



# City of Arkansas City, Kansas

Neighborhood Services

Phone: 620-441-4420 Fax: 620-441-4403

www.arkcity.org

## Right of Way Permit

Date: \_\_\_\_\_

Fee: \_\_\_\_\_

Please choose one: Individual:  Joint:

Name (Firm/Individual): \_\_\_\_\_

Phone: \_\_\_\_\_

Address, City, ST, Zip: \_\_\_\_\_

Email Address: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Phone: \_\_\_\_\_

If joint application, please indicate joint application information:

Name (Firm/Individual): \_\_\_\_\_

Phone: \_\_\_\_\_

Address, City, ST, Zip: \_\_\_\_\_

Email Address: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Phone: \_\_\_\_\_

Scope of work: Please indicate the scope of work to be performed including project location (attach additional pages if necessary):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Work start date: \_\_\_\_\_

Work complete date: \_\_\_\_\_

Does the project involve excavation of the street or sidewalk? Yes  No

Will the project disrupt the flow of traffic: Yes  No

Is this a Supplementary Application\*? Yes  No

\*Application may only apply for a supplementary permit prior to expiration of the original permit.

If this is a Supplementary Application, please indicate reason for request (e.g. request for time extension due to inclement weather):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## ARTICLE V. - RIGHT-OF-WAY, OBSTRUCTIONS, ENCROACHMENTS

### DIVISION 1. - GENERALLY

Secs. 50-168—50-187. - Reserved.

### DIVISION 2. - MANAGEMENT OF PUBLIC RIGHT-OF-WAY<sup>[3]</sup>

Footnotes:

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**Editor's note**— Ord. No. 2015-01-4378, § 3, adopted January 20, 2015, repealed the former division 2, §§ 50-188—50-192, and enacted a new division 2 as set out herein. The former division 2 pertained to excavations. See Code Comparative Table for complete derivation.

Sec. 50-188. - Definitions.

For the purposes of this division, the following words and phrases shall have the meaning given herein:

*Abandoned facilities* means above-grade facilities owned by the right-of-way user that remain unused for six months or below-grade facilities owned by the right-of-way user that remain unused for two years without a written notice by the user filed with the city that it intends to utilize the right-of-way in the future.

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

*City* means the City of Arkansas City, Kansas, a municipal corporation and any duly authorized representative.

*City engineer* means the city engineer of the city of Arkansas City, Kansas, or the city engineer's authorized representative, and is the principal city official for administration of right-of-way permits for work and excavations made in the right-of-way.

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

*Day* means calendar day unless otherwise specified.

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

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

*FCC* means Federal Communications Commission.

*Facility* or *facilities* means lines, pipes, irrigation systems, wires, cables, conduit facilities, ducts, poles, towers, vaults, pedestals, boxes, appliances, antennae, transmitters, gates, meters, appurtenances, or other equipment.

*Governing body* means the board of city commissioners of the city of Arkansas City, Kansas.

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

*KCC* means the Kansas Corporation Commission.

*Pavement* means and includes Portland cement concrete pavement, asphalt concrete pavement, asphalt treated road surfaces or any aggregate material.

*Permit fee* means the fee charged by the city to recover its costs incurred for right-of-way management, including, but not limited to, administrative costs associated with assisting 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 division.

*Permitee* means any person to whom a right-of-way permit is issued to perform work regulated by this division in right-of-way.

*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.

*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, sidestrips, sidewalks, sewers, drainage facilities, traffic control devices, street lights, public facilities, public buildings or public lands.

*Public project for private development* means a public improvement arising solely from a request or requirement of a third party primarily for the benefit and use of a third party.

*Public lands* means any real property owned or leased by the city that is not right-of-way.

*Repair* means the temporary construction work necessary to make the right-of-way useable.

*Repair and restoration costs* means those costs associated with repairing or restoring the public right-of-way because of damage caused by the right-of-way user and its contractors or subcontractors in the right-of-way.

*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.

*Right-of-way* means the area of real property in which the city has a dedicated or acquired right-of-way, or other interest, in real property. It shall include the area on, below, or above the present and future streets, alleys, avenues, roads, highways, public parking lots, or boulevards dedicated or acquired as a right-of-way or public property. The term does not include the airwaves above right-of-way with regard to wireless telecommunications other non-wire telecommunications or broadcast service, easements obtained by utilities, or private easements in platted subdivisions or tracts.

