** This Ordinance shall take effect and be in force from and after its passage, approval, and publication in the official city newspaper.

PASSED by the Governing Body this 8th day of June, 2017.

APPROVED by the Mayor this 8th day of June, 2017.



Attest:

  
\_\_\_\_\_  
John M. Ye, Mayor

  
\_\_\_\_\_  
Frederick L. Sherman, City Clerk

Approved as to form and legality:

  
\_\_\_\_\_  
Ryan Denk, City Attorney