

**ORDINANCE NO. 1810**

**AN ORDINANCE AMENDING CHAPTER 32 OF THE NEODESHA CITY CODE TO ADD ARTICLE VI THERETO REGARDING THE USE AND MANAGEMENT OF CITY RIGHT-OF-WAY AND REPEALING ALL ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT THEREWITH.**

**WHEREAS**, the City of Neodesha, Kansas (“City”) has specifically been granted authority including K.S.A. 17-1902, to establish permitting requirements for structures or equipment in the public Right-of-Way (“ROW”) and the City desires to reaffirm its intent to regulate and enforce permitting requirements for use of its ROW; and

**WHEREAS**, the City Commission’s legislative findings include that: (a) the ROW is a unique and physically limited resource; (b) the ROW is critical to the travel and transportation of persons and property in the City; (c) the ROW is intended for public uses and must be managed and controlled consistent with that intent and can be partially occupied by facilities and public service entities to the enhancement of the health, welfare, and general economic well-being of the City and its citizens; and (d) such findings require adoption of regulations to ensure coordination of users, maximize available space, reduce maintenance and costs to the public, and facilitate entry of a maximum most efficient number of ROW users that will serve the public interest; and

**WHEREAS**, the City has been granted the authority to enact legislation to regulate the construction, placement, and operation of facilities within and using the ROW pursuant to its zoning powers established in K.S.A. 12-753 and additionally, pursuant to its general and specific powers established by the Kansas Constitution Art. 12, § 5, and K.S.A. 12-121; and

**WHEREAS**, consistent with state and federal law and the City Commission’s legislative findings, the City Commission desires to enact new regulations for use of the ROW.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF NEODESHA, KANSAS, AS FOLLOWS:**

**Section 1.** Chapter 32 of the Code of Ordinances, City of Neodesha, Kansas is amended, and Article VI dealing with Right-of-Way Use and Management is created and enacted therein to read substantially in the form of Exhibit 1, attached hereto and incorporated herein by reference.

**Section 2.** The provisions of this ordinance are severable and if any provision hereof is declared invalid, unconstitutional, or unenforceable, such determination shall not affect the validity of the remainder of this ordinance.

**Section 4.** Ordinance 1809 and all ordinances or parts of ordinances in conflict herewith are hereby repealed

**Section 5.** This ordinance shall be in full force and effect after passage and publication in the official city newspaper.

**PASSED BY THE CITY COMMISSION OF THE CITY OF NEODESHA, KANSAS, AND SIGNED BY THE MAYOR THIS 9<sup>th</sup> DAY OF OCTOBER 2024.**

ATTEST:

/s/ Devin Johnson  
**Devin Johnson, Mayor**

/s/ Stephanie Fyfe  
**Stephanie Fyfe, City Clerk**

## CHAPTER 32

### ARTICLE VI – RIGHT-OF-WAY (“ROW”) USE AND MANAGEMENT GENERALLY

**Sec. 32-155 Applicability And Administration.** This Article shall apply to all persons desiring to construct, reconstruct, restore, repair, replace, operate, maintain, excavate, occupy, or obtain any easement on any public ROW within the City. The Public Works Director is authorized to administer ROW permits for work, occupation, and excavations made in the ROW, and is authorized to adopt and promulgate rules and regulations to interpret and implement the provisions of this Article to secure the intent thereof and to promote the public health, safety, and general welfare. The rights granted to use the ROW shall be for the sole use of the ROW user and are limited to the use as set forth by the ROW user in its permit application and related documents filed with the Public Works Department 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. 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 municipal power relating to permits and fees, sidewalk and pavement cuts, utility location, construction coordination, surface restoration, and other requirements on the use of the ROW.

**Sec. 32-156 Definitions And Word Usage.** For the purposes of this Article, the following terms, phrases, words, and abbreviations shall have the meanings given herein which are in addition to those given in Section 1-2 of this Article 32:

#### *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.

#### *ACCESSORY EQUIPMENT*

Any equipment serving or being used in conjunction with a wireless facility or wireless support structure including, but not limited to, utility or transmission equipment, power supplies, generators, batteries, cables equipment buildings, cabinets and storage sheds, shelters, or similar structures.

#### *ANTENNA*

Communications equipment that transmits or receives electromagnetic radio signals used in the provision of wireless services, including without limitation, telecommunications, cable and broadband.

#### *APPLICANT*

Any person requesting permission to occupy, use, or to excavate the ROW.

#### *COLLOCATION*

The mounting or installation of wireless facilities on a building, structure, wireless support structure, tower, utility pole, cell tower or existing structure for the purposes of transmitting or receiving radio frequency signals for communication, cable, or broadband purposes.

#### *CONSTRUCT*

To construct, install, erect, build, affix, collocate, or otherwise place any fixed structure or object in, on, under, through or above the ROW.

#### *PUBLIC WORKS DIRECTOR*

The designated Public Works Director for the City, or any authorized representative thereof.

#### *EMERGENCY*

A situation exists which, in the reasonable discretion of the City or ROW User, if not remedied immediately,

poses an imminent threat to public health, life, safety, damage to property or an electric service outage.

*EXCAVATE*

Any cutting, digging, excavating, tunneling, boring, grading, or other alteration of the surface or subsurface material or earth in the ROW.

*FACILITY OR FACILITIES*

Lines, pipes, irrigation systems, wires, cables, fiber, conduit facilities, poles, towers, vaults, pedestals, boxes, appliances, antennae, transmitters, gates, meters, rails, appurtenances, or other equipment.

*PAVEMENT*

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

*PERMITTEE*

Any person to whom a ROW permit is issued.

*PUBLIC IMPROVEMENT*

Any project undertaken by the City for construction, reconstruction, maintenance, or repair of any public infrastructure.

*REGISTRATION*

The permit application process of a service provider, the approval of the application by the City, and the authorization for the service provider to use a portion of the ROW within the City to provide service within the City limits.

*REPAIR*

The temporary construction work necessary to restore the ROW to a usable condition.

*RESTORATION*

The process by which an excavated or occupied ROW and surrounding area, including pavement and foundation, is returned to the same or better condition that existed before the commencement of the work.

