Bill No. 4330, an Ordinance Repealing and Replacing Chapters 505 and 525 Within Title Five and Chapter 655 Within Title Six of the Municipal Code All Pertaining to Permitting of Work by Utilities and Communications Companies Within City Right-Of-Way

WHEREAS, the City of Wentzville, Missouri (the "City"), manages the right-of-way within the City; and

WHEREAS, right-of-way work for various facilities have increased requiring modifications to Chapters 505, 525 and 655 of the Municipal Code of Ordinances and additional staff time to ensure protection of improvements and proper restoration within the right-of-way; and

WHEREAS, the costs for right-of-way management has been assessed; and

WHEREAS, pursuant to RSMo 67.1832, the City may manage its public rights-of-way and may recover its rights-of-way management costs.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF WENTZVILLE, MISSOURI, AS FOLLOWS:

Section 1: Chapters 505 "Streets Sidewalks and Other Public Places" of the Municipal Code of Ordinances shall be repealed in its entirety and replaced to read as follows:

CHAPTER 505. - STREETS, SIDEWALKS AND OTHER PUBLIC PLACES ARTICLE I. - IN GENERAL

Sec. 505.010. - Street names.

All streets running in an east-west direction and extending or continuing on both sides of Linn Avenue or the imaginary extension thereof, shall be known as East, east of Linn Avenue or the imaginary extension thereof, and West, west of Linn Avenue or the imaginary extension thereof. All streets running in a north-south direction and extending or continuing on both sides of Pitman Street or the imaginary extension thereof shall be known as North, north of Pitman Street or the imaginary extension thereof, and South, south of Pitman Street or the imaginary extension thereof.

Sec. 505.020. - Depositing dirt, rock, etc., on streets-Land disturbing activity prohibited.

It is unlawful for any person to engage in any land disturbing activity or any other action which causes or permits any soil, mud, earth, sand, gravel, rock, stone, concrete or other materials or liquids to be flung from or deposited, dropped upon or to roll, flow, stand or wash upon or over any public street, street improvement, road, sewer, storm drain, watercourse, right-of-way or any other public property, or which creates a nuisance or a hazardous condition that is detrimental to the property, health, safety and welfare of the public.

Sec. 505.030. - Same-Hauling.

(a) It is unlawful for any person, when hauling soil, earth, sand, gravel, mud, rock, stone, concrete, building materials or any other materials or liquids over any public street, road or alley to allow such materials or liquids to blow, drop, to be placed or spill

over and upon such street, road, alley or public property.

(b) The operator of equipment engaged in hauling shall not permit soil, mud, earth, sand, gravel, rock, stone, concrete, or other materials to fall from the vehicle or equipment, upon any street, road, alley or public property.

Sec. 505.040. - Same-Removal.

(a) All matter or objects described in sections 505.020 and 505.030 as well as gravel from an existing gravel driveway or parking lot shall be immediately removed in a prompt and ongoing manner as it occurs and not as a cumulative effort at the end of the day or project.

(b) Any person who causes any soil, mud, earth, sand, gravel, rock, stone, concrete or other materials or liquids to be deposited or to roll, flow, wash or drop onto any public street, road, alley or other public property shall be directed to immediately remove such materials or liquids, and any person failing or refusing to do so shall be issued a summons or warrant to appear in the municipal court.

(c) Subject to the above prohibitions pertaining to gravel, rock, stone, etc., rolling, flowing, washing or dropping onto any public street, road, alley or other public property, and notwithstanding anything to the contrary in sections 405.550 and 405.560, a parking lot serving a use that has been in existence for more than 75 years and which parking lot is used primarily only on the weekends shall be permitted to be used without curbing, lighting, landscaping, and as a non-paved parking lot.

Sec. 505.050. - Obstructions and encroachments prohibited; exceptions.

(a) It is unlawful for any person to obstruct or encroach upon any sidewalk, street, avenue, alley or other public thoroughfare.

(b) For the use of this section, the term "obstruct" means any obstacle or object hindering the flow of pedestrian or vehicular passage. The term "encroach" means the placing of any object within five feet of the shoulder or curb line of a street.

(c) This section shall not apply to merchants occupying and using two feet of the sidewalk next to and in front of their buildings for the purposes of displaying their wares and merchandise, nor to persons receiving or discharging any article in the way of regular business, nor to the erecting of temporary barriers or warning signs erected in the interests of public safety.

ARTICLE II. - CONSTRUCTION STANDARDS

Sec. 505.190. - Design characteristics of streets, sidewalks and other public places.

All streets, sidewalks and other public places, including curbs and gutters, shall be built in accordance with the standards set forth in the city engineering design criteria.

Sec. 505.200. - Adoption of specifications and design criteria for the installation of roads, sanitary sewers, water mains, stormwater drainage facilities and other improvements.

(a) There is hereby adopted by the board of aldermen, for regulating the construction, design, alteration, enlargement, repair, demolition, removal, conversion, modification and maintenance of roads, sewerage, water mains, storm water drainage facilities and their appurtenant facilities within and under the jurisdiction of the city certain documents that are known as:

(1) City engineering design criteria; and

(2) City standard specifications and construction details.

(b) The most recent editions of the documents listed above are incorporated by reference herein, along with any amendments, insertions, and deletions as may be approved by the board of aldermen by resolution from time to time and that shall be maintained by the public works director. These documents shall be posted on the city's website, and shall be kept on file with the public works director and the city clerk.

Section 2: Chapters 525 "Construction Over Public Right-of-Way" of the Municipal Code of Ordinances shall be repealed in its entirety and replaced to read as follows:

CHAPTER 525. - PUBLIC RIGHTS-OF-WAY MANAGEMENT ORDINANCE

Sec. 525.010. - Applicability.

(a) To the extent permitted by law, this chapter shall apply to all persons desiring to construct, operate or maintain facilities in, along, across, under or over public rights-of-way, herein referred to as "ROW", within the city.

(b) No person shall commence or continue with the operation of any facilities or structures in the ROW except as provided and in compliance with this chapter. Because numerous types of users and uses of the ROW are subject to various or changing regulatory schemes under federal or state law, any such limitation or qualification that may be applicable to less than all users and uses of the ROW are not duplicated herein but are nevertheless incorporated herein, whenever application is so required by law, including but not limited to applicable provisions of RSMo ch. 67 and other applicable state and federal law.

Sec. 525.020. - Definitions.
The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Applicant means the person or entity applying for and receiving a ROW permit under this chapter.

Application means that form designed by the city engineer which an applicant must use to obtain a ROW permit to conduct excavation or facilities work across, over or under the city's ROW.

Excavation means any operation in which earth, rock or other material in or on the ground is

moved, removed or otherwise displaced by means of any tools, equipment or explosives and includes without limitation, backfilling, grading, trenching, digging, ditching, pulling material from a ditch but not including routine road maintenance, drilling, well-drilling, auguring, boring, tunneling, scraping, cable or pipe plowing, plowing-in, pulling-in, ripping driving, and demolition of structures, except that, the use of mechanized tools and equipment to break and removed pavement and masonry down only to the depth of such pavement or masonry on roads dedicated to the public use for vehicular traffic, and the installation of marking flags and stakes shall not be deemed excavation.

Facilities work means the installation of new facilities or any change, replacement, relocation, removal, alteration or repair of existing facilities that requires excavation within the ROW, except for the occasional replacement of utility poles and related equipment at the existing general location that does not involve either a street or sidewalk cut.

Facility means any conduit, duct, line, pipe, wire, hose, cable, culvert, tube, pole, receiver, transmitter, satellite dish, micro cell, Pico cell, repeater, amplifier or other device, material, apparatus or medium usable (whether actually used for such purpose or not) for the transmission or distribution of any service or commodity installed below or above ground within the ROW of the city, whether used privately or made available to the public.

Permit means a ROW permit granted by the city engineer to do facilities work or excavation within the ROW.

Public rights-of-way or *Public ROW* or *ROW* means the surface, the air space above the surface and the area below the surface of any public street, highway, lane, path, alley, sidewalk, boulevard, drive, bridge, tunnel, parkway, or other similar property in which the city now or hereafter holds any property interest, which was dedicated as ROW. No reference herein, or in any permit, to ROW 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 such purposes. The term "ROW" does not include the airwaves above the ROW with regard to cellular or other non-wire telecommunications or broadcast services, or easements obtained by utilities or private easements in platted subdivisions or tracts.

ROW work means Facilities work or excavation.

Underground pneumatic boring means utilizing underground pneumatic piercing tools often referred to as a hog, air hog, pneuma gopher and missile to bore a hole underground between two points.

Sec. 525.030. - Permitting provisions; permit requirements.

Any person desiring to conduct ROW work within ROW must first apply for and obtain a permit, in addition to any other building permit, license, easement or authorization required by law, unless such ROW work or excavation must be performed on an emergency basis; then the person conducting the work shall as soon as practicable notify the city of the location of the work and apply for the required permit by the third business day following the commencement of the ROW work.

(a) All applications for permits shall be submitted to the city engineer.

(b) The city engineer shall design and make available standard forms for such applications, requiring such information as the city engineer determines to be necessary, consistent with the provisions of this chapter, to accomplish the purposes of this chapter. Applicants shall furnish the following with the application:

(1) 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 ROW work, their proximity to other facilities that may be affected by the proposed work and the dimensions and offsets from the ROW lines.

(2) An acknowledgment and representation by the applicant to comply with the terms and conditions of the ROW Permit and this Chapter;

(3) The name, address, email and phone number of a representative whom the city may notify or contact at any time [i.e., twenty-four (24) hours per day, seven (7) days per week] concerning the work;

(4) If different from the applicant, the name, address and telephone number of the person or entity owning or operating the facilities in the ROW for which the proposed work is to be performed.

(5) Projected commencement and termination dates or, if such dates are unknown at the time the application, a provision requiring the permit holder to provide the city engineer with reasonable advance notice of such dates once they are determined; length of ROW; number of road crossings; information regarding scheduling and coordination of ROW work if applicable; and location of facilities.

(c) Each such application shall be accompanied by payment of fees as designated in this chapter.

(d) The city engineer shall review each application for a permit and, upon determining that the applicant has authority to perform the desired ROW work and that the applicant has submitted all necessary information and has paid the appropriate fee, shall issue the permit, except as provided in this section.

(e) It is the intention of the city that disruption of the ROW should be minimized. Upon receipt of an application for a permit, the city engineer shall do the following:

(1) Evaluate the degree of excavation necessary to perform the ROW work in the ROW and determine whether the excavation will be more than minor in nature. If the applicant can show to the city engineer's reasonable satisfaction that the ROW work involves any of the following:

a. No significant disruption or damage to the ROW; or

b. Time sensitive maintenance;

then the city engineer shall grant the permit without delay provided that if the permit is not issued in ten business days, the aggrieved party may appeal as provided in subsection (j) of this section; and

(2) For circumstances where the city engineer determines that there will be significant excavation of the ROW and no exemption under this section or any other provision of this section applies, the city engineer may, grant or deny all such applications consistent with the time requirements set forth in this section and in the permit, and direct permit holders performing ROW work in the same area to consult on how they may schedule and coordinate their work to accomplish the goal of this section.

(f) The city engineer may include in permits such conditions and requirements as are reasonably necessary to protect structures and facilities in the ROW from damage and for the proper restoration of such ROW, structures and facilities and for the protection of the public and the continuity of pedestrian and vehicular traffic.

(g) The city engineer may deny a permit application for the following reasons if deemed in the public's interest:

(1) Delinquent fees, costs or expenses owed by the applicant for which the work is to be performed;

(2) Failure to return the ROW to its previous condition under previous permits;

(3) Undue disruption to existing utilities, transportation or city use;

(4) Area is environmentally sensitive as defined by state or federal statute;

(5) Failure to provide required information; and

(6) The applicant is in violation of the provisions of this chapter.

(7) Notwithstanding the provisions of this section, the city engineer will cooperate with the applicant to identify alternative routes which most nearly match the routes requested by the applicant for the placement of facilities.

(h) Notification, joint trenching and collocation requirements.

(1) Except if contrary to governing law, the applicant shall, prior to any excavation or installation within the ROW, provide sufficient notification and joint installation opportunity on a shared-cost basis to potential users of the ROW as may be provided for by separate city policy. Such notification and adopted policies shall be designed to maximize collocation to minimize the disturbance to the public ROW and maximize its usable capacity.

a. The applicant shall not install new conduit or other facilities in the ROW where existing conduit is available to the applicant that would reasonably avoid the need for new excavation or overhead installations. The applicant shall identify by mapping, as required by the city engineer, the location and specifications of all

conduit available for collocation.

b. Any person unreasonably failing to respond to collocation opportunities or otherwise comply with this provision or policies adopted hereunder shall, unless good cause is found by the city, be precluded from use of the ROW for a period of 30 months at such locations that would reasonably have been accommodated by the collocation opportunity that was declined.

c. Where service is to be provided to new subdivisions or construction, applicants may be required to use conduit or other previously installed facilities and reimburse the developer pursuant to a reimbursement and specifications policy adopted by the city.

(2) If any applicant chooses to make its facilities physically available for use by any other applicant, it shall do so only under the terms that are fair and reasonable, competitively neutral and non-discriminatory and which do not prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or interstate telecommunications service under the circumstances. The applicant shall further comply with the facilities attachment requirements of federal law codified at 47 USC 224.

(i) Additional facilities requirements; planned infrastructure

(1) Except if contrary to governing law, when the applicant installs any new conduit, the applicant shall, if so directed in writing as part of any permit approval, simultaneously install sufficient additional conduit or other related facilities (excess conduit) as may be determined by the city engineer and in order to reasonably meet the needs of existing and future users of the ROW.

a. The criteria for when such conduit will be required, the amount of conduit to be required, management and ownership of the excess conduit and financing of the excess conduit and related matters shall be established by a separate city policy. Such policy shall be publicly available and each agreement shall be deemed subject to such applicable policies adopted or as may be amended.

b. The excess conduit shall be designed and installed in accordance with city specifications. The city may reserve for its own purposes a portion of any excess conduit dedicated to the city but shall make available any portion not so reserved to any and all subsequent applicants (or others as determined by the city) on a non-discriminatory basis for fair and reasonable compensation that shall be paid in addition to any franchise or use fees, if applicable.

c. When sections of the applicant's conduit are installed simultaneously with another applicant, the cost of such sections of excess conduit shall also be cost-shared among each applicant as may be established by policy.

d. The requirements herein shall be administered and applied so as not to create an obstacle to entry in the market and on a competitively neutral and non-discriminatory basis to maximize the available space in the ROW and designed to

minimize the total number of excavations and cost of total infrastructure installation.

(2) No linear foot charge shall apply to any excess conduit installed by the applicant and dedicated to the city.

(j) Appeals.

(1) The applicant may appeal any final decision of the city engineer to the city administrator, which appeal shall be acted upon by the city administrator within five business days; and

(2) If denied by the city administrator, the applicant may then appeal to the board of aldermen, which shall consider the appeal within thirty days.

(k) Applicant must pay fees.

(1) Any fees/escrows collected pursuant to this section will be used only to reimburse the city for its actual incurred cost of managing the ROW and will not be used to generate revenue to the city above such costs.

(2) Fees/escrows are charged to recover the city's actual costs for an applicant's ROW work in the ROW including the costs of processing permits, inspections and administration of this chapter, excluding legal fees relating to the interpretation or enforcement of this chapter including all such appeals.

Application Fee: The application fee shall be $100 for administrative costs to review the application and complete training for safe excavation within ROW.

