

**INTRODUCED BY:** Councilmember Paulette Carr

**DATE:** November 27, 2017

**BILL NO. 9345**

**ORDINANCE NO. 7068**

**AN ORDINANCE AMENDING CHAPTERS 100 AND 505 OF THE MUNICIPAL CODE OF THE CITY OF UNIVERSITY CITY, MISSOURI RELATED TO REGULATIONS FOR RIGHT-OF-WAY MANAGEMENT AND ENFORCEMENT REGULATIONS.**

**WHEREAS**, the City of University City, Missouri (“City”) has specifically been granted authority including Section 67.1830 RSMo. to establish permitting requirements for structures or equipment for wireless communication facilities in the public right-of-way (“ROW”) and the City desires to reaffirm its intent to regulate and enforce permitting requirements for the wireless communication facilities in the ROW; and

**WHEREAS**, the City Council’s legislative findings include that: (a) the ROW is a unique and physically limited resource; (b) the ROW is critical to the travel and transportation of persons and property in the City; (c) the ROW is intended for public uses and must be managed and controlled consistent with that intent and can be partially occupied by Facilities and public service entities to the enhancement of the health, welfare, and general economic well-being of the City and its citizens; (d) to avoid disruption of the market and policy or requirement for a level playing field established by Section 67.5094 RSMo. regarding ownership of underlying land in approving wireless locations, wireless facilities in the ROW should not be subject to preferential zoning or compensation requirements so as not to distort the marketplace for such commercial activities; and (e) such findings require adoption of specific additional regulations to ensure coordination of users, maximize available space, reduce maintenance and costs to the public, and facilitate entry of a maximum most efficient number of Right-of-Way Users that will serve the public interest; and

**WHEREAS**, the City has been granted the authority to enact legislation to regulate the construction, placement, and operation of telecommunications towers and antennas pursuant to its zoning powers established in Chapter 89 RSMo. and additionally pursuant to its general and specific police powers established by statute (including Chapters 67, and 392 RSMo.); and

**WHEREAS**, the City is a “grandfathered” City authorized to impose linear foot fees and antenna fees pursuant to Section 67.1846 RSMo. because the City had, prior to May 1, 2001, one or more ordinances reflecting a policy of imposing a linear foot fee on public Right-of-Way Users; and

**WHEREAS**, consistent with state and federal law and the City Council’s legislative findings, the City Council desires to enact new regulations for small wireless facilities within the ROW and other pedestrian and vehicular ways; and

**WHEREAS**, the City is authorized to protect the taxpayer and public funds from incurring expenses resulting from violators of laws or contracts or other obligations to the City

including such as relating to use of the city facilities or other City property, and the Council desires to amend the Municipal Code of the City of University City to ensure the regulations for use of public property and facilities are clear and that recovery of costs are available in the event that the City is forced to incur such expenses.

**NOW, THEREFORE, BE IT ORDAINED BY COUNCIL OF THE CITY OF UNIVERSITY CITY, MISSOURI, AS FOLLOWS:**

**Section 1.** The whereas clauses and findings therein are hereby specifically incorporated herein by reference.

**Section 2.** Section 505.220, Right-Of-Way Management, of Article III of Chapter 505, Public Right-of-Way Use Regulations, of the Municipal Code of the City of University City, Missouri, is hereby amended to enact a new subsection C to read as follows:

