

AN ORDINANCE AMENDING ORDINANCE NO. 4788, THE MUNICIPAL CODE OF THE CITY OF RICHMOND HEIGHTS, MISSOURI, REVISING CHAPTER 520; ARTICLE V; RIGHT-OF-WAY USAGE CODE, SECTION 520.570 RENTAL FEES.

WHEREAS, Chapter 520 ARTICLE V of the Municipal Code (hereinafter Code) establishes provisions regarding right-of-way usage, and

WHEREAS, the Missouri Legislature has enacted changes in related statutes (HB 1991 (2018)), and

WHEREAS, the City Council has determined that the Code should be revised to be consistent with such changes in state law,

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF RICHMOND HEIGHTS, MISSOURI, as follows:

SECTION 1. Section 520.570, Rental Fees, is hereby revised to read as follows:

Section 520.570. Rental Fees.

A. *Finding And Intent.* The City finds that rights-of-way are valuable public property acquired and maintained at great expense to taxpayers. The City further finds that the grant of permission to locate facilities within the rights-of-way is a valuable property right and eliminates the need to invest substantial capital in the private location of such facilities. Any person that places facilities within the rights-of-way after the effective date of this code and any person that leaves existing facilities within the rights-of-way more than ninety (90) days after the effective date of this code shall be deemed to have agreed to pay compensation for such use of the rights-of-way as established herein. It is the intent of this Section that the rental fees provided for herein be applied to and be paid by only those persons having facilities within the rights-of-way. This Section codifies the City's long-established policy of imposing fees on right-of-way users.

B. *Payment To City.*

Any person having facilities within the ROW shall pay to the City annual rent consisting of, depending on the facility, linear foot fees and antenna fees for the use of the affected rights-of-way for the applicable facilities.

C. *Not A Tax Or In Lieu Of Any Other Tax Or Fee — Exemption Due to Payment of Business License Taxes Or Gross Receipts Taxes.*

1. The rental fees are not a tax, license or fee subject to any requirement of voter approval, but rather constitute a charge for special and individualized use of public property.
2. Rental fees are in addition to all other fees and all taxes and payments that a person may be required to pay under any Federal, State or local law, including any applicable property and amusement taxes.
3. As provided by Section 67.1846 RSMo, no person shall be obligated to pay rental fees if such person pays to the City gross receipts taxes, business license fees, or business license taxes that are more than nominal and that are imposed specifically on communications-related revenues, services or equipment. Further, no wireless provider shall be obligated to pay any antenna fee hereunder.

D. Payments.

1. The rental fees shall be paid quarterly to the City and shall commence as of the later of the effective date of this code or the first (1st) day on which a person having facilities within the ROW places facilities within the rights-of-way. The City shall be furnished at the time of each payment with a statement certified by the payer's chief financial officer or comparable officer or by an independent certified public accountant reflecting the calculation of the total amount of rental compensation for the payment period. Payments shall be made to the City no later than forty-five (45) days following the end of each calendar quarter.
2. In the event any rental fee or other payment due hereunder is not made on or before the date specified herein, interest charges shall also be due, computed from such due date, at an annual rate equal to the commercial prime interest rate of the City's primary depository bank during the period such unpaid amount is owed plus a penalty of two percent (2%) of the amount.

E. No Accord Or Satisfaction.

No acceptance of any payment by the City shall be construed as a release or an accord and satisfaction of any claim the City may have for further or additional sums payable as rental fees under this code or for the performance of any other obligation.

F. Audit.

The City shall have the right to inspect all reasonably necessary records and the right to audit and to recalculate any amounts determined to be payable under this code. Persons subject to rental fees hereunder shall be responsible for providing the records to the City at an office located within the metropolitan St. Louis area except as provided in Section **520.560(E)**. Such records shall be maintained for at least five (5) years. The City's audit expenses shall be borne by the person audited if the rental fees paid during the audit period are less than ninety-five percent (95%) of the amount owed according to the audit. Any additional amounts due to the City as a result of the audit shall be paid

within thirty (30) days following written notice to the person by the City of the underpayment, which notice shall include a copy of the audit report. If recalculation results in an additional amount to be paid to the City, such amount shall be subject to interest and penalties as specified in Subsection **(D)(2)** above.

G. Exemption From Rental Fees.

1. Persons having facilities within the ROW pursuant to a duly-issued, lawful and applicable license or franchise shall be exempt from this Section for the duration of such license or franchise, provided they continue to pay on a timely basis all fees due under such license and franchise.

2. Governmental entities having facilities within the ROW shall not be liable for rental fees.

SECTION 2. If any provision of this Ordinance or the application thereof to anyone or to any circumstance is held invalid, the remainder of those sections and the application of such provisions to others or other circumstances shall not be affected thereby.

SECTION 3. This Ordinance shall become effective on the 31st day after passage.

PASSED and SIGNED this 20th day of August, 2018.

JIM THOMSON
MAYOR

ATTEST:

PATRICIA S. VILLMER
DEPUTY CITY CLERK

APPROVED AS TO FORM:

KENNETH J. HEINZ
CITY ATTORNY

First reading: August 6, 2018
Second reading: August 20, 2018