

IN THE VILLAGE OF CENTERTOWN, MISSOURI

BILL NO. 015-002

ORDINANCE NO. 157

AN ORDINANCE OF THE VILLAGE OF CENTERTOWN, MISSOURI ESTABLISHING PROCEDURES AND REQUIREMENTS RELATING TO CONSTRUCTION OF FACILITIES IN, ALONG, ACROSS, UNDER AND OVERPUBLIC RIGHTS-OF-WAY.

BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE VILLAGE OF CENTERTOWN, MISSOURI, AS FOLLOWS:

Section 1: The WHEREAS, changes in the various industries involving advancements in and convergence of technologies and the emergence of competition have increased and will continue to increase the number of requests to install utility facilities in, along, across, under, and over Public Rights-of-Way within the Village of Centertown (hereinafter “the City”) and

WHEREAS, this increasing number of requests means increased disruption of the Primary uses of such Public Rights-of-Way, increased damage to such Public Rights-of-Way, and decreased available space for future installations, among other things; and

WHEREAS, it is determined by the Board of Trustees of the City that it is in the best interests of the City and its residents and businesses to minimize disruption of the primary uses of Public Rights-of-Way, and to minimize damage to Public Rights-of-Way; and

WHEREAS, it is further determined by the Board of Trustees of the City that it is in the best interests of the City and its residents and businesses to establish a more uniform and efficient approach to handling requests for access to and use of Public Rights-of-Way.

BE IT ORDAINED BY THE BOARD OF TRUSTEES FOR THE VILLAGE OF CENTERTOWN, MISSOURI AS FOLLOWS

REGULATIONS OF RIGHTS-OF-WAY

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Sec. 1. Applicability:

To the extent permitted by law, this Ordinance shall apply to all Persons desiring to construct, operate, or maintain Facilities in, along, across, under or over Public Rights-of-Way within the City.

Sec. 2. Definitions:

(a) Definitions and Usage – General.

For the purposes of this Ordinance, the following terms phrases, words, abbreviations shall have the meanings given herein, unless otherwise expressly stated. When not inconsistent with the context, words used in the present tense include the future tense and vice versa, words in the plural number include the future tense and vice versa, words in the plural number include the singular number, and vice versa, and masculine gender includes the feminine gender and vice versa. The words “shall” and “will” are mandatory, and “may” is permissive. Unless otherwise expressly stated and clearly contrary to the context, terms, phrases, words, and abbreviations not defined herein shall be given the meaning set forth in the City Code, and, if not defined therein, their common and ordinary meaning. For further convenience, the first letter of terms, phrases, words, and abbreviations defined in this Ordinance have been capitalized, but an inadvertent failure to capitalize such letter shall not affect is meaning, nor shall the inadvertent capitalization of the first letter of a term, phrase, word or abbreviation not defined herein affect the meaning thereof.

(b) Applicant.

“Applicant” means the Specific Person applying for and receiving a permit under this Ordinance.

(c) Application.

“Application” means that form designed by the City Engineer (1) which an Applicant must use to obtain a Permit to conduct Facilities Work across, over or under the City’s Right-of-Way.

(d) City.

“City” shall mean the Village of Centertown, Missouri.

(e) Reserved.

(f) City Engineer.

“City Engineer” shall mean the City Clerk or the Clerk’s designee.

(g) Excavation.

“Excavation” shall 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, by means of any tools, equipment or explosives, except that, any de minimis displacement or movement of ground caused by pedestrian or vehicular traffic or 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 shall not be deemed excavation.

(h) Facilities.

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

(i) Facilities Work.

“Facilities Work” shall mean the installation of new Facilities, or any change, replacement, replication, removal, alteration or repair of existing Facilities that requires excavation within the Public Rights-of-Way, except for the occasional replacement of utility poles and related equipment at the existing general location that does not involve either a street or sidewalk cut.

(j) Permit.

“Permit” means a Permit granted by the City Engineer(1) to do Facilities Work within the Public Rights-of-Way.

(k) Person.

“Person” shall mean an individual, partnership, association, Joint Stock Company, trust, organization, limited liability company, corporation, or other entity, or any lawful successor thereto or transferee thereof, but such term does not include the City.

(l) Public Rights-of-Way.