Permit Fee. The permit fee shall be a $0.50 per linear foot of utility installation for personnel costs incurred by the city to perform locate services and oversight for underground installations.

(l) Applicant subject to other laws, police power.

(1) An applicant shall at all times be subject to all lawful exercise of the police powers of the city, including, but not limited to, all powers regarding zoning, supervision of construction, and control of ROW.

(2) No action or omission of the city shall operate as a future waiver of any rights of the city under this chapter.

(3) The city shall have the maximum plenary authority to regulate applications, permits and ROW work as may now or hereafter be lawfully permissible. Except where rights are expressly granted or waived by a permit, they are reserved, whether or not expressly enumerated. This chapter may be amended from time to time and in no event shall this chapter be considered a contract between the city and an application such that the city would be prohibited from amending any provision hereof.

(m) Term. Permits required by this Chapter shall be issued for a period not to exceed 30 days, but the time may be extended by the city engineer for reasonable time for good cause shown.

(n) Exceptions. City-sponsored capital improvement projects, requiring utility adjustments, are not required to obtain a separate ROW Permit for any directly associated adjustments or new facilities.

Sec. 525.040. - ROW work.

(a) *Oversight of ROW Work.*

(1) An applicant shall construct, operate and maintain facilities subject to the supervision of the city who has jurisdiction in such matters, and in strict compliance with this chapter, all applicable zoning and construction permitting ordinances, departmental rules and regulations.

(2) ROW work shall be subject to periodic inspection by the city and shall have full access to all portions of ROW work

(3) Stop Work and Corrective Orders. The city engineer may issue stop work orders and corrective orders to prevent unauthorized work. Such corrective or stop work orders shall state that work not authorized by the permit is being carried out, summarize the unauthorized work and provide a period of time to cure the problem, which cure period may be immediate if certain activities must be ceased to protect the public safety, and may be delivered personally or by certified mail to the address listed on the application for permit or to the person in charge of the construction site at the time of delivery. Such orders may be enforced by equitable action in the circuit court, and if the city prevails in such case, the person involved in the ROW work shall be liable for all costs and expenses incurred by the city, including reasonable attorney's fees, in enforcing such orders, in addition to any and all penalties established in this chapter.

(4) Any person who engages in ROW work in the ROW and who has not received a valid permit from the city shall be subject to all requirements of this chapter. Except in those instances where ROW work must be performed on an emergency basis, the city may, in its discretion, at any time until a permit is secured, order the ROW work stopped and do any of the following: require such person to apply for a permit within ten days of receipt of a written notice from the city that a permit is required; require such person to remove its property and restore the affected area to a condition satisfactory to the city; or take any other action it is entitled to take under applicable law including, but not limited to, filing for and seeking damages.

(b) Construction standards.

(1) The construction, operation, maintenance and repair of facilities shall be in accordance with applicable health, safety and construction codes.

(2) All work within the ROW shall be performed with the appropriate level of traffic control in conformance with the Manual of Uniform Traffic Control Devices (MUTCD), current edition. The work shall be performed at such a time that will allow for the least interference with the normal flow of traffic and the peace and quiet of the adjacent residential areas. If lanes will be temporarily closed or restricted, the applicant shall submit a traffic control plan for review demonstrating compliance with MUTCD.

(3) All facilities shall be installed and located with due regard for minimizing interference with the public and with other utility users of the ROW, including the city. Open excavations shall be installed in accordance with OSHA recommendations.

(4) An applicant shall not place facilities where they will damage or interfere with the use or operation of previously installed facilities, or obstruct or hinder the various utilities serving the residents and businesses in the city of their use of any ROW.

(5) Pavement removal. Pavement removal will not be permitted unless specifically listed within the terms and conditions of the permit. When approved by the city engineer, permanent pavement repairs as a result of utility repairs or installation may be permitted. The following are a set of minimum standards necessary to perform permanent and temporary street repairs:

a. All Portland Cement Concrete (PCC), backfill materials and requirements, and material testing requirements shall follow the City of Wentzville Standard Specifications and Construction Details (SSCD) as incorporated by Section 505.200. Where conflicts existing between the information contained herein and the SSCD, the SSCD shall supersede.

b. Unless otherwise authorized by the city engineer, the street shall be opened to traffic on the same day the repair or installation was completed. Immediately after the utility repair or installation is completed, the Contractor shall either install temporary asphalt patch, temporary steel plate trench bridging, or permanent pavement repair in order to open the street to traffic. However in all instances, permanent pavement shall be installed prior to the expiration of the ROW.

1. *Temporary Asphalt Patch.* The excavation must be filled to within one inch of the surface with 3/4" minus aggregate compacted at a minimum 90% maximum dry density. Contractor shall be responsible for providing a material testing firm to complete the necessary testing to verify adequate capacity to the city's requirements. Then the Contractor shall place a temporary one-inch asphalt patch (either hot or cold mix) on the excavation before the temporary repair can be opened to traffic. The Contractor shall be responsible to maintain the temporary asphalt patch in a safe and smooth manner until a permanent repair is made.

2. *Temporary Steel Plate Trench Bridging.* Prior approval by the city engineer is required prior to implementation. All temporary steel plate trench bridging shall be performed in accordance with Saint Louis County Department of Highways

and Traffic Standard Drawing C613.05.

3. Permanent Pavement. All bituminous and concrete pavements shall be replaced in accordance with Saint Louis County Department of Highways and Traffic Standard Drawing C613.00. Additionally, concrete pavement shall be replaced in full slab. Partial replacements will not be accepted.

4. Pavement shall not be accepted until material testing has demonstrated passing results. All pavement without passing material

(6) Restricted Dig/Drill/Bore Zones ("RDDB Zones") are identified within the city. The city engineer shall maintain a record of RDDB Zone maps designating said zones. In the event that an applicant proposes to dig, directional bore, or drill within ten (10) feet of the critical infrastructure lines located in the RDDB Zones, the user must apply for an RDDB permit and complete the following:

a. Pay a RDDB permit fee in the amount of $250 per utility crossing plus $10 per foot of parallel excavation within ten (10) feet of critical water or wastewater utilities

b. Provide the city with a certificate of insurance in the amount of $500,000 and naming the city as an additional insured to cover costs associated with bypass pumping, hauling, and repairing damage to any critical system utility lines located in the RDDB Zones

c. Attend a site visit with city staff prior to any digging, drilling, or boring adjacent to a RDDB Zone

d. Schedule with the city the digging, drilling, or boring a minimum of 48 hours in advance between 8 am and 2 pm Monday to Thursday; and

e. Receive permit approval to perform the work at the selected time to ensure city staff is available to monitor.

f. Perform hand dug potholes to positively identify the exact location of any pipe located within 10 feet of a bore within an affected RDDB Zone and start borings at a minimum distance of 5 feet on either side of Critical Infrastructure locations. The city requires that the utility is fully exposed unless otherwise authorized in writing.

(7) Underground Pneumatic B*oring*. In the event the applicant proposes to perform underground pneumatic boring, the applicant must apply for and obtain a Pneumatic Boring permit and comply with the following:

a. Pay a pneumatic boring permit fee in the amount of $100 per bore.

b. Schedule with the city staff the pneumatic boring a minimum of 48 hours in advance between 8 am and 2 pm Monday to Thursday;

c. Only complete work with city staff present.

d. No pneumatic boring within 20 feet of an RDDB Zone.

e. No pneumatic boring under street pavement.

f. Pneumatic boring perpendicular to a water or force main will be permitted provided,
1. No pneumatic boring crossing any water or force main.
2. Water or force main is positively identified.
3. Pneumatic boring shall be directed away from the main.

g. Pneumatic boring must be kept to lengths of 25 feet or less per instance.

h. Pneumatic boring paralleling a water or force main must be offset by a minimum of 7 feet.

(8) Damages to ROW. Whenever ROW or municipal structures are removed, relocated, or damaged, the applicant, at its sole cost and expense, shall promptly repair damage caused directly by the applicant and return the ROW and municipal structures in and on which the facilities are located to a safe and satisfactory condition in accordance with applicable Laws, normal wear and tear expected. Such repair to ROW and municipal structures shall include traffic control, regrading, placement of seed or sod upon any grassy areas, and replacement of concrete or other paved areas in a manner consistent with the existing conditions and as directed by the city. Sod shall be used along the frontage of established residential lots when requested by the property owner or the City. When sod is used, the Application shall be responsible for watering of the sod for a period of three days. If the applicant does not repair the site as just described, then the city shall have the option, after expiration of the Corrective Order, to perform or cause to be performed such reasonable and necessary work on behalf of the applicant and to charge the applicant for the actual costs incurred by the city at the city's standard rates. Within sixty (60) days of the receipt of a demand for payment by the city, the applicant shall reimburse the city for such costs.

(9) Any contractor or subcontractor used for ROW work 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 an applicant would have hereunder and under applicable laws if the work were performed by the applicant. The applicant shall be responsible for ensuring that the work of contractors and subcontractors is performed consistent with its permits and applicable law, shall be fully responsible for all acts or omissions of contractors or subcontractors, and shall be responsible for promptly correcting acts or omissions by any contractor or subcontractor.

(10) Insurance. Applicant shall provide at its sole expense, and maintain during the term of the permit commercial general liability insurance with $1 million per accident limits, combined single limits with an insurer rated at least A-VII by AM Best and eligible to do business in the State of Missouri, and unless otherwise approved by the city that shall protect the applicant as a named insured and the city, and other city's officials, officers, and employees as additional insureds from class claims

which may arise from operations under the permit, whether such operations are by the applicant, its officers, directors, employees and agents, or any subcontractors of the applicant. city's additional insured status shall (i) be limited to bodily injury, property, damage or personal and advertising injury caused, in whole or in part, by applicant, its employees, agents or other independent contractors or facilities; (ii) not extend to claims where such coverage is prohibited by law or to claims arising out of the gross negligence of city, its employees, agents or independent contractors; and, (iii) not exceed applicant's indemnification obligation under the permit, if any. This liability insurance shall include, but shall not be limited to, protection against claims arising from bodily and personal injury and damage to property resulting from all applicant operations, facilities, products, services or use of automobiles, or construction equipment. The amount of insurance for commercial general liability insurance applying to Bodily and Personal Injury and Property Damage shall be $2,500,000.00 per occurrence and in the aggregate, but in no event less than the individual and combined sovereign immunity limits established by the Missouri Revised Statutes §537.610 for political subdivisions; provided that nothing shall be deemed to waive the city's sovereign immunity. Evidence shall be provided which provides that the city is listed as an additional insured. applicant shall provide at least thirty (30) days' advance written notice to the city of cancellation of any required coverage that is not replaced. Notwithstanding the forgoing, the applicant may, in its sole discretion, self-insure any of the required insurance under the same terms as required by this ordinance. The insurance requirements in this Section or other otherwise shall not apply to applicant to the extent and for such period during the permit as the applicant is exempted from such requirements pursuant to 67.1830(6)(a) RSMo., has on file with the city clerk an affidavit certifying that the applicant has twenty-five million dollars in net assets and the facts otherwise establishing that the applicant is therefore so exempt.

(11) Prior to commencement of work;

a. The applicant shall reasonably notify all adjacent residents which will be affected by the proposed work prior to commencement of excavation. Documentation shall be provided to the city engineer prior to commencement of work.

b. The applicant shall have the contractor's and any subcontractor's foreman responsible for oversight, means and methods for the ROW work attend a meeting with city staff to review and become trained on the city ROW ordinances, policies and procedures. After the training, the foreman shall sign an affidavit of training. This meeting shall occur at least once every three years or as otherwise determined by the city engineer.

(12) Underground pneumatic boring is prohibited unless applicant has been issued a Pneumatic Boring Permit. Utilization of a pneumatic piercing tool may result in revocation of the ROW permit.

(13) All ROW work shall be performed 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 city engineer. Unless otherwise provided by the city engineer 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.

(14) Advertising, signs or extraneous markings. The applicant shall not place or cause to be placed any sort of signs, advertisements or other extraneous markings, whether relating to applicant or any other person or entity, on the ROW, except such necessary minimal markings as approved by the city as are reasonably 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.

(15) Tree protection. Unless otherwise approved in writing by the city in the attachment, installation, removal, reattachment, reinstallation, relocation or replacement or otherwise of the facilities, the applicant shall neither remove, cut nor damage any trees or their roots in and along the ROW. Tree trimming and pruning may be permitted to occur only after prior written notice to the city of the extent of trimming and pruning to be performed and the prior written approval thereof by the city. The type and extent of trimming and pruning shall be in accordance with the requirements of the city.

(16) Prior to installation of any facility in the ROW and after it provides the city with its proposed plans for the facilities, the city may in its discretion designate certain locations or facilities in the ROW to be excluded from use by the applicant for its facilities, including, but not limited to, ornamental or similar special designed street lights or other facilities or locations which, in the reasonable judgment of the city engineer, do not have electrical service adequate or appropriate for the provider's facilities or cannot safely bear the weight or wind loading thereof or any other facility or location that in the reasonable judgment of the city engineer is incompatible with the proposed facilities or would be rendered unsafe or unstable by the installation. The city engineer may further exclude facilities 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 as may be reasonably determined by the city. In the event such exclusions conflict with the reasonable requirements of the applicant, the city will cooperate in good faith with the applicant to attempt to find suitable alternatives, if available, provided that the city shall not be required to incur financial cost nor require the city to acquire new locations for the applicant.

(17) The designation and nature of all facilities shall be subject to the review and approval of the city engineer. Such review shall be based on non-discriminatory bases in application of city policy and approvals shall not be unreasonably withheld.

a. Except as provided herein, all facilities constructed after the date of adoption of this Section shall be placed underground. Antenna or other facilities may be located aboveground only if approved by the city engineer for good cause and including as may be specifically authorized in an exhibit to the ordinance from which this chapter is derived that is on file in the city offices. Unless extraordinary circumstances exist, good cause shall not include authorization for above ground

facilities requiring new poles or major modifications to existing aboveground structures.

b. Aboveground pedestals, vaults, antennae or other facilities may be installed only if approved by the city where alternative underground facilities are not feasible or where underground requirements are otherwise waived pursuant to this section. Except if contrary to governing law, existing conduit shall be used where feasible and available.

c. The location, design and requirements for antennae in the ROW shall additionally be subject to all specific ordinances, regulations or policies of the city generally applicable to the siting of antennae. Where reasonable and appropriate and where adequate ROW exist, the applicant shall place aboveground facilities underground in conjunction with the city capital improvement projects or at specific locations requested by the city, provided that such placement is practical, efficient and economically feasible.

d. Unless specifically authorized by the city or otherwise applicable state law, antennae/towers having a height of 40 feet or greater located on the ROW or antennae on other city-owned or city-controlled property shall only be authorized by a written right of way usage agreement with the city. Unless contrary to governing law, city height limitations, applicable zoning restrictions and general city policies with regard to all users of the ROW shall also be applicable to all facilities.

e. The city engineer may establish such regulations or policies as may be deemed necessary or appropriate to effectuate this section.

Sec. 525.050. - Performance guarantees and remedies.

(a) *Performance Guarantee.*

(1) Prior to any ROW work in the ROW, unless prohibited by applicable state law, an applicant shall establish in the city's favor a performance guarantee in an amount of $2,000 per Permit for excavations 500 linear feet or less or a $20,000 city-wide guarantee for multiple permits or individual permits to excavate more than 500 linear feet so as to ensure the applicant's faithful performance of the ROW work.