*Right-of-way permit* or *permit* means the authorization to perform any work regulated by this division within a right-of-way.

*Right-of-way user* means a person, its successors and assigns, that uses the right-of-way for purposes of work; excavation; provision of services, whether public or private; or to install, construct, maintain, repair facilities thereon, but shall not include ordinary vehicular or pedestrian traffic or any governmental entity that has entered into an agreement with the city regarding the use and occupancy of the city's right-of-way.

*Routine service operation* means a work activity that does not require excavation with mechanical equipment and that makes no material change to the facilities; is performed on existing facilities to ensure the safe, continued operation of the system; does not disrupt traffic; or whose duration is less than four hours in length.

*Sidestrip* means the area between a property line and the street curb, sometimes called boulevard, parkway, tree-shelf or snow-shelf.

*Street* means curb and gutter, pavement, surface and/or subgrade of a City residential, collector or arterial roadway.

(Ord. No. 2015-01-4378, § 3, 1-20-2015)

Sec. 50-189. - Requirements of right-of-way users.

- (a) *Storm water.* No Right-of-way user shall interrupt, change, or impede the existing flow pattern of storm water drainage, nor shall the existing drainage patterns be permanently altered without written consent from the city engineer. Any water discharged from or diverted around a right-of-way user's work area shall be discharged from or diverted around the right-of-way user's work area shall be discharged into an approved sediment control system. Sediment generated from a right-of-way user's work area shall be controlled by the use of silt fences, hay bales, or other devices. A right-of-way user's storm water discharge quality and sediment control shall conform to the requirements of the city, the Kansas Department of Health and Environment (KDHE), and other public agencies having jurisdiction, as such requirements now exist, or may hereafter be amended.
- (b) *Americans with Disabilities Act.* Restoration of public infrastructure, including without limitation, sidewalks, handicap ramps, and pavement, shall conform to the requirements of the Americans with Disabilities Act (ADA), as set forth in the "ADAAG Manual, Americans with Disabilities Act Accessibility Guidelines," developed by the U.S. Architectural and transportation barriers compliance board (access board), latest edition. The permittee is responsible for work beyond the permittee's work zone that may be necessary to meet ADAAG requirements in the permittee's work zone.

(Ord. No. 2015-01-4378, § 3, 1-20-2015)

Sec. 50-190. - Permit required.

- (a) Except as otherwise provide, no right-of-way user may excavate any right-of-way or conduct any repair, construction, or reconstruction of facilities or trim trees located within the right-of-way without first having obtained the appropriate right-of-way permit.
- (b) This requirement shall not apply to:
  - (1) Contractors and city employees working on the construction or reconstruction of public improvements on behalf of the city.
  - (2) Right-of-way users performing routine service operations.
  - (3) Maintenance performed on street light fixtures or lamps which do not materially alter, add to, or take away from the structure and operations of existing facilities.
- (c) No person owning or occupying any land abutting a right-of-way shall construct, maintain, or permit in or on the portion of the right-of-way to which such land is adjacent, any fixed structure, material or object without having obtained the appropriate right-of-way permit unless specifically excluded above.
- (d) As described herein, an emergency shall not exempt right-of-way users from obtaining a right-of-way permit. If due to an emergency it is necessary for the right-of-way user to immediately perform work in the right-of-way and it is impractical for the right-of-way user to first obtain a right-of-way permit, the work may be performed and the required permit shall be obtained as soon as possible during the next business day observed by the city.
- (e) No permittee may perform work in 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 extension is granted.
- (f) 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 and the KCC.

- (g) The right-of-way user shall participate in any joint planning, construction and advance notification of right-of-way work, including coordination and consolidation of street-cut work as directed by the city engineer. In addition, the right-of-way user shall cooperate with other right-of-way users and the city for the best, most efficient, most aesthetic and least obtrusive use of the right-of-way, consistent with safety, and to minimize traffic and other disruptions, including street cuts.
- (h) Except in the case of emergency work, any right-of-way user who is found to be working in the public right-of-way without a permit will be ordered to stop work until a permit is acquired and properly made available for inspection at the work site.

(Ord. No. 2015-01-4378, § 3, 1-20-2015)

Sec. 50-191. - Permit applications.