*RIGHT-OF-WAY or ROW*

The area on, below or above the present and future City streets, alleys, bridges, bikeways, tree lawn or green space, sidewalks, curbs, and aprons.

*ROW MANAGEMENT COSTS*

The fee charged by the City to recover its cost incurred for ROW management, including, but not limited to, costs associated with registering applicants; issuing, processing, and verifying ROW permit applications; inspecting job sites; restoration of projects; protecting or moving user construction equipment; restoring ROW work inadequately performed, determining the adequacy of ROW restoration or occupation; revoking ROW permits; and other costs the City may incur in managing the ROW.

*ROW PERMIT*

authorization to occupy or excavate for the construction, installation, repair, restoration, or maintenance of any type of facility within the ROW.

*ROW USER*

A person or entity that uses or occupies the ROW for purposes of work, excavation, provision of services, or to install, construct, maintain or repair facilities thereon.

*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 ROW, including, but not limited to, gas, telephone, cable television, broadband/internet services, alarm systems, electric, water, transportation systems, data transmission, sanitary sewerage, or other utility or service.

#### *SERVICE PROVIDER*

Any entity that is a provider of infrastructure or a service for, or without, a fee.

#### *SMALL CELL WIRELESS FACILITY*

A wireless facility that meets both of the following qualifications: (1) Each antenna is located inside an enclosure of no more than six (6) 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 Federal Communications Commission has excluded from review pursuant to 54 U.S.C. §306108. Associated equipment may be located outside the primary equipment, and if so located, is not to be included in the calculation of equipment volume. Associated equipment includes, but is 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.

#### *TREE LAWN OR GREEN SPACE*

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

#### *UTILITY POLE*

A structure owned or operated by a public utility as defined in K.S.A. 66-104, and amendments thereto, the City, or an electric cooperative as defined in K.S.A. 2022 Supp. 17-4652, and amendments thereto, that is designed specifically for and used to carry lines, cables or wires for telecommunications, cable, broadband, electricity, or to provide lighting.

#### *WIRELESS FACILITY*

Equipment at a fixed location that enable wireless communications, cable or broadband between users equipment and a network, including, but not limited to: (1) Equipment associated with wireless services such as private, broadcast, and public safety services, as well as unlicensed wireless services, and fixed wireless services such as microwave backhouse; and (2) radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies and comparable equipment, regardless of technological configuration. "Wireless facility" includes small cell wireless facilities.

#### *WIRELESS SUPPORT STRUCTURE*

A freestanding structure, such as a monopole, guyed or self-supporting tower, a cell 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.

### **Sec. 32-157 Agreement Required.**

- A. ROW agreement, franchise agreement, pole attachment agreement, and/or small cell wireless agreement required. No person may own, control, lease, maintain, use, collocate, or install facilities in the ROW without a valid agreement with the City as provided herein:
  1. A ROW agreement, franchise agreement, pole attachment agreement, and/or small cell wireless agreement is to be executed in conformance with all applicable franchise procedures for any ROW user seeking to use the ROW for the purpose of providing, transporting, or distributing electricity, gas, water, steam, lighting, energy, sewer, telecommunication, cable, or broadband service to any person or area within the City's limits and boundaries.
  2. In the event a city franchise is not granted, a ROW agreement shall be required for use of the ROW, except as provided herein or otherwise required by law. A ROW agreement shall conform to all applicable laws

and requirements, including as provided herein, but shall not be subject to procedures applicable only to franchises.

3. Persons desiring to install an incidental use, which includes installation of temporary structures or minor incidental uses in the ROW, such as driveway aprons, ingress or egress facilities, and similar incidental uses, that utilize a small area of the ROW and serves the principal structure, may be permitted without a franchise or ROW agreement pursuant to a permit issued by the Public Works Director. The Public Works Director shall have discretion to establish such application, requirements, and conditions applicable to such uses consistent with the purposes of this Chapter or as otherwise established by law. Any person granted a permit hereunder shall be subject to the applicable requirements of this Chapter. Unless otherwise stated in the permit, such a permit shall be for an indefinite term and shall be revocable at any time on written notice by the City.

### **Sec. 32-158 Application Required.**

- A. An application for any agreement pursuant to Sec. 32-157 shall be provided to the City, on City forms, and shall include all such information as is required by this Section and as determined necessary by the Public Works Director. An application deposit as assessed by the City is hereby established and shall be submitted with the application, which shall be utilized to, at least partly, offset the City's costs in reviewing and issuing an agreement, consistent with applicable law; any amount not used by the City for its actual lawfully reimbursable costs will be refunded upon request after execution of an agreement. If applicable, the applicant shall be obligated to reimburse the City for its reasonable expenses associated with the review, negotiation, and adoption of an appropriate agreement that may reasonably exceed the application deposit amount. The ROW user shall be responsible for accurately maintaining the information in the application during the term of any agreement and shall be responsible for all costs incurred by the City due to the failure to provide or maintain as accurate any application information required herein.
- B. No ROW permit may be issued unless such person has a valid agreement with the City.
- C. The authority granted by the City in any agreement or permit shall be for non-exclusive use of the ROW. Such grant does not in any way limit the continuing authority of the City through the proper exercise of its statutory powers to adopt and enforce ordinances necessary to provide for the health, safety, and welfare of the public. The City specifically reserves the right to grant, at any time, such additional agreements, or other rights, to use the ROW for any purpose and to any other person, including itself, as it deems appropriate, subject to all applicable laws. The granting of any agreement or permit shall not be deemed to create any property interest of any kind in favor of the ROW user nor shall it create any relationship of agency, partnership, joint venture, or employment between the parties. All such agreements and permits shall be approved by ordinance or resolution of the City Commission on a non-discriminatory basis provided that the person is in compliance with all applicable requirements.
- D. The City makes no express or implied representation or warranty regarding its rights to authorize the installation or construction of facilities on any particular segment of ROW and shall not be liable for any damage therefrom. The burden and responsibility for making all such determinations in advance of construction or installation shall be entirely upon the ROW user. The ROW user shall be solely liable for any damages to facilities or other property due to excavation or other ROW work performed prior to obtaining the location of all facilities within the work area. The ROW user shall not make or attempt to make repairs, relocation, or replacement of damaged or disturbed facilities without the approval of the owner of the facilities.
- E. No agreement or permit shall grant the right to use facilities owned or controlled by the City or a third party, and no such use shall occur, without the express written consent of such party (on file with the City and subject to other applicable requirements), nor shall any agreement or permit excuse such person from first obtaining a pole attachment agreement or other express consent for such right or use before locating on the facilities controlled or owned by the City or a third party.
- F. Unless otherwise provided, use or installation of any facilities in non-ROW public property of the City shall be permitted only if a lease agreement or other separate written approval has been negotiated and approved by the

City with such reasonable terms as the City may require.

