

AN ORDINANCE AMENDING CHAPTER 13 OF THE CITY OF ROSE HILL, KANSAS CODE WITH NEW ARTICLE 4 ENTITLED "PUBLIC RIGHT OF WAY" RELATING TO THE USE THEREOF.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF ROSE HILL, KANSAS:

SECTION 1. Definitions. As used in this article the following words and phrases shall mean:

- (a) *Public right(s)-of-way ("ROW")* means only 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, parkways or boulevards dedicated or acquired as right-of-way. The term does not include the airwaves above a right-of-way with regard to wireless telecommunications or other non-wire telecommunications or broadcast service, easements obtained by utilities or private easements in platted subdivisions or tracts.
- (b) *Facility or facilities* means any wire, cable, fiber cable, pipe, conduit, structure, equipment or other material designed for the purpose of transmitting or transporting physical objects, electronic current or light signals or for business purposes located in, along, over, upon, under, or through the public right-of-way.
- (c) All definitions not specifically defined herein shall have the meaning ascribed to them by applicable federal, state or local law.

SECTION 2. Jurisdiction.

The City of Rose Hill, Kansas has jurisdiction and exercises regulatory control over all public rights-of-way within the city pursuant to K.S.A. 12-2001, its home rule powers, and other applicable law. Any rights contained within a franchise, license or permit granted pursuant to this chapter are subject to the home rule powers of the city to adopt and enforce ordinances necessary to the health, safety and welfare of the public.

SECTION 3. City Permission Requirement.

No person, firm, corporation, association, utility, or entity shall enter upon the right-of-way of the city, or in any manner establish a physical presence on, upon, in or over the right-of-way of the city, for the purpose of installing, construction, maintaining or operating lines, conduits, wires, fiber optic wires, cables, pipes, pipelines, poles, towers, vaults or appliances, or related facilities or appurtenances thereto, without the express written permission of the city.

The city grants permission to use rights-of-way by franchises, licenses and permits.

- (a) Franchises. Franchises are established pursuant to K.S.A. 12-2001 et seq. by separate ordinance for long term use of rights-of-way throughout the City to provide utilities and other services to the general population of the City. Requirements, conditions and compensation for the use of the rights-of-ways are established in the ordinance.
- (b) Licenses. Licenses for long term use of specific portions of public rights-of-way for a specific business-related purpose may be granted by the Governing Body after review and recommendation of the city staff subject to the requirements and process for right-of-way licenses herein.
- (c) Permits. (1) Temporary Use Permits may be issued for uses of specific portions of public rights-of-way for periods of time less than 30 days continual use and may be approved for commercial and residential uses. Each period of use requires a new permit. Temporary Use Permit applications must be submitted in accordance with this Article and may be approved by the Governing Body. Temporary Use Permit fees will be established by resolution. (2) Long Term Use Permits may be issued for private residential uses of specific portions of public rights-of-way for periods exceeding 30 days. Application requirements are contained in this article. Such permits may be approved by the Governing Body which may require compensation commensurate with the proposed use and proposed duration of the use. Application fees for such permits will be established by resolution. Long term commercial uses must be approved through the right-of-way license process established herein.

SECTION 3. Right-of-Way License Requirements. No person shall hang, install, lay, place, construct, locate or obtain ownership of any wire, cable, fiber cable, pipe, conduit, structure, equipment or other material designed for the purpose of transmitting or transporting physical objects, electronic current or light signals or for business purposes in, upon, beneath, over or across any public right-of-way or public property within the city without first obtaining a right-of-way license from the City.

SECTION 4. License Exceptions. (a) No person that holds a valid franchise granted by the City need apply for a right-of-way license to perform actions consistent with and authorized by the franchise.

SECTION 5. Restrictions on a Right-of-Way License. (a) No right-of-way license shall be granted when the Governing Body finds that a grant of a right-of-way license would be detrimental to the public health, welfare or benefit of the City or the residents of City.

(b) No right-of-way license shall be granted for an applicant who would otherwise be required to obtain a franchise from the City. This restriction shall apply, but is not otherwise limited to, any person that seeks to use the public right-of-way for the purpose of providing services to two or more persons residing within, or properties located within the City.

(c) No right-of-way license shall be granted to a person who will not have and retain ownership of the facilities proposed to be located in the public right-of-way.

No right-of-way license shall be granted to a person who is not authorized to transact business in the State of Kansas.