- (a) Application for a right-of-way permit shall be submitted to the city engineer by the right-of-way user.
- (b) Right-of-way permit applications shall contain and be considered complete only upon receipt of the following:
  - (1) A completed permit application form, including all required attachments and scaled drawings showing the location and area of the proposed project and the location of all existing and proposed facilities at such location; and
  - (2) Payment to the city for non-refundable permit fees and costs set by the board of city commissioners, plus all additional fees and costs due from the applicant for prior excavation costs, and any loss, damage or expense incurred by the city arising out of applicant's prior excavations of the right-of-way or to remediate any damage caused by applicant or a result of any action by applicant, unless the fee and/or cost is in dispute and timely appealed as provided hereafter.
- (c) Every permittee shall furnish to the city a good and sufficient performance bond in the sum of \$5,000.00, conditioned that the permittee and its employees, agents and servants will comply with this division including the restoration of right-of-way. Such bond shall be kept in full force and effect for the duration of the permit.
- (d) The following information shall be provided when requested by the City Engineer:
  - (1) 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 FCC or the KCC.
  - (2) Proof of liability insurance.
  - (3) Information sufficient to determine whether the right-of-way user is subject to franchising by Kansas law.
  - (4) Information sufficient to determine whether the right-of-way user has applied for and received any certificate of authority required by the KCC or other governmental entity.
  - (5) Information sufficient to determine whether the right-of-way user has applied for and received any permit or other approvals required by the FCC.
  - (6) Such other information as may be reasonably required by the city to complete the permitting process and assess the risk to the public or the right-of-way by reason of the right-of-way user's proposed activities.
- (e) The city shall process each valid and administratively complete application for use of the right-of-way within ten business days.

(Ord. No. 2015-01-4378, § 3, 1-20-2015)

Sec. 50-192. - Joint applications.

- (a) Applicants may apply jointly for permits to excavate the right-of-way at the same time and place.
- (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; provided, that notwithstanding any such agreement each applicant shall be joint and severally liable for all applicable permit fees and costs.
- (c) Applicants who apply for and receive a joint right-of-way permit are held jointly liable for repair, restoration, and all costs associated therein as set forth herein.

(Ord. No. 2015-01-4378, § 3, 1-20-2015)

Sec. 50-193. - Supplementary applications.

- (a) A right-of-way permit shall only be valid for the area of the right-of-way specified within the permit. No permittee may cause any work to be done outside the area specified in the permit, except as provided herein. Any permittee who determines that an area greater than that which is specified in the permit must be utilized must, prior to the commencement of work in that greater area: (1) make application for a permit extension and pay any additional fees required thereby; and (2) receive a new right-of-way permit or permit extension.
- (b) A right-of-way permit shall be valid only for the date or dates specified in the permit. No permittee may commence work before the permit start date or, except as provided herein, may continue working after the end date. If a permittee does not complete the work by the permit end date, the permittee must apply for and receive a new right-of-way permit or a permit extension for additional time.
- (c) Any supplementary application must be submitted to the city prior to the permit end date.

(Ord. No. 2015-01-4378, § 3, 1-20-2015)

Sec. 50-194. - Right-of-way permit fees and costs.

- (a) Any fees paid under this division are not refundable.
- (b) Except for an emergency, any right-of-way user working without a permit shall pay twice the set permit fee amount to apply for a permit.
- (c) Any right-of-way user failing to comply with the permit or this division shall pay to the city all costs incurred to repair and/or restore the right-of-way.
- (d) The right-of-way permit fee shall be waived:
  - (1) When the right-of-way user is required to remove, relocate or adjust facilities located in the right-of-way at the direction of the city to facilitate a public improvement;
  - (2) When reasonably required by the city for reasons of public health, safety and welfare;
  - (3) When a request for an extension of an existing permit is made prior to the expiration of the original permit; or
  - (4) When such fees are prohibited from being imposed by the conditions set forth in a franchise agreement that has been entered into by the city and a right-of-way user, and enacted prior to the date of adoption of this division.

(Ord. No. 2015-01-4378, § 3, 1-20-2015)

Sec. 50-195. - Issuance of permit.