*C. Agreement Required; User Fee.*

1. *Right-of-Way Use Agreement, License, or Franchise Required.* Except where otherwise authorized or required by applicable law, no Person may own, control, lease, maintain, use, or install Facilities in the Right-of-Way without a valid Franchise, License, or Right-of-Way Use Agreement with the City as provided herein and as follows:
  - (1) *Franchise.* A Franchise shall be obtained in conformance with all applicable Franchise procedures for any Right-of-Way User seeking to use the Right-of-Way for the purpose of providing, transporting or distributing electricity, gas, water, steam, lighting, energy, or sewer service to any Person or area within the City's limits and boundaries.
  - (2) *Right-of-Way Use Agreement.* A Right-of-Way Use Agreement shall be required for all other Right-of-Way Users, except as provided herein or otherwise required by law. A Right-of-Way Use Agreement shall conform to all applicable laws and requirements, including as provided herein, but shall not be subject to procedures applicable only to Franchises.
  - (3) *License for Incidental Uses.* Persons desiring to install an incidental use, which includes installation of temporary structures or minor incidental uses in the Right-of-Way, such as driveway aprons, ingress or egress facilities, and similar incidental uses, that utilize a small area of the Right-of-Way and serves the principal structure, may be permitted without a Franchise or Right-of-Way Use Agreement pursuant to a License issued by the Director of Public Works and Parks. The Director of Public Works and Parks shall have discretion to establish such application, requirements, and conditions applicable to such uses consistent with the purposes of this Chapter or as otherwise established by law. Any Person granted a License hereunder shall be subject to the applicable requirements of this Chapter. Unless otherwise stated in the License, a License shall be for an indefinite term and shall be revocable at any time on written notice in the public interest by the City.

2. *Application Required.* An application for a Franchise or Right-of-Way Use Agreement, shall be provided to the City on City forms and shall include all such information as is required by this Section and as determined necessary by the Director of Public Works and Parks. An application deposit of \$500.00 is hereby established and shall be submitted with the application, which shall be utilized to at least partly offset the City's costs in reviewing and issuing an agreement, consistent with applicable law; any amount not used by the City for its actual lawfully reimbursable costs will be refunded upon request after execution of a Right-of-Way Use Agreement or Franchise. If applicable, the applicant shall be obligated to reimburse the City for its reasonable expenses associated with the review, negotiation, and adoption of an appropriate Right-of-Way Use Agreement or Franchise that may reasonably exceed the application deposit amount. The Right-of-Way User shall be responsible for accurately maintaining the information in the application during the term of any Franchise or Right-of-Way Use Agreement and shall be responsible for all costs incurred by the City due to the failure to provide or maintain as accurate any application information required herein.
3. *Condition Precedent to Right-of-Way Permit.* Unless otherwise required by applicable law, no Right-of-Way permit may be issued unless such person has a valid Franchise or Right-of-Way Use Agreement with the City.
4. *Grant and Nature of Approval; terms.* The authority granted by the City in any Right-of-Way Use Agreement, License or Franchise shall be for non-exclusive use of the Right-of-Way. Such grant does not in any way limit the continuing authority of the City through the proper exercise of its statutory powers to adopt and enforce ordinances necessary to provide for the health, safety, and welfare of the public. The City specifically reserves the right to grant, at any time, such additional agreements or other rights to use the Right-of-Way for any purpose and to any other Person, including itself, as it deems appropriate, subject to all applicable laws. The granting of any Right-of-Way Use Agreement, License or Franchise shall not be deemed to create any property interest of any kind in favor of the Right-of-Way User nor shall it create any relationship of agency, partnership, joint venture, or employment between the parties. All Franchises and Right-of-Way Use Agreements shall be approved by ordinance or resolution of the City Council on a non-discriminatory basis provided that the Person is in compliance with all applicable requirements.
5. *No Warranty.* The City makes no express or implied representation or warranty regarding its rights to authorize the installation or construction of Facilities on any particular segment of Right-of-Way and shall not be liable for any damage therefrom. The burden and responsibility for making all such determinations in advance of construction or installation shall be entirely upon the Right-of-Way User. The Right-of-Way User shall be solely liable for any damages to Facilities or other property due to excavation or other Right-of-Way work performed prior to obtaining the location of all Facilities within the work area. The Right-of-Way User shall not make or attempt to make repairs, relocation or replacement of damaged or disturbed Facilities without the approval of the owner of the Facilities.
6. *Use of City or Third-Party Facilities.* No Right-of-Way Use Agreement, License, or Franchise shall grant the right to use Facilities owned or controlled by the City or a third party, and no such use shall occur, without the express written consent of such party (on file

with the City and subject to other applicable requirements), nor shall any Right-of-Way Use Agreement, License, or Franchise excuse such Person from first obtaining a pole attachment agreement or other express consent for such right or use before locating on the Facilities controlled or owned by the City or a third party.