**Sec. 32-159 Fees.**

- A. ROW Fees. Unless otherwise established by the City Commission or applicable law, each ROW user shall pay to the City as compensation for the use of the ROW and/or the right to provide services within the City, a fee as follows:
1. **Linear Foot Fee:** ROW users with underground facilities, not providing services within the City, are subject to a linear foot fee based on the linear feet of facilities located within the ROW. City Commission is authorized to set the linear foot fee so as to ensure appropriate compensation to the City, as well as non-discrimination among the ROW users.
  2. **Gross Receipts/Franchise Fee.** For ROW users exercising the right to provide services within the city limits or boundaries, are subject to a gross receipts/franchise fee not to exceed the amount authorized by state law.
  3. **Timing of Payment of User Fees.** Unless otherwise agreed to in writing, all ROW user fees shall be due and payable by January 15<sup>th</sup> of each calendar year.
  4. **Interest On Late Payments and Under Payments.** If any ROW user fee, or any portion thereof, is not postmarked or delivered on or before the due date, interest on the payment and interest on the unpaid balance shall accrue from the due date until received, at the rate of one and one-half percent (1.5%) per month, of the total amount past due, unless such other maximum rate is established by law.
  5. **Fee Statement.** Each ROW user fee payment shall be accompanied by a statement prepared by the ROW user, certified as true, showing the manner in which the ROW user fee was calculated including the total number of feet of ROW occupied by the ROW user's facilities and the per foot linear foot rate applied, the number of antennas in the ROW and the small cell wireless attachment rate, the number of access line/pole attachments and the access line/pole attachment fees applied, any credit or adjustment taken (including setting forth the prior year's gross revenue and describing what revenues or receipts were included and excluded in the fee paid), and the payment of the user fee made. If any fee statement is determined to understate the fee owed, then such additional amount owed shall be made with a corrected statement, including interest on said amount as provided herein. No refund, credit or offset shall be granted for any claimed payment or overstatement of the amount due or certification of facilities reported, provided that a corrected payment or report may be filed within the time for the original time for payment.
  6. **No Accord and Satisfaction.** No acceptance by the City of any use or gross receipts/franchise fee shall be construed as an accord that the amount paid is in fact the correct amount, nor shall acceptance of any use or gross receipts/franchise fee payment be construed as a release of any claim of the City.
  7. **Maintain Records.** ROW users shall at all times maintain complete and accurate books of account and records of the business, ownership, and operations of the ROW user with respect to the facilities in a manner that allows the City to determine whether the ROW user has properly calculated its user fee in compliance with this Article and state law. Should the City reasonably determine that the records are not being maintained in such manner, the ROW user shall correct the manner in which the books and/or records are maintained so that the ROW user comes into compliance with this Article. All financial books and records which are maintained in accordance with FCC regulations and the regulations of any governmental entity that regulates utilities in Kansas, and generally accepted accounting principles shall be deemed to be acceptable under this Article. Such books and records shall be maintained for a period of at least three (3) years.
  8. **Right of Inspection.** The City or its designated representatives shall have the right to inspect, examine, or audit, during normal business hours and upon seven (7) days' notice, all documents, records, or other

information that pertains to the facilities within the ROW and/or ROW user's fee obligations. In addition to access to the records of the ROW user for inspections, upon request, ROW user shall provide reasonable access to records necessary to verify compliance with the terms of this Article.

9. Fees and Compensation Not a Tax. The fees and costs provided for in this Article, and any compensation charged and paid for the use of the ROW or right to provide services as provided for in this Article, are separate from, and additional to, any and all Federal, State, City, or other local taxes as may be levied, imposed, or due.

#### **Sec. 32-160 No Cause of Action Against the City.**

No ROW user shall have any damages remedy or monetary recourse whatsoever against the City for any loss, cost, expense, or damage arising from any of the provisions or requirements of any agreement, permit, license, or other written authorization or because of the enforcement thereof by said City, or from the use of the ROW. Nothing herein shall preclude the ROW user from seeking injunctive or declaratory judgment relief against the City where such relief is otherwise available, and the requirements therefore are otherwise satisfied.

#### **Sec. 32-161 Compliance With Laws.**

Each ROW user shall comply with all applicable federal and state laws, regulations, and rules, as well as all City ordinances, resolutions, rules, and regulations heretofore and hereafter adopted or established. ROW users shall at all times be subject to the lawful exercise of the powers of the City, including but not limited to all powers regarding zoning, supervision of the restoration of the ROW, building and safety regulations, and control of the ROW. Installation of all facilities in the ROW are subject to and must be in compliance with all zoning, safety, and building code requirements. For applications for installation of wireless facilities in the ROW: (1) the most restrictive adjacent underlying zoning district classification shall apply unless otherwise specifically zoned and designated on the official zoning map, and (2) no application shall be submitted for approval without attaching the small cell wireless agreement which shows City's consent to use the ROW for the specific construction application.

#### **Sec. 32-162 Indemnification.**

Every ROW user, as a condition of use of the ROW, shall at its sole cost and expense fully indemnify, protect, defend (with counsel for the City or outside counsel acceptable to the City) and hold harmless the City, its municipal officials, officers, 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, arising, directly or indirectly, in whole or in part, from the action or inaction of the ROW user, its agents, representatives, employees, contractors, subcontractors, or any other person for whose acts the ROW user may be liable, in constructing, operating, maintaining, repairing, restoring or removing facilities, or use of the ROW or the activities performed, or failed to be performed, by the ROW user under this Article, applicable law, or otherwise, except to the extent arising from or caused by the sole gross negligence or willful misconduct of the City, its elected officials, officers, employees, agents, or contractors. 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.