(d) No right-of-way license shall be granted to a person who has submitted an application that is in any way determined by the Governing Body to be incomplete, unless the applicant is able to remedy the incompleteness of the application within a reasonable time prior to the issuance of a right-of-way license and is not otherwise ineligible for a right-of-way license.

(e) The decision to grant a right-of-way license, or deny an application for a right-of-way license, shall be a decision solely within the discretion of the Governing Body, who may consult with any person deemed appropriate in the course of making a decision on such application.

SECTION 6. Application for a Right-of-Way License. (a) An application for a right-of-way license shall be submitted to the City in letter format. The application shall be typed and shall contain the signature of a person authorized to make decisions for and bind the applicant. The application shall state the name of the applicant, the address of the applicant, the registered agent in the State of Kansas of the applicant (if applicable), the nature of, and intended purpose of, the proposed facilities and the name, address and phone number of an individual who may be contacted in the event of an emergency or when deemed necessary by the City.

(b) The application shall be accompanied by: (1) Engineered drawing or plans showing the nature of the facilities proposed to be installed, including the dimensions of the facility or facilities, the composition of all materials to be used, the method of proposed installation, including size of any trenching that might be required in the course of installation, the nature of the proposed use of the facilities, and such other information as determined to be necessary by the City to make a determination concerning the appropriateness of granting a right-of-way license.

(2) A map or maps showing the proposed location of the facilities in the public right-of-way and on, under or across other property within the City. The map or maps shall be of sufficient size and detail to allow the City to determine the exact place or places where the facility is proposed to be located. The map shall include the location of any physical conditions of significance to the proposed location of the facilities, and shall include the location of any structure or building within 20 feet of any portion of the proposed location of the facility.

(3) A non-refundable application fee, established by resolution, shall be required with submittal of the application. The applicant is also responsible to reimburse the City for all costs, which exceed the established fee, for the City to process the application, upon receipt of an itemized invoice of such costs. Such costs shall be reimbursed before a right-of-way license is issued.

SECTION 7. Terms for Grant of a Right-of-Way License. A right-of-way license approved by the City shall be effective upon fulfillment of the following terms and conditions, and shall remain in effect only during the period that any of the terms and conditions containing a continuing obligation are met.

(a) Payment of an annual fee determined by square footage or lineal footage of public right-of-way or public property occupied by or traversed by the facility. The amount of the fee shall be determined by the Governing Body as a part of the permit approval process.

(b) The City may waive all or a portion of the required fee in the event that the City and the person owning the facility enter into an agreement concerning in-kind services to be provided by the person owning the facility. Such in-kind services may be of whatever form or type deemed by the

City to be at least of equivalent value to the required license fee. Installation of any additional facility or provision of any service, whether for free or for a charge, in conformity with a written contract with the City concerning in-kind services shall not require an additional right-of-way license and shall not be considered to be services requiring a franchise from the City.

(c) A right-of-way license grant by the City shall cover and allow for only the uses and location described in the application for the license. Any additional installation or location of facilities, or modification of use, shall require an additional application for right-of-way license, and shall not be allowed until approval of the application.

(d) The person holding a right-of-way license shall be responsible for all costs of installation of any facilities associated with the right-of-way license, and shall be responsible for the repair of any portion of the right-of-way or property in the right-of-way disturbed or damaged by the installation of the facility. Repairs must return the right-of-way and all other property to a condition equivalent of the condition of the right-of-way or property before the initiation of installation of the facility. The City may require the posting of a bond or the provision of other securities in an amount to be determined by the City to guarantee the payment of costs in the event that the right-of-way or other property is not restored to the satisfaction of the City.

(e) Maintenance, repair or removal of the facility or any portion of the facility may be initiated only upon prior written approval of the City. All work done for the purposes of maintenance, repair or removal of the facility shall be subject to the same terms and conditions as apply to installation work.

(f) The City may require the owner of the facility to move, at the owner's expense, any portion of the facility when such movement is necessary for the completion of any work initiated or under the authority of the City. The City shall not be responsible for any cost associated with damage or loss of business resulting from the required movement of the facility. Except in the event of an emergency, the City will provide reasonable prior notice to the owner of the facility concerning any needed relocation of the facility.

(g) The owner of the facility retains all responsibility to notify other persons or entities of the location of the facilities in the right-of-way, and to respond to inquiries concerning the location of the facilities. The City shall have no responsibility to provide such information, nor responsibly for any damage that might result from providing or failing to provide such information. The owner of any facility installed pursuant to a right-of-way license shall agree to indemnify and hold harmless the City from any and all claims concerning damages arising from the installation, maintenance, repair, relocation, operation of the facility and all other obligations created by these code requirements.

