



Agenda  
Olivette City Council Meeting  
August 23, 2016  
7:00 PM  
Council Chambers of City Hall  
9473 Olive Boulevard  
Olivette, MO 63132

1. Roll Call
2. Communications
3. City Manager's Report  
City Manager Sondag will give a verbal report. Department Status Reports are attached.

Documents:

[DEPARTMENT STATUS REPORTS.PDF](#)

4. City Council Reports
5. Hearing From Citizens

Documents:

[HEARING FROM CITIZENS.PDF](#)

6. Bill #2816 - An Ordinance Repealing Chapter 240 Section 240.070 Of The City Of Olivette Municipal Code And Enacting A New Chapter In Lieu Thereof Relating To Community Center Rental Fees - Second Reading  
Second Reading of a proposed Ordinance to revise rental policies and fees at the Olivette Community Center

Documents:

[COMMUNITY CENTER FEE STUDY AND PROPOSED RATES SECOND READING.PDF](#)  
[CURRENT CITY CODE CHAPTER 240.070.PDF](#)

7. Bill #2818 - An Ordinance To Amend The Title Of Chapter 520 Excavations And Grading And Adopt A New Chapter Title Called Chapter 520 Rights Of Way Usage And Grading And Enact A New Article I Titled Rights Of Way Usage Code - Second Reading  
This ordinance will amend and rename Chapter 520 Excavations and Grading. Chapter 520 will now be called "Rights of Way Usage and Grading", and Article I Excavations of the renamed Chapter 520 will be repealed and replaced with a new article titled Article I Rights of Way Usage Code.

Documents:

[CCS-BILL 2818 TA CH 520 RIGHTS OF WAY USAGE CODE 2ND RDG.PDF](#)

8. Bill #2819 - Conflicts Of Interest Ordinance -- Second Reading  
Every two years, the Missouri Ethics Commission requires that political subdivisions adopt an ordinance to require Financial Interest Statements for Political Subdivisions (short form) to be filed by elected officials and key appointed officials. The City of Olivette last adopted this ordinance as Ordinance #2523 on August 12, 2014.

Documents:

[BILL 2819.PDF](#)

9. Bill #2820 - An Ordinance Repealing Chapter 125, Article VI Olivette On The Go Committee, In Its Entirety - First Reading  
The Council is asked to repeal Chapter 125, Article VI Olivette on the Go Commission in its entirety

Documents:

[BILL 2820 OLIVETTE ON THE GO.PDF](#)

10. Resolution 2016-18: A Resolution Authorizing The Execution Of Change Orders #12 And 13 Of The Contract Between The City Of Olivette And United Construction For Construction Of The City Center  
Council is asked to approved Change Orders 12, 13 and XX to the contract between the City and United Construction for the City Center project

Documents:

[RESOLUTION 2016-18 CITY CENTER CHANGE ORDERS.PDF](#)

11. 2016 Council Rules Of Procedure  
It is anticipated the Council will approve their 2016 Rules of Procedure

Documents:

[RULES OF PROCEDURE.PDF](#)

12. Consideration Of Proposal To Replace Concrete On Harvest Ct And Warson Pines  
The Public Works department requested proposals to replace deteriorated concrete slabs on Warson Pines and Harvest Court. Staff recommends entering into an agreement with Byrne and Jones to complete the work later this fall.

Documents:

[CONCRETE SLAB REPLACEMENT ATTACHMENT.PDF](#)

13. Consideration Of Skid Steer Purchase Proposal  
Consideration of proposal from Bobcat of St. Louis, MODOT contract, to purchase a S650 skid steer with bucket attachment.

Documents:

[OPW BOBCAT S650 ATTACHMENTS.PDF](#)

14. Request To Dispose/Donate Outdated Police & Fire Department Electronic Equipment  
Request authorization to dispose of or donate outdated electronic equipment no longer in use by the Police & Fire Departments.

Documents:

DOCUMENTS.

[RADIO DONATIONS SUBMISSION 2016.PDF](#)

15. Review And Approval Of The Minutes Of The August 9, 2016 City Council Meeting  
Request for the City Council to review and approve the minutes of the August 9th City Council meeting.

Documents:

[DRAFT COUNCIL MINUTES 2016-08-09.PDF](#)

16. Hearing From Citizens (Part 2)

Documents:

[HEARING FROM CITIZENS - PART 2.PDF](#)

17. City Attorney's Report  
City Attorney Paul Martin will give a verbal report to the City Council.
18. Adjournment

**AGENDA ITEMS WILL NOT NECESSARILY BE DISCUSSED IN ORDER. IF YOU HAVE ANY QUESTIONS, PLEASE CALL CITY HALL AT (314) 993-0444**

Individuals desiring to speak at the meeting are asked to fill out speaker cards available on the speaker's podium and submit the cards to the City Clerk prior to the call to order and roll call. Speakers are respectfully asked to hold comments to three (3) minutes to allow all those who wish a chance to speak. Speakers will be called on to speak during the "Hearing from Citizens" portion of the meeting. Please address all comments to the Mayor.

The City of Olivette hereby advises the public, employees and qualified job applicants that they are afforded an equal opportunity to participate in the programs and service of the City regardless of race, color, religion, veteran status, national origin, sex, age, sexual orientation, the existence of a physical or mental disability, or any other classification protected by law. If you are a person with a disability and have special needs, please call Barbara Sondag, City Manager at 314.993.0444 as soon as possible but no later than one day prior to the event or call 314.993.3610 VOICE TDD, 1.800.735.2466 RELAY MISSOURI. Thank you.

Please note that the City Council may adjourn to closed session pursuant to the Revised Statutes of the State of Missouri to discuss legal, confidential or privileged attorney-client matters pursuant to Section 610.021(1), real estate matters pursuant to Section 610.021(2), personnel matters pursuant to 610.021(3), audit matters pursuant to Section 610.021(17), or for any other reason allowed by Missouri law.

The news media may obtain copies of this notice by contacting:

Barbara Sondag  
City Manager  
9473 Olive Boulevard  
Olivette, Missouri 63132  
(314) 993-0444

Posted this 19th day of August, 2016 at 11:45 AM.

**Myra G. Bennett**

Myra G. Bennett, CMC/MBOC

Myra G. Bennett, Clerk/REC  
City Clerk  
City of Olivette



# Olivette Police Department

## Activity Report 2016



### Overview

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	YTD
Total Calls for Service	991	1002	888	1026	1121	1143	1020						7191
Reports Taken	53	56	71	60	75	69	52						436
Crimes Reported	47	52	68	54	68	65	51						405
Adult Arrests	31	38	42	37	41	45	27						261
Juvenile Custodies	2	1	1	5	1	3	1						14

### Community Oriented Policing

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	YTD
Alarms	51	55	42	50	49	56	65						368
Assist Fire Dept.	81	68	74	79	73	53	65						493
Other*	164	162	155	137	166	179	179						1142
Total	296	285	271	266	288	288	309						2003

### Crimes Reported

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	YTD
Assault**	5	6	5	5	7	3	4						35
Burglary	3	0	3	2	3	5	5						21
Drug Offenses	2	1	5	2	3	1	0						14
Larceny	7	2	9	5	13	5	15						56
DWI	5	10	12	10	7	7	5						56
Robbery	0	0	1	0	1	0	1						3
Other***	30	43	48	40	41	44	21						267
Total	47	52	71	54	68	65	51						408

### Case Status

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	YTD
Cleared Cases	29	37	47	40	39	46	28						266
Unfounded Cases	1	0	1	0	0	0	0						2
Juvenile Cases	2	1	1	4	1	4	2						15

\*Includes animal injured, assist other agency, bike patrol, check the welfare, fingerprints, foot patrol, keep the peace, lockouts, police community relations, RADAR trailer assignment, school crossing, traffic control, vacation checks, and water main break.

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# Olivette Police Department

## Bureau of Investigations Report



### Reports Written

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	YTD
Original Reports	3	0	1	2	3	3	3						15
Supplements	24	23	12	13	6	18	10						106
Total	27	31	13	15	9	21	13						129

### Additional Information

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# Olivette Police Department

## Citation Report



### Violations Summary

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	YTD
Alcohol, Drugs - Non Traffic	3	3	3	4	7	4	2						26
Animals	1	0	0	0	2	0	1						4
Assault	0	2	1	2	3	1	0						9
Drivers License	12	12	10	15	16	20	11						96
DUI, Alcohol, Drugs - Traffic	5	10	13	11	7	7	5						58
Emergency Equipment	0	0	0	0	0	0	0						0
Financial Responsibility	24	39	23	38	42	42	22						230
Lane Usage	3	7	5	0	4	6	3						28
Miscellaneous*	25	21	11	39	27	52	15						190
Obstructing Justice, Police	0	1	0	1	0	0	0						2
Parking	6	8	0	1	2	3	6						26
Registration	35	38	21	26	24	43	24						211
Signs, Signals	7	15	10	6	12	8	9						67
Speeding	96	106	72	116	126	107	96						719
Stealing, Larceny-Under \$500	4	4	0	0	1	0	2						11
<b>Total</b>	<b>221</b>	<b>266</b>	<b>179</b>	<b>259</b>	<b>273</b>	<b>293</b>	<b>196</b>						<b>1687</b>

\*Includes, but not limited to, Leaving the Scene of an Accident, Vehicle Light Violations, Passing Violations, Seat Belt Violations, Property Damage, Family Offenses, Flight/Escape, Loitering, Soliciting, Violations of Public Order and Public Peace and Curfew Violations.

### Traffic Accidents

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	YTD
Total*	21	28	18	24	17	28	22						158

\*ONLY traffic accidents that generate a police report will be listed in this report. Traffic accidents where no police report is needed and/or requested will not be included.



# OLIVETTE POLICE DEPARTMENT TRAINING REPORT



## July, 2016 Training

Bill Miller	32 Hours	Law Enforcement Traffic Safety Advisory Council (LETSAC) Conference
Derek Selsor	32 Hours	Law Enforcement Traffic Safety Advisory Council (LETSAC) Conference
Steve Ford	40 Hours	(CIT) Crisis Intervention Team
Alex Moranz	40 Hours	(CIT) Crisis Intervention Team
Rick Knox	32 Hours	FBI National Academy Association Conference
Mike Roemer	32 Hours	FBI National Academy Association Conference
Kevin Lemmie	32 Hours	FBI National Academy Association Conference
Dave Wolf	32 Hours	FBI National Academy Association Conference

The following officers completed 4 hours of training for: Wireless Records Analysis, Intercepts and Tracking/Locating: Craig Schneider, Steve Ford, Bill Miller

The following officers completed 4 hours of Annual Firearms Qualifications: Dave Wolf, Madison Coates, Tim Loethen

The following officers attended Annual Rifle Re-Qualification: Rick Knox, Steve Ford, Tim Loethen

All Officers	1 Hour	Police Legal Sciences On Line Training
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**FIRE DEPARTMENT**

**Fire Department Status Report for month ending July 31, 2016**

	<b>Reporting Period</b> <b>July 2016</b>	<b>Previous Reporting period</b> <b>June 2016</b>	<b>TOTALS <u>Current</u> year</b> <b>to date</b> <b>2016</b>	<b>TOTALS</b> <b>Last year to</b> <b>date (2015)</b>
<b>Fire Response in Olivette</b>	<b>23</b>	<b>9</b>	<b>103</b>	<b>102</b>
<b>Fire Response in Elmwood Park</b>	<b>2</b>	<b>1</b>	<b>9</b>	<b>9</b>
<b>Fire Response Outside Olivette (Mutual Aid)</b>	<b>18</b>	<b>16</b>	<b>105</b>	<b>118</b>
<b>Total Fire Calls</b>	<b>43</b>	<b>26</b>	<b>217</b>	<b>229</b>
<b>Emergency Medical Service (EMS)</b>	<b>52</b>	<b>63</b>	<b>469</b>	<b>444</b>
<b>Total Fire &amp; EMS Response</b>	<b>95</b>	<b>89</b>	<b>686</b>	<b>673</b>

**Fire Department Status Report for month ending July 31, 2016**

**Training:**

**A-Crew**

(F21) Public Relations & Fire Safety Education	1 fa,ru,ab,degreeff	7/5/2016
(INS14) Fire Alarm systems and Devices	.5 fa,ru,ab	7/5/2016
(FC40) S&T: Stand pipe ops	2 all on duty	7/5/2016
(FC01) Fire Control, General	4 all on duty	7/6/2016
(AP9) Portable Equipment	1 all on duty	7/6/2016
(AP9) Portable Equipment: hand tools	.5 ru,fi	7/11/2016
(FC40) S&T: Search techniques	2 fa,ru,eb,ab,fi	7/11/2016
(BC01) Building Const.	.5 fa,ru,ab,fi,st	7/11/2016
(F11) Ventilation	1fa,ru,eb,ab,fi	7/11/2016
(F03) Fire Extinguishers	.5 ru,fi	7/11/2016
Mega Code EMS Dr. Wilmus	1.5 all on duty	7/12/2016
F26 PPE	2 all on duty	7/12/2016
FC40 S&T Readin assignment	2 entire Crew	7/12/2016
(AP9) Portable Equipment	.5 all on duty	7/17/2016
(F06) Fire Service Hose	1 all on duty	7/17/2016
(F15) Water supply	2.25 all on duty	7/17/2016
(DT01) Area Familiarization	1.5 all on duty	7/19/2016
DT01 Special Hazards	1.5 all on duty	7/19/2016
Reading assignment	2 hours Eb, SA, AB	7/23/2016
F01 Orientation	1.5 on duty crew	7/24/2016
AP10 Appartuta check Procedures	1 All On duty	7/24/2016
Reading assignment	2, ST, FI	7/24/2016
(INS14) Fire Alarm systems and Devices	.25 tf,jr,ts	7/29/2016
(INS19) Inspections 1hrs.	1 tf,jr,ts	7/29/2016
(F09) Fire Streams and Hydraulics	.75 tf,jr,ts,nm	7/29/2016
(INS19) Inspections	3 tf,jr,ja,af,ts,nm	7/29/2016
(F25) SCBA	1.75 tf,jr,ja,af,ts	7/30/2016
(BC01) Building construction	1.25 tf,jr,ja,af,ts	7/30/2016

**Total average Hrs. = 39.75 per employee 6 employees**

### **B Crew**

<b>Portable Equipment</b>	<b>8</b>
<b>Radio operations</b>	<b>2</b>
<b>Building Construction</b>	<b>2.5</b>
<b>EMS</b>	<b>3</b>
<b>Strategy &amp; Tactics</b>	<b>5</b>
<b>Inspection Code Enforcement</b>	<b>2</b>
<b>Driver Training</b>	<b>4.5</b>
<b>Ventilation</b>	<b>2</b>
<b>Maps and Area</b>	<b>1</b>
<b>Portable Equipment</b>	<b>8</b>

**Total average Hrs. = 38 per employee 6 employees**

### **C-Crew**

<b>Driver Training</b>	<b>2.25</b>
<b>Portable Equipment</b>	<b>1.50</b>
<b>Fire Service Hose</b>	<b>1</b>
<b>Fire Apparatus Familiarization</b>	<b>1.50</b>
<b>F12 Rescue</b>	<b>2.50</b>
<b>Building Construction</b>	<b>0.75</b>
<b>Live Fire Training</b>	<b>4</b>
<b>Strategic and Tactical Operations</b>	<b>5.75</b>
<b>Fire Inspections</b>	<b>.50</b>
<b>Fundamentals of Fire Suppression</b>	<b>1</b>

**Total average Hrs. = 20.75 hours per employee employees**



FIRE DEPARTMENT

Fire Department Monthly EMS Response summary  
for the month ending July 31, 2016

	<b>Reporting Period July (2016)</b>	Previous Month	<u>TOTAL</u> 2016 YTD	<u>TOTAL</u> 2015 YTD
EMS calls Olivette	46	50	382	354
EMS calls (Elmwood Park)	3	7	58	63
EMS Mutual Aid given	2	5	28	36
Total EMS calls for period	51	62	468	453

Fire Department Monthly EMS Transport summary (this reporting period)

	Transported by Olivette FD	Transported by Mutual Aid	Transported by Private Ambulance		Non-Transport
Olivette	32	1	0		13
Elmwood Park	3	0	0		0
EMS Mutual Aid Given	1	N/A	0		1
Total EMS calls for period	36	1	0		14

**July 2016 Ambulance (MED3000) Billing Revenue**

	July 2016	YTD 2016	YTD 2015
Net Receipts Collected	\$18,995.22	\$100,084.89	\$97,085.05

In December 2011, with the authorization of the City Council, the City of Olivette entered into an agreement with Rockford Mercantile Agency, Inc. for collection of balances for ambulance transports that remained unpaid after 120 days of no activity on the account. The first unpaid balances were submitted in January 2012.

**July 2016 Collection Service (RMA) Revenue**

	July 2016	YTD 2016	YTD 2015
Net Receipts Collected	\$ 859.16	\$ 3,419.56	\$1,240.33

**PUBLIC SERVICES  
DEPARTMENT OF PUBLIC WORKS  
DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT**

Planning Division:

- The St. Louis Metro Section of the American Planning Association sponsored a luncheon titled "Wireless Facilities and Local Land Use Regulation: *Changing Laws, Technology, and Trends*". Both Mr. Trejo and Mr. Roper attended. Ms. Waggoner, Vice Chair of the PCDC, was also in attendance.
- Staff continues working with the PCDC to revise review procedures and to establish standards for onsite stormwater management for new homes.
- Discussions continue with representatives of ExteNet Systems, Inc., seeking to place cellular communication equipment along utility poles on Old Bonhomme Road. An excavation permit for underground fiber installation is under staff review. The proposed fiber location is along Price Road and Dielman Road, south of Old Bonhomme Road, and several sections of Old Bonhomme Road. The Commission is tentatively scheduled to review a revised draft amending Chapter 440 Communications Towers, at their meeting August 18<sup>th</sup>, as the firm seeks to also install antennas on the utility poles.
- Staff issued the City Hall RFP to 24 firms. The two additional property owners within the RFP boundaries have also been notified.
- Did you know the Warson/Baur Industrial Park, located in the northwest corner of the City's boundaries:
  - Contains 34.4 acres of land area (excluding ROW), and 508,039 sf. of building area, with 91.8 % of the building area occupied (a little over 41,000 sf. is available).
  - Of the City's four primary industrial parks, the Warson/Baur has the highest appraised land value, averaging \$14.24 per square foot (land area).
  - There are 741 total employees, with the five largest employers being: PayneCrest Electric (100), Classic Aire Care (75), S&S Automotive (53), Financial Network (46), and Firetech/Certified Net (45).
  - Since July 2011, 41 building permits have been issued for tenant finishes, totaling nearly \$720,000.

Building Division:

- Building inspectors shall be attending a full day symposium titled Product and Material Symposium on September 13<sup>th</sup>, sponsored by the Missouri Association of Building Officials and Inspectors (MABOI). As MABOI members the attendance fee is waived, inspectors earn certification credits to maintain accreditation, and this all helps in the next ISO review, as the agency recognizes professional development and certification.
- A nuisance abatement was conducted at 12 Heartwoods Drive. An administrative warrant was issued by the Municipal Judge on August 10<sup>th</sup>. With the assistance of the Police Department, the warrant was issued August 12<sup>th</sup> and the Building Division had a private hauler abate nuisance conditions.
- A nuisance hearings has been conducted for a problem property at 1220 Warson Pines Road regarding pool conditions. Staff is obtaining quotes for abatement of the pool conditions.
- Commercial Activity:
  - Olive Boulevard:**
    - 9200 Olive Blvd, Ste. 112, Bentley's PETstuff.** A building permit for interior renovations totaling \$25,000 has been issued. Staff has been in discussion with representatives regarding Occupancy Inspections, Business Licenses, and signage.
    - 9339 Olive Blvd., Taco Bell.** A building permit for interior renovations totaling \$100,000 has been issued. Construction has begun. The lobby has been closed pending construction, but the drive thru remains open.
    - 9449-A Olive Blvd., Olivette Plaza, Results Hair Salon.** Interior work continues in the tenant space formerly occupied by Curve's (1,100 sf. space). An application for a business license has been submitted for a hair salon and a sign permit has been issued for wall signage.

**9624 Olive Blvd., Olivette Center, LuLu's Express.** A building permit for interior renovations totaling \$32,000 has been issued. Construction has begun. Occupancy is not anticipated until late August 2016. The Business License application has been completed, a sign permit has been discussed, and the City Council has authorized the issuance of the Liquor License.

**9629 Olive Blvd., Bank of America.** A building permit for interior tenant finishes worth up to \$340,000 has been issue. Construction is ongoing.

**1143 Olivette Executive Parkway, Easter Seals Midwest Adult Day Center.** An occupancy has been issued for a 7,000 sf., adult day center. Adult day service centers provide a place outside the home for older adults and younger adults with all types of disabilities to be active in the community, socialize with their peers and receive needed health and personal care services. The occupant has had issues with the State limiting opening of the facility.

**Dielman Industrial Park and North Price Road Industrial Park:**

**1270 North Price Rd, Ste. B, St. Louis Bridge Club.** A building permit for interior renovations totaling \$500,000 has been issued. Construction has begun. A 328 seat bridge (playing card) facility is proposed.

**9334 Dielman Industrial Dr, Charter Communications.** A building permit for tenant finishes worth \$1.7 million is under review. Part of the permit is scheduled for PCDC review August 18<sup>th</sup>.

**9335 Dielman Industrial Dr.** A building permit for interior renovations totaling \$25,000 has been issued. Construction has begun. The anticipated tenant is Couture Floral, relocating from University City. Couture is a floral designer and provider for weddings and special events. Staff has initiated discussions with representatives regarding Occupancy Inspections, Business Licenses, and signage.

**Dielman Rock Island Industrial Park:**

**9601 DR11 Drive, Rahmani Upholstery.** A building permit has been issued for tenant finishes. Rahmani is a re-upholster and storage. The tenant space is 1,000 sf.

**Baur/Warson Industrial Park:**

**10405 Baur Blvd., Ste. A, MedNet, Inc.** A building permit has been issued for tenant finishes to operate a medical and billing consultant office. The tenant space is 3,460 sf.

**10405 Baur Blvd., Ste. H, Next Project Studio.** A building permit has been issued for tenant finishes for offices of a design build firm. The tenant space is 5,373 sf.

- The following table is a summary of reportable data for the Building Division that is generated through the City's Works Management permit system operated by REJIS.

	Month of July 2016	FY 2016-17 to Date	FY 2015-16 Comparison
<b>Residential Certificates of Occupancy issued</b>	<b>53</b>	<b>53</b>	<b>33</b>
<b>RECEIPTS</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>
<hr/>			
<b>Occupancy Inspections Conducted</b>			
Residential	58	58	54
Commercial			
<b>Total Occupancy Inspections</b>			
<b>RECEIPTS</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>
<hr/>			
<b>Plan Reviews</b>			
Residential	26	26	21
Commercial	15	15	5
<b>Total Plan Reviews</b>	<b>41</b>	<b>41</b>	<b>26</b>
<b>RECEIPTS</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>
<hr/>			
<b>Nos. of On-site Inspections Performed</b>	<b>448</b>	<b>448</b>	<b>261</b>
<b>Avg. Nos. of Inspections Per Working Days</b>	<b>22.4</b>	<b>22.4</b>	<b>11.9</b>
	<b>(20 days)</b>	<b>(20 days)</b>	<b>(22 days)</b>

**Board of Adjustment**

- No meeting was held for the month of August.
- The next scheduled meeting date is September 8, 2016. At the time of the writing of this report, there are no pending petitions.
- There are two vacancies for alternates on the Board:
  - One alternate member, set to expire 2019 (formerly Mr. Lust's position).
  - One alternate member, set to expire 2021.

## Planning and Community Design Commission

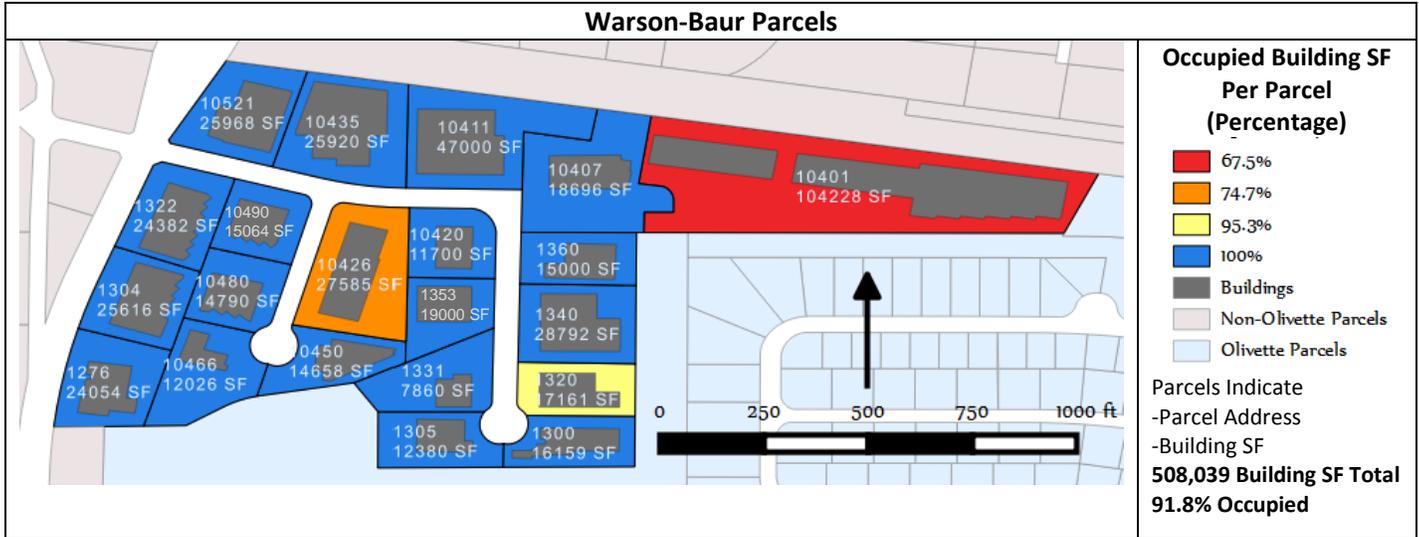
- A Commission meeting was held on August 4, 2016. A summary of activities is as follows:
  - Approved a new home for 724 Mansfield Drive.
  - Discussed review procedures outlined throughout Title IV Land Use Code.
- Following the writing of this report, a Commission was held on August 18, 2016. Scheduled agenda items are as follows:
  - Petition for new home at 701 Payson Drive.
  - Petition for residential additions at 817 New Castle Drive and 1115 Magnet Drive.
  - Petition to amend the ordinance authorizing the Special Permit Use for 9626 Olive Boulevard, to permit operations for LuLu's Asian Kitchen and allow outdoor seating.
  - Petition for exterior improvements at 9334 Dielman Industrial Drive, Charter Communications.
  - Review a draft ordinance amending Chapter 440 Communications Towers.
  - Continue discussion regarding review procedures outlined throughout Title IV Land Use Code.
- Recent petitions received and under review for an upcoming Commission meeting are as follows:
  - Petition for new homes at the following addresses: 740 Cherry Tree Lane, 741 Cherry Tree Lane, and 9753 Lindley Drive. The earliest Commission review date for any of the aforementioned properties is September 18, 2016.
- The next scheduled Commission meeting date is September 1, 2016. Tentatively, no petitions are scheduled for review.

## Economic Development Commission

- The EDC meeting scheduled for August 22<sup>nd</sup> was rescheduled for August 29<sup>th</sup>.
- The EDC held a meeting on July 25<sup>th</sup>. A summary of activities is as follows:
  - Provided a final review of the RFP for the City Hall site. The RFP was subsequently forwarded to the City Council on July 26<sup>th</sup>, and authorized for issuance.
  - Discussed the Plant Sciences master plan efforts.
  - Reviewed activities associated to the 5-Year Economic Development Plan.
  - Reviewed and discussed revisions to the Olivette Marketing Brochure.
- Tentative items for the August 29<sup>th</sup> meeting are as follows:
  - Meeting with Jamey Edgerton of the St. Louis Economic Development Partnership.
  - Updates regarding the I-170 and City Hall RFPs.
  - Further discussion of activities related to the 5-Year Economic Development Plan.
  - Review economic data regarding Baur/Warson Industrial Park.
  - Discuss updates to the Olivette Marketing Brochure.
- RFP submissions for the City Hall site are due August 31<sup>st</sup>. It is anticipated that the EDC will schedule a meeting mid-September to begin review and discussions.

# Warson-Baur Business Inventory

Occupancy, Building & Land Areas, Appraisal Values, Top 10 Employers



APPRAISED VALUES							
	Land			Improvements		Total	
	Area (Acres)	Total (\$)	Per SF	Total (\$)	Per SF	Total (\$)	Per SF
Dielman Industrial	93.2	\$15,544,100	\$3.83	\$32,943,900	\$8.12	\$48,488,000	\$11.95
<i>*Dielman Industrial</i>	82.9	\$14,656,900	\$4.06	\$32,943,900	\$9.12	\$47,600,800	\$13.17
Dielman Rock Island Industrial	15.0	\$2,582,300	\$3.94	\$5,809,600	\$8.87	\$8,391,900	\$12.82
North Price	39.4	\$7,267,100	\$4.23	\$10,095,700	\$5.88	\$17,362,800	\$10.11
<b>Warson-Baur</b>	<b>34.4</b>	<b>\$6,323,900</b>	<b>\$4.23</b>	<b>\$14,873,400</b>	<b>\$9.94</b>	<b>\$21,197,300</b>	<b>\$14.16</b>
LID Districts	182.0	\$31,717,400	\$4.00	\$63,722,600	\$8.04	\$95,440,000	\$12.04
Non-Residential	409.9	\$103,162,200	\$5.78	\$131,418,200	\$7.36	\$234,580,400	\$13.14

*\*Analysis with 3 unimproved properties removed 1290 Dielman Road, 9307 Olive Boulevard & 1160 Walters Way Lane*

### Warson-Baur Top 10 Employers Based on Number of Employees

Employees 2016	Business Name	Address
100 or more	PayneCrest Electric, Inc.	10411 Baur Blvd
50 or more	Classic Aire Care, Inc.	1276 N Warson Rd
40 or more	S & S Automotive	1304 Ashby Rd
	Financial Network, Inc.	10401 Baur Blvd
	Firetech, LLC/Certified Nets	1353 Baur Blvd
	St. Louis County Pet Adoption Center	10521 Baur Blvd
30 or more	Information Technologies, Inc.	10430 Baur Blvd
	IDG USA, LLC	10435 Baur Blvd
	Midwest Dental Lab, Inc.	1311 Baur Blvd
25 or more	Habco Partnership, Inc.	10420 Baur Blvd
741	Total Employees in Warson-Baur	685.6 Building SF Per Employee

Status Report  
For August 23, 2016 Council Packets

**PUBLIC SERVICES**  
**DEPARTMENT OF PUBLIC WORKS**

**Public Works**

- Walter Taylor and Travis Tate attended the second meeting of the newly formed Pavement Managers Group hosted by the Missouri Technical Assistance Program in Rolla.
- Several maintenance repairs have been completed at City Hall.
- Spot curb replacements continue throughout the Oak Estates subdivision
- PW staff continues to assist with the Old Bonhomme Road project to keep Spencer crews working on critical path items.
- Sewer Lateral Program
  - 2 new applications has been approved and 3 residents have submitted a reimbursement package.
- Combination pavement replacements are in progress between 527 and 539 White Rose (photos below).



