

## **BUCHANAN COUNTY, MO. PUBLIC RIGHT OF WAY EXCAVATION PERMIT REQUIREMENTS**

No public utility or public utility right-of way user shall perform excavation through, on, under, across or within a county public right-of-way in any manner without first obtaining an approved PUBLIC RIGHT-OF-WAY PERMIT. This approval must come from the Buchanan County Commission and the permit will be issued in the office of Planning and Zoning.

All public right-of-way users desiring to perform excavation in the county public right-of-way to repair, construct or install new facilities, or replace existing facilities shall submit with the Application for Excavation Permit the following information:

1. Complete plan and drawing of the location of the proposed project.
2. Complete plans detailing the restoration of the public right-of-way.
3. An erosion control plan.
4. A safety plan indicating the methods to be used for the protection of the general public from injury including, but not limited to, the proposed use of barricades, signs, lights, fencing and other barriers.
5. A traffic control plan.
6. A work plan indicating the extent and duration of excavation work and restoration work stating proposed start and end dates.
7. Proof of commercial general liability insurance and commercial automobile liability insurance.

At the time of approval of a project, the Buchanan County Commission will determine the amount of performance bond required at the time of the issuance of the permit. The permit fee will be \$50.00 per excavation site.

Exhibit A

COUNTY RIGHT-OF-WAY FEE SCHEDULE\*  
BUCHANAN COUNTY, MISSOURI  
2013

Application Fee (non-refundable)	\$25
Plan and Specification Review	\$20 per page
Inspections	\$50 per hour (2 hour minimum)

\*These fees are based on a good faith determination of actual county costs per the Ordinances adopted December 20, 2013 and in accordance with RSMO 67.1800 et seq.

**BUCHANAN COUNTY,  
MISSOURI**

**RIGHT-OF-WAY MANAGEMENT ORDER**

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RIGHT-OF-WAY MANAGEMENT:

RIGHT-OF-WAY REGULATIONS

ARTICLE I. GENERAL PROVISIONS

**Section 1000.010: AUTHORITY**

This order is adopted by the authority granted by the State of Missouri in Sections 67.1830, 67.1832, 67.1837, 67.1838, 67.1842, 67.1844, and 67.1846 RSMo. et seq. and Chapter 229 RSMo.

**Section 1000.020 PURPOSE, NECESSITY, AND INTENT**

- A. The County Commission finds that the enactment of a Right-of-Way Management Ordinance for Public Utilities and other users of the Public Right-of-Way will have a beneficial impact on all of the citizens of the County. The use of the Public Right-of-Way is continuing to increase. The County Commission further finds that the public convenience, health, safety and welfare can be best served by establishing regulatory power and procedures to protect the Public Right-of-Way, ensure the orderly development of infrastructure which serves the County, while at the same time not creating barriers which prohibit or effectively prohibit competition. The County Commission further recognizes the necessity for sound management practice in light of the increased use of the Right-of-Way and the fact that the Right-of-Way is a limited resource, and for treating each Right-of-Way User equitably and in a competitively neutral manner with considerations that may be unique to the technologies and situation of each particular Right-of-Way User. The County Commission further finds that such regulatory powers are vested in the County or such Persons as the County shall designate. The County is establishing reasonable fees for this administration based on good faith determinations as to actual County costs.
- B. The County seeks to serve the public by providing for the following:
1. Permit requirements for Public Utility Right-of-Way Users and others seeking to Excavate or engage in a Special Use within a Public Right-of-Way;
  2. Management of the Public Rights-of-Way consistent with applicable Law;
  3. Imposition of notice, safety, and Restoration requirements on Public Utilities and other Persons desiring to Excavate or conduct a Special Use upon the Public Rights-of-Way.

**SECTION 1000.030: REGISTRATION BY PUBLIC UTILITIES**

Public Utility Right-of-Way Users may, but are not required to, register with Planning and Zoning or Designee, as herein provided in order to facilitate the issuance of permits.

**Section 1000.040: PERMITS REQUIRED: PUBLIC UTILITY RIGHT-OF-WAY USERS AND OTHERS**

- A. No Public Utility or Public Utility Right-of-Way User shall perform Excavation, as that term is defined in this Chapter, through, on, under, across, or within a Public Right-of-Way in any manner without first obtaining a Public Utility Right-of-Way Permit from the County as provided in this Chapter.
- B. All Persons not included in the definition of “Public Utilities” or “Public Utility Right-of-Way Users” who intend to undertake any of the following activities through, on, under, across, or within a Public Right-of-Way in any manner shall first secure a Special Use Right-of-Way Permit issued by the Director pursuant to this Chapter, to-wit: encroaching or Excavating on a Public Right-of-Way, laying locating, erecting, removing, installing, constructing, maintaining, operating, or repairing poles, equipment, facilities, devices, materials, apparatuses or media of any kind for any purpose whatever.
- C. All Public Utilities intending to undertake an activity through, on, over, under, across, or within a Public Right-of-Way that is not encompassed within the definition of Excavation, but which encroaches upon or impedes the use of the Public Right-of-Way, or constitutes the placement or suspension of a Facility over the Public Right-of-Way without Excavation shall first secure a Special Use Right-of-Way Permit issued by the Director pursuant to this Chapter.

**Section 1000.050: DEFINITIONS**

- A. For the purpose of this Chapter 1000, the following terms, phrases, words, abbreviations and their derivations shall have the meaning given in this Section.
- B. Unless the context clearly indicates to the contrary, words used in the present tense include the future tense, words in the single number include the plural number, and words in the plural number include the single number. The words “shall” and “will” are mandatory and the word “may” is permissive. Words not defined shall be given their common and ordinary meaning. The word “herein” means “in this Ordinance;” the word “Regulations” means “this Ordinance.”

*ABANDONED EQUIPMENT OR FACILITIES:* Any equipment, materials, apparatuses, devices or Facilities that are:

1. Declared abandoned by the owner of such equipment, materials, apparatuses, devices or Facilities; or
2. No longer is in active use, physically disconnected from a portion of the operating Facility or any other Facility that is in use or in service, and no longer capable of being used for the same or similar purpose for which the equipment, materials, apparatuses or Facilities were installed; or

3. No longer in active use and the owner of such equipment, materials, apparatuses, devices or Facilities fails to respond within thirty (30) days to a written notice sent by the County that the County deems such equipment, materials, apparatuses, devices or Facilities abandoned.

*AFFILIATE:* Each person, directly or indirectly, controlling, controlled by, or under common control with the licensee, provided that Affiliate shall in no event mean any limited partner or shareholder holding an interest of less than 15 percent of such licensee, or any creditor or such licensee solely by virtue of its status as a creditor and which is not otherwise an Affiliate by reason of owning a controlling interest in, being owned by, or being under common ownership, common management, or common control with, such licensee.

*APPLICABLE CODES AND STANDARDS:* National safety codes, industry construction standards, and local safety codes not more stringent than national safety codes.

*APPLICABLE SOFTWARE:* Computer software, if any, used or maintained by the Right-of-Way User for project data and mapping.

*APPLICANT:* Any person that applies for a Public Utility Right-of-Way Permit, or Special use Right-of-Way Permit.

*APPLICATION:* The forms on which an Applicant submits a request for a Public Utility Right-of-Way Permit or Special Use Right-of-Way Permit. An Application consists of all written documentation and representations, in whatever form, including the Applicant's registration information if used by the Applicant, made by the Applicant to the County regarding the matters pertaining to a requested Permit.

*AREA OF INFLUENCE:* That area around a Street Excavation or Right-of-Way activity where the pavement and sub-grade is impacted by the Excavation or activity and is subject to more rapid deterioration.

*THIS CHAPTER OR CHAPTER:* This Right-of-Way Management Ordinance.

*CABLE FRANCHISE:* A Franchise to Construct and operate a Cable System or provide Cable Service as provided by Law.

*COLLOCATION:* The shared use of Facilities, including, but not limited to, the placement of conduit owned by more than one Right-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. Collocation does not include interconnection of Facilities or the sale or purchase of capacity (whether bundled or unbundled).

*COUNTY (OR THE COUNTY):* The County of Buchanan, Missouri, as now constituted.

*COUNTY COMMISSION (OR THE COMMISSION):* The governing body of the County.

*CODE:* The collection of all Ordinances adopted by the County Commission of Buchanan County, Missouri.