#### **Sec. 32-163 ROW User Responsible for Costs.**

All ROW users shall be responsible for all reasonable costs borne by the City that are directly associated with ROW user's installation, maintenance, repair, operation, use, and replacement of its facilities in the ROW that are not otherwise accounted for as part of a permit fee, to the extent permitted by law. All such costs shall be itemized, and the City's books and records related to these costs shall be made available for inspection upon request of the ROW user.

## **Sec. 32-164 ROW Permit Required.**

- A. No ROW user may excavate or occupy any ROW or conduct any repair, collocation, construction, or reconstruction of facilities located within the ROW without first having obtained the appropriate ROW permit. No person shall make or cause to be made, or help, aid, or assist another person make, any excavation on any ROW, before an application is made to make the excavation and after a written permit to make the excavation is issued by the Public Works Director.
- B. No person owning or occupying any land abutting on the ROW shall construct, maintain, or permit in or on the portion of the ROW to which such land is adjacent any fixed structure, material or object other than a U.S. mailbox without having obtained the appropriate ROW permit. Owners of property fronting upon or adjoining any ROW, at their own expense, may grade, construct or reconstruct the curbing, roadway, paving or sidewalk paving of the ROW only with the permission of the Public Works Director. All plans and specifications must be approved by the Public Works Director.
- C. No person shall construct, alter, or repair a building or facility or cause the same to be done, or help, aid, or assist another person construct, alter, or repair a building or facility upon the ROW, before a written permit to do such work is issued by the Public Works Director, after application is made therefor.
- D. A ROW permit is required for emergency situations. If, due to an emergency, it is necessary for the ROW user to immediately perform work in the ROW, 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 during the next business day. The ROW user shall call the Public Works Department and give notification of the emergency on the day it occurs, and on the next business day after, the ROW user shall apply for a ROW permit (all applicable fees apply) in order to continue working.
- E. A ROW permit is not required for the following:
  - 1. Routine maintenance on previously approved small cell wireless facilities;
  - 2. Replacement of such small cell wireless facilities that are the same or smaller in size, weight, and height;  
or
  - 3. Installation, placement, maintenance, operation, or replacement of micro wireless facilities, that are strung on cables between utility poles in compliance with applicable safety and building codes;
  - 4. When such work will not involve excavation, affect traffic patterns, obstruct traffic in the ROW, or materially impede the use of a sidewalk, and provided the ROW user submits as-builts of such new small cell wireless facilities or micro wireless facilities so the City may maintain an accurate inventory of facilities installed in the ROW.

## **Sec. 32-165 Permit Applications.**

- A. Application for a ROW permit shall be submitted to the Public Works Director by the person who will do the work and/or excavation in the ROW. The Public Works Director shall have the right to review and approve the location, design, and nature of the facility/project prior to installation and issuance of a permit. A ROW user shall not construct or reconstruct any of its facilities located upon, over, under or within the ROW 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 ROW user shall coordinate the placement of facilities in a manner that minimizes adverse impact on any public improvement, as determined by the Public Works Director. The ROW user's use of the ROW shall in all matters be subordinate to the City's use or occupation of the ROW.



- B. ROW permit applications shall contain and be considered complete only upon receipt of the following: 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, and any other project information requested by the Public Works Director; a traffic control plan; payment of all money due to the City for permit fees and costs, and for the current permit and prior permit costs, and for any loss, damage, or expense suffered by the City because of the applicant's prior excavations of the ROW, or for any emergency actions taken by the City, unless the payment of such money is in dispute and timely appealed as provided hereafter; and a commitment from the applicant to contact the Kansas One Call program or comparable successor program.

### **Sec. 32-166 Liability Insurance.**

- A. Except as provided in this Article, each ROW user shall provide, at its sole expense, and maintain during the term of an agreement or permit, commercial general liability insurance with a reputable, qualified, and financially sound company licensed to do business in the State of Kansas, and unless otherwise approved by the City, with a rating by Best of not less than "A," that shall protect the ROW user, the City, and the City's officials, officers, and employees from claims which may arise from operations under an agreement or permit, whether such operations are by the ROW user, its officers, directors, employees and agents, or any contractors or subcontractors of the ROW user. This liability insurance shall include, but shall not be limited to, protection against claims arising from bodily and personal injury and damage to property, resulting from all ROW user operations, products, services or use of automobiles, or construction equipment. The amount of insurance for single-limit coverage applying to bodily and personal injury and property damage shall be at least two million dollars (\$2,000,000.00) or such higher amounts as the Public Works Director deems appropriate.
- B. Nothing herein shall be deemed to waive the City's sovereign immunity or limitation of liability as the state statutes may provide.
- C. An endorsement shall be provided which states that the City is listed as an additional insured. and stating that the policy shall not be cancelled or materially modified so as to be out of compliance with the requirements of this Article, or not renewed without thirty (30) days' written notice of such event being given to the Public Works Director.
- D. The City's additional insured coverage shall have no deductible.
- E. If the person is self-insured, it shall provide City proof of compliance regarding its ability to self-insure and proof of its ability to provide coverage in the above amounts. The person shall file annually with the City Clerk an affidavit certifying that the ROW user has twenty-five million dollars (\$25,000,000.00) in net assets.
- F. A copy of the liability insurance certificate, or certificate of net assets value, or such other proof of compliance if otherwise requested by the City shall be delivered by the ROW user to the City Clerk.

