

Chapter 29

UTILITIES*

Article I. In General

- Sec. 29-1. Applicability of rules and regulations of public service commission.
Secs. 29-2--29-25. Reserved.

Article II. Gas

- Sec. 29-26. Enforcement.
Sec. 29-27. Testing of meters upon application of consumer.
Sec. 29-28. Meter test records.
Sec. 29-29. Shutting off gas.
Sec. 29-30. Laying of mains and pipes.
Sec. 29-31. Installation of gas fixtures and appliances.
Sec. 29-32. Minimum pressure.
Secs. 29-33--29-50. Reserved.

Article III. Water

- Sec. 29-51. Definitions.
Sec. 29-52. Scope.
Sec. 29-53. Plat of water system.
Sec. 29-54. Records of location of meters, service connections.
Sec. 29-55. Permits for extensions.
Sec. 29-56. Extensions of mains upon order of city.
Sec. 29-57. Permits for changes in installations.
Sec. 29-58. Minimum water pressure.
Sec. 29-59. Test of water meter upon application of consumer.
Sec. 29-60. Rules for testing water meters.
Sec. 29-61. Shutting off water.
Secs. 29-62--29-80. Reserved.

Article IV. Sewers and Sewage Disposal

Division 1. Generally

- Sec. 29-81. Petitioners for establishing sewer district.
Sec. 29-82. Authority of city over private sewers.
Sec. 29-83. Standards and specifications.
Sec. 29-84. Inspection, order to repair private and building sewers, costs.
Sec. 29-85. Work done without inspection.
Sec. 29-86. Connection of certain establishments to public, private, district or joint district sewer.
Sec. 29-87. Agreement to connect to sewers required for issuance of building permit.
Sec. 29-88. Specifications for building sewers and drains.
Sec. 29-89. Prohibited deposits, obstruction of sewer.
Sec. 29-90. References to federal and state law.
Sec. 29-91. Wastewater analysis procedures.
Secs. 29-92--29-105. Reserved.

***Cross reference(s)**--Department of public works and transportation, § 2-336 et seq.; cable communications, ch. 9; location of utility service installation with reference to streets, § 25-21; poles, wires, and conduits, § 25-221 et seq.

State law reference(s)--Powers of home rule charter cities, Mo. Const. art. VI, § 19(a).

ST. JOSEPH CODE

Division 2. Permits

Sec. 29-106.	Required.
Sec. 29-107.	Application.
Sec. 29-108.	Fee.
Sec. 29-109.	Issuance.
Sec. 29-110.	Bond.
Sec. 29-111.	Time limit for beginning work.
Sec. 29-112.	Notice of work to be done under permit.
Sec. 29-113.	Improper performance of work under permit.
Secs. 29-114--29-130.	Reserved.

Division 3. Sewer Use Requirements and Rules

Subdivision I. General Provisions

Sec. 29-131.	Definitions.
Sec. 29-132.	Abbreviations.
Sec. 29-133.	Purpose and policy.
Sec. 29-134.	City's right of revision.
Sec. 29-135.	State requirements.
Sec. 29-136.	Additional requirements.
Sec. 29-137.	Connection to sewer.
Sec. 29-138.	Installation of building sewers.
Sec. 29-139.	Damages to sewage works.
Sec. 29-140.	Reservation of rights.
Sec. 29-141.	Connection with property lying outside city limits.
Secs. 29-142--29-155.	Reserved.

Subdivision II. Discharge Rules

Sec. 29-156.	General discharge prohibitions.
Sec. 29-157.	Specific prohibitive discharge limitations.
Sec. 29-158.	Pretreatment.
Sec. 29-159.	National categorical pretreatment standards; local limits.
Sec. 29-160.	Excessive discharge; dilution prohibited.
Sec. 29-161.	Accidental discharges.
Sec. 29-162.	Disposal of untreated sewage.
Sec. 29-163.	Storage of dangerous materials.
Sec. 29-164.	Private sewage disposal facilities.
Sec. 29-165.	Disposal of uncontaminated waste.
Sec. 29-166.	Grease, oil and grit interceptors.
Sec. 29-167.	Hauled wastewater.
Sec. 29-168.	Application signatories and certification.
Sec. 29-169.	The city's right of revision.
Sec. 29-170.	Dilution.
Sec. 29-171.	Additional pretreatment measures.
Secs. 29-172--29-185.	Reserved.

Subdivision III. Wastewater Contribution Permits

Sec. 29-186.	Required.
Sec. 29-187.	Permit application and issuance.
Sec. 29-188.	Baseline monitoring reports.
Sec. 29-189.	Limitation variance procedure.
Sec. 29-190.	Duration.
Sec. 29-191.	Transferability.

UTILITIES

Sec. 29-192.	Reporting requirements for permittee.
Sec. 29-193.	Monitoring facilities.
Sec. 29-194.	Right of entry; inspection and sampling.
Sec. 29-195.	Search warrants.
Sec. 29-196.	Confidential information.
Sec. 29-197.	Analytical and monitoring requirements.
Secs. 29-198--29-215.	Reserved.

Subdivision IV. Enforcement, Violations and Remedies

Sec. 29-216.	Harmful contributions.
Sec. 29-217.	Punishment for violation.
Sec. 29-218.	Enforcement action.
Sec. 29-219.	Judicial remedies.
Sec. 29-220.	Supplemental enforcement actions.
Sec. 29-221.	Affirmative defenses to discharge violations.
Sec. 29-222.	Liability for expenses caused by violation.
Sec. 29-223.	Additional remedies for violation.
Sec. 29-224.	Cost recovery at POTW due to industrial discharges.
Secs. 29-225--29-234.	Reserved.

Division 4. Sewage Treatment and Sewer User Charges

Sec. 29-235.	Definitions and abbreviations.
Sec. 29-236.	Wastewater sampling and billing calculation method.
Sec. 29-237.	Schedule and application of user charges.
Sec. 29-238.	Discharge from users supplied with water from private sources.
Sec. 29-239.	Separated meter billing.
Sec. 29-240.	Exemption for water diverted from system.
Sec. 29-241.	Alternate method of determining charge.
Sec. 29-242.	Reports.
Sec. 29-243.	Free services.
Sec. 29-244.	Payment of charges.
Sec. 29-245.	Penalty for nonpayment.
Sec. 29-246.	Special discharge charges.
Sec. 29-247.	Services outside city limits.
Sec. 29-248.	Inspection authority.
Sec. 29-249.	Review of user charges.
Sec. 29-250.	Notice to user of rates and charges.
Sec. 29-251.	Amount of monthly depreciation and replacement deposits.
Sec. 29-252.	Applicability to South St. Joseph Sewer District.
Sec. 29-253.	Appeals of sewer use surcharges.
Secs. 29-254--29-274.	Reserved.

Division 5. Sewer Service Subscription Agreements

Sec. 29-275.	Applicability.
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Subdivision I. Service Conditions.

Sec. 29-276.	Scope.
Sec. 29-277.	Operation and maintenance.
Sec. 29-278.	Construction and inspection of facilities.
Sec. 29-279.	Interconnection Monitoring Facilities (IMFs).
Sec. 29-280.	Rights of use.

ST. JOSEPH CODE

- Sec. 29-281. Regulation of flows.
- Sec. 29-282. Pretreatment standards.
- Sec. 29-283. Rights of the city.
- Secs. 29-284--29-290. Reserved.

Subdivision II. Commercial and Industrial Wastes No Approved Entity Pretreatment Program

- Sec. 29-291. Scope.
- Sec. 29-292. Sewer use ordinance.
- Sec. 29-293. Commercial/industrial user survey.
- Sec. 29-294. Monitoring authority.
- Sec. 29-295. Commercial and industrial monitoring.
- Sec. 29-296. Rights of the city.
- Secs. 29-297--29-305. Reserved.

Subdivision III. Reports and Payments.

- Sec. 29-306. Scope.
- Sec. 29-307. Reporting requirements for areas with unmetered interconnections (no IMF).
- Sec. 29-308. Reporting requirements for areas with metered interconnections (IMF operational).
- Sec. 29-309. Reporting requirements in general.
- Sec. 29-310. Computation of charges.
- Sec. 29-311. Payments for construction of monitoring stations.
- Sec. 29-312. Connection fees.
- Sec. 29-313. Other fees and charges.
- Sec. 29-314. Payments.
- Sec. 29-315. Late payments/payment plans.
- Secs. 29-316--29-320. Reserved.

Subdivision IV. Additional Conditions.

- Sec. 29-321. Boundaries.
- Sec. 29-322. Notification of ordinance amendments.
- Sec. 29-323. Breach of duties.
- Sec. 29-324. Emergency actions.
- Secs. 29-325--29-329. Reserved.

Division 6. Fats, Oils and Greases Controls

- Sec. 29-330. Intent.
- Sec. 29-331. Definitions.
- Sec. 29-332. Applicability.
- Sec. 29-333. General requirements and prohibitions.
- Sec. 29-334. Grease interceptors.
- Sec. 29-335. Violations and penalties.
- Sec. 29-336. Administrative and civil remedies.
- Secs. 29-337—29-349. Reserved.

Article V. Public Utility Right-of-Way Management Ordinance

- Sec. 29-350. Intent
- Sec. 29-351. Definitions.

UTILITIES

Sec. 29-352.	Franchise or right-of-way agreement required.
Sec. 29-353.	Public utility right-of-way user registration.
Sec. 29-354.	Permit required.
Sec. 29-355.	Permit application and submittal requirements.
Sec. 29-356.	Other facilities study.
Sec. 29-357.	Design and location of facilities.
Sec. 29-358.	Processing of applications and approval.
Sec. 29-359.	Denial of application for right-of-way permit.
Sec. 29-360.	Other conditions.
Sec. 29-361.	Construction.
Sec. 29-362.	Restoration.
Sec. 29-363.	Revocation of right-of-way permit.
Sec. 29-364.	Emergencies.
Sec. 29-365.	Abandonment of equipment or facilities.
Sec. 29-366.	Facilities relocation.
Sec. 29-367.	Damage to property.
Sec. 29-368.	Public right-of-way vacation.
Sec. 29-369.	Extensions of time and inspection.
Sec. 29-370.	Other obligations.
Sec. 29-371.	Trimming of trees.
Sec. 29-372.	Indemnification.
Sec. 29-373.	Insurance and bonds.
Sec. 29-374.	Permit fees for work in the right-of-way.
Sec. 29-375.	Violations.
Sec. 29-376.	Appeals.
Sec. 29-377.	Separability.
Sec. 29-378.	Exceptions.
Sec. 29-379.	Reservation of rights and special exceptions.
Sec. 29-380.	City's failure to enforce.

Article VI. Wastewater System Development Charges

Sec. 29-381.	Wastewater system development charge; general
Sec. 29-382.	Wastewater system development charge; meter type, size and charge.
Sec. 29-383.	Wastewater system development charge; administration.
Sec. 29-384.	Collection, expense and annual report of wastewater system development charges.
Sec. 29-385.	Exemptions for wastewater system development charge.
Sec. 29-386.	Credit for wastewater system development charge.
Sec. 29-387.	Termination of service for failure to pay charge.
Sec. 29-388.	Appeals.
Sec. 29-389.	Update of wastewater system development charges.
Sec. 29-390.	Wastewater system development charges as additional and supplemental regulations.
Sec. 29-391.	Use of other funding mechanisms.

ARTICLE I. IN GENERAL**Sec. 29-1. Applicability of rules and regulations of public service commission.**

No ordinance or provision of this code affecting any gas company or water company shall be construed to supersede any rule or regulation of the state public service commission under which any such company is operated. If there is any conflict between any provision of this code or of any ordinance of the city and a rule or regulation of the state public service commission affecting any such company, it shall be sufficient if any such company comply with the applicable rules or regulations of the public service commission.

(Code 1969, § 23-1)

Secs. 29-2--29-25. Reserved.**ARTICLE II. GAS*****Sec. 29-26. Enforcement.**

The director of public works and transportation or director of parks, recreation and civic facilities, as such director may have jurisdiction, shall enforce this code and ordinances of the city relating to gas companies.

(Code 1969, § 23-12)

Sec. 29-27. Testing of meters upon application of consumer.

Upon the application of any consumer of gas for a test of the meter through which gas is supplied to him, when application shall be made to the gas company, the company shall within a period of one week notify the consumer that the meter at issue shall be disconnected and removed to the meter shop of the company where a testing machine is located. Such testing machine shall be of an approved type, and such test shall be open to inspection and observation by the consumer and by the director of public works and transportation.

(Code 1969, § 23-13)

Cross reference(s)--Consumer protection, ch. 12.

***Cross reference(s)**--Plumbing code, § 7-256 et seq.; businesses, ch. 8; gas company license tax, § 27-303.

Sec. 29-28. Meter test records.

Gas meter test records shall be open for inspection by city officials for the purpose of determining compliance with state public service commission test standards.

(Code 1969, § 23-14)

Sec. 29-29. Shutting off gas.

(a) It shall be unlawful for any gas company to shut off gas to any consumer pending the investigation or testing of a gas meter when a dispute shall arise in regard to the correctness of a bill. The company shall adjust the bill as shown by the meter test for the preceding six months or during the times the meter was in use not exceeding six months.

(b) It shall be unlawful for any gas company to shut off or refuse to furnish gas to any consumer on streets where it maintains mains so long as the consumer shall comply with all lawful requirements.

(c) Nothing in this section shall be construed as prohibiting such gas company from shutting off gas when the consumer is in arrears in the payment of any gas bill, as authorized by the rules of the state public service commission.

(Code 1969, § 23-15)

Sec. 29-30. Laying of mains and pipes.

All gas mains or pipes installed in the city shall be laid in accordance with the rules and regulations of the director of public works and transportation or the director of parks, recreation and civic facilities, as the case may be, and in accordance with the provisions of this code and of the charter relating to the use of streets, alleys and public thoroughfares, including parks and boulevards, by utility mains and lines.

(Code 1969, § 23-16)

Sec. 29-31. Installation of gas fixtures and appliances.

All installations of stoves, hot water heaters and other gas fixtures and appliances shall be made in accordance with the building code under the direction of the director of public works and transportation and in accordance with this code

and the ordinances of the city and the rules and regulations of the city.

§29-374

(Code 1969, § 23-17)

Sec. 29-32. Minimum pressure.

(a) Any gas company manufacturing, distributing or selling gas in the city shall maintain a pressure in its mains for the distribution of gas to domestic customers so that the minimum pressure on house piping at the meter shall be not less than four inches water column pressure and not in excess of 50% above the pressure normally maintained at the location of any particular customer and to which customer's appliances have been adjusted. If operating conditions at any particular location in the city require the maintenance of pressure in excess of 50% above normal, regulators shall be installed by the company reducing pressure so that 50% above normal shall not be exceeded.

(b) Should such gas company fail to comply with the requirements of this section or if the service furnished a consumer is insufficient to comply with the requirements of this article, the consumer may notify the gas company, and the company shall remedy the difficulty within 24 hours after the notice.

(Code 1969, § 23-18)

Secs. 29-33--29-50. Reserved.**ARTICLE III. WATER*****Sec. 29-51. Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Water company means any person engaged in the business of supplying water for compensation within the city.

Cross reference(s)--Definitions and rules of construction generally, § 1-2.

***Cross reference(s)**--Plumbing code, § 7-256 et seq.; businesses, ch. 8; water company license tax, § 27-306.

Sec. 29-52. Scope.

Any person engaged in the business of supplying water for compensation within the city shall be subject to this article.

(Code 1969, § 23-29)

Sec. 29-53. Plat of water system.

Any water company which owns and maintains water mains and pipes within the city shall furnish and keep on file in the office of the director of public works and transportation a plat or map showing in detail the location and dimensions of the building, reservoirs, settling basins, filters, aqueducts, mains, pipes, hydrants, gates and valves belonging to the company. Whenever any changes or extensions are made in the water system, the company shall notify the director of public works and transportation of the changes and extensions and shall furnish the director with detailed information sufficient to bring the map and plat on file up to date. A copy of new and corrected plats of any water company shall be furnished the city when prepared by such company.

(Code 1969, § 23-30)

Sec. 29-54. Records of location of meters, service connections.

All water company records showing the location of meters and service connections shall be kept open for inspection by representatives of the city at the main office of the water company during business hours.

(Code 1969, § 23-31)

Sec. 29-55. Permits for extensions.

(a) *Required.* It shall be unlawful for any water company to extend any main or pipe within the city along and over the streets, highways, public places, boulevards, parks and other public lands of the city without a permit for such extension from the director of public works and transportation or the director of parks, recreation and civic facilities, as the case may be.