*COMPLETED APPLICATION:* That point at which an Applicant has submitted all documents, plans, specifications and information required by this Chapter, has fully paid all applicable fees required by this Chapter, and satisfied all other requirements for consideration of the Application by the County under this Chapter. At the discretion of the Director or Designee, some submittals may be made electronically.

*CONSTRUCT:* Includes construct, install, erect, build, affix or otherwise place any fixed structure or object, in, on, under, through or above the Right-of-Way.

*DEGRADATION:* The actual or deemed reduction in the useful life of the Public Right-of-Way resulting from the cutting, Excavation or Restoration of the Public Right-of-Way.

*DE MINIMIS DISPLACEMENT:* Sites involving excavation or filling or a combination of excavation and filling affecting fifty (50) cubic yards or less of dirt, sand or other excavation of fill material or; sites involving grading, removal of protective ground cover or vegetation, excavation, land filling or other land disturbing activity affecting a surface area of one thousand (1,000) square feet or less.

*DEPARTMENT OF PLANNING AND ZONING:* Planning and Zoning of Buchanan County.

*DIRECTOR:* The supervisor of the Buchanan County Planning and Zoning or a Designee of the Commission. The term "Director" includes the employees of Buchanan County Planning and Zoning acting under the supervision of the Director as part of the implementation and enforcement of this Chapter.

*EFFECTIVE DATE:* The date on which this Right-of-Way Management Ordinance is adopted into Law by the Buchanan County Commission.

*EMERGENCY:* Includes, but is not limited to, the following:

1. An unexpected or unplanned outage, cut, rupture, leak or any other failure of a Public Utility facility that prevents or significantly jeopardizes the ability of a Public Utility to provide service to customers; or
2. An unexpected or unplanned outage, cut, rupture, leak or any other failure of a Public Utility Facility that results or could result in danger to the public or a material delay or hindrance to the provision of service to the public if the outage, cut, rupture, leak or any other such failure of Public Utility Facilities is not immediately repaired, controlled, stabilized or rectified; or
3. Any occurrence involving a Public Utility Facility that a reasonable Person could conclude under the circumstances that immediate and undelayed action by the Public Utility is necessary and warranted.

*EXCAVATION AND EXCAVATE:* Terms used interchangeably to mean any act by which earth, asphalt, concrete, sand, gravel, rock or any other material in or on the ground is cut into, dug, uncovered, removed or otherwise displaced, including borings and trenching, by means of any tools, equipment or explosives, except that the following shall not be deemed Excavation:

1. Any De Minimis Displacement or movement of ground caused by pedestrian or vehicular traffic; or
2. The placement or replacement of utility poles and related equipment at the existing general location that does not involve either a street or sidewalk cut; or
3. Any other activity which does not disturb or displace surface conditions of the earth, asphalt, concrete, sand, gravel, rock or any other material in or on the ground.

*FACILITIES AND FACILITY:* Are used interchangeable and shall mean any tangible thing located wholly or partially in, above or underneath the Public Right-of-Way, including, but not limited to, equipment, devices, materials, apparatuses, conduits, ducts, lines, pipes, wires, hoses, cables, culverts, tubes, poles, towers, manholes, transformers, regulator stations, underground vaults, receivers, transmitters, satellite dishes, micro cells, Pico cells, repeaters, amplifiers, appliances, pedestals, boxes, antennas, gates, motors, and other media of every description and all other devices and systems used for the purpose of transmission, collection, exchange, and distribution of communications, information, substances, data, and electronic or electrical current or impulses for the collection, exchanges or dissemination of a product, commodity, or service.

*FCC:* Federal Communications Commission.

*GEOGRAPHICAL INFORMATION SYSTEM (GIS):* A computerized, spatial coordinate mapping and relational database technology which:

1. Captures, assembles, stores, converts, manages, analyzes, amalgamates and records, in the digital mode, all kinds and types of information and data;
2. Transforms such information and data into intelligence and subsequently retrieves, presents and distributes that intelligence to a user for use in making the intelligent decisions necessary for sound management.

*GOVERNING BODY:* The County Commission of Buchanan County, Missouri.

*GOVERNMENTAL ENTITY:* Any county, township, city, town, village, school district, library district, road district, drainage or levee district, sewer district, water district, fire district or other municipal corporation, quasi-municipal corporation or political subdivision of the State of Missouri or of any other State of the United States and any agency or



instrumentality of the State of Missouri or of any other State of the United States or of the United States.

*LAW:* All federal, state, county or local law now in force or hereafter adopted.

*MANAGING THE PUBLIC RIGHT-OF-WAY:* The actions the County takes, through reasonable exercise of its police powers, to impose rights, duties and obligations on all users of the Right-of-Way, including the County, in a reasonable, competitively neutral and nondiscriminatory and uniform manner, reflecting the distinct engineering, construction, operation, maintenance and public work and safety requirements applicable to the various users of the Public Right-of-Way, provided that such rights, duties and obligations shall not conflict with any federal law or regulation.

*MANAGEMENT COSTS OR RIGHTS-OF-WAY MANAGEMENT COSTS:* The actual costs the County imposes pursuant to this Chapter and applicable Law. Some of these may be established by a good faith estimate.

*MISSOURI ONE CALL:* The procedural requirements for Excavation and utility safety established by Sections 319.010, et seq. of the Revised Statutes of Missouri as amended and the terms and conditions of Missouri One Call System, Inc.

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

*PERMITEE:* The person to whom a Public Utility Right-of-Way Permit or Special Use Right-of-Way Permit has been issued under this Chapter, and may be used in this Chapter interchangeably with the terms Public Utility Right-of-Way User and Special Use Right-of-Way User.

*PERSON:* Any natural Person and all domestic and foreign corporations, closely-held corporations, limited liability companies, associations, syndicates, joint stock corporations, partnerships of every kind, clubs, businesses, common law trusts, societies and any other legal entity, including Public Utilities.

*PUBLIC IMPROVEMENT:* Any project undertaken by the County or its agents, contractors, or subcontractors, for the construction, reconstruction, maintenance, or repair of any public infrastructure, including without limitation, roads, streets, alleys, bridges, bikeways, parkways, sidewalks, sewers, drainage facilities, traffic control devices, street lights, public facilities, and public buildings on land owned or controlled by the County.

*PUBLIC RIGHT-OF-WAY:* Sometimes abbreviated herein as “Right-of-Way,” shall mean the area on, below, or above any public roadway, highway, street or alleyway, in which the County has an ownership interest, but not including:

1. The airwaves above a Public Right-of-Way with regard to cellular or other non-wire telecommunications or broadcast service; or

2. Easements obtained by utilities or private easements in platted subdivisions or tracts (excluding those dedicated or acquired for public use); or
3. Railroad Rights-of-Way and ground utilized or acquired for railroad Facilities; or
4. Poles, pipes, cables, conduits, wires, optical cables, or other means of transmission, collection or exchange of communications, information, substances, data, or electronic or electrical current or impulses utilized by a municipally owned or operated utility pursuant to Chapter 91, RSMo., or pursuant to a charter form of government.

*PUBLIC UTILITY:* Every cable television service provider, every pipeline corporation, gas corporation, electrical corporation, rural electrical cooperative, telecommunications company, water corporation, heating or refrigerating corporation or sewer corporation under the jurisdiction of the Public Service Commission; every municipally owned or operated utility pursuant to Chapter 91, RSMo., or pursuant to a charter form of government or cooperatively owned or operated utility pursuant to Chapter 394, RSMo.; 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, cable, conduits, wires, optical cables, Facilities, 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 Right-of-Way. "Public Utility" shall include a Public Utility provider that does not own Facilities in the Public Right-of-Way but uses the Public Right-of-Way by interconnecting with or using the network elements of another Public Utility utilizing the Public Right-of-Way, and/or by leasing excess capacity from another Public Utility.

*PUBLIC UTILITY RIGHT-OF-WAY USER (SOMETIMES RIGHT-OF-WAY USER):* A Public Utility owning, controlling, or utilizing a Facility in the Public Right-of-Way.

*PUBLIC UTILITY RIGHT-OF-WAY PERMIT:* A permit issued by the County authorizing the performance of Excavation in the Public Right-of-Way.

*REPAIR:* In the context of Repairing the Public Right-of-Way means the temporary Construction work necessary to make the Right-of-Way useable.

*RESTORATION:* The process by which a Public Right-of-Way and surrounding area, including pavement and foundation, is returned to the same condition, or better, than existed before the commencement of the Excavation or Special Use.

*ROUTINE SERVICE OPERATION:* A work activity that makes no material change to the Facilities and does not disrupt traffic.