- (a) If the city engineer determines the applicant has satisfied the requirements of this division, the city engineer shall issue a right-of-way permit.
- (b) The city engineer may impose reasonable written conditions in or attached to the right-of-way permit and the performance of the permittee to protect the public health, safety and welfare, to ensure the structural integrity of the right-of-way, to protect the property and safety of other users of the right-of-way, and to minimize the disruption and inconvenience to the traveling public..
- (c) Right-of-way permits are not transferable.
- (d) If work is completed by one right-of-way user for or under contract with another right-of-way user, both right-of-way users must comply with this division, and will be liable for all damage, costs, obligations, and warranties.
- (e) Right-of-way permits are limited to work performed in a contiguous right-of-way area. Except as provided herein, applicants must apply for and receive a separate permit for each non-contiguous right-of-way work area.

(Ord. No. 2015-01-4378, § 3, 1-20-2015)

Sec. 50-196. - Denial of permit.

- (a) The city engineer 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 city engineer, exercising sound 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 locations in the right-of-way or in other right-of-way for the facilities of the applicant;
  - (4) The applicability of any ordinance or other regulations that affect location of facilities in the right-of-way;
  - (5) The degree of compliance of the applicant with the terms and conditions of its franchise, this division, 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; and
  - (8) Whether the issuance of a right-of-way permit for the particular dates and/or time requested would cause a conflict or interferes with an exhibition, celebration, festival, or any other event. In exercising this discretion, the city engineer shall be guided by the safety and convenience of anticipated travel of the public over the right-of-way.
- (b) Notwithstanding the foregoing, the city engineer may exercise discretion in issuing a right-of-way permit in any case where the permit is necessary to:
  - (1) Prevent substantial economic hardship to a user of the right-of-way user's service; or
  - (2) Allow such user to materially improve the service provided by the right-of-way user.

(Ord. No. 2015-01-4378, § 3, 1-20-2015)

Sec. 50-197. - Conditions of permits.

All permittees shall comply with the following provisions:

- (a) Prior to any work, the permittee shall identify and locate any buried facilities utilizing Kansas One Call and other reasonable methods.
- (b) Permittee shall be responsible for any damage or injury caused by permittee, and shall defend and indemnify the city for all claims against city for damage or injury caused by permittee, its employees, agents, contractors or assigns.
- (c) When directed by the city engineer, the permittee shall notify the occupants of all properties within 200 feet of the excavation prior to commencement of work. Door hangers shall be sufficient to satisfy such notification requirement.
- (d) Permittee shall provide proper safety and traffic control, to protect the public from open excavations, storage of materials and on-going work.
- (e) The permittee shall notify the city at least three business days prior to any necessary street closure or which reduces traffic flow to less than two lanes of moving traffic for more than four hours. Except in an emergency, no such closure shall take place without prior notice to and authorization from the city.
- (f) To minimize disruption of traffic, non-emergency work on arterial and collector streets shall not be performed during the hours of 7:00 AM to 8:30 AM and 3:30 PM to 5:00 PM.
- (g) Permittee must maintain an adequate passage for vehicles and pedestrians across or around any excavation until filled and repairs completed, as provided by the permit or this division.
- (h) Permittee shall protect and secure any excavation left open overnight on any thoroughfare or street. Permittee has sole responsibility for maintaining proper barricades, plates, safety fencing or lights as required from the time of opening of the excavation until the excavation is surfaced and opened for travel.

(Ord. No. 2015-01-4378, § 3, 1-20-2015)

Sec. 50-198. - Right-of-way repair and restoration.

- (a) 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 such excavation. The city engineer may inspect the repair or replacement of the damage, and if necessary, require the permittee to complete additional remedial work. Notice of the unsatisfactory restoration and the deficiencies found will be provided to the permittee, who will have 15 days to remediate.
- (b) The permittee must repair all street cuts it created, plus restore any area within five feet of its street cut previously excavated, including paving and its aggregate foundations.
- (c) If the permittee fails to restore the right-of-way in the manner and to the condition required by the city engineer, the city may serve written notice upon the permittee and its surety that the permittee has five days to properly restoration the right-of-way, or the city may do so at the expense of the permittee.
- (d) In restoring right-of-way, the permittee guarantees its work and shall maintain it for 24 months following completion. During such 24 month period, the permittee shall, upon notification from the city engineer, correct all restoration work within 30 days, using any method as required by the city engineer.

(Ord. No. 2015-01-4378, § 3, 1-20-2015)

Sec. 50-199. - Work requirements and inspections.