### **Sec. 32-167 ROW Permit Fees.**

- A. The applicant shall pay to the City a non-refundable permit filing fee in an amount set by the Public Works Director as authorized by the City Commission. The amount of the permit filing fee may be adjusted by the Public Works Director from time to time to reflect the average cost of the actual time expended and costs incurred in the administration, inspection, and superintendence of such work.
- B. The applicant shall pay an excavation fee to the City equal to one dollar (\$1.00) per square foot not to exceed five hundred dollars (\$500.00). The excavation fee may be adjusted by the Public Works Director from time to time to reflect changes in the average cost to manage and inspect the ROW.
- C. The applicant shall pay additional management, administrative, and inspection fees to be determined by the Public Works Director based on the actual time expended and costs incurred in the management, administration,

inspection, and superintendence of such work. A current fee schedule shall be maintained by the City and available to the public and all applicants upon request to the Public Works Director.

- D. The applicant shall pay an additional fair and reasonable linear foot fee and/or antenna/small cell wireless fee for use of the ROW. A current fee schedule shall be maintained by the City and available to the public and all applicants upon request to the Public Works Director.

### **Sec. 32-168 Deposits and Performance Bond Requirements.**

- A. Before a permit is issued, the applicant shall deposit with the Public Works Director a sum of cash, and shall file with the Public Works Director a continuing bond with good and sufficient sureties payable to the City, both conditional upon the performance of all the requirements of the permit and the law, and the restoration, to the satisfaction of the Public Works Director, of the public street, avenue, highway, alley, tree, lawn or other public place, easement or ROW in as good a condition as it was, or better, before the work was done. Each permit shall have a separate cash deposit and performance bond to guarantee backfilling, paving, and/or site restoration of the particular project. The performance bond shall list the specific project for which the applicant is requesting a permit. The bond shall continue in full force and effect for a period of forty-eight (48) months following completion of the work. The bond shall be issued by a surety with an "A" or better rating of insurance in Best's Key Rating Guide, Property/Casualty Edition, shall be subject to the approval of the City's Attorney and shall contain the following endorsement: "This bond may not be canceled or allowed to lapse until sixty (60) days after receipt by the City, by certified mail, return receipt requested, of a written notice from the issuer of the bond of intent to cancel or not to renew."
1. The approximate cost of granular backfill, repaving operations, and general site restoration will be estimated by the Public Works Director at the time an application for a ROW permit is submitted, and the cost so estimated shall be deposited with the City prior to permit issuance.
  2. The amount of the deposit shall be reasonably sufficient to secure the City against any damage or expense that may result from the applicant's failure to comply with the provisions of the permit. The amount of such deposit shall be based upon the location, purpose, and extent of the work.
  3. The amount of the cash deposit and bond shall vary. The minimum deposit shall be two hundred fifty dollars (\$250.00). The minimum bond shall be at least one thousand dollars (\$1,000.00). Any occupation/blockage of the ROW for four (4) hours or longer shall result in a minimum deposit of two hundred fifty dollars (\$250.00) and a minimum bond of three thousand dollars (\$3,000.00).
  4. The individual permit bond requirement may be waived for applicants having on file with the City an unexpired annual bond of at least ten thousand dollars (\$10,000.00) for work requiring ROW permits in the City, with good and sufficient sureties payable to the City.
  5. If a ROW user fails to complete the work in a safe, timely, and competent manner or if the completed restorative work fails without remediation (as determined by the Public Works Director) within the time period for the bond, then after notice and a reasonable opportunity to cure, there shall be recoverable, jointly and severally from the principal and surety of the bond, any damages or loss suffered by the City as a result, including the full amount of any compensation, indemnification, or cost of removal or abandonment of any property of the ROW user and the cost of completing work in or restoring the ROW, up to the full amount of the bond.
  6. The City may also recover against the bond any amount recoverable against a security fund or letter of credit where such amount exceeds that available under a security fund or letter of credit.
  7. ROW users with twenty-five million dollars (\$25,000,000.00) in net assets and who do not have a history of permitting non-compliance within the City as defined by the Public Works Director may self-insure and will not be required to provide construction performance bonds or liability insurance coverage.

### **Sec. 32-169 Issuance of Permit.**

- A. If the Public Works Director determines that the applicant has satisfied all requirements, the Public Works Director shall issue a ROW permit. The Public Works Director may impose conditions upon the issuance of a ROW permit and the performance of the permittee in order to protect the public health, safety, and welfare; to ensure the structural integrity of the ROW; to protect the property and safety of other users of the ROW; and to minimize the disruption and inconvenience to the public. A ROW permit shall have an effective date and an expiration date specific to when all excavation shall cease. Establishment of the expiration date shall be in the discretion of the Public Works Director, which discretion shall be reasonably exercised to achieve the City's policy of minimizing disruption of the public ROW. No permittee may excavate the ROW beyond the date or dates specified in the ROW permit unless the permittee makes a request for an extension of the ROW permit before the expiration of the initial permit and a new ROW permit or permit extension is granted. ROW 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. Installation and collocation of a small cell wireless facility shall be completed within one (1) year of issuance of the ROW permit, or the ROW permit shall become null and void and shall no longer authorize installation or collocation of the small cell wireless facility.
  
- B. *Permitted Work Hours.* The permittee shall comply with all the rules and regulations set forth by the Public Works Director. Work is permitted Monday through Friday from 7:00 A.M. until 8:00 P.M., unless permission is granted by the Public Works Director for other work hours.

### **Sec. 32-170 ROW Repair And Restoration.**

- A. All earth, materials, sidewalks, paving, crossing, utilities, public improvements, or improvements of any kind removed or damaged by the permittee shall be fully repaired or replaced promptly by the ROW user at its sole expense and to the satisfaction of the Public Works Director. If the permittee fails to restore the ROW 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 complete the work at the expense of the permittee, and the permittee and its surety shall be liable to the City for any and all cost incurred by the City by reason of such completion.
  - 1. Every ROW user to whom a ROW permit has been granted shall guarantee for a period of four (4) years the restoration of the ROW in the area where such ROW user conducted excavation and performed the restoration.
  - 2. In the event the restoration is not completed within the time established by the Public Works Director, the permittee shall pay to the City the sum of one hundred dollars (\$100.00) per day as liquidated damages, and not as a penalty, to be deducted from the deposit of the permittee, if sufficient.