*SERVICE:* A commodity provided to a Person by means of a delivery system that is comprised of Facilities located or to be located in the Right-of-Way, including, but not

limited to, gas, telephone, cable television, Internet services, Open Video systems, alarm systems, steam, electric, water, telegraph, data transmission, petroleum pipelines, or sanitary sewerage.

*SERVICE PROVIDER:* Any Person that is a provider of a service for or without a fee that has the requisite certifications and authorizations from applicable government entities, including the Missouri Public Service Commission and the FCC, to provide such services. Service Provider includes both Facility-based Service Providers and reseller Service Providers.

*STREET:* The pavement and sub-grade of a public residential, collector or arterial roadway.

*SPECIAL USE:* The Term “Special Use” (a) in the case of all Persons not falling within the definition of a Public Utility, shall mean all activities encompassed within Section 229.300 RSMo., including, but not limited to such activities as encroachment or Excavation on, or the impeding the use of, a Public Right-of-Way, the laying, locating, erecting, removing, installing, constructing, maintaining, operating, or repairing poles, equipment, Facilities, devices, materials, apparatuses or media of any kind for any purpose whatever, through, on, under, across, or within a Public Right-of-Way in any manner; and (b) in the case of a Public Utility, the term shall mean uses on, of, or affecting the Public Right-of-Way that are encompassed within the activities in Section 1000.040 of this Chapter and Section 229.300 RSMo., but which do not fall within the definition of Excavation.

*SPECIAL USE RIGHT-OF-WAY PERMIT:* A permit issued by the County to any Person, including a Public Utility Right-of-Way User, for the purpose of authorizing a Special Use of the Public Right-of-Way.

*TRENCHLESS TECHNOLOGY:* The use of directional boring, horizontal drilling and micro-tunneling and other techniques in the Construction of Facilities underground which results in the least amount of disruption and damage to the Public Right-of-Way as possible.

## ARTICLE II. PUBLIC UTILITIES

### SECTION 1000.060: REGISTRATION – PUBLIC UTILITY RIGHT-OF-WAY USERS

- A. All Public Utility Right-of-Way Users may, but are not required to, register with Planning and Zoning or a Designee of the County.
- B. Planning and Zoning and the Public Right-of-Way User may refer to and use the information supplied with the registration under this Section as part of the Application for permits.
- C. As part of its registration, each Public Utility Right-of-Way User shall designate a local individual familiar with the Facilities who will act as a local agent for the Public Utility Right-of-Way User and will be responsible for satisfying information requirements of this Chapter; and shall report changes in its registration within thirty (30) days of the change or upon Application for a Public Utility Right-of-Way Permit, whichever occurs first.

D. The valid registration at a minimum shall include the following:

1. Identify and legal status of the Public Utility Right-of-Way User; and
2. Name, address, telephone number and email address of the employee, agent or officer of the Public Utility Right-of-Way User responsible for the accuracy of the registration statement. Such employee, agent or officer shall be the Person to whom notices shall be sent, and shall be responsible for facilitating all necessary communications; and
3. Name, address, telephone number, and email address of the employee, agent or officer of the Public Utility Right-of-Way User who shall be available at all times to act on behalf of the Public Utility Right-of-Way User in the event of an Emergency; and
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 Federal Communications Commission or the Missouri Public Service Commission; and
5. Description of the Public Utility Right-of-Way User's use or intended use of the Public Right-of-Way; and
6. Information which identifies any Person that interconnects with or uses the Public Utility Right-of-Way User's Facilities in the Public Right-of-Way or leases any excess capacity from the Public Utility Right-of-Way User; and
7. A list of authorized agents, contractors or subcontractors eligible to obtain permits on behalf of the Public Utility Right-of-Way User. A registration may be updated or revised at any time by an authorized representative of the Public Utility Right-of-Way User; and
8. Information sufficient to determine the amount of net assets of the Public Utility Right-of-Way User; and
9. The name, street address, and phone number of the agent designated to receive all notices under this Chapter and service of process; and
10. Information sufficient to determine the Public Utility Right-of-Way User is subject to franchising by Missouri Law.

### **ARTICLE III. – PUBLIC UTILITY RIGHT-OF-WAY PERMIT**

#### **Section 1000.070: PERMIT APPLICATION**

- A. Except in cases of Emergencies, a Public Utility Right-of-Way User shall not perform Excavation upon, over, under or within the Public Right-of-Way without first having received a permit for such Excavation upon submission of a written Application for a Public

Utility Right-of-Way Permit for Excavation to the Planning and Zoning or the Commission's Designee. A Public Utility Right-of-Way User, or an authorized contractor, or other agent of the Public Utility Right-of-Way User designated to perform the Excavation, may file the Application. Every Application shall be signed by the Public Utility for which the Application is filed and, when applicable, by the contractor or agent filing on behalf of a Public Utility Right-of-Way User. The Application shall be made on forms provided by the Director.

- B. A Public Utility Right-of-Way User desiring to perform Excavation in the Public Right-of-Way to Repair, Construct or install new Facilities, extend Facilities, or replace existing Facilities in the Public Right-of-Way shall submit with the Application three (3) sets of construction plans and specifications. The Director or Designee may require that any drawings, plans and/or specifications submitted be signed by a degreed engineer or someone in a supervisory position reasonably acceptable to the Director or Designee stating that such drawings, plans and/or specifications comply with all Applicable Codes and Standards, and technical codes as may be applicable to the permit Application. The Permit Application shall include the following:
1. The location of all visible topographic features affected by the project within the Public Right-of-Way; and
  2. The horizontal and vertical location of other Facilities in the Public Right-of-Way within the project limits verified by compiling data from other Public Utility Right-of-Way Users and acquisition of filed data; and
  3. The Subsurface Utility Engineering study required by this Chapter; and
  4. Complete plan and profile drawings indicating the horizontal and vertical location of all components of the proposed project, the design details of such proposed project, and other related information, including, but not limited to, pipe and manhole flow line elevations, type and size of the proposed Facilities, and other related structures; and
  5. Complete plan and profile drawings detailing the Restoration of the Public Right-of-Way and the design details of such Restoration, including the proposed pavement and Public Right-of-Way Restoration as provided in Section 1000.180 of this Chapter, and
  6. An erosion control plan in compliance with applicable provisions of this Chapter; and
  7. A safety plan indicating the methods to be used for the protection of the general public from injury including, but not limited to, the proposed use of barricades, signs, lights, fencing and other barriers. The safety plan shall be in compliance with applicable Law, including, but not limited to, the rules, regulations and standards adopted pursuant to the Williams-Steiger Occupational Safety and Health Act of 1970 and applicable amendments ("OSHA"); and
  8. A traffic control plan in compliance with the applicable provisions of the Chapter; and

9. A work plan including a schedule indicating the extent and duration of Excavation work and Restoration work, including a proposed start and end date; and
  10. Designation of the responsible party for Restoring roadways after occupation of the Right-of-Way; and
  11. Evidence that the Applicant has obtained and secured all certificates and other authorizations required by Law in order to Construct and operate the proposed Facilities in the manner proposed by the Applicant.
- C. Alternate Application for a Permit – No Material Change: A Public Utility Right-of-Way User desiring to Excavate in the Public Right-of-Way for the purpose of Repairing or maintaining existing Facilities that results in no material change to the Facilities, shall submit with the Application for a Public Utility Right-of-Way Permit three (3) sets of construction plans and specifications that, if required by the Director or Designee, bears the signature of a degreed engineer or someone in a supervisory position reasonably acceptable to the Director or Designee. The permit Application shall include the following:
1. Standard details including the type and nature of the work; and
  2. A safety plan indicating the methods used to protect the general public from injury including, but not limited to, the proposed use of barricades, signs, lights, fencing and other barriers. Such safety plan shall be in compliance with applicable Law, including but not limited to OSHA; and
    - a. An erosion control plan as required by applicable provisions of this Chapter; and
    - b. A traffic control plan in compliance with the applicable provisions of this Chapter; and
    - c. Drawings detailing the Restoration of the Public Right-of-Way, including, proposed pavement and Public Right-of-Way Restoration as provided in Section 1000.180 of this Chapter; and
    - d. A landscape plan; and
    - e. A schedule for Excavation work and Restoration work, including a proposed start and end date.