(b) *Permit restrictions.* No permit shall be issued by the director of public works and transportation or the director of parks, recreation and civic facilities, as the case may be, for the extension of any water main or pipe without a requirement in such permit that the grantee shall erect and maintain, at its own expense, a fire hydrant at such point as may be directed by such

director. Such permit shall further prescribe the kind and character of hydrant to be so installed.
(Code 1969, § 23-32)

Sec. 29-56. Extensions of mains upon order of city.

A water company shall extend its mains upon order of the city, to supply public fire hydrants, subject to the rules and regulations of the state public service commission.
(Code 1969, § 23-33)

Sec. 29-57. Permits for changes in installations.

Any water company desiring to change any existing pipe installation owned by it or under its control shall obtain a permit from the director of public works and transportation or the director of parks, recreation and civic facilities, as the case may be, authorizing and approving such additions or changes. Such director may include in such permit any requirements or conditions within his jurisdiction as he may deem necessary with respect to the performance of such proposed work, including but not limited to the cutting of paving and location of mains and pipes.
(Code 1969, § 23-34)

Sec. 29-58. Minimum water pressure.

Water companies shall at all times provide and maintain water of sufficient volume and pressure to give adequate fire protection to all property adjacent to fire hydrants connected with the mains and pipes of water companies.
(Code 1969, § 23-35)

Sec. 29-59. Test of water meter upon application of consumer.

Upon the application of any consumer of water for a test of the meter through which water is supplied to him, which application shall be made with the water company, the company shall within a period of one week notify the consumer that the meter at issue shall be disconnected and removed to the meter shop of the company where a testing machine is located. Such testing machine shall be of an approved type and such tests shall be open to inspection by the consumer and the director of public works and transportation.
(Code 1969, § 23-36)

Sec. 29-60. Rules for testing water meters.

A water company shall test water meters within the city in compliance with the rules and regulations of the state public service commission. Such records of the water company shall be kept open for inspection of city officials at all times for the purpose of determining that such rules have been complied with.
(Code 1969, § 23-37)

Cross reference(s)--Consumer protection, ch. 12.

Sec. 29-61. Shutting off water.

(a) It shall be unlawful for any water company to shut off the water of any consumer pending the investigation or testing of a water meter when a dispute shall arise in regard to the correctness of a bill. The company shall adjust the bill on the basis of the results of the meter test, for the three preceding months, or furnish water to any consumer on streets where it maintains a main or pipe so long as the consumer shall comply with all lawful requirements.

(b) Nothing in this section shall be construed as prohibiting such water company from shutting off the water when the consumer is in arrears for ten days in the payment of any water bill.
(Code 1969, § 23-38)

Secs. 29-62--29-80. Reserved.

ARTICLE IV. SEWERS AND SEWAGE DISPOSAL*

DIVISION 1. GENERALLY

***Cross reference(s)**--Health department, § 2-321 et seq.; department of public works and transportation, § 2-336 et seq.; plumbing code, § 7-256 et seq.; environment, ch. 15; individual sewage disposal systems, § 17-26 et seq.; solid waste, ch. 24.

State law reference(s)--Powers of home rule charter cities, Mo. Const. art. VI, § 19(a); Missouri Clean Water Law, RSMo ch. 644; sewerage systems, RSMo ch. 250.

Sec. 29-81. Petitioners for establishing sewer district.

The owners of any property served by a private sewer which drains into a public, district or joint district sewer, when such property is not situated within the limits of a sewer district, shall

§29-374

be considered as petitioners for establishing a sewer district whenever any other property owners within the proposed district shall petition the director of public works and transportation and the city council for the establishing of a sewer district.

(Code 1969, § 23-49; G.O. 1742, 1-10-00)

State law reference(s)--Common sewer districts, RSMo ch. 204.

Sec. 29-82. Authority of city over private sewers.

The city shall have the right at all times to connect with and use any private sewer or drain built in, under or through any street, alley, sidewalk, parkway, boulevard or public place, for draining streets or any public purpose, and also to reconstruct or close up or disconnect from any public, private, district or joint district sewer any private sewer or drain constructed in violation of this article or which because of use, disrepair or other cause has become a nuisance.

(Code 1969, § 23-50; G.O. 1742, 1-10-00)

Sec. 29-83. Standards and specifications.

The director of public works and transportation shall have the authority to prescribe the materials to be used in the construction of any sewer in the city. General standards and specifications shall be as follows:

- (1) *Connection of building sewer.* Connection of a building sewer or drain to any class of sewer must be made to junction pieces which have been built in the sewers, unless a special permit to cut the sewer is applied for and issued by the director of public works and transportation through the plumbing inspector for inserting into the sewer a junction piece of the size specified in the special permit. The junction piece shall lie at an angle with the sewer not exceeding 45 degrees from the horizontal, and a wye branch shall be preferable to a tee branch.
- (2) *Inside of private sewer.* The inside of every private sewer connecting with any other class of sewer shall, after it is laid, be of uniform grade and alignment its entire length from manhole to manhole.
- (3) *Stoppers.* The ends of all junction pieces, building sewers and drains not to be

immediately used must be closed with suitable watertight stoppers or plugs.

(Code 1969, § 23-51; G.O. 1742, 1-10-00)

Sec. 29-84. Inspection, order to repair private and building sewers, costs.

(a) *Inspection.* Any authorized agent of the director of public works and transportation shall have the right to enter upon any premises drained by any private or building sewer connected with any class of sewer, at all reasonable hours, to ascertain whether the provisions of this article or any other sewer regulation has been complied with.

(b) *Sewer requirements-structures.* If the condition of a sewer line or other sewer facility or its attachments does not conform with this article or any other sewer regulation, the director of public works and transportation shall notify the owner or the agent of the owner in writing of his findings. It shall then be the duty of the owner or his agent to cause the sewer, drains or attachments to be so altered, repaired or reconstructed so as to conform to the requirements of this article or any other sewer regulation.

(c) *Buildings rendered dangerous buildings.* All buildings connected to a private sewer line or other private sewer facility shall be deemed dangerous buildings as that term is defined in Chapter 7 of this code if the condition of the sewer line or other sewer facility is causing, or has the reasonable potential to cause, any of the following:

- (1) Harm the city's sewer system,
- (2) Discharge of untreated wastewater from a private sewer system or the city's sewer system,
- (3) A public health danger,
- (4) Surface erosion,
- (5) Harm to public streets, sidewalks, parks, or other public property, or
- (6) Inflow of water into breakages, cracks, or leaks in the sewer lines or sewer facilities.

(d) *Repairs to public property.* In the event a sewer line or other sewer facility causes harm to

public streets, sidewalks, parks, or other public property, or in the event repair of a sewer line or other sewer facility causes harm to public streets, sidewalks, parks, or other public property, the costs of repairing such public streets, sidewalks, parks, or other public property shall be deemed a cost of repairing the sewer line or other sewer facility.

(Code 1969, § 23-52; G.O. 1742, 1-10-00; G.O. 2761, 11-24-14)

Sec. 29-85. Work done without inspection.

Any work under this article which is done without inspection shall be deemed defective and may be uncovered and, if necessary, reconstructed by the director of public works and transportation at the expense of the permit holder, as provided in this article or the plumbing code of the city.

(Code 1969, § 23-53; G.O. 1742, 1-10-00)

Sec. 29-86. Connection of certain establishments to public, private, district or joint district sewer.

(a) No packinghouse, slaughterhouse, lard rendering establishment, dairy, steam engine, steam boiler, gasworks, hotel, or boardinghouse or any establishment by which, in the opinion of the director of public works and transportation, anything would be discharged into a public, private, district or joint district sewer which

would tend to obstruct or injure the sewer or cause a nuisance shall be connected with any public, private, district or joint district sewer, except through one or more catch basins as may be prescribed by the director of public works and transportation. If the matter of discharge by an establishment cannot, in the opinion of the director of health and community services be rendered harmless to such sewer or to the public health, such establishment shall be prohibited by the director of public works and transportation from connecting with any public, private, district or joint district sewer.

(b) If any establishment shall discharge into any public, private, district or joint district sewer in violation of this section, the director of public works and transportation shall notify the owner of such establishment to cease such violation. If catch basins are needed as provided in this section, the director shall notify such owner to build the catch basins and a manhole 24 inches in diameter over the catch basin, to the level of the street, alley, parkway or boulevard, with a proper iron cover fitted on the manhole, within 30 calendar days from the date of said notice. (Code 1969, § 23-54; G.O. 1742, 1-10-00)

Sec. 29-87. Agreement to connect to sewers required for issuance of building permit.

It shall be a condition of all building permits issued for the repair, construction or erection of buildings that the owner agrees to make a connection with a sewer, if already constructed. If the sewer is not constructed, the owner, his successors or assigns agrees to make such connection whenever such sewer shall be constructed and is directed to make such connection by the director of public works and transportation. (Code 1969, § 23-55; G.O. 1742, 1-10-00)

Sec. 29-88. Specifications for building sewers and drains.

Building sewers and drains connected to any class of sewer, cesspool or septic tank, when acting as a main building drain, shall not be less than four inches internal diameter and shall be one of the following materials: cast iron, concrete, polyvinyl chloride pipe or other material preapproved by the director of public works and transportation. Such pipes shall be

joined together with all joints and connections made watertight. (Code 1969, § 23-56; G.O. 1742, 1-10-00)

Sec. 29-89. Prohibited deposits, obstruction of sewer.

No person shall deposit or throw into any public, private, district or joint district sewer or sewer inlet, any private sewer or drain or any street, alley, boulevard or public place or gutter, connected with a public, private, district or joint district sewer, any substance that may cause the particular sewer, sewer inlet or drain to become obstructed and/or blocked or which may create a nuisance. No dam or obstruction of any kind shall be allowed unless a special permit has been issued by the director of public works and transportation. Enforcement of this section, including, but not limited to, the city's removal of the obstruction and/or blockage, shall not constitute an acceptance of any maintenance or repair responsibilities to any private sewer, or any sewer that has not been accepted pursuant to Section 26-74 of this code, by the city. (Code 1969, § 23-57; G.O. 1470, 10-21-96; G.O. 1742, 1-10-00)

Sec. 29-90. References to federal and state law.

All references to federal or state statute, regulation, or other legal authority shall be deemed to include all amendments and other updates to such statute, regulation, or legal authority. (G.O. 2735, 6-23-14)

Sec. 29-91. Wastewater analysis procedures.

Except as otherwise stated in this article or approved by the director of public works and transportation, all analysis of wastewater performed pursuant this article must be completed in accordance with the Standard Methods for the Examination of Water and Wastewater. (G.O. 2735, 6-23-14)

Secs. 29-92--29-105. Reserved.

Sec. 29-106. Required.

No person shall make or cause to be made any excavation or connection around or under any public or district sewer or connect any private sewer or drain therewith or construct any private sewer or drain in, through or under any street, alley, sidewalk, parkway, boulevard or public place in the city without a permit therefor being first obtained from the director of public works and transportation, which permit shall not be issued until the applicant has complied with the sections of this article requiring a bond.

(Code 1969, § 23-63; G.O. 1742, 1-10-00)

Sec. 29-107. Application.

(a) The application for a permit required in this division shall be signed by the person or his duly authorized agent who desires to do the work designated in the application. The application shall not be assignable, and no person shall allow his name to be used to obtain a permit for any other person.

(b) The application for the permit shall contain a clear description of the property to be drained and the sewer or drain which is to be constructed. If the director of public works and transportation deems it necessary, he may require a plan and profile of the proposed drain or sewer, and all such plans, profiles and descriptions or copies thereof shall be left on file in the office of the director.

(Code 1969, § 23-66; G.O. 1742, 1-10-00)

Sec. 29-108. Fee.

The sum of \$100.00 shall be charged for each permit issued under the provisions of this division.

(Code 1969, § 23-65; G.O. 1742, 1-10-00; G.O. 2735, 6-23-14)

Sec. 29-109. Issuance.

If a proposed sewer or drain is in accordance with the provisions of this article and the plans, etc., if required, are approved by the director of public works and transportation, he shall issue a permit for its construction, which permit shall contain or be accompanied by the regulations and conditions under which the work is to be performed.

(Code 1969, § 23-67; G.O. 1742, 1-10-00)

Sec. 29-110. Bond.

Before any permit required in this division shall be issued, the applicant for such permit shall deposit with the director of finance a bond in the penal sum of \$5,000.00, approved by the director of finance, and in a proper form approved by the city attorney, conditioned that the principal thereunder, in constructing private sewers and drains and connecting the sewers and drains with public, district and joint district sewers will faithfully comply with all provisions of this article and the rules and regulations of the director of public works and transportation.

(Code 1969, § 23-68; G.O. 1742, 1-10-00)

Sec. 29-111. Time limit for beginning work.

Work under the permit required in Section 29-106 shall begin within ten calendar days from the date of issuance of the permit therefor. For default of the time limit, a new permit or an extension of the original permit shall be obtained before the work is commenced.

(Code 1969, § 23-64; G.O. 1742, 1-10-00)

Sec. 29-112. Notice of work to be done under permit.

Before any work is done under a permit issued under the provisions of this division, 24 hours' notice thereof shall be given to the director of public works and transportation, so that an inspector thereof may be present. If the person is unable to do the work at the time designated, he shall advise the director of public works and transportation, together with the time when he will do the work.

(Code 1969, § 23-70; G.O. 1742, 1-10-00)

Sec. 29-113. Improper performance of work under permit.

If any work done under a permit as provided for in this division shall be done improperly and in violation of any of the provisions of this article or shall cause damage to any public, district or joint district sewer, the director of public works and transportation shall have the right to reconstruct such defective work and repair such damage, and the cost thereof may be recovered against such person in a court of competent jurisdiction in a suit on his bond. In addition, the director of public works and transportation may refuse to grant any further permits until all improper and defective work shall have been

repaired and all expenses which may have been caused to the city because of its having to reconstruct such defective work or repair such damage shall have first been paid.

(Code 1969, § 23-69; G.O. 1742, 1-10-00)

Secs. 29-114--29-130. Reserved.

DIVISION 3. SEWER USE
REQUIREMENTS AND RULES

Subdivision I. General Provisions

Sec. 29-131. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

- (1) *Act* or *the act* means the Federal Water Pollution Control Act, also known as the Clean Water Act, 33 USC 1251 et seq.
- (2) *Ammonia* means a compound of nitrogen and hydrogen with the formula NH₃, (typically expressed in parts per million by weight in accordance with 40 CFR 136).
- (3) *Approval authority* means the State of Missouri Department of Natural Resources.
- (4) *Authorized representative of the user* means:
 - a. If the user is a corporation:
 - 1. The president, secretary, treasurer or a vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or
 - 2. The manager of one or more manufacturing, production or operation facilities, provided the manager (i) is authorized to make management decisions that govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations,

and initiating and directing other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; (ii) can ensure that the necessary systems are established or actions taken to gather complete and accurate information for individual wastewater discharge permit requirements and other requirements of this article; and (iii) where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

- b. If the user is a partnership or sole proprietorship: a general partner or proprietor, respectively; or
- c. If the user is a federal, state or local governmental facility: a director or highest official appointed or designated to oversee the operation and performance of the activities of the government facility, or their designee.
- d. The individuals described in Subsections a through c above, may designate another authorized representative of the user if the authorization is in writing, the authorization specifies the individual or position responsible for the overall operation of the facilities from which the discharge originates or having overall responsibility for environmental matters for the company, and the written authorization is submitted to the city.

- (5) *Best management practices (BMP)* include but are not limited to a schedule of activities, prohibitions, maintenance policies and other management procedures that are implemented to prevent or reduce the discharge of pollutants into the public sewer system. BMP also include pretreatment requirements, operating procedures and practices to control plant site runoff, spillage or leaks, sludge or wastes disposal or drainage from raw material storage.