“Public Rights-of-Way” shall mean the surface, the air space above the surface, and the area below the surface of any public street, highway, lane, path, alley, sidewalk, boulevard, drive, bridge, tunnel, parkway, or other similar property in which the City now or hereafter holds any property interest, which was dedicated as rights-of-way. No reference herein, or in any Permit, to “Public Rights-of-Way” shall be deemed to be a representation or guarantee by the City that its interest or other right to control the use of such property is sufficient to permit its use for such purposes. “Public Rights-of-Way” does not include the airwaves above the rights-of-way with regard to cellular or other non-wire telecommunications or broadcast services, or easements obtained by utilities or private easements in platted subdivisions or tracts.

Sec. 3. Permitting Provisions:

(a) Permit Requirements.

Any Person desiring to conduct Facilities Work within Public Rights-of-Way must first apply for and obtain a permit, in addition to any other building permit, license, easement, or authorization required by law, unless such Facilities Work must be performed on an emergency basis, then the Person conducting the work shall as soon as practicable notify the City of the location of the work and apply for the required Permit by the third business day following the commencement of the Facilities Work.

(1) All applications for Permits shall be submitted to the City Engineer (1) . The City Engineer(1) shall design and make available standard forms for such Applications, requiring such information as the City Engineer determines to be necessary, consistent with the provisions of this Ordinance, to accomplish the purposes of this Ordinance.

(2) Each such Application shall be accompanied by payment of fees as designated in this Ordinance.

(3) The City Engineer shall review each Application for a Permit and, upon determining that the Applicant has authority to Perform the desired Facilities Work and that the Applicant has submitted all necessary information and has paid the appropriate Fee, shall issue the Permit, except as provided in subsection (4). In order to avoid excessive processing and accounting costs to either the City or the Applicant, the City Engineer shall have authority to establish procedures for bulk processing of Applications and periodic payment of fees.

(4) It is the intention of the City that disruption of the Public Rights-of-Way should be minimized. Upon receipt of an Application for a Permit, the City Engineer shall do the following:

(a) Evaluate the degree of excavation necessary to perform the Facilities Work in the Rights-of-Way and determine whether the excavation will be more than minor in nature. If the Applicant can show to the City Engineer's reasonable satisfaction that the Facilities Work involves any of the following: (a) no

significant disruption or damage to the Public Rights-of-Way, or (b) time sensitive maintenance; then the City Engineer shall grant the Permit without delay provided that if the permit is not issued in ten business days, the aggrieved party may appeal as provided in subsection 8; and

(b) For circumstances where the City Engineer determines that there will be significant excavation of the Public Rights-of-Way and no exemption under (4)(a) or any other provision of this section applies, the City Engineer may, consistent with the time requirements set forth in Section (3) and in the Permit, direct Permit holders performing Facilities Work in the same area to consult on how they may schedule and coordinate their work to accomplish the goal of this section.

(5) Each Permit shall include projected commencement and termination dates or, if such dates are unknown at the time the Permit is issued, a provision requiring the Permit holder to provide the City Engineer with reasonable advance notice of such dates once they are determined; length of Public Rights-of-Way; number of road crossings; information regarding scheduling and coordination of Facilities Work if applicable; and location of Facilities.

(6) The City Engineer may include in Permits in such conditions and requirements as are reasonably necessary to protect structures and Facilities in the Public Rights-of-Way from damage and for the proper restoration of such Public Rights-of-Way, structures and Facilities, and for the protection of the public and the continuity of pedestrian and vehicular traffic.

(7) The City Engineer may deny a permit application for the following reasons if deemed in the public's interest:

- (a) Undisputed past due fees from prior permits,
- (b) Failure to return the right-of-way to its previous condition under previous permits,
- (c) Undue disruption to existing utilities, transportation or city use,
- (d) Area is environmentally sensitive as defined by state or federal statute,
- (e) Failure to provide required information, and
- (f) The applicant is in violation of the provisions of this Ordinance.

Notwithstanding the provisions of Subsections (7)(c) and (7)(d) above, the City Engineer will cooperate with the Applicant to identify alternative routes which most nearly match the routes requested by Applicant for the placement of Facilities.

(8) Applicant may appeal any final decision of the City Engineer(1) to: (a) the Chairman, Board of Trustees, which appeal shall be acted upon by the Chairman, Board of Trustees (within five (5) business days; and (b) if denied by the Chairman, Board of Trustees the Applicant may then appeal to the governing body of the City, which shall consider the appeal within sixty (60) days or at its next regular meeting, whichever occurs first.