## Parks Division

As summer winds down, the Parks Division is preparing the fields for the youth soccer league. This entails measuring out the field dimensions and marking the lines to make them easier to identify for weekly game prep; pulling the goal posts and nets out of storage and moving them to the fields for installation; additional mowing of the field areas. This year the field dimensions and some goal posts will be slightly different sizes for the younger age groups as the City moves into compliance with US Soccer.

The two vacant part-time positions in the Parks Division have been filled. Isaac Rice and Dion Scott joined the team on July 25<sup>th</sup> and have provided much needed support to the Parks Division.

## Recreation Division

**Summer Camps** finished for the season on July 29 with over 435 children attending camp this summer. Staff is conducting a content and satisfaction survey of all camp parents. Age groupings, locations, and program content are all under review this fall in preparation for summer 2017. Parent feedback from the surveys will be incorporated into program improvements.

*Circus skills workshop during Circus Kaput Field Trip; Summer Adventure Camp 2016*



**Youth Soccer League** games begin September 10. The preseason player's clinic will be held on Saturday, August 20 at Warson Park. As of August 18, 622 players have registered for the 2016 season. .

Registration is live on the Parks and Recreation website for the **All Olivette Garage Sale** on September 10. This year the participating homes map will be released the day before. People will be able to download the map from the website or pick-up a paper copy at the Community Center. Paper maps will also be available on Saturday at the Community Center.

Save the Dates! **Party in the Park 2.0** is Friday, September 23 at Warson Park and the ever popular **Boo Bash** returns October 22 to the Community Center.

## Facility Division

Much was accomplished during the July 25-31 Community Center closure. Room 6 was converted to a Work /Conference/Break Room for staff and volunteers. The Parks & Recreation Commission's August meeting was held in the new Conference area of Room 6. A new flatscreen location display was installed in the entrance. The

screen displays the daily room schedule in rotation with park and program photos. A programming screen was installed in the lobby and will be used to show selected entertainment broadcasts, movies and live Cardinal and Blues games.



*Conference Area of Room 6*



*Work & Break Areas of Room 6*



The old school library located between Rooms 1 and 2 had been used for storing athletic gear and old uniforms for many years. During the closure, it was converted to a lecture room. This room set-up will remain constant and it be used for by the public and by City programs. It has a lectern, rolling white boards, screens and easels.

*Lecture Room*



## ***CITY COUNCIL AGENDA SUBMISSION***

### **Agenda Item:**

Hearing from Citizens

### **Description:**

Olivette citizens and businesses express concerns, discuss issues, and make requests of the City Council's assistance in getting matters resolved.

The Mayor and City Council would like to remind the audience of the following:

1. The purpose is to hear your concerns, issues, and questions.
2. Cards submitted after the beginning of 1<sup>st</sup> "Hearing from Citizens" will not be called until the 2<sup>nd</sup> "Hearing from Citizens".
3. The Chair has discretion to allow individuals to speak without previously submitting a card; however, those individuals will also need to complete a card.
4. Personal attacks of Council Member, Staff, and/or individuals are not permissible.
5. Any question should be directed to the Chair and only the Chair.
6. Questions concerning agenda items may be addressed by Council or staff at the time the agenda item is discussed.
7. Questions that are not pertaining to agenda items may receive an answer by the method of your choice; indicated at the bottom of the submittal cards.
8. Profanity is not allowed.
9. Campaigning and electioneering are not permitted.

"Hearing from Citizens" is not intended to be an open discussion. It is intended to provide an opportunity for citizens to be heard at official meetings.

When called, please step to the podium; state your name and your address before addressing your subject matter.

Each person has up to three (3) minutes to speak. Should your time elapse, you are welcome to continue at the second hearing from citizen's session again, for up to 3 minutes.



**CITY COUNCIL AGENDA SUBMISSION  
AUGUST 23, 2016**

**Agenda Item:**

Bill # 2816: An Ordinance repealing Chapter 240 Section 240.070 of the City of Olivette Municipal Code and enacting a new chapter in lieu thereof relating to Community Center Rental Fees – Second Reading.

**Description:**

The proposed ordinance will repeal the current rental rates for the Community Center last revised in 2001 and adopt new fees prepared by staff.

**Recommended Action:**

Motion to adopt Bill #2816, Ordinance repealing Chapter 240 Section 240.070 of the City of Olivette Municipal Code and enacting a new chapter in lieu thereof relating to Community Center Rental Fees.

**Attachments:**

1. Department Memorandum to the City Council dated July 26, 2016
2. Bill No. 2816, proposed draft Ordinance
3. Current Chapter of the City Code governing rental fees

**Funding Request:** None

**Submitted by:**

*Beverly Tucker Knight*

**DEPARTMENT HEAD**

## MEMORANDUM

**DATE:** 26 July 2016  
**TO:** City Council  
**FROM:** Beverly Tucker Knight, Parks & Recreation Director  
**RE:** Community Center Fee Study & Proposed New Rates

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### BACKGROUND

#### Overview

The Olivette Community Center engenders community building by providing space for structured recreation classes, health and wellness programs, special events, camps, drop-in visiting, social function rentals, neighborhood association meetings, adult day care services in addition to one-time and ongoing rental uses. The rental program is utilized by families, school groups, neighborhood associations, businesses, service groups, clubs, churches, non-profits and other social groupings.

The Community Center totals 20,000 square feet with 80% open for use by the public and 20% dedicated to staff and storage. The public areas are divided into 8 classrooms, a gymnasium with a stage area and the lobby/social area. Reservations are made in person at the Olivette Community Center, on a first come, first serve basis. Reservations must be made 30 days in advance with a deposit to secure the date. Rental fees include a damage deposit that is refunded after the use. One-time renters must rent in three or five hour blocks depending on the day of the week. Payment in full is required 30 days prior to the rental date. Ongoing users do not pay the damage deposit and are allowed to pay in increments.

The Parks & Recreation Department is responsible for the operation of the Community Center which includes offering recreation programs to the public, managing one-time and ongoing room rentals, cleaning and maintaining the facility and its amenities. The City Ordinance governing the facility rental fees was last substantially revised in 2001 with minor revisions in 2008.

In preparing the fee recommendations, the cost for service of the building was determined along with the cost recovery rate. The current rental fees were compared with six other cities. The Parks & Recreation Commission also provided suggestions on the recommended fees and policy changes.

### DISCUSSION

#### Cost for Service

The annual expenditure costs used in determining the cost for service at the Community Center include personnel, services, commodities and capital. The personnel costs used are fully-burdened. Indirect overhead from City Hall and depreciation costs were not included.

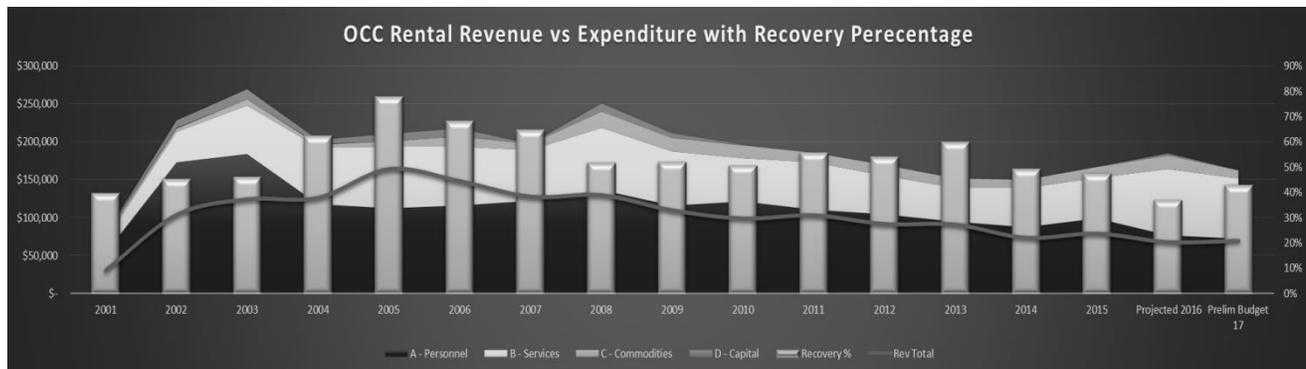
Revenue for the Community Center is comprised of room rentals, vending machine income, and a revenue fund titled "New Programs". This fund includes activities such as the Strength, Tone & Fitness class and co-sponsored activities such as Kennelwood Dog Obedience and groups with historic fee structures such as ATA Blackbelt. Prior to 2014, dog park registration fees and pre-school sports programs were recorded under New Programs. Preschool sports revenue is now recorded in the appropriate sports program fund and dog park fees with park rental fees. Another anomaly in 2014 was Cardinal ticket sale revenue being tracked in New Programs.

These inconsistencies with revenue tracking show an uneven picture of the cost recovery. Therefore two cost recovery charts are shown, one with rental revenue only and one with program and rental revenue combined.

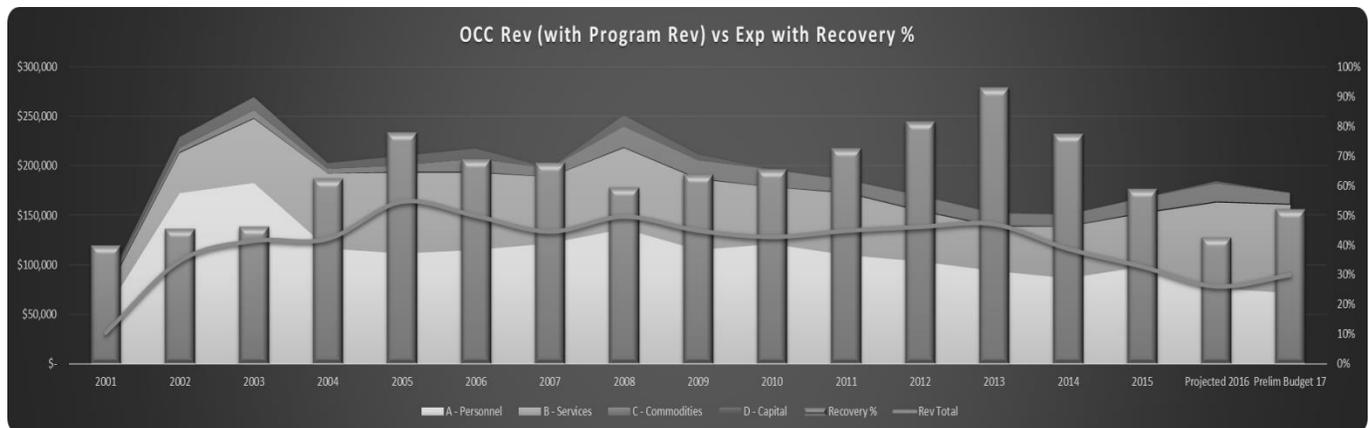
Eighty-one percent of Community Center revenue is from facility rentals. The facility renters are over 79% non-residents.

The fifteen year look back shows a decline in capital expenditure and revenue. Several factors contributed to the revenue decline including degraded facility condition, lack of cleanliness, poor customer service and decline in program offerings. A correlation between the cessation of capital improvements and the poor facility condition could also be drawn.

**COST RECOVERY with Rental Revenue**



**COST RECOVERY with Rental & Program Revenue**



### Fee Comparisons with Other Cities

Six nearby cities were selected for comparing one-time rental facility rates. While no two cities have identical capacities, conditions and rental policies, these six communities have basic similarities. On-going rental fees were not surveyed. This practice is addressed in a separate section.

Olivette was found to have the most complex set of fee combinations with 24 different rates for single use renters due to the additional categories of weekday evening and weekend rates. Of the cities surveyed, only Creve Coeur had a rate category for prime-time usage for its gymnasium. All cities differentiate between residents and non-residents for fee setting. Some have additional categories for non-profit groups, businesses and/or non-members.

Olivette’s one-time rental fees range between 36-77% lower than the comparison cities.

### FEE COMPARISON CHARTS

#### Hourly Rental Rates

Room/Capacity	Olivette		Creve Coeur <sup>1,2,8</sup>		Clayton <sup>1,2,3,4,7,8</sup>		Des Peres <sup>2,3,4,5,6,8</sup>		Kirkwood <sup>1,3,9</sup>		Maryland Hts.		U City <sup>1,2,3,8,9</sup>	
	Res	Non	Res	Non	Res	Non	Res	Non	Res	Non	Res	Non	Res	Non
<b>WEEKDAY DAY</b>														
Single/Up to 40	\$9	\$10	\$10	\$15	\$30	\$50	\$25	\$35	\$30	\$35	\$100	\$120	\$30	\$50
Single/Up to 50	\$13	\$14	\$30	\$45	\$50	\$70	\$35	\$50	\$30	\$35			\$60	\$100
Double/Up to 80	\$18	\$20	\$60	\$90	\$70	\$90	\$70	\$100	\$40	\$50	\$125	\$160	\$400	\$500
Hall/Gym 80-200	\$45	\$50	\$60	\$90	\$550		\$40	\$55	\$40	\$65	\$200	\$240	\$800	\$1,000

**FOOTNOTES**

- |  |  |
|--|--|
| 1. Has additional business (or other) rate categories not included | 6. Renter gives Credit Card# for damage fees |
| 2. Has set-up/clean-up fees  | 7. Sec Deposit charged for each area rented  |
| 3. Room capacities vary from Olivette slightly                     | 8. Minimum times required for rentals        |
| 4. Uses preferred caterer and/or vendor list                       | 9. Has rental priority polic                 |
| 5. After hours fees charged  |  |

#### Security/Damage Deposits

	Olivette	Creve Cr	Clayton	D Peres	Kirkwood	MD Hts	U City
<b>SECURITY DEP</b>	\$150	\$250	\$100	cc held	\$100	\$25	\$100
Second rate			\$250		\$250	\$75	\$200
Third rate						\$250	

#### Olivette Weekend Rates Compared with Averages of Comparison Cities

Room/Capacity	Olivette		Average	
	Res	Non	Res	Non
Single/Up to 40	\$36	\$40	\$33	\$45
Single/Up to 50	\$40	\$44	\$36	\$52
Double/Up to 80	\$45	\$50	\$112	\$144
Hall/Gym 80-200	\$90	\$100	\$248	\$250
Security Deposit	\$150		\$225	

**Ongoing User Rates and Policy**

Currently, ongoing renters receive a substantial discount on the hourly rates and are permitted to book the Community Center for a year at a time and pay for use monthly. Ongoing renters are not currently required to pay a damage deposit.

**ONGOING USER FEE CHART**

WEEKDAY			WEEKDAY EVE			WEEKEND		
ROOM	RES	NON	ROOM	RES	NON	ROOM	RES	NON
Single/Up to 40	\$5.90	\$6.00	Single/Up to 40	\$8.90	\$9.00	Single/Up to 40	\$11.90	\$12.00
Single/Up to 50	\$9.90	\$10.00	Single/Up to 50	\$12.90	\$13.00	Single/Up to 50	\$15.90	\$16.00
Double/Up to 80	\$11.90	\$12.00	Double/Up to 80	\$17.90	\$18.00	Double/Up to 80	\$23.90	\$24.00
Hall/Gym 80-200	\$38.90	\$39.00	Hall/Gym 80-200	\$50.90	\$51.00	Hall/Gym 80-200	\$64.90	\$65.00

**RECOMMENDATION**

The Community Center exists to serve the residents of Olivette. Increasing use of the Center by residents is a priority of the Parks & Recreation Department and the Parks & Recreation Commission. Through changes in operations and improvements in cleanliness, user areas and customer service, interest in the Center is growing among residents. The Parks and Recreation staff is actively recruiting new instructors for programs in line with the interests expressed by residents in the benchmark survey completed earlier this year.

Through changes in rental policies, adding new programs and bringing rental fees more in line with neighboring cities, cost recovery is expected to improve.

**Recommended Policy Changes**

- A. Establish priority booking
  - a. Parks & Recreation Department programs
  - b. City of Olivette functions
  - c. Residents
  - d. All Others
- B. Eliminate the special rate schedule (*Attachment C*) for ongoing users and replace it with a discount incentive tied to paying in advance. For ongoing users booking for the entire year and paying advance, 20% discount is recommended. For ongoing users paying for six months in advance, a 10% discount is recommended.
- C. Retain 30 day advance booking for rentals
- D. Recommend that the City Council be notified of the current free users and approve the list:
  - a. Olivette City Departments (fire, police, etc.)
  - b. Boy Scouts/Girl Scouts
  - c. Olivette/Creve Coeur Chamber of Commerce
  - d. Olivette neighborhood trustee meetings
  - e. St. Louis County Election Board
  - f. The American Red Cross
  - g. Local schools in emergency

## E. Damage Deposit

- a. Require damage deposit for all renters: both ongoing and one-time renters
- b. Increase damage deposit to \$250

**Recommended Fee Changes**

Room/Capacity	Current Olivette Wk End Rate		Average Comp Cities		PROPOSED NEW RATES	
	Res	Non	Res	Non	Res	Non
Single/Up to 40	\$36	\$40	\$33	\$45	\$30	\$45
Single/Up to 50	\$40	\$44	\$36	\$52	\$45	\$60
Double/Up to 80	\$45	\$50	\$112	\$144	\$75	\$110
Hall/Gym 80-200	\$90	\$100	\$248	\$250	\$175	\$250
Security Deposit	\$150		\$225		\$225	

It is recommended that the new fees be introduced in two phases:

1. One Time User Fees on September 1, 2016
2. Ongoing User Discount Program on January 1, 2107.

**AN ORDINANCE REPEALING CHAPTER 240.070 COMMUNITY CENTER OF THE MUNICIPAL CODE OF THE CITY OF OLIVETTE AND ENACTING A NEW CHAPTER IN LIEU THEREOF RELATING TO COMMUNITY CENTER FEES AND POLICIES**

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF OLIVETTE, ST. LOUIS COUNTY, MISSOURI, AS FOLLOWS:**

**SECTION ONE:**

The City of Olivette Municipal Code, is hereby amended repealing Chapter 240.070 Community Center in its entirety and adopting a new chapter in lieu with a fee schedule, definitions and policies, is made a part of this ordinance as fully set out herein.:

**Section 240.070 Community Center**

**A. FEES**

Fees shall be paid for the facilities in accordance with the following schedule:

<b>Room Type</b>	<b>Resident Hourly Rate</b>	<b>Non-Resident Hourly Rate</b>
Single Classroom	\$30	\$45
Single Classroom with Kitchenette	\$45	\$60
Double Classroom	\$75	\$110
Gymnasium	\$175	\$250
Damage Deposit	\$225	\$225

**B. ONGOING RENTAL DISCOUNT**

1. Ongoing Renters are eligible for a 10% discount on the hourly rate when reserving and paying for six months of use in advance.
2. Ongoing Renters are eligible for a 20% discount when reserving and paying for a full year of use.

**C. ROOM CAPACITIES**

Room Capacities will be set by the City of Olivette Fire Department according to current code.

**D. DEFINITIONS**

For purposes of this Section, the following definitions shall apply:

- a. **Resident Rate:** a person or business with a physical address within the city limit of Olivette.
- b. **One-Time Rental:** a rental of one or more rooms for a single date or function.
- c. **Ongoing Rental:** a rental made for a regular weekly, monthly or other type of recurring use.

- d. **Damage Deposit:** a deposit payable in advance by all renters to be returned upon satisfactory inspection of the room following use. Renters may be liable for additional fees if damage or cleaning fees exceed the Damage Deposit.

**SECTION TWO:**

The sections of this ordinance shall be severable. In the event any section of this ordinance is found by a court of competent jurisdiction to be invalid, the remaining sections of this ordinance are valid, unless the court finds the valid sections of this ordinance are so essentially and inseparably connected with, and so dependent upon, the void section that it cannot be presumed the city council would have enacted the valid sections without the void section, or unless the court finds that the valid sections standing alone are incomplete and are incapable of being executed in accordance with the legislative intent.

**SECTION THREE:**

This Ordinance shall be in full force and effect from and after its passage and approval as provided by law, as follows:

- A. One-Time Rental Fees on September 1, 2016
- B. Ongoing User Fee Discount on January 1, 2017

Passed and approved this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
RUTH SPRINGER, MAYOR

ATTEST:

\_\_\_\_\_  
MYRA G. BENNETT, CMC/MPCC  
CITY CLERK  
CITY OF OLIVETTE

BILL NOS. 2816

ORDINANCE NOS. \_\_\_\_\_

**Section 240.070. Community Center. [R.O. 2008 §175.085; Ord. No. 1950 §1, 1-13-1998; Ord. No. 2077, 1-23-2001]**

A. Fees shall be paid for the facilities, activities and equipment in accordance with the schedule following:

1. *Rental rates.*

<b>Room Type</b>	<b>Capacity</b>	<b>Weekday</b>	<b>Evening</b>	<b>Weekend</b>
Single	40	\$30.00	\$39.00	\$350.00
Single w/ Carpet	40	\$36.00	\$45.00	\$350.00
Single w/ Kitchen	50	\$42.00	\$51.00	\$370.00
Double	80	\$60.00	\$75.00	\$400.00
Large Banquet Hall	175	\$150.00	\$195.00	\$650.00

\*All weekend prices include a refundable \$150.00 damage deposit.

\*Rates include table/chair setup and ice.

\*Some equipment also available for small fee.

The community center is a meeting place for residents and non-residents. We have several multi-purpose rooms; small enough for an intimate get together, and large enough for a wedding reception.

a. *Definitions.* For purposes of this Section, the following definitions shall apply:

CLEAR — A room or area without chairs, table or similar furnishings. DAY

— A room rental which occurs between 8:00 A.M. and 5:00 P.M. Monday through Friday.

EVENING — A room rental which occurs between 5:00 P.M. and 10:00 P.M. Monday through Thursday.

SETUP — A room or area where one (1) or more chairs, tables or similar furnishing is provided by the City.

WEEKEND — A room rental which occurs at any time between 5:00 P.M. Friday through 10:00 P.M. Sunday and on any holiday.

b. *Minimum rentals.* All community center one-time only rentals on weekends shall be for a minimum of five (5) hours. All other community center one-time rentals on weekends shall be a minimum of three (3) hours.

c. *Deposit.* A non-refundable deposit equal to fifty percent (50%) of the total room rental rate shall be required to reserve a room.

- d. *Security/damage deposit.* A security/damage deposit of one hundred fifty dollars (\$150.00) shall be required for each room rental and for each equipment rental. The security/damage deposit shall be returned upon conclusion of the rental, upon satisfactory inspection of the room or equipment rented.
  - e. *Resident rates.* Residents who provide proof of current residency shall be entitled to a ten percent (10%) reduction in room rental fees.
2. *Equipment rental daily fees.*
- a. TV/VCR: \$15.00.
  - b. Overhead projector: \$15.00.
  - c. Podium: \$15.00.
  - d. Piano: \$15.00.



**CITY COUNCIL AGENDA SUBMISSION  
AUGUST 23, 2016**

**Agenda Item:**

Bill # 2818 – An Ordinance to amend the title of Chapter 520 Excavations and Grading of and adopt a new chapter title called Chapter 520 Rights of Way Usage and Grading and enact a new Article I titled Rights of Way Usage Code.

**Description:**

This item was read for the first time, by title only, at the August 9, 2016, City Council meeting.

The City Attorney has modified Exhibit 'A' of Bill #2818. A redlined copy is attached.

The City Council is being requested to amend Bill #2818 so as to adopt with the revised Exhibit 'A', and then read Bill #2818 for the second time and follow with a motion to adopt.

Bill #2818 has been prepared by the City Attorney, with the intention to provide for the following:

1. Rename Chapter 520 Excavations and Grading to Chapter 520 Rights of Way Usage and Grading.
2. Repeal Article I Excavations of Chapter 520 in its entirety.
3. Adopt a new Article I, title Rights of Way Usage Code.

**Recommended Action:**

Motion to amend Bill #2818 with the revised Exhibit 'A' as prepared by the City Attorney.

Motion to adopt the revised Bill #2818, an Ordinance to amend the title of Chapter 520 Excavations and Grading of and adopt a new chapter title called Chapter 520 Rights of Way Usage and Grading and enact a new Article I titled Rights of Way Usage Code.

Only a simple majority of the City Council is necessary for the Bill to become and Ordinance.

**Attachments:**

Staff Report dated August 9, 2016.

Bill #2818, including the City Attorney revised Exhibit 'A'.

**Funding Request:**

None.

**Submitted by:**

*Carlos Trejo*, AICP

Director of Planning and Community Development

**DEPARTMENT HEAD**



City of Olivette Public Services  
Department of Planning & Community Development  
1200 North Price Road  
Olivette, MO 63132

(314) 993-0252 (Office)  
(314) 994-9862 (Fax)

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**DATE: AUGUST 9, 2016**  
**TO: MAYOR RUTH SPRINGER AND MEMBERS OF THE CITY COUNCIL**  
**FROM: CARLOS TREJO**  
**DIRECTOR OF PLANNING AND COMMUNITY DEVELOPMENT**  
**RE: BILL #2818**  
**RIGHTS OF WAY USAGE CODE**

Bill #2818 has been prepared by the City Attorney, with the intention to provide for the following:

1. Rename Chapter 520 Excavations and Grading to Chapter 520 Rights of Way Usage and Grading.
2. Repeal Article I Excavations of Chapter 520 in its entirety.
3. Adopt a new Article I, title Rights of Way Usage Code.

Article I Excavations of Chapter 520 was the primary means of overseeing utility, facility, and improvements conducted in street rights of way. The original Article was adopted in 1962 and has governed excavations in rights of ways since. The regulations of openings and excavations and the requirements for backfilling and restoration have not been amended since 1962. There have been periodic updates to Article I, those being as follows:

- Ord. #1406, adopted in 1983, amending permit requirements.
- Ord #2167, adopted in 2003, regarding protection to adjoining private property.
- Ord #1819, adopted in 1994, regarding deposits.

Bill #2818 will update the use of public and private rights of way. The intent of the Rights of Way Usage Code is to:

- A. Manage the Rights of Way of the City of Olivette to the extent permitted by state and federal law and so protect the public health, safety, and welfare;
- B. Establish procedures, standards, and requirements for, among other things: (a) the registration of persons having facilities within the Rights of Way, and persons desiring to do so, (b) work performed in the city's Rights of Way, and (c) security for such work and the removal of abandoned facilities; and
- C. Comply with applicable state and federal laws and regulations regarding facilities or services in public or private Rights of Way.

**Action.** (Revised for the August 23, 2016 meeting:

The City Council is scheduled to read Bill #2818 for the second time by title only and then request to consider a motion to adopt.)

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**AN ORDINANCE TO AMEND THE TITLE OF CHAPTER 520 EXCAVATIONS AND GRADING AND ADOPT A NEW CHAPTER TITLE CALLED CHAPTER 520 RIGHTS OF WAY USAGE AND GRADING AND ENACT A NEW ARTICLE I TITLED RIGHTS OF WAY USAGE CODE**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF OLIVETTE, ST. LOUIS COUNTY, MISSOURI, AS FOLLOWS**

**SECTION 1.** Title V Building and Construction of the Olivette Municipal Code is hereby amended by renaming Chapter 520 Excavations and Grading to a new title called Chapter 520 Rights of Way Usage and Grading.

**SECTION 2.** Article I Excavations being part of Chapter 520 is hereby repealed in its entirety and a new Article I titled Rights of Way Usage Code is adopted in lieu thereof, attached hereto as Exhibit A, is made a part of this ordinance as fully set out herein.

**SECTION 3.** For purposes of the Right of Way Usage Code adopted in Section 2 hereof, the City Council hereby amends Table 1-E. Administrative Enforcement Fees, being part of Title V: Building and Construction Schedule 1: Fees, to add the following:

Right of Way Usage Registration      \$25; and  
Right of Way Usage Application Fee    \$50

for the partial recovery of the costs of these services as required therein.

**SECTION 4.** The sections of this ordinance shall be severable. In the event any section of this ordinance is found by a court of competent jurisdiction to be invalid, the remaining sections of this ordinance are valid, unless the court finds the valid sections of this ordinance are so essentially and inseparably connected with, and so dependent upon, the void section that it cannot be presumed the city council would have enacted the valid sections without the void section, or unless the court finds that the valid sections standing alone are incomplete and are incapable of being executed in accordance with the legislative intent.

**SECTION 5.** This ordinance shall become effective from and after its enactment according to law.

Passed and approved this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

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Ex. A

MUNICIPAL CODE, CITY OF OLIVETTE, MISSOURI  
CHAPTER 520, EXCAVATIONS AND GRADING

ARTICLE I. RIGHTS OF WAY USAGE CODE

**Section 520.010. Title.** This Article shall be known and may be cited as the "Rights of Way Usage Code."

**Section 520.020. Purpose and Intent.** The purposes and intent of this Article are to:

- A. Manage Rights of Way Work in the City of Olivette to the extent permitted by state and federal law to ensure the safe and aesthetic placement of facilities and the restoration of any ROW cuts or excavation and so protect the public health, safety, and welfare;
- B. Establish procedures, standards, and requirements for, among other things: (a) the registration of persons having facilities within the Rights of Way, and persons desiring to do so, (b) work performed in the city's Rights of Way, (c) facilities placed within the ROW, and (d) security for such work and the removal of abandoned facilities; and
- C. Comply with applicable state and federal laws and regulations regarding facilities or services in public or private Rights of Way.

**Section 520.030. Definitions and Word Usage.** The following terms shall have the following meanings unless otherwise defined by context:

**"City Facilities,"** any Facilities located Within the Public Rights of Way and owned by the City.

**"City Manager,"** the manager or administrator of the City or such other person designated by the City to hear appeals as provided in Section 70.030.2 hereof.

**"Director,"** the City's Public Works Director or Planning and Community Design Director, as context requires, or such other designated person.

**"Emergency Rights of Way (or "ROW") Work,"** includes but is not limited to ROW Work made necessary by exigent circumstances to repair, control, stabilize, rectify, or correct an unexpected or unplanned outage, cut, rupture, leak, or any other failure of a Facility when such failure results or could result in danger to the public or a material delay or hindrance to the provision of Service.

**"Facilities,"** a network or system, or any part thereof, used for providing or delivering a Service and consisting of one or more lines, pipes, wires, cables, fibers, conduit facilities, cabinets, poles, vaults, pedestals, boxes, appliances, antennas, transmitters, radios, towers, gates, meters, appurtenances, shelters, or other equipment.

**"Person,"** an individual, partnership, limited liability corporation or partnership, association, joint stock company, trust, organization, corporation, or other entity, or any lawful successor thereto or transferee thereof.

**"Person(s) Having Facilities Within the Rights of Way,"** any Person having ownership or control of Facilities located Within the Rights of Way.

**"Private Street,"** a street, highway, lane, path, alley, sidewalk, boulevard, drive, bridge, tunnel, parkway, waterway, public easement, or sidewalk in which the City does not now or hereafter holds any interest.