**SECTION 1000.080: PROCESSING OF APPLICATIONS AND APPROVAL;  
TRANSFER OF PERMIT**

- A. The Director shall process each completed Application for a Public Utility Right-of-Way Permit within fourteen (14) days from the date of the receipt of the Application. The Director may require an Applicant to separate proposed work into individual or distinct Applications due to the complexity of a proposed project or for other reasonable reasons.

- B. If the Director determines that an Applicant has complied with the requirements of this Chapter, the Director shall issue a Public Utility Right-of-Way Permit.
- C. A Public Utility Right-of-Way Permit shall be valid only for the area of the Public Right-of-Way specified within the Public Utility Right-of-Way Permit. No Public Utility Right-of-Way User may cause or allow Excavation outside the area specified in the Public Utility Right-of-Way Permit. In the event an area greater than that which is specified in the Public Utility Right-of-Way Permit must be Excavated, the Public Utility Right-of-Way User, prior to commencement of the additional or new Excavation, must: (a) make an Application for a Public Utility Right-of-Way Permit amendment describing the area in which the Excavation will occur; and (b) pay any additional fees required thereby.
- D. A copy of the Public Utility Right-of-Way Permit issued shall be posted in at least one conspicuous place at each Excavation site for public display. The permit must be available for inspection at all times by the Director, his designee and department employees, the public, and law enforcement officers.

#### **SECTION 1000.090: DENIAL OF APPLICATION FOR PUBLIC UTILITY RIGHT-OF-WAY PERMIT**

The Director or Designee may deny an Application for a Public Utility Right-of-Way Permit for any of the following reasons:

1. The Public Utility Right-of-Way Users fails to provide all the necessary information and documents required by this Chapter or reasonably requested by the Director for managing the Public Right-of-Way; or
2. The Public Utility Right-of-Way User has failed to return the Public Right-of-Way to its previous condition under a previous Public Utility Right-of-Way Permit; or
3. The Director or Designee has provided a reasonable, competitively neutral, and nondiscriminatory justification for requiring an alternative method for performing the work identified in the Application or a reasonable alternative route that will result in neither additional installation expense up to ten percent (10%) to the Public Utility Right-of-Way User nor a declination of service quality; or
4. The Director or Designee determines that the denial is necessary to protect the public health, safety or welfare, provided that the denial under this Section does not extend to those items under the jurisdiction of the Missouri Public Service Commission, the denial does not interfere with a Public Utility's right of eminent domain of private property, and is imposed on a competitively neutral and nondiscriminatory basis. In determining whether denial of a Public Utility Right-of-Way Permit Application is necessary to protect the public health, safety or welfare, the factors Director or Designee may consider include, but are not limited to, one or more of the following factors:

- a. The extent to which the Public Right-of-Way space where the Public Utility Right-of-Way Permit is sought is available, including the consideration of competing demands for the particular space in the Public Right-of-Way, or other general conditions of the Public Right-of-Way;
- b. The applicability of any Order, Code provision, or other regulations that affect the location of Facilities in the Public Right-of-Way;
- c. The degree of disruption to surrounding communities and businesses that will result from the use of that part of the Public Right-of-Way, including whether the issuance of a Public Utility Right-of-Way Permit for the particular dates and/or times requested will cause a conflict or interfere with an exhibition, celebration, festival, or any other event;
- d. Whether the area is environmentally sensitive as defined by Law or is an historic district as defined by local ordinance.

**SECTION 1000.100: REVOCATION OF PUBLIC UTILITY RIGHT-OF-WAY PERMIT**

- A. In the event the Director determines that a substantial breach of the terms or material conditions of a Public Utility Right-of-Way Permit has occurred, he either may assess civil penalties, if provided by Law, until the breach is cured, or revoke the permit, or both. Prior to revocation of the permit or the imposition of penalties, or both, the Director shall give written notice of each substantial breach to the offending Permittee and, unless otherwise provided herein, allow the offending Permittee a reasonable opportunity of not less than ten (10) days to cure such breach. In circumstances requiring Emergency remedial action for the protection of the health and safety of the public, the preservation or protection of the Public Right-of-Way, or to prevent harm to other utilities using the Right-of-Way, the Director may require the offending Permittee to effect Repairs or take appropriate action immediately.
- B. A substantial breach by a Public Utility Right-of-Way User includes, but is not limited to the following:
  1. A material violation of a provision of the Public Utility Public Right-of-Way Permit; or
  2. An evasion or attempt to evade any material provision of the Public Utility Right-of-Way Permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the County or its citizens; or
  3. A material misrepresentation of fact in the Application for a Public Utility Right-of-Way Permit; or
  4. A failure to complete work by the date specified in the Public Utility Right-of-Way Permit, unless a permit extension is obtained, or unless the failure to complete the work is due to reasons beyond the Public Utility Right-of-Way User's control; or



5. A failure to correct, within the time specified by the Director, work that does not conform to any permit granted, or to applicable Law, including this Chapter and Applicable Codes and Standards.

#### **SECTION 1000.110: APPEALS**

- A. A Public Utility Right-of-Way User that has been denied a Public Utility Right-of-Way Permit, has had its Public Utility Right-of-Way Permit revoked, believes that the fees imposed upon it by the County do not conform to the requirements of Section 67.1840 RSMo., or asserts any other issues related to the use of the Public Right-of-Way shall be entitled to a review of its disputes by appealing to the Buchanan County Commission in accordance with this Section.
- B. Appeals to the Commission shall be filed within ten (10) days after the date on which the notice of the permit denial, revocation of permit, imposition of fees, or other action or decision subject to appeal is delivered in Person or sent by registered or certified mail to the Public Utility Right-of-Way User, whichever is earlier. The appeal shall be accompanied by a statement in writing under oath setting forth, with particularity, the action or decision subject to appeal and the reasons why it is incorrect or contrary to Law. Appeals shall be filed in Person at the offices of the Clerk of Buchanan County, or by the United States Postal Service, registered or certified mail, return receipt requested, addressed to the following address: The Buchanan County Clerk, 5<sup>th</sup> and Jules, St. Joseph, Missouri 64501. Appeals filed by registered or certified mail will be deemed filed on the date of mailing as reflected by U.S. Postal mark. Appeals filed by any other method of delivery will be deemed filed on the date of receipt by the Office of the Clerk of Buchanan County.
- C. The Person requesting an appeal shall be afforded a hearing on the matter before the Commission within thirty (30) days of the date the appeal is filed. Upon review of the appeal, the Buchanan County Commission may, in whole or part, affirm or reverse the action taken by the Director or Designee, extend the time limit of the Director's decision or action, waive requirements of, or grant a variance from the specific provisions of rules applicable to the Person who perfected the appeal. The Commission shall give due consideration to the purposes of the rules in preserving public safety and convenience, integrity of public infrastructure, and the operational safety and function of the Public Right-of-Way.
- D. The decision affirming the denial, revocation, fee imposition or dispute resolution shall be in writing and supported by written findings establishing the reasonableness of the decision.

#### **SECTION 1000.120: USE OF THE RIGHT-OF-WAY**

##### **A. General Provisions**

1. The Right-of-Way User shall:

- a. Consult with the Director regarding the location, design, and nature of the Facility prior to installation;
  - b. Comply with all requirements of this Chapter;
  - c. Coordinate the placement of Facilities with the Director and other Public Utility Right-of-Way Users;
  - d. Locate and install Facilities, and perform Excavation, Restoration and other activities connected therewith in such manner as will avoid, whenever possible, disruption of, or interference with, Public Improvements, existing Facilities such as pipes, drains, sewers, irrigation systems, streets, alleys, sidewalks, and the Public Right-of-Way, and private property in and around the area affected by the Excavation or other activity of the Public Utility;
  - e. When possible, give consideration to any request made by the Director concerning placement of Facilities in private easements in order to limit or eliminate future street improvement relocation expenses;
  - f. Not interfere with the Facilities of other Right-of-Way Users without express permission.
2. If and when the Director requires or negotiates to have a Public Utility Right-of-Way User cease the use of its existing poles and Facilities and to relocates its Facilities underground, all other Service Providers and Public Utilities using the same poles and Facilities shall also relocate their Facilities and related Equipment and connections underground at the same time.
  3. The Director or Designee may assign specific corridors within the Public Right-of-Way, or any particular segment thereof as may be necessary, for Facilities that are, or pursuant to current technology the Director or Designee expects someday will be, located in Public Right-of-Way. All Facilities shall be designed and Constructed in the proper corridor as designated by the Director or Designee pursuant to the Authority contained in this Chapter. All Persons whose Facilities are located in Public Right-of-Way in a position at variance with the corridors established by the Director or Designee shall, no later than at the time of the next Reconstruction or Excavation of the area where its Facilities are located, move the Facilities to the proper corridor designated by the Director or Designee.
  4. If, in the preparation and planning of a Right-of-Way project, the Director or Designee deems it appropriate for a conduit for common use to be Constructed along, across or under the Right-of-Way, the Director or Designee may contact all appropriate Right-of-Way Users for their input on the planning and design of such conduit. If a Right-of-Way User desires to construct, maintain or operate Facilities along such Right-of-Way, the Director or Designee may require the Right-of-Way User to use such conduit, secure appropriate permits, and pay such fees in connection therewith as are consistent with this Chapter, Sections 67.1830 to 67.1850 RSMo. and Chapter 229 RSMo.