(h) A right-of-way license does not allow the use of any private property within or outside the right-of-way.

(i) A right-of-way license shall be non-transferable.

(j) A right-of-way license may be terminated by the City 30 days after written notice of the termination is mailed to the last known address of the person to whom the license was granted. The City may terminate a right-of-way license for failure to abide by any of the terms and conditions of

the license, for failure to abide by any contract entered into for in-kind services, or upon discovery by the City that the conditions under which the license was granted no longer apply. The owner of the facilities must remove the facilities within 60 days of the notice of termination being mailed.

Removal shall be at the owner's expense. Any facility or portion of a facility not removed with the time allowed may be removed by the City at the owner's expense, or may become the property of the City. Such a choice will be based upon the sole discretion of the City.

SECTION 8. Long Term Residential Right-of-Way Use Permit Application Requirements.

(a) Long term right-of-way permits are required for all private uses within the public right-of-way adjoining residential properties. Application for a long term residential right-of-way use permit shall be required for any structure, fence, personal property storage, or similar private use of the right-of-way not specifically exempted by this article or the City Code.

Application for a long term residential right-of-way use permit shall be made in writing and contain the following information: (1) Name, address and phone number of the applicant. (2) A specific description of the proposed use, including all drawings necessary to identify the exact location of the use within the right-of-way. (3) The reason for the proposed use, including an explanation of why use of the right-of-way is necessary. (4) The duration of the proposed use

(b) The following restrictions apply to issuance of a long term right-of-way permit:

(1) The use must be limited to normal residential type uses. Long term uses related to home occupations and other approved use of residential properties for business related purposes require a right-of-way use license as set forth herein.

(2) No permit will be considered for a right-of-way use specifically prohibited elsewhere in the Rose Hill Code.

(3) The Governing Body must find that a grant of a long term right-of-way permit would not be detrimental to the public health, welfare, motorist or pedestrian safety or to neighboring residents of the applicant.

(4) The Governing Body may require whatever conditions it feels necessary to insure public safety and mitigate impacts of the proposed use.

(c) The decision to grant a long term right-of-way permit, or deny an application for a long term right-of-way permit, shall be a decision solely within the discretion of the Governing Body, who may consult with any person deemed appropriate in the course of making a decision on such application.

(d) An application fee, established by resolution, is required to be submitted with an application for a long term right-of-way use permit.

SECTION 9. Short Term Right-of-Way Use Permit Application Requirements.

(a) Permits may be issued for short term use of the public right-of-way for any residential, commercial, institutional or industrial use for a period of 30 days or less. Short term permits may be approved by the Governing Body. Applications for short term use permits shall contain the same information required for long term permits.

(b) The following restrictions apply to short term right-of-way use permits:

(1) No permit will be considered for a right-of-way use specifically prohibited elsewhere in the Rose Hill Code.

(2) The Governing Body must find that a grant of a short term right-of-way permit would not be detrimental to the public health, welfare, motorist or pedestrian safety or to neighboring properties.

(3) The Governing Body may require whatever conditions deemed necessary to insure public safety and mitigate impacts of the proposed use.

(d) An application fee, established by resolution, is required to be submitted with an application for a short term right-of-way use permit.

(e) A short term right-of-way use permit is for a specific time period, not to exceed 30 days. Additional periods of time for the same or a different use require a separate permit.

SECTION 10. Right-of-Way Excavation - Permit Requirements. (a) Any excavation within a public right right-of-way, whether for private or public purposes, requires an excavation permit issued by the City, with the following exceptions: (1) The holder of a franchise for use of public rights-of-way, where the franchise agreement includes standards and requirements for excavation within the public right-of-way.

(2) The holder of a license for use of public rights-of-way, where the license agreement includes standards and requirements for excavation within the public right-of-way.

(3) Excavation and construction within a newly platted public right-of-way, where such work is being completed pursuant to a development agreement between the developer and the City.

(4) Excavation and construction by a licensed and bonded contractor under contract to the City to construct public improvements within the right-of-way.

(b) All excavation within and restoration of public rights-of-way must comply with all requirements of the City or City Engineer.