**"Rights of Way" or "ROW,"** unless otherwise restricted herein, the surface, the air space above the surface, and the area below the surface of any private street, for the purposes defined herein, and any of public street, highway, lane, path, alley, sidewalk, boulevard, drive, bridge, tunnel, parkway, waterway, public easement, or sidewalk in which the City holds any interest, which, consistent with the purposes for which it was dedicated, may be used for the purpose of installing and maintaining Facilities. "Rights of Way" shall not include (i) City Facilities or the City's property other than ROW, such as city-owned or operated buildings, parks, or other similar property, (ii)

airwaves used for cellular, non-wire telecommunications or broadcast services, (iii) easements obtained by ROW Users on private property, (iv) railroad Rights of Way or ground used or acquired for railroads, (v) Facilities owned and used by the City for the transmission of one or more Services, or (vi) streets owned or under the jurisdiction of St. Louis County or the Missouri Department of Transportation. No reference herein to "Rights of Way" shall be deemed to be a representation or guarantee by the City that its interest or other right to control the use of such property is sufficient to permit its use for the delivery of Service.

**"Rights of Way (or "ROW") Permit,"** a permit granted by the City to a ROW User for ROW Work.

**"Rights of Way (or "ROW") User,"** a Person performing ROW Work Within the Rights of Way. A ROW User shall not include ordinary vehicular or pedestrian use.

**"Rights of Way (or "ROW") Work,"** action by a ROW User to (i) install, change, replace, relocate, remove, maintain or repair Facilities Within the Rights of Way, or (ii) to conduct work of any kind Within or adjacent to the Rights of Way that results in an excavation, obstruction, disruption, damage or physical invasion or impact of any kind to the Rights of Way or the use thereof. The routine inspection of Facilities shall not be considered ROW Work unless the inspection requires the conduct of any of the activities or actions noted herein.

**"Service,"** providing or delivering an economic good or an article of commerce, including, but not limited to gas, telephone, cable television, Internet, open video systems, video services, alarm systems, steam, electricity, water, telegraph, data transmission, petroleum pipelines, sanitary or storm water sewerage or any similar or related service, to one or more Persons located within or outside of the City by use of Facilities located within the Rights of Way.

**"Within"** means in, along, under, over, or across Rights of Way.

#### **Section 520.040. Registration of Person(s) Having Facilities Within The Row.**

- A. Registration Required. Any person desiring to become a Person Having Facilities Within the ROW and any Person Having Facilities Within the ROW must register with the City.
- B. Effectiveness Of Registration. Registration hereunder by an eligible person shall remain effective for so long as that person remains eligible, unless terminated by the person or the City hereunder. Any registration of an ineligible person shall be void from the date of ineligibility.
- C. Registration Characteristics.
  - (1) A valid registration hereunder authorizes the issuance of ROW permits to the registered person in accordance with this Code. It does not expressly or implicitly authorize ROW work without a ROW permit or work on private property without owner consent through eminent domain or otherwise (except for use of compatible easements pursuant to law) or to use publicly or privately owned facilities without a separate agreement with the owners.
  - (2) A valid registration hereunder shall not eliminate the need to obtain any franchise, license, permit, easement, lease, or other contract for the privilege of (i) transacting and carrying on a business within the City as may be generally required by the ordinances and laws of the City, (ii) attaching devices to poles or other structures, whether owned by the City or other person, or (iii) performing ROW Work Within a Private Street.
  - (3) A valid registration grants no exclusive or vested rights to occupancy within the Rights of Way other than those rights granted by this code or its administration.
- D. Registered Person Subject To Other Laws.
  - (1) A person required to register shall at all times be subject to and shall comply with all applicable federal, state and local laws and shall at all times be subject to all lawful exercise of the police power of the City, including but not limited to all powers regarding planning, zoning, supervision of construction, assurance of equal employment opportunities, control of Rights of Way and consumer protection.

- (2) Registration hereunder shall not deprive any person of any rights or obligations imposed by any previously existing franchise, license or contract, nor shall it impose any obligations on any such person in addition to those included in any previously existing franchise, license or contract, except to the extent allowed by law.
  - (3) Nothing in this code shall be construed to prohibit the grant or renewal of any franchise by the City as may be allowed or required by state or federal law.
  - (4) Nothing in this code shall be construed or deemed to supersede any applicable state or federal law or any applicable regulation issued by a state or federal agency including, but not limited to, the Missouri Public Service Commission and the federal Communications Commission. In the event of any conflict between such laws or regulations and this code, the applicable state or federal law or regulation shall apply.
- E. Failure To Register. Any person who has not registered within ninety (90) days of the effective date of this code shall nonetheless be subject to all requirements of this code including, but not limited to, its provisions regarding ROW permits, construction and technical standards and fees, except as otherwise provided herein. In its discretion and to the extent allowed by law, the City at any time may:
- (1) Require such person to register within thirty (30) days of receipt of a written notice to such person from the City that registration is required;
  - (2) Require such person to remove its facilities from the Rights of Way and restore the affected area to a condition satisfactory to the City within a specific time period;
  - (3) Direct municipal personnel to remove the facilities from the Rights of Way and restore the affected area to a condition satisfactory to the City and charge the person the costs thereof, including by placing a lien on the person's property as provided in connection with abating nuisances; or
  - (4) Take any other action it is entitled to take under applicable law.
- F. Registration Exemption. Governmental entities having facilities within the ROW need not register hereunder, but such entities shall be subject to Sections 515.060 and 515.070 of this code and such other Sections or provisions as may be appropriate to their presence in the ROW.

#### **Section 520.050. Registration Procedures.**

- A. Requirements And Processing.
- (1) Registration shall be accomplished in the form of a letter to the City filed with the Director.
  - (2) To be valid, the registration letter must be signed by an authorized representative of the registering person and contain all required information and be accompanied by a filing fee established by the City.
  - (3) At any time the Director determines a registration letter does not comply with this code, the Director may return it to a point of contact identified therein with a written explanation of the reason(s) for such return. Filing fees shall not be refunded. Failure to return a registration letter shall not validate an incomplete or otherwise invalid or void registration letter.
- B. Contents Of Registration Letter. A registration letter shall contain or be accompanied by the information required herein. All such information received by the City shall be public, unless confidentiality is requested and permitted by the Missouri Open Meetings Law and other applicable state and federal law. The information required shall include:
- (1) Name, address and legal status of the registering person;
  - (2) Name, title, address, telephone number, e-mail address and fax number of individual(s) authorized to serve as the point of contact between the City and the

registering person so as to make contact possible at any time (i.e., twenty-four (24) hours per day, seven (7) days per week);

- (3) Description of the general uses made or to be made of the facilities located within the Rights of Way by the registering person, e.g., provision of service(s), transfer or lease of facilities (or portion thereof, including bandwidth) to another person, use of the facilities to transverse the City, construction of facilities to be used at a later date, etc.;
  - (4) Description of all services provided or to be provided by the registering person to any person located in the City through facilities located within the Rights of Way and an explanation of the registering person's legal qualifications to provide such services, including copies of supporting documentation such as relevant certificates or orders from the federal Communications Commission, Missouri Secretary of state and/or Missouri Public Service Commission or pertinent rules or Statutes;
  - (5) Name and address of any and all other persons providing service(s) to any person located in the City through the registering person's facilities located within the Rights of Way and a general description of such service(s); and
  - (6) Current certificates of insurance in accordance with this code.
- C. Notice Of Change. Within thirty (30) days of any changes in the information set forth in or accompanying its registration letter, a registered person shall notify the City of any such change. Such notices shall be submitted and processed in the same manner as an initial registration, except the filing fee shall not be required.
- D. Registration Index. The Director shall maintain an index of all registered persons and their point(s) of contact.
- E. Termination Of Registration.
- (1) The City shall have the right to terminate a registration for a substantial and ongoing failure to comply with this Code or other applicable law or for defrauding or attempting to defraud the City. To invoke the provisions of this Section, the Director shall give the person written notice of such intent. If within thirty (30) calendar days following such written notice from the City, the person has not completed corrective action or corrective action is not being actively and expeditiously pursued to the satisfaction of the Director, the Director may commence a proceeding to consider terminating the person's registration, giving written notice of the reasons therefor.
  - (2) Prior to terminating a registration, the Director shall hold a hearing, after giving at least ten (10) calendar days' notice to the person, at which time the person shall be given an opportunity to be heard. Following the hearing, the Director may determine whether to terminate the registration based on the information presented at the hearing and other information of record. If the Director determines to terminate a registration, the decision shall be in writing setting forth the reasons therefor. The Director may make such decision conditional on a person's failure to resolve outstanding problems or take appropriate steps to resolve such problems within a specific period of time. A copy of such decision shall be provided to the person.
  - (3) Once a registration has been terminated by the Director, the person may not register again except upon express written approval by the City Manager, which approval shall be withheld absent clear and convincing evidence that the person has remedied all previous violations and is in full compliance with all laws and will not in the future violate this code or defraud the City.
  - (4) Registration of a public utility that has been legally granted access to the right-of-way shall not be terminated.

#### **Section 520.060. Right-of-Way ("ROW") Permits.**

- A. Application Requirements.

- (1) Any Person desiring to perform ROW Work must first apply for and obtain a ROW Permit, in addition to any other building permit, license, easement, franchise, or authorization that may be required by law. In the event of a need for Emergency ROW Work, the Person conducting the work shall as soon as practicable notify the City of the location of the work and shall apply for the required ROW Permit as soon as practicable following the commencement of the work, not to exceed the third business day thereafter. The Director may design and issue general permits for Emergency ROW Work for several different locations or throughout the City.
- (2) No person desiring to become a Person Having Facilities Within the ROW, and no Person Having Facilities Within the ROW, who has failed to register with the City shall be granted a ROW permit, except as otherwise provided or allowed by ordinance, franchise, license, or written contract with the City.
- (3) An application for a ROW Permit shall be submitted to the Director. The Director may design and make available standard forms for such Applications, requiring such information as allowed by law and as the Director determines in his or her discretion to be necessary and consistent with the provisions of this Ordinance and to accomplish the purposes of this Ordinance. Each Application shall at minimum contain the following information for the proposed ROW Work, unless otherwise waived by the Director:
  - (a) The name, address and telephone number of a representative whom the City may notify or contact at any time (i.e., 24 hours per day 7 days per week) concerning the work
  - (b) If different from the Applicant, the name, address, and telephone number of the Person on whose behalf the proposed work is to be performed;
  - (c) A description of the proposed work, including a conceptual master plan and an engineering site plan or other technical drawing or depiction showing the nature, dimensions, location, and description of the Applicant's proposed work or Facilities, their proximity to other Facilities that may be affected by the proposed work, and the number of street crossings and their locations and dimensions, if applicable;
  - (d) Projected commencement and termination dates and anticipated duration of the work or, if such dates are unknown, a representation that the Applicant shall provide the Director with reasonable advance notice of such dates once they are determined;
  - (e) If the applicant is, or is acting on behalf of, a Person Having Facilities Within the ROW or a person desiring to become a Person Having Facilities Within the ROW, verification that the applicant or such person has registered with the City and that the information included in that registration is accurate as of the date of the application;
  - (f) Proof of security for the work and restoration of the ROW as provided in Section 520.080, below; and
  - (g) For above-ground facilities:
    - (i) Technical information, including:
      - a. A detailed description of the physical dimensions and appearance of the proposed facilities;
      - b. The chemical composition of any battery contained within the proposed facilities;
      - c. Any hazardous material contained within the proposed facilities;

- d. The potential for interference with the facilities of other wireless transmission providers;
  - e. In the discretion of the Director, an engineering analysis of structural failure scenarios resulting from excess wind and seismic overloading, prepared by a licensed professional engineer;
  - f. Such other information as may be reasonably required by the Director and consistent with Section 510.015.2(d) hereof;
- (ii) Certification, by a duly authorized representative of any person owning a facility, utility pole or other structure within the ROW upon which the applicant's facility is to be attached or secured, that:
- a. The applicant has permission from such person to install the facility;
  - b. The person is not in default of any franchise, license or other agreement with the City; and
  - c. The person is not in substantial violation of any provision of this code;
- (k) Proof that the ROW User has the legal authority to perform ROW Work within said street and further that the City is authorized thereby to regulate same through this Code. In the absence of such proof, the ROW User shall provide for the assumption of all risk and the indemnification of the City for any resulting loss or damage, in a form acceptable to the City Attorney.
- (4) The information required by the Application may be submitted in the form maintained by the Applicant, provided it is responsive to the Application's requirements, and the Applicant shall be allowed a reasonable amount of time to complete the Application based on the amount of data or information requested or required.
- (5) Each such Application shall be accompanied by the following payments:
- (a) An application fee approved by the City to cover the cost of processing the Application;
  - (b) A deposit, if applicable, for any cut into or excavation of the ROW, as provided in Section 520.080 hereof; and
  - (c) Any other amounts due to the City from the Applicant, including but not limited to prior delinquent fees, costs, and any loss, damage, or expense suffered by the City because of the Applicant's prior work in the Rights of Way or for any emergency actions taken by the City, but the Director may modify this requirement to the extent the Director determines any such fees to be in good-faith dispute or beyond the ability of the Applicant to control.
- (6) Applications shall be reviewed and acted upon within the timeframes provided in this article. The City acknowledges that federal law or regulations may prescribe deadlines not consistent with those included in this article, but the certainty of such federal deadlines cannot be effectively ascertained and prescribed herein. It shall be incumbent upon the Applicant to inform the City of any desire to utilize federal deadlines and to explain the applicability of same at the time of application. The Director shall include a federal deadline option on the City's form application.

**B. Application Review and Determination.**

- (1) The Director shall promptly review each Application for a ROW Permit that is complete and in compliance with all application requirements. The Director shall grant or deny all such Applications within thirty-one (31) days of their receipt. Unless the Application is denied, the Director shall issue a ROW Permit upon determining that the Applicant:

- (a) Has submitted all necessary information;
- (b) Has paid the appropriate fees and
- (c) Is in full compliance with this Ordinance and all other City ordinances.

In order to avoid excessive processing and accounting costs to either the City or the applicant, the Director may establish procedures for bulk processing of Applications and periodic payment of fees to avoid excessive processing and accounting costs.

- (2) It is the intention of the City that interference with, damage to, excavation or disruption of, or the placement of Facilities Within, the City's Rights of Way should be minimized and limited in scope to the extent allowed by law to achieve the purposes of this Ordinance. When reasonable and necessary to accomplish such purposes, the Director may require as alternatives to the proposed ROW Work either less disruptive methods or different locations for Facilities, provided that any required alternative:
  - (a) Shall not increase expenses by more than ten percent (10%) of the Applicant's costs for the work as proposed,
  - (b) Shall not result in a decline of service quality, and
  - (c) Shall be competitively neutral and nondiscriminatory.

The Director shall provide to the Applicant the reasons why the required alternative is reasonable and necessary.

- (3) Upon receipt of an Application, the Director shall determine whether any portion of the Rights of Way will be affected by the proposed work and whether the interference, disruption, or placement of Facilities will be more than minor in nature. In determining whether the proposed work is more than minor in nature the Director shall consider the nature and scope of the work, its location and duration, and its effect on the Rights of Way, the use thereof, and neighboring properties.
  - (a) If the Applicant can show to the Director's reasonable satisfaction that the work involves no interference, disruption, excavation, or damage to, or only minor interference, with, the Rights of Way, or that the work does not involve the placement of Facilities or involves time-sensitive maintenance, then the Director shall promptly grant the ROW Permit.
  - (b) If the Director determines that the effect on the Rights of Way will be more than minor in nature and no exemption under the above paragraph (3)(a) or any other provision of this Ordinance applies, the Director shall schedule and coordinate the work and grant the ROW Permit accordingly. When reasonable and necessary to accomplish the purposes of this Ordinance, the Director may postpone issuance of a ROW Permit, and may give public notice of the Application in an attempt to identify whether any other Person intends to do work in the same area within a reasonable period of time, so that all ROW Work in the area can be coordinated. Due regard shall be accorded Applicants that are required by any law, rule, regulation, license, or franchise to provide Service to the area defined in the Application. The Director shall not impose any coordination or scheduling requirements that prevent or unreasonably delay an Applicant's access to the ROW or that create a barrier to entry.
  - (c) Applicants shall participate in any joint planning, construction and advance notification of such work, including coordination and consolidation of any excavation of or disturbance to the Rights of Way, as directed by the Director. Applicants shall cooperate with each other and other ROW Users and the City for the best, most efficient, least intrusive, most aesthetic, and least obtrusive performance of ROW Work and use of the ROW.
  - (d) The Director shall provide contact information permitting Applicants to ascertain

whether existing capacity may be available from other Persons utilizing the Rights of Way along the intended path of any proposed work. The Director shall also maintain indexes of all ROW Permits issued, both by the ROW User and by the affected Rights of Way.

- (e) The grant of a ROW permit shall not eliminate the need of an applicant to obtain
  - (i) any other permit required by law for the construction or installation of Facilities Within the ROW or
  - (ii) any other authority necessary for the placement or attachment of Facilities on property other than the ROW.
- (4) In addition, the following provisions shall apply to above-ground Facilities:
  - (a) The design, location, nature, and construction of above-ground Facilities shall be subject to the review and approval of the Director as provided herein and as otherwise required by law. Such review shall be non-discriminatory and competitively neutral and approvals shall not be unreasonably withheld.
  - (b) In considering the application the Director shall consider the requirements of Towers and Antennas as contained in Chapter 440 of the Municipal Code and shall apply those requirements to the extent practicable and consistent with the purposes and intent of this Code, but no special antenna permit shall be required for the placement of such Facilities in the ROW.
  - (c) The Director may designate certain locations or facilities in the ROW to be excluded from use by the applicant for its facilities including, but not limited to:
    - (i) Ornamental or similar specially designed street lights,
    - (ii) Designated historic areas,
    - (iii) Facilities, equipment, structures or locations that do not have electrical service adequate or appropriate for the proposed facilities or cannot safely bear the weight or wind loading thereof,
    - (iv) Facilities, equipment, structures or locations that in the reasonable judgment of the Director, are incompatible with the proposed facilities or would be rendered unsafe or unstable by the installation, and
    - (v) Facilities, equipment, structures or locations that have been designated or planned for other use or are not otherwise available for use by the applicant due to engineering, technological, proprietary, legal or other limitations or restrictions.
  - (d) The design and placement of above-ground Facilities shall:
    - (i) Maximize use of structures on which such facilities already exist;
    - (ii) Avoid interference with existing driveways, sidewalks, or other pedestrian or vehicle paths (antennas shall not be located less than eight feet above grade);
    - (iii) Be located no closer to similar Facilities as may be necessary for service delivery, so as to minimize adverse visual impacts and preserve property values;
    - (iv) Not inhibit the current or future use of the ROW;
    - (v) Be a neutral color and shall not be bright, reflective or metallic (black, gray and tan shall be considered neutral colors, as shall any color that blends with the surrounding dominant color and helps to camouflage the facilities);
    - (vi) Be screened sufficiently to reasonably conceal the facility, if the facility is taller than three (3) feet in height or exceeds four (4) square feet in size, with the Person Having Facilities Within the ROW being responsible for the installation, repair, or replacement of screening materials);

(vii) Not emit any unnecessary or intrusive noise and shall comply with all other applicable regulations and standards established by the state, federal, or local law; and

(viii) Meet such additional physical criteria as reasonably determined by the Director.

(6) If the application of any provision of this Code excludes locations for facilities to the extent that the exclusion conflicts with the reasonable requirements of the applicant, the Director shall cooperate in good faith with the applicant to attempt to find suitable alternatives.

(7) The grant of a ROW permit shall not eliminate the need to have obtained a license, permit or other agreement for attaching facilities to other facilities, poles or other structures, whether owned by the City or another Person.

(8) Nothing in this Code shall be construed to require that the City any Person access to any City facilities or the City's proprietary property, but the City may enter into separate agreements to allow such access. Such agreements may include the payment of rent or reasonable attachment fees for use of City facilities or other City property. All such agreements shall be non-discriminatory and competitively neutral among wireless transmission providers.

C. Permit Issuance and Denial.

(1) Each ROW Permit issued by the Director shall include:

(a) Projected commencement and termination dates or, if such dates are unknown at the time the permit is issued, a provision requiring the ROW User to provide the Director with reasonable advance notice of such dates once they are determined;

(b) Length of affected Rights of Way, number of road crossings, and identification and description of any pavement or curb cuts included in the work;

(c) Information regarding scheduling and coordination of work, if necessary;

(d) The location of any of the Applicant's Facilities, both those proposed and existing, and the location of any known Facilities owned by another Person that may be affected by the proposed work;

(e) An acknowledgement and representation by the Applicant to comply with the terms and conditions of the ROW Permit and this Ordinance; and

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

(2) An applicant receiving a ROW permit shall promptly notify the Director of any material changes in the information submitted in the application. The Director may issue a revised ROW permit or require that the ROW User reapply for a ROW permit in accordance with all requirements of this code.

(3) ROW permits inure to the benefit of the applicant and the rights granted thereunder may not be assigned or transferred to any other person without the written consent of the Director.

(4) The Director may deny an Application, if denial is deemed to be in the public interest, for the following reasons:

(a) Delinquent fees, costs or expenses owed by the Applicant;

- (b) Failure to provide information required by the Application or this code;
- (c) The Applicant being in violation of the provisions of this code or other pertinent and applicable City ordinances;
- (d) Failure to return the ROW to its previous condition under previously issued ROW Permits or after prior excavations by the Applicant;
- (e) For reasons of environmental, historic or cultural sensitivity, as defined by applicable federal, state or local law;
- (f) For the Applicant's refusal to comply with alternative ROW Work methods, locations, or other reasonable conditions required by the Director; and
- (g) For any other reason to protect the public health, safety and welfare, provided that such denial does not fall within the exclusive authority of the Missouri Public Service Commission or interfere with a ROW User's right of eminent domain of private property, and provided further that such denial is imposed on a competitively neutral and nondiscriminatory basis.

D. Permit Revocation and Ordinance Violation.

- (1) The Director may revoke a ROW Permit without fee refund after notice and an opportunity to cure, but only in the event of a substantial breach of the terms and conditions of the permit or this Ordinance. Prior to revocation the Director shall provide written notice to the ROW User identifying any substantial breach and allowing a reasonable period of time not longer than thirty (30) days to cure the problem, which cure period may be immediate if certain activities must be stopped to protect the public safety. The cure period shall be extended by the Director on good cause shown by the ROW User. A substantial breach includes, but is not limited to, the following:
  - (a) A material violation of a provision of the ROW Permit or this Ordinance;
  - (b) An evasion or attempt to evade any material provision of the ROW Permit or this Ordinance, or the perpetration or attempt to perpetrate any fraud or deceit upon the City or its residents;
  - (c) A material misrepresentation of fact in the ROW Permit Application;
  - (d) A failure to complete ROW Work by the date specified in the ROW Permit, unless an extension is obtained or unless the failure to complete the work is due to reasons beyond the ROW User's control; and
  - (r) A failure to correct, upon reasonable notice and opportunity to cure as specified by the Director, work that does not conform to applicable national safety ordinances, industry construction standards, this Ordinance or any other applicable ordinances, provided that City standards are no more stringent than those of a national safety ordinance.
- (2) Any breach of the terms and conditions of a ROW permit shall also be deemed a violation of this Ordinance, and in lieu of revocation the Director may initiate prosecution of the ROW User for such violation.

E. Private Streets.

Notwithstanding anything in this Code to the contrary, the City has no authority to grant a ROW User the right to install or maintain Facilities or to perform work in any Private Street; provided, however, the City shall regulate any ROW Work in any Private Street under its inherent police power and as provided in this Code for purposes of public health and safety. Doing so is not intended and may not be considered as an exercise of jurisdiction over such Private Street for the purposes of public use or maintenance.

**Section 520.070. Work in the Rights of Way.**

A. Jurisdiction, Inspection, Permit Deadlines, Stop Work Orders, and Liability.

- (1) No person shall perform any excavation in the ROW without providing proof of security for such work or for the restoration and maintenance of the ROW as provided in Section 520.080, below. In the event of a need for Emergency ROW Work, the Person conducting the work shall provide the required proof as soon as practicable following the commencement of the work, not to exceed the third business day thereafter.
- (2) All Facilities and ROW Work shall be subject to inspection by the City and the supervision of all federal, state and local authorities having jurisdiction in such matters to ensure compliance with all applicable laws, ordinances, departmental rules and regulations, and the ROW Permit. The City shall charge an inspection fee in an amount determined by the Director.
- (3) ROW Work shall commence within 30 calendar days after the issuance of the permit and if not so commenced, such permit shall be deemed terminated. Permits so terminated may be renewed upon the payment of an additional permit fee as originally required. Every permit shall expire at the end of the period of time set out in the permit. If the ROW User is unable to commence or to complete the work within the specified time, the ROW User shall, prior to the expiration date, present in writing to the Director a request for an extension of time setting forth the reasons for the requested extension. If the Director determines that such an extension is necessary and not contrary to the public interest, the ROW User may be granted additional time for the completion of the work.
- (4) The Director shall have full access to all portions of the ROW Work and may issue stop work orders and corrective orders to prevent unauthorized or substandard work. Such orders:
  - (a) May be delivered personally or by certified mail to the address(es) listed on the Application for the ROW Permit or the Person in charge of the construction site at the time of delivery;
  - (b) Shall state that substandard work or work not authorized by the ROW Permit is being carried out, summarize the substandard or unauthorized work and provide a period of not longer than thirty (30) days to cure the problem, which cure period may be immediate if certain activities must be stopped to protect the public safety; and
  - (c) May be enforced by equitable action in the Circuit Court of St. Louis County, Missouri, and in such case the Person responsible for the substandard or unauthorized work shall be liable for all costs and expenses incurred by the City in enforcing such orders, including reasonable attorney's fees, in addition to any and all penalties established in this Ordinance.

B. Installation of Facilities.

- (1) In conjunction with the City's long-standing policy favoring underground construction, no Person may erect, construct or install new poles or other Facilities above the surface of the Rights of Way without the written permission of the City, unless the City's authority has been pre-empted by state or federal law. Such permission may be granted through a ROW Permit when other similar Facilities exist above-ground or when conditions are such that underground construction is impossible, impractical or economically unfeasible, as determined by the City, and when in the City's judgment the above-ground construction has minimal aesthetic impact on the area where the construction is proposed.
- (2) During installation of Facilities and to the extent authorized by law, existing underground conduits shall be used whenever feasible and permitted by the owner thereof.

- (3) In the case of new construction or property development, the developer or property owner shall give reasonable written notice, to other potential ROW Users as directed by the City, of the particular date on which open trenching will be available for installation of Facilities. Costs of trenching and easements required to bring Facilities within the development shall be borne by the developer or property owner; except that if the Facilities are not installed within five (5) working days of the date the trenches are available, as designated in the notice given by the developer or property owner, then once the trenches are thereafter closed, the cost of new trenching shall be borne by the Person installing the Facilities.
- (4) Facilities shall be constructed and maintained in such a manner so as not to emit any unnecessary or intrusive noise and shall comply with all other applicable regulations and standards established by the City or state or federal law.

C. Relocation of Equipment and Facilities.

- (1) In the event of an emergency, or where construction equipment or Facilities create or are contributing to an imminent danger to health, safety, or property, the City may, to the extent allowed by law, remove, re-lay, or relocate such construction equipment, or the pertinent parts of such Facilities, without charge to the City for such action or for restoration or repair. The City shall attempt to notify the Person Having Facilities Within the ROW prior to taking such action, but the inability to do so shall not prevent same. Thereafter, the City shall notify the Person Having Facilities Within the ROW as soon as practicable.
- (2) At the City's direction and as may be permitted by law, all Facilities shall be moved underground and the cost shall be solely the obligation of the Person Having Facilities Within The ROW (or as otherwise allowed or required by law).
- (3) Any Person Having Facilities Within the ROW shall, within a reasonable time specified by the City, protect, support, disconnect, relocate or remove, at its own expense, construction equipment or discrete portions of its facilities when required by the City by reason of traffic conditions; public safety; Rights of Way construction, maintenance or repair (including resurfacing or widening); change of Rights of Way grade or boundaries; construction, installation or repair of sewers, drains, water pipes, power lines, signal lines, tracks or any type of government-owned communications system, public work or improvement or any government-owned utility; Rights of Way vacation; or for any other purpose where the convenience of the City would be reasonably served thereby. This requirement shall not apply when the Person Having Facilities Within the ROW holds a valid easement that existed prior to the date when the area in question became Rights of Way. The Person Having Facilities Within the ROW shall bear the burden of establishing to the City's satisfaction the fact of the pre-existing easement.
- (4) Any Person Having Facilities Within the ROW shall, on the request of the City or any person authorized by the City, temporarily relocate facilities to permit the moving of buildings or oversized vehicles.
- (5) A Person Having Facilities Within the ROW shall, on the reasonable request of any Person and after reasonable advance written notice, protect, support, disconnect, relocate, or remove Facilities to accommodate such Person, and the actual cost, reasonably incurred, of such actions shall be paid by the Person requesting such action. The Person Having Facilities Within the ROW taking such action may require such payment in advance.
- (6) Rather than relocate Facilities as requested or directed, a ROW User may abandon the facilities if approved by the City as provided in Subsection (F) of this Section.
- (7) No action hereunder shall be deemed a taking of property, and no Person shall be entitled to any compensation therefor. No location of any Facilities Within the Rights of Way shall be a vested interest.

E. Property Repair and Alterations.

- (1) During any ROW Work, the Person doing the work shall protect from damage any and all existing structures and property belonging to the City and any other Person. Any and all Rights of Way, public property, or private property disturbed or damaged during the work shall be repaired or replaced by the Person doing the work or the Person on whose behalf the work is being done, and such Person shall immediately notify the owner of the fact of any damaged property. Such repair or replacement shall be completed within a reasonable time specified by the Director and to the Director's satisfaction.
- (2) Any alteration to the existing water mains, sewerage or drainage system or to any City, state or other public structures or facilities in the Rights of Way required on account of the construction, installation, repair or maintenance of Facilities Within the Rights of Way shall be made at the sole cost and expense of the owner of such Facilities.

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

- (1) If a registration is terminated, the City may require that the Person Having Facilities Within the ROW remove its facilities from the Rights of Way at the person's expense. In removing its facilities the person shall obtain a ROW permit and restore any excavation that shall be made by it as required by this code. The liability, indemnity, insurance and bonding requirements as provided herein shall continue in full force and effect during and after the period of removal and restoration and until full compliance by the person with the terms and conditions of this paragraph and the requirements of this code.
- (2) If a Person Having Facilities Within the ROW installs the Facilities without having complied with the requirements of this code, the City may:
  - (a) Require the removal of the Facilities,
  - (b) Remove the Facilities at the expense of the Person Having Facilities Within the ROW, or
  - (c) Require the transfer of the Facilities as provided herein.
- (3) If a Person Having Facilities Within the ROW:
  - (a) Discontinues use of any facility for a continuous period of twelve (12) months;
  - (b) Has installed the facilities without complying with the requirements of this code; or
  - (c) Declares the facilities abandoned or if such facilities are:
    - (i) No longer in active use;
    - (ii) No longer capable of being used for the same or similar purpose for which the facilities were installed; or
    - (iii) Are physically disconnected from any other facility that is in use or in service;

Then the facilities may be deemed abandoned. If such abandonment occurs, the City may require the removal of the facilities, remove the facilities at the expense of the Person Having Facilities Within the ROW, allow the abandonment of the facilities without removal or require the transfer of the facilities, all as provided in this Subsection 6.
- (4) If the City requires removal of the Facilities, the Person shall obtain a ROW Permit and shall abide by all requirements of this Ordinance. The liability, indemnity, insurance and bonding requirements required herein shall continue in full force and effect during

and after the period of removal and restoration and until full compliance by the Person with the terms and conditions of the ROW Permit and the requirements of this Ordinance.