- (6) *Best Management Practices Plan (BMPP)*, for the purposes of this article, means an operational methodology prepared in accordance with the requirements of this section and by the order of the director or his/her duly appointed representative, to prevent or reduce the discharge of any substance regulated under this chapter, consistent with the principles of the best management practices, to the public sewer system.
- (7) *Biochemical oxygen demand (BOD)* means the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory conditions in five days at 20 degrees Celsius, typically expressed in parts per million by weight in accordance with 40 CFR 136.
- (8) *Building drain* means that part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste and other drainage pipes inside the walls of the building and conveys it to the building sewer.
- (9) *Building permit* includes building, plumbing and electrical permits.
- (10) *Building sewer* means the extension from the building drain to the city sewer.
- (11) *Carbonaceous biochemical oxygen demand (cBOD)* means the quantity of oxygen utilized in the biochemical oxidation of organic matter in the absence of nitrogen, under standard laboratory conditions in five days at 20 degrees Celsius, typically expressed in parts per million by weight divided by volume in liters in accordance with 40 CFR 136.
- (12) *Chemical Oxygen Demand (COD)* means a measure of the oxygen required to oxidize all compounds, both organic and inorganic, in water conditions, typically expressed in parts per million in accordance with 40 CFR 136.
- (13) *City* means the City of St. Joseph, Missouri.
- (14) *City sewer* means a sewer, which is owned and controlled by public authority.
- (15) *Combined sewer* means a sewer receiving both surface runoff and sewage.
- (16) *Composite sample* means a sample consisting of several effluent portions collected in a 24-hour period and generally composited proportionately to the flow.
- (17) *Contributory industrial user* means industrial users identified by the city as discharging a given pollutant.
- (18) *Control authority* means the City of St. Joseph, Department of Public Works & Transportation.
- (19) *Cooling water* means the water discharged from any use, such as air conditioning, cooling or refrigeration, or to which the only pollutant added is heat.
- (20) *Daily discharges* means, for pollutants, the arithmetic average of all or analytical test results of water collected in a single day including, those from split samples and, for flow rate, the arithmetic average of flow from during a single day as measured by all flow meters measuring the same waste stream.
- (21) *Daily maximum* or *Daily maximum limit* means the maximum allowable discharge of a pollutant or flow rate during a calendar day expressed, for pollutants, in units of concentration or mass (pounds per day) and calculated using arithmetic average measurement of the pollutant concentration derived from all measurements taken that day (concentration in mg/L x flow rate (mgd) x 8.34) and, for flow rate, expressed in terms of million gallons per day.
- (22) *Direct discharge* means the discharge of treated or untreated wastewater directly to the waters of the state of Missouri.
- (23) *Director* means the director of public works and transportation designated by the city to administer and enforce the provisions of this division or the person designated by the city to supervise the

- operation of the publicly owned treatment works and who is charged with certain duties and responsibilities by this division, or his duly authorized representative.
- (24) *Domestic sewage* means those wastes, which are comparable to wastes, which originate in residential units and contain only human excrement and wastes from kitchen, laundry, bathing and other household facilities.
- (25) *Environmental Protection Agency* or *EPA* means the U.S. Environmental Protection Agency or, where appropriate, the term may also be used as a designation for the administrator or other duly authorized official of the agency.
- (26) *Existing source* means any source of discharge, the construction or operation of which commenced prior to the publication by EPA of proposed categorical pretreatment standards, which will be applicable to such source if the standard is thereafter promulgated in accordance with Section 307 of the Act.
- (27) *Flow Rate* means the volume of liquids discharged by a user in a period of time expressed in either gallons per day or gallons per minute.
- (28) *Garbage* means solid food wastes from the preparation, cooking and disposing of food and from the handling, storage and sale of produce.
- (29) *Grab sample* means a sample, which is taken from a waste stream without regard to the flow in the waste stream and over a period of time not to exceed 15 minutes.
- (30) *Holding tank waste* means any waste from holding tanks such as vessels, chemical toilets, campers, trailers, septic tanks and vacuum-pump tank trucks.
- (31) *Immediately dangerous to life or health (IDLH)* represents the maximum concentration from which, in the event of respirator failure, or which one could escape within 30 minutes without a respirator and without experiencing any escapee-impairing (e.g., severe eye irritation) or irreversible health effects.
- (32) *Indirect discharge* means the discharge or the introduction of domestic or nondomestic pollutants from any source regulated under Section 307(b) or (c) of the act (33 USC 1317) into the POTW, including but not limited to holding tank waste discharged into the system.
- (33) *Industrial user* means a source of indirect discharge, which does not constitute a discharge of pollutants under regulations, issued pursuant to section 402 of the act (33 USC 1342).
- (34) *Inhibit* or *inhibition* means any discharge that causes the city to deviate from the normal operations of the POTW.
- (35) *Interference* means a discharge, which alone or in conjunction with a discharge or discharges from other sources, inhibits or disrupts the POTW, its treatment processes or operations or its sludge processes, use or disposal; or prevents the use of sewage sludge or disposal of sewage sludge in compliance with any of the following statutory/regulatory provisions or permits issued thereunder, or any more stringent state or local regulations: Section 405 of the Act; the Solid Waste Disposal Act (SWDA), including Title II commonly referred to as the Resource Conservation and Recovery Act (RCRA); any state regulations contained in any state sludge management plan prepared pursuant to Subtitle D of the Solid Waste Disposal Act; the Clean Air Act; the Toxic Substances Control Act; and the Marine Protection, Research and Sanctuaries Act. All expenses in the form of labor, equipment or materials to remediate the effects of this interference will be the responsibility of the user, which caused the interference.
- (36) *Limit fee* means a fee or charge, as set forth in Division 4 of this article, applied to a user which contributes BOD, suspended solids, Ammonia, FOG, or flow more than amounts allowed by this code or by a wastewater discharge permit.

- (37) *Limitation variance charge* means a charge applied to an industrial user, which results from a limitation variance request.
- (38) *Lower explosive limit (LEL)* means the minimum concentration in air which a gas or vapor will flame with an ignition source.
- (39) *Medical waste* means isolation wastes, infectious agents, human blood and blood products, pathological wastes, sharps, body parts, contaminated bedding, surgical wastes, potentially contaminated laboratory wastes and dialysis wastes.
- (40) *Minimum charge* means a charge, as determined by Division 4 of this article, established by the city for making sewage treatment available to the user, whether or not sewage is contributed.
- (41) *Monthly average* means the sum of all daily discharges measured during a calendar month divided by the number of daily discharges measured during that same month.
- (42) *Multiple-family user* means a dwelling occupied by more than one residential unit, contributing domestic waste and served by one meter, including apartments and trailer courts.
- (43) *National categorical pretreatment standard* or *categorical discharge standard* means any regulation containing pollutant discharge limits promulgated by the EPA in accordance with Section 307(b) and (c) of the act (33 USC 1317) and the standards under 40 CFR 401-471 which applies to a specific category of industrial users.
- (44) *National pollution discharge elimination system permit* or *NPDES permit* or *Missouri State Operating Permit* means a permit issued pursuant to Section 402 of the act (33 USC 1342).
- (45) *National prohibitive pretreatment standard* means any regulation developed under the authority of Section 307(b) of the act and 40 CFR 403.5.
- (46) *Natural outlet* means any outlet into a watercourse, pond, ditch, lake or any other body of surface water or groundwater.
- (47) *New source* means:
- a. Any building, structure, facility or installation from which there is (or may be) a discharge of pollutants, the construction of which commenced after the publication of proposed pretreatment standards under Section 307(c) of the Act which will be applicable to such source if such standards are thereafter promulgated in accordance with that section, provided that:
 1. The building, structure, facility or installation is constructed at a site at which no other source is located; or
 2. The building, structure, facility or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or
 3. The production or the wastewater generating processes of the building, structure, facility or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant and the extent to which the new facility is engaged in the same general type of activity as the existing source, should be considered.
 - b. Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility or installation meeting the criteria of Subsection a.2. or a.3. above but otherwise alters, replaces or adds to existing process or production equipment.

- c. Construction of a new source as defined under this subsection has commenced if the owner or operator has:
1. Begun or caused to begin, as part of a continuous onsite construction program:
 - i. Any placement, assembly or installation of facilities or equipment; or
 - ii. Significant site preparation work including clearing, excavation or removal of existing buildings, structures or facilities which is necessary for the placement, assembly or installation of new source facilities or equipment; or
 2. Entered into a binding contractual obligation for the purchase of facilities or equipment, which are intended to be used in its operation within a reasonable time. Options to purchase or contracts, which can be terminated or modified without substantial loss and contracts for feasibility, engineering and design studies do not constitute a contractual obligation under this subsection.
- (48) *Normal sewage* means sewage containing not more than 300 mg/l BOD or more than 350 mg/l suspended solids. All the waste contributed by residential users shall be considered as normal sewage.
- (49) *Noncontact cooling water* means water used for cooling which does not come into direct contact with any raw material, intermediate product, waste product or finished product.
- (50) *Pass through* means a discharge which exits the POTW into the water of the United States in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of the city's NPDES permit, including an increase in the magnitude or duration of a violation.
- (51) *Person* means any individual, partnership, copartnership, firm, company, corporation, association, joint stock company, trust, estate or any other legal entity, or their legal representatives, agents or assigns. This definition includes all federal, state and local governmental entities.
- (52) *pH* means a measure of the acidity or alkalinity of a solution, expressed in standard units.
- (53) *Pollutant* means any dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discharged equipment, rock, sand, dirt and industrial, commercial and agricultural waste and certain characteristics of waste water (e.g., pH, temperature, TSS, turbidity, color, BOD, COD toxicity or odor) discharged into water.
- (54) *Pollution* means the manmade or man-induced alteration of the chemical, physical, biological and radiological integrity of water or atmosphere within the POTW.
- (55) *POTW treatment plant* or *Water Protection Facility (WPF)* means that portion of the POTW designed to provide treatment to sewage.
- (56) *Pretreatment* or *treatment* means the reduction of the amount of pollutants, the elimination of pollutants, the alteration of the nature of pollutants, or the alteration of the nature of pollutant properties in wastewater to a less harmful state prior to or in lieu of discharging or otherwise introducing such pollutants into a POTW. The reduction or alteration can be obtained by physical, chemical or biological processes or process changes by other means, except as prohibited by 40 CFR 403.6(d).
- (57) *Pretreatment program* means the pre-treatment program implemented by the

- city as required by the Clean Water Act of 1977, for existing and new sources of pollution 40 CFR 403.
- (58) *Pretreatment program charge* means a charge applied to an industrial user, which results from an administrative, sampling, laboratory or enforcement costs related to the city's pretreatment program.
- (59) *Pretreatment requirements* means any substantive or procedural requirement related to pretreatment standards.
- (60) *Pretreatment standard* means a national categorical pretreatment standard, a national prohibitive pretreatment standard or a prohibitive discharge standard.
- (61) *Prohibitive discharge standard* means the general discharge prohibitions or specific prohibitive discharge limitations included in this division.
- (62) *Properly shredded garbage* means garbage that has been shredded to such degree that all particles will be carried freely under the flow conditions normally prevailing in the city sewers, with no particle greater than one-half inch in any dimension.
- (63) *Publicly owned treatment works (POTW)* means a treatment works as defined by Section 212 of the act (33 USC 1292) which is owned, in this instance, by the city. This definition includes any facilities for collecting, transporting, pumping, treating and disposing of sewage, including the WPF. This includes any sewers except building sewers and sewers that are owned by parties other than the city that convey wastewater to the WPF, but does not include pipes, sewers or other conveyances not connected to a POTW facility providing treatment. For the purposes of this division, "POTW" also includes any sewers that convey wastewater to the POTW from persons outside the city who are, by contract or agreement with the city, users of the city's POTW.
- (64) *Receiving stream* means any natural watercourse into which sewage is discharged.
- (65) *Residential user* means a user who contributes domestic waste and is served by one water meter.
- (66) *Sanitary sewer* means a sewer, which carries sewage, and to which stormwater, surface water and groundwater is not intentionally admitted.
- (67) *Service charge* means a charge, as determined by Division 4 of this article, applied to a user, which contributes flow, BOD and suspended solids not more than those of normal sewage.
- (68) *Sewage* means the liquid and water-carried industrial or domestic wastes from dwellings, commercial buildings, industrial facilities and institutions, together with any groundwater, surface water and stormwater that may be present, whether treated or untreated, which is contributed into or permitted to enter the POTW.
- (69) *Sewer* means a pipe or conduit for carrying sewage.
- (70) *Septic tank waste* means any sewage from holding tanks such as vessels, chemical toilets, campers, trailers and septic tanks.
- (71) *Significant industrial user* means:
- a. A user subject to categorical pretreatment standards; or
 - b. A user that:
 1. Discharges an average of 25,000 gpd or more of process wastewater to the POTW (excluding sanitary, noncontact cooling and boiler blowdown wastewater); or
 2. Contributes a process wastewater which makes up five percent or more of the average dry weather hydraulic or organic capacity of the WPF; or
 3. Is designated as such by the city on the basis that it has a reasonable potential for adver-

sely affecting the POTW's operation or for violating any pretreatment standard or requirement; or

- c. Upon a finding that a user meeting the criteria in Subsection (a)(67)b. has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement, the city may at any time, on its own initiative or in response to a petition received from a user, and in accordance with procedures in 40 CFR 403.8(f)(6), determine that such user should not be considered a significant industrial user.
- (72) *Silver rich solutions* include but are not limited to: fixers, bleach fixes, stabilizers (e.g., plumbless, stabilizers and chemicals washers) low flow washers and all functionally similar solutions.
- (73) *Slug load* or *slug* means any discharge at a flow rate or concentration, which could cause a violation of the prohibited discharge standards in accordance with Section 29-56 of this article.
- (74) *Slug discharge* means any discharge of a non-routine, episodic nature, including, but not limited to, an accidental spill or a non-customary batch discharge, which has a reasonable potential to cause interference or pass through, or in any other way violates this article, regulations established pursuant to this article, local limits, or permit conditions.
- (75) *Split sample* means a wastewater sample split at the point of collection or another defined location, between a user and the city, into different even proportions for analysis.
- (76) *Standard industrial classification (SIC)* means a classification pursuant to the Standard Industrial Classification Manual issued by the Executive Office of the President, Office of Management and Budget, 1987.
- (77) *Standard laboratory methods* means the latest methods of analysis and testing as outlined in 40 CFR 136 or the Standard Methods for the Examination of Water and Wastewater.
- (78) *Storm sewer* or *storm drain* means a sewer, which carries stormwaters and surface waters and drainage, but excludes sewage and polluted industrial wastes.
- (79) *Stormwater* means any flow occurring during or following any form of natural precipitation and resulting from such precipitation, including snowmelt.
- (80) *Suspended solids* means the total suspended matter that floats on the surface of, or is suspended in, water, wastewater or other liquids and which is removable by laboratory filtering.
- (81) *Threshold limit value-short term exposure limit (TLV-STEL)* means the concentration to which workers can be exposed continuously for a short period of time without suffering from irritation, chronic or irreversible damage or narcosis of sufficient degree to increase the likelihood of accidental injury, impair self rescue or materially reduce work efficiency, and provided that the daily TLV-TWA is not exceeded.
- (82) *UV Transmittance* means fraction of ultraviolet light at 254 NM wavelength that passes through a water sample.
- (83) *Threshold limit value-time weighted average (TLV-TWA)* means the time weighted average concentration for a normal eight hour workday and a 40 hour workweek, to which nearly all workers may be repeated, exposed, day after day, without adverse effect.
- (84) *Total Kjeldahl Nitrogen (TKN)* means the sum of organic nitrogen, and ammonia (NH₃) in water conditions, expressed in parts per million in accordance with 40 CFR 136.
- (85) *Total silver halide process wastewater* means the sum of all aqueous solutions used in any silver halide imaging process, including but not limited to photography film developers, fixers, bleach fix, stabilizers, low flow washers and all functionally similar solutions.