### **Sec. 32-171 Stop Work Orders.**

- A. Any excavation, backfilling, repair, restoration, and all other work performed in the ROW shall be done in conformance with the City's rules and standards as promulgated by the Public Works Director. The Public Works Director may issue a citation to the permittee or ROW user for any work which does not conform to the applicable standards, conditions, code, or terms of the permit. The Public Works Director may choose to inspect the ongoing permitted work in the ROW at any time to ensure that all requirements of the approved permit are being met by the permittee.
  
- B. Any ROW user who is found to be working in the public ROW without a permit or contrary to the permit requirements will be directed to stop work until a permit is issued and properly posted at the work site, or until the permit requirements are met to the satisfaction of the Public Works Director. 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. The Public Works Director may order the immediate cessation of any work which poses a threat to the life, health, safety, or well-being of the public.

### **Sec. 32-172 Denial, Revocation And Appeal Of Permit.**

- A. Permit Denial. The Public Works Director 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 ROW; or when necessary, to protect the ROW and its users. Except in the case of an emergency, the Public Works Director may automatically deny a permit for an applicant in the following events:
1. Facilities work is sought which requires excavation of any portion of the paved public ROW which was constructed or reconstructed in the preceding five (5) years, or has a Pavement Surface Evaluation and Rating (PASER) system surface rating of nine (9) or above, as determined by the Public Works Director; or
  2. The applicant, contractor or facilities owner owes undisputed past-due fees from prior permits, or is in violation of the provisions of this Article; or
  3. The applicant, contractor or facilities owner has failed to return the public ROW to its previous and acceptable condition under previous permits; or
  4. The facilities work will cause undue disruption to existing or planned utilities, transportation, public or City use; or
  5. Failure to pay for damages caused to any City facilities from prior facilities work by the applicant or facilities owner.
- B. The Public Works Director, at his or her discretion, may consider one (1) or more of the following factors in denial of the permit:
1. The extent to which the ROW space where the permit is sought is available;
  2. The competing demands for the particular space in the ROW;
  3. The availability of other locations in the affected ROW or in other ROW for the facilities of the applicant;
  4. The applicability of any ordinance or other regulations that affect location of facilities in the ROW;
  5. The degree of compliance of the applicant with the terms and conditions of any ROW use agreement with the City, 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 ROW;
  7. The condition and age of the ROW, and whether the ROW was constructed or reconstructed within the preceding five (5) years;
  8. The balancing of the costs of disruption to the public and damage to the ROW, against the benefits to that part of the public served by the construction in the ROW;

9. Whether the applicant has failed within the last three (3) years to comply with, or is presently not in full compliance with, the requirements of this Article;
10. Whether the applicant owes monies to the City;
11. Whether the issuance of a ROW permit for the particular dates and/or time requested would cause a conflict or interfere with an exhibition, celebration, festival, or any other event.
12. In exercising this discretion, the Public Works Director shall be guided by the safety and convenience of anticipated travel of the public over the ROW.

C. Notwithstanding the above provisions, the Public Works Director may, in his or her discretion, issue a ROW permit in any case where the permit is necessary to prevent substantial economic hardship to a user of the applicant's service, and allow such user to materially improve the service provided by the applicant.

D. Permit Revocation.

i. The Public Works Director may revoke any ROW permit, without refund of the permit fee, in the event of a substantial breach of the terms and conditions of any law or the ROW permit.

ii. A substantial breach shall include, but not be limited to, the following:

- a. The violation of any material provision of the ROW permit; or
- b. An evasion or attempt to evade any material provision of the ROW permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the City or its residents; or
- c. Any material misrepresentation of any fact in the permit application; or
- d. The failure to maintain the required bond or insurance; or
- e. The failure to complete the work in a timely manner; or
- f. The failure to correct a condition indicated on an order issued by the Public Works Director; or
- g. Repeated traffic control violations; or
- h. Failure to repair facilities damaged in the ROW to the satisfaction of the Public Works Director.

i. If a ROW permit is revoked, the permittee shall reimburse the City for the City's reasonable costs, including administrative costs, restoration costs, the costs of collection and reasonable attorneys' fees incurred in connection with such revocation.

C. Permit Appeal. Whenever a permittee shall deem itself aggrieved by any decision or action taken by the Public Works Director, the permittee may file an appeal to the City. The permittee shall be afforded a hearing on the matter before the City Administrator within thirty (30) days of filing the appeal. The City Administrator's decision shall be final.

D. The violation of any provision of this Article is hereby deemed to be grounds for revocation of any City issued permits and denial of future permits by the City.

## **Sec. 32-172 State Public ROW Law.**

If any provision of this Article or a rule or regulation adopted pursuant to this Article conflicts with State law on the public ROW, such State law shall prevail to the extent required by law, and the City's authority shall be limited to that permitted thereunder.

