Passed: Sept. 27, 2016
Published: Oct. 5, 2016

ORDINANCE NO. 2293

AN ORDINANCE RELATING TO MANAGING THE USE AND OCCUPANCY OF THE PUBLIC RIGHT-OF-WAY FOR THE CITY OF DERBY, KANSAS; AMENDING AND REPEALING ORDINANCE No. 1871 OF THE CITY OF DERBY, KANSAS, AND PROVIDING SUBSTITUTE PROVISIONS THEREFOR.

WHEREAS, the City of Derby, Kansas (the "City") is a municipal corporation organized and existing under the laws of the State of Kansas, and authorized by the Kansas Constitution and state statute to determine its local affairs and to regulate the activities and installations of private entities on, in, above and under the City's public right-of-way; and

WHEREAS, the governing body of the City of Derby, Kansas, finds that the public health, safety, general welfare and convenience of the City and its residents requires that it regulate the installation, construction, maintenance and operation of lines, conduits, wires, fiber optic cables, pipes, pipelines, poles, towers, vaults, appliances, wireless communications facilities, or related facilities on, in, above and under the public right-of-way within the City;

NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF DERBY, KANSAS:

Section 1. PURPOSE.

a. To execute the City's primary role as chief steward of the right-of-way and its duty to recover the costs of managing the right-of-way and incursions into it;

b. To clarify, regulate and harmonize conditions of occupancy and construction for those ROW-users occupying space within the City's right-of-way given the anticipated increased use of the right-of-way by various ROW-users;

c. To recognize the necessity for sound management practices in light of the increased use of the right-of-way;

d. To treat each ROW-user in a competitively neutral and nondiscriminatory manner with considerations that may be unique to the technology and situation of each particular ROW-user;

e. To minimize disruption, visual impact and inconvenience to the public and to preserve the public health, safety or welfare; and

f. To facilitate compliance with state and federal legislation.

Section 2. DEFINITIONS.

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

a. "Abandoned Facilities" means above-grade facilities owned by the ROW-user that remain unused for six months or below-grade facilities owned by the ROW-user that remain unused for two years and will not be utilized by the ROW-user in the future.

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

c. "City" means the City of Derby, Kansas, a municipal corporation and any duly authorized representative.

d. "City Engineer" means the City Engineer of the City of Derby, Kansas, or the authorized representative.

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

f. "Day" means calendar day unless otherwise specified.

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

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

i. "FCC" means Federal Communications Commission.

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

k. "Governing Body" means the City Council of the City of Derby, Kansas.

l. "Governmental Entity" means any county, township, city, town, village, school district, library district, road district, drainage or levee district, sewer district, water district, fire district or other municipal corporation, quasi-municipal corporation or political subdivision of the State of Kansas or of any other state of the United States and any agency or instrumentality of the State of Kansas or of any other state of the United States.

m. "KCC" means the Kansas Corporation Commission.

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

o. "Permit Fee" means the fee charged by the City to recover its cost incurred for right-of-way management, including, but not limited to, administrative costs associated with assisting applicants; issuing, processing, and verifying right-of-way permit applications; inspecting job sites and restoration of improvements; determining the adequacy of right-of-way restoration; revoking right-of-way permits; and other costs the City may incur in managing the provisions of this Ordinance.

p. "Permittee" means any person to whom a right-of-way permit is issued to perform excavation or work regulated by this ordinance in a right-of-way.

q. "Person" means any natural or corporate person, business association or business entity including, but not limited to, a partnership, a sole proprietorship, a political subdivision, a public or private agency of any kind, a utility, a successor or assign of any of the foregoing, or any other legal entity.

r. "Public Improvement" means any project undertaken by the City for the construction, reconstruction, maintenance, or repair of any public infrastructure, and including without limitation, streets, alleys, bridges, bikeways, sidestrips, sidewalks, sewers, drainage facilities, traffic control devices, street lights, public facilities, public buildings or public lands.

s. "Public Project for Private Development" means a public improvement arising solely from a request or requirement of a third party primarily for the benefit and use of a third party.

t. "Public Lands" means any real property owned or leased by the City that is not right-of-way.

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

v. "Repair and Restoration Costs" means those costs associated with repairing or restoring the public right-of-way because of damage caused by the ROW-user or its contractors or subcontractors in the right-of-way.

w. "Restoration" means the process by which an excavated right-of-way and surrounding area, including pavement and foundation, is returned to the same condition, or better, that existed before the commencement of the work.

x. "Right-of-way" means the area of real property in which the City has a dedicated or acquired right-of-way interest in the real property. It shall include the area on, below, or above the present and future streets, alleys, avenues, roads, highways, or boulevards dedicated or acquired as right-of-way. The term does not include property owned or held by the City but not typically considered right-of-way, including, but not limited to, City parks and reserves and City buildings.

y. "Right-of-way Permit" means the authorization to perform any work or excavation regulated by this ordinance within a right-of-way.

z. "Routine Service Operation" means a work activity that does not require excavation with mechanical equipment and that makes no material change to the facilities; is performed on existing facilities to ensure the safe, continued operation of the system; and does not disrupt traffic.

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

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

cc. "Street" means curb and gutter, pavement and sub-grade of a City residential, collector or arterial roadway.

Section 3. POLICY.

a. It is the policy of the City to authorize any ROW-user to use the right-of-way in a competitively neutral, non-discriminatory manner that maximizes the efficient use of and conserves the right-of-way and minimizes the burden on the right-of-way, physically and aesthetically. Any use of the right-of-way by a ROW-user shall be subject to the terms and conditions hereof, in addition to other applicable federal, state or local requirements.

b. The right granted to the ROW-user to use the right-of-way is limited to the use that the ROW-user has filed with the City in accordance with this Ordinance. These rights are for the exclusive use of the ROW-user except where otherwise provided herein, or when authorized by the City.

c. This Ordinance also is designed to regulate occupancy and excavations in the right-of-way by providing, among other things, for the issuance of permits which grant the authority to utilize and occupy the right-of-way within the City.

d. All ROW-users shall be subject to all rules, regulations, policies, resolutions, and ordinances now or hereafter adopted or promulgated by the City in the reasonable exercise of its police power and are subject to all applicable laws, orders, rules and regulations adopted by governmental entities now or hereafter having jurisdiction. In addition, the ROW-users shall be subject to all technical specifications, design criteria, policies, resolutions and ordinances now or hereafter adopted or promulgated by the City in the reasonable exercise of its police power relating to permits and fees, sidewalk and pavement cuts, utility location, construction coordination, surface restoration, and other requirements on the use of the right-of-way.