7. *Lease Required for Public Lands.* Unless otherwise provided, use or installation of any Facilities in non-Right-of-Way public property of the City shall be permitted only if a lease agreement or other separate written approval has been negotiated and approved by the City with such reasonable terms as the City may require, and subject to Charter Chapter C, Article XI, Section 98, limiting the use of designated Public Park or Recreational Facility in Section 115.270.

8. *Right-of-Way User Fees.*

(1) *User Fee.* Unless otherwise established by the City Council or applicable law, each Right-of-Way User shall pay to the City as compensation for the use of the public way, and including as referenced in Section 505.220.G.4, a user fee as follows:

- a. *Linear Foot Fee:* a monthly payment of \$.165 per linear foot of Facilities located in the Right-of-Way, for an annual amount of one dollar and ninety-eight cents (\$1.98) per linear foot of Facilities in the Right-of-Way; and
- b. *Antenna Fee:* a \$200.00 fee per month for each antenna in the Right-of-Way, if applicable to the user;

provided that all Right-of-Way Users shall be entitled to a credit against the user fee due hereunder equal to the payment(s) from such Right-of-Way User in accordance with Section 67.1846 RSMo.; provided, however, such credit cannot exceed the amount due under this subsection and may not be carried forward or back to any other time period and a credit shall not apply to any taxes paid under protest or otherwise paid with qualification unless so required by law.

(2) *Bundled Services.* The Right-of-Way User expressly acknowledges and agrees that to the extent it markets bundled services, including combination of goods or services, it will fairly reflect to the City an appropriate and reasonable division of services among the various services offered based on the actual value of each separate service. Whether or not the Right-of-Way User separates services on a subscriber's bill, it will provide to the City notice of any such allocation sufficient for City verification. Should the Right-of-Way User engage in billing or payment practices that, in the reasonable determination of the City, do not fairly reflect a fair and appropriate allocation, the City may nullify such allocation and require payment applicable to the full receipts.

(3) *Timing of Payment of User Fees.* Unless otherwise agreed to in writing, all Right-of-Way User fees shall be due and payable every month of each calendar year within thirty (30) days after the end each such month. A credit of the applicable gross receipts tax for that same period may be taken against the linear foot payment for that month.

- (4) *Interest of Late Payments and Under Payments.* If any Right-of-Way User fee, or any portion thereof, is not postmarked or delivered on or before the due date, interest on the payment and interest on the unpaid balance shall accrue from the due date until received, at the rate of one and one-half percent (1.5%) of the total amount past due or at such other lower rate as may be required by applicable law.
- (5) *Fee Statement; Retroactive Adjustments.* Each Right-of-Way User fee payment shall be accompanied by a statement, certified as true, showing the manner in which the Right-of-Way User fee was calculated including the total number of feet of Right-of-Way occupied by the Right-of-Way User's Facilities and number of antennas in the Right-of-Way, the per foot linear foot rate applied, any credit or adjustment taken (including setting forth the prior month's gross revenue and describing what revenues or receipts were included and excluded in the fee paid), and the payment of the user fee made. If any fee statement is determined to understate the fee owed, then such additional amount owed shall be made with a corrected statement, including interest on said amount as provided herein. No refund, credit or offset shall be granted for any claimed payment or overstatement of the amount due or certification of facilities reported, provided that a corrected payment or reported may be filed within the time for the original time for payment
- (6) *No Accord and Satisfaction.* No acceptance by the City of any use fee shall be construed as an accord that the amount paid is in fact the correct amount, nor shall acceptance of any use fee payment be construed as a release of any claim of the City.
- (7) *Maintain Records.* Right-of-Way Users shall at all times maintain complete and accurate books of account and records of the business, ownership, and operations of the Right-of-Way User with respect to the Facilities in a manner that allows the City to determine whether the Right-of-Way User has properly calculated its user fee in compliance with this Section. Should the City reasonably determine that the records are not being maintained in such manner, the Right-of-Way User shall correct the manner in which the books and/or records are maintained so that the Right-of-Way User comes into compliance with this Section. All financial books and records which are maintained in accordance with FCC regulations and the regulations of any governmental entity that regulates utilities in Missouri, and generally accepted accounting principles shall be deemed to be acceptable under this Section. Such books and records shall be maintained for a period of at least three (3) years.
- (8) *Right of Inspection.* The City or its designated representatives shall have the right to inspect, examine, or audit, during normal business hours and upon seven (7) calendar days' notice, all documents, records, or other information that pertains to the Facilities within the Right-of-Way and/or Right-of-Way User's user fee obligations. In addition to access to the records of Right-of-Way User for audits, upon request, Right-of-Way User shall provide reasonable access to records necessary to verify compliance with the terms of this Section.