- (5) If the Person fails to remove the Facilities after having been directed to do so, the City may, to the extent permitted by law,
  - (a) Have the removal done at the Person's expense.
  - (b) Deem the Facilities abandoned, without removal, if the Director determines that abandonment is not likely to prevent or significantly impair the future use, repair, excavation, maintenance, or construction of the ROW.
  - (c) Determine that the ownership of the Facilities should be transferred to the City, or to such Person as directed by the City. In either case the owner of the Facilities shall submit a written instrument, satisfactory in form to City, transferring to the City, or to such Person as directed by the City, ownership of the Facilities. The City may sell, assign, or transfer all or part of the Facilities so transferred.
- (6) The City shall not remove any facilities unless the existence of such facilities prevents or significantly impairs the use, repair, excavation or construction of the ROW. The City shall not remove or seek to possess or transfer the Facilities until thirty (30) days have passed following written notice by the Director to the Person Having Facilities Within The ROW of the City's intent to so act. The Director may choose not to act on good cause shown by the Person Having Facilities Within the ROW.

#### G. Standards for ROW Work.

- (1) Except for Emergency ROW Work as provided in Section 520.060 (A.1), ROW Work shall be performed only upon issuance and in accordance with the requirements and scope of a ROW Permit. At all times during the work, ROW Permits shall be conspicuously displayed at the work site and shall be available for inspection by the Director. No ROW User shall perform any ROW Work not authorized by a permit.
- (2) If at any time it appears that the duration or scope of the ROW Work is or will become materially different from that allowed by the ROW Permit, the ROW User shall inform the Director. The Director may issue a waiver, an extension or a revised ROW Permit, or require that the ROW User reapply for a ROW Permit in accordance with all requirements of this code.
- (3) ROW Users shall not open or encumber more of the Rights of Way than is reasonably necessary to complete the ROW Work in the most expeditious manner or allow excavations to remain open longer than is necessary to complete the work.
  - (a) No ROW Work shall extend beyond the centerline of the street before being backfilled or the surface of the street temporarily restored in a manner satisfactory to the Director.
  - (b) No ROW Work shall prevent the reasonable use of such street by the public or cause substantial hazards.
  - (c) All ROW Work that affects vehicular or pedestrian traffic shall be properly signed, barricaded, and otherwise protected at the ROW User's expense. The ROW User shall be responsible for providing adequate traffic control to the area surrounding the work as determined by the Director.
  - (d) The ROW User shall perform the ROW Work at such times that will allow the least interference with the normal flow of traffic and the peace and quiet of the neighborhood, as permitted by the Director. Unless otherwise provided by the Director in the Permit, non-Emergency ROW Work on arterial and collector streets may not be accomplished during the hours of 7:00 a.m. to 8:30 a.m. and 4:00 p.m. to 6:00 p.m. in order to minimize disruption of traffic flow.

(4) Excavations.

- (a) No ROW User shall make or cause to be made any excavation in any ROW without adequately protecting the same by erecting such fencing or other barriers as the Director deems adequate to prevent persons, animals or vehicles from falling into said excavation. Said barriers may include warning signs by day and red torches or their equivalent by night, which shall be placed and maintained around any such excavation as to give reasonable notice and warning to any person approaching such excavation from any direction. The Director may require additional safety regulations a may be in conformity with the requirements of federal or state law or regulation.
- (b) Excavated materials shall be laid compactly along the side of the trench and kept trimmed up so as to cause as little inconvenience as possible to public travel. In order to expedite the flow of traffic or to abate a dirt or dust nuisance, the Director may require the ROW User to provide toe boards or bins; and if the excavated area is muddy and causes inconvenience to pedestrians, temporary wooden plank walks, footbridges, or coverings shall be installed as required by the Director. If the street is not wide enough to hold the excavated material without using part of the adjacent sidewalk, the ROW User shall keep a passageway at least one-half (½) the sidewalk width open along such sidewalk line.
- (c) When any earth, gravel or other excavated material is caused to roll, flow or wash upon any street, the ROW User shall cause the same to be removed from the street within four (4) hours after deposit.

(5) Notice.

- (a) The ROW User shall notify the City no less than three (3) working days in advance of any ROW Work that would require any street closure or would reduce traffic flow to less than two (2) lanes of moving traffic for more than four (4) hours. Except in the event of Emergency ROW Work, no such closure shall take place without notice and prior authorization from the City.
  - (b) The ROW User shall provide written notice to all property owners within one hundred and eighty-five (185) feet of the site at least 48 hours prior to performing the ROW Work. Notice shall include a reasonably detailed description of work to be done, the location of work, and the time and duration of the work.
- (6) All ROW Work shall be in accordance with all applicable sections of the Occupational Safety and Health Act of 1970, the National Electrical Safety Code, and other federal, state, or local laws and regulations that may apply, including, without limitation, local health, safety, construction and zoning ordinances, and laws and accepted industry practices, all as hereafter may be amended or adopted. In the event of a conflict among ordinances and standards, the most stringent ordinance or standard shall apply (except insofar as that ordinance or standard, if followed, would result in Facilities that could not meet requirements of federal, state or local law).
- (7) All Facilities shall be installed and located to cause minimum interference with the rights and convenience of property owners, other ROW Users and the City. Facilities shall not be placed where they will disrupt or interfere with other Facilities or public improvements, or obstruct or hinder in any manner the various utilities serving the residents and businesses in the City or public improvements.
- (a) All existing facilities shall be exposed sufficiently ahead of trench excavation work to avoid damage to those facilities and to permit their relocation, if necessary.
  - (b) Pipe drains, pipe culverts or other facilities encountered shall be protected by the ROW User.
  - (c) Monuments of concrete, iron or other lasting material set for the purpose of locating

or preserving the lines of any street or property subdivision or a precise survey reference point or a permanent survey bench mark within the City shall not be removed or disturbed or caused to be removed or disturbed unless permission to do so is first obtained in writing from the Director. Permission shall be granted only upon condition that the ROW User shall pay all expenses incident to the proper replacement of the monument.

- (8) All ROW Work shall be conducted in accordance with good engineering practices, performed by experienced and properly trained personnel so as not to endanger any Person or property or to unreasonably interfere in any manner with the Rights of Ways or legal rights of any property owner, including the City, or unnecessarily hinder or obstruct pedestrian or vehicular traffic.
- (9) All safety practices required by law shall be used during ROW Work, including commonly accepted methods and devices to prevent failures and accidents that are likely to cause damage, injury, or nuisance to the public.
- (10) Any contractor or subcontractor of a ROW User must be properly licensed under laws of the state and all applicable local ordinances, and each contractor or subcontractor shall have the same obligations with respect to its work as a ROW User would have pursuant to this Ordinance. A ROW User:
  - (a) must ensure that contractors, subcontractors and all employees performing ROW Work are trained and experienced,
  - (b) shall be responsible for ensuring that all work is performed consistent with the ROW Permit and applicable law,
  - (c) shall be fully responsible for all acts or omissions of contractors or subcontractors,
  - (d) shall be responsible for promptly correcting acts or omissions by any contractor or subcontractor, and
  - (e) shall implement a quality control program to ensure that the work is properly performed.
- (11) A ROW User shall not place or cause to be placed any sort of signs, advertisements or other extraneous markings on the Facilities or in the ROW, whether relating to the ROW User or any other Person, except such necessary minimal markings approved by the City as necessary to identify the Facilities for service, repair, maintenance or emergency purposes or as may be otherwise required to be affixed by applicable law or regulation.
- (12) Unless otherwise approved in writing by the City, a ROW User shall not remove, cut, or damage any trees, or their roots, Within the ROW.
- (13) Street crossings will be bored at the direction of the Director.

#### H. Restoring and Maintaining the Rights of Way.

- (1) To complete any ROW Work, the ROW User shall restore the ROW and surrounding areas, including but not limited to any pavement, foundation, concrete slabs or curbs, screening, landscaping, or vegetation and shall comply with other reasonable conditions of the Director. Restoration of the ROW shall be completed within the dates specified in the ROW Permit unless the Director issues a waiver, extension or a new or revised ROW Permit.
- (2) It shall be the duty of any Person making an excavation in the ROW to backfill such excavations and restore the surface in accordance with the City's minimum prescribed standards for such surfaces, as may be determined and published by the Director.
- (3) If a ROW User fails to restore the ROW within the date specified either by the ROW Permit, or any extension thereof as granted by the Director, the City may perform its

own restoration. The City may also opt to perform its own restoration regardless of any failure by the ROW User, in which case the ROW Permit, or any amendment or revision thereto, shall note such option. In either event, if the City performs the restoration the ROW User shall be responsible for reimbursing the City's reasonable actual restoration costs within thirty (30) days of invoice.

- (4) 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 the ROW User conducted excavation. During this period the ROW User shall, upon notification from the Director, correct all restoration work to the extent necessary as required by the Director. Said work shall be completed within a reasonable time, not to exceed thirty (30) calendar days from receipt of the Director's notice unless otherwise permitted by the Director. If a ROW User fails to restore the ROW within the time specified, the City may perform the work and the ROW User shall be responsible for reimbursing the City's reasonable actual restoration costs within thirty days of invoice. The Director may extend the cure period on good cause shown.
  - (5) A ROW User shall not be relieved of the obligation to complete the necessary right-of-way restoration and maintenance because of the existence of any performance bond required by this Ordinance.
- I. After the completion of ROW work the ROW User shall provide to the City as-built drawings, maps or other comparable records as determined by the Director, drawn to scale and certified to the City as reasonably depicting the location of all facilities constructed pursuant to the ROW permit. Such records may be provided to the Director in the form maintained by the ROW User, but when available to the ROW User, shall be submitted in automated formats compatible with the City's systems, such as AUTOCAD.DXF, AUTOCAD.DWG, MICROSTATION.DGN (or comparable as allowed by the Director) or in hard copy otherwise.

**Section 520.080. Security Deposit; Bonds; Insurance; Surety; Indemnification; Penalties.**

- A. Security Required. A ROW User shall not perform any ROW work without complying with the security requirements of this section.
- B. Security Deposit.
  - (1) A ROW User shall submit a cash deposit in the sum of \$2,000, or other such amount as may be determined by the Director, for any cut to or excavation of the ROW. The deposit shall be to secure the proper restoration of the ROW by the ROW User after completion of the work. Whenever a ROW User applies for more than one cut or excavation, the ROW User may post a single deposit in an amount determined by the Director to cover the anticipated costs of restoration.
  - (2) The Director shall inspect the ROW User's restoration of the ROW for compliance with the City's standards. Upon the ROW User's timely and successful restoration as evidenced by the Director's issuance of a certificate of final inspection, the City shall refund to the ROW User the security deposit.
  - (3) If the ROW User fails to restore the cut or excavation to required standards within a reasonable amount of time, then after notice and a reasonable opportunity to cure the Director may effect the proper restoration of the ROW and the use of the security deposit for such purposes. In this event the City shall be entitled to any damages or loss suffered by the City as a result.
  - (4) If any deposit is less than sufficient to pay the City's costs and damages, the ROW User shall pay to the City an amount equal to the deficiency. If the ROW User fails or refuses to pay such deficiency, the City may institute an action to recover the same in any court of competent jurisdiction and shall be entitled to a reasonable allowance for attorneys' fees. Until such deficiency is paid in full, no additional permits shall be issued to the ROW User.

C. Performance and Maintenance Bonds.

- (1) For any ROW User having less than twenty-five million dollars (\$25,000,000.00) in net assets and a history of noncompliance with state and local regulations, the Director may, in addition to, in combination, with, or in lieu of the security deposit required, permit a ROW User to establish in the City's favor a performance and maintenance bond in an amount to be determined by the Director to ensure the ROW Work and the restoration of the Right of Way. The bond shall continue in full force and effect for a period of 24 months following completion of the work. The Director shall have the authority to extend the maintenance bond period for up to an additional 24 months.
- (2) If a ROW User fails to complete the ROW Work in a safe, timely, and competent manner, or if the completed restorative work fails without remediation within the time period for the bond (as determined by the Director), then after notice and a reasonable opportunity to cure there shall be recoverable, jointly and severally from the principal and surety of the bond any damages or loss suffered by the City as a result, including the full amount of any compensation, indemnification, or cost of removal or abandonment of any property of the ROW User and the cost of completing work Within or restoring the Rights of Way, plus a reasonable allowance for attorneys' fees, up to the full amount of the bond. The City may also recover against the bond any amount recoverable against a security fund or letter of credit where such amount exceeds that available under a security fund or letter of credit.
- (3) Upon completion of ROW Work to the satisfaction of the Director and upon lapse of the bond period, including any extension by the Director, the City shall release the bond.
- (4) The bond shall be issued by a surety with an "A" or better rating of insurance in Best's Key Rating Guide, Property/Casualty Edition, shall be subject to the approval of the City's attorney and shall contain the following endorsement:

"This bond may not be cancelled, or allowed to lapse, until sixty (60) days after receipt by the City, by certified mail, return receipt requested, of a written notice from the issuer of the bond of intent to cancel or not to renew."
- (5) In lieu of any bond required herein, the ROW User may establish in the City's favor such other security as the Director may determine to be commensurate with the noted bonding requirements, including but not limited to an annual bond to be maintained in the minimum amount of twenty-five thousand dollars (\$25,000.00).

D. Insurance.

- (1) All ROW Users shall maintain, for the duration of any ROW Work and, when applicable, for as long as the ROW User has Facilities Within the Rights of Way, at least the following liability insurance coverage: worker's compensation and employer liability insurance to meet all requirements of Missouri law and commercial general liability insurance with respect to the construction, operation, and maintenance of the Facilities, and the conduct of the ROW User's business in the City, in the minimum amounts of:
  - (a) \$3,000,000 for property damage resulting from any one accident;
  - (b) \$5,000,000 for personal bodily injury or death resulting from any one accident; and
  - (c) \$3,000,000 for all other types of liability.

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

- (2) All insurance policies shall be with sureties qualified to do business in the state of

Missouri, with an "A" or better rating of insurance by Best's Key Rating Guide, Property/Casualty Edition, and in a form approved by the City.

- (3) All insurance policies shall be available for review by the City, and a ROW User having Facilities within the Rights of Way shall keep on file with the City current certificates of insurance.
- (4) All general liability insurance policies shall name the City, its officers, boards, board members, commissions, commissioners, agents, and employees as additional insureds and shall further provide that any cancellation or reduction in coverage shall not be effective unless thirty (30) days' prior written notice thereof has been given to the Director. A ROW User shall not cancel any required insurance policy without submission of proof that it has obtained alternative insurance that complies with this Ordinance.
- (5) The Director may exempt in writing from these insurance requirements any self-insured ROW User, provided that the ROW User demonstrates to the Director's satisfaction that the ROW User's self-insurance plan is commensurate with said requirements and that the ROW User has sufficient resources to meet all potential risks, liabilities and obligations contemplated by the requirements of this Ordinance. The Director may require a security fund or letter of credit as a condition to a self-insured's exemption. The Director shall waive this requirement when the ROW User has twenty-five million dollars (\$25,000,000.00) in net assets and does not have a history of noncompliance with applicable regulatory law.

E. Indemnification.

- (1) Any ROW User granted a ROW Permit, and any Person Having Facilities Within the Rights of Way, as partial consideration for the privilege granted, shall, at its sole cost and expense, indemnify, hold harmless, and defend the City, its officials, boards, board members, commissions, commissioners, agents, and employees, against any and all claims, suits, causes of action, proceedings, and judgments for damages or equitable relief arising out of (i) any ROW Work, including but not limited to the construction, maintenance, repair, or replacement of the of Facilities, (ii) the operation of its Facilities, (iii) failure to secure consents from landowners, or (iv) any actions taken or omissions made by the Person pursuant to the authority of this Ordinance.
- (2) The foregoing indemnity provisions include, but are not limited to, the City's reasonable attorneys' fees incurred in defending against any such claim, suit, or proceeding prior to the Person assuming such defense. The City shall notify a Person of claims and suits within seven (7) business days of its actual knowledge of the existence of such claim, suit, or proceeding. Once a Person assumes such defense, the City may at its option continue to participate in the defense at its own expense.
- (3) Notwithstanding anything to the contrary contained in this Ordinance, the City shall not be so indemnified or reimbursed in relation to any amounts attributable to (i) the City's own negligence, willful misconduct, intentional or criminal acts, or (ii) the City acting in a proprietary capacity to deliver Service(s) within the City.
- (4) Recovery by the City of any amounts under insurance, a performance bond, or otherwise does not limit a Person's duty to indemnify the City in any way; nor shall such recovery relieve a Person of amounts owed to the City, or in any respect prevent the City from exercising any other right or remedy it may have.

F. Principal's Responsibility.

Notwithstanding anything in this Code to the contrary, a Person Having Facilities Within the ROW shall be responsible for ensuring the work of any contracted ROW User, including the prompt correction of any contractor error or deficiency, ROW restoration if the contractor is unable or unwilling to perform same to the City's standards, and liability for damages caused by the contractor.

### **Section 520.090. Dispute Resolutions, Appeals, and Arbitration.**

- A. The Director shall make a final determination as to any matter concerning the grant, denial or revocation of a ROW Permit as provided in this Ordinance. On the request of an Applicant or a ROW User and within a reasonable period of time, the Director also shall make a final determination as to any other issue relating to the use of the ROW, the imposition of any fee or the application of any provision of this Ordinance, provided, however, that this review shall not apply to matters being prosecuted in the municipal court. Any final determination of the Director shall be subject to review as provided herein.
- B. Any Person aggrieved by a final determination of the Director may appeal in writing to the City Manager within five business (5) days thereof. The appeal shall assert specific grounds for review, and the City Manager shall render a decision on the appeal within fifteen (15) business days of receipt affirming, reversing, or modifying the determination of the Director. The City Manager may extend this time period for the purpose of any investigation or hearing deemed necessary. A decision affirming the Director's determination shall be in writing and supported by findings establishing the reasonableness of the decision.
- C. Any Person aggrieved by the final determination of the City Manager may file a petition for review pursuant to Chapter 536 of the Revised Statutes of Missouri, as amended, in the Circuit Court of the County of St. Louis. Such petition shall be filed within thirty (30) days after the City Manager's final determination.
- D. Arbitration and Mediation.
  - (1) On agreement of the parties and in addition to any other remedies, any final decision of the City Manager may be submitted to mediation or binding arbitration.
  - (2) In the event of mediation, the City Manager and the Applicant or ROW User shall agree to a mediator. The costs and fees of the mediator shall be borne equally by the parties, and each party shall pay its own costs, disbursements and attorney fees.
  - (3) In the event of arbitration, the City Manager and the Applicant or ROW User shall agree to a single arbitrator. The costs and fees of the arbitrator shall be borne equally by the parties. If the parties cannot agree on an arbitrator, the matter shall be resolved by a three-person arbitration panel consisting of one arbitrator selected by the City Manager, one arbitrator selected by the Applicant or ROW User, and one person selected by the other two arbitrators, in which case each party shall bear the expense of its own arbitrator and shall jointly and equally bear with the other party the expense of the third arbitrator and of the arbitration. Each party shall also pay its own costs, disbursements and attorney fees.

### **Section 520.100. Miscellaneous.**

- A. Upon failure of a ROW User to commence, pursue or complete any ROW Work required by law or by the provisions of this Ordinance to be done in any street, within the time prescribed and to the reasonable satisfaction of the City, the City may, at its option, after thirty (30) days notice, cause such work to be done and the ROW User shall pay to the City the cost thereof in the itemized amounts reported by the City to the ROW User within thirty (30) days after receipt of such itemized report.
- B. Upon ten (10) days written notice and with the supervision of the City, or as otherwise provided by law, a ROW User shall have the authority to trim trees that overhang Rights of Way of the City so as to prevent the branches of such trees from coming in contact with its Facilities, at its own expense subject to the supervision and direction of the City. Nothing in this paragraph shall authorize the trimming of trees on private property without permission of the property owner. All cut materials shall be properly disposed.
- C. During ROW Work by a ROW User the City shall have the right to install, and to thereafter maintain, at its own cost in any excavation to or other applicable disturbance of the ROW any parallel facilities of its own that do not unreasonably interfere with the operations of other

Facilities.

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

**Section 520.110. Penalties.**

Any Person convicted of violating any provision of this code shall be punished by a fine not to exceed one thousand dollars (\$1,000.00) or by imprisonment not to exceed ninety (90) days, or by both such fine and imprisonment. Each day the violation continues may be charged as a separate offense.



REDLINED VERSION FOR  
PRESENTATION PURPOSES

Ex. A

MUNICIPAL CODE, CITY OF OLIVETTE, MISSOURI  
CHAPTER 520, EXCAVATIONS AND GRADING

**ARTICLE I. RIGHTS OF WAY USAGE CODE**

**Section 520.010. Title.** This Article shall be known and may be cited as the "Rights of Way Usage Code."

**Section 520.020. Purpose and ~~intent~~Intent.** The purposes and intent of this Article are to:

- A. Manage ~~the~~ Rights of Way ~~of~~Work in the City of Olivette to the extent permitted by state and federal law to ensure the safe and aesthetic placement of facilities and the restoration of any ROW cuts or excavation and so protect the public health, safety, and welfare;
- B. Establish procedures, standards, and requirements for, among other things: (a) the registration of persons having facilities within the Rights of Way, and persons desiring to do so, (b) work performed in the city's Rights of Way, (c) facilities placed within the ROW, and (ed) security for such work and the removal of abandoned facilities; and
- C. Comply with applicable state and federal laws and regulations regarding facilities or services in public or private Rights of Way.

**Section 520.030. Definitions and Word Usage.** The following terms shall have the following meanings unless otherwise defined by context:

"**City Facilities,**" any Facilities located Within the Public Rights of Way and owned by the City.

"**City Manager,**" the manager or administrator of the City or such other person designated by the City to hear appeals as provided in Section 70.030.2 hereof.

"**Director,**" the City's Public Works Director or Planning and Community Design Director, as context requires, or such other designated person.

"**Emergency Rights of Way (or "ROW") Work,**" includes but is not limited to ROW Work made necessary by exigent circumstances to repair, control, stabilize, rectify, or correct an unexpected or unplanned outage, cut, rupture, leak, or any other failure of a Facility when such failure results or could result in danger to the public or a material delay or hindrance to the provision of Service.

"**Facilities,**" a network or system, or any part thereof, used for providing or delivering a Service and consisting of one or more lines, pipes, wires, cables, fibers, conduit facilities, cabinets, poles, vaults, pedestals, boxes, appliances, antennas, transmitters, radios, towers, gates, meters, appurtenances, shelters, or other equipment.

"**Person,**" an individual, partnership, limited liability corporation or partnership, association, joint stock company, trust, organization, corporation, or other entity, or any lawful successor thereto or transferee thereof.

"**Person(s) Having Facilities Within the Rights of Way,**" any Person having ownership or control of Facilities located Within the Rights of Way.

**"Private Street,"** a street, highway, lane, path, alley, sidewalk, boulevard, drive, bridge, tunnel, parkway, waterway, public easement, or sidewalk in which the City does not now or hereafter holds any interest.

**"Rights of Way"** or **"ROW,"** unless otherwise restricted herein, the surface, the air space above the surface, and the area below the surface of any private street, for the purposes defined herein, and any of public street, highway, lane, path, alley, sidewalk, boulevard, drive, bridge, tunnel, parkway, waterway, public easement, or sidewalk in which the City holds any interest, which, consistent with the purposes for which it was dedicated, may be used for the purpose of installing and maintaining Facilities. "Rights of Way" shall not include (i) City Facilities or the City's property other than ROW, such as city-owned or operated buildings, parks, or other similar property, (ii) airwaves used for cellular, non-wire telecommunications or broadcast services, (iii) easements obtained by ROW Users on private property, (iv) railroad Rights of Way or ground used or acquired for railroads, (v) Facilities owned and used by the City for the transmission of one or more Services, or (vi) streets owned or under the jurisdiction of St. Louis County or the Missouri Department of Transportation. No reference herein to "Rights of Way" shall be deemed to be a representation or guarantee by the City that its interest or other right to control the use of such property is sufficient to permit its use for the delivery of Service.

**"Rights of Way (or "ROW") Permit,"** a permit granted by the City to a ROW User for ROW Work.

**"Rights of Way (or "ROW") User,"** a Person performing ROW Work Within the Rights of Way. A ROW User shall not include ordinary vehicular or pedestrian use.

**"Rights of Way (or "ROW") Work,"** action by a ROW User to (i) install, change, replace, relocate, remove, maintain or repair Facilities Within the Rights of Way, or (ii) to conduct work of any kind Within or adjacent to the Rights of Way that results in an excavation, obstruction, disruption, damage or physical invasion or impact of any kind to the Rights of Way or the use thereof. The routine inspection of Facilities shall not be considered ROW Work unless the inspection requires the conduct of any of the activities or actions noted herein.

**"Service,"** providing or delivering an economic good or an article of commerce, including, but not limited to gas, telephone, cable television, Internet, open video systems, video services, alarm systems, steam, electricity, water, telegraph, data transmission, petroleum pipelines, sanitary or storm water sewerage or any similar or related service, to one or more Persons located within or outside of the City by use of Facilities located within the Rights of Way.

**"Within"** means in, along, under, over, or across Rights of Way.

#### **Section 520.040. Registration of Person(s) Having Facilities Within The Row.**

- A. Registration Required. Any person desiring to become a Person Having Facilities Within the ROW and any Person Having Facilities Within the ROW must register with the City.
- B. Effectiveness Of Registration. Registration hereunder by an eligible person shall remain effective for so long as that person remains eligible, unless terminated by the person or the City hereunder. Any registration of an ineligible person shall be void from the date of ineligibility.
- C. Registration Characteristics.
  - (1) A valid registration hereunder authorizes the issuance of ROW permits to the registered person in accordance with this Code. It does not expressly or implicitly authorize ROW work without a ROW permit or work on private property without owner consent through eminent domain or otherwise (except for use of compatible easements pursuant to law) or to use publicly or privately owned facilities without a separate agreement with the owners.
  - (2) A valid registration hereunder shall not eliminate the need to obtain any franchise, license, permit, easement, lease, or other contract for the privilege of (i) transacting and carrying on a business within the City as may be generally required by the ordinances and laws of the City, (ii) attaching devices to poles or other structures,

whether owned by the City or other person, or (iii) performing ROW Work Within a Private Street.

- (3) A valid registration grants no exclusive or vested rights to occupancy within the Rights of Way other than those rights granted by this code or its administration.

D. Registered Person Subject To Other Laws.

- (1) A person required to register shall at all times be subject to and shall comply with all applicable federal, state and local laws and shall at all times be subject to all lawful exercise of the police power of the City, including but not limited to all powers regarding planning, zoning, supervision of construction, assurance of equal employment opportunities, control of Rights of Way and consumer protection.
- (2) Registration hereunder shall not deprive any person of any rights or obligations imposed by any previously existing franchise, license or contract, nor shall it impose any obligations on any such person in addition to those included in any previously existing franchise, license or contract, except to the extent allowed by law.
- (3) Nothing in this code shall be construed to prohibit the grant or renewal of any franchise by the City as may be allowed or required by state or federal law.
- (4) Nothing in this code shall be construed or deemed to supersede any applicable state or federal law or any applicable regulation issued by a state or federal agency including, but not limited to, the Missouri Public Service Commission and the federal Communications Commission. In the event of any conflict between such laws or regulations and this code, the applicable state or federal law or regulation shall apply.

E. Failure To Register. Any person who has not registered within ninety (90) days of the effective date of this code shall nonetheless be subject to all requirements of this code including, but not limited to, its provisions regarding ROW permits, construction and technical standards and fees, except as otherwise provided herein. In its discretion and to the extent allowed by law, the City at any time may:

- (1) Require such person to register within thirty (30) days of receipt of a written notice to such person from the City that registration is required;
- (2) Require such person to remove its facilities from the Rights of Way and restore the affected area to a condition satisfactory to the City within a specific time period;
- (3) Direct municipal personnel to remove the facilities from the Rights of Way and restore the affected area to a condition satisfactory to the City and charge the person the costs thereof, including by placing a lien on the person's property as provided in connection with abating nuisances; or
- (4) Take any other action it is entitled to take under applicable law.

F. Registration Exemption. Governmental entities having facilities within the ROW need not register hereunder, but such entities shall be subject to Sections 515.060 and 515.070 of this code and such other Sections or provisions as may be appropriate to their presence in the ROW.

**Section 520.050. Registration Procedures.**

A. Requirements And Processing.

- (1) Registration shall be accomplished in the form of a letter to the City filed with the Director.
- (2) To be valid, the registration letter must be signed by an authorized representative of the registering person and contain all required information and be accompanied by a filing fee established by the City.

- (3) At any time the Director determines a registration letter does not comply with this code, the Director may return it to a point of contact identified therein with a written explanation of the reason(s) for such return. Filing fees shall not be refunded. Failure to return a registration letter shall not validate an incomplete or otherwise invalid or void registration letter.
- B. Contents Of Registration Letter. A registration letter shall contain or be accompanied by the information required herein. All such information received by the City shall be public, unless confidentiality is requested and permitted by the Missouri Open Meetings Law and other applicable state and federal law. The information required shall include:
- (1) Name, address and legal status of the registering person;
  - (2) Name, title, address, telephone number, e-mail address and fax number of individual(s) authorized to serve as the point of contact between the City and the registering person so as to make contact possible at any time (i.e., twenty-four (24) hours per day, seven (7) days per week);
  - (3) Description of the general uses made or to be made of the facilities located within the Rights of Way by the registering person, e.g., provision of service(s), transfer or lease of facilities (or portion thereof, including bandwidth) to another person, use of the facilities to transverse the City, construction of facilities to be used at a later date, etc.;
  - (4) Description of all services provided or to be provided by the registering person to any person located in the City through facilities located within the Rights of Way and an explanation of the registering person's legal qualifications to provide such services, including copies of supporting documentation such as relevant certificates or orders from the federal Communications Commission, Missouri Secretary of state and/or Missouri Public Service Commission or pertinent rules or Statutes;
  - (5) Name and address of any and all other persons providing service(s) to any person located in the City through the registering person's facilities located within the Rights of Way and a general description of such service(s); and
  - (6) Current certificates of insurance in accordance with this code.
- C. Notice Of Change. Within thirty (30) days of any changes in the information set forth in or accompanying its registration letter, a registered person shall notify the City of any such change. Such notices shall be submitted and processed in the same manner as an initial registration, except the filing fee shall not be required.
- D. Registration Index. The Director shall maintain an index of all registered persons and their point(s) of contact.
- E. Termination Of Registration.
- (1) The City shall have the right to terminate a registration for a substantial and ongoing failure to comply with this Code or other applicable law or for defrauding or attempting to defraud the City. To invoke the provisions of this Section, the Director shall give the person written notice of such intent. If within thirty (30) calendar days following such written notice from the City, the person has not completed corrective action or corrective action is not being actively and expeditiously pursued to the satisfaction of the Director, the Director may commence a proceeding to consider terminating the person's registration, giving written notice of the reasons therefor.
  - (2) Prior to terminating a registration, the Director shall hold a hearing, after giving at least ten (10) calendar days' notice to the person, at which time the person shall be given an opportunity to be heard. Following the hearing, the Director may determine whether to terminate the registration based on the information presented at the hearing and other information of record. If the Director determines to terminate a registration, the decision shall be in writing setting forth the reasons therefor. The Director may make such decision conditional on a person's failure to resolve outstanding problems or take

appropriate steps to resolve such problems within a specific period of time. A copy of such decision shall be provided to the person.