## **Sec. 32-173 Location, Type, and Design of Facilities Subject to Approval.**

- a. Exclusion Of Certain Locations/Facilities. To the extent permitted by applicable law, the Public Works Director may designate certain locations or facilities in the ROW to be excluded from use by the ROW user, including, but not limited to, ornamental or similar specially designed street lights or other facilities or locations which, in the reasonable judgment of the Public Works Director, cannot safely bear the weight or wind loading thereof, or any other facility or location that in the reasonable judgment of the Public Works Director would be rendered unsafe or unstable by the installation. The Public Works Director may further exclude certain other facilities that have been designated or planned for other use or are not otherwise available for use by the ROW user due to engineering, technological, proprietary, legal, or other limitations or restrictions as may be reasonably determined by the City.
  - i. In the event such exclusions conflict with the reasonable requirements of the ROW user, the City will cooperate in good faith with the ROW user to attempt to find suitable alternatives, if available, provided that the City shall not be required to incur financial cost nor require the City to acquire new locations for the ROW user.
- b. Review Required. The design, location, and nature of all facilities shall be subject to the review and approval of the Public Works Director to the extent permitted by law. Such review shall be on a non-discriminatory basis in application of City policy, and approvals shall not be unreasonably withheld or delayed. City height limitations, applicable zoning restrictions, and general City policies with regard to all users of the ROW shall be applicable to all facilities. The Public Works Director may establish regulations or policies as may be deemed necessary or appropriate to affect this provision.
- c. Underground and Collocation of Facilities Required; Exceptions. Except as provided herein or where prohibited by applicable law, no person may erect, construct, or install facilities above the surface of the ROW without the written permission of the City based on good cause established by the applicant and found by the City. In addition, all new fiber optics, coaxial, and similar cable facilities shall be located within existing conduit, trenches, or other facilities to minimize unnecessary use of ROW space, reduce potential existing or future interference and obstructions, and to reduce the cost to the public or others therefrom, and to maximize the public's ability to use and permit appropriate private or public uses of the ROW in the public interest except where preempted by law or where good cause is established and written permission granted by the City.
  - i. Such permission may be granted by the City Commission when other similar facilities exist above ground and conditions are such that underground construction is impossible, impractical or unfeasible, as determined by the City, and when in the City's judgment the aboveground construction has minimal aesthetic impact on the area where the construction is proposed.
  - ii. Where reasonable and appropriate and where adequate ROW exists, the ROW user shall place aboveground facilities underground in conjunction with City capital improvement projects and/or at specific locations requested by the City, provided that such placement is practical, efficient, and economically feasible.
  - iii. New utility poles and related ground-mounted equipment shall be permitted to be installed above ground; provided, however, that to ensure unobstructed pedestrian use and City maintenance of the ROW and minimize visual obstructions for vehicular traffic, a new utility pole and any ground-mounted equipment related to that utility pole

or the equipment thereon shall not be installed within two hundred (200) feet of another utility pole or other ground-mounted equipment on the same side of the ROW.

- a. A replacement utility pole that is installed in lieu of an existing utility pole and is installed within ten (10) feet of the existing utility pole shall not be considered a new utility pole subject to the spacing requirements herein. Such spacing regulations as applied to that specific site may be altered by the Public Works Director upon good cause shown by the applicant, including:
  - i. When and where nearby utility poles exist that are spaced closer than two hundred feet (200') apart; and
  - ii. When conditions are such that no existing structure is available for placement of facilities; and
  - iii. The utility pole can be placed to be minimally visually intrusive.

### **32-174 Wireless Antennas And Small Cell Wireless Facilities.**

- A. Pursuant to City authority and to properly manage the limited space in the ROW, minimize obstructions and interference with the use of the ROW by the public and to ensure public safety, while also seeking to facilitate delivery of broadband technologies to City residents and businesses, wireless facilities shall be permitted in the ROW in compliance with the requirements applicable to other facilities and users in the ROW, and the additional requirements set forth in this Subsection for wireless antennas and small cell wireless facilities.
- B. General Conditions.
  1. Any wireless facility in the ROW shall be subject to conditions relating to the location (including prohibited or limited locations), design, height, appearance, safety, radio-frequency, and other interference issues as may be lawfully imposed by the City where necessary or appropriate to protect the public, and to conform to policies and interests of the public as may be set forth in special district plans, historic areas, or other policies as may be reasonably adopted by the Public Works Director to address changing infrastructure, technology, and uses of the ROW and/or City facilities.
  2. A wireless facility shall not be located or installed in a manner that results in interference with or impairs the operation of existing utility facilities, City attachments, or third-party attachments.
  3. Wireless antennas or small cell wireless facilities shall further comply with all applicable requirements for installation of any facilities in the ROW as set forth in this Articles VI herein, including appropriate agreements and permits as applicable.
  4. Requirements for installation of wireless antennas and small cell wireless facilities include those set forth in K.S.A. 66-2019, the City's applicable zoning, building and other regulations and codes, as well as such other approvals as required by the City.
- C. Specific Conditions.
  1. Small Cell Wireless Facilities. Any small cell wireless facility meeting the requirements as defined in K.S.A. 66-2019(b)(14) shall be authorized to be located in the ROW subject to the approval of the Public Works Director and subject to the following additional requirements:
    - i. If proposing to install a new utility pole, compliance with the spacing requirements in Section 32-173C of this Article;
    - ii. The facility will not materially interfere with the safe operation of traffic control equipment and will not materially interfere with the City's or any third-party's communications equipment;

- iii. The facility will not materially interfere with sightlines or clear zones for transportation, pedestrians, or nonmotorized vehicles;
- iv. The facility will not materially obstruct the legal use of the ROW by the City, a utility, or other thirty-party;
- v. The ROW user shall comply with reasonable and nondiscriminatory spacing requirements of general application adopted by ordinance or regulations promulgated by the Kansas Department of Transportation that concern the location of ground mounted equipment and new utility poles.
- vi. The ROW user shall comply with applicable codes, including nationally recognized engineering standards for utility poles or wireless support structures;
- vii. The ROW user shall comply with the reasonably objective and documented aesthetics of a decorative pole and the ROW user does not agree to pay to match the applicable decorative elements; and
- viii. The ROW user shall comply with reasonable and nondiscriminatory undergrounding requirements contained in the City's ordinances, or subsequently enacted for new developments, that require all utility facilities in the area to be placed underground and prohibit the installation of new or the modification of existing utility poles in a ROW without prior approval;
- ix. For all collocations on City utility poles, the ROW user shall provide all make-ready estimates for the utility pole, including replacement costs where necessary for the safety and reliability of the utility pole, as determined by the City; and
- x. Any other requirements which may be applicable to the proposed small cell wireless facility pursuant to K.S.A. 66-2019.

2. All Other Wireless Facilities in the ROW.

- a. Any wireless facility located on a utility pole or existing structure as defined in Section 32-156 of this Article 32, but not meeting the requirements of Subsection 32-174C above, may be approved, subject to conditions as may be imposed consistent with the purposes of this Article, only upon approval by the City Commission upon a determination by the City Commission that such small cell wireless facility is:
  - i. In the public interest to provide a needed service to persons within the City; and
  - ii. Cannot feasibly meet all of the requirements of a small cell wireless facility, but varies from such requirements to the minimum extent necessary; and
  - iii. Does not negatively impact appearance or property values in light of the location, design, and circumstances to be approved; and
  - iv. Does not create any reasonable safety risk; and
  - v. Complies with all zoning, ROW, and other applicable requirements.