Section 4. ADMINISTRATION.

The City Engineer is the principal city official for administration of right-of-way permits for work and excavations made in the right-of-way. The City Engineer may delegate any or all of the duties hereunder.

Section 5. REQUIREMENTS OF RIGHT-OF-WAY USERS.

a. Public Works Policy. All ROW-users must conform their activities to the requirements of the City's Department of Public Works and Department of Planning & Engineering.

b. Storm Water. The work of ROW-users in the public right-of-way shall not interrupt, change, or impede the existing flow pattern of storm water drainage, nor shall the existing drainage patterns be permanently altered without written consent from the City Engineer. Any water discharged from or diverted around the ROW-user's work area shall be discharged into an approved sediment control system. Sediment generated from ROW-user's work area shall be controlled by the use of silt fences, hay bales, or other devices. ROW-users' storm water discharge quality and sediment control shall conform to the requirements of the City, the Kansas Department of Health and Environment (KDHE), and any other public agencies having jurisdiction, as such requirements now exist, or may hereafter be amended.

c. Americans with Disabilities Act. Restoration of public infrastructure, including without limitation, sidewalks, handicap ramps, and pavement, shall conform to the requirements of the Americans with Disabilities Act (ADA), as set forth in the "ADAAG Manual, Americans with Disabilities Act Accessibility Guidelines," developed by the U.S. Architectural and Transportation Barriers Compliance Board (Access Board), latest edition. The permittee is responsible for work beyond the permittee's work zone that may be necessary to meet ADAAG requirements in the permittee's work zone.

Section 6. PERMIT REQUIREMENT.

a. Except as otherwise provided, no ROW-user may excavate any right-of-way or conduct any repair, construction, or reconstruction of Facilities or trim trees located within the right-of-way without first having obtained the appropriate right-of-way permit.

b. This requirement shall not apply to:

1. Contractors and City employees working on the construction or reconstruction of public improvements on behalf of the City.
2. ROW-users performing routine service operations as defined herein.

3. Improvements installed and maintained pursuant to a minor street privilege granted pursuant to City Code.
4. Maintenance performed on street light fixtures or lamps which does not materially alter, add to, or take away from the structure and operations of existing Facilities.

c. Except as authorized pursuant to Chapter 12.40 of the City Code, no person owning or occupying any land abutting on a public right-of-way shall construct, maintain, or permit in or on the portion of the public right-of-way to which such land is adjacent, any fixed structure, material or object without having obtained the appropriate right-of-way permit.

d. As described herein, an emergency situation shall not exempt ROW-users from obtaining a right-of-way permit for applicable work activities. If due to an emergency it is necessary for the ROW-user to immediately perform work in the right-of-way and it is impractical for the ROW-user to first get the appropriate permit, the work may be performed and the required permit shall be obtained as soon as possible during the next business day observed by the City.

e. No permittee may perform work in the right-of-way beyond the date or dates specified in the right-of-way permit unless the permittee:

1. Makes a supplementary application for another right-of-way permit before the expiration of the initial permit, and
2. A new right-of-way permit or permit extension is granted.

f. Right-of-way permits issued shall be available at all times at the worksite for inspection by the City Engineer, other City employees and the public.

g. Prior to the commencement of excavation, the permittee shall identify and locate any buried Facilities to be spray painted according to the Uniform Color Code required by the Kansas One Call.

h. At the discretion of the City Engineer, the permittee may be required to notify the occupants of all properties within two hundred feet (200') of the excavation prior to the commencement of such excavation. Door hangers shall be sufficient to satisfy such notification requirement.

i. As is necessary, it shall be the responsibility of the permittee to notify the Derby Police Department, Derby Fire & Rescue Department and Sedgwick County EMS of the schedule and location of such excavation prior to the commencement of such excavation.

j. Before receiving a right-of-way permit, the applicant must show proof of any necessary permit, license, certification, grant, registration, franchise agreement or any other authorization required by any appropriate governmental entity including, but not limited to, the City, the FCC and the KCC.

k. The ROW-user shall participate in any joint planning, construction and advance notification of right-of-way work, including coordination and consolidation of street-cut work as directed by the City Engineer. In addition, the ROW-user shall cooperate with other ROW-users and the City for the best, most efficient, most aesthetic and least obtrusive use of the right-of-way, consistent with safety, and to minimize traffic and other disruptions, including street cuts.

l. Except in the case of emergency work, any ROW-user who is found to be working in the public right-of-way without a permit will be ordered to stop work until a permit is acquired and properly made available for inspection at the worksite.

m. Any permittee found to be working without providing for required safety and traffic control will be ordered to stop work until the appropriate measures are implemented.

Section 7. PERMIT APPLICATIONS.

a. Application for a right-of-way permit shall be submitted to the City Engineer by the ROW-user.

b. Right-of-way permit applications shall contain and be considered complete only upon receipt of the following:

1. A completed permit application form, including all required attachments and scaled drawings showing the location and area of the proposed project and the location of all existing and proposed Facilities at such location; and
2. Payment of all money due to the City for permit fees and costs, including any such fees and costs due and unpaid from the applicant for prior excavation costs, for any loss, damage or expense suffered by the City because of the applicant's prior excavations of the right-of-way or for any emergency actions taken by the City, unless the payment of such money is in dispute and timely appealed as provided hereafter.

c. The following information shall be provided when requested by the City Engineer:

1. Proof of any necessary permit, license, certification, grant, registration, franchise agreement or any other authorization required by any appropriate governmental entity, including, but not limited to, the FCC or the KCC.
2. Information sufficient to determine whether the ROW-user is subject to franchising by Kansas law.
3. Information sufficient to determine whether the ROW-user has applied for and received any certificate of authority required by the KCC or other governmental entity.
4. Information sufficient to determine that the ROW-user has applied for and received any permit or other approvals required by the FCC.
5. Traffic control plans, surveys, or such other information as may be reasonably required by the City to complete the permitting process and assess the risk to the public or the right-of-way by reason of the ROW-user's proposed activities.

d. The City shall process all applications for use of the right-of-way within the timeframes required by state and federal law.

e. If an applicant has submitted an application for a permit for the installation, construction, maintenance or repair of multiple Facilities, that Applicant may not submit another application for a permit for the installation, construction, maintenance or repair of multiple Facilities until the first application has been approved or denied. This provision may be waived by the City Engineer.