(2) Deposit options. All deposits may be in the form of cash or an irrevocable letter of credit, and in some limited circumstances, a surety bond as follows:

a. Cash escrow. Cash deposited with the city engineer to be held in an interest bearing account dedicated for that purpose, with all interest accruing to the city to offset administrative and other costs of maintaining cash deposits.

b. Letter of Credit. An irrevocable letter of credit drawn on a local financial institution in the city's approved format. The letter of credit shall provide that the issuing institution will pay to the city such amounts necessary, up to the maximum available limit, to complete restoration work related to damages in the ROW.

c. Surety Bond. In certain circumstances, for good cause shown, the city may accept a bond issued by a bond company licensed in the State of Missouri so long as the bond adheres to the city's approved format.

(3) Time held.

a. The performance guarantee shall be held for a minimum period of 90 days from the date of permit issuance, unless during such period, the city engineer verifies that the ROW work, including restoration, has been completed in conformity with the provisions of this chapter.

(4) In the event an applicant fails to complete the ROW work in a safe, timely and competent manner, there shall be recoverable, jointly and severally from the principal and performance guarantee, any damages or loss suffered by the city as a result, plus a reasonable allowance for attorney's fees, up to the full amount of the performance guarantee.

(5) Upon completion of the ROW work to the satisfaction of the city engineer, the city engineer shall eliminate the performance guarantee or reduce its amount after a time appropriate to determine whether the work performed was satisfactory, which time shall be established by the city engineer considering the nature of the work performed.

(6) The applicant 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 or proceedings, and judgments for damages or equitable relief that are caused by laws, errors and omissions of the applicant arising out of the construction and maintenance of its facilities.

(7) Recovery by the city of any amounts under the performance guarantee or otherwise does not limit an applicant's duty to indemnify the city in any way, nor shall such recovery relieve an applicant of its obligations under a permit or reduce the amounts owed to the city other than by the amounts recovered by the city under the performance bond, or in any respect prevent the city from exercising any other right or remedy it may have.

(b) Penalties. For each violation of the provisions of this chapter or a permit granted pursuant to this chapter as to which the city has given notice to the applicant as provided in this chapter, penalties may be chargeable to the applicant at a rate not exceeding $100.00 per day for so long as the violation continues.

Sec. 525.060. - Miscellaneous provisions.

(a) Compliance with laws. Each applicant shall comply with all applicable city ordinances, resolutions, rules and regulations heretofore and hereafter adopted or established.

(b) *Franchises not superseded.* Nothing herein relieves the applicant or the city from any obligations under an existing franchise. Nothing herein shall be deemed to relieve an applicant of the provisions of an existing franchise, license or other agreement or permit.

(c) *Rights and remedies.*

(1) The exercise of one remedy under this chapter shall not foreclose use of another, nor shall the exercise of a remedy or the payment of damages or penalties relieve an applicant of its obligations to comply with its permits. Remedies may be used alone or in combinations; in addition, the city may exercise any rights it has at law or equity.

(2) The city hereby reserves to itself the right to intervene in any suit, action or proceeding involving any provisions of this chapter.

(3) No applicant shall be relieved of this obligation to comply with any of the provisions of this chapter by reason of any failure of the city to enforce prompt compliance.

(d) *Incorporation by reference.* Any permit granted pursuant to this chapter shall by implication include a provision that shall incorporate by reference this chapter into such permit as fully as if copied therein verbatim.

(e) *Force majeure.* An applicant shall not be deemed in violation of provisions of this chapter where performance was rendered impossible by war or riots, civil disturbances, floods, or other natural catastrophes beyond the applicant's control, and a permit shall not be revoked or an applicant penalized for such non-compliance, provided that the applicant takes immediate and diligent steps to bring itself back into compliance with its permit as soon as possible under the circumstances without unduly endangering the health, safety and integrity of the applicant's employees or property, the public, ROW, public property or private property.

(f) *Calculation of time.* Unless otherwise indicated, when the performance or doing of any act, duty, matter or payment is required under this chapter of any permit, and a period of time is prescribed and is fixed herein, the time shall be computed so as to exclude the first and include the last day of the prescribed or fixed period of time.

(g) *Wireless facilities and wireless support structures.*

(1) To the extent the city's zoning requirements may be imposed to the construction of wireless facilities and wireless support structures, the most restrictive adjacent underlying zoning district classification shall apply unless otherwise specifically zoned and designated on the official zoning map; and

(2) No application to construct or erect a wireless facility or wireless support structure shall be submitted for approval without attaching the city's consent to use the ROW for the specific construction application in accordance with RSMo ch. 67 .

(3) Pursuant to the city's authority, including by RSMo 67.1830 , and due to the limited space in the city's ROW and in order to minimize obstructions and interference with the use of the ROW and to ensure traffic safety, preserve property values, and enforce the public policy to maintain neutrality as to ownership of wireless locations, wireless facilities, support structures and equipment shall not be permitted in the ROW on new structures unless the board of aldermen determines on a nondiscriminatory basis such proposed application is in the public interest addressing all concerns stated in this chapter, and provided such use and location has received prior, separate zoning authorization to the extent permitted by law. In such circumstances where any new wireless application is permitted in the ROW, such uses shall be subject to reasonable regulations, including any applicable specifications, compensation, and other terms established by the city in such approval or agreements. Wireless antennas and related facilities on existing structures or underground may be permitted in the same manner as other uses in the ROW but subject to approval, denial or condition relating to location, design, height, appearance, safety, and such other zoning, building specification or other regulations, except as may be limited by law.

Sec. 525.070. - Annexation.

The provisions hereof shall specifically apply to any lands or property annexed as of the date of such annexation.

Sec. 525.080. - Relocation of facilities.

Whenever the city shall in its exercise of the public interest intend to remove, expand, modify, reconstruct, repair or relocate a Municipal Structure, road, or other infrastructure located in the ROW and request of the applicant the relocation or reinstallation of any of its facilities, applicant shall forthwith within the reasonable time provided in writing by the city, but not without less than 90 days' advance notice, remove, relocate, or reinstall any such Facility as may be reasonably necessary to meet the request, except in the event applicant is delayed due to a force majeure or other event beyond its control. The cost of such relocation, removal, or reinstallation of the facilities shall be an exclusive obligation of said applicant without expense to the city. applicant shall upon request of any other person requesting relocation of facilities and holding a validly issued building or moving permit of the city, and within forty-eight (48) hours prior to the date upon which said person intends to exercise its rights under said permit, temporarily raise, lower, or relocate wires or other facilities as may be required for the person to exercise the rights under the permit, and applicant may require such permit holder to make payment in advance for any expense incurred by said applicant pursuant to said person's request. If any facilities are not relocated in accordance with this ordinance and within the reasonable time frames required by the city, and provided applicant is not delayed due to a force majeure or other event beyond its control, the city or its contractors may relocate the facilities and the applicant and its surety shall be liable to the city for any and all costs incurred by the city.

Sec. 525.090. - Standards applicable to the city.

Any standards in this chapter relating to facilities work or excavation shall be fully applicable to work performed by the city and its departments.

Section 3: Chapters 655 "Cable and Communications" of the Municipal Code of Ordinances shall be repealed in its entirety and replaced to read as follows:

CHAPTER 655. - CABLE AND COMMUNICATIONS

ARTICLE I. - GENERAL PROVISIONS

Sec. 655.010. - Declaration of findings.

The city hereby declares as a legislative finding that the rights-of-way within the city:

(1) Are a unique and physically limited resource;

(2) Are critical to the travel and transport of persons and property in the city; and

(3) Are intended for public uses and must be managed and controlled consistent with that intent; and can be partially occupied by the facilities of utilities and public service entities, to the enhancement of the health, welfare and general economic well-being of the city and its citizens; and require adoption of the specific additional regulations established by this Code to ensure coordination of users, maximize available space, reduce maintenance and costs to the public and facilitate entry of a maximum number of providers of cable, communications and other services in the public interest.

Sec. 655.020. - Applicability.

(a) The requirements of this chapter shall apply to the full extent of the terms herein and shall be limited in scope or application only to the extent as may be required by applicable federal or state law, including such changes in applicable law as may be hereinafter enacted. No provisions of this chapter shall be disregarded pursuant to this subsection except on express application to and determination by the city to such effect based on the specific factual circumstances demonstrated.

(b) The provisions of this chapter shall be deemed incorporated in each franchise or agreement granted.

(c) Nothing in this chapter shall be interpreted to unilaterally deprive any person of any rights or obligations imposed by any binding and existing valid franchise or contract during the term thereof and shall impose obligations on any such person additional to those included in such franchise or contract only to the extent permitted by law; provided that the failure of the city to enforce any provision herein or the failure of any person to comply with any provision herein shall not be a waiver of the city's right to enforce such provisions nor shall it in any way constitute evidence or agreement by the city that such person has a valid existing franchise or agreement.

(d) The provisions of this chapter shall apply irrespective of whether a provider is operating pursuant to a valid franchise or agreement.

Sec. 655.030. - Preservation of police power; authority.

Any rights granted pursuant to this chapter and pursuant to any franchise or agreement

authorized hereunder are subject to the authority of the city to adopt and enforce ordinances necessary to the health, safety and welfare of the public. Providers shall be subject to and comply with all applicable laws enacted by the city pursuant to its statutory or other powers, to the extent not in conflict with state or federal law. Nothing in this chapter shall be deemed to waive a right, if any, that any party may have to seek judicial or regulatory review as to the provisions herein or as to actions of the parties under applicable federal, state or local law currently in effect or as may hereinafter be amended.

Sec. 655.040. - Indemnification.

As a condition of use of the rights-of-way, the provider at its sole cost and expense shall indemnify, protect, defend (with counsel acceptable to the city) and hold harmless the city, its elected officials, officers, employees and agents from and against any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind and all costs and expenses of any kind, including, without limitation, reasonable attorneys' fees and costs of defense arising, directly or indirectly, in whole or in part, out of the fact that the city approved an agreement or franchise with the provider, the rights granted to the provider or activities performed or failed to be performed by the provider under the agreement or use of the rights-of-way or otherwise, except to the extent arising from or caused by the sole or gross negligence or willful misconduct of the city, its elected officials, officers, employees, agents or contractors. This indemnification shall survive the expiration or termination of any agreement or use of the rights-of-way for a period of five years after the effective date of expiration or termination.

Sec. 655.050. - Compliance with laws.

In performing activities and exercising its rights and obligations under any agreement or franchise, the provider shall comply with all applicable federal, state and local laws, ordinances, regulations and policies, including, but not limited to, all laws ordinances, regulations and policies relating to construction and use of public property.

Sec. 655.060. - Enforcement; attorneys' fees.

The city shall be entitled to enforce this chapter and any agreement or franchise through all remedies lawfully available and provider shall pay city its costs of enforcement, including reasonable attorneys' fees in the event that provider is determined judicially to have violated the terms of this chapter or any agreement or franchise.

Sec. 655.070. - Relationship of the parties.

Under no circumstances shall any agreement or franchise authorized by this chapter be construed to create any relationship of agency, partnership, joint venture or employment between the parties.

Sec. 655.080. - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Access facilities means channel capacity designated for public, educational or governmental access use and the facilities and equipment for the use of such channel capacity.

Affiliate means a person who owns or controls, is owned or controlled by or under common control with the licensee.

Agreement means a communications rights-of-way use agreement authorized herein and executed by the city and licensee.

Antenna means any device that transmits or receives radio waves for voice, data or video communications purposes including, but not limited to, television, AM/FM radio, microwave, cellular telephone and similar forms of communications. A combination of panels, boxes or other antenna physically connected and designed in conjunction to receive signals at one location in the system shall be considered one antenna.

Basic cable service means any cable service tier that includes the lawful retransmission of local television broadcast signals and any public, educational and governmental access programming required by this chapter to be carried on the basic tier. Basic cable service shall be consistent with 47 USC 543(b)(7) (1997).

Cable Act means the Cable Communications Policy Act of 1984, Pub. L. No. 98-549 (codified at 47 USC 521-611 (1982 and Supp. V. 1987)), as amended by the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385 and the Telecommunications Act of 1996 as it may from time to time be amended.

Cable internet service means the offering of direct access by a cable licensee to the international computer network of both federal and non-federal interoperable packet switched data networks to customers for a fee. For purposes of an agreement, the term "cable internet service" means the direct access to the Internet provided to customers over the cable system and shall include the provision of incidental services or revenues that are required by law to be treated under the same regulation as such direct access service. Except as may be otherwise required by applicable law or a binding provision of a franchise issued by the city prior to the effective date of this chapter, a provider receiving revenue from cable Internet service shall include such revenue in the calculation of gross receipts from communications services and shall be required to have a communications agreement with the city governing the use of the rights-of-way for such purposes. Except as may lawfully be required by the city or otherwise dictated by applicable law, all agreements or franchises granted hereinafter shall authorize use of the rights-of-way for cable Internet service only pursuant to a communications use agreement. All prior payments to the city attributable to such cable Internet service under a cable franchise shall be irrefutably deemed to be lawful compensation for the past use prospectively paid under any new communications agreement, irrespective of any additional rates or terms required for any future use under any new communications agreement.

Cable services means one-way transmission to subscribers of video programming or other programming service; and subscriber interaction, if any, that is required for the selection or use of such video programming or other programming service.

Cable system means a facility, consisting of a set of closed transmission paths and associated signal generation, reception and control equipment, that is designed to provide cable service which includes video programming and that is provided to multiple subscribers within the franchise area, but such term does not include:

(1) A facility that serves only to retransmit the television signals of one or more

television broadcast stations;

(2) A facility that serves subscribers without using any public rights-of-way;

(3) A facility of a common carrier that is subject, in whole or in part, to the provisions of 47 USC 201-226, except that such facility shall be considered a cable system (other than for purposes of 47 USC 541(c)) to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on demand services;

(4) An open video system that complies with section 653 of the Cable Act; or

(5) Any facility of any electric utility used solely for operating its electric utility system.

Capital costs means costs associated with the purchase of assets, products or other resources that will provide service for more than one year, but shall not have any meaning inconsistent with generally accepted accounting principles.

Channel means a portion of the electromagnetic frequency spectrum that is used in a cable system and that is capable of delivering a television channel. At the time of the passage of this chapter, analog standard channel is defined as six MHz.

City engineer means the city engineer, public works director or other designated city official or designee thereof.

Code means this communications and cable services code and all provisions therein established by this chapter.

Collocation means the shared use of facilities, including, but not limited to, the placement of conduit owned by more than one rights-of-way user in the same trench or boring and the placement of equipment owned by more than one user in the same or connected conduit. The term "collocation" does not include interconnection of facilities or the sale or purchase of capacity (whether bundled or unbundled).

Communications means the transmission via the facilities, in whole or in part, between or among points specified by the user, of information of the user's choosing (e.g., data, video, voice) without change in the form or content of the information as sent and received regardless of the statutory or regulatory scheme to which such transmissions may be subject.

Communications service means the transmission via facilities, in whole or in part, of any writings, signs, signals, pictures, sounds or other forms of intelligence through wire, wireless or other means, including, but not limited to, any telecommunications service, enhanced service, information service, or internet service and cable internet service as such terms are now or may in the future be defined under federal law and including all instrumentalities, facilities, conduit, apparatus (communications facilities) and services (among other things, the receipt, forwarding and delivery of telecommunications) incidental to or designed to directly or indirectly facilitate or accept such transmission. The term "communications service" does not include cable service, but these services shall be subject to separate cable franchising requirements and application.

Complaint means any oral, written or electronic inquiry, allegation or assertion made by a person regarding cable service or cable system operations.