- (3) Once a registration has been terminated by the Director, the person may not register again except upon express written approval by the City Manager, which approval shall be withheld absent clear and convincing evidence that the person has remedied all previous violations and is in full compliance with all laws and will not in the future violate this code or defraud the City.
- (4) Registration of a public utility that has been legally granted access to the right-of-way shall not be terminated.

**Section 520.060. Right-of-Way (“ROW”) Permits.**

A. Application Requirements.

- (1) Any Person desiring to perform ROW Work must first apply for and obtain a ROW Permit, in addition to any other building permit, license, easement, franchise, or authorization that may be required by law. In the event of a need for Emergency ROW Work, the Person conducting the work shall as soon as practicable notify the City of the location of the work and shall apply for the required ROW Permit as soon as practicable following the commencement of the work, not to exceed the third business day thereafter. The Director may design and issue general permits for Emergency ROW Work for several different locations or throughout the City.
- (2) No person desiring to become a Person Having Facilities Within the ROW, and no Person Having Facilities Within the ROW, who has failed to register with the City, shall be granted a ROW permit, except as otherwise provided or allowed by ordinance, franchise, license, or written contract with the City.
- (3) An application for a ROW Permit shall be submitted to the Director. The Director may design and make available standard forms for such Applications, requiring such information as allowed by law and as the Director determines in his or her discretion to be necessary and consistent with the provisions of this Ordinance and to accomplish the purposes of this Ordinance. Each Application shall at minimum contain the following information for the proposed ROW Work, unless otherwise waived by the Director:
  - (a) The name, address and telephone number of a representative whom the City may notify or contact at any time (i.e., 24 hours per day 7 days per week) concerning the work
  - (b) If different from the Applicant, the name, address, and telephone number of the Person on whose behalf the proposed work is to be performed;
  - (c) A description of the proposed work, including a conceptual master plan and an engineering site plan or other technical drawing or depiction showing the nature, dimensions, location, and description of the Applicant's proposed work or Facilities, their proximity to other Facilities that may be affected by the proposed work, and the number of street crossings and their locations and dimensions, if applicable;
  - (d) Projected commencement and termination dates and anticipated duration of the work or, if such dates are unknown, a representation that the Applicant shall provide the Director with reasonable advance notice of such dates once they are determined;
  - (e) If the applicant is, or is acting on behalf of, a Person Having Facilities Within the ROW or a person desiring to become a Person Having Facilities Within the ROW, verification that the applicant or such person has registered with the City and that the information included in that registration is accurate as of the date of the application;

- (f) Proof of security for the work and restoration of the ROW as provided in Section 520.080, below; and
  - (g) For wireless transmission providers above-ground facilities:
    - (i) Technical information, including:
      - a. A detailed description of the physical dimensions and appearance of the proposed facilities;
      - b. The chemical composition of any battery contained within the proposed facilities;
      - c. Any hazardous material contained within the proposed facilities;
      - d. The potential for interference with the facilities of other wireless transmission providers;
      - ee. In the discretion of the Director, an engineering analysis of structural failure scenarios resulting from excess wind and seismic overloading, prepared by a licensed professional engineer;
      - f. Such other information as may be reasonably required by the Director and consistent with Section 510.015.2(d) hereof;
    - (ii) Certification, by a duly authorized representative of any person owning a facility, utility pole or other structure within the ROW upon which the applicant's facility is to be attached or secured, that:
      - a. The applicant has permission from such person to install the facility;
      - b. The person is not in default of any franchise, license or other agreement with the City; and
      - c. The person is not in substantial violation of any provision of this code;
  - (k) Proof that the ROW User has the legal authority to perform ROW Work within said street and further that the City is authorized thereby to regulate same through this Code. In the absence of such proof, the ROW User shall provide for the assumption of all risk and the indemnification of the City for any resulting loss or damage, in a form acceptable to the City Attorney.
- (4) The information required by the Application may be submitted in the form maintained by the Applicant, provided it is responsive to the Application's requirements, and the Applicant shall be allowed a reasonable amount of time to complete the Application based on the amount of data or information requested or required.
- (5) Each such Application shall be accompanied by the following payments:
- (a) An application fee approved by the City to cover the cost of processing the Application;
  - (b) A deposit, if applicable, for any cut into or excavation of the ROW, as provided in Section 520.080 hereof; and
  - (c) Any other amounts due to the City from the Applicant, including but not limited to prior delinquent fees, costs, and any loss, damage, or expense suffered by the City because of the Applicant's prior work in the Rights of Way or for any emergency actions taken by the City, but the Director may modify this requirement to the extent the Director determines any such fees to be in good-faith dispute or beyond the ability of the Applicant to control.
- (6) Applications shall be reviewed and acted upon within the timeframes provided in this article. The City acknowledges that federal law or regulations may prescribe deadlines

not consistent with those included in this article, but the certainty of such federal deadlines cannot be effectively ascertained and prescribed herein. It shall be incumbent upon the Applicant to inform the City of any desire to utilize federal deadlines and to explain the applicability of same at the time of application. The Director shall include a federal deadline option on the City's form application.

B. Application Review and Determination.

(1) The Director shall promptly review each Application for a ROW Permit that is complete and ~~in compliance~~in compliance with all application requirements. The Director shall grant or deny all such Applications within thirty-one (31) days of their receipt. Unless the Application is denied, the Director shall issue a ROW Permit upon determining that the Applicant:

- (a) Has submitted all necessary information;
- (b) Has paid the appropriate fees and
- (c) Is in full compliance with this Ordinance and all other City ordinances.

In order to avoid excessive processing and accounting costs to either the City or the applicant, the Director may establish procedures for bulk processing of Applications and periodic payment of fees to avoid excessive processing and accounting costs.

(2) It is the intention of the City that interference with, damage to, excavation or disruption of, or the placement of Facilities Within, the City's Rights of Way should be minimized and limited in scope to the extent allowed by law to achieve the purposes of this Ordinance. When reasonable and necessary to accomplish such purposes, the Director may require as alternatives to the proposed ROW Work either less disruptive methods or different locations for Facilities, provided that any required alternative:

- (a) Shall not increase expenses by more than ten percent (10%) of the Applicant's costs for the work as proposed,
- (b) Shall not result in a decline of service quality, and
- (c) Shall be competitively neutral and nondiscriminatory.

The Director shall provide to the Applicant the reasons why the required alternative is reasonable and necessary.

(3) Upon receipt of an Application, the Director shall determine whether any portion of the Rights of Way will be affected by the proposed work and whether the interference, disruption, or placement of Facilities will be more than minor in nature. In determining whether the proposed work is more than minor in nature the Director shall consider the nature and scope of the work, its location and duration, and its effect on the Rights of Way, the use thereof, and neighboring properties.

- (a) If the Applicant can show to the Director's reasonable satisfaction that the work involves no interference, disruption, excavation, or damage to, or only minor interference, with, the Rights of Way, or that the work does not involve the placement of Facilities or involves time-sensitive maintenance, then the Director shall promptly grant the ROW Permit.
- (b) If the Director determines that the effect on the Rights of Way will be more than minor in nature and no exemption under the above paragraph (3)(a) or any other provision of this Ordinance applies, the Director shall schedule and coordinate the work and grant the ROW Permit accordingly. When reasonable and necessary to accomplish the purposes of this Ordinance, the Director may postpone issuance of a ROW Permit, and may give public notice of the Application in an attempt to identify whether any other Person intends to do work in the same area within a

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reasonable period of time, so that all ROW Work in the area can be coordinated. Due regard shall be accorded Applicants that are required by any law, rule, regulation, license, or franchise to provide Service to the area defined in the Application. The Director shall not impose any coordination or scheduling requirements that prevent or unreasonably delay an Applicant's access to the ROW or that create a barrier to entry.

- (c) Applicants shall participate in any joint planning, construction and advance notification of such work, including coordination and consolidation of any excavation of or disturbance to the Rights of Way, as directed by the Director. Applicants shall cooperate with each other and other ROW Users and the City for the best, most efficient, least intrusive, most aesthetic, and least obtrusive performance of ROW Work and use of the ROW.
  - (d) The Director shall provide contact information permitting Applicants to ascertain whether existing capacity may be available from other Persons utilizing the Rights of Way along the intended path of any proposed work. The Director shall also maintain indexes of all ROW Permits issued, both by the ROW User and by the affected Rights of Way.
  - (e) The grant of a ROW permit shall not eliminate the need of an applicant to obtain (i) any other permit required by law for the construction or installation of Facilities Within the ROW or (ii) any other authority necessary for the placement or attachment of Facilities on property other than the ROW.
- (4) ~~In addition to the foregoing and in addition to any other standards or requirements imposed by this code with regard to an application filed by a wireless transmission provider, the Director shall ensure compliance with,~~ the following provisions shall apply to above-ground Facilities:
- (a) The design, location, nature, and construction of ~~all wireless transmission facilities~~above-ground Facilities shall be subject to the review and approval of the Director as provided herein and as otherwise required by law. Such review shall be non-discriminatory and competitively neutral and approvals shall not be unreasonably withheld.
  - (b) In considering the application the Director shall consider the requirements of Towers and antennas, Antennas as defined contained in Chapter 440 of the Municipal Code, shall also comply and shall apply those requirements to the extent practicable and consistent with the requirements in such chapter for obtaining a purposes and intent of this Code, but no special antenna permit shall be required for the placement of such Facilities in the ROW.
  - (c) The Director may designate certain locations or facilities in the ROW to be excluded from use by the applicant for its facilities including, but not limited to:
    - (i) Ornamental or similar specially designed street lights,
    - (ii) Designated historic areas,
    - (iii) Facilities, equipment, structures or locations that do not have electrical service adequate or appropriate for the proposed facilities or cannot safely bear the weight or wind loading thereof,
    - (iv) Facilities, equipment, structures or locations that in the reasonable judgment of the Director, are incompatible with the proposed facilities or would be rendered unsafe or unstable by the installation, and
    - (v) Facilities, equipment, structures or locations that have been designated or planned for other use or are not otherwise available for use by the applicant due to engineering, technological, proprietary, legal or other limitations or restrictions.

- (d) The design and placement of above-ground Facilities shall:
- (i) Maximize use of structures on which such facilities already exist;
  - (ii) Avoid interference with existing driveways, sidewalks, or other pedestrian or vehicle paths (antennas shall not be located less than eight feet above grade);
  - (iii) Be located no closer to similar Facilities as may be necessary for service delivery, so as to minimize adverse visual impacts and preserve property values;
  - (iv) Not inhibit the current or future use of the ROW;
  - (v) Be a neutral color and shall not be bright, reflective or metallic (black, gray and tan shall be considered neutral colors, as shall any color that blends with the surrounding dominant color and helps to camouflage the facilities);
  - (vi) Be screened sufficiently to reasonably conceal the facility, if the facility is taller than three (3) feet in height or exceeds four (4) square feet in size, with the Person Having Facilities Within the ROW being responsible for the installation, repair, or replacement of screening materials);
  - (vii) Not emit any unnecessary or intrusive noise and shall comply with all other applicable regulations and standards established by the state, federal, or local law; and
  - (viii) Meet such additional physical criteria as reasonably determined by the Director.

(6) If the application of any provision of this Code excludes locations for facilities to the extent that the exclusion conflicts with the reasonable requirements of the applicant, the Director shall cooperate in good faith with the applicant to attempt to find suitable alternatives, ~~but such alternatives may exceed the cost increase limitation established by Section 520.060.B(2) and the City shall not be required to incur any financial cost or to acquire new locations for the applicant.~~

(7) The grant of a ROW permit shall not eliminate the need ~~of a wireless transmission provider~~ to have obtained a license, permit or other agreement for attaching facilities to other facilities, poles or other structures, whether owned by the City or ~~other person~~ another Person.

(8) Nothing in this Code shall be construed to require that the City ~~grant wireless transmission providers~~ any Person access to any City facilities or the City's proprietary property, but the City may enter into separate agreements ~~with wireless transmission providers~~ to allow such access. Such agreements may include the payment of rent or reasonable attachment fees for use of City facilities or other City property. All such agreements shall be non-discriminatory and competitively neutral among wireless transmission providers.

(5C. Permit Issuance and Denial.

- (1) Each ROW Permit issued by the Director shall include:
- (a) Projected commencement and termination dates or, if such dates are unknown at the time the permit is issued, a provision requiring the ROW User to provide the Director with reasonable advance notice of such dates once they are determined;
  - (b) Length of affected Rights of Way, number of road crossings, and identification and description of any pavement or curb cuts included in the work;
  - (c) Information regarding scheduling and coordination of work, if necessary;

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- (d) The location of any of the Applicant's Facilities, both those proposed and existing, and the location of any known Facilities owned by another Person that may be affected by the proposed work;
  - (e) An acknowledgement and representation by the Applicant to comply with the terms and conditions of the ROW Permit and this Ordinance; and
  - (f) Such conditions and requirements as are deemed reasonably necessary by the Director to protect structures and other Facilities in the Rights of Way from damage, to restore such Rights of Way, and any structures or Facilities, to ensure the reasonable continuity and sight-lines of pedestrian and vehicular traffic, and to protect property values, the aesthetics of adjoining properties and neighborhoods, and the public health, safety and welfare.
- (62) An applicant receiving a ROW permit shall promptly notify the Director of any material changes in the information submitted in the application. The Director may issue a revised ROW permit or require that the ROW User reapply for a ROW permit in accordance with all requirements of this code.
- (73) ROW permits inure to the benefit of the applicant and the rights granted thereunder may not be assigned or transferred to any other person without the written consent of the Director.
- (84) The Director may deny an Application, if denial is deemed to be in the public interest, for the following reasons:
- (a) Delinquent fees, costs or expenses owed by the Applicant;
  - (b) Failure to provide information required by the Application or this code;
  - (c) The Applicant being in violation of the provisions of this code or other pertinent and applicable City ordinances;
  - (d) Failure to return the ROW to its previous condition under previously issued ROW Permits or after prior excavations by the Applicant;
  - (e) For reasons of environmental, historic or cultural sensitivity, as defined by applicable federal, state or local law;
  - (f) For the Applicant's refusal to comply with alternative ROW Work methods, locations, or other reasonable conditions required by the Director; and
  - (g) For any other reason to protect the public health, safety and welfare, provided that such denial does not fall within the exclusive authority of the Missouri Public Service Commission or interfere with a ROW User's right of eminent domain of private property, and provided further that such denial is imposed on a competitively neutral and nondiscriminatory basis.

CD. Permit Revocation and Ordinance ~~Violations~~ Violation.

- (1) The Director may revoke a ROW Permit without fee refund after notice and an opportunity to cure, but only in the event of a substantial breach of the terms and conditions of the permit or this Ordinance. Prior to revocation the Director shall provide written notice to the ROW User identifying any substantial breach and allowing a reasonable period of time not longer than thirty (30) days to cure the problem, which cure period may be immediate if certain activities must be stopped to protect the public safety. The cure period shall be extended by the Director on good cause shown by the ROW User. A substantial breach includes, but is not limited to, the following:
  - (a) A material violation of a provision of the ROW Permit or this Ordinance;
  - (b) An evasion or attempt to evade any material provision of the ROW Permit or this Ordinance, or the perpetration or attempt to perpetrate any fraud or deceit upon the City or its residents;

- (c) A material misrepresentation of fact in the ROW Permit Application;
  - (d) A failure to complete ROW Work by the date specified in the ROW Permit, unless an extension is obtained or unless the failure to complete the work is due to reasons beyond the ROW User's control; and
  - (r) A failure to correct, upon reasonable notice and opportunity to cure as specified by the Director, work that does not conform to applicable national safety ordinances, industry construction standards, this Ordinance or any other applicable ordinances, provided that City standards are no more stringent than those of a national safety ordinance.
- (2) Any breach of the terms and conditions of a ROW permit shall also be deemed a violation of this Ordinance, and in lieu of revocation the Director may initiate prosecution of the ROW User for such violation.

**DE.** Private Streets.

Notwithstanding anything in this Code to the contrary, the City has no authority to grant a ROW User the right to install or maintain ~~facilities~~Facilities or to perform work in any Private Street; provided, however, ~~that~~ the City shall regulate any ROW Work in any Private Street under its inherent police power and as provided in this Code for purposes of public health and safety. Doing so is not intended and may not be considered as an exercise of jurisdiction over such Private Street for the purposes of public use or maintenance.

**Section 520.070. Work in the Rights of Way.**

A. Jurisdiction, Inspection, Permit Deadlines, Stop Work Orders, and Liability.

- (1) No person shall perform any excavation in the ROW without providing proof of security for such work or for the restoration and maintenance of the ROW as provided in Section 520.080, below. In the event of a need for Emergency ROW Work, the Person conducting the work shall provide the required proof as soon as practicable following the commencement of the work, not to exceed the third business day thereafter.
- (2) All Facilities and ROW Work shall be subject to inspection by the City and the supervision of all federal, state and local authorities having jurisdiction in such matters to ensure compliance with all applicable laws, ordinances, departmental rules and regulations, and the ROW Permit. The City shall charge an inspection fee in an amount determined by the Director.
- (3) ROW Work shall commence within 30 calendar days after the issuance of the permit and if not so commenced, such permit shall be deemed terminated. Permits so terminated may be renewed upon the payment of an additional permit fee as originally required. Every permit shall expire at the end of the period of time set out in the permit. If the ROW User is unable to commence or to complete the work within the specified time, the ROW User shall, prior to the expiration date, present in writing to the Director a request for an extension of time setting forth the reasons for the requested extension. If the Director determines that such an extension is necessary and not contrary to the public interest, the ROW User may be granted additional time for the completion of the work.
- (4) The Director shall have full access to all portions of the ROW Work and may issue stop work orders and corrective orders to prevent unauthorized or substandard work. Such orders:
  - (a) May be delivered personally or by certified mail to the address(es) listed on the Application for the ROW Permit or the Person in charge of the construction site at the time of delivery;
  - (b) Shall state that substandard work or work not authorized by the ROW Permit is being carried out, summarize the substandard or unauthorized work and provide

a period of not longer than thirty (30) days to cure the problem, which cure period may be immediate if certain activities must be stopped to protect the public safety; and

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

B. Installation of Facilities.

- (1) In conjunction with the City's long-standing policy favoring underground construction, no Person may erect, construct or install new poles or other Facilities above the surface of the Rights of Way without the written permission of the City, unless the City's authority has been pre-empted by state or federal law. Such permission may be granted through a ROW Permit when other similar Facilities exist above-ground or when conditions are such that underground construction is impossible, impractical or economically unfeasible, as determined by the City, and when in the City's judgment the above-ground construction has minimal aesthetic impact on the area where the construction is proposed.
- (2) During installation of Facilities and to the extent authorized by law, existing underground conduits shall be used whenever feasible and permitted by the owner thereof.
- (3) In the case of new construction or property development, the developer or property owner shall give reasonable written notice, to other potential ROW Users as directed by the City, of the particular date on which open trenching will be available for installation of Facilities. Costs of trenching and easements required to bring Facilities within the development shall be borne by the developer or property owner; except that if the Facilities are not installed within five (5) working days of the date the trenches are available, as designated in the notice given by the developer or property owner, then once the trenches are thereafter closed, the cost of new trenching shall be borne by the Person installing the Facilities.
- (4) Facilities shall be constructed and maintained in such a manner so as not to emit any unnecessary or intrusive noise and shall comply with all other applicable regulations and standards established by the City or state or federal law.

C. Relocation of Equipment and Facilities.

- (1) In the event of an emergency, or where construction equipment or Facilities create or are contributing to an imminent danger to health, safety, or property, the City may, to the extent allowed by law, remove, re-lay, or relocate such construction equipment, or the pertinent parts of such Facilities, without charge to the City for such action or for restoration or repair. The City shall attempt to notify the Person Having Facilities Within the ROW prior to taking such action, but the inability to do so shall not prevent same. Thereafter, the City shall notify the Person Having Facilities Within the ROW as soon as practicable.
- (2) At the City's direction and as may be permitted by law, all Facilities shall be moved underground and the cost shall be solely the obligation of the Person Having Facilities Within The ROW (or as otherwise allowed or required by law).
- (3) Any Person Having Facilities Within the ROW shall, within a reasonable time specified by the City, protect, support, disconnect, relocate or remove, at its own expense, construction equipment or discrete portions of its facilities when required by the City by reason of traffic conditions; public safety; Rights of Way construction, maintenance or repair (including resurfacing or widening); change of Rights of Way grade or boundaries; construction, installation or repair of sewers, drains, water pipes, power

lines, signal lines, tracks or any type of government-owned communications system, public work or improvement or any government-owned utility; Rights of Way vacation; or for any other purpose where the convenience of the City would be reasonably served thereby. This requirement shall not apply when the Person Having Facilities Within the ROW holds a valid easement that existed prior to the date when the area in question became Rights of Way. The Person Having Facilities Within the ROW shall bear the burden of establishing to the City's satisfaction the fact of the pre-existing easement.

- (4) Any Person Having Facilities Within the ROW shall, on the request of the City or any person authorized by the City, temporarily relocate facilities to permit the moving of buildings or oversized vehicles.
- (5) A Person Having Facilities Within the ROW shall, on the reasonable request of any Person and after reasonable advance written notice, protect, support, disconnect, relocate, or remove Facilities to accommodate such Person, and the actual cost, reasonably incurred, of such actions shall be paid by the Person requesting such action. The Person Having Facilities Within the ROW taking such action may require such payment in advance.
- (6) Rather than relocate Facilities as requested or directed, a ROW User may abandon the facilities if approved by the City as provided in Subsection (F) of this Section.
- (7) No action hereunder shall be deemed a taking of property, and no Person shall be entitled to any compensation therefor. No location of any Facilities Within the Rights of Way shall be a vested interest.

E. Property Repair and Alterations.

- (1) During any ROW Work, the Person doing the work shall protect from damage any and all existing structures and property belonging to the City and any other Person. Any and all Rights of Way, public property, or private property disturbed or damaged during the work shall be repaired or replaced by the Person doing the work or the Person on whose behalf the work is being done, and such Person shall immediately notify the owner of the fact of any damaged property. Such repair or replacement shall be completed within a reasonable time specified by the Director and to the Director's satisfaction.
- (2) Any alteration to the existing water mains, sewerage or drainage system or to any City, state or other public structures or facilities in the Rights of Way required on account of the construction, installation, repair or maintenance of Facilities Within the Rights of Way shall be made at the sole cost and expense of the owner of such Facilities.

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

- (1) If a registration is terminated, the City may require that the Person Having Facilities Within the ROW remove its facilities from the Rights of Way at the person's expense. In removing its facilities the person shall obtain a ROW permit and restore any excavation that shall be made by it as required by this code. The liability, indemnity, insurance and bonding requirements as provided herein shall continue in full force and effect during and after the period of removal and restoration and until full compliance by the person with the terms and conditions of this paragraph and the requirements of this code.
- (2) If a Person Having Facilities Within the ROW installs the Facilities without having complied with the requirements of this code, the City may:
  - (a) Require the removal of the Facilities,
  - (b) Remove the Facilities at the expense of the Person Having Facilities Within the ROW, or
  - (c) Require the transfer of the Facilities as provided herein.

- (3) If a Person Having Facilities Within the ROW:
- (a) Discontinues use of any facility for a continuous period of twelve (12) months;
  - (b) Has installed the facilities without complying with the requirements of this code; or
  - (c) Declares the facilities abandoned or if such facilities are:
    - (i) No longer in active use;
    - (ii) No longer capable of being used for the same or similar purpose for which the facilities were installed; or
    - (iii) Are physically disconnected from any other facility that is in use or in service;

Then the facilities may be deemed abandoned. If such abandonment occurs, the City may require the removal of the facilities, remove the facilities at the expense of the Person Having Facilities Within the ROW, allow the abandonment of the facilities without removal or require the transfer of the facilities, all as provided in this Subsection 6.

- (4) If the City requires removal of the Facilities, the Person shall obtain a ROW Permit and shall abide by all requirements of this Ordinance. The liability, indemnity, insurance and bonding requirements required herein shall continue in full force and effect during and after the period of removal and restoration and until full compliance by the Person with the terms and conditions of the ROW Permit and the requirements of this Ordinance.
- (5) If the Person fails to remove the Facilities after having been directed to do so, the City may, to the extent permitted by law,
- (a) Have the removal done at the Person's expense.
  - (b) Deem the Facilities abandoned, without removal, if the Director determines that abandonment is not likely to prevent or significantly impair the future use, repair, excavation, maintenance, or construction of the ROW.
  - (c) Determine that the ownership of the Facilities should be transferred to the City, or to such Person as directed by the City. In either case the owner of the Facilities shall submit a written instrument, satisfactory in form to City, transferring to the City, or to such Person as directed by the City, ownership of the Facilities. The City may sell, assign, or transfer all or part of the Facilities so transferred.
- (6) The City shall not remove any facilities unless the existence of such facilities prevents or significantly impairs the use, repair, excavation or construction of the ROW. The City shall not remove or seek to possess or transfer the Facilities until thirty (30) days have passed following written notice by the Director to the Person Having Facilities Within The ROW of the City's intent to so act. The Director may choose not to act on good cause shown by the Person Having Facilities Within the ROW.

G. Standards for ROW Work.

- (1) Except for Emergency ROW Work as provided in Section 520.060 (A.1), ROW Work shall be performed only upon issuance and in accordance with the requirements and scope of a ROW Permit. At all times during the work, ROW Permits shall be conspicuously displayed at the work site and shall be available for inspection by the Director. No ROW User shall perform any ROW Work not authorized by a permit.
- (2) If at any time it appears that the duration or scope of the ROW Work is or will become materially different from that allowed by the ROW Permit, the ROW User shall inform the Director. The Director may issue a waiver, an extension or a revised ROW Permit,

or require that the ROW User reapply for a ROW Permit in accordance with all requirements of this code.

- (3) ROW Users shall not open or encumber more of the Rights of Way than is reasonably necessary to complete the ROW Work in the most expeditious manner or allow excavations to remain open longer than is necessary to complete the work.
  - (a) No ROW Work shall extend beyond the centerline of the street before being backfilled or the surface of the street temporarily restored in a manner satisfactory to the Director.
  - (b) No ROW Work shall prevent the reasonable use of such street by the public or cause substantial hazards.
  - (c) All ROW Work that affects vehicular or pedestrian traffic shall be properly signed, barricaded, and otherwise protected at the ROW User's expense. The ROW User shall be responsible for providing adequate traffic control to the area surrounding the work as determined by the Director.
  - (d) The ROW User shall perform the ROW Work at such times that will allow the least interference with the normal flow of traffic and the peace and quiet of the neighborhood, as permitted by the Director. Unless otherwise provided by the Director in the Permit, non-Emergency ROW Work on arterial and collector streets may not be accomplished during the hours of 7:00 a.m. to 8:30 a.m. and 4:00 p.m. to 6:00 p.m. in order to minimize disruption of traffic flow.
- (4) Excavations.
  - (a) No ROW User shall make or cause to be made any excavation in any ROW without adequately protecting the same by erecting such fencing or other barriers as the Director deems adequate to prevent persons, animals or vehicles from falling into said excavation. Said barriers may include warning signs by day and red torches or their equivalent by night, which shall be placed and maintained around any such excavation as to give reasonable notice and warning to any person approaching such excavation from any direction. The Director may require additional safety regulations a may be in conformity with the requirements of federal or state law or regulation.
  - (b) Excavated materials shall be laid compactly along the side of the trench and kept trimmed up so as to cause as little inconvenience as possible to public travel. In order to expedite the flow of traffic or to abate a dirt or dust nuisance, the Director may require the ROW User to provide toe boards or bins; and if the excavated area is muddy and causes inconvenience to pedestrians, temporary wooden plank walks, footbridges, or coverings shall be installed as required by the Director. If the street is not wide enough to hold the excavated material without using part of the adjacent sidewalk, the ROW User shall keep a passageway at least one-half (½) the sidewalk width open along such sidewalk line.
  - (c) When any earth, gravel or other excavated material is caused to roll, flow or wash upon any street, the ROW User shall cause the same to be removed from the street within four (4) hours after deposit.
- (5) Notice.
  - (a) The ROW User shall notify the City no less than three (3) working days in advance of any ROW Work that would require any street closure or would reduce traffic flow to less than two (2) lanes of moving traffic for more than four (4) hours. Except in the event of Emergency ROW Work, no such closure shall take place without notice and prior authorization from the City.
  - (b) The ROW User shall provide written notice to all property owners within one hundred and eighty-five (185) feet of the site at least 48 hours prior to performing

the ROW Work. Notice shall include a reasonably detailed description of work to be done, the location of work, and the time and duration of the work.

- (6) All ROW Work shall be in accordance with all applicable sections of the Occupational Safety and Health Act of 1970, the National Electrical Safety Code, and other federal, state, or local laws and regulations that may apply, including, without limitation, local health, safety, construction and zoning ordinances, and laws and accepted industry practices, all as hereafter may be amended or adopted. In the event of a conflict among ordinances and standards, the most stringent ordinance or standard shall apply (except insofar as that ordinance or standard, if followed, would result in Facilities that could not meet requirements of federal, state or local law).
- (7) All Facilities shall be installed and located to cause minimum interference with the rights and convenience of property owners, other ROW Users and the City. Facilities shall not be placed where they will disrupt or interfere with other Facilities or public improvements, or obstruct or hinder in any manner the various utilities serving the residents and businesses in the City or public improvements.
  - (a) All existing facilities shall be exposed sufficiently ahead of trench excavation work to avoid damage to those facilities and to permit their relocation, if necessary.
  - (b) Pipe drains, pipe culverts or other facilities encountered shall be protected by the ROW User.
  - (c) Monuments of concrete, iron or other lasting material set for the purpose of locating or preserving the lines of any street or property subdivision or a precise survey reference point or a permanent survey bench mark within the City shall not be removed or disturbed or caused to be removed or disturbed unless permission to do so is first obtained in writing from the Director. Permission shall be granted only upon condition that the ROW User shall pay all expenses incident to the proper replacement of the monument.
- (8) All ROW Work shall be conducted in accordance with good engineering practices, performed by experienced and properly trained personnel so as not to endanger any Person or property or to unreasonably interfere in any manner with the Rights of Ways or legal rights of any property owner, including the City, or unnecessarily hinder or obstruct pedestrian or vehicular traffic.
- (9) All safety practices required by law shall be used during ROW Work, including commonly accepted methods and devices to prevent failures and accidents that are likely to cause damage, injury, or nuisance to the public.
- (10) Any contractor or subcontractor of a ROW User must be properly licensed under laws of the state and all applicable local ordinances, and each contractor or subcontractor shall have the same obligations with respect to its work as a ROW User would have pursuant to this Ordinance. A ROW User:
  - (a) must ensure that contractors, subcontractors and all employees performing ROW Work are trained and experienced,
  - (b) shall be responsible for ensuring that all work is performed consistent with the ROW Permit and applicable law,
  - (c) shall be fully responsible for all acts or omissions of contractors or subcontractors,
  - (d) shall be responsible for promptly correcting acts or omissions by any contractor or subcontractor, and
  - (e) shall implement a quality control program to ensure that the work is properly performed.
- (11) A ROW User shall not place or cause to be placed any sort of signs, advertisements or other extraneous markings on the Facilities or in the ROW, whether relating to the

ROW User or any other Person, except such necessary minimal markings approved by the City as necessary to identify the Facilities for service, repair, maintenance or emergency purposes or as may be otherwise required to be affixed by applicable law or regulation.