(9) Applicant must pay the following fees:

Any fees collected pursuant to this section will be used only to reimburse the City for its actual incurred cost of managing the rights-of-way and will not be used to generate revenue to the City above such costs. The City may not require or accept in-kind services in lieu of any fee.

(a) Permit Fee: A fee charged to recover the City's actual costs for an applicant's facilities work in the right-of-way including the costs of processing permits, inspections and administration of this ordinance, excluding legal fees relating to the interpretation or enforcement of this ordinance including all such appeals. The permit fee is \$150.

(b) Applicant Subject to Other Laws, Police Power.

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

(2) Facilities Work shall be subject to periodic inspection by the City.

(3) The City Engineer shall have full access to all portions of Facilities Work and may issue stop work orders and corrective orders to prevent unauthorized work. Such corrective or stop work orders shall state that work not authorized by the Permit is being carried out, summarize the unauthorized work and provide a period of not longer than thirty (30) days to cure the problem, which cure period may be immediate if certain activities must be ceased to protect the public safety, and may be delivered personally or by certified mail to the address listed on the Application for Permit or to the person in charge of the constructions site at the time of delivery. Such orders may be enforced by equitable action in the Circuit Court of Cole County, Missouri, and if the City prevails in such case, the Person involved in the Facilities Work shall be liable for all costs and expenses incurred by the City, including reasonable attorney's fees, in enforcing such orders, in addition to any and all penalties established in this Ordinance.

(4) Any Person who engages in Facilities Work in the Public Rights-of-Way and who has not received a valid Permit from the City shall be subject to all requirements of this Ordinance. Except in those instances where Facilities Work must be performed on an emergency basis, the City may, in its discretion, at any time until a Permit is secured, order the Facilities Work ceased and do any of the following: require such Person to apply for a Permit within thirty (30) days of receipt of a written notice from the City that a Permit is required; require such Person to remove its property and restore the affected area to a condition satisfactory to the City, or take any other action it is entitled to take under applicable law, including, but not limited to, filing for and seeking damages for trespass.

(b) Construction Standards.

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

(2) All Facilities shall be installed and located with due regard for minimizing interference with the public and with other utility users of the rights-of-way, including the City.

(3) An Applicant shall not place Facilities where they will damage or interfere with the use or operation of previously installed facilities, or obstruct or hinder the various utilities serving the residents and businesses in the City of their use of any Public Rights-of-Way.

(4) Any and all Public Rights-of-Way disturbed or damaged during the Facilities Work shall be promptly repaired or replaced by the applicant to its previous condition.

(5) Any contractor or subcontractor used for Facilities Work must be properly licensed under laws of the state and all applicable local ordinances, and each contractor or subcontractor shall have the same obligations with respect to its work as an Applicant would have hereunder and applicable laws if the work were performed by the Applicant. The Applicant shall be responsible for ensuring that the Work of contractors and subcontractors is performed consistent with its Permits and applicable law, shall be fully responsible for all acts or omissions of contractors or subcontractors, and shall be responsible for promptly correcting acts or omissions by any contractor or subcontractor.

Sec. 5 Performance Guarantees and Remedies:

(a) Performance Bond.

(1) Prior to any Facilities Work in the in the Public Rights-of-Way, an Applicant shall establish in the City's favor a performance bond in an amount determined by non-discriminatory regulations promulgated by the City Engineer as necessary to ensure the Applicant's faithful performance of the Facilities Work. Differences in bond requirements, including provisions for self-insurance or provisions for a single continuing bond where Facilities Work is conducted by the same Applicant under numerous permits, may be established by regulation based on the extent or nature of the Facilities Work, the past performance of the Applicant and not based on the characteristics of the Applicant. In lieu of a performance bond, Applicant may provide an acceptable substitute with the approval of the City Engineer.

(2) In the event, an Applicant fails to complete the Facilities Work in a safe, timely and competent manner, there shall be recoverable, jointly and severally from the principal and surety at the bond, any damages or loss suffered by the City as a result, plus a reasonable allowance for attorneys fees, up to the full amount of the bond.

(3) Upon completion of the Facilities Work to the satisfaction of the City Engineer, the City Engineer shall eliminate the bond or reduce its amount after a time appropriate to determine

whether the work performed was satisfactory, which time shall be established by the City Engineer considering the nature of the work performed.