Section 8. JOINT APPLICATIONS.

a. Applicants may apply jointly for permits to excavate the right-of-way at the same time and place.

b. Applicants who apply jointly for a right-of-way permit may share in the payment of the permit fee. Applicants must agree among themselves as to the portion each shall pay;

provided, that notwithstanding any such agreement each applicant shall be jointly and severally liable for all applicable permit fees and costs.

c. Applicants who apply for and receive a joint right-of-way permit are held jointly and severally liable for repair, restoration, and all costs associated therein as set forth herein.

Section 9. SUPPLEMENTARY APPLICATIONS.

a. A right-of-way permit shall only be valid for the area of the right-of-way specified within the permit. No permittee may cause any work to be done outside the area specified in the permit, except as provided herein. Any permittee who determines that an area greater than that which is specified in the permit must be utilized must, prior to the commencement of work in that greater area: (1) make application for a permit extension and pay any additional fees required thereby; and (2) receive a new right-of-way permit or permit extension.

b. A right-of-way permit shall be valid only for the date or dates specified in the permit. Except as provided herein, no permittee may commence work before the permit start date or may continue working after the end date. If a permittee does not complete the work by the permit end date, the permittee must apply for and receive a new right-of-way permit or a permit extension for additional time. This supplementary application must be submitted to the City prior to the permit end date.

Section 10. RIGHT-OF-WAY PERMIT FEES AND COSTS.

a. Right-of-way permit fees shall be established by Resolution of the City upon the recommendation of the City Engineer. An application shall not be deemed submitted unless the permit fee is paid. The permit fee shall be subject to all state and federal fee limitations.

b. Fees paid for a right-of-way permit are not refundable.

c. Except as provided for in an emergency situation, a ROW-user found to have worked or be working in the right-of-way without having obtained a permit shall pay a fee double the amount specified in the fee resolution.

d. The City shall also charge and collect any necessary repair and restoration costs.

e. The right-of-way permit fee shall be waived:

1. When the ROW-user is required to remove, relocate or adjust Facilities located in the right-of-way at the direction of the City to facilitate a public improvement; or
2. When reasonably required by the City for reasons of public health, safety or welfare.
3. When a request for an extension of an existing permit is made prior to the expiration of the original permit.
4. When such fees are prohibited from being imposed by the conditions set forth in a franchise agreement that has been entered into by the City and a ROW-user and enacted prior to the December 12, 2006.

Section 11. ISSUANCE OF PERMIT.

a. If the City Engineer determines that the applicant has satisfied the requirements of this Ordinance, the City Engineer shall issue a right-of-way permit.

b. The City Engineer may impose reasonable conditions upon the issuance of a right-of-way permit and the performance of the permittee to protect the public health, safety or

welfare, to ensure the structural integrity of the right-of-way, to protect the property and safety of other users of the right-of-way, and to minimize the disruption and inconvenience to the traveling public; any such conditions shall be in writing upon or attached to the permit.

c. Right-of-way permits are not transferable.

d. If work is being done by the ROW-user for or under contract with another ROW-user, both such ROW-users shall be jointly and severally liable for all damages, obligations, and warranties herein described.

e. Individual right-of-way permits are limited to work performed in a contiguous right-of-way area. Except as provided for herein, applicants must apply for and receive a permit for each non-contiguous right-of-way work area.

Section 12. DENIAL OF PERMIT.

a. The City Engineer may deny a permit or prohibit the use or occupancy of a specific portion of the right-of-way to protect the public health, safety or welfare, to prevent interference with the safety and convenience of ordinary travel over the right-of-way, or when necessary to protect the right-of-way and its users. The City Engineer, exercising sound discretion, may consider all relevant factors including but not limited to:

1. The extent to which the right-of-way space where the permit is sought is available;
2. The competing demands for the particular space in the right-of-way;
3. The availability of other portions of the right-of-way or in other right-of-way for the Facilities of the applicant;
4. The applicability of any ordinance or other regulations, including City zoning regulations, that affect location of or other standards for Facilities in the right-of-way;
5. The degree of compliance of the applicant with the terms and conditions of its franchise, this Ordinance, and other applicable ordinances and regulations;
6. The degree of disruption to surrounding residents, communities and businesses that will result from the use of that part of the right-of-way;
7. The balancing of costs of disruption to the public and damage to the right-of-way, against the benefits to that part of the public served by the construction in the right-of-way; and
8. Whether the issuance of a right-of-way permit for the particular dates and/or time requested would cause a conflict or interfere with an exhibition, celebration, festival, or any other event. In exercising this discretion, the City Engineer shall be guided by the safety and convenience of anticipated travel of the public over the right-of-way.
9. The adverse impact of the Facilities or Facilities' proposed location on any reasonable public interest necessitated by public health, safety, or welfare.

b. Notwithstanding the foregoing, the City Engineer may exercise discretion in issuing a right-of-way permit in any case where the permit is necessary to:

1. Prevent substantial economic hardship to a user of the ROW-user's service; or
2. Allow such user to materially improve the service provided by the ROW-user.

c. The City Engineer shall not issue a right-of-way permit for encroachments in the right-of-way for private purposes that create a safety hazard and/or would be deemed a nuisance pursuant to the City Code.

d. Any denial of a wireless communications antenna, tower or related Facilities shall, in accordance with federal and state law, be made in writing and supported by substantial evidence contained in the written record issued contemporaneously with said decision.