(12) Unless otherwise approved in writing by the City, a ROW User shall not remove, cut, or damage any trees, or their roots, Within the ROW.

(13) Street crossings will be bored at the direction of the Director.

~~(14) Above ground facilities shall be a neutral color and shall not be bright, reflective or metallic. Black, gray and tan shall be considered neutral colors, as shall any color that blends with the surrounding dominant color and helps to camouflage the facilities. Facilities shall be located in such a manner as to reduce or eliminate their visibility. A sightproof screen may be required for any authorized above ground facilities taller than three (3) feet in height or covering in excess of four (4) square feet in size. Such screening shall be sufficient to reasonably conceal the facility. The Person Having Facilities Within the ROW shall be responsible for the installation, repair or replacement of screening materials.~~

~~(15) Above ground facilities shall be constructed and maintained in such a manner so as not to emit any unnecessary or intrusive noise and shall comply with all other applicable regulations and standards established by the state, federal, or local law.~~

~~(16) If the application of this Subsection excludes locations for above ground facilities, to the extent that the exclusion conflicts with the reasonable requirements of the applicant, the Director shall cooperate in good faith with the applicant to attempt to find suitable alternatives, but such alternatives may exceed the cost increase limitation established by Section 520.060.B(2), and the City shall not be required to incur any financial cost or to acquire new locations for the applicant.~~

#### H. Restoring and Maintaining the Rights of Way.

(1) To complete any ROW Work, the ROW User shall restore the ROW and surrounding areas, including but not limited to any pavement, foundation, concrete slabs or curbs, screening, landscaping, or vegetation and shall comply with other reasonable conditions of the Director. Restoration of the ROW shall be completed within the dates specified in the ROW Permit unless the Director issues a waiver, extension or a new or revised ROW Permit.

(2) It shall be the duty of any Person making an excavation in the ROW to backfill such excavations and restore the surface in accordance with the City's minimum prescribed standards for such surfaces, as may be determined and published by the Director.

(3) If a ROW User fails to restore the ROW within the date specified either by the ROW Permit, or any extension thereof as granted by the Director, the City may perform its own restoration. The City may also opt to perform its own restoration regardless of any failure by the ROW User, in which case the ROW Permit, or any amendment or revision thereto, shall note such option. In either event, if the City performs the restoration the ROW User shall be responsible for reimbursing the City's reasonable actual restoration costs within thirty (30) days of invoice.

(4) 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 the ROW User conducted excavation. During this period the ROW User shall, upon notification from the Director, correct all restoration work to the extent necessary as required by the Director. Said work shall be completed within a reasonable time, not to exceed thirty (30) calendar days from receipt of the Director's notice unless otherwise permitted by the Director. If a ROW User fails to restore the ROW within the time specified, the City may perform the work and the ROW User shall be responsible for reimbursing the City's reasonable actual restoration costs within thirty days of invoice. The Director

may extend the cure period on good cause shown.

- (5) A ROW User shall not be relieved of the obligation to complete the necessary right-of-way restoration and maintenance because of the existence of any performance bond required by this Ordinance.
- I. After the completion of ROW work the ROW User shall provide to the City as-built drawings, maps or other comparable records as determined by the Director, drawn to scale and certified to the City as reasonably depicting the location of all facilities constructed pursuant to the ROW permit. Such records may be provided to the Director in the form maintained by the ROW User, but when available to the ROW User, shall be submitted in automated formats compatible with the City's systems, such as AUTOCAD.DXF, AUTOCAD.DWG, MICROSTATION.DGN (or comparable as allowed by the Director) or in hard copy otherwise.

**Section 520.080. Security Deposit; Bonds; Insurance; Surety; Indemnification; Penalties.**

- A. Security Required. A ROW User shall not perform any ROW work without complying with the security requirements of this section.
- B. Security Deposit.
  - (1) A ROW User shall submit a cash deposit in the sum of \$2,000, or other such amount as may be determined by the Director, for any cut to or excavation of the ROW. The deposit shall be to secure the proper restoration of the ROW by the ROW User after completion of the work. Whenever a ROW User applies for more than one cut or excavation, the ROW User may post a single deposit in an amount determined by the Director to cover the anticipated costs of restoration.
  - (2) The Director shall inspect the ROW User's restoration of the ROW for compliance with the City's standards. Upon the ROW User's timely and successful restoration as evidenced by the Director's issuance of a certificate of final inspection, the City shall refund to the ROW User the security deposit.
  - (3) If the ROW User fails to restore the cut or excavation to required standards within a reasonable amount of time, then after notice and a reasonable opportunity to cure the Director may effect the proper restoration of the ROW and the use of the security deposit for such purposes. In this event the City shall be entitled to any damages or loss suffered by the City as a result.
  - (4) If any deposit is less than sufficient to pay the City's costs and damages, the ROW User shall pay to the City an amount equal to the deficiency. If the ROW User fails or refuses to pay such deficiency, the City may institute an action to recover the same in any court of competent jurisdiction and shall be entitled to a reasonable allowance for attorneys' fees. Until such deficiency is paid in full, no additional permits shall be issued to the ROW User.
- C. Performance and Maintenance Bonds.
  - (1) For any ROW User having less than twenty-five million dollars (\$25,000,000.00) in net assets and a history of noncompliance with state and local regulations, the Director may, in addition to, in combination, with, or in lieu of the security deposit required, permit a ROW User to establish in the City's favor a performance and maintenance bond in an amount to be determined by the Director to ensure the ROW Work and the restoration of the Right of Way. The bond shall continue in full force and effect for a period of 24 months following completion of the work. The Director shall have the authority to extend the maintenance bond period for up to an additional 24 months.
  - (2) If a ROW User fails to complete the ROW Work in a safe, timely, and competent manner, or if the completed restorative work fails without remediation within the time period for the bond (as determined by the Director), then after notice and a reasonable opportunity to cure there shall be recoverable, jointly and severally from the principal and surety of the bond any damages or loss suffered by the City as a result, including

the full amount of any compensation, indemnification, or cost of removal or abandonment of any property of the ROW User and the cost of completing work Within or restoring the Rights of Way, plus a reasonable allowance for attorneys' fees, up to the full amount of the bond. The City may also recover against the bond any amount recoverable against a security fund or letter of credit where such amount exceeds that available under a security fund or letter of credit.

- (3) Upon completion of ROW Work to the satisfaction of the Director and upon lapse of the bond period, including any extension by the Director, the City shall release the bond.
- (4) The bond shall be issued by a surety with an "A" or better rating of insurance in Best's Key Rating Guide, Property/Casualty Edition, shall be subject to the approval of the City's attorney and shall contain the following endorsement:

"This bond may not be cancelled, or allowed to lapse, until sixty (60) days after receipt by the City, by certified mail, return receipt requested, of a written notice from the issuer of the bond of intent to cancel or not to renew."
- (5) In lieu of any bond required herein, the ROW User may establish in the City's favor such other security as the Director may determine to be commensurate with the noted bonding requirements, including but not limited to an annual bond to be maintained in the minimum amount of twenty-five thousand dollars (\$25,000.00).

#### D. Insurance.

- (1) All ROW Users shall maintain, for the duration of any ROW Work and, when applicable, for as long as the ROW User has Facilities Within the Rights of Way, at least the following liability insurance coverage: worker's compensation and employer liability insurance to meet all requirements of Missouri law and commercial general liability insurance with respect to the construction, operation, and maintenance of the Facilities, and the conduct of the ROW User's business in the City, in the minimum amounts of:
  - (a) \$3,000,000 for property damage resulting from any one accident;
  - (b) \$5,000,000 for personal bodily injury or death resulting from any one accident; and
  - (c) \$3,000,000 for all other types of liability.

These insurance requirements shall not be construed to limit the liability of any Person or to impose any liability on the City or to waive any sovereign immunity.
- (2) All insurance policies shall be with sureties qualified to do business in the state of Missouri, with an "A" or better rating of insurance by Best's Key Rating Guide, Property/Casualty Edition, and in a form approved by the City.
- (3) All insurance policies shall be available for review by the City, and a ROW User having Facilities within the Rights of Way shall keep on file with the City current certificates of insurance.
- (4) All general liability insurance policies shall name the City, its officers, boards, board members, commissions, commissioners, agents, and employees as additional insureds and shall further provide that any cancellation or reduction in coverage shall not be effective unless thirty (30) days' prior written notice thereof has been given to the Director. A ROW User shall not cancel any required insurance policy without submission of proof that it has obtained alternative insurance that complies with this Ordinance.
- (5) The Director may exempt in writing from these insurance requirements any self-insured ROW User, provided that the ROW User demonstrates to the Director's satisfaction

that the ROW User's self-insurance plan is commensurate with said requirements and that the ROW User has sufficient resources to meet all potential risks, liabilities and obligations contemplated by the requirements of this Ordinance. The Director may require a security fund or letter of credit as a condition to a self-insured's exemption. The Director shall waive this requirement when the ROW User has twenty-five million dollars (\$25,000,000.00) in net assets and does not have a history of noncompliance with applicable regulatory law.

E. Indemnification.

- (1) Any ROW User granted a ROW Permit, and any Person Having Facilities Within the Rights of Way, as partial consideration for the privilege granted, shall, at its sole cost and expense, indemnify, hold harmless, and defend the City, its officials, boards, board members, commissions, commissioners, agents, and employees, against any and all claims, suits, causes of action, proceedings, and judgments for damages or equitable relief arising out of (i) any ROW Work, including but not limited to the construction, maintenance, repair, or replacement of the of Facilities, (ii) the operation of its Facilities, (iii) failure to secure consents from landowners, or (iv) any actions taken or omissions made by the Person pursuant to the authority of this Ordinance.
- (2) The foregoing indemnity provisions include, but are not limited to, the City's reasonable attorneys' fees incurred in defending against any such claim, suit, or proceeding prior to the Person assuming such defense. The City shall notify a Person of claims and suits within seven (7) business days of its actual knowledge of the existence of such claim, suit, or proceeding. Once a Person assumes such defense, the City may at its option continue to participate in the defense at its own expense.
- (3) Notwithstanding anything to the contrary contained in this Ordinance, the City shall not be so indemnified or reimbursed in relation to any amounts attributable to (i) the City's own negligence, willful misconduct, intentional or criminal acts, or (ii) the City acting in a proprietary capacity to deliver Service(s) within the City.
- (4) Recovery by the City of any amounts under insurance, a performance bond, or otherwise does not limit a Person's duty to indemnify the City in any way; nor shall such recovery relieve a Person of amounts owed to the City, or in any respect prevent the City from exercising any other right or remedy it may have.

F. Principal's Responsibility.

Notwithstanding anything in this Code to the contrary, a Person Having Facilities Within the ROW shall be responsible for ensuring the work of any contracted ROW User, including the prompt correction of any contractor error or deficiency, ROW restoration if the contractor is unable or unwilling to perform same to the City's standards, and liability for damages caused by the contractor.

**Section 520.090. Dispute Resolutions, Appeals, and Arbitration.**

- A. The Director shall make a final determination as to any matter concerning the grant, denial or revocation of a ROW Permit as provided in this Ordinance. On the request of an Applicant or a ROW User and within a reasonable period of time, the Director also shall make a final determination as to any other issue relating to the use of the ROW, the imposition of any fee or the application of any provision of this Ordinance, provided, however, that this review shall not apply to matters being prosecuted in the municipal court. Any final determination of the Director shall be subject to review as provided herein.
- B. Any Person aggrieved by a final determination of the Director may appeal in writing to the City Manager within five business (5) days thereof. The appeal shall assert specific grounds for review, and the City Manager shall render a decision on the appeal within fifteen (15) business days of receipt affirming, reversing, or modifying the determination of the Director. The City

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

- C. Any Person aggrieved by the final determination of the City Manager may file a petition for review pursuant to Chapter 536 of the Revised Statutes of Missouri, as amended, in the Circuit Court of the County of St. Louis. Such petition shall be filed within thirty (30) days after the City Manager's final determination.
- D. Arbitration and Mediation.
  - (1) On agreement of the parties and in addition to any other remedies, any final decision of the City Manager may be submitted to mediation or binding arbitration.
  - (2) In the event of mediation, the City Manager and the Applicant or ROW User shall agree to a mediator. The costs and fees of the mediator shall be borne equally by the parties, and each party shall pay its own costs, disbursements and attorney fees.
  - (3) In the event of arbitration, the City Manager and the Applicant or ROW User shall agree to a single arbitrator. The costs and fees of the arbitrator shall be borne equally by the parties. If the parties cannot agree on an arbitrator, the matter shall be resolved by a three-person arbitration panel consisting of one arbitrator selected by the City Manager, one arbitrator selected by the Applicant or ROW User, and one person selected by the other two arbitrators, in which case each party shall bear the expense of its own arbitrator and shall jointly and equally bear with the other party the expense of the third arbitrator and of the arbitration. Each party shall also pay its own costs, disbursements and attorney fees.

**Section 520.100. Miscellaneous.**

- A. Upon failure of a ROW User to commence, pursue or complete any ROW Work required by law or by the provisions of this Ordinance to be done in any street, within the time prescribed and to the reasonable satisfaction of the City, the City may, at its option, after thirty (30) days notice, cause such work to be done and the ROW User shall pay to the City the cost thereof in the itemized amounts reported by the City to the ROW User within thirty (30) days after receipt of such itemized report.
- B. Upon ten (10) days written notice and with the supervision of the City, or as otherwise provided by law, a ROW User shall have the authority to trim trees that overhang Rights of Way of the City so as to prevent the branches of such trees from coming in contact with its Facilities, at its own expense subject to the supervision and direction of the City. Nothing in this paragraph shall authorize the trimming of trees on private property without permission of the property owner. All cut materials shall be properly disposed.
- C. During ROW Work by a ROW User the City shall have the right to install, and to thereafter maintain, at its own cost in any excavation to or other applicable disturbance of the ROW any parallel facilities of its own that do not unreasonably interfere with the operations of other Facilities.
- D. Nothing in this Ordinance shall be in preference or hindrance to the right of the City and any board, authority, commission or public service corporation of the City to use or occupy the Rights of Way or to perform or carry on any public works or public improvements of any description.

**Section 520.110. Penalties.**

Any Person convicted of violating any provision of this code shall be punished by a fine not to exceed one thousand dollars (\$1,000.00) or by imprisonment not to exceed ninety (90) days, or by both such fine and imprisonment. Each day the violation continues may be charged as a separate offense.



**CITY COUNCIL AGENDA SUBMISSION  
AUGUST 23, 2016**

**Agenda Item:**

Bill #2819 – An Ordinance of the City of Olivette, Missouri, to Establish a Procedure to Disclose Potential Conflicts of Interest and Substantial Interests for Certain Municipal Officials – Second Reading

**Description:**

Every two years, the Missouri Ethics Commission requires that political subdivisions adopt an ordinance to require Financial Interest Statements for Political Subdivisions (short form) to be filed by elected officials and key appointed officials. The City of Olivette last adopted this ordinance as Ordinance #2523 on August 12, 2014.

The new ordinance, once approved, must be forwarded to the Missouri Ethics Commission, no later than September 15, 2016. (If a municipality does not re-adopt the ordinance, all elected, appointed and decision-making personnel, as well as candidates for public office, are required to file a Personal Financial Disclosure Statement – long form.)

First reading of this bill was held at the August 9, 2016 City Council Meeting, and is now before the City Council for second reading and final approval.

**Recommended Action:**

Motion to approve Bill #2819 – An Ordinance of the City of Olivette, Missouri, to Establish a Procedure to Disclose Potential Conflicts of Interest and Substantial Interests for Certain Municipal Officials.

**Submitted by:**

*Myra G. Bennett, CMC/MPCC*  
**DEPARTMENT HEAD**

**AN ORDINANCE OF THE CITY OF OLIVETTE, MISSOURI, TO ESTABLISH  
A PROCEDURE TO DISCLOSE POTENTIAL CONFLICTS OF INTEREST AND  
SUBSTANTIAL INTERESTS FOR CERTAIN MUNICIPAL OFFICIALS.**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF OLIVETTE, MISSOURI, AS FOLLOWS:

**Section 1. Declaration of Policy.** The proper operation of municipal government requires that public officials and employees be independent, impartial and responsible to the people; that government decisions and policy be made in the proper channels of the governmental structure; that public office not be used for personal gain; and that the public have confidence in the integrity of its government. In recognition of these goals, there is hereby established a procedure for disclosure by certain officials and employees of private financial or other interests in matters affecting the city.

**Section 2. Conflicts of Interests.** The Mayor or any member of the City Council who has a substantial personal or private interest, as defined by Sections 105.450 et seq., RSMo, in any bill shall disclose on the records of the City Council the nature of his interest and shall disqualify himself from voting on any matters relating to this interest.

**Section 3. Disclosure Reports.** Each elected official, candidate for elective office, the City Manager, and the chief purchasing officer shall disclose the following information by May 1, or the appropriate deadline as referenced in Section 105.487 RSMo, if any such transactions were engaged in during the previous calendar year:

a. For such person, and all persons within the first degree of consanguinity or affinity of such person, the date and the identities of the parties to each transaction with a total value in excess of five hundred dollars (\$500), if any, that such person had with the political subdivision, other than compensation received as an employee or payment of any tax, fee or penalty due to the political subdivision, and other than transfers for no consideration to the political subdivision; and

b. The date and the identities of the parties to each transaction known to the person with a total value in excess of five hundred dollars (\$500), if any, that any business entity in which such person had a substantial interest, had with the political subdivision, other than payment of any tax, fee or penalty due to the political subdivision or transactions involving payment for providing utility service to the political subdivision, and other than transfers for no consideration to the political subdivision.

c. The City Manager and the chief purchasing officer also shall disclose by May 1 for the previous calendar year the following information:

1) The name and address of each of the employers of such person from whom income of one thousand dollars (\$1,000) or more was received during the year covered by the statement;

2) The name and address of each sole proprietorship that he owned; the name, address and the general nature of the business conducted of each general partnership and joint venture in

which he was a partner or participant; the name and address of each partner or co participant for each partnership or joint venture unless such names and addresses are filed by the partnership or joint venture with the secretary of state; the name, address and general nature of the business conducted of any closely held corporation or limited partnership in which the person owned ten percent or more of any class of the outstanding stock or limited partnership units; and the name of any publicly traded corporation or limited partnership that is listed on a regulated stock exchange or automated quotation system in which the person owned two percent or more of any class of outstanding stock, limited partnership units or other equity interests;

3) The name and address of each corporation for which such person served in the capacity of a director, officer or receiver.

**Section 4. Filing of Reports.** The reports, in the attached format, shall be filed with the City Clerk and with the Missouri Ethics Commission. The reports shall be available for public inspection and copying during normal business hours.

**Section 5. When Filed.** The financial interest statements shall be filed at the following times, but no person is required to file more than one financial interest statement in any calendar year;

a. Each person appointed to office shall file the statement within 30 days of such appointment or employment;

b. Every other person required to file a financial interest statement shall file the statement annually not later than May 1 and the statement shall cover the calendar year ending the immediately preceding December 31; provided, that any member of the City Council may supplement the financial interest statement to report additional interests acquired after December 31 of the covered year until the date of filing of the financial interest statement.

**Section 6. Filing of Ordinance.** The City Clerk shall send a certified copy of this ordinance to the Missouri Ethics Commission within ten days of its adoption.

**Section 7. Effective Date.** This ordinance shall be in full force and effect from and after the date of its passage and approval and shall remain in effect until amended or repealed by the City Council.

PASSED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2016.

\_\_\_\_\_  
MAYOR RUTH SPRINGER

ATTEST:

\_\_\_\_\_  
MYRA G. BENNETT, CMC/MPCC  
CITY CLERK  
CITY OF OLIVETTE



**CITY COUNCIL AGENDA SUBMISSION**  
**August 23, 2016**

**Agenda Item:**

Bill 2820 – An Ordinance Repealing Chapter 125, Article VI: Olivette on the Go Committee, in its entirety.

**Description:**

The Council is asked to hold a first reading of an ordinance that repeals Chapter 125, Article VI: Olivette On the Go in its entirety. Over the past several years it has become increasingly difficult to recruit and retain the number of volunteers necessary to serve on the Olivette On the Go Committee. After much discussion and debate, the Council is asked to hold a first reading of an ordinance that would eliminate the committee. The Park and Recreation Commission is asked to investigate alternative community festivals and/or activities and to bring their recommendations back to the Council.

**Recommended Action:**

First Reading

**Attachments:**

1. Ordinance

**Funding Request:** N/A

**Submitted by:**

Barbara Sondag  
CITY MANAGER

**BILL NO. 2820**

**ORDINANCE NO.**

**AN ORDINANCE REPEALING CHAPTER 125, ARTICLE VI: OLIVETTE ON THE GO COMMITTEE, IN ITS ENTIRETY.**

**WHEREAS**, Chapter 125, Article VI: Olivette On the Go Committee, Sections 125.180-125.195, was adopted in July of 2010, and

**WHEREAS**, over the past several years finding volunteers to serve on the Committee has become more difficult, and

**WHEREAS**, the Olivette City Council desires to offer community events that meet the desires of the community, and

**WHEREAS**, the City Council is instructing the Park and Recreation Commission, in conjunction with the Park Master Plan, to investigate alternative community events and to bring recommendations back to the Council at the Plan's conclusion.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF OLIVETTE, ST. LOUIS COUNTY, MISSOURI, AS FOLLOWS**

**SECTION 1.** Chapter 125, Article VI: Olivette On the Go Commission Sections 125.180 – 125.195 shall be repealed in its entirety and the remaining sections shall be renumbered accordingly.

**SECTION 2. BE IT FURTHER ORDAINED THAT** this ordinance shall become effective from and after its adoption according to law.

**PASSED THIS 13<sup>TH</sup> DAY OF SEPTEMBER, 2016**

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**MAYOR RUTH SPRINGER**

**ATTEST:**

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**CITY CLERK MYRA G. BENNETT**

Article VI  
Olivette On The Go Committee

*Section 125.180 Committee Established.*

~~{Ord. No. 2430 §1, 7-13-2010; Ord. No. 2504 §§1—3, 9-24-2013}~~

There is hereby established the Olivette On the Go Committee of the City of Olivette, which shall possess all of the powers and be subject to all of the responsibilities imposed upon it by law, the ordinances of the City and the directions of Council.

*Section 125.185 Committee Membership.*

~~{Ord. No. 2430 §1, 7-13-2010; Ord. No. 2504 §§1—3, 9-24-2013}~~

- A. ~~The Committee shall be composed of a minimum of seven (7) voting members appointed by the City Council for three-year terms. If the number of members exceeds the minimum numbers noted above, the Committee shall be comprised of an odd number of members. Members shall be residents or business owners in the City of Olivette; however, up to two (2) members may be non-residents. Non-residents shall be non-voting members of the Committee. [Ord. No. 2533 §1, 10-28-2014]~~
- B. ~~The City Council shall appoint members to the Olivette On the Go Committee for specified terms ending on the calendar date of November 1. Each member of the Committee shall serve until a successor is appointed and qualified. [Ord. No. 2533 §1, 10-28-2014]~~
- C. ~~The Parks and Recreation Director shall serve as an ex officio, non-voting member of the Committee.~~
- D. ~~A designated member of the City Council shall serve as an ex officio, non-voting member of the Committee.~~

*Section 125.190 Committee Officers and Procedures.*

~~{Ord. No. 2430 §1, 7-13-2010; Ord. No. 2504 §§1—3, 9-24-2013}~~

- A. ~~The Committee shall elect from among its membership a Chair, a Vice Chair and a Secretary, each of whom shall serve for a one-year term and may be reelected.~~
- B. ~~The Committee shall abide by Missouri's Open Meetings and Records Act, Sections 610.010, RSMo., et seq., as may be amended from time to time. No action shall be taken or recommendation made by the Committee to the Council except by a vote of at least a majority of its members. The Committee shall otherwise abide by the procedures established in Scott Foresman newly revised Robert's Rules of Order, except as otherwise may be provided by law.~~

*Section 125.195 Committee Responsibilities.*

~~{Ord. No. 2430 §1, 7-13-2010; Ord. No. 2504 §§1—3, 9-24-2013}~~

- A. ~~Duties and responsibilities of the Olivette on the Go Committee shall include, but not be limited to:~~

1. ~~Planning and executing a festival for the City of Olivette to facilitate community unity and enjoyment, provide a wholesome family and community opportunity for enjoyment and community spirit, and possibly raise funds for worthwhile community projects and activities.~~
2. ~~Planning and executing activities and events that showcase talent, community activities and businesses and organizations in the City of Olivette during the festival.~~
3. ~~Making recommendations to City Council regarding a detailed plan for the festival, including budgets and funding, entertainment, events and activities, vendors, event management, relationships with operating City departments, assignments of responsibilities, recruitment of volunteers and the dates and duration of the festival.~~
4. ~~Working with City Council and City staff in executing the adopted festival plan, including assignment of responsibilities and coordination of volunteers.~~
5. ~~Working with City staff in tracking and managing festival finances and proceeds.~~
6. ~~Making recommendations to City Council regarding approval and execution of contracts required to execute the festival plan.~~
7. ~~Conducting an evaluation of each annual festival after its conclusion to identify strengths, weaknesses and recommendations for revisions or improvements.~~
8. ~~Preparing an annual report to the City Council regarding relevant issues for the just concluded festival within sixty (60) days of its conclusion, including a detailed financial accounting of the annual festival's receipts and expenses.~~
9. ~~Other relevant activities as may be required to carry out the responsibilities outlined above or as may be assigned by the City Council.~~



**CITY COUNCIL AGENDA SUBMISSION**  
*August 23, 2016*

**Agenda Item:**

**RESOLUTION 2016-18 A RESOLUTION AUTHORIZING THE EXECUTION OF CHANGE ORDERS #12 AND 13 OF THE CONTRACT BETWEEN THE CITY OF OLIVETTE AND UNITED CONSTRUCTION FOR CONSTRUCTION OF THE NEW CITY CENTER.**

**Description:**

The City Council is asked to approve a resolution authorizing execution of two changes orders of the contract between the City of Olivette and United Construction for construction of the new City Center. Change orders over \$10,000 require City Council approval. Change Order #12, in the amount of \$16,983 includes costs associated with increasing the height of the masonry wall around the generator and increasing the size of the generator pad. Change Order #13, in the amount of \$12,234 includes cost for the import of needed soil material for fill onsite and to undercut and re-compact soil at the east property line. The Council will remember that the import of soil was included under unit pricing of the contract, as it was unclear how much soil might be needed on site.

To date there have been seventeen change orders totaling \$114,917. This represents 1.3% of the \$8.8M construction costs. Several of these change orders included unit pricing, and thus were anticipated.

**Recommended Action:**

The Council is asked to approve Resolution 2016-18 authorizing the execution of Change Orders #12 and 13 of the contract between the City of Olivette and United Construction for construction of the new City Center.

**Attachments:**

1. Resolution
2. Change Orders

**Funding Request:** N/A

**Submitted by:**

*Barbara Sondag*

**CITY MANAGER**

**RESOLUTION #2016-18**

**A RESOLUTION AUTHORIZING THE EXECUTION OF CHANGE ORDERS #12 AND 13 OF THE CONTRACT BETWEEN THE CITY OF OLIVETTE AND UNITED CONSTRUCTION FOR CONSTRUCTION OF THE NEW CITY CENTER.**

**WHEREAS**, the City of Olivette, Missouri (the “City”) entered into a contract with United Construction for the construction of new City Center at a contract sum of \$8,812,000; and

**WHEREAS**, the contract stipulated that change orders over the amount of \$10,000 required the approval of the Olivette City Council; and

**WHEREAS**, change order #12, in the amount of \$16,983 represents the need for additional screening and pad of the generator; and

**WHEREAS**, change order #13, in the amount of \$12,234, represents the delivery and compaction of additional soils;

**WHEREAS**, both change orders were reviewed and approved by Archimages and PARIC for accuracy and reasonableness;

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF OLIVETTE, MISSOURI, AS FOLLOWS:**

**Section 1.** Change Orders #12 and #13, (**Exhibit A**) of the contract between the City of Olivette and United Construction for construction of the new City Center be approved, and that the City Manager be authorized to execute the change orders.

**Section 2.** This Resolution shall be in full force and effect from and after its passage.

PASSED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2016.

(SEAL)

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Mayor Ruth Springer

ATTEST:

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Myra G. Bennett, CMC/MRCC  
City Clerk

**Exhibit A**  
**Change Orders #12 and #13**



# AIA Document G701™ – 2001

## Change Order

<b>PROJECT</b> (Name and address): Olivette Municipal Center 1150 Dielman Road Olivette, MO 63132	<b>CHANGE ORDER NUMBER:</b> 012 <b>DATE:</b> August 2, 2016	<b>OWNER:</b> <input checked="" type="checkbox"/> <b>ARCHITECT:</b> <input checked="" type="checkbox"/> <b>CONTRACTOR:</b> <input checked="" type="checkbox"/> <b>FIELD:</b> <input checked="" type="checkbox"/> <b>OTHER:</b> <input checked="" type="checkbox"/>
<b>TO CONTRACTOR</b> (Name and address): United Construction 12747 Olive Blvd., Ste 101 St. Louis, MO 63141	<b>ARCHITECT'S PROJECT NUMBER:</b> 13069.2 <b>CONTRACT DATE:</b> February 10, 2016 <b>CONTRACT FOR:</b> General Construction	

### THE CONTRACT IS CHANGED AS FOLLOWS:

(Include, where applicable, any undisputed amount attributable to previously executed Construction Change Directives)

COR #016 - Additional cost to increase the height of the masonry wall around generator.

The original Contract Sum was	\$ 8,812,000.00
The net change by previously authorized Change Orders	\$ 81,836.00
The Contract Sum prior to this Change Order was	\$ 8,893,836.00
The Contract Sum will be increased by this Change Order in the amount of	\$ 16,983.00
The new Contract Sum including this Change Order will be	\$ 8,910,819.00

The Contract Time will be increased by Zero (0) days.

The date of Substantial Completion as of the date of this Change Order therefore is February 15, 2017.

**NOTE:** This Change Order does not include changes in the Contract Sum, Contract Time or Guaranteed Maximum Price which have been authorized by Construction Change Directive until the cost and time have been agreed upon by both the Owner and Contractor, in which case a Change Order is executed to supersede the Construction Change Directive.