Converter means an electronic device that changes the frequency of a signal. A subscriber converter may expand reception capacity or unscramble coded signals distributed over the cable system.

Direct incremental costs means the costs actually incurred by a cable provider in meeting an obligation under its franchise which the provider would not otherwise have incurred in order to either operate and conduct the business of its cable system or meet another obligation of the franchise.

Drop means the cables that connect the ground block on the cable subscriber's property to the nearest feasible point on the cable system in order to receive cable service.

Facilities means any conduit, duct, line, pipe, wire, hose, cable, culvert, tube, pole, receiver, transmitter, satellite dish, micro call, Pico cell, repeater, amplifier or other device, material, apparatus or medium usable (whether actually used for such purpose or not) for the transmission or distribution of any service or commodity installed below or above ground within the public rights-of-way of the city, whether used privately or made available to the public.

Franchise means the rights and obligations extended by the city to a person to own, lease, construct, maintain or operate a cable system in the rights-of-way within the franchise area for providing cable services. Any such authorization, in whatever form granted, shall not mean or include:

(1) Any other permit or authorization required for the privilege of transacting and carrying on a business within the city required by the ordinances and laws of the city, including the provision of communications services;

(2) Any permit, agreement or authorization required in connection with operations in the rights-of-way including, without limitation, permits and agreements for placing devices on or in poles, conduits or other structures, whether owned by the city or a private entity, or for excavating or performing other work in or along the rights-of-way.

Franchise area means all area within the incorporated limits of the city unless otherwise expressly modified by the franchise.

Franchise fee means any tax, fee or assessment of any kind imposed by the city or other governmental entity on a cable service provider or its cable subscribers or both, solely because of their status and activities as such, pursuant to article III of this chapter. The term "franchise fee" does not include:

(1) Any tax, fee or assessment of general applicability (including any such tax, fee or assessment imposed on both utilities and cable operators or their cable services, but not including a tax, fee or assessment that is unduly discriminatory against cable service providers or cable subscribers);

(2) Capital costs that are required by a cable franchise to be incurred by a grantee for public, educational or governmental (PEG) access facilities;

(3) Requirements or charges incidental to the award or enforcement of a cable franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties or liquidated damages;

(4) Any permit fee or other fee imposed under any valid right-of-way ordinance; or

(5) Any fee imposed under Title 17 of the United States Code.

Grantee means a person who is granted a cable franchise and that person's agents, employees, lawful successors, transferees or assignees.

Gross receipts means all revenues received directly or indirectly by a licensee or its

affiliates for services originating, terminating or otherwise rendered within the corporate limits of the city and all revenue derived from the use of the communications services facilities to the extent permitted by law.

Gross revenues.

(1) The term "gross revenues" means any revenue actually received by a grantee or by any other entity that is a cable operator on a grantee's cable system, including the grantee's affiliates, from the operation of the grantee's cable system to provide cable services. By way of illustration and not limitation, this definition would include revenue derived from pay cable fees, installation and reconnection fees, leased channel access fees; converter rentals; revenue from cable Internet service (unless it is determined by applicable law that it is not a cable service); revenue from home shopping to the extent conducted through a cable service; all cable service lease payments from the cable system; payments or other consideration received by the grantee from programmers for carriage of programming on the cable system and accounted for as revenue under generally accepted accounting principles (GAAP); advertising revenues; revenues from data transmissions to the extent these transmissions are considered cable services under federal law; payments or other consideration received by the grantee for the use of the cable system to provide cable service and accounted for as revenue under GAAP.

(2) The term "gross revenues" includes revenue received by any entity other than the grantee where necessary to prevent evasion or avoidance of the obligations under this chapter or a franchise to pay the applicable cable franchise fees. Revenues that are not directly attributable to specific cable subscribers, including, but not limited to, leased access fees, advertising revenues and home shopping commissions, shall be allocated among the franchising jurisdictions served by the grantee's cable system on a per subscriber or other equitable basis measured in a consistent manner from period to period.

(3) The term "gross revenues" does not include:

a. To the extent consistent with GAAP, bad debt; provided, however, that all or part of any such bad debt that is written off but subsequently collected shall be included in gross revenues in the period collected;

b. Amounts collected from cable subscribers for public, educational and governmental access, provided, however, this exclusion does not limit a grantee's ability to pass through franchise-related costs to the extent allowed by applicable law;

c. Any taxes on cable services furnished by grantee that are imposed directly upon any subscriber or user by the state, city or other governmental unit and that are collected by grantee on behalf of the governmental unit; or

d. Franchise fees collected from cable subscribers.

Institutional network or *I-Net* means a communication network that is constructed or operated by a grantee and that is generally available only to cable subscribers who are not residential subscribers. The I-Net shall consist of capacity, fibers or both from both within the primary cable network or separately constructed networks that may be dedicated to governmental, educational and other publicly funded users for two-way, broadband communications. The I-Net includes all equipment and maintenance of equipment required to

make the capacity available, including, but not limited to, fiber and coaxial cable, cable modems, switching, routing, transmitting and receiving necessary for the use of the network as set out in the individual cable franchise.

Institutional network services means the provision of an I-Net by a cable system operator to governmental, educational and other non-profit, publicly funded users, as determined by the city, pursuant to the terms of its franchise for non-commercial applications including, but not limited to, two-way dedicated voice, video, data and telephony channels connecting and interconnecting user facilities.

Licensee means the party or its successor, assigns or transferee subject to a right-of-way use agreement authorizing communications facilities in the right-of-way.

Linear foot means the length in feet of cable, wire, fiber, conduit or other linear facilities. Facilities that are physically connected, wrapped or lashed as a single cable, conduit or bundle of cables or conduit shall be considered a single facility for purposes of calculating each linear foot, provided that each conduit or bundle of conduit up to and including four inches in exterior diameter shall constitute a separate facility for calculating linear feet. Conduit having fiber optic or other cable or wire installed within it shall not be considered separate facilities but shall be considered part of the single "conduit" or bundle for purposes of calculating linear feet. Each provider shall be subject to a separate linear foot charge for facilities used by provider and subject to this chapter, to the extent permitted by applicable law.

Normal business hours means those hours during which most similar businesses in the community are open to serve customers. In all cases, normal business hours must include some evening hours, at least one night per week and some weekend hours.

Normal operating conditions means those cable services or conditions that are within the control of a cable system franchise grantee. Those conditions that are ordinarily within the control of grantee include, but are not limited to, special promotions; pay-per-view events; rate increases; regular peak or seasonal demand periods; and maintenance or upgrade of the cable system. Those conditions that are not within the control of grantee include, but are not limited to, natural disasters; civil disturbances; power outages; telephone network outages; vandalism, public works projects for which no advanced notice is given and severe or unusual weather conditions.

Open video services means any video programming services provided to any person by a licensee certified by the FCC to operate an open video system pursuant to section 47 USC 573, as may be amended, regardless of the facilities used.

Provider means a licensee or grantee or any person required to have a communications service agreement or cable service franchise and such other users of the ROW installing or maintaining facilities unless otherwise exempted by the city.

Public building means any building owned or for the greater part occupied by the city or other governmental unit.

Renewal means a new communications service agreement or cable service franchise granted to an existing provider.

Reports means any and all non-trade secret documents and information required to be completed or kept or filed by a grantee or licensee on order of the Federal Communications Commission, state or city. In accordance with applicable law, the city shall maintain such information as confidential to the extent that the provider identifies specific information as such.

Reseller service provider means a person providing communications or cable service within the city that does not have ownership, possessory interest or control of identifiable facilities in the rights-of-way but instead uses the rights-of-way by interconnecting with or using the network elements of another communications service provider utilizing the rights-of-way or by using excess capacity or bandwidth from a facility-based communications service provider.

Right-of-way or *ROW* means the surface and space on, above and below every municipal street, alley, road, highway, lane or city right-of-way dedicated or commonly used now or hereafter for utility purposes and facilities thereon including, but not limited to, overhead lighting facilities. The term "right-of-way" does not include any county, state or federal rights-of-way except where controlled or maintained by the city or as otherwise provided by applicable laws or pursuant to an agreement between the city and any such person or agency. The term "right-of-way" does not include public property owned or leased by the city and not intended for right-of-way use including, but not limited to, city hall property or public works facilities.

ROW users means such persons and entities maintaining or installing facilities in the rights-of-way of the city that provide a service for or without a fee including, but not limited to, every cable telex service provider, pipeline corporation, gas corporation, electrical corporation, rural electric cooperative, telecommunications company, water corporation, heating or refrigerating corporation or sewer corporation under the jurisdiction of the PSC; every municipally owned or operated utility pursuant to RSMo ch. 91 or pursuant to a charter form of government or operatively owned or operated utility pursuant to RSMo ch. 394 ; every street light maintenance district; every privately owned utility; and every other entity, regardless of its form of organization or governance, whether for profit or not, which, in providing a public utility type of service for members of the general public, utilizes pipes, cables, conduits, wires, optical cables, poles, or other means of transmission, collection or exchange of communications, information, substances, data, or electronic or electrical current or impulses in the collection, exchange or dissemination of its product or services through the public rights-of-way, and all other persons or entities installing or maintaining facilities in the rights-of-way of the city not otherwise expressly exempted.

Service interruption means the loss of picture or sound on one or more channels on the cable system.

Standard installation means any service installation that can be completed using a drop of 125 feet or less.

Subscriber means any person who or which lawfully elects to subscribe for any purpose to cable service provided by a grantee by means of or in connection with the cable system and whose premises or facilities are physically wired and lawfully activated to receive cable service from grantee's cable system, including persons who receive cable service without charge according to the terms of this chapter or franchise.

System means the cables, wires, lines, towers, wave guides, optic fiber, antennae and any associated converters, equipment or other facilities designed and constructed for producing, receiving, amplifying or distributing communications to or from locations within the city.

Telecommunications Act means the Telecommunications Act of 1996 codified at Title 47 of the United States Code.

Trained representatives means employees of a grantee who have the authority and capability while speaking with a cable subscriber to, among other things, answer billing questions, adjust bills and schedule service and installation calls.

Use fee means the fee, if any, imposed by the city on licensee for use of the rights-of-way pursuant to article II of this chapter.

ARTICLE II. - COMMUNICATIONS SERVICES

Sec. 655.090. - Unlawful to operate without an agreement.

Except as otherwise provided by law, it is unlawful for any person to construct, operate, own or maintain communications facilities or to provide communications services by use of facilities in the rights-of-way in the city without a valid, unexpired rights-of-way use agreement from the city issued in conformance with the Article IV, unless otherwise specifically authorized under applicable federal or state law or otherwise provided by the Article IV or for installation of facilities of the city. Unless otherwise provided hereinafter by city ordinance, a reseller service provider shall not be required to obtain an agreement. It is unlawful for any provider or reseller service provider not having its own franchise or agreement authorizing such communications to transmit communications for commercial purposes through any facility owned by a provider that does not have a valid franchise or agreement with the city authorizing the use of such facilities.

Sec. 655.100. - Cable service and open video systems (OVS); separate franchise or agreement required.

(a) An agreement for communications service shall not provide the licensee the right to provide cable service as a cable operator (as defined by 47 USC 522(5)) within the city. Upon the licensee's request for a franchise to provide cable service as a cable operator (as defined by 47 USC 522(5)) within the city, the city shall timely negotiate such cable television services franchise in good faith with licensee.

(b) A communications services agreement shall also not permit the licensee to operate an open video system, except where otherwise expressly provided in the agreement or by separate agreement and the licensee remits the maximum fees permitted by 47 USC 573(c)(2)(B) and where licensee otherwise complies with FCC regulations promulgated pursuant to 47 USC 573. Absent such applicable agreement from the city, licensee shall be prohibited from offering OVS service and any such service shall be considered a breach of the agreement.

(c) Unless otherwise specified, any such new agreement or amendment to an agreement shall obligate licensee to pay a use fee of five percent on all gross revenues directly or indirectly attributable to the provision of OVS service within the city.

(d) The city may, at its option, negotiate with licensee to exchange all or a part of the use fees for capacity or facilities used for city or other public purposes. Any such exchange shall be negotiated based on the licensee's cost of providing capacity or facilities to the city and shall be credited towards the calculation of applicable use fees.

Sec. 655.110. - Description of service.

In order to determine the applicable regulatory schemes applicable to the licensee, the licensee shall, on an annual basis, provide the city with a description of new local communications services offered within the city during the prior one-year period. The first annual report shall also provide a listing of each separate type of service or bundled service offered during the initial annual period. Any individual or bundled service or item for which the provider has a separate charge shall be considered a separate service under this section.

Sec. 655.120. - Duty to notify city of resellers.

(a) Within 30 days of the licensee carrying any communications of any reseller service provider through communications ROW user's facilities, the licensee shall notify the city of the name and address of such reseller service provider, the reseller rates or tariffs to be paid to the licensee relating to such reseller and provide to city any written commitment, if any, as to the payment of taxes or use fees for the revenues attributable to such reseller service provider. Thereafter, each licensee shall provide the city on at least a semi-annual basis the identity of entities with which the ROW user has entered into an interconnection or resale agreement within the state or those providing service within the city, if that information is available. This notice will not relieve the reseller service provider from its own obligation to register and obtain any necessary agreement with the city.

(b) Nothing in this chapter shall prevent a facility-based service provider from providing to any reseller service provider the use of the facility-based service provider's facilities in the right-of-way as authorized by federal or state law. A reseller service provider shall pay all applicable taxes, licenses or fees of the city and may not lawfully do business in the city or use the facilities in the rights-of-way or capacity therein, if it is in default in such obligations.

Sec. 655.130. - Duty of reseller service provider; facilities subject to franchise or agreement.

Prior to providing service within the city, a reseller service provider shall first register with the city and obtain any necessary permit, business license, certification, grant or any other authorization required by any appropriate governmental entity, including, but not limited to, the city, the FCC or the PSC. Reseller service provider registration shall include a statement under oath by the registrant setting forth:

(1) The certification of the applicable regulatory approval necessary to undertake such service or communications;

(2) The name of the providers owning the facilities within the city through which the communications shall be transmitted;

(3) The commencement date for providing any service within the city;

(4) The name, address (physical and electronic mail) and phone number of a designated representative of the registrant accountable for compliance with city regulations and taxes; and

(5) The type of services offered or expected to be offered in the following annual period. Such registration shall, among other reasons, be available for use by the city to determine applicability and compliance of the registrant with applicable city taxes. The reseller service provider shall report any changes in its registration information within 30 days.

Sec. 655.140. - Sale or lease of facilities.

Except as otherwise may be provided by law or agreement, the licensee shall not lease, sell or otherwise transfer possession or control of the facilities or any portion thereof for any purpose to any person that has not obtained a duly issued agreement or other grant by the city to use the rights-of-way and which includes the authority to use or maintain such leased or transferred

facilities. The licensee shall provide the city at least 30 days' prior notice of such intended sale, lease or transfer of possession or control.

Sec. 655.150. - Use fee.

To the extent not inconsistent with applicable law, a fee for use of the rights-of-way for purposes other than cable television facilities shall be imposed on a linear foot basis as may be established from time to time by the board of aldermen or such other basis as may be established by the board of aldermen in light of the type of use, circumstances and applicable regulatory requirements, if any.

ARTICLE III. - CABLE SERVICES

Sec. 655.160. - Cable franchise requirements.