Section 13. REVOCATION OF PERMIT.

a. Permittees hold right-of-way permits issued pursuant to this Ordinance as a privilege and not as a right. The City reserves the right, as provided herein, to revoke any right-of-way permit without refund of the permit fee in the event of a substantial breach of the terms and conditions of this ordinance or the right-of-way permit. A material breach shall include, but not be limited to the following:

1. The violation of any material provision of the right-of-way permit;
2. An evasion or attempt to evade any material provision of the right-of-way permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the City or its citizens;
3. Any material misrepresentation of any fact in the permit application;
4. The failure to complete the work in a timely manner;
5. The failure to correct a condition indicated on an order issued pursuant to this Ordinance;
6. Repeated traffic control violations; or
7. Failure to repair Facilities damaged in the right-of-way.

b. If the City Engineer determines that the permittee has committed a material breach of any law or condition placed on the right-of-way permit, the City Engineer shall make a written demand upon the permittee to remedy such violation. The demand shall state that failure to remedy a violation may be cause for revocation of the permit or legal action. Further, a material breach will allow the City Engineer, exercising sound discretion, to place additional or revised conditions on the right-of-way permit, specifically related to the manner in which the breach is cured by the permittee. Within five (5) calendar days of receiving notification of a material breach, the permittee shall contact the City Engineer with a plan acceptable to the City Engineer, for correction of the breach. Permittee's failure to contact the City Engineer, permittee's failure to submit an acceptable plan, or permittee's failure to reasonably implement the approved plan shall be cause for immediate revocation of the right-of-way permit.

c. If a right-of-way permit is revoked, the permittee shall also reimburse the City for the City's reasonable costs, including administrative costs, restoration costs and the costs of collection and reasonable attorney's fees incurred in connection with such revocation.

d. Nothing in this section shall limit the right of the City Engineer to revoke a permit issued hereunder, with or without notice to the permittee, in the event the City Engineer finds that acts or omissions of the permittee pose a substantial and immediate danger to the public.

Section 14. PERMITTED WORK.

a. The ROW-user shall not make any cut, excavation or grading of right-of-way, other than excavations necessary for emergency repairs, without first securing a right-of-way permit.

b. The permittee shall not at any one time open or encumber more of the right-of-way than is authorized by the permit and reasonably necessary to enable the permittee to complete the project in the most expeditious manner.

c. The permittee shall, in the performance of any work required for the installation, repair, maintenance, relocation and/or removal of any of its Facilities, limit all excavations to those excavations that are necessary for efficient operation.

d. The permittee shall not permit such an excavation to remain open longer than is necessary to complete the repair or installation.

e. The permittee shall notify the City no less than three (3) business days in advance of any construction, reconstruction, repair, location or relocation of Facilities which would require any street closure or which reduces traffic flow to less than two (2) lanes of moving traffic for more than four (4) hours. Except in the event of an emergency as reasonably determined by the permittee, no such closure shall take place without notice to and prior authorization from the City.

f. To minimize disruption of traffic, non-emergency work on arterial and collector streets shall not be performed during the hours of 7:00 AM to 8:30 AM and 4:00 PM to 6:00 PM.

g. All work performed in the right-of-way or which in any way impacts vehicular or pedestrian traffic shall be properly signed, barricaded, and otherwise protected at the permittee's expense. Such signage shall be in conformance with the latest edition of the Manual on Uniform Traffic Control Devices unless otherwise agreed to by the City.

h. The permittee shall identify and locate any underground Facilities in conformance with the Kansas Underground Utility Damage Prevention Act "Kansas One Call" system, and notice shall be provided directly to El Paso Water Company, City of Derby sewer maintenance, and either to Westar or to the City of Derby Public Works Department with respect to any municipal traffic signal and street light systems, as appropriate.

i. The permittee shall be liable for any damages to underground Facilities due to excavation work prior to obtaining location of such Facilities, or for any damage to underground Facilities that have been properly identified prior to excavation. The permittee shall not make or attempt to make repairs, relocation or replacement of damaged or disturbed underground Facilities without the approval of the owner of the Facilities.

j. Whenever there is an excavation by the permittee, the permittee shall be responsible for providing adequate traffic control. The permittee shall perform work on the right-of-way at such times that will allow the least interference with the normal flow of traffic and the peace and quiet of the neighborhood. In the event the excavation is not completed in a reasonable period of time, the permittee may be liable for actual damages to the City for delay caused by the permittee pursuant to this Ordinance.

k. All Facilities and other appurtenances laid, constructed and maintained by the permittee shall be laid, constructed and maintained in accordance with acceptable engineering practice and in full accord with any and all applicable engineering codes adopted or approved by the parties and in accordance with applicable statutes of the State of Kansas, as well as the rules and regulations of the Kansas Corporation Commission and any other local, state or federal agency having jurisdiction over the parties.

Section 15. USE OF THE RIGHT-OF-WAY.

a. The ROW-user's use of the right-of-way shall in all matters be subordinate to the City's use or occupation of the right-of-way. The City may reserve sufficient space within the

right-of-way for future public improvements. Without limitation of its rights, the City expressly reserves the right to exercise any and all governmental powers now or hereafter vested in or granted to the City.

b. ROW-users shall coordinate the placement of Facilities in a manner that does not interfere with any Public Improvement(s) and does not compromise the public health, safety, or welfare, as reasonably determined by the City. Where placement is not regulated, the Facilities shall be placed with adequate clearance from such Public Improvement(s) so as not to impact or be impacted by such Public Improvement(s).

c. ROW-users shall consider any request made by the City concerning placement of Facilities in private easements in order to limit or eliminate future street improvement relocation expenses.

d. All Facilities of the ROW-user shall be located and laid so as not to disrupt or interfere with any pipes, drains, sewers, irrigation systems, or other structures or Public Improvements already installed. In addition, ROW-users shall, in doing work in connection with its Facilities, avoid, so far as may be practicable, disrupting or interfering with the lawful use of the right-of-way or other public lands of the City.

e. All Facilities of ROW-users shall be placed so that they do not interfere with the use of right-of-way and public lands. The City, through its City Engineer, shall have the right to review the location, design and nature of the facility prior to its being installed.