5. All Construction work, activities and uses, and all technical standards governing Construction, Reconstruction, installation, operation, testing, use, maintenance, and dismantling of a Right-of-Way User's Facilities in the Right-of-Way shall be in accordance with federal, state and local Law and regulations, and Applicable Codes and Standards including those promulgated by national trade associations commonly associated with the service provided by the Right-of-Way User. Subject to the limitations imposed by the Federal Telecommunications Act 147 U.S.C.A., *et. seq.*, the standards established in this paragraph are minimum standards.
6. The Right-of-Way User shall cooperate promptly and fully with the Director and take all the reasonable measures necessary to provide accurate and complete on-site information regarding the nature and horizontal and vertical location of its Facilities located within the Right-of-Way, both underground and overhead, when requested by the Director or his authorized agent for a public improvement. Such location and identification shall be at the sole expense of the Right-of-Way User without any expense to the County, its employees, agents, or authorized contractors.

#### B. Construction

1. Before the start date of any Excavation, each Public Utility Right-of-Way User who has Facilities located in the area subject to Excavation shall be responsible for marking the horizontal and approximate vertical placement of all its Facilities in accordance with Missouri One Call System. A Public Utility Right-of-Way User whose Facilities are less than twenty (20) inches below a concrete or asphalt surface shall notify and work closely with the Person performing Excavation in an effort to establish the exact location of its Facilities and the best procedure for Excavation.
2. The Public Utility Right-of-Way User shall provide the Director or Designee at least six (6) days written notice before the commencement of any Excavation, and five (5) days written notice to all other Public Utilities affected by the Excavation, Restoration and other activities authorized or encompassed within the Right-of-Way Permit.
3. The Public Utility Right-of-Way User shall provide each owner and each occupant of property within 500 feet of the project at least forty-eight (48) hours written notice before the commencement of any Excavation.
4. The Public Utility Right-of-Way User shall provide the Director or Designee at least seventy-two (72) hours prior written notice before the closure of any roadway, highway, or street, or interruption in traffic flow, and shall provide a safe passing lane unless otherwise approved by the Director.

#### C. Public Safety

1. Any Right-of-Way User who for any purpose makes or causes to be made any Excavation in, upon, under, through or adjoining any street, sidewalk, alley or other

Right-of-Way shall securely cover all openings and store, secure, or remove rubbish, building or other material during Construction over the night time, and enclose and secure and protect the Excavation and surrounding areas affected thereby with good substantial and sufficient barricades or drums equipped with the appropriate type warning lights and orange safety fencing material.

2. Whenever a Right-of-Way User shall Excavate, or use in any fashion, the full width of any street, sidewalk, alley, driveway approach or other Right-of-Way, it shall be the duty of such Right-of-Way User to maintain an adequate passage for vehicles and pedestrians across or around the Excavation until it is refilled as specified.

#### D. Completion, Mapping, and As-built Drawings

1. All work allowed under the Public Utility Right-of-Way Permit shall be completed by the time required in the Public Utility Right-of-Way Permit. Not less than ten (10) days following the completion of said work, record drawings for all extensions or new installations of Facilities shall be provided to the Director. Abandoned Equipment or Facilities shall also be identified on record drawings.
2. The Right-of-Way User shall keep and maintain accurate records and as-built drawings depicting accurate location of all its Facilities Constructed, Reconstructed, or relocated in the Right-of-Way.
3. When possible, information and records the Public Utility Right-of-Way User is required to submit to the Director under this Chapter shall be submitted electronically in an Applicable Software format compatible with the County's Geographical Information Systems (GIS) provided, however, that nothing herein shall be construed to require the Right-of-Way User to acquire or modify its electronic mapping system.
4. Underground Facilities shall be differentiated from overhead Facilities.
5. Mapping and identification shall be at the sole expense of the Service Provider.
6. The drawings shall include results of any post-construction surveys conducted including, but not limited to, the following:
  - a. Elevation of all structures, including sanitary sewer manholes, storm sewer inlets, pipe inverts, and structure top elevations; and
  - b. Final adjusted stationing of all structures, including but not limited to valves, hydrants, and blow-off assemblies; and
  - c. Final adjusted contours as featured in the grading and drainage plans.

#### **SECTION 1000.130: SUBSURFACE UTILITY ENGINEERING STUDY REQUIRED**

- A. Prior to commencement of any Excavation in the Public Right-of-Way, the Applicant shall conduct a Subsurface Utility Engineering Study on the proposed route of Excavation, Construction, or expansion, which shall contain the information required herein, and such other information as the Director may require. As part of the subsurface Utility Engineering Study, the Applicant, at a minimum shall:
1. Secure all available record plans, plats and other location data indicating the existence and approximate location of all Facilities located underground along the proposed construction route; and
  2. Visibly survey and record the location and dimensions of any above-ground features of all Facilities located underground along the proposed construction route including, but not limited to, manholes, valve boxes, utility boxes, posts and visible street cut repairs; and
  3. Plot and incorporate the project data obtained from completion of the tasks described in subsections A.1 and A.2 above on the Applicant's proposed system route maps and plan sheets; and provide the Director with this information in Applicable Software, if used by the Applicant, and otherwise in the form regularly maintained by the Applicant. To the extent practicable, the CADD file or files in the alternate Applicable Software shall be consistent and compatible with the type and version of the CADD files maintained by the Director; and
  4. Determine and record the presence and approximate horizontal location of all Facilities located underground in the Public Right-of-Way along the proposed system route utilizing surface geophysical designating techniques such as electromagnetic, magnetic and elastic wave locating methods; and
  5. Plot, incorporate and reconcile the data obtained by completion of the task described in subsection A.4 above the updated route maps, system plans and Applicable Software files described in subsection A.3 above and provide the Director with this information; and
  6. Where system design and the location of Facilities located underground appear to conflict on the updated system route maps, plans and Applicable Software files, utilize non-destructive digging methods, such as vacuum Excavation, at the critical points identified to determine as precisely as possible, the horizontal, vertical and spatial position, composition, size and other specifications of the conflicting Facilities located underground. An applicant shall not Excavate more than an eight inch (8") by eight inch (8") hole in the Public Right-of-Way to complete this task without the express, written permission of the Director of Designee; and
  7. Based on all of the data collected upon completion of the tasks described in this Section, adjust the proposed Facilities design elevations, horizontal or vertical locations to avoid the need to relocate other Facilities; and

8. All subsurface utility engineering requirements of this Section shall be performed by a firm that specializes in subsurface utility engineering, provided, however, the requirements may be performed by the Applicant if the Applicant possesses the requisite education and experience to complete the study itself. The Applicant shall bear the cost of compliance with this Section of this Chapter.

#### **SECTION 1000.140: DESIGN STANDARDS**

- A. The construction plans and specifications required by this Chapter shall comply with applicable construction and safety codes, this Chapter, and other applicable Law. The design shall not provide for the disruption or interference with any other Facilities or Public Improvement, except as herein provided.
- B. New Facilities shall be installed underground or contained within buildings or other structures in conformity with applicable construction and safety codes, this Chapter and other applicable Law. No Person shall erect new poles or other wire holding structures without the Director's consent.
- C. All designs and plans, and all Construction, Excavation, and maintenance of Facilities and projects shall be accomplished in the manner resulting in the least amount of damage and disruption of the Public Right-of-Way and surrounding areas. Specifically, every Applicant shall utilize, whenever possible, Trenchless Technology and specify the use of Trenchless Technology in the design of projects located below or under pavement or other locations that will require cutting or patching of Public Right-of-Way. If and when the Public Right-of-Way User for any reason ceases using existing poles and Facilities, all other Public Utility Right-of-Way Users utilizing the same poles and Facilities shall also relocate their Facilities and related equipment and connections underground at the same time.