- (86) *Toxic pollutant* includes any pollutant or combination of pollutants listed as toxic in regulations promulgated by the administrator of the Environmental Protection Agency under the provision of CWA 307(a).
- (87) *User* means any person or industrial user who contributes, causes or permits the contribution of wastewater into the city's POTW.
- (88) *User charge* means a charge, as determined by Division 4 of this article, levied on users of treatment works for the cost of operation and maintenance plus amortization and replacement costs of such works. The user charge shall include the minimum charge, service charge, overage charges and any pretreatment program charges.
- (89) *Wastewater discharge permit* means as set forth in this division.
- (90) *Watercourse* means a channel or location in which a flow of water occurs, either continuously or intermittently.
- (91) *Waters of the state of Missouri* means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through or border upon the state of Missouri or any portion thereof which are defined by the State of Missouri as waters of the state of Missouri.
- (92) *Wholesale user* means a user that provides its own primary treatment and discharges directly to a POTW pump station or the WFP without utilizing the City's POTW collection system or primary treatment systems.
- (Code 1969, § 23-76(B); Gen. Ord. No. 1005, § 1(23-76(B)), 8-17-92; G.O. 1742, 1-10-00; G.O. 2720, 3-3-14; G.O. 2735, 6-23-14)
- Cross reference(s)**--Definitions and rules of construction generally, § 1-2.
- As used in this division, the following abbreviations shall have the designated meanings:
- (1) BOD--Biochemical oxygen demand.
 - (2) CF—Cubic foot.
 - (3) CFR--Code of Federal Regulations.
 - (4) COD--Chemical oxygen demand.
 - (5) CWA--Clean Water Act.
 - (6) EPA--Environmental Protection Agency.
 - (7) FOG--Fats, oil and grease.
 - (8) IDLH--Immediately dangerous to life or health.
 - (9) l--Liter.
 - (10) mg--Milligrams.
 - (11) mg/l--Milligrams per liter (also may be referred to as "parts per million" as referenced in Chapter 29 of the code).
 - (12) MGD--Million gallons/day.
 - (13) NPDES--National pollutant discharge elimination system.
 - (14) POTW--Publicly owned treatment works.
 - (15) RCRA--Resource Conservation and Recovery Act.
 - (16) SIC--Standard industrial classification.
 - (17) SWDA--Solid Waste Disposal Act, 42 USC 6901 et seq.
 - (18) TKN—Total Kjeldahl Nitrogen.
 - (19) TLV-STEL--Threshold limit value - short term exposure limit.
 - (20) TLV-TWA--Threshold limit value - time weighted average.
 - (21) TSS--Total suspended solids.
 - (22) USC--United States Code.

Sec. 29-132. Abbreviations.

(23) WPF—Water Protection Facility. (Code 1969, § 23-76(C); Gen. Ord. No. 1005, § 1(23-76(C)), 8-17-92; G.O. 1742, 1-10-00; G.O. 2407, 10-18-10; G.O. 2735, 6-23-14)

Cross reference(s)--Definitions and rules of construction generally, § 1-2.

Sec. 29-133. Purpose and policy.

(a) The purpose of this division is to adopt uniform requirements for the use of the city sewers and sewage treatment facilities and to regulate the use of public and private sewers and drains, private sewage disposal, the installation and connection of building sewers, the discharge of waters and wastes into the public sewer system, the discharge of water and wastes into natural outlets and to provide penalties for violations thereof.

(b) This division also sets forth uniform requirements for direct and indirect contributors into the city wastewater collection system and WPF and thereby enable the city to comply with all applicable state and federal laws required by the Clean Water Act of 1977 and the general pretreatment regulations (40 CFR 403), and provides for penalties for violations thereof. The objectives of the general pretreatment regulations and of this division are to:

- (1) Prevent the introduction of pollutants into the municipal wastewater system which will interfere with the operation of the system or contaminate the resulting sludge;
- (2) Protect the general public and city personnel who may be affected by wastewater and sludge in the course of their employment;
- (3) Prevent the introduction of pollutants into the municipal wastewater system which will pass through the system, inadequately treated, into receiving waters or the atmosphere or otherwise be incompatible with the system;
- (4) Improve the opportunity to recycle and reclaim wastewaters and sludge from the system; and

- (5) Provide for equitable distribution of the cost of the municipal wastewater system.

(c) This division provides for the regulation of direct and indirect contributors to the municipal wastewater system through the issuance of permits, application of BMPs, and other control mechanisms to certain significant nondomestic users and through enforcement of general requirements for the other users, authorizes monitoring and enforcement activities, requires user reporting and assumes that existing customer's capacity will not be preempted. Fees for the equitable distribution of costs resulting from the program established in this division will be enumerated in Division 4 of this article.

(d) This division shall apply to persons within the territorial limits of the city and to persons outside the city who are, by contract or agreement with the city, users of the city treatment works. Except as otherwise provided in this division, the director shall administer, implement and enforce the provisions of this division.

(Code 1969, § 23-76(A); Gen. Ord. No. 1005, § 1(23-76(A)), 8-17-92; G.O. 1742, 1-10-00; G.O. 2735, 6-23-14)

Sec. 29-134. City's right of revision.

The city reserves the right to establish by ordinances more stringent or additional limitations or requirements on discharges to the city's treatment works if deemed necessary to comply with the objectives of this division.

(Gen. Ord. No. 1049, § 1(23-77(g)), 12-7-92; G.O. 1742, 1-10-00)

Sec. 29-135. State requirements.

State requirements as established by statute or the approval authority and limitations on discharges shall apply in any case where they are more stringent than federal requirements and limitations or those in this division.

(Gen. Ord. No. 1049, § 1(23-77(f)), 12-7-92; G.O. 1742, 1-10-00; G.O. 2735, 6-23-14)

Sec. 29-136. Additional requirements.

§29-374

No statements contained in this division shall be construed to interfere with any additional requirements that may be imposed by the director. (Gen. Ord. No. 767, § 1(23-77(n)), 3-5-90; G.O. 1742, 1-10-00)

Sec. 29-137. Connection to sewer.

The owner of each residential unit or any commercial or industrial establishment situated within the city, or sewer districts or users that are connected to the city's collection system, and having a city sanitary or combined sewer available through a service line operating by gravity, shall install at his/her expense suitable facilities for the conveying of all sanitary sewage and industrial wastes from the establishment into the city sewer within 90 calendar days after the date of official notice to do so. Sewer service line connections by means other than gravity flow are subject to requirement and approval by the director. Regardless of property size, the property owner must connect if a city sanitary sewer or combined sewer is within 200 feet of an existing structure and their septic tank system has failed and all new construction must connect. Sewer service lines cannot be extended along a right-of-way or easement beyond the limits of the property line without a permit from the director. The department of public works and transportation shall maintain administrative guidelines for the implementation of this section and shall keep them on file with the city clerk. Commercial and industrial waste may be discharged directly into the Missouri River, provided the owner of the establishment possesses a valid permit from the state department of natural resources specifically authorizing such discharge. (Gen. Ord. No. 1049, § 1(23-77(j)), 12-7-92; G.O. 1691, 4-5-99; G.O. 1742, 1-10-00; G.O. 2735, 6-23-14)

Sec. 29-138. Installation of building sewers.

(a) All costs and expense incident to the installation and connection of the building sewer shall be borne by the owner. The owner shall indemnify the city from any loss or damage that may directly or indirectly be occasioned by the installation of the building sewer.

(b) A separate and independent building sewer shall be provided for every building, except where one building stands at the rear of another on an interior lot and no private sewer is available or can be constructed to the rear building through an adjoining alley, courtyard or driveway, the building sewer from the front building may be extended to the rear building and the whole considered as one building sewer.

(c) Old building sewers may be used in connection with new buildings only when they are found, on examination and test by the director, to meet all requirements of this division.

(d) Whenever possible, the building sewer shall be brought to the building at an elevation below the basement floor. In all buildings in which any building drain is too low to permit gravity flow to the public sewer, sanitary sewage carried by such building drain shall be lifted by an approved means and discharged to the building sewer.

(Gen. Ord. No. 1049, § 1(23-77(o)), 12-7-92; G.O. 1742, 1-10-00)

Sec. 29-139. Damages to sewage works.

No person shall maliciously, willfully or negligently break, damage, destroy, uncover, deface or tamper with any structure, appurtenance or equipment which is part of the sewage works, including any external monitoring equipment installed by the city or at the city's direction.

(Gen. Ord. No. 1049, § 1(23-77(r)), 12-7-92; G.O. 1742, 1-10-00; G.O. 2735, 6-23-14)

Sec. 29-140. Reservation of rights.

The city reserves the right to enter into special agreements with industrial users setting out special terms under which they may discharge to the POTW. In no case will a special agreement waive compliance with a pretreatment standard or requirement established by this chapter or state or federal statute or regulation.

(Gen. Ord. No. 1049, § 1(23-77(s)), 12-7-92; G.O. 1742, 1-10-00; G.O. 2735, 6-23-14)

Sec. 29-141. Connection with property lying outside city limits.

(a) All connections of property outside the city limits directly into the sanitary sewer shall be made in accordance with the following provisions:

- (1) Persons owning property outside the city limits and desiring to connect to the sanitary sewer system of the city shall file an application with the department of public works and transportation. The application form shall clearly state that the user recognizes that he is subject to the city's sewer user ordinance and system of user charges.

- (2) Persons connecting to the sanitary sewer system shall pay such connection fees as may be established by the department of public works and transportation at the time the application is filed.
- (3) The department of public works and transportation shall establish regulations and guidelines for the connection to the sanitary sewer system. If the applicant meets the requirements of this chapter and the regulations and guidelines established by the department of public works and transportation, then the department of public works and transportation may grant the permit for connection to the sanitary sewer system.
- (4) All connections to the sanitary sewer system shall be made in accordance with the terms and provisions of this chapter and the plumbing code of the city and shall be made subject to the same permits, inspections, permit fees, inspection fees and all other items required for connections within the city.
- (b) All connections of property outside the city limits indirectly into the sanitary sewer system, such as through another public or private party, shall be made in accordance with the following provisions:
- (1) The person desiring the connection shall first obtain a sewer easement deeded to the city and extend the main to the property line.
 - (2) The party desiring to connect shall then make application to the department of public works and transportation in accordance with all applicable city codes, city standards and/or state and federal regulations related to obtaining a permit to connect with the sewage system of the city.
- (c) All fees and charges shall be paid before final approval is given for connection to the sanitary sewer system.
- (d) Nothing contained in this section shall be construed as prohibiting the city from entering into a contract, agreement, or license for connections to the sanitary sewer system.
- (e) The city reserves the right to cut off or disconnect any connection made under the provisions of this section in the event the charges or fees required by this section become delinquent or in the event of a violation of the provisions of this section or in the event that the superintendent of wastewater treatment determines that connections made under the provisions of this section are an unreasonable burden on the capacity and operation of the sanitary sewer system.
- (f) It is the intent of this section that property lying within the city shall be given first consideration for connections and use of the sanitary sewer system in all cases and at all times that the superintendent of wastewater treatment can determine the adequacy of the connection.
- (g) All connections into the sanitary sewer system of property located outside the city limits, whether made directly or indirectly, shall be made in accordance with the following provisions:
- (1) The owners of the land shall submit a petition for annexation of the land into the city;
 - (2) The parcel of property shall be developed and used in accordance with the plans for its land use adopted by the city council. If no plans for its land use have been adopted and approved at the time of the application for service, then the service shall not be permitted until plans have been adopted and approved; and
 - (3) Except as otherwise provided by the city council, the parcel of property shall be developed in accordance with city specifications and standards as though the property were within the city's limits.
- (G.O. 1935, 5-12-03)

Secs. 29-142--29-155. Reserved.

Subdivision II.. Discharge Rules

Sec. 29-156. General discharge prohibitions.

(a) *General prohibitions.* No user shall introduce or cause to be introduced into the POTW any pollutant or wastewater, which causes pass through or interference. These general prohibitions apply to all users of the POTW whether or not they are subject to categorical pretreatment standards or any other national, state or local pretreatment standards or requirements.

(b) *Specific prohibitions.* No user shall introduce or cause to be introduced into the POTW the following pollutants, substances or wastewater:

- (1) Pollutants which create a fire or explosive hazard in the POTW, including, but not limited to, waste streams with a closed-cup flashpoint of less than 140 degrees Fahrenheit (60 degrees Celsius) using the test methods specified in 40 CFR 261.21;
- (2) Wastewater having a pH less than 5.0 or more than 10.5, or otherwise causing corrosive structural damage to the POTW or equipment;
- (3) Wastewater, alone or materially in conjunction with other sources, which, after treatment at the WPF, causes the WPF's effluent to fail toxicity tests or violate NPDES permit limits.
- (4) Solid or viscous substances in amounts which will cause obstruction of the flow in the POTW resulting in interference but in no case solids greater than 1/2 inch in any dimension;
- (5) Pollutants, including oxygen-demanding pollutants (BOD, etc.), released in a discharge at a flow rate and/or pollutant concentration which, either singly or by interaction with other pollutants, will cause interference with the POTW.
- (6) Wastewater having a temperature greater than 150 degrees Fahrenheit (65.6 degrees Celsius), or which will inhibit biological activity at the POTW resulting in interference, but in no case wastewater which causes the temperature at the introduction into the POTW to exceed 104 degrees Fahrenheit (40 degrees Celsius).
- (7) Petroleum oil, nonbiodegradable cutting oil or products of mineral oil origin in amounts that will cause interference or pass through.
- (8) Pollutants which result in the presence of toxic gases, vapors or fumes within the POTW in a quantity that may cause acute worker health and safety problems.
- (9) Trucked or hauled pollutants, except at discharge points designated by the director in accordance with Section 29-167 of this chapter.
- (10) Noxious or malodorous liquids, gases, solids or other wastewater which, either singly or by interaction with other wastes, are sufficient to create a public nuisance or hazard to life or to prevent entry into the sewers for maintenance or repair.
- (11) Any substance which may cause the POTW's effluent or any other product of the POTW, such as residues, sludges or scums, to be unsuitable for reclamation and reuse or to interfere with the reclamation process. In no case, shall a substance discharged to the POTW cause the POTW to be in noncompliance with the sludge use or disposal criteria, guidelines or regulations developed under Section 405 of the act, any criteria, guidelines or regulations affecting sludge use or disposal developed pursuant to the Solid Waste Disposal Act, the Clean Air Act, the Toxic Substances Control Act or state criteria applicable to the sludge management method being used.
- (12) Wastewater which imparts color which cannot be removed by the treatment process such as, but not limited to, dye wastes and vegetable tanning solutions, which consequently impart color to the treatment plant's effluent, thereby violating the city's NPDES permit.
- (13) Wastewater containing any radioactive wastes or isotopes except in compliance with applicable state or federal regulations.
- (14) Wastes containing insoluble, nonflocculent substances having a specific gravity in excess of 2.65.

- (15) Sludges, screenings or other residues from the pretreatment of industrial wastes.
- (16) Medical wastes, except as specifically authorized by the director in a wastewater discharge permit.
- (17) Fats, oils, or greases of animal or vegetable origin in concentration greater than allowed by this article.
- (18) Detergents, surface-active agents or other substances which may cause excessive foaming in the POTW.
- (19) Pollutants, substances or wastewater prohibited by this section shall not be processed or stored in such a manner that they could be discharged to the POTW.
- (20) Materials which inhibit UV transmittance as measured at the WPF and impact the ability of the WPF treatment processes to achieve compliance with permit requirements.

(c) *Allowable discharges.* The following discharges shall be allowed unless specifically prohibited by the director: swimming pool drainage, condensate, deionized water, noncontact cooling water and unpolluted wastewater.
(Gen. Ord. No. 1049, § 1(23-77(a)), 12-7-92; G.O. 1742, 1-10-00; G.O. 2735, 6-23-14)

Sec. 29-157. Specific prohibitive discharge limitations.

(a) The pollutant limits listed below are applicable to discharge from industrial users and are established to protect the POTW facilities from interference and pass through. No contributory industrial user shall discharge wastewater containing in excess of the following:

Maximum Permissible Concentration
(in milligrams per liter (mg/l))

<u>Pollutant</u>	<u>mg/l</u>
Arsenic (As)	0.62
Cadmium (Cd)	0.07

Chromium (Cr)	4.57
Copper (Cu)	1.64
Cyanide (CN)	0.38
Mercury (Hg)	0.14
Molybdenum (Mo)	0.45
Lead (Pb)	0.53
Nickel (Ni)	0.99
Selenium (Se)	0.75
Silver (Ag)	1.75
Sulfide	0.50
Zinc (Zn)	3.00
PH	5.0 - 10.5

The above local limits are based on total metal concentrations and apply only to those industries identified by the city as contributing to the pollutant load. In accordance with the requirements of this chapter, equivalent mass-based limits may be applied in place of the limits stated above.

Maximum Permissible Concentration
(in milligrams per liter (mg/l))

<u>Pollutant</u>	<u>mg/l</u>
BOD	1,000
TSS	1,200
Ammonia	100
FOG	200

No industrial user shall discharge wastewater containing in excess of the pollutant amounts specified above or local limits established by the director pursuant to 40 CFR 403.5(c) and/or this chapter.

(b) *Organic pollutants.* At the discretion of the director, the city may establish organic pollutant discharge limits for industrial users. Industrial users identified for organic pollutant discharge limits may be required to submit an organic compounds control plan containing such information as required by the director, including but not limited to, Henry's Law Constant, the Lower Explosive Limit (LEL), Worker Health and Safety Criteria such as TLV-TWA, TLV-STEL and IDLH for the specific regulated pollutant(s) of concern as established by the director. The director will use this information to determine an explosivity limit and a worker health and safety limit as follows:

- (1) Explosivity Limit = Lower Explosive Limit/Henry's Law Constant.