f. Whenever reasonably possible, when new Facilities are constructed or significant work as determined by the City Engineer is performed on existing Facilities, the Facilities shall be located or relocated underground. Appliances, boxes, antennae, pedestals, transmitters, and other equipment as approved by the City Engineer may be located above ground. Electric transmission and main distribution lines of 12 kilovolts (KV) and above shall be exempted. Electric supply lines below 12KV will be located underground. ROW-users shall comply with all requirements of the City relating to underground Facilities. The City Engineer may grant a special exception to this requirement on a temporary or permanent basis on such terms as the City Engineer may deem appropriate in cases of emergency, safety concerns, unusual circumstances, or some other good cause under the condition that does not cause discrimination among ROW-users. In addition, in cases where temporary electrical power or communication service is reasonably required for emergencies or for building construction purposes, the city manager or the city manager's agent may grant special permission for the temporary construction and use of poles, wires and other above-ground Facilities for a period not to exceed one hundred and twenty (120) days; provided, that in the event that resolving said emergency or completing said construction cannot be concluded within said time period because of a shortage of material, a natural disaster, strikes, or other circumstances beyond the control of the parties, or by unusual hardships, then the time may be extended by an additional temporary period or periods necessary to allow completion of such construction. If an exception or permission is granted pursuant to this section, the Facilities shall be located as directed by the City Engineer, including, but not limited to, requirements regarding location and height. Above-ground Facilities shall comply with all applicable zoning regulations, and be located in a manner that does not compromise the public health, safety, or welfare.

g. ROW-users shall not interfere with the Facilities of the other ROW-users without their permission. If and when the City requires or negotiates to have a ROW-user cease using its existing poles and to relocate its Facilities underground, all other ROW-users using the same poles shall also relocate their Facilities underground at the same time, except transmission

equipment, as defined in 47 CFR 1.40001; provided, any such relocation shall be subject to the appeal process contained in this Ordinance.

h. The City Engineer may assign specific corridors within the right-of-way, or any particular segment thereof as may be necessary, for each type of facility that is currently, or pursuant to current technology the City Engineer expects will someday be located within the right-of-way. Any ROW-user whose Facilities are currently in the right-of-way in a position at a variance with the designated corridors shall, no later than at the time of next reconstruction or excavation of the area where its Facilities are located, move the Facilities to its assigned position within the right-of-way, unless this requirement is waived by the City Engineer for good cause shown and after consideration of such factors as the remaining economic life of the Facilities, public safety, user service needs and hardship to the ROW-user.

i. If, in the preparation and planning of a right-of-way project, the City Engineer deems it appropriate for a conduit to be constructed along, across or under the right-of-way, the City Engineer shall contact all appropriate ROW-users for input on the planning and design of such conduit. If a ROW-user desires to construct, maintain or operate Facilities along such right-of-way, the City Engineer may require the ROW-user to use such conduit; provided, that the ROW-user's use of the conduit is reasonable and appropriate under the circumstances.

j. All earth, sod, landscape features, materials, sidewalks, paving, utilities, other public improvements or improvements of any kind damaged or removed by the ROW-user shall be repaired or replaced promptly by the ROW-user at its sole expense and to the reasonable satisfaction of the City. Upon determination by the City Engineer that such repair or replacement is a public safety matter, all such repair or replacement shall be commenced within twenty-four (24) hours of notice from the City, or the City Engineer may direct the City to make such repair or replacement, in which case the ROW-user shall be liable to and reimburse the City for the cost thereof plus penalties. The City Engineer has the authority to inspect the repair or replacement of the damage, and if necessary, to require the ROW-user to re-do work or do any additional work to complete such repair or replacement.

k. All technical standards governing construction, reconstruction, installation, operation, testing, use, maintenance, and dismantling of a ROW-user's Facilities in the right-of-way shall be in accordance with applicable federal, state and local law and regulations, including those promulgated by national trade associations commonly associated with the service provided by the ROW-user. It is understood that the standards established in this paragraph are minimum standards and the requirements established or referenced in this Ordinance may be in addition to or stricter than such minimum standards. A ROW-user shall not construct or reconstruct any of its Facilities located upon, over, under or within the City right-of-way without first having submitted in writing a description of its planned improvement to the City Engineer and having received a permit for such improvement. The City Engineer may require that any drawings, plans or specifications submitted be certified by a professional engineer licensed to practice engineering by the State of Kansas stating that such drawings, plans and/or specifications comply with all applicable technical codes, rules and regulations, unless such plans are based directly on nationally recognized codes, which are appropriately cited, and attested to on the plans by the signature of an authorized official of the organization applying for the permit.

l. ROW-users shall cooperate promptly and fully with the City and take all reasonable measures necessary to provide accurate and complete on-site information regarding the nature and horizontal and vertical location of its Facilities located within the right-of-way, both underground and overhead, when requested by the City or its authorized agent for a public

improvement. Such location and identification shall be at the sole expense of the ROW-user without any expense to the City, its employees, agents, or authorized contractors.

m. Encroachments in the Right-of-way for private purposes which create a safety hazard are prohibited.

n. The City shall have the authority to prohibit the use or occupancy of a specific portion of the right-of-way by a ROW-user due to public health, safety or welfare considerations.

Section 16. PROTECTION OF THE PUBLIC.

a. It shall be the responsibility of each ROW-user to take adequate measures to protect and defend its Facilities in the right-of-way from harm and damage.

b. The City shall not be liable for any damage to or loss of any of the ROW-user's Facilities within the right-of-way as a result of or in connection with any construction, excavation, grading, filling or work of any kind, including public improvements by or on the behalf of the City, except to the extent caused by the negligent acts or omissions of the City.

c. ROW-users shall be responsible to the City and its agents, representatives, and authorized contractors for all damages suffered by them including, but not limited to delay damages, repair costs, down time, construction delays, penalties or other expenses of any kind arising out of the failure of the ROW-user to timely perform any of its obligations under this Ordinance to the extent caused by the acts or omissions of the ROW-user.

d. The City or its authorized contractors shall be responsible for taking reasonable precautionary measures including calling for facility locations when constructing its public improvements.

e. Any ROW-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, and shall leave any part or portion thereof open, or shall leave any part or portion thereof disrupted with rubbish, building or other material during construction or the night time, shall cause the same to be enclosed with good substantial and sufficient barricades or drums equipped with the appropriate type of warning lights and orange safety fencing material which is properly secured around the excavation or the disruption, all to the satisfaction of the City Engineer.