(9) *Fees and Compensation not a Tax.* The fees and costs provided for in this Section, and any compensation charged and paid for the use of the Right-of-Way as provided for in this Section, are separate from, and additional to, any and all federal, state, City or other local taxes as may be levied, imposed, or due.

9. *No Cause of Action Against the City.* A Right-of-Way User shall have no damages remedy or monetary recourse whatsoever against the City for any loss, cost, expense, or damage arising from any of the provisions or requirements of any ROW Use Agreement, License, Franchise, or other written authorization or because of the enforcement thereof by said City, or from the use of the Rights-of-Way. Nothing herein shall preclude the Right-of-Way User from seeking injunctive or declaratory judgment relief against the City where such relief is otherwise available and the requirements therefor are otherwise satisfied.

10. *Compliance with Laws.* Each Right-of-Way User shall comply with all applicable federal and state laws and regulations and rules as well as all City ordinances, resolutions, rules, and regulations heretofore and hereafter adopted or established. Right-of-Way Users shall at all times be subject to the lawful exercise of the police powers of the City, including but not limited to all police powers regarding zoning, supervision of the restoration of the Rights-of-Way, building and safety regulations, and control of the Rights-of-Way. Installation of all Facilities in the Rights-of-Way are subject to and must be in compliance with all zoning, safety, and building code requirements. For applications for installation of wireless Facilities in the Rights-of-Way, (1) the most restrictive adjacent underlying zoning district classification shall apply unless otherwise specifically zoned and designated on the official zoning map, and (2) no application shall be submitted for approval without attaching the City's consent to use the Rights-of-Way for the specific construction application in accordance with Chapter 67 RSMo.

11. *Indemnification.* Every Right-of-Way User, as a condition of use of the Rights-of-Way, shall at its sole cost and expense fully indemnify, protect, defend (with counsel for the City acceptable to the City) and hold harmless the City, its municipal officials, officers, employees, and agents, from and against any and all claims, demands, suits, proceedings, and actions, liability, and judgment by other persons for damages, losses, costs, and expenses, including attorney fees, arising, directly or indirectly, in whole or in part, from the action or inaction of the Right-of-Way User, its agents, representatives, employees, contractors, subcontractors, or any other person for whose acts the Right-of-Way User may be liable, in constructing, operating, maintaining, repairing, restoring or removing facilities, or use of the Rights-of-Way or the activities performed, or failed to be performed, by the Right-of-Way User under this Section or applicable law, or otherwise, except to the extent arising from or caused by the sole or gross negligence or willful misconduct of the City, its elected officials, officers, employees, agents, or contractors. 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 person from the duty to defend against liability or its duty to pay any judgment entered against the City or its agents.

12. *Right-of-Way User Responsible for Costs.* The Right-of-Way User shall be responsible for all reasonable costs borne by the City that are directly associated with Right-of-Way User's installation, maintenance, repair, operation, use, and replacement of its Facilities in the Rights-of-Way that are not otherwise accounted for as part of a permit fee, to the extent permitted by law. All such costs shall be itemized and the City's books and records related to these costs shall be made available upon request of the Right-of-Way User.