- (2) Worker Health and Safety Limit = Worker Health And Safety Criteria/Henry's Law Constant.
- (3) The Explosivity and Worker Health and Safety Limit will be considered along with other environmental criteria such as Allowable Headwork's Loading and/or Maximum Allowable Headwork's Loading for a specific POTW in the establishment of organic pollutant discharge limits for industrial users.

(c) *Peak limits.* The director shall have the authority to (1) establish peak hourly and peak minute limits for conventional pollutants based on site specific conditions and (2) establish site-specific concentration and loading requirements for conventional pollutants

(d) *Best management practices plan (BMPP).* The BMPP may be required at the discretion of the director as a form of compliance of this section.

(Gen. Ord. No. 1049, § 1(23-77(b)), 12-7-92; G.O. 1742, 1-10-00; G.O. 2735, 6-23-14)

Sec. 29-158. Pretreatment.

(a) Users shall provide necessary wastewater treatment or flow equalization facilities as required to comply with this division and other requirements imposed by the director and shall achieve compliance with all pretreatment standards within the time limitations as specified by the applicable pretreatment regulations. Any facilities required to pretreat wastewater to a level acceptable to the city shall be provided, operated and maintained at the user's expense. Detailed plans showing the pretreatment facilities and operating procedures shall be submitted to the city for review and shall be acceptable to the city before construction of the facility. The review of such plans and operating procedures will in no way relieve the user from the responsibility of modifying the facility as necessary to produce an effluent acceptable to the city under the provisions of this division. Any subsequent changes in the pretreatment facilities or method of operation shall be reported to and be acceptable to the city prior to the user's initiation of the changes.

(b) If sampling performed by an industrial user indicates a violation, the industrial user must notify the control authority within 24 hours of

becoming aware of the violation. The industrial user shall also repeat the sampling and analysis and submit the results of the repeat analysis to the control authority within 30 calendar days after becoming aware of the violation. The industrial user is not required to resample if the POTW performs monitoring at the industrial user's at least once a month, or if the POTW performs sampling between the industrial user's initial sampling and when the industrial user receives the results of this sampling.

(c) The city shall publish annually, in the largest daily newspaper published in the municipality where the POTW is located, a list of the industrial users which, during the previous 12 months, were in significant noncompliance with applicable, pretreatment standards and requirements. The term "significant noncompliance" means:

- (1) Chronic violations of wastewater discharge limits, defined as those in which 66 percent or more of wastewater measurements taken during a six-month period exceed the numeric pretreatment standard or requirement, including instantaneous limits as defined in Sections 29-157 and 29-159 of the code for the same pollutant parameter by any amount;
- (2) Technical Review Criteria (TRC) violations, defined as those in which 33 percent or more of wastewater measurements taken for each pollutant parameter during a six-month period equals or exceeds the product of the numeric pretreatment standard or requirement, including instantaneous limits as defined in Sections 29-157 and 29-159 of the code multiplied by the applicable criteria (1.4 for BOD, TSS, fats, oils and grease, and 1.2 for all other pollutants except pH);
- (3) Any other discharge violation of a pretreatment standard or requirement as defined by Sections 29-157 and 29-159 of the code that the city believes has caused, alone or in combination with other discharges, interference or pass through, including endangering the health of city personnel or the general public;
- (4) Any discharge of pollutants that has caused imminent endangerment to the

public or to the environment, or has resulted in the city's exercise of its emergency authority to halt or prevent such a discharge;

- (5) Failure to meet, within 90 calendar days of the scheduled date, a compliance schedule milestone contained in a wastewater discharge permit or enforcement order for starting construction, completing construction or attaining final compliance;
 - (6) Failure to provide within 30 calendar days after the due date, any required reports, including baseline monitoring reports, 90-day compliance reports, periodic self-monitoring reports and reports on compliance with compliance schedules;
 - (7) Failure to accurately report noncompliance; or
 - (8) Any other violation that the city determines will adversely affect the operation or implementation of the local pretreatment program.
- (d) Notification of the discharge of hazardous waste.

- (1) Any industrial user who commences the discharge of hazardous waste shall notify the POTW, the EPA Regional Waste Management Division Director and state hazardous waste authorities in writing of any discharge into the POTW of a substance which, if otherwise disposed of, would be a hazardous waste under 40 CFR 261. Such notification must include the name of the hazardous waste as set forth in 40 CFR 261, the EPA hazardous waste number and the type of discharge (continuous, bath or other). If the industrial user discharges more than ten kilograms of such waste per calendar month to the POTW, the notification shall also contain the following information to the extent such information is known and readily available to the industrial user: an identification of the hazardous constituents contained in the wastes, an estimation of the mass and concentration of such constituents in the wastestream discharged during the calendar month and an estimate of the mass of constituents in the

wastestream expected to be discharged during the following 12 months. All notifications must take place no later than 180 calendar days after the discharge commences. Any notification under this subsection need be submitted only once for each hazardous waste discharged. However, notifications of changed discharges must be submitted as provided in this section. The notification requirement in this section does not apply to pollutants already reported under the self-monitoring requirements of this chapter.

- (2) Discharges are exempt from the requirements of Subsection (d)(1) of this section during a calendar month in which they discharge no more than 15 kilograms of hazardous wastes, unless the wastes are acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e). Discharge of more than 15 kilograms of nonacute hazardous wastes in a calendar month, or of any quantity of acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e), requires a one-time notification.
 - (3) Subsequent months during which the industrial user discharges more than such quantities of any hazardous waste do not require additional notification.
 - (4) In the case of any new regulations under section 3001 of RCRA identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, the industrial user must notify the POTW, the EPA Regional Waste Management Waste Division Director and state hazardous waste authorities of the discharge of such substance within 90 calendar days of the effective date of such regulations.
 - (5) In the case of any notification made under this section, the industrial user shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.
- (Gen. Ord. No. 1049, § 1(23-77(c)), 12-7-92; G.O. 1742, 1-10-00; G.O. 2407, 10-18-10; G.O. 2735, 6-23-14)

Sec. 29-159. National categorical pretreatment standards; local limits.

(a) *Adopted.* The categorical pretreatment standards found at 40 CFR Chapter I, Subchapter N, Parts 405-471 are hereby incorporated, as though fully set out herein.

(b) *Limits.* All users shall comply with flow limits and pollutant discharge limits stated in wastewater discharge permits issued to them.

(c) *Mass and concentration conversion – when allowed.* The city may convert the limits of the categorical pretreatment standards at 40 CFR parts 414, 419, and 455 from mass limits to concentration limits, or from concentration limits to mass limits, for purposes of calculating limitations applicable to individual users only when, in converting such limits, the city uses the concentrations listed in the applicable subparts of 40 CFR parts 414, 419, and 455 and documents that dilution is not being substituted for treatment.

(d) *Mass and concentration conversion - method.* Pollutant discharge limits in categorical pretreatment standards may be expressed either as concentration or mass limits. Where concentration limits are specified, the city may, in its discretion, provide equivalent mass limits and where mass limits are specified, the city may, in its discretion, provide equivalent concentration limits. When such equivalent limits are provided, local, state or federal authorities responsible for enforcement may use either concentration or mass limits as a basis for enforcement. Limits in the categorical pretreatment standards shall apply to the effluent of the process regulated by the standard, or as otherwise specified by the standard.

(1) *Calculation method – concentration-to-mass.* Equivalent mass limitations that are calculated based upon concentration limits shall be calculated by multiplying the applicable mass limit by the individual user's average rate of production. This average rate of production shall be based upon a reasonable measure of the user's actual long-term daily production (such as the average daily production during a representative year) rather than the user's designed production capacity. For new sources provided by a user, actual production shall be estimated using projected production.

(2) *Calculation method – mass-to-concentration.* Equivalent concentration limitations that are calculated based upon mass limitations shall be calculated by dividing the applicable mass limitations by the individual user's average daily flow rate of regulated process wastewater. This average daily flow rate shall be based upon a reasonable measure of the user's actual long-term average flow rate (such as the average daily flow rate during the representative year).

(e) *User-requested conversions.* When categorical pretreatment standard limits are expressed only in terms of pollutant concentrations, a user may request that the city convert the limits to equivalent mass limits. The determination to convert concentration limits to mass limits is within the discretion of the city; however, the city may establish equivalent mass limits upon the user's request only if the user:

- (1) Employs, or demonstrate that it will employ, water conservation methods and technologies that substantially reduce or otherwise limit water use during the term of any applicable control mechanism;
- (2) Currently uses control and treatment technologies adequate to achieve compliance with the applicable categorical pretreatment standard, and has not used dilution as a substitute for treatment;
- (3) Provides sufficient information to establish the user's actual average daily flow rate for all wastestreams, based on data from a continuous effluent flow monitoring device, as well as the facility's long-term average production rate. Both the actual average daily flow rate and long-term average production rate must be representative of then-current operating conditions;
- (4) Not have daily flow rates, production levels, or pollutant levels that vary so significantly that equivalent mass limits are not appropriate to control the discharge; and
- (5) Have consistently complied with all applicable categorical pretreatment standards during the period prior to the user's request for equivalent mass limits.

(f) *Equivalent mass limit requirements.* A user subject to equivalent mass limits which have been converted from concentration limits must:

- (1) Maintain and effectively operate control and treatment technologies adequate to achieve compliance with the equivalent mass limits;
- (2) Record the facility's flow rates through the use of a continuous effluent flow monitoring device;
- (3) Record the facility's production rates and notify the City whenever production rates are expected to vary by more than 20 percent from baseline production rates. Upon notification of a revised production rate, the City may reassess the equivalent mass limit and revise the limit as necessary to reflect changed conditions at the facility; and
- (4) Continue to employ the same or comparable water conservation methods and technologies so long as it discharges under an equivalent mass limit.

(g) *Conversion exceptions.* Notwithstanding any other provision of this section, limits for pollutants which cannot appropriately be expressed as mass, including, but not limited to pH, temperature, and radiation must be limited in terms of concentration and may not be limited in terms of mass.

(h) *Compliance with conversions.* Conversions of mass and concentration are deemed pretreatment standards pursuant to this code. The city will document how conversions were derived. Once incorporated into a user's permit or other control mechanism, the user must comply with the equivalent limitations in lieu of the promulgated categorical standards from which the equivalent limitations were derived.

(i) *Maximum discharge.* When categorical pretreatment standards specify one limit for calculating maximum daily discharge limitations and a second limit for calculating maximum monthly average or 4-day average limitations, the same production or flow figure shall be used in calculating both the daily discharge and the average.

(j) *Significant changes.* Any user operating under a control mechanism incorporating

equivalent mass or concentration limits calculated from a production-based standard shall notify the city within two (2) business days after the user has a reasonable basis to know that the production level will significantly change within the next calendar month. Any user not notifying the city of such anticipated change will be required to meet the mass or concentration limits in its control mechanism that were based on the original estimate of the long term average production rate.

(k) *Variances.* A user may obtain a variance from a categorical pretreatment standard if the user can prove, pursuant to the procedural and substantive provisions in 40 CFR 403.13, that factors relating to its discharge are fundamentally different from the factors considered by EPA when developing the categorical pretreatment standard.

(l) *Net gross adjustments.* A user may obtain a net gross adjustment to a categorical standard in accordance with 40 CFR 403.15. (Gen. Ord. No. 1049, § 1(23-77(h)), 12-7-92; G.O. 1742, 1-10-00; G.O. 2735, 6-23-14)

Sec. 29-160. Excessive discharge; dilution prohibited.

(a) Dilution prohibited. Except as specifically allowed in this section, no user shall ever increase the use of process water or, in any way, attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with the limitations contained in any pretreatment standards or in any other specific pollutant limitations developed by the city or state unless prior approval is received from the director.

(b) Exception; pH. Dilution may be an acceptable means of complying with the pH prohibition when a variance request is submitted to the city and approved by the director. (Gen. Ord. No. 1049, § 1(23-77(h)), 12-7-92; G.O. 1742, 1-10-00; G.O. 2735, 6-23-14)

Sec. 29-161. Accidental discharges.

(a) Each user shall provide protection from accidental discharge of prohibited materials or other substances regulated by pretreatment standards or this division. Facilities to prevent accidental discharge of prohibited materials shall be provided and maintained at the owner's or user's own cost and expense. Detailed plans

showing facilities and operating procedures to provide this protection shall be submitted to the city for review and shall be approved by the city before construction of the facility. All existing users shall complete such a plan within 120 calendar days from the effective date of this division. All users shall complete this plan prior to issuance of the wastewater discharge permit.

(b) No user who commences contribution to the POTW after the effective date of the ordinance from which this division is derived shall be permitted to introduce pollutants into the system until accidental discharge procedures have been approved by the city. Review and approval of such plans and operating procedures shall not relieve the industrial user from the responsibility to modify the user's facility as necessary to meet the requirements of this division.

(c) For an accidental discharge, it is the responsibility of the user to immediately telephone and notify the POTW of the incident. The notification shall include location of discharge, type of waste, concentration and volume and corrective actions.

(d) Within five working days following an accidental discharge, the user shall submit to the director a detailed written report describing the cause of the discharge and the measure to be taken by the user to prevent similar future occurrences. Such notification shall not relieve the user of any expense, loss, damage or other liability which may be incurred as a result of damage to the POTW, fish kills or any other damage to person or property, nor shall such notification relieve the user of any fines, civil penalties or other liability which may be imposed by this division or other applicable law.

(e) A notice shall be permanently posted on the user's bulletin board or other prominent place advising employees whom to call if a dangerous discharge occurs. Employers shall ensure that all employees who may cause or suffer such a dangerous discharge to occur are advised of the emergency notification procedure.

(f) *Accidental discharge/slug control plans.* At least once every two years, the director shall evaluate whether each significant industrial user needs an accidental discharge/slug control plan. The director may require any user to develop, submit for approval and implement such a plan, failure to comply will constitute a violation of this

section. The director shall review and approve or require additional information within 45 working days of receipt. An accidental discharge/slug control plan shall address, at a minimum, the following:

- (1) Description of discharge practices, including nonroutine batch discharges.
- (2) Description of stored chemicals.
- (3) Procedures for immediately notifying the director of any accidental or slug discharge.
- (4) Procedures to prevent adverse impact from any accidental or slug discharge. Such procedures include, but are not limited to, inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site runoff, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants, including solvents and/or measures and equipment for emergency response.

(Gen. Ord. No. 1049, § 1(23-77(j)), 12-7-92; G.O. 1742, 1-10-00; G.O. 2720, 3-3-14)

Sec. 29-162. Disposal of untreated sewage.

It shall be unlawful to discharge to any separated system storm sewer, natural outlet or other waters of the state within the city or in any area under the jurisdiction of the city any sewage, industrial wastes or other polluted waters, except where suitable treatment, subject to the approval of the director, has been provided and provided that the owner possesses a valid permit from the state department of natural resources specifically authorizing such discharge.

(Gen. Ord. No. 1049, § 1(23-77(k)), 12-7-92; G.O. 1742, 1-10-00; G.O. 2735, 6-23-14)

Sec. 29-163. Storage of dangerous materials.

The storage of any material in sewered areas or in areas draining into a city sewer, natural outlet or any other waters of the state of Missouri as defined herein, which, because of discharge or leakage from such storage, may create an explosion hazard in sewage works or in any other way have a deleterious effect upon these works, treatment processes or which constitutes a hazard to human beings or animals or the receiving

§29-374

stream shall be subject to review by the director who, at his discretion, may require reasonable safeguards against leakage of such materials into the sewers.

(Gen. Ord. No. 1049, § 1(23-77(l)), 12-7-92; G.O. 1742, 1-10-00; G.O. 2407, 10-18-10; G.O. 2735, 6-23-14)

Sec. 29-164. Private sewage disposal facilities.

The owner of any private sewage disposal facility shall operate and maintain the private sewage disposal facility in a sanitary manner at all times, at no expense to the city.

(Gen. Ord. No. 1049, § 1(23-77(m)), 12-7-92; G.O. 1742, 1-10-00)

Sec. 29-165. Disposal of uncontaminated waste.