f. Whenever a ROW-user shall excavate the full width of any street, sidewalk, alley, driveway approach or other right-of-way, it shall be its duty to maintain an adequate passage for vehicles and pedestrians across or around the excavation until it is filled and repairs completed as provided by the permit or this ordinance.

g. Any excavation left open overnight on any thoroughfare or collector type street shall be protected and secured. The permitee assumes the sole responsibility for maintaining proper barricades, plates, safety fencing or lights as required from the time of opening of the excavation until the excavation is surfaced and opened for travel.

h. Pursuant to the permitting requirements provided herein, ROW-users retain the discretion to trim trees upon and overhanging the right-of-way so as to prevent such trees from coming in contact with the Facilities of the ROW-user.

i. In the event the ROW-user disturbs or damages any part of any tree in the right-of-way to the detriment of the health or safety of the tree, the ROW-user will be required to remove and replace the tree at the ROW-user's cost. The type and size of such replacement tree shall be reasonably determined by the City Engineer. Further, in review of the ROW-user's plan, the City Engineer, exercising sound discretion, may require the ROW-user to directionally bore around any tree in the right-of-way.

j. Upon the appropriate request of any person having satisfied City procedure and ordinances, ROW-users shall remove, raise, or lower its Facilities temporarily to permit the moving of houses or other structures. The expense of such temporary removal, raising or lowering shall be paid by the person requesting the same, and the ROW-user may require such payment in advance. The ROW-user must be given not less than fifteen (15) days written notice from the person detailing the time and location of the moving operations, and not less than twenty-four (24) hours advance notice from the person advising of the actual operation.

k. The City Engineer may cause to be removed any encroachment in the right-of-way that creates a hazard to the public health, safety, or welfare, and the cost of such removal and restoration of the right-of-way shall be borne by the ROW-user.

Section 17. RIGHT-OF-WAY REPAIR AND RESTORATION.

a. The work to be done under a right-of-way permit and the repair and restoration of the right-of-way as required herein must be completed within the dates specified in the permit. In the event of circumstances beyond the control of the permittee or when work was delayed or prohibited by unseasonable or unreasonable conditions, the City Engineer may upon request of the permittee extend the date for completion of the project upon receipt of a supplementary application for a permit extension.

b. All earth, materials, sidewalks, paving, public improvement or improvements, or utilities of any kind damaged or removed by the permittee shall be fully repaired or replaced promptly by the permittee at its sole expense and the reasonable satisfaction of the City. The City Engineer has the authority to inspect the repair or replacement of the damage, and if necessary, require the permittee to do the additional remedial work. Notice of the unsatisfactory restoration and the deficiencies found will be provided to the permittee and a reasonable time not to exceed fifteen (15) days will be provided to allow for the deficiencies to be corrected.

c. After any excavation, the permittee shall, at its expense, restore all portions of the right-of-way to the same condition or better condition than it was prior to such excavation.

d. In addition to repairing its own street cuts, the permittee must restore any area within five (5) feet of the new street cut that has previously been excavated, including the paving and its aggregate foundations.

e. If the permittee fails to restore the right-of-way in the manner and to the condition required by the City Engineer, or fails to satisfactorily and timely complete all restoration the City may, at its option, serve written notice upon the permittee and its surety that, unless within five (5) days after serving of such notice, a satisfactory arrangement can be made for the proper restoration of the right-of-way, the City may take over the work and prosecute same to completion, by contract or otherwise at the expense of the permittee, and the permittee shall be liable to the City for any and all costs incurred by the City by reason of such prosecution and completion.

f. Any permittee responsible for an excavation who leaves any debris in the right-of-way shall be responsible for providing safety protection in accordance with the latest edition of the Manual on Uniform Traffic Control Devices and any applicable federal or state requirement.

g. If an excavation cannot be back-filled immediately and is left unattended, the permittee shall secure the unfilled excavation. The permittee has sole responsibility for maintaining proper barricades, safety fencing and lights as required, from the time of the opening of the excavation until the excavation is surfaced and opened for travel.

h. In restoring right-of-way, the permittee guarantees its work and shall maintain it for twenty-four (24) months following its completion. During such twenty-four (24) month period the permittee shall, upon notification from the City Engineer, correct all restoration work to the extent necessary, using any method as required by the City Engineer. Said work shall be completed within a reasonable time, not to exceed thirty (30) calendar days after receipt of notice from the City Engineer (not including days during which work cannot be done because of circumstances constituting force majeure or days when work is prohibited as unseasonable or unreasonable). In the event the permittee is required to perform restoration pursuant to such guarantee, the City Engineer shall have the authority to extend the guarantee period for such new restoration for up to an additional twenty-four (24) months from the date of the new restoration if the City Engineer determines that the permittee willfully failed to comply with the conditions of the right-of-way permit, any restoration requirements, or this ordinance.

i. The twenty-four (24) month guarantee period shall be applicable to failure of the pavement surface as well as failure below the pavement surface.

j. Payment of a permit fee shall not relieve the permittee of the obligation to complete the necessary right-of-way restoration.

Section 18. WORK REQUIREMENTS AND INSPECTIONS.

a. Any excavation, back filling, repair and restoration, and all other work performed in the right-of-way shall be done in conformance with the standards set by and to the satisfaction of the City Engineer

b. The permittee shall use flowable fill as backfill on any street cut. This requirement may be waived or changed when appropriate in the discretion of the City Engineer. In such event, the City Engineer may require the permittee to employ a testing laboratory as approved by the City Engineer, which shall certify the proper back-filling on any street cut. The permittee shall pay all costs associated with such testing.

c. The permittee shall notify the City Engineer upon completion of permitted work.

d. The permittee will notify the City Engineer to schedule an inspection at the start of back filling. Upon completion of all right-of-way restoration activities, the permittee will schedule a closeout inspection.

e. When any corrective actions required have been completed and inspected to the City Engineer's satisfaction, the twenty-four (24) month maintenance period will begin.

f. In addition to the required scheduled inspections, the City Engineer may choose to inspect the ongoing permitted work in the right-of-way at any time to ensure that all requirements of the approved permit are being met by the permittee.

g. At the time of any inspection, the City Engineer may order the immediate cessation of any work, which poses a serious threat to the life, health, safety, or well being of the public. The City Engineer may issue a stop work order and/or a citation to the permittee for any work, which does not conform to the applicable standards, conditions, code or terms of the permit. The stop work order or the citation shall state that failure to correct the violation will be cause for revocation of the permit.