- (a) The permittee shall use flowable fill as backfill on any street cut. This requirement may be waived or changed when appropriate in the discretion of the city engineer. In such event, the city engineer may require the permittee to employ a testing laboratory as approved by the city engineer, which shall certify the proper back filling on any street cut. The permittee shall pay all costs associated with such testing.
- (b) The permittee shall notify the city engineer upon completion of permitted work.
- (c) The permittee will notify the city engineer to schedule an inspection at the start of back filling. Upon completion of all right-of-way restoration activities, the permittee will schedule a closeout inspection.
- (d) In addition to the required scheduled inspections, the city engineer may choose to inspect the ongoing permitted work in the right-of-way at any time to ensure that all requirements of the approved permit are being met by the permittee.
- (e) The permit shall be located at the work site, and available for inspection at all times.

(Ord. No. 2015-01-4378, § 3, 1-20-2015)

Sec. 50-200. - Revocation of permit.

- (a) The city may revoke any right-of-way permit without refund of the permit fee in the event of a material breach of the terms and conditions of this division or the right-of-way permit. A material breach shall include, but not be limited to the following:
  - (1) The violation of any material provision of the right-of-way permit;
  - (2) An evasion or attempt to evade any material provision of the right-of-way permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the city or its citizens;
  - (3) Any material misrepresentation of any fact in the permit application;
  - (4) The failure to complete the work in a timely manner;
  - (5) The failure to correct a condition indicated on an order issued pursuant to this division;
  - (6) Repeated traffic control violations; or
  - (7) Failure to repair facilities or other damaged improvements owned or damaged by permittee in the right-of-way.
- (b) If the city engineer determines a permittee committed a material breach of law or the right-of-way permit, the city engineer shall send to permittee a notice to remedy such violation, stating failure to remedy a violation may be cause for revocation of the permit or legal action. Upon a material breach, the city engineer may place additional or revised conditions on the right-of-way permit regarding the permittee's remedy of the violation(s). Within seven calendar days of mailing the notification of material breach, the permittee shall provide the city engineer a plan acceptable to the city engineer to correct the breach. Permittee's failure to contact the city engineer, submit an acceptable plan, or reasonably implement the approved plan shall be cause for immediate revocation of the right-of-way permit.
- (c) If a right-of-way permit is revoked, the permittee shall also reimburse the city for all costs incurred in the revocation, including administrative costs, restoration costs and the costs of collection and reasonable attorney's fees.
- (d) The city engineer may immediately revoke a permit, with or without notice to the permittee, if acts or omissions of the permittee pose a substantial and immediate danger to the public.

(Ord. No. 2015-01-4378, § 3, 1-20-2015)

Sec. 50-201. - Facility relocation.

- (a) Right-of-way users shall promptly remove, relocate or adjust any facilities located in the right-of-way as directed by the city for a public improvement when required by the city by reason of public health, safety and welfare. Such removal, relocation, or adjustment shall be performed by the right-of-way user at its sole expense without expense to the city and shall be subject to all applicable rules, regulations and schedules of the city. The right-of-way user shall proceed with relocations upon notice to proceed given by the city engineer.
- (b) Right-of-way users shall promptly remove, relocate or adjust any facilities located in a 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 or otherwise conveyed to the city to avoid conflict with city construction and improvements. Right-of-way users shall disclaim those parts of its easements which lie within the expanded right-of-way. Should the city elect to require the right-of-way 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 a right-of-way user to relocate its facilities, the city shall provide such right-of-way user with written notice of relocations and the anticipated bid letting date of said improvement. The right-of-way user shall respond with any conflicts and a proposed construction schedule within 30 days.
- (d) Following notice by the city in the form of the delivery of final design plans for such public improvements, the right-of-way 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 or other factors beyond the control of the right-of-way user. The right-of-way user shall certify to the city, in writing, within three business days of said action 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 as a result of the right-of-way user's failure to timely relocate or adjust its facilities, or failure to properly relocate or adjust such facilities, shall be borne by the right-of-way user.
- (f) The right-of-way user shall not be responsible for the expense of relocation to accommodate any public project for private development, the expenses attributable to such a project shall be the responsibility of the third party and said right-of-way user may require payment in advance.
- (g) In the event a right-of-way user is required to move its facilities in accordance with this section, any ordinary right-of-way permit fee shall be waived.
- (h) The right-of-way user shall not be financially responsible for costs incurred due to additional location, removal, relocation, or adjustment necessary as a result of inaccurate or mistaken information provided by an entity other than said right-of-way user or an entity operating on behalf of said right-of-way user.
- (i) It is the intent of this section for both the city and the right-of-way 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.