#### **SECTION 1000.150: ADDITIONAL CONDITIONS AND LIMITATIONS IMPOSED BY DIRECTOR**

- A. The Director or Designee is authorized to impose on a case-by-case basis, additional conditions consistent with this Chapter and other applicable Law as are necessary to protect the public health, safety or welfare, to manage properly the Public Right-of-Way, and to Restore properly the Public Right-of-Way.
- B. The Director or Designee may establish in the Public Utility Right-of-Way Permit, limitations on the amount of Excavation that may occur at one time and the amount of Public Right-of-Way which may be obstructed during Construction.
- C. The Public Utility Right-of-Way User shall not permit Excavation to remain open longer than is necessary to complete the Repair or installation, and in no event may Excavation remain open beyond the expiration of the Public Utility Right-of-Way Permit or approved extensions.

- D. Non-Emergency Excavation on arterial and collector streets shall be performed during the hours allowed by Law.
- E. The Director or Designee may limit the number of conduits that may be installed by each Public Utility Right-of-Way User in order to prevent a Public Utility Right-of-Way User from unreasonably consuming a disproportionate amount of the available Public Right-of-Way, to prevent the deterrence of competition, and to protect the use of the Public Right-of-Way by others.

#### **SECTION 1000.160: EMERGENCIES**

In the event a Public Utility or Public Utility User must engage in Excavation, or other activity requiring a Public Utility Right-of-Way Permit, before applying for or acquiring the permit because of an “Emergency” as that term is defined in this Chapter, the utility (a) may proceed with all necessary Emergency work without first obtaining a permit; and (b) immediately notify the Director, and when necessary, local police and fire departments and other applicable Emergency personnel, of the necessity of such Emergency work, including the location and type of work required. Not later than five (5) days following the commencement of the Emergency work, the Public Utility performing the Emergency work shall submit an Application therefore as provided in this Chapter, and pay the applicable fees. The Application, and all Excavation and work occasioned by an Emergency, shall comply in all respects with this Ordinance, and other conditions imposed by the Director.

#### **SECTION 1000.170: EXTENSIONS OF TIME TO COMPLETE; NOTICE OF COMPLETION**

- A. All Construction, Excavation, or Restoration work shall be completed by the dates, and within the times of day and week set forth in the Public Utility Right-of-Way Permit, unless the Public Utility Right-of-Way User obtains a waiver, extension, or a new or amended Right-of-Way Permit as provided in this Chapter.
- B. If Public Utility Right-of-Way User is unable to complete the Construction, Excavation, or Restoration work within the time frame and dates set forth in the Public Utility Right-of-Way Permit, the Public Utility Right-of-Way User may apply to the Director for an extension of time. The Application must be filed in sufficient time within which to allow the Director to act before expiration of the original permit, and shall be accompanied by a statement of reasons for the desired extension, and the changes, if any, the extension may require to the original Application and supporting information. The Public Utility Right-of-Way User shall notify the Director or Designee immediately upon its completion of all work (including Restoration) contemplated by its Public Utility Right-of-Way Permit.

#### **SECTION 1000.180: RESTORATION PLAN**

- A. Unless the Director elects to perform Restoration work as permitted under Section 67.1834 RSMo., each Applicant for a Public Utility Right-of-Way Permit shall provide, as part of its

Application, a plan for the Restoration of the Public Right-of-Way and surrounding areas in accordance with the following requirements:

1. All Public Rights-of-Way, the actual Excavation and the surrounding areas, including the paving and its foundations, all areas encompassed by the permit, and all areas that are disturbed or damaged during the work under a Public Utility Right-of-Way Permit shall be Repaired and Restored by the Public Utility Right-of-Way User pursuant to the terms of the approved plans and specifications, the terms of the Public Utility Right-of-Way Permit, this Chapter and other applicable Law. In all events, the Public Right-of-Way shall be Repaired and Restored to a condition as good as that previously existed before such work was commenced; and
  2. The Restoration of the Public Right-of-Way must be completed within the time set forth in the Public Utility Right-of-Way Permit. The Public Utility Right-of-Way User shall also inspect the area of the work and maintain the Restored Public Right-of-Way in the condition required hereunder for the full Guarantee Period; and
  3. Every Right-of-Way User to whom a Right-of-Way Permit has been granted shall guarantee for a period of two (2) years the Restoration work of the Right-of-Way in the area where such Right-of-Way User conducted Excavation and performed the Restoration (“Guarantee Period”). The guarantee is in addition to, and not in lieu of, bond and other obligations imposed upon the Permittee. The Guarantee Period shall commence when the Restoration work and all required corrections have been inspected and completed to the satisfaction of the Director or Designee. During the Guarantee Period, each Public Utility Right-of-Way User shall, upon notification from the Director, perform all follow-up Restoration work required to correct, Repair, or replace Restoration work performed by a Public Utility Right-of-Way User not properly restored. The follow-up work shall be completed within five (5) calendar days after the receipt of notice from the Director that such follow-up Restoration work is necessary. Follow-up Restoration work required because of an Emergency shall be performed by a Public Utility Right-of-Way User immediately upon verbal or written notification from the County; and
  4. All Repairs or replacement shall be commenced within twenty-four (24) hours of notice from the Director. The Director or Designee may inspect the Repairs or replacement of the damage and, if necessary, require the Right-of-Way User to perform any necessary additional work and Repairs.
- B. Upon the failure, refusal or neglect of a Public Utility Right-of-Way User to comply with the provisions of this Section, the Director or Designee, after notice is given to such Public Utility Right-of-Way User, may cause the work or other activity required by this Section to be completed or performed, in whole or in part, to the satisfaction of the Director. Upon so doing, the Director shall submit to such Public Utility Right-of-Way User an itemized statement of the actual costs for Repairing and Restoring the Public Right-of-Way. The Public Utility Right-of-Way User shall, within thirty (30) days after receipt of the statement, pay to the County the entire amount thereof. In addition to other remedies available to the



County, amounts not paid by the due date may be charged against any performance bond required by this Chapter.

- C. All Excavation shall have a metal or plastic marker of a color, size and shape approved by the Director or Designee inserted into Restored pavement that shall identify the Public Utility Right-of-Way User.
- D. In lieu of requiring a plan of Restoration, the Director may, at his/her option, perform or caused to be performed all or any portion of the Restoration work, in which case the Public Utility Right-of-Way User shall reimburse to the County the actual Restoration costs within thirty (30) days from a Public Utility Right-of-Way User's receipt of a statement from the Director for such costs.

#### **SECTION 1000.190: ABANDONMENT OF EQUIPMENT OR FACILITIES**

- A. Unless otherwise permitted by the Director in writing, a Public Utility Right-of-Way User shall remove all Abandoned Equipment or Facilities that prevent or significantly impair the Public Right-of-Way use, and Repair and Restore the affected Public Right-of-Way and surrounding area in accordance with the standards set forth in this Chapter and as otherwise required by Law. In the event a Public Utility Right-of-Way User fails to remove such Abandoned Equipment or Facilities, the Director may do so at such Public Utility Right-of-Way User's cost and expense.
- B. The Director, upon such terms and conditions as he may reasonably impose, may grant a Public Utility Right-of-Way User permission to abandon, without removing, any equipment or Facilities, so long as such equipment or Facilities abandoned in place does not materially interfere with the use of the Public Right-of-Way, or with the use of the Public Right-of-Way by any Public Utility Right-of-Way User or constitute a threat to public health, safety or welfare.
- C. If required by the Director, a Public Utility Right-of-Way User shall submit to the County an accurate map of all Abandoned Equipment and Facilities.
- D. In the event abandoned Facilities are found to be a nuisance, the County may exercise any remedies or rights it has at Law or in equity, including, but not limited to, (a) abating the nuisance, or (b) requiring the removal of the Facility by the Right-of-Way User.

#### **SECTION 1000.200: DAMAGE TO PROPERTY**

Each Public Utility Right-of-Way User shall be responsible for the cost of Repairing or replacing property owned by other Persons in the Public Right-of-Way damaged by the Public Utility Right-of-Way User or its Facilities, or by the County's during, or as part of its response to an Emergency caused by a Public Utility Right-of-Way User or its Facilities.