Section 19. FACILITY RELOCATION.

a. ROW-users shall promptly remove, relocate or adjust any Facilities located in the right-of-way as directed by the City for a public improvement or when reasonably required by the City by reason of public health, safety or welfare. Such removal, relocation, or adjustment

shall be performed by the ROW-user at its sole expense without expense to the City and shall be subject to all applicable rules, regulations and schedules of the City. The ROW-user shall proceed with relocations upon notice to proceed given by the City Engineer.

b. ROW-users shall promptly remove, relocate or adjust any Facilities located in a private easement, as directed by the City for a public improvement, at City expense, by moving such Facilities to areas within the expanded right-of-way or within remaining private easements or remaining portions of such easements not condemned by or otherwise conveyed to the City to avoid conflict with City construction and improvements. ROW-users shall disclaim those parts of its easements which lie within the expanded right-of-way. Should the City elect to require the ROW-user to again relocate its Facilities to other areas within the expanded right-of-way, the cost of any such future relocation shall be borne by the City.

c. As soon as working drawings are available for public improvements which will require a ROW-user to relocate its Facilities, the City shall provide such ROW-user with written notice of relocations and the anticipated bid letting date of said improvement. The ROW-user shall respond with any conflicts and a proposed construction schedule within thirty (30) days.

d. Following notice by the City in the form of the delivery of final design plans for such public improvements, the ROW-user shall remove, and relocate its Facilities in accordance with the mutually agreed upon schedule, provided the project is not delayed by adverse weather conditions or other factors beyond the control of the ROW-user. The ROW-user shall certify to the City, in writing, within three business days of said action that its Facilities have been relocated or adjusted to clear construction in accordance with project plans provided by the City.

e. Any damages suffered by the City, its agents or its contractors to the extent caused by ROW-user's failure to timely relocate or adjust its Facilities, or failure to properly relocate or adjust such Facilities, shall be borne by the ROW-user.

f. The ROW-user shall not be responsible for the expense of relocation to accommodate any public project for private development or for a private benefit, the expenses attributable to such a project or private benefit shall be the responsibility of the third party and said ROW-user may require payment in advance.

g. In the event a ROW-user is required to move its Facilities in accordance with this section, any ordinary right-of-way permit fee shall be waived.

h. The ROW-user shall not be financially responsible for costs incurred due to additional location, removal, relocation, or adjustment necessary as a result of inaccurate or mistaken information provided by an entity other than said ROW-user or an entity operating on behalf of said ROW-user

i. It is the intent of this section for both the City and the ROW-user to cooperate with one another so that the need for facility relocation is minimized and, when required and feasible, relocations may be completed prior to receipt of bids by the City for a public improvement.

Section 20. VACATION OF RIGHT-OF-WAY.

a. If the City vacates a right-of-way which contains the Facilities of the ROW-user, and if the vacation does not require the relocation of the ROW-user's Facilities, the City shall reserve, to and for itself and all ROW-users having Facilities in the vacated right-of-way, an easement for the right to install, maintain and operate any Facilities in the vacated right-of-way and to enter upon such vacated right-of-way at any time for the purpose of reconstructing, inspecting, maintaining or repairing the same.

b. If the vacation requires the relocation of Facilities, and

1. If the vacation proceedings are initiated by the ROW-user, the ROW-user must pay the relocation costs.
2. If the vacation proceedings are initiated by the City, the ROW-user must pay the relocation costs unless otherwise agreed to by the City and the ROW-user.
3. If the vacation proceedings are initiated by a person other than the ROW-user or the City, such other person must pay the relocation costs.

Section 21. ABANDONMENT AND UNUSABLE FACILITIES.

a. A ROW-user owning abandoned Facilities in the right-of-way shall either:

1. Remove its Facilities and replace or restore any damage or disturbance caused by the removal at its own expense. The City Engineer may allow underground Facilities or portions thereof to remain in place if the City Engineer determines that it is in the best interest of public health, safety, or welfare to do so. At such time, the City may take ownership and responsibility of such vacated Facilities left in place;
2. Provide information satisfactory to the City that the ROW-user's obligations for its Facilities in the right-of-way have been lawfully assumed by another authorized ROW-user; or
3. Submit to the City a proposal and instruments for transferring ownership of its Facilities to the City. If the ROW-user proceeds under this section, the City may, at its option, purchase the equipment, require the ROW-user, at its own expense to remove it, or require the ROW-user to post a bond in an amount sufficient to reimburse the City for reasonable anticipated costs to be incurred to remove the Facilities.

b. Facilities of a ROW-user who fails to comply with this section, and whose above-grade Facilities remain unused for six months or below-grade Facilities for two (2) years, shall be deemed to be abandoned unless, after the City has made a good faith effort to contact such ROW-user, the City receives confirmation that the ROW-user intends to use the Facilities. Abandoned Facilities are deemed to be a nuisance. The City may exercise any remedies or rights it has at law or in equity, including, but not limited to, (1) abating the nuisance, (2) taking possession and ownership of the facility and restoring it to a useable function, or (3) requiring the removal of the facility by the ROW-user.

Section 22. ROW-USER'S RIGHT TO SELL, TRANSFER, LEASE, ASSIGN, SUBLET OR DISPOSE.

Except as provided hereafter, the ROW-user shall not sell, transfer, lease, assign, sublet or dispose of its Facilities, or any portion thereof, that is located in City right-of-way, or any right, title or interest in the same, or transfer any rights granted by the City to any other person either by forced or involuntary sale, or by ordinary sale, consolidation or otherwise, without notice to the City. This provision shall not apply to the sale of property or equipment in the normal course of business or to the sale or lease of Facilities to reseller ROW-users. No notice to the City shall be required for a transfer in trust, mortgage, or other similar instrument, 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 the ROW-user.