(a) *General findings regarding cable services.* The city finds that cable service has become an integral part of its citizens' lives and that evolving cable systems have the potential to play an even more dramatic role in the future, providing great benefits and advanced capabilities to residents of the city. At the same time, the rapidly emerging role of cable systems as an integrated broadband communications platform necessitates a finding that the local government has a legitimate and vital role to play in regulating cable services in a manner that ensures high quality customer service while at the same time fostering competition to the extent permitted under law. The board of aldermen further finds that the public convenience, safety and general welfare can best be served by establishing regulatory powers that are vested in the city.

(b) *Unlawful to operate without a franchise.* It is unlawful for any person to construct, operate or maintain a cable system or to provide cable service or other competing, multichannel video services in the city without a franchise, unless otherwise specifically authorized under applicable federal or state law. Consistent with article V of this chapter, any such person shall be subject to a fine of $500.00 per day. The payment of such fine notwithstanding, all such violators shall be subject to all other applicable provisions of this chapter to the fullest extent allowed by law, including, but not limited to, the payment of a franchise fee. This section shall not apply to a grantee who has properly asserted its intent and is diligently pursuing renewal of the franchise pursuant to 47 USC 546.

(c) *Franchise not exclusive.*

(1) Any franchise granted pursuant to this chapter shall be non-exclusive. The city specifically reserves the right to grant, at any time, such additional franchises for a cable television system or any component thereof to any other person including itself, as it deems appropriate, subject to this chapter and applicable federal and state law.

(2) The terms and conditions of any cable franchises granted or renewed pursuant to this chapter shall be, when taken as a whole, no less burdensome or more beneficial than any other cable franchises granted or renewed pursuant to this chapter, when taking into consideration the context in which the earlier terms were adopted; provided, however, that nothing herein shall be construed as requiring the use of identical terms or conditions or limit the enforceability of conditions that are freely negotiated.

(3) Nothing in this subsection shall be deemed to create any cause of action or claim of breach by any franchisee or third party.

(d) *Franchise territory.* Every cable franchise shall apply to the entire territorial area of the city, as it exists now or may later be configured.

(e) *Federal, state and city jurisdiction.*

(1) This chapter and Code shall be construed in a manner consistent with all applicable federal and state laws.

(2) In the event that the federal or state government discontinues pre-emption in any area of cable communications over which it currently exercises jurisdiction in such manner as to expand rather than limit municipal regulatory authority, the city may, if it so elects, adopt rules and regulations in these areas to the extent permitted by law and the reasonable exercise of the city's police powers.

(3) Unless otherwise expressly provided in a franchise, all provisions of this chapter and Code shall apply to all cable franchises granted or renewed after or simultaneously with the effective date of the ordinance from which this chapter is derived. This chapter and Code shall also apply to all existing franchises to the extent not inconsistent with the terms of any such franchise or applicable law and to the extent that it does not impose additional material burdens on such grantee. A cable franchise (including all of grantee's particular rights, powers, protections, privileges, immunities and obligations associated therewith as the same exist on the date hereof) shall constitute a legally binding contract between the city and the grantee and as such cannot be amended, modified or changed by the city without the consent of the grantee in any manner whatsoever, whether by ordinance, rule, regulation or otherwise, to impose on the grantee more stringent or burdensome requirements or conditions. In the event of any express conflict between the terms and conditions of a franchise and the provisions of this chapter or Code and other generally applicable regulatory ordinances of the city, the specific terms of the franchise shall control; provided, however, that nothing herein contained shall preclude the city from the proper exercise of its police powers.

(4) In the event of a change in state or federal law which by its terms would require the city to amend this chapter or Code, the parties shall modify the existing franchise in a mutually agreed upon manner.

(5) Nothing in this chapter shall be deemed to restrict the board of aldermen from authorizing a franchise having express requirements that differ from those established by this chapter, provided that such different requirements do not violate applicable law.

(f) *Initial franchise applications.* Any person desiring an initial franchise for a cable system shall file an application with the city. A non-refundable application fee as may be hereinafter established by the city shall accompany the application, that shall not be considered or credited against the collection of applicable franchise fees.

(g) *Consideration of initial applications.*

(1) Upon receipt of any application for an initial franchise, the city administrator or other designated administrative official shall prepare a report and make his recommendations respecting such application to the board of aldermen.

(2) A public hearing shall be held prior to any initial franchise grant at a time and date approved by the board of aldermen. Within 30 days after the close of the hearing, the board of aldermen shall make a decision based upon the evidence received at the hearing as to whether or not the franchises should be granted and, if granted, subject to what conditions.

(h) *Franchise renewal.* Franchise renewals shall be in accordance with applicable law, including, but not necessarily limited to, the Cable Communications Policy Act of 1984. The city and a grantee, by mutual consent, may enter into renewal negotiations at any time during the term of the franchise.

(i) *Grant of additional franchise and competing service.* Since competing or overlapping cable franchises may have an adverse impact on the public rights-of-way, on the quality and availability of services to the public and may adversely affect an existing provider's ability to continue to provide the services it is presently providing under a franchise, the city may issue a franchise in an area where another grantee is operating only following a public hearing to consider the potential impact which the grant of an additional franchise may have on the community. In considering whether to grant one or more additional franchises, the city shall specifically consider and address in a written report the following issues:

(1) The positive or negative impact of an additional franchise on the community.

(2) The ability and willingness of the specific applicant in question to provide cable services to the entire franchise area that is served by the existing cable provider. The purpose of this subsection is to ensure that any competition which may occur among grantees will be on terms which, when taken as a whole, do not give a competitive advantage to one grantee over another.

(3) The amount of time it will take the applicant to complete construction of the proposed cable system and activate cable service in the entire franchise area; and whether the applicant can complete construction and activation of its cable system in a timely manner.

(4) The financial capabilities of the applicant and its guaranteed commitment to make the necessary investment to erect, maintain and operate the proposed cable system for the duration of the franchise term. In order to ensure that any prospective grantee does have the requisite current financial capabilities, the city may request equity and debt financing commitment letters, current financial statements, bonds, letters of credit or other documentation to demonstrate to the city's satisfaction that the requisite funds to construct and operate the proposed cable system are available.

(5) The quality and technical reliability of the proposed cable system based upon the applicant's plan of construction and the method of distribution of signals and the applicant's technical qualifications to construct and operate such cable system.

(6) The experience of the applicant in the erection, maintenance and operation of a cable system.

(7) The capacity of the rights-of-way to accommodate one or more additional cable systems and the potential disruption of those rights-of-way and private property that may occur if one or more additional franchises are granted.

(8) The disruption of existing cable service and the potential that the proposed franchise would adversely affect the residents of the city.

(9) The likelihood and ability of the applicant to continue to provide competing cable service to subscribers within the entire franchise area for the duration of the franchise.

(10) Such other information as the city may deem appropriate to be considered prior to granting any competing or overlapping franchise.

(j) *Permits for non-franchised entities.* The city may issue a license to a person other than the grantee to permit that person to traverse any portion of a grantee's franchise area within the city in order to provide cable service outside but not within the city. Such license or easement, absent a grant of a franchise in accordance with this chapter, shall not authorize nor permit the person to provide cable service of any type to any home or place of business within the city. Such license shall be granted pursuant to the requirements of article II of this chapter.

Sec. 655.170. - Design, services, capabilities and location.

(a) *Cable system design.* Every grantee shall offer cable service that meets the current and future cable-related needs of the city. Such cable service shall, at a minimum, be comparable to cable services offered by that grantee or its affiliates operating any headend serving the city and surrounding municipalities in St. Charles County and St. Louis County. The franchise shall incorporate a description of the grantee's cable system including the general design and capabilities of the cable system to identify for the city how the cable system will meet the current and future cable needs of the city.

(b) *The cable system.* Every cable system shall pass by every single-family dwelling unit and multiple-family dwelling unit within the franchise area in accordance with line extension policies set forth in this chapter. Service shall be provided to subscribers in accordance with the schedules and line extension policies specified in this chapter unless otherwise specified in the franchise.

(c) *Drops to public buildings.*

(1) Every grantee shall provide installation of at least one cable drop and one outlet, and provide monthly basic cable service, without charge, to public buildings specified by the city in the applicable franchise, where the drop does not exceed 200 feet. All accredited K-12 schools shall also receive one cable drop and one outlet and basic cable service at no charge, subject to the above 200-foot limit. The location of such cable drops and outlets shall be determined in cooperation with the management of the public building to which the connection is to be made. Following the city's designation of additional public buildings to receive cable service, a grantee shall complete construction of the drop and outlet within 90 days if the city requests construction, weather permitting, and subject to payment of the direct incremental costs of installation in excess of 200 feet. Drops and outlets that are in addition to the one free drop and outlet required by this section shall be provided by a grantee at the cost of grantee's time and material. Alternatively, at an institution's request, the institution may add outlets at its own expense, as long as such installation meets the grantee's standards that shall be made readily available to any public entity upon request. Additional outlets and services to public buildings are subject to the applicable commercial rate.

(2) All such cable service outlets shall not be utilized for commercial purposes. The city shall take reasonable precautions to prevent any use of a grantee's cable system in any

inappropriate manner or that may result in loss or damage to the cable system. Users of such outlets shall hold the grantee harmless from any and all liability or claims arising out of their use of such outlets, other than for those claims arising out of improper installation or faulty equipment.

(3) In instances where the drop line from the feeder cable to the public building, school or library exceeds 200 feet, the grantee may charge for its direct incremental costs that are incurred in exceeding this length.

(d) *School and library cable modems.* Unless otherwise specified in the applicable franchise, upon activation and commercial offering of two-way cable modem service within the franchise area, every grantee shall provide upon written request at least one courtesy cable modem and cable Internet service without charge to every state accredited K-12 school and library in the franchise area.

(e) *Use of grantee's facilities.* Subject to any applicable state or federal law, the city shall have the right to install and maintain, free of charge, upon the poles and within the underground pipes and conduits of a grantee, any wires and fixtures desired by the city for public purposes; provided, however, that:

(1) Such use by the city does not unreasonably interfere with the current or future use by the grantee;

(2) Such use by the city is restricted to non-commercial public purposes; and

(3) The city takes reasonable precautions to prevent any use of the grantee's facilities in any manner that results in an inappropriate use thereof or any loss or damage to the cable system.

For the purposes of this subsection, the term "public purposes" includes, but is not limited to, the use of the structures and installations for city, fire, police, traffic, utility or signal systems, but not for cable system purposes in competition with the grantee. The grantee shall not deduct the value of such use of its facilities from its franchise fee or other fees payable to the city.

(f) *Upgrade of system.* Every grantee shall upgrade its cable system (herein referred to as the "system upgrade"), if required, as set forth in its respective franchise.

(g) *Emergency alert capability.* Every grantee shall at all times provide the system capabilities to comply with the FCC's emergency alert system rules and regulations. Provided that at a minimum these capabilities will remain in place even if the FCC at some future date eliminates the current regulations.

(h) *Periodic review.* The franchise shall include provisions to provide for a periodic review between the city and a grantee to evaluate changes in law, technology or service and reasonable procedures for mutually agreed upon modifications to the franchise to incorporate changes identified as desirable or necessary as a result of any such periodic review.

(i) *Closed captioning and descriptive audio service.* Every grantee will make audio descriptive service and closed captioning capabilities available to the extent required by state and federal law.

(j) *Standby power.* Within 12 months of activation of the system, the grantee shall

provide standby power generating capacity capable of providing at least two hours of emergency supply at the hub site feeding the system. For nodes, two hours with emergency power supply. Every grantee shall maintain standby power system supplies throughout the major trunk cable networks capable of providing emergency power within the standard limits of commercially available power supply units.

(k) *Status monitoring.* Every grantee shall provide an automatic status monitoring system or a functional equivalent, which monitors modes and power supplies in the outside plant and critical network elements at the hub, when the cable system has been activated for interactive service, provided that such status monitoring is technically and economically feasible.

(l) *HDTV/ATV conversion.* Conversion to high definition television/advanced television (HDTV/ATV) formats shall occur in accordance with applicable law.

Sec. 655.180. - Institutional network and public, educational and governmental access (or PEG access).

(a) *Institutional network, access channels.*

(1) Every grantee shall, to the extent required in its franchise and subject to applicable law, provide or fund on an equal basis with other cable providers whose franchises are granted or renewed after the adoption of this chapter an institutional network that provides two-way broadband voice, video and data capabilities for use by governmental, educational and other publicly funded or non-profit local community service organizations identified by the city. Such institutional network requirements shall at a minimum satisfy the community need for such facilities as determined by the board of aldermen for the period of the applicable franchise.

(2) Every grantee shall also provide a channel, bandwidth capacity, service and funding for separate public, educational and government access channels as specified in their franchise. All such PEG access channels shall be available to all subscribers as part of their basic cable service. Given the ongoing changes in the state of technology as of the effective date of the ordinance from which this chapter is derived, absent the express written consent of the city, grantee shall transmit PEG access channels in the format or technology utilized to transmit all of the channels on the basic cable service tier. Oversight and administration of the PEG access channels shall be set forth in the franchise.

(b) *Proof of performance testing.* To ensure high quality service on the institutional network and access channels, proof of performance testing throughout the system and on all channels will be made available to the city to the extent required in a franchise. Every grantee will monitor access channels throughout the cable system to determine the level of technical quality of access channels is in conformance with FCC rules and to ensure that the level of technical quality on such access channels is the same as on other channels within the cable system. In the event that a complaint is made by a programmer of any access channels, the grantee shall immediately investigate the complaint and determine whether the grantee is in compliance with the technical standards set forth in section 655.190(a)(2).

Sec. 655.190. - Technical standards and customer service practices.

(a) *General technical standards and customer service practices.*

(1) This chapter incorporates cable service technical standards and establishes customer service practices that every grantee must satisfy.

(2) Every grantee shall maintain such equipment and keep such records as required to comply with all customer service and technical standards required by these regulations and other applicable laws. The grantee shall at all times assist and cooperate with city in explaining, interpreting and understanding such records or reports.

(b) *Test and compliance procedure.* Tests for a cable system shall be performed periodically in a manner so as to conform with FCC specifications. The tests may be witnessed by representatives of the city and written test reports shall be made available to the city upon request. If any test locations fail to meet the performance standards, the grantee shall be required to indicate what corrective measures have been taken and shall have the site retested.

(c) *Cable system office hours and telephone availability.*

(1) Every grantee shall maintain a conveniently located customer service center that shall include a place where subscribers may pay their bills, pick up and return converter boxes and comparable items and receive information on the grantee and its services. Such service center shall be open at least during normal business hours. The grantee shall also maintain a publicly listed toll-free or local telephone line that is available to subscribers 24 hours a day, seven days a week.

(2) Every grantee shall have trained company representatives available to respond to subscriber telephone inquiries during normal business hours.

(3) After normal business hours, the telephone access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after normal business hours must be responded to by a trained representative on the next business day.

(4) Under normal operating conditions, telephone answer time by a trained customer service representative or automated response unit, including wait time, shall not exceed 30 seconds when the connection is made. If a call must be transferred, transfer time shall not exceed 30 seconds. Under normal operating conditions, these standards shall be met no less than 90 percent of the time, measured on a quarterly basis.

(5) Under normal operating conditions, a grantee shall establish an inbound telephone system upon which subscribers shall not receive a busy signal more than three percent of the time.

(6) A grantee will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.

(d) *Cable channels for commercial use, local commercial television signals and non-commercial educational television.* A franchisee shall designate channel capacity for commercial and non-commercial use by persons unaffiliated with the franchisee as required by federal law consistent with the principle of fairness and equal accessibility to all persons and the city to the extent they have a legitimate use for

such capacity.