### NOT VALID UNTIL SIGNED BY THE ARCHITECT, CONTRACTOR AND OWNER.

<u>Archimages, Inc.</u> <b>ARCHITECT</b> (Firm name)	<u>United Construction</u> <b>CONTRACTOR</b> (Firm name)	<u>City of Olivette</u> <b>OWNER</b> (Firm name)
<u>143 West Clinton Place</u> <u>St. Louis, MO 63122</u> <b>ADDRESS</b>	<u>12747 Olive Blvd., Ste 101</u> <u>St. Louis, MO 63141</u> <b>ADDRESS</b>	<u>9473 Olive Blvd.</u> <u>Olivette, MO 63132</u> <b>ADDRESS</b>
 <b>BY</b> (Signature)	 <b>BY</b> (Signature)	 <b>BY</b> (Signature)
<u>Roy A. Mangan</u> (Typed name)	<u>Kent Koenemann</u> (Typed name)	<u>Barb Sondag</u> (Typed name)
<u>August 2, 2016</u> <b>DATE</b>	<b>DATE</b>	<b>DATE</b>



**Change Order Request - Estimate Summary**

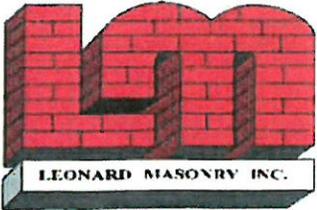
COR #:	<b>16 REVISED</b>			DESCRIPTION OF WORK:	COR 16 includes the additional price to increase the height of the masonry wall around the generator and increase the size of the concrete pad.
PROJECT #:	<b>U-1202</b>				
PROJ. TITLE:	<b>Olivette Municipal Center</b>			PREPARED BY: <b>KPK</b>   CHECKED BY:   DATE: <b>3-Aug-16</b>	
COST CODE	DESCRIPTION	AMOUNT	NOTES:		
	Labor (part #1)	0	This COR is based on discussions during the OAC meeting on March 18, 2016 to increase the height of the masonry walls around the generator because the generator is taller than initially expected. RF1 117 was issued which updated the height of the masonry wall as well as increased the size of the generator pad. The proposed cost is to increase the height of the wall from 6' to 11'-4" tall. This increased height is intended to block the generator from view from Dielman Rd. Please refer to the attached proposal from Leonard, Byrne and Jones, and Briner for details and cost breakdowns. Vee-Jay did not respond with an updated quote so we assume no change. Please note Leonard is also requesting a time extension of 5 days in conjunction with this change. This RE-Revised edition of COR 16 excludes cost of the generator pad increase.		
	Labor (part #2)	0			
	Fringes & Burden (part #1) @ %	INCL. ABOVE			
	Fringes & Burden (part #2) @ %	INCL. ABOVE			
01020	Consumables @ 5% of Labor	0			
01045	Safety @ 1% of Labor	0			
	Material (part #1)	0			
	Material (part #2)	0			
	Equipment (part #1)	0			
	Equipment (part #2)	0			
	Subtotal	0			
	Overhead and Profit on Self-Performed Work @ 12 %	0			
	Subtotal	0			
	Total Subcontracts (part #2)	16,174			
	Overhead and Profit on Subcontract Work @ 5 %	809			
	Subtotal	16,983			
	<b>CHANGE PROPOSAL TOTAL =</b>	<b>\$ 16,983</b>			

**Approval by Owner's Representative:**  
 Signature: \_\_\_\_\_  
 Date: \_\_\_\_\_

<b>TIME:</b>
This Change Proposal ADDS: _____ * days to our Contract Time OR...
* Extension of Time to be addressed in a separate agreement.
** Additional contract time for this revision cannot be determined yet.



# Change Order Request



C.O.R. # 943-06R

G.C. #

Date: 5/27/2016

**Project Name:** Olivette Municipal Center

**Project #:** 943

**To:** United Construction  
**Attn:** Kent Koenemann  
12747 Olive Blvd.  
Suite 101  
St. Louis, MO 63141

**From:** Leonard Masonry, Inc.  
Ken Westhoff  
5925 Fee Fee Road  
St. Louis, MO 63042

**Phone:** (314) 434-9690 **Fax:** (314) 434-0412

**Phone:** (314) 731-5500 **Fax:** (314) 731-3366

We hereby propose to make the following changes:

Increase height of generator screen wall per RFI 117.

**Change Order Price** \$11,679.00

This price is good for 5 days. If conditions change, this price is void.

We are requesting a time extension of 5 days in conjunction with this change.

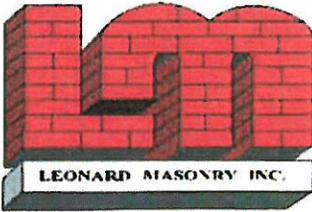
Ken Westhoff                      5/27/2016  
\_\_\_\_\_  
Author                                      Date Sent

Accepted      The above prices and specifications of this Change Order request are satisfactory and are hereby accepted. All work to be performed under same terms and conditions as specified in original contract unless otherwise specified.

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date of Acceptance

# Change Order Request



C.O.R. # 943-06R

G.C. #

Date: 5/27/2016

Project Name: Olivette Municipal Center

Project #: 943

## Labor

Labor Type	Man Hrs	\$/Hr	Burden	Fringe	TotalTax	Total Labor
Bricklayer	64.00	\$35.30	\$14.77	\$19.63	\$0.00	\$4,460.80
Mason Tender	40.00	\$30.76	\$13.02	\$14.99	\$0.00	\$2,350.80
				Sub Total	\$0.00	\$6,811.60
				Grand Total	\$0.00	\$6,811.60

## Materials

Materials	Quantity	Cost	TotalTax	Total Materials
Brick type 1	429.00	\$0.47	\$0.00	\$201.63
Brick type 2	1,113.00	\$0.35	\$0.00	\$389.55
Split face block	256.00	\$4.70	\$0.00	\$1,203.20
Split face bond beam	2.00	\$5.70	\$0.00	\$11.40
Split face ret. corner	7.00	\$6.70	\$0.00	\$46.90
4" block	-33.00	\$1.04	\$0.00	(\$34.32)
Cast stone	1.00	\$798.00	\$0.00	\$798.00
Mortar	2.00	\$186.00	\$0.00	\$372.00
Grout	54.00	\$5.00	\$0.00	\$270.00
Rebar	380.00	\$0.50	\$0.00	\$190.00
Horizontal reinforcing	210.00	\$0.80	\$0.00	\$168.00
		Sub Total	\$0.00	\$3,616.36
		Grand Total	\$0.00	\$3,616.36
		<b>Total</b>		<b>\$10,427.96</b>
		<b>Overhead</b>		<b>\$1,251.36</b>
		<b>Total</b>		<b>\$11,679.00</b>



United Construction  
C/O Kent Koenemann

**PROJECT:** Olivette Municipal Center  
**DATE:** 6/30/2016

## Change Order Request

Please issue a change order for the extra work detailed below:

<u>DATE</u>	<u>DESCRIPTION</u>	<u>QTY</u>	<u>UNIT</u>	<u>RATE</u>	<u>TOTAL</u>
<b>Additional Cost for Generator Enclosure Revision</b>					
	Carpenter Foreman	12.00	HRS	\$85.00	\$1,020.00
	Laborer	8.00	HRS	\$75.00	\$600.00
	Concrete	7.00	CY	\$105.00	\$735.00
	Concrete Short Load Charge	1.0	LS	\$100.00	\$100.00
	Foreman Truck	12.00	HRS	\$20.00	\$240.00
	Rebar	1.0	LS	\$1,800.00	\$1,800.00
					<b><u>\$4,495.00</u></b>

Sincerely,

Carl L. Rouse



# AIA Document G701™ – 2001

## Change Order

<b>PROJECT</b> (Name and address): Olivette Municipal Center 1150 Dielman Road Olivette, MO 63132	<b>CHANGE ORDER NUMBER:</b> 013 <b>DATE:</b> August 2, 2016	<b>OWNER:</b> <input checked="" type="checkbox"/> <b>ARCHITECT:</b> <input checked="" type="checkbox"/> <b>CONTRACTOR:</b> <input checked="" type="checkbox"/> <b>FIELD:</b> <input checked="" type="checkbox"/> <b>OTHER:</b> <input checked="" type="checkbox"/>
<b>TO CONTRACTOR</b> (Name and address): United Construction 12747 Olive Blvd., Ste 101 St. Louis, MO 63141	<b>ARCHITECT'S PROJECT NUMBER:</b> 13069.2 <b>CONTRACT DATE:</b> February 10, 2016 <b>CONTRACT FOR:</b> General Construction	

### THE CONTRACT IS CHANGED AS FOLLOWS:

(Include, where applicable, any undisputed amount attributable to previously executed Construction Change Directives)

COR #018 - Cost for the import of needed soil material for fill onsite and to undercut and recompact soil at the East property line.

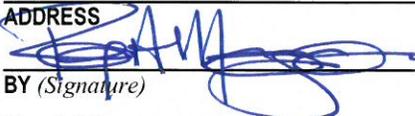
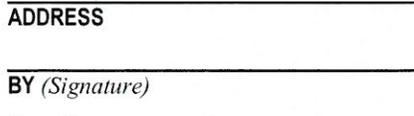
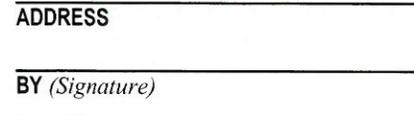
The original Contract Sum was	\$ 8,812,000.00
The net change by previously authorized Change Orders	\$ 98,819.00
The Contract Sum prior to this Change Order was	\$ 8,910,819.00
The Contract Sum will be increased by this Change Order in the amount of	\$ 12,234.00
The new Contract Sum including this Change Order will be	\$ 8,923,053.00

The Contract Time will be increased by Zero (0) days.

The date of Substantial Completion as of the date of this Change Order therefore is February 15, 2017.

**NOTE:** This Change Order does not include changes in the Contract Sum, Contract Time or Guaranteed Maximum Price which have been authorized by Construction Change Directive until the cost and time have been agreed upon by both the Owner and Contractor, in which case a Change Order is executed to supersede the Construction Change Directive.

### NOT VALID UNTIL SIGNED BY THE ARCHITECT, CONTRACTOR AND OWNER.

Archimages, Inc. <b>ARCHITECT</b> (Firm name)	United Construction <b>CONTRACTOR</b> (Firm name)	City of Olivette <b>OWNER</b> (Firm name)
143 West Clinton Place St. Louis, MO 63122 <b>ADDRESS</b>	12747 Olive Blvd., Ste 101 St. Louis, MO 63141 <b>ADDRESS</b>	9473 Olive Blvd. Olivette, MO 63132 <b>ADDRESS</b>
 <b>BY</b> (Signature)	 <b>BY</b> (Signature)	 <b>BY</b> (Signature)
Roy A. Mangan (Typed name)	Kent Koenemann (Typed name)	Barb Sondag (Typed name)
August 2, 2016 <b>DATE</b>	<b>DATE</b>	<b>DATE</b>





**ADDITIONAL WORK AUTHORIZATION:**

WO# 8988

**McFRY EXCAVATING, INC.**  
 142 Enchanted Parkway, Suite 100  
 Manchester, MO 63021  
 Phone: 636-386-4779 Fax: 636-386-4780

DATE: 6-3-2016	CONTRACTOR: UNITED	JOB#:	JOB NAME: Olivette Munc Center
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DESCRIPTION OF WORK TO BE COMPLETED; WORK TO CONSIST OF BUT NOT LIMITED TO THE FOLLOWING:

Hauled 26 Loads of Dirt into Site.

UNIT PRICE #9  
 \$1500/cy

*Jeff Brunson*

WORK AUTHORIZED BY: 6-3-2016	OPERATOR: DAH B
---------------------------------	--------------------

Rated Weir T.S.I. 6/3/16

FOR OFFICE USE ONLY

EQUIPMENT	MACHINE		HRS.		\$
EQUIPMENT	MACHINE		HRS.		\$
EQUIPMENT	MACHINE		HRS.		\$
ROCK	TONS		TYPE		\$
TRUCKS	TOTAL		HRS.		\$
DUMP FEES	TOTAL		LOADS		\$
HAND LABOR	LABORER		HRS		\$
SUBCONTRACTORS		DESCRIPTION			\$
OTHER					\$
					TOTAL \$

DATE:	WORK APPROVED FOR PAYMENT BY:
-------	-------------------------------

NOTICE TO OWNER...FAILURE OF THIS CONTRACTOR TO PAY THOSE PERSONS SUPPLYING MATERIAL OR SERVICES TO COMPLETE THIS CONTRACT CAN RESULT IN THE FILING OF A MECHANICS' LIEN ON THE PROPERTY WHICH IS THE SUBJECT OF THIS CONTRACT PURSUANT TO CHAPTER 429 RSMo. TO AVOID THIS RESULT YOU MAY ASK THIS CONTRACTOR FOR "LIEN WAIVERS" FROM ALL PERSONS SUPPLYING MATERIAL OR SERVICES FOR THE WORK DESCRIBED IN THIS CONTRACT. FAILURE TO SECURE LIEN WAIVERS MAY RESULT IN YOUR PAYING FOR LABOR AND MATERIAL TWICE.

**ADDITIONAL WORK AUTHORIZATION:**

WO# 8989

**McFRY EXCAVATING, INC.**  
 142 Enchanted Parkway, Suite 100  
 Manchester, MO 63021

Phone: 636-386-4779 Fax: 636-386-4780

DATE: 6-6-2016	CONTRACTOR: UNITED	JOB#:	JOB NAME: Olivette Munc. Center
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**DESCRIPTION OF WORK TO BE COMPLETED; WORK TO CONSIST OF BUT NOT LIMITED TO THE FOLLOWING:**

Hauled 30 Loads of Dirt into Site

WORK AUTHORIZED BY: Jeff Guessenorn	OPERATOR: D.H.B.
--	---------------------

6-6-2016 Robert Weir T.S.I. 6/6/16	<b>FOR OFFICE USE ONLY</b>
---------------------------------------	----------------------------

EQUIPMENT	MACHINE		HRS.		\$
EQUIPMENT	MACHINE		HRS.		\$
EQUIPMENT	MACHINE		HRS.		\$
ROCK	TONS		TYPE		\$
TRUCKS	TOTAL		HRS.		\$
DUMP FEES	TOTAL		LOADS		\$
HAND LABOR	LABORER		HRS		\$
SUBCONTRACTORS		DESCRIPTION			\$
OTHER					\$
					TOTAL \$

DATE:	WORK APPROVED FOR PAYMENT BY:
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**NOTICE TO OWNER...FAILURE OF THIS CONTRACTOR TO PAY THOSE PERSONS SUPPLYING MATERIAL OR SERVICES TO COMPLETE THIS CONTRACT CAN RESULT IN THE FILING OF A MECHANICS' LIEN ON THE PROPERTY WHICH IS THE SUBJECT OF THIS CONTRACT PURSUANT TO CHAPTER 429 RSMo. TO AVOID THIS RESULT YOU MAY ASK THIS CONTRACTOR FOR "LIEN WAIVERS" FROM ALL PERSONS SUPPLYING MATERIAL OR SERVICES FOR THE WORK DESCRIBED IN THIS CONTRACT. FAILURE TO SECURE LIEN WAIVERS MAY RESULT IN YOUR PAYING FOR LABOR AND MATERIAL TWICE.**

**ADDITIONAL WORK AUTHORIZATION:**

WO# 8991

**McFRY EXCAVATING, INC.**  
 142 Enchanted Parkway, Suite 100  
 Manchester, MO 63021

Phone: 636-386-4779 Fax: 636-386-4780

DATE: 6-8-2016	CONTRACTOR: UNITED	JOB#:	JOB NAME: Olivette Manc. Center
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DESCRIPTION OF WORK TO BE COMPLETED; WORK TO CONSIST OF BUT NOT LIMITED TO THE FOLLOWING:

Hauled 22 Loads of Dirt into Site

WORK AUTHORIZED BY: Jeff Bruner	OPERATOR: VAH
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6-8-2016

Russel Wein 6/8/16

FOR OFFICE USE ONLY

EQUIPMENT	MACHINE		HRS.		\$
EQUIPMENT	MACHINE		HRS.		\$
EQUIPMENT	MACHINE		HRS.		\$
ROCK	TONS		TYPE		\$
TRUCKS	TOTAL		HRS.		\$
DUMP FEES	TOTAL		LOADS		\$
HAND LABOR	LABORER		HRS		\$
SUBCONTRACTORS		DESCRIPTION			\$
OTHER					\$
				TOTAL	\$

DATE:	WORK APPROVED FOR PAYMENT BY:
-------	-------------------------------

NOTICE TO OWNER...FAILURE OF THIS CONTRACTOR TO PAY THOSE PERSONS SUPPLYING MATERIAL OR SERVICES TO COMPLETE THIS CONTRACT CAN RESULT IN THE FILING OF A MECHANICS' LIEN ON THE PROPERTY WHICH IS THE SUBJECT OF THIS CONTRACT PURSUANT TO CHAPTER 429 RSMo. TO AVOID THIS RESULT YOU MAY ASK THIS CONTRACTOR FOR "LIEN WAIVERS" FROM ALL PERSONS SUPPLYING MATERIAL OR SERVICES FOR THE WORK DESCRIBED IN THIS CONTRACT. FAILURE TO SECURE LIEN WAIVERS MAY RESULT IN YOUR PAYING FOR LABOR AND MATERIAL TWICE.

**ADDITIONAL WORK AUTHORIZATION:**

WO# 8998

**McFRY EXCAVATING, INC.**  
 142 Enchanted Parkway, Suite 100  
 Manchester, MO 63021

Phone: 636-386-4779 Fax: 636-386-4780

DATE: 6-7-2016	CONTRACTOR: UNITED	JOB#:	JOB NAME: Olivette Munc. Center
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**DESCRIPTION OF WORK TO BE COMPLETED; WORK TO CONSIST OF BUT NOT LIMITED TO THE FOLLOWING:**

Dug out wet area that was 75' x 4' x 8' = 2400 sq ft. = 89 cu. Yards. Put new dry dirt in place of compacted.

#6/cy

WORK AUTHORIZED BY: Jeff Gueneron 6-7-2016	OPERATOR: YAHB
--	-------------------

					FOR OFFICE USE ONLY
EQUIPMENT	MACHINE		HRS.		\$
EQUIPMENT	MACHINE		HRS.		\$
EQUIPMENT	MACHINE		HRS.		\$
ROCK	TONS		TYPE		\$
TRUCKS	TOTAL		HRS.		\$
DUMP FEES	TOTAL		LOADS		\$
HAND LABOR	LABORER		HRS		\$
SUBCONTRACTORS		DESCRIPTION			\$
OTHER					\$
					TOTAL \$

DATE:	WORK APPROVED FOR PAYMENT BY:
-------	-------------------------------

**NOTICE TO OWNER...FAILURE OF THIS CONTRACTOR TO PAY THOSE PERSONS SUPPLYING MATERIAL OR SERVICES TO COMPLETE THIS CONTRACT CAN RESULT IN THE FILING OF A MECHANICS' LIEN ON THE PROPERTY WHICH IS THE SUBJECT OF THIS CONTRACT PURSUANT TO CHAPTER 429 RSMo. TO AVOID THIS RESULT YOU MAY ASK THIS CONTRACTOR FOR "LIEN WAIVERS" FROM ALL PERSONS SUPPLYING MATERIAL OR SERVICES FOR THE WORK DESCRIBED IN THIS CONTRACT. FAILURE TO SECURE LIEN WAIVERS MAY RESULT IN YOUR PAYING FOR LABOR AND MATERIAL TWICE.**



**CITY COUNCIL AGENDA SUBMISSION**  
*August 23, 2016*

**Agenda Item:**

City Council Rules of Procedure

**Description:**

Each year the Council reviews its Rules of Procedure. The annual review occurred at the Council Retreat, held on July 23. This year the Council added a section on Committee/Commission Appointments.

**Recommended Action:**

To Approve the 2016 City Council Rules of Procedure.

**Attachments:**

1. Rules of Procedure

**Funding Request:** N/A

**Submitted by:**

Barbara Sondag  
CITY MANAGER

## **COUNCIL RULES OF PROCEDURE 2016**

The following rules govern the conduct of meetings of the City Council. Rules, other than those prescribed by statute, may be suspended at any time by the consent of a majority of the Council present at any meeting.

Rule 1. *Parliamentary Procedure.* Generally speaking, the City Council operates under Robert's Rules of Order. However, special rules and procedures adopted by the Council always supersede Robert's Rules of Order.

Parliamentary procedure was developed not only to bring order to meetings but also to ensure that all members have equal rights during the process. The rights of the minority must be protected, but the majority vote decides after full and free discussion.

Rule 2. *Meeting Times* The Council has its Regular Meeting on the second and fourth Tuesday of each month at 7:00 pm. On the first Tuesday of each month the Council and staff generally meet together worksession meeting for goal setting, problem solving, or project review. Worksessions, while following a less formal structure, must meet the same statutory requirements as any Council gathering.

Rule 3. *Agenda Setting*

Consideration of items to be reviewed by the Mayor and Chairman at the regular agenda setting meeting for inclusion in the regularly-scheduled Council meeting shall be done in the following manner:

- a. By prior agreement of a majority of three Council members at a previously-scheduled Council meeting.
- b. By written request of a Council member by 12pm the Wednesday prior to a scheduled meeting. The request would be addressed to the City Manager's Office.
- c. By written request of an Olivette citizen or group, by 12pm the Wednesday prior to the next scheduled Council meeting.
- d. At the request of the City Manager, by draft Agenda considered by the Mayor and Chairman at the Agenda-setting meeting.
- e. By any state or federal government entity, for items requiring Council authorization.
- f. In order for a request to be placed on the Council Agenda, the Mayor and Chairman or designee, must both agree on placement of a proposed Agenda item.

Should both the Mayor and Chairman agree that an item should not be on the Agenda, the item shall not be placed on the regular warned Agenda and other Council shall be notified. All Council members shall be given notice of items discussed or otherwise considered for inclusion on the agenda.

In the event that the Mayor and Chairman disagree regarding placement of an item on the Agenda, the item shall be forwarded to the Council for a vote as to placement on the Agenda.

If a majority of Council members vote to place an item on the Agenda, the item will be placed on the next regularly-scheduled Council Meeting for consideration. The item will not be discussed or considered at the meeting during which it was voted to be placed on

the agenda. The item will be discussed on the Agenda for the meeting at which it was placed.

As with any item voted by a Council member, a proposal must have the affirmative vote of three Council members to constitute a positive vote. In the event of defeat of the item by a majority of Council members, the Council will not consider the agenda item.

Rule 4. *Agenda posting* The City Clerk shall make the agenda known to the Council, the press and public as far in advance of a meeting as may be practical, preferably two days in advance of such meeting. The agenda is posted at various locations including on the bulletin board at City Hall and on the City's website, [www.olivettemo.com](http://www.olivettemo.com). Each Council agenda packet includes a brief summary of proposed legislation, staff recommendations as well as a calendar of upcoming events.

The published agenda may be altered or suspended by the Council present. Items shall be added or removed upon majority vote. Recommendations approved by the Planning and Community Design Commission for legislative action shall be placed on the agenda upon the receipt of said recommendation by the City Clerk.

Rule 5. The Mayor shall decide all questions or order, subject to appeal to a majority of the Council.

Rule 6. A member of Council discussing a question shall address his fellow members, and no member of Council has the floor until recognized by the Mayor, subject to appeal to a majority of the Council. For example, "Mayor, may I ask a question of the City Manager, City Attorney etc.?"

Rule 7. Roll call votes shall be taken and recorded for all actions of the City Council pursuant to Section 2.8 (c) of the City Charter.

Rule 8. No vote or action of the City Council shall be rescinded at any subsequent meeting unless there is present at such meeting as many members of the Council as were present when such vote or action was originally taken.

Rule 9. *Open Sessions* All meetings of the Council shall be open to the public, except portions of such meetings from which the Council may exclude the public as permitted under the Sunshine Law.

Rule 10. *Closed Session*. Any person in attendance at an executive session is honor-bound not to violate the confidentiality of the discussion taking place during the session, except as to any portions thereof which may clearly violate the Open Meetings Law.

Rule 11. *Committee Reports* The Chair of the various boards, commissions, and advisory committees established by statute or ordinance, may, upon the approval of a majority of the City Council, render an oral report. Reports may be received in written form and made part of the record.

Rule 12. *Hearing from Citizens Portion of Agenda* With regard to comments, suggestions, concerns and petitions from City residents, business persons, or other interested persons in the “Hearing from Citizens” portion of the regular meeting of the City Council agenda, the following procedures shall be observed:

- a. Persons wishing to speak on a particular matter including, but not limited to any bill appearing on the Council’s tentative agenda shall fill out a speaker card with the name and address of the speaker and the subject matter to be addressed. The individual shall submit the speaker card to the Chair. The chair shall call for submittal of all speaker cards prior to the “Hearing from Citizens” portion of the meeting. Any person who has indicated a desire to speak by the timely submittal of a speaker card shall be afforded a total of three (3) minutes to address the matters identified on the speaker card. All remarks shall be addressed to the Council as a body through the Chair, rather than to any individual Councilmember or to the audience.
  1. The “Hearing from Citizens” portion of the meeting shall not be used as a question and answer period. Speakers wishing to receive information, however, may direct questions to the Council or to other City officials; *provided that* the question is directed to the Chair and not to an individual Councilmember or official. Questions may be answered at the discretion and direction of the Chair, but need not be answered during the “Hearing from Citizens” portion. The Council will attempt to respond to questions of general public interest in an expeditious manner.
  2. Individual Councilmembers who desire to respond to questions posed or issues raised during the “Hearing from Citizens” portion may do so at the time provided during the agenda for City Council Reports or, in the case of a matter identified on the agenda, may seek permission from the Chair to respond during the time the matter is considered by the Council. The Chair may, at the discretion of the Chair, permit a Councilmember’s response at times other than herein provided. No person shall enter into any discussion without obtaining the floor through recognition by the Chair.
  3. To afford additional time for Citizen questions of public interest, bills introduced on one Council agenda shall not be taken up for final action until the next succeeding agenda, except for those bills determined by the Council to require expedited action and so noted on the agenda; *provided that* failure to follow this procedure shall not invalidate any action of the Council. Residents, business persons and other interested parties are encouraged to submit written comments in advance to the Council on any pending matter.
- b. Citizen comments and questions shall be limited to the “Hearing from Citizens” portion of the agenda. Once the “Hearing from Citizens” portion is closed, the public portion of the Council meeting is complete, the business

meeting of the Council begins and public comments and audience participation is concluded.

Rule 13. *Debates and Deliberations of the Council*

With regard to the discussions, debates and deliberations among the City Council, the following rules of procedures shall be observed:

- a. Council members shall be allowed to speak only after having obtained recognition from the Chair to do so.
- b. Council members shall hold the floor for a maximum of five (5) minutes at any given time and shall be allowed to hold the floor no more than twice on any given issue.
- c. Council members refrain from engaging in repetitive debate and may forfeit the floor for doing so.
- d. Council members shall limit their discussions to the City business at hand and shall refrain from injecting new issues into the discussion. Personal and political comments are not appropriate.
- e. Debate on any matter under consideration by the Council and requiring a vote thereon may take place only after a motion is made by a member of the Council pertaining to the matter and a second is obtained from another Council member (See page 39, Parliamentary Procedure). After debate is exhausted, the Chair shall call the question, after which no further debate shall be allowed, and the Chair shall bring the motion at issue to a vote by the Council. After voting is completed, the City Clerk shall announce the vote and the Chair shall declare the motion as having passed or failed.

Rule 14. *General Rules of Decorum.* Members of the audience shall refrain from speaking, interrupting, or leaving a meeting while a person recognized by the Chair is speaking or the meeting is otherwise in progress. Protracted, repetitive, irrelevant or abusive remarks from the public may be closed off at any time by majority direction of the Council. The Chair will endeavor to allow for appropriate breaks in the proceedings to allow those members of the audience who desire to leave, to do so. Members of the audience should turn off or otherwise mute mobile phones, pagers, or other items that may cause a disruption of the proceedings. Violators will be asked to leave the meetings. Council members and staff will refrain from using mobile phones or other devices during the meeting.

Rule 15. *Rules governing out of order.* The chair shall use an escalating procedure to bring a meeting into order in the unfortunate situation that a Councilmember or member of general public is out of order. The procedure is as follows:

- a. Mayor shall ask the individual to come to order. If unsuccessful, step two;

- b. Mayor shall name the individual, asking the person, by name, to come to order e.g. Councilmember Jones, you are out of order. The name shall then appear in the minutes. If unsuccessful, step three;
- c. Mayor shall ask for a motion to adjourn the meeting and reconvene in fifteen minutes to allow the out of order person to cool-off. If the person continues inappropriate behavior, then step four;
- d. Mayor shall ask for a motion to rule the person is out of order and to have the person escorted from the meeting.

Rule 16. *Rules Governing; Suspension of Rules.* Except where provided otherwise by the governing body, all meeting of City councils, boards, or committees shall be governed by Robert's Rules of Order, Newly Revised, 10<sup>th</sup> Edition. The Council may only suspend its rules of procedure by motion duly passed. However, failure to follow these procedures shall not invalidate any action taken by the Council.

Rule 17. *Approval of Ordinances at one Meeting* Normally new and amended bills must be read twice with a public hearing held at the second reading. The process is as outlined below:

*First meeting:*

- a. The Chair request that the Bill be read for a first time by title only (or in its entirety).
- b. Council members may ask questions regarding the bill, however there shall not be debate on the bill.

*Second meeting:*

- a. The Mayor then opens the public hearing
- b. Public speaks to the bill and upon completion the Mayor closes the public hearing.
- c. The Chair request that the Bill be read for a second time by title
- d. A motion is made, seconded and carried to approve the Bill for final passage. A Roll call vote is taken.
- e. If approved the Clerk declares, "Bill number \_\_\_\_\_ becomes Ordinances Number \_\_\_\_\_"

However, there are times when it is necessary to expedite the process and have both readings and public hearing held at one meeting. The process is as outlined below:

- a. Mayor calls for first reading of the bill. (No motion)
- b. A motion is made, seconded and carried for the Council to suspend their ordinary rules and read Bill \_\_\_\_\_ for a second time by title only (or in its entirety) and consider it for final passage. Roll call vote is taken
- c. Mayor opens the Public Hearing. (No motion)
- d. Public speaks to the bill and upon completion the Mayor closes the public hearing. (No motion)
- e. Mayor calls for the Bill to be read a second time. (No motion)
- f. A motion is made, seconded and carried to approve the Bill \_\_\_\_\_ for final passage. Roll call vote is taken

- g. If approved the Clerk declares, “Bill \_\_\_\_\_ becomes Ordinance Number \_\_\_\_\_”

Rule 18. *Council Liaison.* Councilmembers may be assigned the role of Council Liaison to a Committee or Commission. With the exception of PCDC (which has statutory requirements of the Councilmember) this role is similar no matter what committee or commission the liaison might be serving.

The Council Liaison should provide insight and perspective to the Committee, without being directive. Council Liaisons should participate in Committee discussions, without dominating those discussions. Committee members are citizen volunteering their time, talent and treasure to the City, but for many participants this might be their first entry into the public sector. Council liaisons should discuss committee concerns/issues with the staff liaison or the City Manager.

Committee Liaisons report orally to the Council at regular Council meetings.

Rule 19. *Media (News, Social, etc.)*

The Mayor is the primary point of contact for communication with the Media. When time allows, the Mayor will review with the full Council media communication.

Rule 20. *Committee/Commission Appointments*

The following process will be used to fill the annual vacancies that occur June 30 of each year.

No later than forty-five days prior to the appointment date, the City Clerk will email committee members whose terms are expiring. The communication will inform the member of the expiring term, how to reapply for the committee, and a close date for accepting applications.

No later than thirty days prior to the appointment date, the City Clerk will publicize the need for volunteers to fill City committee/commission vacancies. At a minimum, information will include the names of the committees, the number of vacancies, and the close date for accepting applications.

The application process will occur through the City’s website, using a standardize application form. All applicants will utilize the on-line form.

Following the close date, the City Clerk will download the applications from the website and distribute to Council and the City Manager.

The City Council will determine the need for interviewing applicants and if necessary a date and time will be set for applicant interviews.