(c) Applications for a Right-of-way Excavation Permit shall include: (1) Name, address and phone number of the applicant. (2) Name, address and phone number of the contractor, if different. (3) A specific description of the location of the proposed excavation within the right-ofway. (4) The scheduled dates for the excavation and construction. (5) A specific description and/or plans for the excavation and construction to be completed. (6) A traffic control plan, if normal pedestrian or vehicle traffic flows are impacted by construction. (7) A specific description and/or plans for

restoration of paved and unpaved right-of-way areas. (8) Evidence of liability insurance in an amount not less than \$500,000. For projects that will encroach upon or otherwise impact vehicle and pedestrian travel areas, the City also requires a Certificate of Insurance naming the City as additional insured. (d) Application may be made for multiple right-of-way locations under a single permit only if all construction work is to be completed simultaneously by a single contractor. (e) An application fee, established by Resolution, is required to be submitted with any application for a right-of-way excavation permit.

SECTION 11. Landscaping in Public Rights-of-Way. Landscaping of unimproved portions of public right-of-ways adjoining private property is allowed and encouraged without a license or permit under the following conditions:

(a) The landscaping shall not encroach on streets, required shoulders, drainage ditches, pedestrian walkways, bike paths or other such uses of the rights-of-way. Landscaping must also not impact vision clearance or otherwise create unsafe conditions in the right-of-way. Such landscaping is limited to unimproved rights-of-way immediately adjacent to the property of the person installing or maintaining such landscaping.

(b) No trees shall be planted without permission of the City. Landscaping is limited to grass, ground cover, plants not to exceed two feet in height and/or rock.

(c) It is the responsibility of the property owner to maintain landscaping of right-of-ways adjacent to their property. This responsibility extends from any paved or unpaved vehicle travel surface to the property line and includes any shoulder or drainage area. Existing shrubs and trees are to be maintained so as not to encroach on vehicle travel lanes and required shoulders or to interfere with vision clearance at driveways and street corners. Dead or dying vegetation must be removed. Grass, ground cover and noxious vegetation must be mowed and controlled.

(d) The landscaping will not be replaced or the property owner compensated if landscaping must be damaged or removed for installation or maintenance of utilities, street repair, drainage improvements or other such public purposes.

SECTION 12. Indemnification of City.

All grantees of a franchise, License, or permit shall indemnify and hold the city and its officers and employees harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees to include 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 or 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 the provider, any agent, officer, director, representative, employee, affiliate or subcontractor of the provider, or their respective officers, agents, employees, directors or representatives, while installing, repairing or maintaining facilities in a public right-of-way. This indemnity does not apply to any liability resulting from the negligence of the city, its officers, employees, contractors or subcontractors. If a grantee 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 law and without waiving any defenses of

the parties under state or federal law. This section is solely for the benefit of the city and does not create or grant any rights, contractual or otherwise, to any other person or entity.

SECTION 13. Obligations of the City. The exercise of jurisdiction and regulatory control over a public right-of-way by the city is not official acceptance of the right of way, and does not obligate the city to maintain or repair any part of the right-of-way.

SECTION 14. Enforcement and Penalties. The City may enforce this section by citation or abatement or both. (a) A police officer or any other official designed by city code or ordinance shall have citation authority for purposes of enforcing this article.

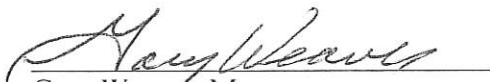
(b) It is unlawful for any person to violate any provision or to fail to comply with any requirement of this code, or any requirements or conditions of a right-of-way permit or license. Violation of any provision or failing to comply with any requirement of this code or a license or permit issued under this code is a misdemeanor violation and a complaint may be filed with the Rose Hill Municipal Court. Each day a violation continues is considered a separate violation.

(c) In addition to issuance of a complaint, the City may take action to correct or abate a violation upon a determination by the Governing Body that the violation creates an immediate safety hazard to pedestrian and/or vehicle traffic or constitutes a nuisance. The person responsible for the violation shall be required to reimburse the City for all costs to correct or abate the violation, including all administrative and legal costs to enforce compliance.

SECTION 15. This Ordinance shall take effect and be in force from and after publication in the official city newspaper.

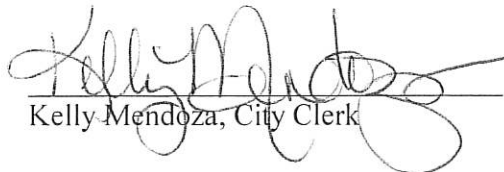
PASSED AND APPROVED this 19th day of Sept, 2022.

CITY OF ROSE HILL




Gary Weaver, Mayor

ATTEST:



Kelly Mendoza, City Clerk

Approved as to form:



Richard A. Samaniego, City Attorney