(e) *Technical standards.*

(1) Any cable system within the city shall meet or exceed the technical standards set forth in 47 CFR 76.601 et seq. and any other applicable federal technical standards, including any such reasonable standards as hereafter may be amended or adopted by the board of aldermen in a manner consistent with federal law.

(2) A franchisee shall use equipment generally used in high-quality, reliable, modern systems of similar design, including, but not limited to, back-up power supplies at the outside plant capable of providing power to the system for a minimum of two hours in the event of an electrical outage and permanent standby generators for the headend/primary hubs plus adequate portable generators to cover longer outages. The obligation to provide back-up power supplies requires the franchisee to install equipment that will:

a. Cut in automatically on failure of commercial utility AC power;

b. Revert automatically to commercial power when it is restored; and

c. Prevent the standby power source from powering a "dead" utility line. In addition, the design and construction of a system shall include modulators, antennae, amplifiers and other electronics that permit and are capable of passing through the signal received at the headend with minimal alteration or deterioration.

(f) *Interconnection.*

(1) A franchisee shall design its system so that it may be interconnected with any or all other systems or similar communications systems in the area. Interconnection of systems may be made by direct cable connection, microwave link, satellite or other appropriate methods.

(2) Upon receiving the directive of the board of aldermen to interconnect, the franchisee shall immediately initiate negotiations with the other affected system so that costs may be shared proportionately for both construction and operation of the interconnection link.

(3) The board of aldermen may in writing grant reasonable extensions of time to interconnect or rescind its request to interconnect upon its own initiative or upon petition by the franchisee to the board of aldermen. The board of aldermen shall rescind the request if it finds that the franchisee has negotiated in good faith and the cost of interconnection would cause unreasonable increase in subscriber rates.

(4) No interconnection shall take place without prior written approval of the board of aldermen. A franchisee seeking approval for interconnection shall demonstrate that all signals to be interconnected will comply with FCC technical standards for all classes of signals and will result in no more than a low level of distortion.

(5) The franchisee shall cooperate with any interconnection corporation, regional interconnection authority or state or federal regulatory agency which may be established for regulating, facilitating, financing or otherwise providing for the interconnection of communications systems beyond the boundaries of the city.

(g) *Integration of advancements in technology.* A franchise agreement may require a franchisee to periodically upgrade its cable system to integrate advancements in technology as may be necessary to meet the needs and interests of the community

in light of the costs thereof or to submit periodic reports on cable technology and competition to the city clerk.

(h) *System design review process.* In addition to any requirements included in a franchise agreement, at least 60 days prior to the date construction of any rebuild or major extension is scheduled to commence, the franchisee shall provide the city clerk with notice that a detailed system design and construction plan is available for review by the city at a specific office of the franchisee located in the metropolitan St. Louis area, that shall include at least the following elements:

(1) Design type, trunk and feeder design and number and location of hubs or nodes.

(2) Distribution system-cable, fiber and equipment to be used.

(3) Plans for standby power.

(4) Longest amplifier cascade in system (number of amplifiers, number of miles, type of cable/fiber).

(5) Design maps and tree trunk maps for the system. The system design will be shown on maps of industry standard scale using standard symbols and shall depict all electronic and physical features of the cable plant. The city may review the plan and, within 30 days of the date the plan is made available for city review, submit comments to the franchisee. Within 15 days of receipt of the comments, the franchisee shall notify the city clerk that a revised plan is available for review by the city at a specific office located in the metropolitan St. Louis area, either incorporating the comments or explaining why the comments were not included. The city's review does not excuse any non-performance under a franchise agreement, this chapter or other applicable law.

(i) *Emergency alert system.* A franchise shall comply with 47 USC 544(g) and all regulations issued pursuant thereto.

(j) *Service calls and installations.* Under normal operating conditions, each of the following standards must be met no less than 95 percent of the time as measured on a quarterly basis:

(1) Standard installations will be performed within seven business days after an order has been placed. Standard installations are those that are located up to 125 feet from the existing distribution system.

(2) The appointment window alternatives for installations, service calls and other installation activities will be either a specific time or within a maximum four-hour time block during normal business hours. The grantee may schedule service calls and other installation activities outside of normal business hours for the express convenience of a subscriber, if so requested.

(3) A grantee may not cancel an appointment with a subscriber after the close of business on the business day prior to the scheduled appointment.

(4) If a grantee's representative is running late for an appointment with a subscriber and will not be able to keep the appointment as scheduled, the subscriber must be contacted. The appointment must be rescheduled, as necessary, at a time that is convenient for the subscriber.

(k) *Repairs and interruptions.*

(1) Under normal operating conditions and excluding conditions beyond the control of a grantee, every grantee will begin working on service interruptions and outages within a reasonable time frame, but in no event later than 24 hours after the service interruption or outage becomes known. The grantee must begin actions to correct other service problems on the business day following notification of such service problems.

(2) The term "service interruption" means the loss of picture or sound on one or more cable channels or cable Internet service connectivity, if permitted under applicable law.

(3) Work on requests for service, excluding conditions beyond the control of a grantee, must begin by the next business day after notification of the problem and shall exercise all due diligence to complete the work in the shortest period of time possible.

(4) Outside repairs to cable plant which cannot be made by the initial service technician dispatched shall under normal operating conditions be rescheduled within 24 hours of the originally scheduled service call. The subscriber does not need to be home for outside plant and line repairs.

(5) A grantee may interrupt service only for good cause and for the shortest time reasonably possible, including interruption for system upgrade, maintenance and repair. Subject to the reasonable safety precautions for the benefit of the grantee's employees and agents, routine maintenance shall occur at times that affect the fewest number of subscribers, generally between 12:00 midnight and 6:00 a.m. To the extent that specific neighborhoods will be affected by a planned outage such as during an upgrade, the grantee shall provide advance notice through telephone calls, door hangers or other reasonable means.

(6) A grantee shall provide a credit equivalent to a pro rata of the monthly cable rate for each service interruption exceeding four hours in any 24-hour period, unless it is demonstrated that the subscriber caused the outage or the outage was planned as part of an upgrade or other work that occurred between the hours of 12:00 midnight and 6:00 a.m. of which the city and the subscriber received appropriate prior notification. A subscriber is entitled to a full refund for any cable system or disruption to a pay-per-view event. These credits and refunds shall be made available upon request by subscriber describing the time, date and nature of the disruption experienced.

(7) Technicians capable of performing service-related emergency repairs and maintenance must be available 24 hours a day, including weekends and holidays.

(8) No charge shall be made to a subscriber for any service call relating to grantee-owned and grantee-maintained equipment after the initial installation of cable service unless the problem giving rise to the service request can be demonstrated by grantee to have been:

a. Caused by the negligence or malicious destruction of cable equipment by the subscriber; or

b. A problem established as having been non-cable system or cable service in origin.

A grantee may also assess a service charge for repeat service calls to the same address in instances where the problem was not caused by the grantee.

(9) Cable drop lines, cable trunk lines or any other type of outside wiring that comprise

part of a grantee's cable system that are located underground shall be placed in such locations pursuant to city code and the surrounding ground shall be restored as close as is practical to its condition immediately prior to such underground construction activity within a reasonable period of time after connection to the cable system. Except for a grantee's maintenance facilities, no cable drop line, cable trunk line or any other type of outside wiring shall be permitted to lay upon the ground for an unreasonable period of time within the city, except for the express purpose of being immediately connected to the cable system of grantee. The requirements of this subsection shall apply to all installation, reinstallation, service or repair commenced by a grantee within the city during normal operating conditions.

(l) *Disconnections and downgrades.*

(1) If any subscriber fails to pay a properly due monthly subscriber fee or any other properly due fee or charge, the grantee may disconnect the subscriber's outlet; provided, however, that such disconnection shall not be effected until after the later of:

a. Thirty days after the due date of the delinquent fee or charge; or

b. Fifteen days after delivery to subscriber of written notice of the intent to disconnect.

If a subscriber pays before expiration of the later of subsection (l)(1)a or (1)b of this section, the grantee shall not disconnect. Provided however, that this section does not apply to subscribers disconnected as a result of insufficient funds.

(2) No subscriber may be disconnected without prior written notice.

(3) No subscriber may be disconnected for non-payment if payment of outstanding balances is made before the scheduled date for disconnection, up to and including the last business day before the scheduled disconnection.

(4) No subscriber may be disconnected due to a grantee's failure to timely or correctly post payments.

(5) No subscriber may be disconnected outside of normal business hours or on Sundays or holidays.

(6) Absent extenuating circumstances, a grantee is not required to reconnect a subscriber with an undisputed outstanding balance.

(7) A grantee is permitted to refuse orders for premium or pay-per-view services from subscribers with a record of non-payment.

(8) A grantee may disconnect subscriber premises that are responsible for signal leakage in excess of applicable federal limits. A grantee may effectuate such disconnection without advance notice, provided that a grantee shall immediately notify the subscriber with door tags or telephone calls or other reasonable means. If the source of the signal leakage is remedied and the subscriber was not the cause of such leakage, the grantee shall reconnect the subscriber at no charge. If the subscriber was the cause of the signal leakage, the grantee may charge a reasonable reconnection fee. For purposes of this section, use of FCC-approved navigation devices does not in and of itself constitute subscriber caused signal leakage.

(9) Subscribers may request disconnection or a downgrade of cable service at any time.

A grantee may not impose any charge for service delivered after the requested date of disconnection. As provided under federal law, subscribers may request a downgrade at no charge if made within 30 days of a rate increase.

(10) Nothing in this chapter or Code shall limit the right of a grantee to deny cable service to any household or individual which has a negative credit or cable service history with the grantee, which may include non-payment of bills, theft or damage to the grantee's equipment, outstanding balances or threats or assaults on employees of the grantee in the course of their employment. In the event cable service is denied, the grantee will give notice to the subscriber of the right to contact the appropriate authority as designated by the city.

(m) *Communications between grantee and subscribers.*

(1) *Notifications to subscribers.*

a. Every grantee shall provide written information to subscribers on each of the following topics at the time of installation, at least annually to all subscribers and at any time upon request of a subscriber:

1. Product and services offered;

2. Prices and options for programming services and conditions of subscription to programming and other services and facilities;

3. Installation and service maintenance policies;

4. Instructions on how to use services;

5. Channel positions of programming offered on a system; and

6. Billing and complaint procedures, including the name, address and telephone number of the city.

b. Subscribers will be given 30 days' advance notice of any changes in rates, programming services or channel positions, if the change is within the control of the grantee. All such notice shall be provided in writing by any reasonable means. In addition, the grantee shall notify subscribers 30 days in advance of any significant changes in other information required by this section. Notwithstanding the foregoing or any provision of this franchise to the contrary, a grantee shall not be required to provide prior notice of any rate change that is the result of a regulatory fee, franchise fee or any other fee, tax assessment or change of any kind imposed by any government entity on the transaction between the grantee and the subscriber.

(2) *Billing.*

a. Bills must be clear, concise and understandable. Bills must be fully itemized, including, but not limited to, basic and premium service charges and equipment charges.

b. Bills must clearly delineate all activity during the billing period, including optional charges, rebates and credits.

c. In case of a billing dispute, a grantee must respond to a written complaint from a subscriber within 30 calendar days.

d. Credits for service shall be issued no later than the subscriber's next billing cycle

after determination that the credit is warranted.

(3) *Late charges.* A grantee may impose a monthly fee for any delinquent balance owed by a subscriber, subject to the following:

a. At least ten days before the date the fee is imposed, the subscriber shall be given written notice on the face of the bill or by separate notice of:

1. The date after which the fee will be imposed if the balance is not paid; and

2. The amount of the fee that will be imposed.

b. The fee for the delinquent payment shall not exceed $2.95 in the event that the subscriber fails to pay its fee within 30 days after the date in which the fee is due to the grantee. Grantee may impose an additional $1.70 late charge in the event that subscriber fails to pay its fee within 45 days after the date in which the fee is due to the grantee.

c. Grantee reserves the right to revise the late charge so that the fee is the same throughout the metropolitan area, provided that the grantee gives 30 days' written notice to the city and is not greater than five percent of the amount of the delinquent balance or $5.00 per month, whichever is greater.

(4) *Refunds.* Refund checks will be issued promptly, but no later than either:

a. The subscriber's next billing cycle following resolution of the request or 30 days, whichever is earlier; or

b. The return of equipment supplied by the grantee if cable services are terminated.

(n) *Complaint log.* Subject to the privacy provisions of 47 USC 521 et seq., every grantee shall prepare and maintain written records of all complaints made to them and the resolution of such complaints, including the date of such resolution. Such written records shall be on file at the office of grantee. A grantee shall make available to city a written summary of such complaints and their resolution upon request.

(o) *Parental control.* Every grantee shall make available to any subscriber upon request a lockout device for blocking both video and audio portions of any channels of programming entering the subscriber's premises. Such device shall be provided at a reasonable charge, except to the extent that federal law specifically provides otherwise. A grantee may, however, require a reasonable security deposit for the use of such a device.

(p) *Service area.*

(1) *Area served.* A franchisee shall build and maintain its system so that within a reasonable period of time, as established by the franchise, it is able to provide service to all households desiring service located within the franchise area without any construction charges (other than standard connection charges). A franchisee must build and maintain its system so that it can extend service to households desiring service located outside the franchise area in accordance with subsection (p)(2)a through (2)f of this section. Connections to commercial customers shall be governed by subsection (p)(2)g of this section.

(2) *Line extension requirements.*

a. For areas within the city limits but outside the franchise area, including areas annexed after the effective date of its franchise, a franchisee shall extend its trunk and distribution system to serve households desiring service without any construction charge (other than standard connection charges and drop charges as authorized herein), unless the franchisee demonstrates to the board of aldermen's satisfaction evidenced by written decision that circumstances justify a specific charge, where the new subscriber requesting service is located within 150 feet from the termination of the cable system or the number of potential subscribers to be passed by such extension is equal to or greater than 24 potential households per cable mile or portion thereof, measured from any point on the system.

b. In circumstances where that the factors requiring line extension do not exist as set forth in the foregoing paragraph are not met, the franchisee shall on the request of the board of aldermen extend its cable system based upon the following cost-sharing formula. The franchisee shall contribute an amount equal to the construction costs per mile multiplied by the length of the extension in miles, multiplied by a fraction where the numerator equals the number of potential households per mile at the time of the request and the denominator equals 24. Households requesting service as of the completion of construction can be required to bear the remainder of the total construction costs on a pro rata basis.

c. The term "construction costs" means actual turnkey costs to construct the entire extension including lines, materials, electronics, pole make-ready charges and labor but not the cost of drops except as provided below. If the franchisee proposes to require a household requesting extension to make a contribution in aid of extension, it must:

1. Notify the board of aldermen in advance;

2. Send the board of aldermen a copy of the invoice showing the amount actually charged each household requesting extension; and

3. Within 30 days of completion of the extension, furnish proof of the total cost of the extension and make any appropriate refunds if the total cost is less than the amounts charged in advance of construction.