At a regular meeting the Council will appoint the committee/commission members by nomination and a vote of the majority. Following the appointments, the City Clerk will notify applicants of the status of their application. The City Clerk will also email to all staff and Council liaisons the list of committee members with contact information. Staff Liaisons will contact new members to schedule a committee/commission orientation.



**CITY COUNCIL AGENDA SUBMISSION  
August 23, 2016**

**Agenda Item:**

Consideration of proposals to replace concrete slabs on Harvest Court and Warson Pines

**Description:**

The Public Works Department released a bid package to replace deteriorated concrete pavement on Harvest Ct. and Warson Pines earlier this year. The quantity of concrete that needs to be replaced is more than City staff can self perform.

The City received bids from Spencer Contracting and Byrne and Jones. Both contractors have a positive history with Olivette and are qualified to complete the project.

Byrne and Jones is the low bidder and has availability to complete the project this fall.

**Recommended Action:**

Motion to authorize the City Manager to enter into an agreement not to exceed \$64,221.00 with Byrne and Jones per the bid opening March 9, 2016

**Attachments:** Notification, Bid and Plans

**Funding Request: \$64,221.00**

05-4021-D323.00 Current Balance \$128,000.00

**Submitted by:**

*Bruce McGregor*

Public Works Director

# BID TABULATION

City of Olivette  
 Project: 2016 Concrete Slab Replacement  
 Date: March 9, 2016



ITEM NO.	ITEM DESCRIPTION	QTY	UNIT	ENGINEER'S ESTIMATE		Byrne & Jones Construction		Spencer Contracting Co.	
				UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE
1.A	Remove & Replace P.C.C. Pavement (Harvest Court, limestone aggregate)	260	SY	\$90.00	\$23,400.00	\$95.50	\$24,830.00	\$75.00	\$19,500.00
1.B	Remove & Replace P.C.C. Pavement (Warson Pines, exposed Meramec aggregate)	294	SY	\$95.00	\$27,930.00	\$87.90	\$25,842.60	\$90.38	\$26,571.72
2	4" Rolled Stone Base	650	SY	\$6.00	\$3,900.00	\$3.40	\$1,883.60	\$8.00	\$5,200.00
3	Seeding & Mulching	80	SY	\$75.00	\$6,000.00	\$85.40	\$6,832.00	\$50.00	\$4,000.00
4	Traffic Control	1	LS	\$500.00	\$500.00	\$228.00	\$228.00	\$4,300.00	\$4,300.00
5	Saw cutting (full depth for removal)	575	LF	\$6.00	\$3,450.00	\$4.20	\$2,415.00	\$7.00	\$4,025.00
6	Inlet Protection	7	EA	\$150.00	\$1,050.00	\$113.00	\$791.00	\$100.00	\$700.00
<b>Alternate #1</b>									
7	Pavement under drains to inlet	26	LF	\$70.00	\$1,820.00	\$53.80	\$1,398.80	\$60.00	\$1,560.00

<b>TOTAL BASE BID:</b>	<b>\$66,230.00</b>	<b>\$62,822.20</b>	<b>\$64,296.72</b>
<b>ALTERNATE #1 BID:</b>	<b>\$1,820.00</b>	<b>\$1,398.80</b>	<b>\$1,560.00</b>



AFFIDAVIT OF PUBLICATION

STATE OF MISSOURI  
COUNTY OF ST. LOUIS

} S.S.

Before the undersigned Notary Public personally appeared **Karie Clark** on behalf of **THE COUNTIAN, ST. LOUIS COUNTY** who, being duly sworn, attests that said newspaper is qualified under the provisions of Missouri law governing public notices to publish, and did so publish, the notice annexed hereto, starting with the **February 16, 2016** edition and ending with the **February 16, 2016** edition, for a total of 1 publications:

02/16/2016

**2016 Concrete Slab Replacement**

Sealed bids for the 2016 Concrete Slab Replacement project in the City of Olivette, MO will be received until 10:30AM Central Standard Time, **Wednesday March 9, 2016** by the City of Olivette, 9473 Olive Blvd, Olivette, Missouri 63132, at which time bids will be publicly opened and read.

The work shall consist of slab replacement and related work on Harvest Court and Warson Pines within the City Limits.

Bid documents will be available at [www.OlivetteMO.com](http://www.OlivetteMO.com) and from 8:00AM to 3:30PM at the Olivette Department of Public Works, 1200 North Price, Olivette, MO 63132, 314-993-0252 beginning Tuesday February 17, 2015. Questions should be directed to Bruce McGregor at [BmcGregor@OlivetteMO.com](mailto:BmcGregor@OlivetteMO.com) or (314-993-0252).

Each bid must be accompanied by a cashier's check or certified check, or a Bid Bond executed by the Bidder and an approved surety company payable to the City, in an amount not less than five percent (5%) of the sum total of the base bid. A payment bond and performance bond in the amount of one hundred (100%) percent of the bid amount will be required of the selected bidder.

Bidder's shall not pay less than the prevailing hourly rates of pay established by wage determinations included with the project specifications, and shall comply with all other conditions of the specifications.

The City reserves the right to reject any and all bids and to waive informalities in bids. A Bid may not be modified, withdrawn or canceled by the Bidder within sixty (60) days following the time and date designated for the receipt of Bids, and each Bidder so agrees in submitting his Bid.

10989493 County Feb 16, 2016

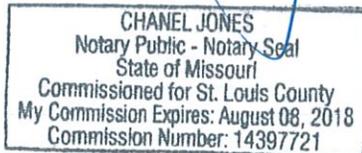
*Karie Clark*

Karie Clark

Subscribed & sworn before me this 16<sup>th</sup> day of Feb., 2016  
(SEAL)

*Chanel Jones*

Notary Public





**CITY COUNCIL AGENDA SUBMISSION  
August 23, 2016**

**Agenda Item:**

Consideration of proposal from Bobcat of St. Louis

**Description:**

The Public Works department currently has 2 backhoes (1989 and 2004 model years) to use for various construction and maintenance projects. The 1989 backhoe was declared surplus during the August 9, 2016 Council Meeting.

Public Work staff believes that a skid steer will better diversify equipment resources for staff to respond to municipal needs. Skid steers are customizable with a variety of attachments that can be rented or purchased. The attached proposal includes the S650 skid steer with enclosed cab and combination bucket.

Bobcat of St. Louis offered a trade in of \$9000.00 for the 1989 backhoe. The Public Works Director believes that this is a fair price based on evaluation by JJ Kane Auctioneers.

This proposal is extended off of MODOT Contract # 3-130326RW that expires April 4, 2017.

**Recommended Action:**

Motion to authorize the City Manager to approve a purchase order to Bobcat Company, Government Sales in the amount of \$33,362.84 to purchase (1) S650 skid steer with combination bucket.

**Attachments:** Proposal, MODOT Acceptance Letter

**Funding Request: \$33,362.84**

Account 05-4021-D380.00 Current Balance \$48,000.00

**Submitted by:**

*Bruce McGregor*

Public Works Director



## Product Quotation

Quotation Number: CMS-34180v1  
Date: 2016-08-15 14:02:27

Customer Name/Address:	Bobcat Delivering Dealer	<b>ORDER TO BE PLACED WITH: Contract Holder/Manufacturer</b>
<b>CITY OF OLIVETTE</b> Attn: BRUCE MCGREGOR 9723 GRANDVIEW DR OLVETTE, MO 63132 Phone: (314) 994-2402	Tim Bobcat of St. Louis, VALLEY PARK MO 63088-2031 Phone: (636) 225-2900 Fax: (636) 225-8866	<b>Clark Equipment Co dba Bobcat Company</b> 250 E Beaton Dr, PO Box 6000 West Fargo, ND 58078 Phone: 701-241-8719 Fax: 701-280-7860 Contact: Crystal Stram Crystal.stram@doosan.com

Description	Part No	Qty	Price Ea.	Total
<b>S650 T4 Bobcat Skid-Steer Loader</b> 74 HP Tier 4 Turbo Diesel Engine Auxiliary Hydraulics: Variable Flow Backup Alarm Bob-Tach Bobcat Interlock Control System (BICS) Controls: Bobcat Standard Cylinder Cushioning - Lift, Tilt Engine/Hydraulic Systems Shutdown Glow Plugs (Automatically Activated) Horn Instrumentation: Engine Temp and Fuel Gauges, Hourmeter, RPM and Warning Lights Warranty: 12 Months, Unlimited Hours	M0269	1	\$32,298.70	\$32,298.70
	Lift Arm Support Lift Path: Vertical Lights, Front & Rear Operator Cab			
	<ul style="list-style-type: none"> <li>Includes: Adjustable Cushion Seat, Top &amp; Rear Windows, Parking Brake, Seat Bar, Seat Belt</li> <li>Roll Over Protective Structure (ROPS) meets SAE-J1040 &amp; ISO 3471</li> <li>Falling Object Protective Structure (FOPS) meets SAE-J1043 &amp; ISO 3449, Level I; (Level II is available through Bobcat Parts)</li> </ul>			
	Spark Arrestor Exhaust System Tires: 12-16.5 12 PR Bobcat Heavy Duty			
<b>Factory Installed</b>	<b>A91 Option Package</b>			
Cab enclosure with Heat and AC High Flow Hydraulics Two-Speed Travel with SAPR Parking Brake Sound Reduction Hydraulic Bucket Positioning Cab Accessories Package	M0269-P01-A91	1	\$7,095.90	\$7,095.90
	Power Bob-Tach Deluxe Instrument Panel Keyless Start Suspension Seat with 3-Point Belt Engine Block Heater Attachment Control Kit			
<b>Attachments</b>	<b>Strobe</b>			
	M0269-R16-C03	1	\$279.00	\$279.00
	74" Combination Bucket	1	\$2,387.00	\$2,387.00
	7167312			
	--- Bolt-On Teeth (8)	8	\$37.78	\$302.24
	6737322			

<b>Total of Items Quoted</b>		<b>\$42,362.84</b>
<b>Trade-in JD Backhoe Loader</b>		<b>(\$9,000.00)</b>
<b>Quote Total - US dollars</b>		<b>\$33,362.84</b>

\*Prices off Missouri Contract# 3-130326RW. Contract Expires: 5-1-2015 THRU 4-30-2017  
 \*Terms Net 30 Days. Credit cards accepted.  
 \*FOB: Destination within the 48 Contiguous States.  
 \*Delivery: 60 to 90 days or less from ARO.  
 \*State Sales Taxes apply. IF Tax Exempt, please provide Tax Exempt Certificate with order.  
 \*TID# 38-0425350  
 \*Orders Must be Placed With: Clark Equipment Company dba Bobcat Company, Govt Sales, 250 E Beaton Drive, PO Box 6000, West Fargo, ND 58078.

Prices & Specifications are subject to change. Please call before placing an order. Applies to factory ordered units only.



# Bobcat

250 East Beaton Drive  
West Fargo, ND 58078

April 7, 2016

Robin Warren  
Sr. General Services Specialist  
Central Office GS – Procurement  
573-526-7929  
[Robin.Warren@modot.mo.gov](mailto:Robin.Warren@modot.mo.gov)

Ms. Warren,

Bobcat Company agrees to exercise the 3<sup>rd</sup> and final renewal option for contract 3-1303326RW for Skid Steers. Please see the enclosed or attached price pages that include the newest models and the 2016 pricing sheets for contracted items for your review and approval.

Thank you in advance for your time and dedication to this renewal.

If you have further questions or concerns regarding this, please don't hesitate to call me at 701-241-8746 or email at [randy.fuss@doosan.com](mailto:randy.fuss@doosan.com).

Best Regards,

**Randy L. Fuss**  
*Government Accounts Manager, Sr*  
Bobcat Company  
701-241-8746  
[Randy.fuss@doosan.com](mailto:Randy.fuss@doosan.com)



**CITY COUNCIL AGENDA SUBMISSION**  
*August 23, 2016*

**Agenda Item: Request for Authorization to Dispose of or Donate Outdated Electronic Equipment No Longer in Use by the Police & Fire Departments**

**Description: The Police & Fire Departments have outdated electronic equipment to include walkie-talkies, vehicle radios, vehicle laptops and vehicle cameras that can be disposed of or donated to the Missouri Department of Public Safety (DPS). DPS will contact smaller agencies that may be able to utilize the equipment for their operations. Disposed of electronics will be recycled.**

**Recommended Action: A Motion Authorizing the Police & Fire Departments to Dispose of or Donate Outdated Electronic Equipment.**

**Attachments: List of Electronic Equipment to be Disposed of or Donated.**

**Funding Request:**

**Submitted by:**

*Rick Knox*

**DEPARTMENT HEAD**

## **Proposed Handheld Radio Donation**

- Motorola Battery Maintenance Box (battery reconditioning) D1099452
- Seventeen (17) handheld walkie belt clips
- Two (2) automobile charging stations for handheld walkies
- Nineteen (19) handheld Motorola walkie charging stations
- Twenty-four (24) handheld Motorola walkies:
  - HT 750 672TAE7631
  - HT 750 672TAE7932
  - HT 750 672HDG1237
  - HT 750 672HDED238
  - HT 750 672TAE929
  - HT 750 672HDG1219
  - HT 750 672HDED231
  - HT 750 672HDED288
  - HT 750 672HDG1247
  - HT 750 672TSE7944
  - HT 1250 749HFG5788
  - HT 1250 749HFG6415
  - HT 1250 749HFG6414
  - HT 1250 749HFG5797
  - HT 1250 749HFG5798
  - HT 1250 749HFG6412
  - HT 1250 749HFG6417
  - HT 1250 749HFG5881
  - XT 1500 687CKV1951
  - XT 1500 687CKV1948
  - XT 1500 687CKV1950
  - XT 1500 687CKV1949
  - XT 1500 687 CKV1952
  - XT 1500 687CKV1953

## **Proposed Radios to Destroy/Dispose Of (old and outdated)**

- Motorola HT 600 651AWJ3740
- Visar 720AWJ3740

### **Proposed Tough Book Donation**

- 5JKSA72372
- 4LKSA79665
- 4LKSA9561
- 4LKSA81232
- 4LKSA79633
- 4LKSA79625
- 4LKSA79621

### **Proposed Motorola Car Radio Donation**

- 623CFH0490
- 623CFH0494
- 623CEJ0682
- 623CEJ0683
- 623CEJ0684
- 623CEJ0685
- 623CFH0491
- 623CFH0492
- 623CFH0493

### **Kustom Signals Car Camera Radio Donation**

- IE02480
- IE02484
- IE02481
- IE01977
- IE02482
- IE02483

## Dave Wolf

---

**From:** Scott Avery <savery@olivettermo.com>  
**Sent:** Wednesday, August 10, 2016 3:06 PM  
**To:** 'David Wolf'  
**Cc:** 'Rick Knox'; 'Ron Johnson'  
**Subject:** Radios for donation

Lt. Wolf the following radios are what the fire department has to donate at this time.

HT 1250 Portable radios following serial numbers

749HEQF877  
749HFS8498  
749TCU1521  
749TCU1515  
749HFS8665  
749HFS8688  
749HEQF853  
749TAG9291  
749TCU1516  
749TAG9281  
749HFJA717

HT 1250 COMMAND PROGRAMMABLE PORTABLES FOLLOWING SERIAL NUMBERS

103TJW0077  
103TFWJ085

MO1HX Mobile Radios serial numbers

623CFT0459  
623CFE0746  
623CFT0458  
623CFE0747  
623CFE0748

Thank you for making all of the arrangements for the donation of these radios.

Scott E. Avery  
Fire Chief  
City of Olivette  
Cell 314-791-0502

## Dave Wolf

---

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749TCU1516  
749TAG9281  
749HFJA717

HT 1250 COMMAND PROGRAMMABLE PORTABLES FOLLOWING SERIAL NUMBERS

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MO1HX Mobile Radios serial numbers

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623CFE0746  
623CFT0458  
623CFE0747  
623CFE0748

Thank you for making all of the arrangements for the donation of these radios.

Scott E. Avery  
Fire Chief  
City of Olivette  
Cell 314-791-0502

**CITY OF OLIVETTE  
CITY COUNCIL MEETING MINUTES  
August 9, 2016**

The Olivette City Council met on August 9, 2016 at 7:00 PM in the Council Chambers at Olivette City Hall located at 9473 Olive Boulevard, Olivette, Missouri. Mayor Ruth Springer called the meeting to order.

**Item #1 – Roll call**

On roll call, the following persons were present: Mayor Ruth Springer, Chairman Pro-tem J. Gregory Carl, Council Member Maxine Weil, Council Member Missy Waldman and Council Member Suzanne Sewell.

Also in attendance were City Manager Barbara Sondag, City Attorney Paul Martin, Police Chief Rick Knox, Fire Chief Scott Avery, Finance Director Darren Mann, Planning & Community Development Director Carlos Trejo, Public Works Director Bruce McGregor, and City Clerk Myra Bennett.

**Item #2 – Communications**

City Clerk Bennett noted that no written communications were submitted for the August 9, 2016 City Council meeting.

**Item #3 – City Manager's Report**

City Manager Sondag reported the following:

- Construction continues on the new city facility. Most of the interior framing is complete, and exterior masonry work is underway. The project remains under budget, with an anticipated move in date set for March 17, 2017. Weather conditions continue to be an issue regarding construction.
- Work continues on the Old Bonhomme Road project. With school starting on August 16<sup>th</sup>, it is important to note that there will be traffic delays, and ask that residents use extreme caution when driving through work zones. Public Works Director McGregor has been in contact with the Ladue bus system regarding traffic concerns. Traffic will remain westbound only, and the Police Department will be assisting with traffic. The Ladue School District will be sending out a communication to parents regarding the construction zone and traffic flow.
- Keat Properties has been chosen as the preferred developer for the I-170/Olive Boulevard redevelopment. Survey work is now complete, and they are in final preparation of the redevelopment plan. TIF members have been identified, but not yet appointed. Review of the redevelopment plan and completion of a blight study will be upcoming steps in the process, and *Development Strategies* will be involved in that process.
- The request for proposals for the current City Hall site redevelopment project was released two weeks ago. Deadline for submittal of proposals is August 31, 2016.
- The City of Olivette has been ranked #4 in the "2016 Best Suburbs to Live in St. Louis Metro Area" survey by the Business Journal. Additional information is available on the City website.
- There will be a "Party in the Park" event at Warson Park on September 23<sup>rd</sup>, with family activities beginning at 6:30 PM, and "DJ Reggie Dance Party" later that evening.
- "Coffee with the Mayor" will be held on August 24<sup>th</sup> at 8:45 AM at City Hall.
- "Turkey Trot" will be held on November 24<sup>th</sup> at 8:00 AM at Stacy Park.

#### **Item #4 – City Council Reports**

Council Member Waldman stated that she has no report at this time. She thanked Chairman Pro-tem Carl for attending the PCDC meeting in her absence.

Chairman Pro-tem Carl noted that he attended the Planning and Community Design Commission (PCDC) meeting on August 4<sup>th</sup>. He noted that a property at 724 Mansfield was approved with a 2 ft. variance on the driveway, into the 5 ft. buffer. He also noted that he attended today's Pension Board meeting, in Mayor Springer's absence, and he stated that there is approximately \$19.6 million in the pension investments at this point. Chairman Pro-tem Carl reported that the next Pension Board meeting has been scheduled to be held on November 1, 2016 at 4:30 PM at City Hall.

Council Member Sewell and Council Member Weil both stated that they have no report at this time.

Council Member Springer thanked Chairman Pro-tem for attending today's Pension meeting, in her absence.

#### **Item #5 – July Monthly Financial Report**

Finance Director Mann gave a summary of revenues and expenditures for all funds for the period ending July 31, 2016. He noted that with one month complete (8.3%), total revenues for the general fund are below expectations at 7.33%, but are higher than last year by \$92,353. Expenditures ended July at 9.81% of budget and \$36,178 lower than last July. Mr. Mann stated that sales taxes are remaining strong with other revenue sources around the 8.3% expected with one month of reporting. He added that property taxes will pull on year to date percentages, until collection in December. He stated that Individual department expenditures are at expected levels.

#### **Item #6 – Bond Funds Quarterly Investment Report**

Finance Director Mann noted that a summary and statement, provided by 5/3 Securities for the Series 2014 GO Bond funds has been distributed to the City Council for review. He noted that \$4.7 million was transferred to the operating accounts since the last report for April. He stated that maturities are set to average \$1,000,000 per month to November, and are expected to meet cash needs, so maturities from here on out are planned to be pulled back for City Center costs. Mr. Mann reported that earnings to date on the bond funds are just shy of \$70,500.

#### **Item #7 – Hearing from Citizens (Part I)**

No speaker cards were submitted.

#### **Item #8 – A Catalyst Strategy for the Economic Enhancement of Olivette**

City Manager Sondag noted that in May of 2015, Development Strategies was hired to create a development strategy that would assist the City in planning the redevelopment of two areas – I-170/Olive and the current City Hall area. She stated that Development Strategies has completed their final report, "A Catalyst Strategy for the Economic Enhancement of Olivette", and Matt Wetli is in attendance at tonight's meeting to review that information with the City Council. Mr. Wetli gave a PowerPoint presentation, summarizing the information contained in the final report. Discussion held.

Mayor Springer commended Mr. Wetli on his presentation, and noted that the overall message of the report is that Olivette is a great community, with a plan for Economic Development, and the City will be able to achieve its goals.

**OLD BUSINESS** – none.

**NEW BUSINESS**

**Item #9 – Bill #2817 - An Ordinance Fixing the Annual Rate of Tax Levy for 2016 on all Property within the City of Olivette, Providing for the Extension of Said Taxes on the Books of the Collector by the County Clerk and Providing for the Collection Thereof - First Reading**

City Clerk Bennett read Bill #2817 - An Ordinance Fixing the Annual Rate of Tax Levy for 2016 on all Property within the City of Olivette, Providing for the Extension of Said Taxes on the Books of the Collector by the County Clerk and Providing for the Collection Thereof, for the first time, by title only.

Finance Director Mann gave an overview of this item, noting that a public hearing and second reading of the bill is scheduled to be held on September 13, 2016. City Manager Sondag stated that the City has noticed that some of the property values for commercial property in Olivette have been declining, and staff is reviewing this issue. Discussion held.

**Item #10 – Bill #2818 - An Ordinance to amend the title of Chapter 520 Excavations and Grading and adopt a new chapter title called Chapter 520 Rights of Way Usage and Grading and enact a new Article I titled Rights of Way Usage Code - First Reading**

City Clerk Bennett read Bill #2818 – An Ordinance to amend the title of Chapter 520 Excavations and Grading and adopt a new chapter title called Chapter 520 Rights of Way Usage and Grading and enact a new Article I titled Rights of Way Usage Code, for the first time, by title only.

Planning and Community Development Director Trejo gave an overview of this issue, noting that the proposed ordinance would 1) rename “Chapter 520 Excavations and Grading” to “Chapter 520 – Rights of Way Usage and Grading”, 2) repeal “Article I – Excavations” of Chapter 520 in its entirety, and 3) adopt a new “Article I – Rights of Way Usage Code”.

City Attorney Martin stated that 30-35 years ago, when many of the regulations were written, only large utility companies fell within rights of way; however, with the increase in technology, many other companies fall within these issues, and it is appropriate to revise regulations to take these into consideration. He noted that these amendments will bring the code into compliance with state law. Mr. Martin added that there may be an amendment to this bill, prior to second reading and final passage.

**Item #11 – Bill #2819 – An Ordinance of the City of Olivette, Missouri, to Establish a Procedure to Disclose Potential Conflicts of Interest and Substantial Interests for Certain Municipal Officials – First Reading**

City Clerk Bennett read Bill #2819 – An Ordinance of the City of Olivette, Missouri, to Establish a Procedure to Disclose Potential Conflicts of Interest and Substantial Interests for Certain Municipal Officials – First Reading, for the first time, by title only.

City Clerk Bennett stated that, every two years, the Missouri Ethics Commission requires that political subdivisions adopt an ordinance to require that Financial Interest Statements for Political Subdivisions (short form) be filed by elected officials and key appointed officials. The City of Olivette last adopted this ordinance as Ordinance #2523 on August 12, 2014. She noted that the new ordinance, once approved, must be forwarded to the Missouri Ethics Commission, no later than September 15, 2016. Ms. Bennett noted that, if a municipality does not re-adopt the ordinance, all elected, appointed and decision-making personnel, as well as

candidates for public office, would be required to file a Personal Financial Disclosure Statement – long form.

It is anticipated that the second reading of this bill will be held at the August 23, 2016 City Council meeting.

**Item #12 – Application for Liquor License for LuLu's Asian Kitchen, located at 9626 Olive Boulevard**

Planning and Community Development Director Trejo noted that LuLu's Asian Kitchen has applied for a “retail liquor by the drink” and a “Sunday by the drink” liquor license. He stated that the application has been reviewed by the Department of Planning and Community Development and the Chief of Police. Mr. Trejo stated that the Department of Planning and Community Development finds the applicant in good standing, and the Chief of Police has found no concerns from law enforcement. He stated that staff recommends approval of the application. Mr. Trejo also noted that the owners of LuLu’s Asian Kitchen are in attendance at tonight’s meeting, if there are any questions.

Chairman Pro-tem Carl made a motion to approve the authorization to issue a Liquor License for the 2016 calendar year to LuLu’s Asian Kitchen, addressed as 9626 Olive Boulevard. Motion seconded by Council Member Sewell.

POLL OF THE COUNCIL:

Chairman Pro-tem Carl	Yea
Council Member Sewell	Yea
Council Member Waldman	Yea
Council Member Weil	Yea
Mayor Springer	Yea

Motion passed.

**Item #13 - Consideration of 1989 John Deere Backhoe as Surplus**

Public Services Director McGregor stated that the 1989 John Deere backhoe (asset # 8853) serves as reserve equipment for winter salt loading or emergency operations. He noted that, after 27 years of use, the machine requires too much maintenance to be a cost effective component of the Public Works equipment inventory. Mr. McGregor stated that staff intends to replace this unit with a skid steer to diversify the Public Works equipment inventory, and recommends that this machine be declared surplus.

Council Member Weil made a motion to declare asset #8853 surplus. Motion seconded by Council Member Sewell.

POLL OF THE COUNCIL:

Chairman Pro-tem Carl	Yea
Council Member Sewell	Yea
Council Member Waldman	Yea
Council Member Weil	Yea
Mayor Springer	Yea

Motion passed.

**Item #14 - Selection of City Center Washer-Extractor**

Finance Director Mann stated that a request for proposals was issued for a new Washer/ Extractor for Fire Department use in the new City Center, and 3 responses were received by August 1, 2016 bid opening deadline. Mr. Mann stated that staff recommends the purchase and installation of a new Pellerin Milnor MWR18X4 Gear Guardian from Loomis Brothers Equipment Company. He noted that bond funds would be used to cover this expenditure. Discussion held regarding the use of the washer/extractor, and it was explained that this equipment is used for cleaning the Fire Department turnout gear. Mayor Springer asked if staff is familiar with the proposed equipment and company, in order to ensure that this is a quality piece of equipment. Fire Chief Avery noted that he is familiar with this company and the equipment, due to the fact this is the same company used by the City of O'Fallon, when he worked for that city.

Council Member Weil made a motion to approve the purchase and installation of a new Pellerin Milnor MWR18X4 Gear Guardian from Loomis Brothers Equipment Company at a cost of \$7,225. Motion seconded by Council Member Sewell.

POLL OF THE COUNCIL:

Council Member Weil	Yea
Council Member Sewell	Yea
Council Member Waldman	Yea
Chairman Pro-tem Carl	Yea
Mayor Springer	Yea

Motion passed.

**Item #14 B. – Appointment of Shannon Hadley to the Olivette Pension Board of Trustees**

Mayor Springer stated that Ms. Shannon Hadley had originally expressed interest in serving on a different commission; however, other appointments were made to that committee. She stated that, after speaking with Ms. Hadley, it was determined that she met the qualifications to serve as a member of the Pension Board of Trustees, and she expressed interest in serving on this board.

Mayor Springer made a motion to appoint Ms. Shannon Hadley to serve as a member of the Olivette Pension Board of Trustees, with a term ending June 30, 2019. Motion seconded by Chairman Pro-tem Carl.

POLL OF THE COUNCIL:

Mayor Springer	Yea
Chairman Pro-tem Carl	Yea
Council Member Sewell	Yea
Council Member Waldman	Yea
Council Member Weil	Yea

Motion passed.

**Item #15 - Review and Approval of the Minutes of the July 26, 2016 City Council Meeting**

Mayor Springer asked if there were any corrections to be made to the minutes of the July 26, 2016 City Council meeting. Being none, Council Member Waldman made a motion to approve the July 26, 2016 City Council meeting minutes as written. Motion seconded by Council Member Sewell.

POLL OF THE COUNCIL:

Council Member Waldman	Yea
Council Member Sewell	Yea
Council Member Weil	Yea
Chairman Pro-tem Carl	Yea
Mayor Springer	Yea

Motion passed.

**Item #16 – Hearing from Citizens (Part 2)**

No speaker cards were submitted.

**Item #17 – City Attorney’s Report**

City Attorney Martin stated that the Missouri Supreme Court recently handed down a decision that could affect cities. In the past, an unsuccessful bidder was deemed to not have any standing to sue a City for not choosing them. Recently, the Court changed direction on this and ruled that an unsuccessful bidder has a legal right and constitutional process for filing suit. City Attorney Martin stated that this could mean more lawsuits for cities. City Manager Sondag noted that the City of Olivette has a formal bidding process, which it follows for all bidding, which greatly minimizes the chances of a successful lawsuit against the City. Discussion held.

**Item #18 – Adjournment**

Being no further business, Chairman Pro-tem Carl made a motion to adjourn the meeting. Motion seconded by Council Member Waldman. Mayor Springer adjourned the meeting at approximately 8:30 PM.

\_\_\_\_\_  
Mayor Ruth Springer

ATTEST:

\_\_\_\_\_  
Myra G. Bennett, CMC/MPCC  
City Clerk  
City of Olivette



## ***CITY COUNCIL AGENDA SUBMISSION***

### **Agenda Item:**

Hearing from Citizens (Part 2)

### **Description:**

Olivette citizens and businesses express concerns, discuss issues, and make requests of the City Council's assistance in getting matters resolved.

The Mayor and City Council would like to remind the audience of the following:

1. The purpose is to hear your concerns, issues, and questions.
2. Cards submitted after the beginning of 1<sup>st</sup> "Hearing from Citizens" will not be called until the 2<sup>nd</sup> "Hearing from Citizens".
3. The Chair has discretion to allow individuals to speak without previously submitting a card; however, those individuals will also need to complete a card.
4. Personal attacks of Council Member, Staff, and/or individuals are not permissible.
5. Any question should be directed to the Chair and only the Chair.
6. Questions concerning agenda items may be addressed by Council or staff at the time the agenda item is discussed.
7. Questions that are not pertaining to agenda items may receive an answer by the method of your choice; indicated at the bottom of the submittal cards.
8. Profanity is not allowed.
9. Campaigning and electioneering are not permitted.

"Hearing from Citizens" is not intended to be an open discussion. It is intended to provide an opportunity for citizens to be heard at official meetings.

When called, please step to the podium; state your name and your address before addressing your subject matter.

Each person has up to three (3) minutes to speak. Should your time elapse, you are welcome to continue at the second hearing from citizen's session again, for up to 3 minutes.