No person shall discharge or cause to be discharged any stormwater, surface water, groundwater, roof runoff, subsurface drainage, including interior and exterior foundation drains, uncontaminated cooling water or unpolluted industrial process waters to any sanitary sewer or to a natural outlet without a permit or other authorization from the director. The discharge into any storm sewer or to a natural outlet of any

waters which may have a deleterious effect upon the receiving stream is prohibited.

(Gen. Ord. No. 1049, § 1(23-77(p)), 12-7-92; G.O. 1742, 1-10-00; G.O. 2735, 6-23-14)

Sec. 29-166. Grease, oil and grit interceptors.

(a) Suitable interceptors shall be installed by the user when, in the opinion of the director, they are necessary for the removal of excessive amounts of grease, oils and grit from a waste before such waste is discharged into the city sewer. All interceptors shall be of a type, construction and capacity approved by the director and shall be located to be readily and easily accessible for cleaning and inspection.

(b) When required, such interceptors shall be installed and maintained continuously in efficient operation by the owner at his expense.

(c) Intercepted material shall be returned to the industrial process, sent to an approved landfill or disposed of in other approved manner.

(d) Nothing in this section shall be interpreted as limiting the obligations of a FOG user under other provisions of this chapter.

(Gen. Ord. No. 1049, § 1(23-77(q)), 12-7-92; G.O. 1742, 1-10-00; G.O. 2670, 2-4-13)

Sec. 29-167. Hauled wastewater.

(a) Septic tank waste may be introduced into the city's POTW only at locations designated by the director and at such times as are established by the director. Such waste shall not violate Sections 29-156 and 29-157 of this article or any other requirements established by the city. The director may require septic tank waste haulers to obtain wastewater discharge permits.

(b) The director shall require haulers of industrial waste to obtain wastewater discharge permits. The director may require generators of hauled industrial waste to obtain wastewater discharge permits. The director also may prohibit the disposal of hauled industrial waste. The discharge of hauled industrial waste is subject to all other requirements of this article.

(c) Industrial waste haulers may discharge loads only at locations designated by the director. No load may be discharged without prior consent of the director. The director may collect samples of any hauled load to ensure compliance with applicable standards and to properly charge the hauler or the generator of the wastewater. The director may also require the industrial waste hauler to provide a waste analysis of any load prior to discharge and to properly charge the hauler or the generator of the wastewater.

(d) Industrial waste haulers must provide a waste-tracking form for every load. This form shall include, at a minimum, the name and address of the industrial waste hauler, permit number, truck identification, names and addresses of sources of waste and volume and characteristics of waste. The form shall identify the type of industry, known or suspected waste constituents and whether any wastes are RCRA hazardous wastes.

(e) If user charges for hauled wastewater are not paid upon notification that they are owed, the director may deny the hauler of the hauled

wastewater the right to discharge into the city's POTW until all charges are paid. Such denial may extend to any other haulers employed by the same hauling entity or affiliated entities.

(G.O. 1742, 1-10-00; G.O. 2709, 10-28-13)

Sec. 29-168. Application signatories and certification.

All wastewater discharge permit applications and user reports must be signed by an authorized representative of the user and contain the following certification statement:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

(G.O. 1742, 1-10-00)

Sec. 29-169. The city's right of revision.

The city reserves the right to establish, by ordinance or in wastewater discharge permits, more stringent standards or requirements on discharges to the POTW.

(G.O. 1742, 1-10-00)

Sec. 29-170. Dilution.

No user shall ever increase the use of process water, or in any way attempt to dilute a discharge, as partial or complete substitute for adequate treatment to achieve compliance with a discharge limitation unless expressly authorized by an applicable pretreatment standard or requirement. The director may impose mass limitations on users who are using dilution to meet applicable pretreatment standards or requirements, or in other cases when the imposition of mass limitations is appropriate.

(G.O. 1742, 1-10-00)

Sec. 29-171. Additional pretreatment measures.

(a) Whenever deemed necessary, the director may require users to restrict their discharge during peak flow periods, designate that certain wastewater be discharged only into specific sewers, relocate and/or consolidate points of discharge, separate sewage wastestreams from industrial wastestreams and such other conditions as may be necessary to protect the POTW and determine the user's compliance with the requirements of this article.

(b) The director may require any person discharging into the POTW to install and maintain, on their property and at their expense, a suitable storage and flow control facility to ensure equalization of flow. A wastewater discharge permit may be issued solely for flow equalization.

(c) Users with the potential to discharge flammable substances may be required to install and maintain an approved combustible gas detection meter.

(G.O. 1742, 1-10-00)

Secs. 29-172--29-185. Reserved.

Subdivision III. Wastewater Contribution Permits

Sec. 29-186. Required.

(a) It shall be unlawful to discharge without a permit, to any natural outlet within the city or in any area under the jurisdiction of the city or to the POTW, any wastewater except as authorized by the director in accordance with the provisions of this division.

(b) All significant industrial users proposing to connect or contribute to the POTW shall obtain a wastewater discharge permit before connecting to or contributing to the POTW. All existing significant industrial users connected to or contributing to the POTW shall submit a properly completed and approved wastewater discharge permit application, including a compliance schedule, within 30 calendar days after the effective date of this division, and the director shall issue a wastewater discharge permit within 120 calendar days after the effective date of this division unless the user applies for a limitation

§29-374

variance hearing, in which case the variance procedure shall govern.

(Gen. Ord. No. 1007, § 1(23-78(a), (b)(1)), 8-17-92; G.O. 1742, 1-10-00; G.O. 2720, 3-3-14)

Sec. 29-187. Permit application and issuance.

(a) The user required to obtain a wastewater discharge permit shall complete and file, with the city, an application in the form prescribed by the city. Existing users required to obtain a wastewater discharge permit shall submit a complete application for the permit to the director within 30 calendar days after the effective date of this division. Existing users with proposed expansion, addition of new product line or change in process shall apply for a new wastewater discharge permit at the same time a building permit is requested. All new users shall apply for a wastewater discharge permit at the same time a building permit is requested. In support of the application, the user shall submit, in units and terms appropriate for evaluation, the following information:

- (1) Name, address and location, if different from the address.
- (2) SIC number according to the Standard Industrial Classification Manual, Bureau of the Budget, 1987, as amended.
- (3) Wastewater constituents and characteristics, including but not limited to those mentioned in subdivision II of this division as determined by a reliable analytical laboratory. Sampling and analysis shall be performed in accordance with procedures established by the EPA pursuant to section 304(g) of the act and contained in 40 CFR 136.
- (4) Time and duration of contribution.
- (5) Average daily and 15-minute peak wastewater flow rates, including daily, monthly and seasonal variations if any.
- (6) Site plans, floor plans, mechanical and plumbing plans and details to show all sewers, sewer connections and appurtenances by the size, location and elevation.
- (7) Description of activities, facilities and plant processes on the premises, including all materials which are or could be discharged.
- (8) Where known, the nature and concentration of any pollutants in the

discharge which are limited by the city or state or federal pretreatment standards and a statement regarding whether or not the pretreatment standards are being met on a consistent basis and, if not, whether alternative manufacturing, processing, housekeeping procedures, operation and maintenance, or additional pretreatment is required for the user to meet applicable pretreatment standards.

- (9) If additional pretreatment or additional or alternative manufacturing, processing, housekeeping procedures or operation and maintenance procedures will be required to meet pretreatment standards, the user will provide the shortest schedule for compliance. The completion date in this schedule must be approved by the director and shall not be later than the compliance date established by any applicable national categorical pretreatment standard. The conditions contained in Section 29-193 shall apply to this schedule.
- (10) Each product produced by type, amount, process and rate of production.
- (11) Type and amount of raw materials processed (average and maximum per day).
- (12) Number and type of employees and hours of operation of the plant and proposed or actual hours of operation of the pretreatment system.
- (13) Any other information as may be deemed by the city to be necessary to evaluate the permit application.

(b) The director will evaluate the data furnished by the user and may require additional information. Within 45 calendar days of receipt of a complete wastewater discharge permit application, the director will determine whether or not to issue a wastewater discharge permit. The director may deny any application for a wastewater discharge permit.

(c) Each user must notify the director of any planned significant changes to the user's operations or system which might alter the nature, quality or volume of its wastewater at least 30 calendar days before the change. All significant

industrial users, as defined herein, shall notify the director immediately of any changes at its facility affecting the potential for slug discharge. The director may require the user to submit such information as may be deemed necessary to evaluate the change condition, including the submission of a wastewater discharge permit application as specified in this subsection. For purposes of this requirement, significant changes include, but are not limited to, flow increases of 20% or greater and the discharge or any previously unreported pollutants.

(d) *Wastewater discharge permit contents.* A wastewater discharge permit shall include such conditions as are deemed reasonably necessary by the director to prevent pass through or interference, protect the quality of the water body receiving the treatment plant's effluent, protect worker health and safety, facilitate sludge management and disposal and protect against damage to the POTW.

(1) Wastewater discharge permits must contain:

- a. A statement that indicates wastewater discharge permit duration, which in no event shall exceed more than five years.
- b. A statement that the wastewater discharge permit is nontransferable without prior notification to the city in accordance with Section 29-191 of this article, and provisions for furnishing the new owner or operator with a copy of the existing wastewater discharge permit.
- c. Effluent limits, including best management practices, based on applicable pretreatment standards.
- d. Self-monitoring sampling, reporting, notification and record keeping requirements. These requirements shall include an identification of pollutants to be monitored, sampling location, sampling frequency and sample type based on federal, state and local law.
- e. A statement of applicable civil and criminal penalties for violation of pretreatment standards and requirements and any applicable compliance schedule. Such schedule may not extend the time for

compliance beyond that required by applicable federal, state or local law.

- f. Requirement for prior notification to the city by any industrial user connected to the POTW of any new introduction of wastewater constituents or any substantial change in the volume or character of the wastewater constituents being introduced into the wastewater treatment system.
 - g. Requirement of any industrial user to control slug discharge, if determined by the director to be necessary.
- (2) Wastewater discharge permits may contain, but need not be limited to, the following conditions:
- a. Limits on the average and/or maximum rate of discharge, time of discharge and/or requirements for flow regulation and equalization.
 - b. Requirements for the installation of pretreatment technology, pollution control or construction of appropriate containment devices designed to reduce, eliminate or prevent the introduction of pollutants into the POTW.
 - c. Requirements for the development and implementation of spill control plans or other special conditions including management practices necessary to adequately prevent accidental, unanticipated or nonroutine discharges.
 - d. Development and implementation of waste minimization plans to reduce the amount of pollutants discharged to the POTW.
 - e. The unit charge, limitation variance charge or a schedule of user charges and fees for the management of the wastewater discharged to the POTW.
 - f. Requirements for installation and maintenance of inspection and sampling facilities and equipment.
 - g. A statement that compliance with the wastewater discharge permit does not relieve the permittee of responsibility for compliance with all applicable federal and state pretreatment standards, including those which become effective during the term of the wastewater discharge permit.

- h. Other conditions as deemed appropriate by the director to ensure compliance with this article and state and federal laws, rules and regulations.
- (3) The director may require, as deemed necessary, an industrial user to install continuous pH monitoring devices or other monitoring devices; if required, this will be included in the wastewater discharge permits.
- (e) *Wastewater discharge permit appeals.*
Any person, including the user, may petition the director to reconsider the terms of a wastewater discharge permit within 15 working days of notice of its issuance.
 - (1) Failure to submit a timely petition for review shall be deemed a waiver of the administrative appeal.
 - (2) In its petition, the appealing party must indicate the wastewater discharge permit provisions objected to, the reasons for this objection and the alternative condition, if any, it seeks to place in the wastewater discharge permit.
 - (3) The effectiveness of the wastewater discharge permit shall not be stayed pending the appeal.
 - (4) The director shall respond within 15 working days of all wastewater permit appeals. Decisions not to reconsider a wastewater discharge permit, not to issue a wastewater discharge permit or not to modify a wastewater discharge permit shall be considered final administrative actions for purposes of judicial review.
 - (5) Aggrieved parties seeking judicial review of the final administrative wastewater discharge permit decision must do so by filing a complaint with the circuit court of Buchanan County, Missouri.
- (f) *Wastewater discharge permit modification.*
The director may modify a wastewater discharge permit for good cause, including, but not limited to, the following reasons:

- (1) To incorporate any new or revised federal, state or local pretreatment standards or requirements;
- (2) To address significant alterations or additions to the user's operation, processes or wastewater volume or character since the time of wastewater discharge permit issuance;
- (3) A change in the POTW that requires either a temporary or permanent reduction or elimination of the authorized discharge;
- (4) Information indicating that the permitted discharge poses a threat to the POTW, city personnel or the receiving waters;
- (5) Violation of any terms or conditions of the wastewater discharge permit;
- (6) Misrepresentations or failure to fully disclose all relevant facts in the wastewater discharge permit application or in any required reporting;
- (7) Revision of or a grant of variance from categorical pretreatment standards pursuant to 40 CFR 403.13;
- (8) To correct typographical or other errors in the wastewater discharge permit; or
- (9) To reflect a transfer of the facility ownership or operation to a new owner or operator.
- (g) *Wastewater discharge permit revocation.*
The director may revoke a wastewater discharge permit for good cause, including, but not limited to, the following reasons:
 - (1) Failure to notify the director of significant changes to the wastewater before the changed discharge;
 - (2) Misrepresentation or failure to fully disclose all relevant facts in the wastewater permit application
 - (3) Falsifying self-monitoring reports;
 - (4) Tampering with monitoring equipment;

- (5) Refusing to allow the director timely access to the facility premises and records;
- (6) Failure to meet effluent limitations;
- (7) Failure to pay fines;
- (8) Failure to pay sewer charges;
- (9) Failure to meet compliance schedules;
- (10) Failure to complete a wastewater survey or the wastewater discharge permit application;
- (11) Failure to provide advance notice of the transfer of business ownership of a permitted facility;
- (12) Violation of any pretreatment standard or requirement, any terms of the wastewater discharge permit or this article.
- (13) Failure to provide prior notification to the director of changed conditions.

(h) *Denial for Outstanding Fees and Penalties.* A wastewater discharge permit application may be denied to any user who has failed to pay any outstanding fees, fines or penalties incurred as a result of any provision of this ordinance, a previous individual wastewater discharge permit, or an order issued hereunder.

(i) Any permit titled or described as a wastewater contribution permit, significant industrial user permit or other permit issued substantially in compliance with the requirements of this section prior to March 4, 2014 shall be deemed to be a wastewater discharge permit.

Wastewater discharge permits shall be voidable upon cessation of operation or transfer of business ownership. All wastewater discharge permits issued to a particular user are void upon the issuance of a new wastewater discharge permit to that user.

(Gen. Ord. No. 1007, § 1(23-78(b)(2) & (5)), 8-17-92; G.O. 1742, 1-10-00; G.O. 2407, 10-18-10; G.O. 2720, 3-3-14; G.O. 2735, 6-23-14)

Sec. 29-188. Baseline monitoring reports.

(a) Within either 180 calendar days after the effective date of a categorical pretreatment standard or the final administrative decision on a

category determination under 40 CFR 403.6(a)(4), whichever is later, existing categorical users currently discharging to or scheduled to discharge to the POTW shall submit to the director a report which contains the information listed in Subsection (b) below. At least 90 calendar days prior to commencement of their discharge, new sources and sources that become categorical users subsequent to the promulgation of an applicable categorical standard, shall submit to the director a report which contains the information listed in Subsection (b) below. A new source shall report the method of pretreatment it intends to use to meet applicable categorical standards and shall give estimates of its anticipated flow and quantity of pollutants to be discharged.

(b) Users described above shall submit the following information:

- (1) *Identifying information.* The name and address of the facility, including the name of the operator and owner.
- (2) *Environmental permits.* A list of any environmental control permits held by or for the facility.
- (3) *Description of operations.* A brief description of the nature, average rate of production and standard industrial classifications of the operation(s) carried out by such user. This description should include a schematic process diagram, which indicates points of discharge to the POTW from the regulated processes.
- (4) *Flow measurement.* Information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from regulated process streams and other streams as necessary to allow use of the combined waste stream formula set out in 40 CFR 403.6(e).
- (5) *Measurement of pollutants.*
 - a. The categorical pretreatment standards applicable to each regulated process.
 - b. The results of sampling and analysis identifying the nature and concentration, and/or mass, where

required by the standard or by the director, of regulated pollutants in the discharge from each regulated process. Instantaneous, daily maximum and long-term average concentration, or mass, where required, shall be reported. The sample shall be representative of daily operations and shall be analyzed in accordance with procedures set out in Section 29-192 of this article.

