

INTRODUCED BY: Councilmember Tim Cusick

DATE: November 23, 2020

BILL NO. 9415

ORDINANCE NO. 7136

AN ORDINANCE AMENDING CHAPTER 505 OF THE MUNICIPAL CODE OF THE CITY OF UNIVERSITY CITY, MISSOURI RELATED TO REGULATIONS FOR RIGHT-OF-WAY MANAGEMENT.

WHEREAS, the City of University City, Missouri (“City”) has specifically been granted authority including Chapter 67 RSMo. to establish permitting requirements for structures or equipment for wireless communication facilities in the public right-of-way (“ROW”); 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 ROW Users; and

WHEREAS, the City has entered into ROW Use Agreements which allow for the linear foot rate to increase annually by 2%, and for ease of administration and to protect against discrimination in favor of any ROW User, the City Council now desires to make such 2% linear foot rate increases occur automatically on January 1 of each year, starting in 2021 without any additional action by the City Council.

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 amend Subsection C.8 to enact the underlined text to read as follows:

C. Agreement Required; User Fee.

...

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: one thousand dollars (\$1,000.00)/month for the first (1st) mile of linear facilities, or part thereof, plus 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 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. Beginning January 1, 2021, and each year thereafter on January 1, the Linear Foot Fee rate of \$.165 per linear foot for each foot after the first mile, as outlined above, shall automatically increase by two percent (2%) annually. This rate, and any annual increases that occur beginning January 1, 2021 or thereafter, shall also apply to all new ROW Users upon execution of a ROW Use Agreement and City Council approval.

- (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. The Rights-of-Way User Fees due to the City shall be paid based on the sum of the actual Linear Foot of Facilities installed in the City's ROW and any additional Linear Foot approved by permit for installation. 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%) per month, of the total amount past due, unless such other maximum rate is established by 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.

Section 3. The portions of this ordinance shall be severable. In the event that any portion of this ordinance is found by a court of competent jurisdiction to be invalid, the remaining portions of this ordinance are valid, unless the court finds that the valid portions of this ordinance are so essential and inseparably connected with and dependent upon the void portion that it cannot be presumed that the City Council would have enacted the valid portions without the invalid ones, or

unless the court finds that the valid portions standing alone are incomplete and are incapable of being executed in accordance with the legislative intent.

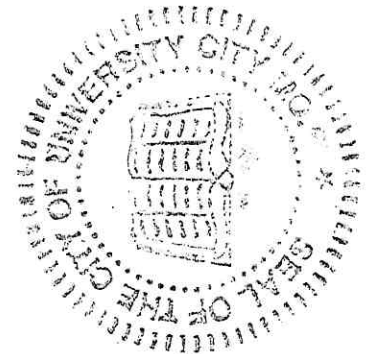
Section 4. This Ordinance shall take effect and be in force from and after its passage as provided by law.

PASSED AND APPROVED THIS 14th DAY OF DECEMBER, 2020.

By: 
Terry Crow, MAYOR

ATTEST:


LaRette Reese, CITY CLERK



CERTIFIED TO BE CORRECT AS TO FORM:


CITY ATTORNEY