Section 23. APPEALS PROCESS.

a. Whenever a ROW-user shall deem itself aggrieved by any decision or action taken by the City, such ROW-user may file an appeal to the City Manager within ten (10) calendar days of the date of notice of such decision or action; provided, this section shall not apply to any person who is availing themselves of the appeal provisions set forth in K.S.A. 66-2019(h)(6).

b. The appellant shall be afforded a hearing on the matter before the Governing Body within thirty (30) days of filing the appeal.

c. In cases of applicability or interpretation of the rules, the Governing Body may revoke such decision or action taken by the City.

d. In cases where compliance with such decision or action taken by the City would cause undue hardship, the Governing Body may extend the time limit of such decision or action, or may grant exceptions to, or waive requirements of, or grant a variance from the specific provisions of rules. The Governing Body 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.

e. Pending a decision of the Governing Body, the order of the City Engineer shall be stayed, unless the City Engineer determines that such action will pose a threat to public safety or the integrity of the public infrastructure.

f. If a ROW-user deems itself aggrieved after the appeal to the Governing Body, such ROW-user may within thirty (30) days after the effective date of the Governing Body's final decision commence an action in the District Court of Sedgwick County, Kansas.

Section 24. CLAIM NOTIFICATION.

a. ROW-users shall promptly advise the other in writing of any known claim or demand against the provider or the City related to or arising out of the occupant's activities in a public right-of-way.

Section 25. INDEMNIFICATION.

a. Each ROW-user shall indemnify and hold the City and its officers and employees harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees (including reasonable attorney fees and costs of defense), proceedings, actions demands, causes of action, liability and suits of any kind and nature, including personal or bodily injury (including death), property damage or other harm for which recovery of damages is sought, to the extent that it is found by a court of competent jurisdiction to be caused by the negligence of such ROW-user, any agent, officer, director, contractor, subcontractor, or their respective officers, agents, employees, directors or representatives, while installing, operating, repairing or maintaining Facilities in a public right-of-way. The indemnity provided by herein does not apply to any liability resulting from the negligence of the City, its officers, employees, contractors or subcontractors. Nothing herein shall be deemed to prevent the City, or any agent from participating in the defense of any litigation by their own counsel at their own expense. Such participation shall not under any circumstances relieve the ROW-user from its duty to defend against liability or its duty to pay any judgment entered against the City, its officers, employees,

or its agents. If a ROW-user and the City are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of this state without, however, waiving any governmental immunity available to the City under state of federal law. This section is solely for the benefit of the City and ROW-user and does not create or grant any rights, contractual or otherwise, to any other person or entity.

Section 26. FORCE MAJEURE.

a. Each and every provision hereof shall be subject to acts of God, fires, strikes, riots, floods, war and other circumstances beyond the ROW-user's or the City's control that have a direct or substantial impact upon the matters regulated by said provisions.

Section 27. FEDERAL, STATE AND CITY JURISDICTION.

a. This Ordinance shall be construed in a manner consistent with all applicable federal, state, and local laws. Notwithstanding any other provisions of this Ordinance to the contrary, the construction, operation and maintenance of the ROW-user's Facilities shall be in accordance with all laws and regulations of the United States, the state and any political subdivision thereof, or any administrative agency thereof, having jurisdiction. In addition, the ROW-user shall meet or exceed the most stringent technical standards set by regulatory bodies, including the City, now or hereafter having jurisdiction. The ROW-user's rights are subject to the police powers of the City to adopt and enforce ordinances necessary to the health, safety, or welfare of the public. The ROW-user shall comply with all applicable laws and ordinances enacted pursuant to that power. Finally, failure of the ROW-user to comply with any applicable law or regulation may result in the forfeiture of any permit, registration or authorization granted in accordance with this Ordinance.

Section 28. PENALTIES.

a. Any person or entity violating any provision of this chapter is guilty of a class "C" public offense, and upon conviction thereof shall be punished by a fine of not more than five hundred ($500) dollars or by imprisonment of not more than thirty (30) days or both such fine and imprisonment. Every day that this chapter is violated shall constitute a separate offense.

b. The violation of any provision of this Ordinance is hereby deemed to be grounds for revocation of the permit and registration to operate with the City.

c. The City shall have the authority to maintain civil suits or actions in any court of competent jurisdiction for the purpose of enforcing the provisions of this Ordinance. In addition to any other remedies, the City may maintain an injunction, mandamus or other appropriate action or proceeding to prevent violation of this Ordinance.

Section 29. RESERVATION OF RIGHTS.

a. In addition to any rights specifically reserved to the City by this Ordinance, the City reserves unto itself every right and power which is required to be reserved by a provision of any ordinance under any registration, permit or other authorization granted under this Ordinance. The City shall have the right to waive any provision of this Ordinance or any registration, permit or other authorization granted thereunder, except those required by federal or state law, if the City determines as follows: (a) that it is in the public interest to do so; or (b) that the enforcement of such provision will impose an undue hardship on the person. To be effective, such waiver shall be evidenced by a statement in writing signed by a duly authorized representative of the

City. Further, the City hereby reserves to itself the right to intervene in any suit, action or proceeding involving the provisions herein.

b. Notwithstanding anything to the contrary set forth herein, the provisions of this Ordinance shall not infringe upon the rights of any person pursuant to any applicable state or federal statutes, including, but not limited to the right to occupy the right-of-way.

Section 30. CITY'S FAILURE TO ENFORCE.
The City's failure to enforce or remedy any noncompliance with the terms and conditions of this Ordinance or of any permit granted hereunder shall not constitute a waiver of the City's rights nor a waiver of any person's obligation as herein provided.

Section 31. REPEALER.
Ordinance No. 1871 of the City of Derby, Kansas, as originally enacted is hereby repealed.

Section 32. SEVERABILITY.
Should any section, clause, sentence, or phrase of this ordinance be found to be unconstitutional or is otherwise held invalid by any court of competent jurisdiction, such invalidity shall not affect the validity of any remaining provisions herein.

Section 33. EFFECTIVE DATE.
This Ordinance shall take effect and be in force from and after its publication or a summary thereof once in the official city newspaper.

PASSED BY THE CITY COUNCIL this 27th day of September, 2016, and **SIGNED BY THE MAYOR.**

THE CITY OF DERBY SEAL

Seal

Randy White, Mayor

Attest:

Karen Friend, City Clerk

Approved as to form:

Jacqueline R. Butler, City Attorney