- c. Sampling must be performed in accordance with procedures set out in Section 29-192 of this article.
- (6) *Certification.* A statement, reviewed by the user's authorized representative and certified by a qualified professional, indicating whether pretreatment standards are being met on a consistent basis, and if not, whether additional operation and maintenance (O&M) and/or additional pretreatment is required to meet the pretreatment standards and requirements.
- (7) *Compliance schedule.* If additional pretreatment and/or O&M will be required to meet the pretreatment standards, the shortest schedule by which the user will provide such additional pretreatment and/or O&M. The completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standard. A compliance schedule pursuant to this section must meet the requirements set out in Section 29-218 of this article.
- (8) *Signature and certification.* All baseline monitoring reports must be signed and certified in accordance with Section 29-168 of this article.
- (Gen. Ord. No. 1007, § 1(23-78(b)(4)), 8-17-92; G.O. 1742, 1-10-00; G.O. 2407, 10-18-10)

Sec. 29-189. Limitation variance procedure.

(a) *Generally.* No user of the city's treatment works shall discharge prohibitive pollutants in excess of the limitations set forth in Sections 29-156 and 29-157, unless the user has a limitation variance issued by the director. Existing users

shall apply for a limitation variance within 30 calendar days after the effective date of this division.

(b) *Step 1.* The user's application for a limitation variance hearing must accompany the application for a wastewater discharge permit and must have a notarized signature of an authorized representative of the user. In addition to the information required in support of the wastewater discharge permit application, the following information must accompany the application for a limitation variance:

- (1) General overall description of the user's efforts to meet the prohibitive standards set forth in this division.
- (2) Specific reasons why the user should be allowed to discharge pollutants in excess of the limits set forth in this division.
- (3) General overall process and manufacturing description.

(c) *Step 2.* Within ten working days of receiving the application for limitation variance, the director will notify the user of a hearing date.

(d) *Step 3.* All data for the director's review and consideration must be submitted ten working days prior to the hearing and must include:

- (1) Data which supports the request for a limitation variance.
- (2) A clear and concise statement which specifically states how the data supports the user's request for limitation variance.

(e) *Step 4.* The city may recover reasonable costs and expenses as a result of the evaluation of the limitation variance request and limitation variance hearing. These costs and expenses may include but are not limited to laboratory testing costs and engineering services. The user shall verbally present the information which supports the limitation variance to the director at the hearing.

(f) *Step 5.*

- (1) The director shall notify the user of his preliminary findings and decisions within 20 working days of the limitation variance hearing. The director shall base

his preliminary decision and subsequent final decision on the user's limitation variance request on the following considerations:

- a. The effects the discharge of the specific pollutants, for which a variance is being requested, will have on the operation of the POTW or on the disposal of sludge.
 - b. The removal capabilities of the city's POTW and evaluation if the pollutant will pass through the treatment works untreated into receiving streams.
 - c. The city's capability to recycle and reclaim wastewater and sludges resulting from wastewater treatment.
 - d. Any state or federal discharge requirement for the specific pollutant.
 - e. Health and safety considerations of city workers at the POTW treatment works, pumping stations or collection stations.
 - f. The capability of the city's POTW to meet NPDES permit discharge requirements.
- (2) The director may:
- a. Deny the request for a limitation variance.
 - b. Approve the request for a limitation variance.
 - c. Conditionally approve the request for a limitation variance. Conditional approval of a limitation variance request may be issued by the director for a specific time period. The director may establish a specific concentration of pollutant the user may discharge and may establish a limitation variance charge for the conditional approval of discharge of pollutants. The limitations variance charge the user is assessed shall be based upon:
 1. Recovery of additional operation and maintenance costs incurred by the city's POTW as a result of the user limitation variance.
 2. Recovery of any damage to pumps, laboratory equipment, computers or any other equipment at the POTW treatment works, pump stations or collection systems.

3. Additional equipment or manpower necessary for or associated with treatment of the pollutants allowed under the limitation variance.

The limitation variance charge shall be adjusted periodically by the director to allow for the recovery of costs described in this subsection.

(g) *Step 6.* Within ten working days of notification of the director's preliminary findings and decisions, the user must submit any additional data the user feels the director should evaluate for his final decision. The information must contain a clear and concise statement which specifically states how the data supports the users request for a limitation variance.

(h) *Step 7.* The director will notify the user of the final decision on the limitation variance request. This notification shall include a written summary of the director's evaluation of the limitation variance request.

(i) *Step 8.* Within 30 calendar days of the final notification from the director, the user must submit and have approved a compliance schedule to meet the pretreatment standards or cease contributing to the POTW. The compliance schedule shall conform to Section 29-193.

(j) *Step 9.* After approval of the compliance schedule, the director shall issue a wastewater discharge permit.
(Gen. Ord. No. 1007, § 1(23-78(b)(3)), 8-17-92; G.O. 1742, 1-10-00; G.O. 2720, 3-3-14)

Sec. 29-190. Duration.

Permits shall be issued for a specified time period, not to exceed five years. The user shall apply for permit reissuance a minimum of 180 calendar days prior to the expiration of the user's existing permit. The terms and conditions of the permit may be subject to modification by the city during the term of the permit as limitations or requirements are modified or other just cause exists. The user shall be informed of any proposed changes in his permit at least 30 calendar days prior to the effective date of change. Any changes or new conditions in the permit shall include a reasonable time schedule for compliance.

(Gen. Ord. No. 1007, § 1(23-78(b)(6)), 8-17-92; G.O. 1742, 1-10-00)

Sec. 29-191. Transferability.

Wastewater discharge permits may be transferred to a new owner or operator only if the permittee gives at least 30 calendar days advance notice to the director and the director approves the wastewater discharge permit transfer. The notice to the director must include a written certification by the new owner or operator which:

- (1) States that the new owner and/or operator has no immediate intent to change the facility's operations and processes;
- (2) Identifies the specific date on which the transfer is to occur; and
- (3) Acknowledges full responsibility for complying with the existing wastewater discharge permit.

Failure to provide advance notice of a transfer renders the wastewater discharge permit void as of the date of facility transfer.

(Gen. Ord. No. 1007, § 1(23-78(b)(7)), 8-17-92; G.O. 1742, 1-10-00)

Sec. 29-192. Reporting requirements for permittee.

(a) Users subject to the reporting requirements of this article shall retain and make available for inspection and copying all records of information obtained pursuant to any monitoring activities required by this article and any additional records of information obtained pursuant to monitoring activities undertaken by the user independent of such requirements, including all documentation associated with best management practices as established under Subsection 29-157(c). Records shall include the date, exact place, method, time of sampling and the name of the person(s) taking the samples; the dates analyses were performed; who performed the analyses; the analytical techniques or methods used; and the results of such analyses. These records shall remain available for a period of at least three years. This period shall be automatically extended for the duration of any litigation concerning the user or the city, or where the user has been specifically notified of a longer retention period by the director.

(b) *Compliance schedule.* If additional pretreatment, additional or alternative manufacturing, processing, housekeeping procedures or alternative operation and maintenance procedures will be required to meet pretreatment standards or pollutant limitations in this division, the shortest schedule by which the user will provide such and the projected final compliance date shall be submitted to the city in report form with the completed wastewater discharge permit application. The following conditions shall apply to this schedule:

- (1) The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the construction and operation of additional or alternative manufacturing, processing, housekeeping procedures or additional pretreatment required for the user to meet applicable pretreatment standards or to meet the requirements of this division (e.g., hiring an engineer, completing preliminary plans, completing final plans, executing contract for major components, commencing construction, completing construction, etc.).
- (2) Not later than 14 calendar days following each date in the schedule and the final date for compliance, as stipulated by the city, the user shall submit a progress report to the director, including, at a minimum, whether or not the user complied with the increment of progress to be met on such date and, if not, the date on which the user expects to comply with this increment of progress, the reason for delay and the steps being taken by the user to return the construction to the schedule established.

(c) *Final compliance report.* Within 90 calendar days following the date for final compliance as determined by the compliance schedule in the wastewater discharge permit or as promulgated by categorical pretreatment standards or, in the case of a new source, after 60 calendar days of commencement of the introduction of wastewater into the POTW, any user subject to pretreatment standards and requirements shall submit to the director a report indicating the nature and concentration of all pollutants in the discharge from the regulated process which are limited by the pretreatment

standards and requirements and the average and maximum daily flow for the process units in the user facility which are limited by the pretreatment standards or requirements. The final compliance report shall state whether the applicable pretreatment standards are being met on a consistent basis and, if not, what additional manufacturing, processes, housekeeping procedures, operation and maintenance procedures or pretreatment is necessary to bring the user into compliance with the applicable pretreatment standards or requirements. This statement shall be signed in accordance with 40 CFR 403.12(1).

(d) *Periodic compliance reports (semiannual reports).*

- (1) All significant industrial users must submit certified laboratory reports from an independent laboratory. Any user who has been issued a waste-water contribution permit or any user subject to categorical pretreatment standards shall submit to the director during the months of June and December, unless the director requires more or unless required more frequently in the categorical pretreatment standard, a report indicating the nature and concentration of pollutants in the effluent discharged to the POTW which are limited by pretreatment standards or this division. The user must submit certified laboratory reports from a qualified independent laboratory. This report shall include estimated average and maximum daily flows and estimates of the daily flows which, during the reporting period, exceeded the average daily flow reported to the city. This report shall include the certification statement as set forth in 40 CFR 403.6(a) (2)(ii) and shall be signed in accordance with 40 CFR 403.12(1) by all users issued a wastewater discharge permit or subject to categorical pretreatment standards. At the discretion of the director and in consideration of such factors as holidays, budget cycles, etc., the director may agree to alter the months during which such reports are to be submitted.
- (2) In cases where the director has imposed mass limitations on users, the periodic compliance report shall indicate the mass of pollutants regulated by pretreatment

standards in the effluent of the user. These reports shall contain the results of sampling and analysis of the discharge, including the flow and the nature and concentration, or production and mass, where requested by the director, of pollutants contained therein which are limited by the applicable pretreatment standards. The frequency of monitoring shall be prescribed in the applicable pretreatment standard. All analysis shall be performed in accordance with procedures established by the director pursuant to section 304(g) of the act and contained in 40 CFR 136 or with any other test procedures approved by the director.

(e) *Sample collection and analysis.*

- (1) All wastewater samples must be representative of the user's discharge. Wastewater monitoring and flow measurement facilities shall be properly operated, kept clean, and maintained in good working order at all times. The failure of a user to keep its monitoring facility in good working order shall not be grounds for the user to claim that sample results are unrepresentative of its discharge.
- (2) Sampling shall be performed in accordance with the techniques approved by the director. Where 40 CFR 136 does not include a sampling or analytical technique for the pollutant in question, sampling and analysis shall be performed in accordance with the procedures set forth in the EPA publication, Sampling and Analysis Procedures for Screening of Industrial Effluents for Priority Pollutants, April, 1977, and amendments thereto, or with any other sampling and analytical procedures approved by the director. Samples shall be obtained by a flow proportion 24-hour composite sampler. Where such sampling is not feasible, grab samples or composite samples may be taken only if approved by director. The user will take a minimum of three composite samples during a two-week period which are representative of the user discharge. Where time-proportional composite sampling or grab sampling is authorized by the city, the samples must

be representative of the discharge. Using protocols (including appropriate preservation) specified in 40 CFR Part 136 and appropriate EPA guidance, multiple grab samples collected during a 24-hour period may be composited prior to the analysis as follows: for cyanide, total phenols and sulfides, the samples may be composited in the laboratory or in the field; for volatile organics and oil and grease, the samples may be composited in the laboratory. Composite samples for other parameters unaffected by the compositing procedures as documented in approved EPA methodologies may be authorized by the city, as appropriate. In addition, grab samples may be required to show compliance with instantaneous limits.

- (3) Samples for oil and grease, temperature, pH, cyanide, total phenols, sulfides and volatile organic compounds must be obtained using grab collection techniques.
- (4) For sampling required in support of baseline monitoring reports required in Section 29-188 and 90 day compliance reports required in this section [40CFR 403.12(b) and (d)], a minimum of four grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide and volatile organic compounds for facilities for which historical sampling data do not exist; for facilities for which historical sampling data are available, the director may authorize a lower minimum. For periodic compliance reports in this section (40 CFR 403.12(e) and (h)), the industrial user is required to collect the number of grab samples necessary to assess and assure compliance with applicable pretreatment standards and requirements.

(Gen. Ord. No. 1007, § 1(23-78(c)), 8-17-92; G.O. 1742, 1-10-00; G.O. 2407, 10-18-10; G.O. 2720, 3-3-14)

Sec. 29-193. Monitoring facilities.

(a) When deemed necessary by the director, the owner of any property served by a building sewer carrying commercial or industrial wastes, other than domestic waste, shall install and shall maintain at his own expense a suitable sampling structure as approved by the director, upon each

and every building sewer or shall combine the building sewers into a common building sewer upon which one sampling station shall be placed. The sampling structure shall be furnished with such necessary meters and other appurtenances in the building sewer to facilitate observation, sampling and measurement of the waters. Such structure shall be easily accessible and safely located and shall be constructed in accordance with plans approved by the director and shall be located so as to permit the gauging of flow and the collection of 24-hour composite samples truly representing the wastes leaving the property. Construction shall be completed within 90 calendar days following written notification by the city.

(b) All measurements, tests and analyses of the characteristics of wastes shall be determined in accordance with 40 CFR 136, or other methods approved by the administrator, and sampling shall be carried out by customarily accepted methods to reflect the true characteristics of wastes.

(c) All the characteristics of the wastes shall be obtained from 24-hour composite samples whereas temperatures, pH, cyanide, phenols, oil and grease, sulfide and volatile organics are determined from periodic grab samples.

(d) The director or his representative shall be permitted access to the property at any time for the purpose of inspection, observation, measurement, sampling or testing.

(e) Samples should be taken immediately downstream from pretreatment facilities if such exist or immediately downstream from the regulated process if no pretreatment exists. If other wastewaters are mixed with the regulated wastewater prior to pretreatment, the user should measure the flow and concentrations necessary to allow use of the combined wastestream formula to evaluate compliance with the pretreatment standards set forth in this article.

(Gen. Ord. No. 1007, § 1(23-78(d)), 8-17-92; G.O. 1742, 1-10-00)

Sec. 29-194. Right of entry; inspection and sampling.

The city shall inspect facilities of any user to ascertain whether the purpose of this division is being met and all requirements are being complied with. Persons or occupants of premises where wastewater is created or discharged shall allow the city or its representative ready access at all reasonable times to all parts of the premises for the purposes of inspection, sampling, records examination and copying or in the performance of any of their duties. Any records that are maintained under this division shall remain available for a period of at least three years. This period shall be automatically extended for the duration of any litigation concerning compliance with this division, or where the industrial user has been specifically notified of a longer retention period. The city, state and EPA shall have the right to set up on the user's property such devices as are necessary to conduct sampling inspection, compliance monitoring or metering operations. Where a user has security measures in force which would require proper identification and clearance before entering into the premises, the user shall make necessary arrangements with the user's security guards so that upon presentation of suitable identification, personnel from the city, state and EPA will be permitted to enter, without delay, for the purposes of performing their specific responsibilities. Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the user at the written or verbal request of the director and shall not be replaced. The costs of clearing such access shall be born by the user. Unreasonable delays in allowing the director access to the user's premises shall be a violation of this article.

(Gen. Ord. No. 1007, § 1(23-78(e)), 8-17-92; G.O. 1742, 1-10-00)

Sec. 29-195. Search warrants.

If the director has been refused access to a building, structure or property, or any part thereof, and is able to demonstrate probable cause to believe that there may be a violation of this article, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program of the city designed to verify compliance with this article or any permit or order issued hereunder, or to protect the overall public health, safety and welfare of the community, then the director may seek issuance of a search warrant from the circuit court of Buchanan County, Missouri.

(G.O. 1742, 1-10-00)

Sec. 29-196. Confidential information.