**Section 3.** Section 505.220, Right-Of-Way Management, of Article III of Chapter 505, Public Right-of-Way Use Regulations, of the Municipal Code of the City of University City, Missouri, is hereby amended to enact two new subsections O and P to read as follows:

*O. Use of Existing Facilities Required; Exceptions.* All new Facilities or structures shall collocate on available existing poles or within existing conduit, trenches, or other Facilities to minimize unnecessary use of Right-of-Way space, reduce potential existing or future interference and obstructions, and to reduce the cost to the public or others therefrom, and to maximize the public's ability to use and license appropriate private or public uses of the Right-of-Way in the public interest (except where preempted by law or where good cause is established as determined by the City applying these objectives). Where existing poles or Facilities are available, or exist at or near the proposed use, unless otherwise approved, the Applicant must either use such Facilities or file a written request verified by the Applicant for exception specifying the specific reasons why such Facilities are not available or feasible to be used and addressing the objectives hereof. Any secondary use of decorative pedestrian lighting poles, other than approved signage or banners, by a Right-of-Way User shall generally be prohibited unless the City Council approves a waiver in the public interest.

*P. Wireless Antennas and Facilities.* Pursuant to City authority, including Section 67.1830(f) RSMo., and to properly manage the limited space in the City's Right-of-Way, minimize obstructions and interference with the use of the Right-of-Way by the public, and to ensure public safety, preserve property values, and enforce the public policy to maintain neutrality as to ownership of wireless locations, while also seeking to facilitate delivery of broadband technologies to City residents and businesses, wireless Facilities shall be permitted in the Right-of-Way only in compliance with the requirements applicable to other Facilities and users in the Right-of-Way, and subject to the supplemental requirements set forth in this Section for wireless antennas and Facilities. Any wireless Facilities authorized in the Right-of-Way shall be only as authorized in a binding approved Right-of-Way Use Agreement, pole attachment agreement, or other written authorization with the City and subject to approval, denial, or condition relating to location, design, height, appearance, safety, specifications for use of City structures, and such zoning, building, or other regulations, including specifically Division 10 of Article V of Chapter 400, except as may be limited by law.

1. *General Conditions.* Any wireless Facility in the Right-of-Way shall be authorized only for entities that have a current and unexpired lawful ROW Agreement or Franchise with the City pursuant to 505.220.C.1, and shall be subject to conditions relating to the location (including prohibited or limited locations), design, height, appearance, safety, radio-frequency, and other interference issues as may be lawfully imposed by the City where necessary or appropriate to protect the public, and to conform to policies and

interests of the public as may be set forth in special district plans, historic areas, or other policies as may be reasonably adopted by the City to address changing infrastructure, technology, and uses of the Right-of-Way and/or City Facilities.

2. ***“Fast-Track” Small Wireless Collocation.*** Any wireless Facility meeting the requirements of a “Fast-Track Small Wireless Facility” as defined by Sections 400.1380 and 400.1405 of the Zoning Code, may be authorized to use and be located in the Right-of-Way with approval of the Director of Public Works and Parks subject to the following additional requirements:
  - (1) Only one Small Wireless Facility shall be permitted per existing structure in the Right-of-Way;
  - (2) No ground equipment shall be authorized, unless placed underground;
  - (3) No Small Wireless Facility shall be located in a manner which obstructs or causes a safety concern for vehicle or pedestrian traffic; and
  - (4) If the proposed structure the Applicant proposes to locate its Small Wireless Facility is not structurally sound, but the Director of Public Works and Parks finds such to be a desired location, the Director of Public Works and Parks can require the Applicant to install a new substantially similar structure at its cost.
  
3. ***New Structures.*** Wireless Facilities shall not be permitted in the Right-of-Way on new structures, provided that if evidence warranting an exception is provided by the Applicant pursuant to Section 505.220.O, the City Council may grant an exception authorizing a new structure for a wireless Facility if it also determines on a non-discriminatory basis such proposed application is in the public interest in light of the purposes of this Section and Subsection, and provided such use and location has received prior, separate zoning authorization as required by and in compliance with Division 10 of Article V of Chapter 400, to the extent permitted by law. In such circumstances where any new wireless structure application is permitted in the Right-of-Way, such use shall be subject to reasonable regulations or conditions and including any applicable specifications, compensation, and other terms established by the City in such approval or agreement as necessary or appropriate to preserve the purposes of this Section and Subsection.
  