(Ord. No. 2015-01-4378, § 3, 1-20-2015)

Sec. 50-202. - Vacation of right-of-way.

- (a) If the city vacates a right-of-way which contains the facilities of the right-of-way user, and if the vacation does not require the relocation of the right-of-way user's facilities, the city shall reserve, to and for itself and all right-of-way users having facilities in the vacated right-of-way, an easement for the right to install, maintain and operate any facilities in the vacated right-of-way and to enter upon

such vacated right-of-way at any time for the purpose of reconstructing, inspecting, maintaining or repairing the same.

- (b) If the vacation requires the relocation of facilities, and
  - (1) If the vacation proceedings are initiated by the right-of-way user, the right-of-way user must pay the relocation costs.
  - (2) If the vacation proceedings are initiated by the city, the right-of-way user must pay the relocation costs unless otherwise agreed to by the city and the right-of-way user.
  - (3) If the vacation proceedings are initiated by a person other than the right-of-way user or the city, such other person must pay the relocation costs.

(Ord. No. 2015-01-4378, § 3, 1-20-2015)

Sec. 50-203. - Abandonment and unusable facilities.

- (a) A right-of-way user owning abandoned facilities in the right-of-way shall either:
  - (1) Remove its facilities and replace or restore any damage or disturbance caused by the removal at its own expense. The city engineer may allow underground facilities or portions thereof to remain in place if the city engineer determines that it is in the best interest of public safety 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 right-of-way user's obligations for its facilities in the right-of-way have been lawfully assumed by another authorized right-of-way user; or
  - (3) Submit to the city a proposal and instruments for transferring ownership of its facilities to the city. If the right-of-way user proceeds under this section, the city may, at its option, purchase the equipment, require the right-of-way user, at its own expense to remove it, or require the right-of-way 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 right-of-way user who fails to comply with this section, and whose above-grade facilities remain unused for six months or below-grade facilities for two years, shall be deemed to be abandoned unless, after the city has made a good faith effort to contact such right-of-way user, the city receives confirmation that the right-of-way 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, (1) abating the nuisance, (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 right-of-way user.

(Ord. No. 2015-01-4378, § 3, 1-20-2015)

Sec. 50-204. - Use of the right-of-way.

- (a) The right-of-way user's use of the right-of-way shall in all matters be subordinate to the city's use or occupation of the right-of-way. 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 any and all governmental powers now or hereafter vested in or granted to the city.
- (b) Right-of-way users shall coordinate the placement of facilities in a manner which minimizes adverse impact on any public improvement, as reasonably determined by the city. Where placement is not regulated, the facilities shall be placed with adequate clearance from such public improvements so as not to impact or be impacted by such public improvement.

- (c) Right-of-way users 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 of the right-of-way user shall be located and laid so as not to disrupt or interfere with any publicly owned or operated pipes, drains, sewers, irrigation systems, structures or improvements already installed. In addition, right-of-way users shall, in doing work in connection with its facilities, avoid, so far as may be practicable, disrupting or interfering with other lawful uses of the right-of-way or other public lands of the city.
- (e) All facilities of right-of-way users shall be placed so that they do not interfere with the use of right-of-way and public lands. The city, through its city engineer, shall have the right to review the location, design and nature of the facility prior to its being installed.
- (f) Whenever new facilities are constructed or significant work as determined by the city engineer is performed on existing facilities, the facilities shall be located or relocated underground. Appliances, boxes, antennae, pedestals, transmitters, and other equipment as approved by the city engineer may be located above ground. Electric transmission and main distribution lines of 12 kilovolts (KV) and above shall be exempted. Electric supply lines below 12 KV will be located underground. Right-of-way users shall comply with all requirements of the city relating to underground facilities. The governing body may grant a special exception to this requirement on a temporary or permanent basis on such terms as the governing body may deem appropriate in cases of emergency, safety concerns, unusual circumstances, or some other good cause. In addition, in cases where temporary electrical power or communication service is reasonably required for emergencies or for building construction purposes, the city manager or the city manager's agent may grant special permission for the temporary construction and use of poles, wires and other above-ground facilities for a period not to exceed 120 days; provided, that in the event that resolving said emergency or completing said construction cannot be concluded within said time period because of a shortage of material, a natural disaster, strikes, or other circumstances beyond the control of the parties, or by unusual hardships, then the time may be extended by an additional temporary period or periods necessary to allow completion of such construction. When above-ground facilities are allowed pursuant to this section, said facilities shall be located only as directed by the city including, but not limited to, requirements regarding location and height.
- (g) Right-of-way users shall not interfere with the facilities of the other right-of-way users without their permission. If and when the city requires or negotiates to have a right-of-way user cease using its existing poles and to relocate its facilities underground, all other right-of-way users using the same poles shall also relocate their facilities underground at the same time.
- (h) The city engineer may assign specific corridors 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 city engineer expects will someday be, located within the right-of-way. Any right-of-way 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 the city engineer for good cause shown and after consideration of such factors as the remaining economic life of the facilities, public safety, user service-needs and hardship to the right-of-way user.
- (i) If, in the preparation and planning of a right-of-way project, the city engineer deems it appropriate for a conduit to be constructed along, across or under the right-of-way, the city engineer shall contact all appropriate right-of-way users for input on the planning and design of such conduit. If a right-of-way user desires to construct, maintain or operate facilities along such right-of-way, the city engineer may require the right-of-way user to use such conduit; provided, that the right-of-way user's use of the conduit is reasonable and appropriate under the circumstances.
- (j) All earth, sod, landscape features, materials, sidewalks, paving, utilities, other public improvements or improvements of any kind damaged or removed by the right-of-way user shall be repaired or replaced promptly by the right-of-way user at its sole expense and to the reasonable satisfaction of the city. Upon determination by the city engineer that such repair or replacement is a public safety