At the end of each calendar year, the franchisee must calculate the amount any contributing person would have paid based on the number of persons served at that time and pay back the difference between the amount which would then be owed. The franchisee shall report such calculations and refunds to the city clerk by the end of January of the following year.

d. Installation of drops. Except as federal rate regulations may otherwise require, the franchisee shall not assess any additional cost for service drops of 150 feet or less unless the franchise demonstrates to the board of aldermen's satisfaction, evidenced by written decision, that circumstances justify a specific charge. Where a drop exceeds 150 feet in length, a franchisee may charge the subscriber for the difference between the franchisee's actual costs associated with installing a 150-foot drop and the franchisee's actual cost of installing the longer drop, provided that drop length shall be the shorter of:

1. Actual length of installed drop; or

2. The shortest practicable distance to the point where the franchisee would be required to extend its distribution system.

e. Location of drop. Except as federal rate regulations may otherwise require or otherwise approved by the city, all cables and wires shall be installed underground parallel to other utilities where such easements or space is available for use by franchisee.

f. Time for extension. A franchisee must extend service to any person who requests it:

1. Within seven days of the request within the franchise area or where service can be provided by activating or installing a drop within 150 feet of the existing distribution system;

2. Within 30 days of the request for service outside the franchise area where an extension of one-half mile or less (but more than 150 feet) is required; or

3. Within six months for service outside the franchise area where an extension of one-half mile or more is required.

g. Because existing conditions can vary dramatically, franchisee may in its discretion require commercial customers to pay all reasonable costs of connection (including time and materials) in excess of the average cost of connection for residential services.

(3) *Newly annexed areas.* In such cases where mandatory extension of the cable system is required for areas newly annexed after the effective date of the franchise, but the technical capabilities of then-existing cable system are such that the minimum technical performance standards required by this franchise or the FCC cannot be met, then the grantee shall be required to make such extension only if the grantee can earn a fair return (as measured by the grantee's weighted average cost of capital) on the incremental investment required combined with the overall investment base of the cable system within the boundaries of the franchise area.

(4) *Special agreements.* Nothing herein shall be construed to prevent a grantee from serving areas not covered under this section upon agreement with developers, property owners or residents.

(q) *Customer service reporting requirements.* The city may require upon reasonable request that a grantee periodically prepare and furnish to city annual reports and any other reasonable information relevant to the grantee's compliance with the customer service requirements of this chapter measured on a quarterly basis.

Sec. 655.200. - Operation and maintenance.

(a) *Open books and records.* Every grantee shall cooperate with the city with respect to the city's administration of this chapter and Code and any applicable franchise granted pursuant to it. Subject to the privacy provisions of the Cable Act, the city shall have the right to inspect, upon three business days' notice during normal business hours, all books, records, maps, plans, financial statements, service complaint logs, performance test results and other existing like materials of a grantee that relate to the operation of the grantee's cable system and that are

reasonably necessary to city's enforcement or administration of this chapter or the grantee's franchise. A grantee shall not be required to maintain any books or records for franchise compliance purposes longer than three years, except that financial records necessary to demonstrate compliance with the required cable franchise fee payments shall be kept for six years. Upon request, the city will treat designated information disclosed by a grantee as confidential to the extent permissible under state and federal law. All such review of a grantee's books and records shall be performed by an independent party if the city itself enters into the business as a competitor.

(b) *Communications with regulatory agencies.* Copies of all petitions, applications, communications and reports submitted by a grantee to the FCC, Securities and Exchange Commission or any other federal or state regulatory commission or agency having jurisdiction with respect to any matters directly affecting the cable system operations shall be made available contemporaneously to the city upon request. Copies of responses from the above regulatory agencies to a grantee likewise shall be made available promptly to the city upon request. If the city is specifically named in any such pleading or response, the city shall automatically be furnished a copy.

(c) *Annual reports.*

(1) Upon request, a grantee shall make available to city, within 90 days of the end of each of the applicable grantee's fiscal years during the term of this franchise, the following:

a. A revenue statement certified by a representative of the grantee showing the gross revenues of the grantee for the preceding fiscal year;

b. A current list of names and addresses of each officer and director and other management personnel of the grantee;

c. A copy of all documents that relate directly to the grantee's cable system that were filed with any federal, state or local agencies during the preceding fiscal year and that were not previously filed with city;

d. A statement of the grantee's current billing practices and charges;

e. A copy, if any, of the grantee's current subscriber service contract; and

f. A copy of annual reports to stockholders, if any, for operating company and parent company.

All of the above information shall not be required annually unless there is a change after the first filing.

(2) The city and its agents and representatives shall have authority to arrange for and conduct an audit during normal business hours of the books and records of grantee that are reasonably necessary for the enforcement of a franchise. A grantee shall first be given 30 days' notice of the audit, the description of and purpose for the audit and a description, to the best of city's ability, of the books, records and documents that city wants to review. The costs and expense of such audit shall be borne by the grantee if the audit reveals a discrepancy of two percent or more from the information related to the city.

(3) Any review or audit of a grantee's books and records shall be performed by an independent party if the city itself enters into the business as a competitor to provide cable services.

(d) *Additional reports and assistance.* Upon request of the city, a grantee shall add additional reports to the index that are reasonably necessary to the city's proper enforcement of this chapter, Code or franchise. The city shall require such reports only through passage of a formal resolution of the city. In addition, upon request, a grantee shall cooperate and assist the city in interpreting and understanding any report required under this chapter, Code or its franchise, including through the provision of explanatory graphs or charts.

(e) *Service contract and subscriber information.*

(1) A grantee shall have authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable the grantee to exercise its rights and perform its obligations under this chapter and its franchise and to ensure uninterrupted cable service to all of its subscribers, provided such rules, regulations, terms and conditions shall not be in conflict with the provisions of this chapter, federal, state or local law or any applicable rules and regulations.

(2) Upon request, a grantee shall submit to city any subscriber contract form that it utilizes. If no written contract exists, a grantee shall file with the city a document completely and concisely stating the terms of the residential subscriber contract offered, specifically including the length of the subscriber contract. The length and terms of any subscriber contract shall be available for public inspection during normal business hours.

Sec. 655.210. - Financial provisions, remedies, procedures and due process.

(a) *Cable franchise fee.*

(1) As compensation for grant of a franchise and in consideration of permission to use the rights-of-way of the city for the construction, operation, maintenance and reconstruction of a cable system and to defray the costs of franchise obligations, every grantee shall pay to the city on a monthly or quarterly basis throughout the term of its franchise a sum totaling five percent of the grantee's gross revenues.

(2) The franchisee fee is in addition to all other fees and all taxes and payments that a franchisee or other person may be required to pay under any federal, state or local law, including any applicable property and amusements taxes, except to the extent that such fees, taxes or assessments are a franchise fee under 47 USC 542.

(3) Further, every grantee shall market any bundled services to fairly reflect an appropriate and reasonable division of services among the various services offered. Whether or not a grantee separates services on a subscriber's bill, it will provide to the city the amounts upon which it will pay any applicable use fee and any other applicable taxes or fees based on the provision of communications service and the amounts upon which it will pay the cable service franchise fee. Should a grantee engage in billing practices that, in the determination of the city, do not fairly reflect an appropriate split of communications services and cable television services, the city will notify the grantee in writing of its determination. The parties will meet and discuss in good faith whether the

billing practices result in an unfair payment of fees to the city. If the parties do not agree on an appropriate method of determining which charges are subject to use fees and that are subject to the cable service franchise fee, the parties may subject the dispute to arbitration or may resort to other methods of dispute resolution, including litigation. Taxes or fees that are not paid on the appropriate division of the bundled bill, when ultimately paid, will be subject to all interest and penalties provided by the applicable portion of this chapter.

(4) Payments due the city under this section shall be computed quarterly, for the preceding quarter, as of March 31, June 30, September 30 and December 31. Each quarterly payment shall be due and payable no later than 45 days after the dates listed in the previous sentence. Each payment shall be accompanied by a brief report by the grantee showing the basis for the computation and a franchise fee worksheet listing all of the sources of revenues attributable to the operation of the grantee's system.

(5) Should any additional monies be due to the city as a result of information contained in the annual financial report of a grantee or by audit as permitted by this chapter, the grantee shall pay such additional monies to the city within 60 days after receipt of notice of same from the city.

(6) In the event any franchisee fee or other payment is not made on or before the date specified herein, the franchisee and any other person shall pay interest charges computed from such due date at an annual rate equal to the commercial prime interest rate of the city's primary depository bank during the period such unpaid amount is owed. In addition, unless otherwise prohibited by law, the franchisee shall pay an additional sum of two percent of the amount due to defray the city's additional expenses by reason of the delinquency.

(7) No acceptance of any payment shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim the city may have for further sums payable under the provisions of this chapter, Code or applicable franchise. All amounts paid shall be subject to audit and recomputation by the city or its designee at any time upon reasonable notice and specification of the documents requested to be reviewed. The city's right to audit and the grantee's obligations to retain records related to the franchise fee audit shall expire six years from the date on which each franchise fee payment by the grantee is due.

(b) *Security fund.* Each grantee may be required to maintain a security fund with the city to ensure compliance with this chapter, Code and applicable franchise in an amount and in a manner as set forth in the grantee's franchise.

(c) *Bonds, indemnification and insurance.* Each grantee shall maintain bonds and insurance with the city in amounts and in a manner as set forth in the grantee's franchise. Each grantee also shall be required to indemnify the city in a manner as set forth in article I of this chapter and in the grantee's franchise.

(d) *Remedies and enforcement procedure.*

(1) Whenever the city has reason to believe that a grantee has violated any provision of this chapter or its franchise, including the customer service and telephone availability requirements, the city shall first notify the grantee in writing of the violation and demand correction within a reasonable time that shall not be less than 30 days. If the grantee fails to demonstrate to the reasonable satisfaction of the city that no violation exists, if

the grantee fails to correct the violation within the time prescribed or if the grantee is unable to correct the violation and fails to commence corrective action within the time prescribed and to diligently remedy such violation thereafter, the grantee shall then be given written notice of not less than 30 days of a public hearing to be held before the board of aldermen. The notice shall indicate with reasonable specificity the violation alleged to have occurred. This procedure shall apply to all alleged Code or franchise violations, including those in which grounds for revocation are considered.

(2) At the public hearing, the board of aldermen shall hear and consider all relevant evidence and thereafter render findings and a decision based upon the evidence.

(3) In the event the city finds that the grantee has corrected the violation or promptly commenced correction of such violation after notice thereof from the city and is diligently proceeding to fully remedy the violation or that no violation has occurred, the proceedings shall terminate and no penalty or other sanction shall be imposed. In the event the city finds that a violation exists and that the grantee has not corrected the same in a satisfactory manner or did not promptly commence and diligently proceed to correct the violation, the city may impose penalties or liquidated damages from the security fund, as follows:

a. For system construction schedule violations, including, but not limited to, provisions relating to initial construction schedules and system upgrade construction schedule: $500.00 per day of non-compliance;

b. For all other violations: $250.00 per day per violation.

The city shall provide the grantee with written notice of its decision together with a written finding of fact explaining the basis for such a decision.

(4) If the city elects to assess penalties or liquidated damages, then such election shall constitute the city's exclusive remedy for a period of 60 days. Thereafter, if the grantee remains in non-compliance, the city may pursue any other available remedy, including franchise revocation.

(5) In the event that a franchise is cancelled or terminated by reason of the default of the grantee, the security fund deposited pursuant to the franchise shall remain in effect and available to the city until all pending claims or penalties are resolved or settled, after which point any remaining amounts in the security fund shall revert to the possession of the grantee.

(6) The rights reserved to the city with respect to the security fund are in addition to all other rights of the city, whether reserved by this chapter, applicable franchise or authorized by law and no action, proceeding or exercise of a right with respect to such security fund shall affect any other right city may have.

(7) The foregoing provisions shall not be deemed to preclude the city from obtaining any other available remedies for repeated violations of the same general type, whether remedied or not.

(e) *Grounds for revocation.* In addition to any rights in this chapter or applicable franchise, the city reserves the right to utilize the above-described enforcement procedure to revoke a franchise and all rights and privileges pertaining thereto in the event that any of the following occur and the city and a grantee are not able to

mutually agree upon a cure or alternate remedy.

(1) The grantee substantially violates any material provision of this chapter or its franchise;

(2) The grantee practices an act of fraud or deceit upon the city; or

(3) The grantee becomes insolvent or is adjudged bankrupt, provided that any remedy imposed pursuant to this subsection shall not conflict with the requirements of the federal bankruptcy code or other applicable law.

(f) *Right of appeal.*

(1) Upon the imposition of a penalty or revocation decision, a grantee shall have a period of 120 days subsequent to the date of the formal adoption of the decision by the board of aldermen within which to file an appeal with a court of competent jurisdiction.

(2) During any such appeal period, the franchise shall remain in full force and effect.

Sec. 655.220. - Foreclosure, receivership and abandonment.

(a) *Foreclosure.* Upon the foreclosure or other judicial sale of all or a part of the cable system or upon the termination of any lease covering all or part of the cable system, a grantee shall notify the city of such fact and such notification shall be treated as a notification that a change in control of the grantee has taken place and the provisions of this chapter governing the consent to transfer or change in ownership shall apply without regard to how such transfer or change in ownership occurred.

(b) *Receivership.* The city shall have the right to cancel a franchise 120 days after the appointment of a receiver or trustee to take over and conduct the business of a grantee, whether in receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of the 120 days or unless:

(1) Within 120 days after its election or appointment, the receiver or trustee has fully complied with all the provisions of the franchise and remedied all defaults thereunder; and

(2) Such receiver or trustee, within the 120 days, has executed an agreement, duly approved by a court having jurisdiction, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this chapter and applicable franchise.

Sec. 655.230. - Purchase of system.

If a renewal or extension of a franchise is denied without further right of appeal or a franchise is lawfully terminated with all rights of appeal exhausted, the city may acquire ownership of the cable system or effect a transfer of ownership of the cable system to another person, any such acquisition or transfer shall be in accordance with and to the extent permitted by 47 USC 547, as follows:

(1) Upon revocation of a franchise, such valuation shall not include any sum attributable to the value of the franchise itself and plant and property shall be valued according to its book value at the time of revocation or the cable system's initial cost less depreciation

and salvage, whichever of the two is lower.

(2) At the expiration of a franchise, such valuation shall be at fair market value, exclusive of the value attributed to the franchise itself.

Sec. 655.240. - Sale or transfer of franchise.

(a) A grantee shall not sell, transfer, lease, assign, sublet or dispose of, in whole or in part, an interest in or control of a franchise or cable system without the prior consent of the city, which consent shall not be unreasonably denied or delayed and may be denied only upon a good faith finding by the city that the proposed transferee lacks the legal, technical or financial qualifications to consummate the transaction and operate the cable system so as to perform its obligations under the franchise. This section shall not apply to sales of property or equipment in the normal course of business. Consent from the city shall not be required for a transfer in trust, mortgage or other instrument of hypothecation, in whole or in part, to secure an indebtedness or for a pro forma transfer to a corporation, partnership or other entity controlling, controlled by or under common control with a grantee.

(b) The following events shall be deemed to be a sale, assignment or other transfer of an interest in or control of a franchise or cable system requiring compliance with this section:

(1) The sale, assignment or other transfer of all or a majority of a grantee's assets in the city;

(2) The sale, assignment or other transfer of capital stock or partnership, membership or other equity interests in a grantee by one or more of its existing shareholders, partners, members or other equity owners so as to create a new controlling interest in grantee;

(3) The issuance of additional capital stock or partnership membership or other equity interest by a grantee so as to create a new controlling interest in a grantee; and

(4) A grantee's agreement to transfer management or operation of the grantee or the system to an unaffiliated entity so as to create a new controlling interest in the grantee. The term "controlling interest," as used herein, means majority equity ownership of a grantee.

(c) A transfer solely for security purposes such as the grant of a mortgage or security interest, including the pledge or grant of a mortgage or security interest to lenders of a grantee's assets, including, but not limited to, the franchise such as in a transaction commonly known as an initial public offering, shall not be deemed to be a sale, assignment or other transfer of an interest in or control of a franchise or cable system and thus shall not require compliance with this section.