#### **Section 1000.210: PUBLIC RIGHT-OF-WAY VACATION**

- A. If the County vacates a Public Right-of-Way, the County may reserve for itself and all Public Utility Right-of-Way Users having Facilities in the vacated Public Right-of-Way, the right to install, maintain and operate the Facilities in the vacated Public Right-of-Way and to enter upon such Public Right-of-Way at any time for the purpose of Reconstructing, inspecting, maintaining, repairing or restoring the same. The County may retain all necessary easements in vacated Public Right-of-Way in existence at the time of vacation.
- B. If the vacation requires the relocation of Facilities, and if:
  - 1. The vacation proceedings are initiated by the Public Utility Right-of-Way User, the User must pay the relocation costs.
  - 2. The vacation proceedings are initiated by the County, the Right-of-Way User must pay the relocation costs unless otherwise agreed to by the County and the User.
  - 3. If a Person other than the Right-of-Way User or the County initiates the vacation proceedings, such other Person must pay the relocation costs.

**SECTION 1000.220: EFFECT OF PERMIT ON OTHER OBLIGATIONS**

- A. Nothing in this Chapter, including the issuance of a Public Utility Right-of-Way Permit, relieves the Public Utility Right-of-Way User of its obligations to obtain all other necessary permits, licenses, and authority and to pay all fees required by Law.
- B. A Public Utility Right-of-Way User shall comply with all Applicable Codes and Standards, and all other applicable Law, including Missouri One Call System.
- C. A Public Utility Right-of-Way User is responsible for all work done in the Public Right-of-Way pursuant to the Public Utility Right-of-Way Permit, regardless of who actually performs the work.
- D. A Public Utility Right-of-Way User shall not obstruct a Public Right-of-Way to the extent that the obstruction interferes with the natural free and clear passage of water through gutters or other waterways.

**SECTION 1000.230: REPORTS OF DEVIATION FROM STANDARDS, CONDITIONS, AND TERMS**

To insure the safety of the public, other Public Utilities and their employees, and the County employees and contractors, all deviations from the Applicable Codes and Standards, and the placement of Facilities known to a Public Utility or Public Utility User as of the effective date of these regulations, or discovered at any time thereafter, shall be reported in writing to the Director. Reports of deviations known to exist as of the effective date of this Ordinance shall be filed within ninety (90) calendar days of the effective date hereof, and all other reports shall be filed within ten (10) calendar days of discovery. The report of deviations required herein shall set forth the location and exact nature of the deviation, the date of

discovery, and a statement by the reporting utility as to whether the deviation represents a hazardous condition, endangers the public, or interferes with the right of other Public Utilities, the public or any governmental authority to use the Public Right-of-Way affected by such deviations.

#### **SECTION 1000.240: TRIMMING OF TREES**

A Public Utility Right-of-Way User shall have the authority to trim trees, in accordance with applicable Law and all easements restrictions, upon and above Public Right-of-Way so as to prevent the branches of such trees from coming in contact with Facilities. County representatives shall have the authority to approve all trimming of trees conducted by a Public Utility Right-of-Way User.

#### **SECTION 1000.250: INSURANCE AND BONDS**

- A. Each Public Utility Right-of-Way User operating in the Public Rights-of-Way of Buchanan County shall secure and maintain Commercial General Liability Insurance (“CGL Insurance”) with a combined single limit per occurrence of not less than the amount required by the requirements for CGL Insurance established by the Director or Designee. The CGL Insurance required herein shall be written on a comprehensive form and shall cover claims and liability in connection with or resulting from the Public utility Right-of-Way User’s operations and activities for personal injuries, occupational sickness, disease, death or damage to property of others, including loss of use resulting there from, arising out of any operations or activities of the Public Utility Right-of-Way user, its agents, or any Person directly or indirectly employed by them. The CGL Insurance required herein shall include premises, operations, independent contractors, products-completed operations, personal injury and advertising injury and liability assumed under an insured contract (including the tort liability of another assumed in a business contract) coverage. In particular, and not by way of any limitation, the CGL Insurance shall cover the Public Utility Right-of-Way User’s indemnity obligations imposed by Law.
- B. Each Public Utility Right-of-Way User operating in the Public Rights-of-Way of Buchanan County shall secure and maintain Commercial Automobile Liability Insurance (“Auto Insurance”) with a combined single limit for bodily injury and property damage per accident of not less than the amount required by the requirements for Auto Insurance established by the Director of Designee. This insurance, to be in comprehensive form, which shall cover claims and liability for all injuries and all damage to property arising from the use of automobiles, trucks and motorized vehicles, and shall cover the operation on or off the site of the work of all motor vehicles licensed for highways use whether they are owned, non-owned or leased.
- C. Unless waived by the Director, the County shall be endorsed as an additional insured under the policies described subsections A and B above. Nothing contained in this Section, including that the Public Utility Right-of-Way User maintain insurance, is intended as, or

shall be construed to be a waiver of the sovereign immunity protections afforded the County under Law.

- D. Before commencing any work allowed by the Public Utility Right-of-Way Permit, the public Utility Right-of-Way User shall procure and furnish to the Planning and Zoning, Director, or Designee, on forms provided or approved by the Director or Designee, a payment and performance bond in the amount of the estimated cost of the required Public Right-of-Way, Excavation, Repair and Restoration work to be performed by the Public Utility Right-of-Way User. Such bonds shall be in effect through the duration of the work allowed by the Public Utility Right-of-Way Permit and for the two (2) year Guarantee Period. The bonds required hereunder shall be in a form approved by the Director or Designee and executed by a responsible surety licensed in the State of Missouri. The Public Utility Right-of-Way User shall require the attorney in fact who executes the required bond on behalf of the surety to affix thereto a certified and current copy of this power of attorney indicating the monetary limit of such power. If the surety of any bond furnished by the Public Utility Right-of-Way User is declared bankrupt or becomes insolvent or its right to conduct business in the State of Missouri is terminated, or it ceases to meet the requirement of this paragraph, the Public Utility Right-of-Way User shall within ten (10) days substitute another bond and surety, both of which must be acceptable to the Director or Designee. If the Public Utility Right-of-Way User fails to make such substitution, the County may procure such required bonds on behalf of the Public Utility Right-of-Way User at the Public Utility Right-of-Way User's expense.
- E. A Public Utility Right-of-Way User that demonstrates through certified documents or other means reasonably acceptable to the Director or Designee that the Public Utility Right-of-Way User has Twenty Five Million Dollars (\$25,000,000) in net assets and does not have a history of permitting noncompliance within the County, shall not be required to comply with subsections A through D of this section.
- F. All contractors, subcontractors, and agents used for the performance of any work contemplated or covered by a Public Utility Right-of-Way Permit shall be properly licensed and insured pursuant to the laws of the State of Missouri and applicable Law, including this Chapter. Each contractor and subcontractor of the Public Utility Right-of-Way User shall have the same obligations with respect to its work as the Public Utility Right-of-Way User would have pursuant to Sections 67.1830 to 67.1846 RSMo., this Chapter, and other applicable Law as if the work were performed by the Public Utility Right-of-Way User. All Public Utility Right-of-Way Users shall be responsible for (a) ensuring that the work of contractors, subcontractors, and agents is performed consistent with all permits and applicable Law, and (b) promptly correcting acts or omissions by any contractor or subcontractor.

#### **SECTION 1000.260: PUBLIC UTILITY RIGHT-OF-WAY PERMIT FEES**

- A. Each Applicant shall pay to the County a Public Utility Right-of-Way Permit Fee and, when applicable, a supplemental Public Utility Right-of-Way Fee as provided in this Chapter.