matter, all such repair or replacement shall be commenced within 24 hours of notice from the city, or the city engineer may direct the city to make such repair or replacement, in which case the right-of-way user shall be liable to and reimburse the city for the cost thereof plus penalties. The city engineer has the authority to inspect the repair or replacement of the damage, and if necessary, require the right-of-way user to re-do work or do any additional work to complete such repair or replacement.

- (k) All technical standards governing construction, reconstruction, installation, operation, testing, use, maintenance, and dismantling of a right-of-way user's facilities in the right-of-way shall be in accordance with applicable federal, state and local laws and regulations, including those promulgated by national trade associations commonly associated with the service provided by the right-of-way user. It is understood that the standards established in this paragraph are minimum standards and the requirements established or referenced in this division may be in addition to or stricter than such minimum standards. A right-of-way 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 city engineer and having received a permit for such improvement. The city engineer may require that any drawings, plans or specifications submitted be certified by a professional engineer licensed to practice engineering by the State of Kansas 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) Right-of-way users 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 right-of-way 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 a specific portion of the right-of-way by a right-of-way user due to public health, safety or welfare considerations.

(Ord. No. 2015-01-4378, § 3, 1-20-2015)

Sec. 50-205. - Appeals process.

- (a) Whenever a right-of-way user shall deem itself aggrieved by any decision or action taken by the city, such right-of-way user may file an appeal to the city manager within ten calendar days of the date of notice of such decision or action.
- (b) The appellant shall be afforded a hearing on the matter before the city manager within 30 days of filing the appeal.
- (c) In cases of applicability or interpretation of the rules, the city manager may revoke such decision or action taken by the city engineer.
- (d) If a right-of-way user deems itself aggrieved after the appeal to the city manager, such right-of-way user may within thirty (30) days after the effective date of the city manager's final decision file an appeal to the governing body.
- (e) The appellant shall be afforded a hearing on the matter before the governing body within 30 days of filing the appeal.
- (f) Pending a decision of the governing body, the order of the city engineer shall be stayed, unless the city engineer determines that such action will pose a threat to public safety or the integrity of the public infrastructure.

(Ord. No. 2015-01-4378, § 3, 1-20-2015)

Sec. 50-206. - Penalties.

- (a) Any person or entity violating any provision of this chapter is guilty of a class "C" public offense, and upon conviction thereof shall be punished by a fine of not more than \$500.00 or by imprisonment of not more than 30 days or both such fine and imprisonment. Every day that this chapter is violated shall constitute a separate offense.
- (b) The city shall have the authority to maintain civil suits or actions in any court of competent jurisdiction for the purpose of enforcing the provisions of this division. In addition to any other remedies, the city may maintain an injunction, mandamus or other appropriate action or proceeding to prevent violation of this division.

(Ord. No. 2015-01-4378, § 3, 1-20-2015)