D. Wireless Facility Compensation. If the wireless facility is to be located on a City-owned structure or utility pole, an annual payment of two hundred seventy dollars (\$270.00) per attachment shall be required. Nothing herein shall limit, waive, or otherwise affect the applicability of linear foot fees as may be required pursuant to this Article 32.

E. Wireless Facility Application Requirements. Any application that includes one (1) or more wireless antennas or wireless facilities shall include all requirements for:

- 1. Installation of any facilities in the ROW as set forth in this Article;
- 2. The requirements of this Section 32-174, and



3. Requirements for installation of wireless antennas and wireless facilities set forth in K.S.A. 66-2019, and
4. Written proof of consent of the landowner and written proof of consent of the structure owner (document authorizing use of the structure) to include, but be limited to a copy of the easement, ROW agreement, Small Cell Wireless Agreement and/or Pole Attachment Agreement, as applicable.

### **32-175 Mapping Of Facilities.**

Upon completion of the ROW work involving installation of new facilities, the ROW user shall supply the City copies of as-built and detailed maps showing the exact location of facilities installed in the ROW. As a condition of continued ROW use, all ROW users shall, on an annual basis, provide the City with as-builts or other detailed maps of the ROW user's current facilities. Such annual requirement may be waived by the Public Works Director upon written request.

### **32-176 No Interference.**

- A. All ROW users shall construct and maintain its facilities so as not to interfere with other users of the ROW. The ROW user shall not interfere with or alter the facilities of the City or other ROW user without their consent and shall be solely responsible for such.
- B. Except as may otherwise be provided, or as determined by the Public Works Director, the ROW user shall, prior to commencement of work, execute a City-approved resident-notification plan to notify residents affected by the proposed work.
- C. All construction and maintenance by the ROW user or its subcontractors shall be performed in accordance with industry standards.
- D. The ROW user shall, in the performance of any excavation, facilities maintenance, or other ROW work, limit such work to that necessary for efficient operation and so as not to interfere with other users of the ROW.
  1. All facilities and other structures shall be installed and located to cause minimum interference with the rights and convenience of property owners, ROW users, and the City.
  2. Facilities and other structures shall not be placed where they will disrupt or interfere with other facilities, structures, or public improvements or obstruct or hinder in any manner the various utilities serving the residents and businesses in the City or public improvements.
  3. Above-ground facilities shall be constructed and maintained in such a manner so as not to emit any unnecessary or intrusive noise.
- F. When reasonable and necessary to accomplish such purposes, the Public Works Director may require as alternatives to the proposed work either less disruptive methods or different locations for facilities consistent with applicable law.

### **32-177 Subordinate Uses.**

The ROW user's use shall be in all situations subordinate and subject to the City's use.

### **32-178 Sight Triangle Maintained.**

ROW users shall comply with the requirements of sight triangles, and nothing shall be erected, placed, planted, or allowed to grow in such a manner as to materially impede vision within the triangular area formed by the ROW lines and a line connecting them at points thirty (30) feet from their point of intersection or at equivalent points on a private street.

### **32-179 Relocation.**

- A. City Required Relocation. The ROW user shall promptly remove, relocate, or adjust any facilities located in the ROW as directed by the City when such is required by public necessity, public convenience, or security require it, or such other findings in the public interest that may require relocation, adjustment, or removal at the cost of the ROW user. Such removal, relocation, or adjustment shall be performed by the ROW user within the time frames established by the City and at the ROW user's sole expense without any 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.
- B. Emergency Exception. In the event of an emergency or where construction equipment or facilities create or are contributing to an imminent danger to health, safety, or property, the City may, to the extent allowed by law, remove, relay, or relocate such construction equipment or the pertinent parts of such facilities without charge to the City for such action, for restoration, or for repair. The City shall attempt to notify the person having facilities in the ROW prior to taking such action, but the inability to do so shall not prevent same. Thereafter, the City shall notify the person having facilities in the ROW as soon as practicable.
- C. Third-Party Relocation. A person having facilities in the ROW shall, on the reasonable request of any person, other than the City, holding a validly issued permit, after reasonable advance written notice, protect, support, or temporarily disconnect or relocate facilities to accommodate such person, and the actual cost, reasonably incurred, of such actions shall be paid by the person requesting such action. The person having facilities in the ROW taking such action may require such payment in advance.
- D. Abandonment Exception. Rather than relocate facilities as requested or directed, a ROW user may abandon the facilities if approved by the City as provided in Section 32-181 of this Article VI.
- E. ROW User Responsible For Damage. Any damages suffered by the City, its agents or its contractors to the extent caused by the ROW user's failure to timely relocate, remove or adjust its facilities, or failure to properly relocate, remove, or adjust such facilities, shall be borne by the ROW user.
  - 1. In the event the ROW user fails to relocate facilities as required by the City, the City may, but shall not be required to, upon notice to the ROW user, remove the obstructing facilities with or without further delay, and the ROW user shall bear all responsibility and liability for the consequences therefrom, and the City shall bear no responsibility to the ROW user or others for damage resulting from such removal.

### **32-180 No Vested Rights.**

No action hereunder shall be deemed a taking of property, and no person shall be entitled to any compensation therefor. No location of any facilities in the ROW shall be a vested interest or property right.

### **32-181 Abandoned Facilities; Removal.**

- A. A person owning abandoned facilities in the ROW must not later than thirty (30) days of notice, or of abandonment, remove its facilities and replace or restore any damage or disturbance caused by the removal at its own expense.
- B. The Public Works Director may upon written application and written approval 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, and general welfare to do so.
- C. The City shall be entitled to all costs of removal and enforcement for any violation of this Section 32-181.
- D. Nuisance. Facilities abandoned or otherwise left unused in violation of this Section 32-181 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:

1. Abating the nuisance; or
2. Taking possession and ownership of the facility and restoring it to a useable function; or
3. Requiring the removal of the facility by the ROW user.

**Section 32-182 to Section 32-195 is Reserved.**