(d) The grantee shall submit to the city the application and FCC Form 394 requesting such transfer or assignment consent or comply with other applicable procedure. In the case of any sale or transfer of ownership of an interest in or control of a franchise or cable system, the city shall have 120 days to act upon any request for approval of such sale or transfer that contains or is accompanied by such information as is required in accordance with FCC regulations and the requirements of this chapter. If the city fails to render a final decision on the request within 120 days after receipt by the city of all required information, such request shall be

deemed granted unless the requesting party and the city agree to an extension of the 120-day period.

(e) The city reserves any legal right it has under applicable law to require a grantee to pay all costs and expenses incurred by the city in connection with the sale, assignment or transfer of a franchise, including, but not limited to, the city's costs of reviewing the qualifications of any proposed transferees. Such reimbursement shall not be considered a franchise fee.

Sec. 655.250. - Rights of individuals protected.

(a) *Discriminatory practices prohibited.* A grantee shall not deny cable service, deny access or otherwise discriminate against subscribers, programmers or general citizens on the basis of income level, race, color, religion, national origin, sex or age. Every grantee shall strictly adhere to the equal employment opportunity requirements of state and federal law. Every grantee shall comply at all times with all other applicable federal, state and local laws and all executive and administrative orders relating to non-discrimination.

(b) *Subscriber privacy.* Every grantee shall at all times comply with the federal subscriber privacy requirements codified at 47 USC 551.

Sec. 655.260. - Miscellaneous provisions.

(a) *Rate regulation.* The city reserves the right to regulate rates for basic cable service and any other services offered over a cable system to the extent permitted by federal or state law. A grantee shall be subject to the rate regulation provisions provided for herein and those of the Federal Communications Commission (FCC) at 47 CFR 76.900, subpart N. The city shall follow the rules relating to cable rate regulation promulgated by the FCC at 47 CFR 76.900, subpart N.

(b) *Rights reserved to city.* Upon either final non-appealable determination of non-renewal or revocation of a franchise, the city shall have discretion to permit a grantee by mutual consent to continue to operate the cable system for an extended period of time agreed upon by the parties. Any such operation of the system by a grantee shall be in accordance with the terms and conditions of this chapter or franchise and shall provide the regular subscriber service and any and all of the services that may be provided at that time.

ARTICLE IV. - RIGHTS-OF-WAY MANAGEMENT AND FACILITIES

Sec. 655.270. - Supplemental Conditions.

Every provider, as defined in section 655.080, shall be subject to and comply with these supplementary terms and conditions within this article in addition to those within Chapter 525, as may be amended from time to time, that is incorporated herein by reference and such provisions and the provisions of this chapter and Chapter 525 shall be deemed a condition of any franchise and agreement. The provisions of this article shall also apply to providers to the full extent permitted by law, and additionally to all construction activities in public utility easements.

Sec. 655.280. - Agreement or franchise requirements.

(a) *Agreement or franchise required.*

(1) *Franchise.* Except where otherwise authorized or required by applicable law, no ROW user may construct, maintain, own, control, or use facilities in the rights-of-way without a franchise or ROW agreement with the city as provided herein. A franchise shall be obtained in conformance with all applicable franchise procedures for any ROW user seeking to use the rights-of-way for purposes of providing cable television service, or distribution of electricity, gas, water, steam, lighting, or sewer public utility service in the city.

(2) *ROW agreement.* A ROW agreement shall be required for all other ROW users, except as provided herein or otherwise required by law. Such agreements shall conform to all applicable law, including as provided in article II of this chapter, but shall not be subject to procedures applicable to franchises and the city may, if appropriate, approve form agreements that may be executed by the city administrator in substantially the form approved.

(3) *Incidental uses.* Incidental uses of the rights-of-way may be permitted without franchise or rights-of-way use agreement pursuant to a special use permit issued by the public works director. The director may establish such application, requirements and conditions applicable to such uses consistent with the purposes of this article or as otherwise established by law.

(b) *Franchises and agreements non-exclusive; approval.* The authority granted by the city in any agreement or franchise shall be for non-exclusive use of the rights-of-way. The city specifically reserves the right to grant, at any time, such additional agreements or other rights to use the rights-of-way for any purpose and to any other person, including itself, as it deems appropriate, subject to all applicable law. The granting of an agreement or franchise shall not be deemed to create any property interest of any kind in favor of the ROW user. All franchises and agreements shall be approved by ordinance of the board of aldermen on a non-discriminatory basis provided that the applicant is in compliance with all applicable requirements. Such franchises and agreements shall be deemed to incorporate the terms of this article and other applicable laws of the city, except as may be expressly stated in such agreements and franchises.

(c) *Lease required for public lands.* Unless otherwise provided, use or installation of any facilities in, on or over non-right-of-way public lands of the city shall be permitted only if a lease agreement or other separate written approval has been negotiated and approved by the city with such reasonable terms as the city may require.

(d) *Transferability.* Except as provided in this article or as otherwise required by law, no franchise, agreement or permit may be transferred without the written application to and consent of the city based on the requirements and policies of this ROW ordinance. The city shall not unreasonably withhold its consent to transfer as provided herein.

Sec. 655.290. - Application for franchise or agreement required.

(a) *Application.* An application for franchise or right-of-way agreement shall be presented to the director in writing and shall include all such information as is provided for in this section. The ROW user shall be responsible to accurately maintain the information in the application during the term of any franchise or agreement and shall be responsible for all costs incurred by the city due to the failure to provide or maintain as accurate any application information to the city required herein.

(b) *Application fee.* An application fee for review, documentation and approval of such agreement or franchise shall be established by the department to recover any actual costs anticipated and incurred by the city in reviewing, documenting, or negotiating such agreement or franchise, including reasonable legal fees, provided that no costs, if any, of litigation or interpretation of RSMo 67.1830 or 67.1832 shall be included if such inclusion is prohibited by law as to that applicant. If actual costs are thereafter determined to be less than the application fee, such amount shall be returned to the applicant after written request therefrom; if actual costs exceed the application fee, the applicant shall pay such additional amount prior to issuance of any final city approval after written notice from the city. Nothing herein shall be construed to prohibit the city from also charging reasonable compensation for use of the rights-of-way where such a fee is not contrary to applicable law.

(c) *Application form.* A ROW user shall submit a completed application for franchise or right-of-way agreement on such form provided by the city, which shall include information necessary to determine compliance with this chapter, including, but not limited to:

(1) The identity and legal status of the ROW user.

(2) The name, address, telephone number, fax number and e-mail address of each officer, agent, or employee responsible for the accuracy of the application. Each officer, agent or employee shall be familiar with the local facilities of the ROW user, shall be the persons to whom notices shall be sent, and shall be responsible for facilitating all necessary communications, including, but not limited to, certification to the city of any material changes to the information provided in such completed application during the term of any agreement.

(3) The name, address, telephone number, fax number and e-mail address of the local representative of the ROW user who shall be available at all times to act on behalf of the ROW user in the event of an emergency.

(4) Proof of any necessary permit, license, certification, grant, registration, franchise agreement or any other authorization required by any appropriate governmental entity, including, but not limited to, the FCC or the public service commission.

(5) A description of the ROW user's intended use of the right-of-way, including such information as to proposed services as to determine the applicable federal, state, and local regulatory provisions as may apply to such user.

(6) A list of authorized agents, contractors or subcontractors eligible to obtain permits on behalf of the ROW user. An application may be updated to add such person at the time of permit application if the updated application is submitted by an authorized representative of the ROW user.

(7) Information sufficient to determine the amount of net assets of the ROW user.

(8) Information sufficient to determine whether the ROW user is subject under

applicable law to franchising, service regulation, payment of compensation for the use of the right-of-way, taxation, or other requirements of the city.

(9) Such other information as may be reasonably required by the city to determine requirements and compliance with applicable regulations.

(d) *Approval process.* After submission by the right-of-way user of a duly executed and completed application and deposit fee, and executed franchise or right-of-way agreement as may be provided by the director, or as modified by the director in review of the specific circumstances of the application, all in conformity with the requirements of this article and all applicable law, the director shall submit such agreement to the board of aldermen for approval. Upon determining compliance with this article, the board of aldermen shall authorize execution of the form franchise or right-of-way agreement (or a modified agreement otherwise acceptable to the city consistent with the purposes of this article), and such executed franchise or agreement shall constitute consent to use the rights-of-way; provided that nothing herein shall preclude the rejection or modification of any executed franchise or agreement submitted to the city to the extent such applicable law does not prohibit such rejection or modification, including where necessary to reasonably and in a uniform or non-discriminatory manner reflect the distinct engineering, construction, operation, maintenance or public work or safety requirements applicable to the applicant.

Sec. 655.300. - Removal of facilities.

Upon expiration of an agreement, whether by lapse of time, by agreement between the provider and the city or by forfeiture thereof, the provider shall remove, at its sole cost, from public property any and all of its facilities that are the subject of an agreement within a reasonable time after such expiration, not to exceed 90 days and it shall be the duty of provider immediately upon such removal to restore the rights-of-way from which the facilities are removed to as good condition as the same were before the removal was effected and as required by the city. The provider shall further, unless otherwise consented to by the city, remove all facilities that have not been used for a period of more than one year. Notwithstanding the foregoing, upon request of the provider, the city may allow underground facilities to be left in place when it is not practical or desirable to require removal.

Sec. 655.310. - Insurance and bonds.

During the term of an agreement, the provider shall obtain and maintain at the provider's sole expense all insurance and bonds required by the Chapter 525 or applicable agreement or franchise. Nothing contained in this chapter shall limit the provider's liability to the city to the limits of insurance certified or carried.

ARTICLE V. - MISCELLANEOUS

Sec. 655.450. - Administration of agreements or franchise.

The city shall be responsible for the continued administration of this chapter and any agreement or franchises granted hereunder. The city may delegate this authority from time to time in any manner consistent with applicable law, provided however, that the city shall not delegate enforcement authority.

Sec. 655.460. - Appeals.

Unless otherwise provided herein or by any otherwise governing ordinance or law, a provider may appeal any decision of the city pursuant to this chapter to the board of aldermen within 15 days of such decision where, upon written request of the provider specifying this provision and including the details of the alleged claim, an evidentiary hearing shall be held on such appeal.

Sec. 655.470. - Non-enforcement by the city.

A provider shall not be relieved of its obligation to comply with any of the provisions of this chapter or its applicable agreement or franchise by reason of any failure of the city to enforce prompt compliance.

Sec. 655.480. - Penalties.

Any person violating any provision of this chapter shall be subject to such penalty and requirements as set forth in the Chapter 525. This Code shall be deemed incorporated into the Chapter 525 and any violation hereof shall be deemed a violation of that ordinance.

Sec. 655.490. - Publication of notices.

All public notices or ordinances required to be published by law shall be published in an official newspaper serving the city. A grantee shall be responsible for all costs of publication that may be required with respect to its agreement or franchise or any amendments thereto.

ARTICLE VI. - VIDEO SERVICES PROVIDERS

Sec. 655.500. - Requirements and regulations of video services providers.

(a) *Definitions.* The words and phrases used in this section shall have the meaning as set forth in RSMo 67.2677 or, if not defined therein, shall have such meanings as established by this Code.

(b) *Franchise fee.* Pursuant to RSMo 67.2689 and as partial compensation for use of the city's public rights-of-way, each video service provider or other person providing cable services or video services within the city shall, to the extent permitted by law, pay to the city a fee of five percent of the gross revenues from such video services provider in the geographic area of the city. Such payment shall be made as required by RSMo 67.2689. The city shall have the right to audit any video service provider as authorized by RSMo 67.2691. Late payments shall accrue interest due to the city compounded monthly at 1.5 percent or such other maximum rate as may be established by law.

(c) *Customer service requirements.* All video service providers providing service within the city shall adopt and comply with the minimum customer service requirements set forth in RSMo 67.2692. Notice or receipt of this by the video service provider shall be deemed notice of the city invoking such customer service requirements.

(d) *Rights-of-way regulation; indemnification; permits and compliance with other laws.* Video service providers shall comply with the requirements of RSMo 67.2707, 67.2709, and all applicable ordinances and regulations consistent with RSMo

67.1830 to 67.1846, relating to use of the city rights-of-way. Each video service provider shall indemnify and hold harmless the city and its officer s, employees and agents from any loss or damage, including, but not limited to, attorneys' fees, as provided in such ordinances or regulations, but in no event less than the obligation on video service providers set forth in RSMo 67.2695. The city may require documentation of such indemnification by written agreement or other instrument to the extent permitted by law. In addition, video service providers shall be subject to and comply with such supplementary provisions relating to placement, screening and location of facilities as provided in title 4 of this Code, whether on public or private property, and such other applicable laws of the city, except as may be otherwise validly preempted. Notwithstanding any other ordinance to the contrary, no facilities to be used for video services shall be installed without obtaining a permit from the city authorizing the location and plans for such facilities; provided that this provision shall not apply to installation of otherwise lawfully authorized poles or wires.

(e) *Public, educational and governmental channels.* Each video service provider shall designate a number of channels for public, educational and governmental programming consistent with section RSMo 67.2703; provided that any greater number of channels, as may be required in the incumbent cable franchise or franchise ordinance shall be required pursuant to RSMo 67.2703.2. The city shall bear no cost relating to the transmission, availability or maintenance of such channels unless expressly authorized by the city in writing and approved by the city. Incumbent cable operators and other video service providers shall provide support for such public, educational and governmental channels consistent with RSMo 67.2703.8.

(f) *Continued obligations.* The obligations of a cable service provider or video service provider as set forth in any existing cable services or video services franchise or ordinance shall also continue to apply to the full extent permitted by applicable law.

(g) *Reservation of rights.* The city retains all rights in RSMo 67.2675 through 67.2714, inclusive, and may take any and all actions permitted by law to exercise such rights or to enforce such obligations on providers of video service.

(h) *Notice.* A copy of this chapter shall be delivered to each video service provider operating in the city after notice to the city that such provider is authorized to provide service within the city; provided that this section shall, to the extent permitted by law, not be affected by any claimed or actual failure of a service provider to have received delivery of a copy of this chapter.

Section 4: The portions of this Ordinance shall be severable. In the event that any portion of this Ordinance is found by a court of competent jurisdiction to be invalid, the remaining portions of this Ordinance shall be deemed valid, unless the court finds the valid portions of this Ordinance are so essential and inseparably connected with and dependent upon the void portions without the invalid ones, or unless the court finds that the valid portions standing alone are incomplete and are incapable of being executed in accordance with the legislative intent.

Section 5: This Ordinance shall be in full force and effect immediately upon its passage and approval.

4126

Ordinance No. (~~ID # 9630~~)

READ TWO TIMES AND PASSED BY THE BOARD OF ALDERMEN OF THE CITY OF WENTZVILLE, MISSOURI THIS 14th DAY OF October, 2020.

Nickolas Guccione
Mayor, Nickolas Guccione

Attest:
Kathryn Bowman
City Clerk, Kathryn Bowman

APPROVED BY THE MAYOR OF THE CITY OF WENTZVILLE, MISSOURI THIS 15th DAY OF October, 2020.

Nickolas Guccione
Mayor, Nickolas Guccione

Attest:
Kathryn Bowman
City Clerk, Kathryn Bowman

Approved as to Form:

Attorney

OFFICIAL SEAL CITY OF WENTZVILLE INC 1872 ST. CHARLES COUNTY, MISSOURI