(4) A performance bond shall be issued by a surety acceptable to the City, and shall contain the following endorsement:

“This bond may not be canceled, or allowed to lapse until sixty (60) days after receipt by the City, by certified mail, return receipt requested, of a written notice from the issuer of the bond of intent to cancel or not to renew.”

(5) Applicant shall, at its sole cost and expense, indemnify, hold harmless, and defend the City, its officials, boards, board members, commissions, commissioners, agents, and employees, against any and all claims, suits, causes of action or proceedings, and judgments for damages or equitable relief which are caused by the acts, errors and omissions of Applicant arising out of the construction and maintenance of its Facilities.

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

(b) Penalties.

For each violation of provisions of this Ordinance or a Permit granted pursuant to this Ordinance as to which the City has given notice to Applicant as provided in this Ordinance, penalties may be chargeable to the Applicant at a rate not exceeding \$100 per day for so long as the violation continues.

Sec. 6. Miscellaneous Provisions:

(a) Compliance with Laws.

Each Applicant shall comply with all applicable city ordinances, resolutions, rules and regulations heretofore and hereafter adopted or established.

(b) Franchises Not Superseded. Nothing herein relieves the City from any obligations under an existing franchise.

Nothing herein shall be deemed to relieve an Applicant of the provisions of an existing franchise, license or other agreement or permit.

(c) Rights and Remedies.

(1) The exercise of one remedy under this Ordinance shall not foreclose use of another, nor shall the exercise of a remedy or the payment of damages or penalties relieve an Applicant of its

obligations to comply with its Permits. Remedies may be used alone or in combination; in addition, the City may exercise any rights it has at law or equity.

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

(3) No Applicant shall be relieved of its obligation to comply with any of the provisions of this Ordinance by reason of any failure of the City to enforce prompt compliance.

(d) Incorporation by Reference.

Any Permit granted pursuant to this Ordinance shall by implication include a provision that shall incorporate by reference this Ordinance into such Permit as fully as if copied therein verbatim.

(e) Force Majeure.

An Applicant shall not be deemed in violation of provisions of this Ordinance where performance was rendered impossible by war or riots, civil disturbances, floods, or other natural catastrophes beyond the Applicant's control, and a Permit shall not be revoked or an Applicant penalized for such noncompliance, provided that the Applicant takes immediate and diligent steps to bring itself back into compliance and to comply as soon as possible under the circumstances with its Permit without unduly endangering the health, safety, and integrity of the Applicant's employees or property, the public, Public Right-of-Way, public property, or private property.

(f) Calculation of Time.

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

(g) Severability.

If any term, condition, or provision of this Ordinance shall, to any extent, be held to be invalid or unenforceable, the remainder hereof shall be valid in all other respects and continue to be effective. In the event of a subsequent change in applicable law so that the provision that has been held invalid is no longer invalid, said provisions shall there upon return to full force and effect without further action by the City and shall thereafter be binding on the Applicant and the City.

Sec. 7. Annexation:

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

Sec. 8. Relocation of Facilities.

Whenever, by reason of changes in the grade or widening of a street or in the location or manner of constructing a water pipe, drainage channel, sewer, or other city-owned underground or above ground structure it is deemed necessary by the City to move, alter, change, adapt, or conform the underground or above ground facilities of user, user shall make the alterations or changes, on alternative right-of-way provided by the City, if available, as soon as practicable after being so ordered in writing by the City without claim for reimbursement or damages against the City.

Sec. 9. Standards Applicable to City.

Any standards in this Ordinance relating to Facilities Work shall be fully applicable to work performed by the City and its departments.

Sec. 10. Savings Clause.

Nothing contained herein shall in any manner be deemed or construed to alter, modify, supersede, supplement or otherwise nullify any other ordinances of the City or requirements thereof, whether or not relating to or in any manner connected with the subject written hereof, unless expressly provided otherwise herein or hereafter.

Section 2: This ordinance shall be in full force and effect upon final passage and Approval.

FIRST READING HELD: September 10, 2010

SECOND READING HELD AND FINAL PASSAGE ON THIS 10 DAY OF September, 2010 BY THE FOLLOWING VOTE:

	<u>Aye</u>	<u>Nay</u>
Darron Jones	_____	_____absent
Susan Gilliam	<u>x</u>	_____
John Doyle	_____	_____absent
Jesse Corona	<u>x</u>	_____
Nelda Hutinger	<u>x</u>	_____

Signature on file
Chairman, Board of Trustees

Attest:

Signature on file
Village Clerk