- B. The initial Public Utility Right-of-Way Permit Fee shall be based upon the County's actual costs in issuing, processing and verifying Applications and inspections of the project site and Restoration work up to two (2) hours. Initial inspections, checking overnight in cases of open cuts, follow-up inspection at the completion of the work, and re-inspection six months and 18 months later (and so on) to insure the surface and other Restored areas have remained sound and in compliance with the requirements of this Chapter are additional reasonable and necessary services for which fees may be collected. Each Applicant shall pay the initial Public Utility Right-of-Way Permit Fee to the County at the time the Applicant submits its Application for a Public Utility Right-of-Way permit.
- C. Each Public Utility Right-of-Way User shall pay to the County a supplemental Public Utility Right-of-Way Permit Fee in the amount of all of the County's actual costs, including attorneys' fees, reasonably incurred for managing the Public Rights-of-Way, and including the following:
1. Inspecting the project site and the Restoration work in excess of the number of hours established for the initial Public Utility Right-of-Way Fee; and
  2. Protecting or moving the Public Utility Right-of-Way User's equipment or Facilities after reasonable notification to the Public Utility Right-of-Way User doing the Public Right-of-Way work; and
  3. Determining the adequacy of Public Right-of-Way Restoration; and
  4. Inspecting and/or testing Restoration work after rejection of improper or defective Restoration work; and
  5. Restoring work inadequately performed after the Director has provided notice and a ten (10) day period for the Public Utility Right-of-Way User to correct such inadequate work; and
  6. Revoking the Public Utility Right-of-Way Permit.
- D. Fees paid for a Public Utility Right-of-Way Permit subsequently revoked by the Director or Designee are not refundable. Supplemental Public Utility Right-of-Way Permit Fees shall be paid within three days of the date of assessment by the Director.
- E. If any project is revised after the Application for it is approved, the Director or Designee may require an additional fee based on the County's actual costs incurred by reason of the revisions and the criteria established in this Chapter.
- F. The amount of the Public Utility Right-of-Way Permit Fee set forth in Section 1000.270 may be reviewed at any time, and shall be reviewed at least annually, by the Director or Designee and based upon the criteria for assessment of permit fees and Management Costs established in Sections 67.1830 to 67.1847 RSMo., and this Chapter. All adjustments to fees shall be

adopted by the County Commission prior to the date on which the adjusted fees are scheduled to take effect.

#### **SECTION 1000.270: FEE SCHEDULE**

- A. The Right-of-Way Permit Fees, including adjustments to the fees shall be recommended by the Director or Designee, approved by the County Commission and listed in the Schedule of Fees (Exhibit A) maintained in the County Clerk's office.
- B. Right-of-Way fees shall be determined on the basis of criteria for assessment of permit fees established in Sections 67.1830 to 67.1847 RSMo., and shall be:
  - 1. Based on the actual, substantiated costs reasonably incurred by the County in managing the Public Right-of-Way (in some instances, this may be based on a reasonable good faith estimate);
  - 2. Based on an allocation among all users of the Public Right-of-Way, including the County, which shall reflect the proportionate costs imposed on the County by each of the various types of uses of the Public Right-of-Way;
  - 3. Imposed on a competitively neutral and nondiscriminatory basis;
  - 4. Imposed in a manner so that above ground uses of the Public Right-of-Way do not bear costs incurred by the County to regulate underground uses of the Public Right-of-Way;
  - 5. Applied uniformly to all users of the Public Right-of-Way, including the County.
- C. Right-of-Way Management Costs shall:
  - 1. Be the same for all entities doing similar work.
  - 2. Not include payment by a Public Utility Right-of-Way User for the use or rent of the Public Right-of-Way, degradation of the Public Right-of-Way or any costs incurred by the County as outlined in Section 1000.260 that are incurred by the County as a result of the use by users of the Public Right-of-Way other than Public Utilities, the fees and costs of litigation that relate to the interpretation of this Chapter or Sections 67.1830 or 67.1832 RSMo, or litigation, interpretation or development of this Chapter 1000 or Section 67.1832 RSMo, and fees and costs related to appeals taken pursuant to Section 67.1838 RSMo.

#### **SECTION 1000.280: VIOLATIONS**

- A. No Public Utility shall Excavate in the Public Right-of-Way in violation of this Chapter.
- B. In the event the Director or Designee determines that a Public Utility Right-of-Way User has committed a violation of any provision this Chapter, or of Sections 67.1830, 67.1832,

67.1837, 67.1838, 67.1842, 67.1844, and 67.1847 RSMo. et seq, or a condition of the Public Utility Right-of-Way Permit, the Director or Designee, in addition to other remedies as provided in this Chapter or by other Law:

1. Shall, prior to the imposition of a civil penalty or revocation of a permit, make written demand upon the Public Utility Right-of-Way User to remedy such violation;
2. May revoke all applicable permits as provided herein;
3. Order the immediate cessation of any work, including work and Excavation being undertaken as a result of an Emergency, which poses a serious threat to the public health, safety or welfare, or which is not in compliance with this Ordinance or the permit at issue, or applicable Law.
4. May assess civil penalties as provided in this Chapter or by other applicable Law.

#### **SECTION 1000.290: CIVIL PENALTIES AND DAMAGES**

County Right-of-Way Ordinance Violations.

It shall be a violation of the County Right-of-Way Management Ordinance for any person or entity to place an object in, on, or under the County right-of-way without prior written permission of the County. Further, in the event the County is alleged by any person or entity to have damaged that person or entity's property, or caused injury to person in County right-of-way, the County, its agents, and employees shall be released, held harmless, and indemnified by that person or entity if the property is located within the right-of-way without written permission of the County. In addition, this release hold harmless, and indemnification to the County, its agents, and employees shall also apply if the property is located with written County permission but the property is not properly identified or marked for reasonable viewing by County workers or agents.

Failure of a person or entity to obtain the permits required by the County Right-of-Way Management Ordinance shall result in a damage payment to the County of \$100 per day for each day for which no permit has been issued but the person or entity has caused placement of an object in, on, or under the County's right-of-way as contemplated by this ordinance. This may be waived or reduced by the County Commission for good cause shown.

#### **SECTION 1000.300: BLASTING**

Any person or entity planning demolition, earth moving, or construction activities involving explosives within an unincorporated area of the County shall first apply for a permit with the Zoning Officer at least ten days prior to the planned event. The permit applicant shall supply with the permit an emergency preparedness plan, fire, sheriff, and ambulance response times, and notification and communication plan to neighboring property owners as determined in consultation with the Zoning and Planning Director. Any concern or appeal as to requirements imposed upon the permit applicant by the Director of Zoning and Planning may be appealed to

the County Commission. The applicant shall pay, with the permit filing, a non-refundable permit fee of \$500. A permit shall be required and permit fee paid for each explosion. The applicant shall agree to follow all federal, state, and local laws and safety protocols and requirements and further shall indemnify, defend and hold harmless the County, its employees, and agents, for any claims or suits resulting from these activities resulting in injuries to persons or damage to property including contractual disputes or otherwise. The applicant shall provide a bond in the amount of \$50,000 with good and sufficient sureties to be approved by the Commission and the form thereof to be approved by the County Attorney with such other conditions and provisions as contained in 804.2 of the County's Ordinances. The Director or Designee may impose further reasonable conditions and requirements and may also waive the requirement of multiple permitting for a project involving numerous explosives. A permit applicant may appeal such additional requirements, if any, to the County Commission. No work may proceed in regard to work contemplated by this section without first obtaining a permit. Federal, state, and other public authorities involved in activities contemplated by this section shall be exempt from these provisions. Failure of a person or entity to obtain the permit(s) required by this section shall result in a damage payment to the County of \$500 per day for each day for which no permit has been issued as contemplated by this ordinance. This may be waived or reduced by the County Commission for good cause shown.

#### **SECTION 1000.310: RIGHT-OF-WAY OR ROAD CLOSURE INVOLVING RAILROAD**

In the event a Railroad proposes to close a Railroad crossing in an unincorporated area of the County involving or adjacent to or abutting County right-of-way or a County road, it shall first apply for a closing permit to Zoning and Planning. It shall provide the Director or Designee the following:

The proposed closing effective date;

Copies of communication with MODOT, if any, or any other governmental entity;

A traffic count for the prior six months for the proposed affected crossing;

The Railroad's published Safety Plan;

An alternate emergency response route and timeframe with the proposed hypothetical closing in place; and,

Such other items as may be reasonably requested by the Director or Designee.

The Railroad with the submittal of the above shall submit a non-refundable fee of \$1000. The County Commission and Railroad shall then conduct negotiations on a damages amount to be paid by the Railroad to the County for the proposed closing. This amount shall be based on a good faith estimate by the County as to actual future costs and inconvenience to the County and its residents as a result of the closing. This amount may include intangibles as well. Further, in the event the permit request is granted, the Railroad shall indemnify, defend, and hold harmless the County, its employees, and agents for any injuries to persons or damages to property, including claims of a contractual nature, resulting from or arising out of any activities involving the crossing closing. In the event County has to seek legal action for any matter surrounding the Permit, Railroad shall be responsible for all of County's reasonable attorneys' fees and expenses. Further, in the event a County road is temporarily closed due to a Railroad derailment or other event due to Railroad operations, the Railroad shall as soon as possible re-open the road and restore the road, right-of-way, and any affected property owners in the same condition as prior to



the derailment or other event. The Railroad shall also as soon as possible comply with all of the above requirements regarding road closures.