4. ***All other Wireless in Right-of-Way.*** Any wireless Facility located on an Existing Structure, as defined by Section 400.1380 but not meeting the requirements of *subsections 1. General Conditions or 2. Small Wireless Collocation*, above, may be approved, subject to conditions as may be imposed consistent with the purposes of this Section, only upon approval by the Council upon a determination by the Council that such wireless Facility is: (1) in the public interest to provide a needed service to persons within the City, (2) cannot feasibly meet all of the requirements of a “Small Wireless Facility” but varies from such requirements to the minimum extent necessary, (3) does not negatively impact appearance or property values in light of the location, design, and circumstances to be approved, (4) does not create any reasonable safety risk, and (5) complies with all zoning, Right-of-Way, and other applicable requirements.



5. *Wireless Facility Compensation Requirements.* Unless otherwise established by the City Council or applicable law, compensation to the City for use of City Right-of-Way or structures for wireless facilities, in addition to any linear foot or other required compensation and conditions, including as authorized by § 67.1846 RSMo., Section 505.220.C.8. above, and as otherwise may be provided, shall be as follows unless otherwise lawfully provided for in the agreement authorizing such use:

(1) *City Structures.* If a wireless facility is to be located on a City owned structure acceptable for such use by the City, a pole attachment agreement, or other written authorization shall be required with terms including insurance, indemnification, and a monthly payment of \$200.00 per attachment or such other compensation as may be lawfully provided for in such agreement or authorization;

(2) *Third-Party Structures.* If a wireless facility is to be located on a structure owned by a third-party approving of such use, such facility shall pay a user fee to the City relating to use of the Right-of-Way, in the amount of the Antenna fees provided in Section 505.220.C.8(1).

6. *Application Requirements.* Any application including one or more wireless Antennas or Facilities shall include all requirements for (1) installation of any Facilities in the Right-of-Way as set forth in this Section, (2) the requirements of this Subsection, and also include (3) requirements for installation of wireless Antennas and Facilities set forth in the Uniform Wireless Communications Infrastructure Deployment Act (§§ 67.5090 *et seq.* RSMo.) or other applicable law including written proof of consent of landowner (copy of the Right-of-Way Agreement) and of structure owner (document authorizing use of the structure).

**Section 4.** Section 505.220, Right-Of-Way Management, of Article III of Chapter 505, Public Right-of-Way Use Regulations, of the Municipal Code of the City of University City, Missouri, is hereby amended by repealing subsection F and to enact a new subsection F to read as follows:

F. *Liability Insurance.* Except as provided in this section, each Right-of-Way User shall provide, at its sole expense, and maintain during the term of an agreement or franchise, commercial general liability insurance with a reputable, qualified, and financially sound company licensed to do business in the State of Missouri, and unless otherwise approved by the City, with a rating by best of not less than "A," that shall protect the Right-of-Way User, the City, and the City's officials, officers, and employees from claims which may arise from operations under an agreement or franchise, whether such operations are by the Right-of-Way User, its officers, directors, employees and agents, or any subcontractors of the Right-of-Way User. This liability insurance shall include, but shall not be limited to, protection against claims arising from bodily and personal injury and damage to property, resulting from all Right-of-Way User operations, products, services or use of automobiles, or construction equipment. The amount of insurance for single limit coverage applying to bodily and personal injury and property damage shall be at least two million eight hundred dollars (\$2,800,000.00), but in no event less than the individual and combined sovereign immunity limits established by RSMo § 537.610 for political subdivisions; provided that nothing herein shall be deemed to waive the City's sovereign immunity. An endorsement shall be provided which states that the City is listed

as an additional insured and stating that the policy shall not be cancelled or materially modified so as to be out of compliance with the requirements of this section, or not renewed without thirty (30) days' advance written notice of such event being given to the Director of Public Works and Parks. If the person is self-insured, it shall provide the City proof of compliance regarding its ability to self-insure and proof of its ability to provide coverage in the above amounts. The insurance requirements in this section or otherwise shall not apply to a Right-of-Way User to the extent and for such period during an agreement or franchise as Right-of-Way User is exempted from such requirements pursuant to RSMo § 67.1830(6)(a) and has on file with the city clerk an affidavit certifying that Right-of-Way User has twenty-five million dollars (\$25,000,000.00) in net assets and is otherwise, therefore, so exempted unless otherwise provided by agreement or franchise. The City reserves the right to waive any and all requirements under this section when deemed to be in the public interest.

A copy of the liability insurance certificate, or other proof of compliance if otherwise requested by the City shall be delivered by the Right-of-Way User to the city clerk.

**Section 5.** Article IV of Chapter 100, General Code Provisions, of the Municipal Code of the City of University City, Missouri, is hereby amended to enact two new Sections to read as follows:

**Section 100.200 Enforcement; Attorneys' Fees.**

The City shall be entitled to enforce any provision of this Code through all remedies lawfully available, and any person determined judicially to have violated the terms of this Code shall further be liable to pay the City's costs and attorneys' fees in enforcing such Code provisions. Additionally, any user of City services, right-of-way or other City facilities or property, shall, as a condition of such use or continued use, to the full extent permissible by law, be liable to pay the City's costs and attorneys' fees incurred in enforcing any lawful requirement applicable to such use, whether arising in contract, statute, ordinance, or other enforceable duty as to such use.

**Section 100.210 Violation; Remedies, Unauthorized Holdover.**

Any person who fails to hold and maintain a current and valid agreement with the City to use the City's land or facilities has no right to holdover and shall be subject to the provisions and City remedies of this subsection in addition to all other remedies and penalties as may otherwise exist in applicable law. Any claimed holdover right shall be deemed void and terminated upon expiration of a valid use agreement unless the City has affirmatively in writing authorized the holdover, or as otherwise may be required by law. Where an agreement, lease, or other agreement for use of public land or facilities expires, and in addition to any penalties or other requirements therein, the licensee during any period without a valid agreement shall, during any period of unauthorized use: (1) indemnify the City from any liability arising from the use, (2) pay any damages and costs of the City from such use, including attorneys' fees incurred in enforcing this ordinance, and (3) make payment of compensation in the amount of two times the monthly rent of the last expired agreement, if a holdover, and two times the market rental value reasonably determined by the City, if no prior agreement, until a valid agreement is executed with the City or the attachments and/or use is fully removed, the property restored and all

obligations to the City satisfied. Unless otherwise provided in an unexpired agreement, Licensee shall also be responsible for interest on all amounts owed and at a rate of one and one-half percent per month. Nothing in these provisions, remedies or compensation requirements, or acceptance or enforcement thereof by the City, shall be deemed to accept or authorize any use of public property without a required agreement, or after the expiration of such agreement, or otherwise in violation of applicable requirements.

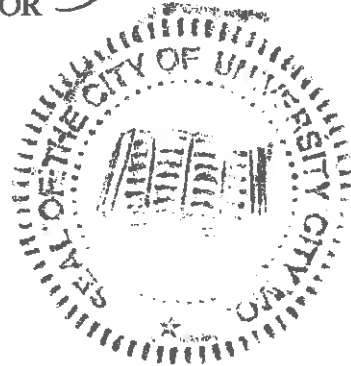
**Section 6.** This Ordinance shall take effect and be in force from and after its passage as provided by law.

PASSED AND APPROVED THIS 11<sup>th</sup> DAY OF DECEMBER, 2017.

By: Shelly Welsch  
MAYOR

ATTEST:

LaRette Green  
INTERIM CITY CLERK



CERTIFIED TO BE CORRECT AS TO FORM:

John A. Muligan, Jr.  
CITY ATTORNEY