(a) Information and data obtained from applications, permits, monitoring programs and inspections under this division shall be available for inspection by the public or any government agency without restriction, unless an industrial user specifically states that the release of such information would divulge information, processes or methods of production entitled to protection as trade secrets of the industrial user. Any information submitted to the director may be claimed as confidential in accordance with applicable federal regulations. Any claim of confidentiality must be made at the time of submittal by stamping the words "confidential business information" on each page containing such information. When requested by the industrial user furnishing the report, the portion of a report which might disclose trade secrets or secret processes shall not be made available for inspection by the public, but shall be made available upon request to governmental agencies for uses related to NPDES program or pretreatment program. Subject however, to the confidentiality provisions of 40 CFR 2, which is incorporated by this reference as applicable to the city to the same extent 40 CFR 2 is applicable to EPA or any applicable state law. If a party to any judicial or administrative proceeding or any court or any administrative agency, except as specified in this section, demands or subpoenas or orders the production of any of such confidential information, the director shall immediately notify the person who supplied such information so that person shall have the opportunity to secure judicial or administrative relief to preserve such confidentiality. Unless such person gets such

§29-374

relief, the director will comply with such demand, subpoena or order, as legally required.

(b) Wastewater constituents and characteristics will not be recognized as confidential information. The industrial pretreatment reports that are required by the city's NPDES permit will be available to the public.

(Gen. Ord. No. 1007, § 1(23-78(f)), 8-17-92; G.O. 1742, 1-10-00)

Sec. 29-197. Analytical and Monitoring Requirements.

All pollutant analyses, including sampling techniques, to be submitted as part of a wastewater discharge permit application or report shall be performed in accordance with the techniques prescribed in 40 CFR Part 136 unless otherwise specified in an applicable categorical pretreatment standard. If 40 CFR Part 136 does not contain sampling or analytical techniques for the pollutant being analyzed, or where the EPA publishes a determination that the 40 CFR Part 136 sampling and analytical techniques are inappropriate for the pollutant being analyzed, sampling and analyses shall be performed by using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the director or other parties approved by EPA. Notwithstanding any provision of this section, the director shall have the authority to implement more restrictive requirements and procedures to ensure the validity of the analytic results; such requirements, if established, must be followed.

(G.O. 2735, 6-23-14)

Secs. 29-198--29-215. Reserved.

Subdivision IV. Enforcement, Violations and Remedies

Sec. 29-216. Harmful contributions.

(a) The director may immediately suspend a user's discharge, after informal notice to the user, whenever such suspension is necessary to stop an actual or threatened discharge, which reasonably appears to present, or cause an imminent or substantial endangerment to the health and welfare of persons. The director may also immediately suspend a user's discharge, after notice and opportunity to respond, that threatens to interfere with the operation of the POTW or

which presents, or may present, an endangerment or to the environment.

(b) Any user notified of a suspension of its discharge shall immediately stop or eliminate its contribution. In the event of a user's failure to immediately comply voluntarily with the suspension order, the director may take such steps as deemed necessary, including immediate severance of the sewer connection, to prevent or minimize damage to the POTW, its receiving stream or endangerment to any individuals. The director may allow the user to recommence its discharge when the user has demonstrated to the satisfaction of the director that the period of endangerment has passed, unless the termination proceedings in Section 29-193 of this article are initiated against the user.

(c) A user that is responsible, in whole or in part, for any discharge presenting imminent endangerment shall submit a detailed written statement, describing the causes of the harmful contribution and the measures taken to prevent any future occurrence, to the director prior to the date of any show cause or termination hearing under Sections 29-218 through 29-221 of this article.

(d) Nothing in this section shall be interpreted as requiring a hearing prior to any emergency suspension under this section.

(Code 1969, § 23-79(A); Gen. Ord. No. 1008, § 1(23-79(A)), 8-17-92; G.O. 1742, 1-10-00)

Sec. 29-217. Punishment for violation.

(a) Any user of the city's POTW who threatens to violate or who violates any of the terms or conditions of this division, applicable state or federal law or regulations or the conditions of a wastewater discharge permit issued to a user, is subject to the enforcement action set out in Section 29-218. Each occurrence of such violation shall constitute a separate offense and each day of a continuing violation shall constitute a separate offense. Punishment of any violation under this section shall not be deemed an exclusive remedy; the city shall have the right, in addition thereto, to institute any other appropriate action, including but not limited to severance of the user's sewer connection, an action for damages caused to the city by the user, equitable relief or an action in municipal court for the violation of this division.

(b) In addition to other available remedies, any user of the city's POTW who is required by this division to have a wastewater discharge permit shall be subject to suspension of the permit by the director if it shall appear to the director that an actual or threatened violation of this division, state or federal laws or regulations or the permit granted to such user has or is about to occur.

(c) Any person that is notified of a suspension of his wastewater discharge permit shall immediately stop contributing to the city's POTW system. If the user fails to voluntarily comply with the suspension order, the city, in order to prevent or minimize damage to the city's POTW system, may take such steps as are deemed necessary, including severance of the user's sewer connection.

(d) The payment of a limit fee shall not be construed as a limit on enforcement measures that may be taken for the violation of a limit stated in a wastewater discharge permit. The director is hereby authorized to propose, adopt, amend and rescind rules and regulations establishing the applicability of enforcement actions to users who have exceeded limits stated in a wastewater discharge permit, provided such rules are based solely on the frequency, duration, and impact of the discharge that exceeded the permit limit, and other reasonable factors related to discharges that exceed permit limits.

(Code 1969, § 23-79(B); Gen. Ord. No. 1008, § 1(23-79(B)), 8-17-92; G.O. 1742, 1-10-00; G.O. 2720, 3-3-14; G.O. 2735, 6-23-14)

Sec. 29-218. Enforcement action.

(a) *Verbal telephone notice (VTN)*. A verbal telephone notice is the first step of notifying the industry of a violation and can be used as the only enforcement action for a minor violation.

(b) *Site visit (SV)*. A site visit can be used in conjunction with any other enforcement action to ensure that requirements to return to compliance or ensure that noncompliance is not occurring. This can be used for enforcement or to respond to a report by, but not limited to, the following individuals:

- (1) Citizens noticing a violation;
- (2) City employees;

(3) Employees of an industry seeing a violation; or

(4) Any other individual that notices a violation.

(c) *Compliance Schedules*. When an industry is in a state of noncompliance and after a series of resampling for the pollutant that resulted in noncompliance or a series of other actions to identify noncompliance, then said industry will submit to the superintendent and pretreatment coordinator its plan to return to compliance. Such plan shall comply with the following:

(1) *Progress increments-required*. Progress increments shall be included in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment facilities or other measures required for the user to meet the applicable pretreatment standards (such events include, but are not limited to, hiring an engineer, completing preliminary and final plans, executing contracts for major components, commencing and completing construction, and beginning and conducting routine operation) or other applicable requirements. No increments referred to herein shall be scheduled in excess of nine months apart. If a progress increment is missed by more than 30 calendar days and the industry cannot demonstrate good cause, said industry will be considered in significant noncompliance, which will be considered an additional violation, and additional steps may be taken to ensure future compliance.

(2) *Progress reports*. The user under a compliance schedule shall submit a progress report to the director no later than 14 days following each progress increment date in the schedule and on or about the final date of compliance. Such report shall include, but not be limited to, a statement of whether the user complied with the progress increment, the reason for any delay, if any, and, the steps being taken by the user to return to the established schedule (if delayed). If a report is more than 30 calendar days late, the industry will be considered in

significant noncompliance, which will be considered an additional violation, and additional steps may be taken to ensure future compliance.

against, or prerequisite for, taking any other action against the user.

(d) *Notice of violation.* When the director finds that a user has violated, or continues to violate, any provision of this article, a wastewater discharge permit or order issued hereunder or any other pretreatment standard or requirement, the director may serve upon that user a written “notice of violation (NOV)”. Within 15 calendar days of the receipt of this notice, an explanation of the violation and a plan for the satisfactory correction and prevention thereof, to include specific required actions, shall be submitted by the user to the director. Submission of this plan in no way relieves the user of liability for any violations occurring before or after receipt of the notice of violation. Nothing in this section shall limit the authority of the director to take any action, including emergency actions or any other enforcement action, without first issuing a notice of violation.

(e) *Consent orders.* The director may enter into consent orders, assurances of voluntary compliance or other similar documents establishing an agreement with any user responsible for noncompliance. Such documents will include specific action to be taken by the user to correct the noncompliance within a time period specified by the document. Such documents shall have the same force and effect as the administrative orders issued pursuant to this article and shall be judicially enforceable.

(f) *Show cause hearing.* The director may order a user which has violated, or continues to violate, any provision of this article, a wastewater discharge permit or order issued hereunder or any other pretreatment standard or requirement, to appear before the director and show cause why the proposed enforcement action should not be taken. Notice shall be served on the user specifying the time and place for the meeting, the proposed enforcement action, the reasons for such action and a request that the user show cause why the proposed enforcement action should not be taken. The notice of the meeting shall be served personally or by registered or certified mail (return receipt requested) at least ten working days prior to the hearing. Such notice may be served on any authorized representative of the user. A show cause hearing shall not be a bar

(g) *Compliance orders.* When the director finds that a user has violated, or continues to violate, any provision of this article, a wastewater discharge permit or order issued hereunder or any other pretreatment standard or requirement, the director may issue an order to the user responsible for the discharge directing that the user come into compliance within a specified time. If the user does not come into compliance within the time provided, sewer service may be discontinued unless adequate treatment facilities, devices or other related appurtenances are installed and properly operated. Compliance orders may also contain other requirements to address the noncompliance, including additional self-monitoring and management practices designed to minimize the amount of pollutants discharged to the sewer. A compliance order may not extend the deadline for compliance established for a pretreatment standard or requirement, nor does a compliance order relieve the user of liability for any violation, including any continuing violation. Issuance of a compliance order shall not be a bar against, or a prerequisite for, taking any other action against the user.

(h) *Cease and desist orders.* When the director finds that a user has violated, or continues to violate, any provision of this article, a wastewater discharge permit or order issued hereunder or any other pretreatment standard or requirement, or that the user's past violations are likely to recur, the director may issue an order to the user directing it to cease and desist all such violations and directing the user to:

- (1) Immediately comply with all requirements; and
- (2) Take such appropriate remedial or preventive action as may be needed to properly address a continuing or threatened violation, including halting operations and/or terminating the discharge.

Issuance of a cease and desist order shall not be a bar against, or a prerequisite for, taking any other action against the user.

(i) *Administrative fines.*

- (1) When the director finds that a user has violated, or continues to violate, any

provision of this article, a wastewater discharge permit or order issued hereunder or any other pretreatment standard or requirement, the director may fine such user between a minimum amount of \$1,000.00 per day, per occurrence up to \$37,500.00 per day per occurrence to conform with 40 CFR 403.8(f)(vi)(A) requirements. Such fines shall be assessed on a per violation, per day basis. In the case of monthly or other long-term average discharge limits, fines shall be assessed for each day during the period of violation.

- (2) Users desiring to dispute such fines must file a written request for the city manager to appeal the fine within 30 calendar days of being notified of the fine. The written request must state the factual basis for the appeal. When a request is properly filed, the city manager shall convene a hearing on the matter. The director may add the costs of preparing administrative enforcement actions, such as notices and orders, to the fine. The city manager shall issue a decision within 15 working days following the conclusion of the hearing. A decision not to rescind an administrative fine, shall be considered the final administrative action for purposes of judicial review. Users seeking judicial review may initiate judicial review by filing a petition in the circuit court of Buchanan County, Missouri, within thirty days after the mailing or delivery of the notice of the city manager's final decision.
- (3) The city manager, with the written concurrence of the city attorney and the director of administrative services, may enter into an agreement or issue an order authorizing a credit to a sewer service account, provided a user which has been issued an administrative fine agrees to perform tasks that mitigate the effect of the violation, limit the possibility of a future violation, or otherwise provide public benefit.
- (4) The city manager, with the written concurrence of the city attorney and the director of administrative services, may issue a credit to a sewer service account,

provided a user which has been issued an administrative fine has entered into an agreement with the city or received an order from the city manager to perform tasks that mitigate the effect of the violation, limit the possibility of a future violation, or otherwise provide public benefit and has successfully completed those tasks.

- (5) Issuance of an administrative fine shall not be a bar against, or a prerequisite for, taking any other action against the user.

(j) *Emergency suspensions.* The director may immediately suspend a user's discharge, after informal notice to the user, whenever such suspension is necessary to stop an actual or threatened discharge, which reasonably appears to present, or cause an imminent or substantial endangerment to the health or welfare of persons. The director may also immediately suspend a user's discharge, after notice and opportunity to respond, that threatens to interfere with the operation of the POTW, or which presents or may present, a danger to the environment.

- (1) Any user notified of a suspension of its discharge shall immediately stop or eliminate its contribution. In the event of a user's failure to immediately comply voluntarily with the suspension order, the director may take such steps as deemed necessary, including immediate severance of the sewer connection, to prevent or minimize damage to the POTW, its receiving stream or endangerment to any individuals. The director may allow the user to recommence its discharge when the user has demonstrated, to the satisfaction of the director, that the period of endangerment has passed, unless termination proceedings are initiated against the user.
- (2) A user that is responsible, in whole or in part, for any discharge presenting imminent endangerment, shall submit a detailed written statement, describing the causes of the harmful contribution and the measures taken to prevent any future occurrence, to the director prior to the date of any show cause or termination hearing.

Nothing in this section shall be interpreted as requiring a hearing prior to any emergency suspension under this section.

(k) *Termination of discharge.* In addition to the provisions of this article, any user who violates the following conditions is subject to discharge termination:

- (1) Violations of wastewater discharge permit conditions;
- (2) Failure to accurately report the wastewater constituents and characteristics of its discharge;
- (3) Failure to report significant changes in operations or wastewater volume, constituents and characteristics prior to discharge;
- (4) Refusal of reasonable access to the user's premises for the purpose of inspection, monitoring or sampling; and
- (5) Violation of the pretreatment standards listed in this article.

Such user will be notified of the proposed termination of its discharge and be offered an opportunity to show cause under this article as to why the proposed action should not be taken. Exercise of this option by the director shall not be a bar to, or a prerequisite for, taking any other action against the user.

(l) *Appeals.* Appeals of notices of violation that do not include administrative fines, compliance orders, cease and desist orders,

emergency suspensions, and terminations of discharge issued under this section may be made in accordance with the procedures set forth in Article XIII, Division 1 of Chapter 2.

(Code 1969, § 23-79(C); Gen. Ord. No. 1008, § 1(23-79(C)), 8-17-92; G.O. 1742, 1-10-00; G.O. 2407, 10-18-10; G.O. 2735, 6-23-14; G.O. 2906, 3-25-19)

Sec. 29-219. Judicial remedies.

(a) *Injunctive relief.* When the director finds that a user has violated, or continues to violate, any provision of this article, a wastewater discharge permit, or order issued hereunder or any other pretreatment standard or requirement, the director may petition the circuit court of Buchanan County, Missouri, through the city attorney for the issuance of a temporary or permanent injunction, as appropriate, which restrains or compels the specific performance of the wastewater discharge permit, order or other requirement imposed by this article on activities of the user. The director may also seek such other action as is appropriate for legal and/or equitable relief, including a requirement for the user to conduct environmental remediation. A petition for injunctive relief shall not be a bar against, or a prerequisite for, taking any other action against a user.

(b) *Civil penalties.*

- (1) A user who has violated, or continues to violate, any provision of this article, a wastewater discharge permit, or order issued hereunder or any other pretreatment standard or requirement shall be liable to the city for a civil penalty between a minimum amount of \$1,000.00 per day, per occurrence up to \$32,500.00 per day, per occurrence to conform with 40 CFR 403.8(f)(vi)(A) requirements. In the case of a monthly or other long-term average discharge limit, penalties shall accrue for each day during the period of the violation.
- (2) The director may recover reasonable attorney fees, court costs and other expenses associated with enforcement activities, including sampling and monitoring expenses and the cost of any actual damages incurred by the city.

- (3) In determining the amount of civil liability, the court shall take into account all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the magnitude and duration of the violation, any economic benefit gained through the user's violation, corrective actions by the user, the compliance history of the user and any other factor as justice requires.

- (4) Filing a suit for civil penalties shall not be a bar against, or a prerequisite for, taking any other action against a user.

(c) *Criminal prosecution.*

- (1) A user who willfully or negligently violates any provision of this article, a wastewater discharge permit, or order issued hereunder or any other pretreatment standard or requirement, shall, upon conviction, be guilty of a misdemeanor, punishable by a fine of not more than \$500.00 or imprisonment for not more than six months, or both.
- (2) A user who willfully or negligently introduces any substance into the POTW which causes personal injury or property damage shall, upon conviction, be guilty of a misdemeanor and be subject to a fine of not more than \$500.00, or be subject to imprisonment for not more than six months, or both. This penalty shall be in addition to any other cause of action for personal injury or property damage available under state law.
- (3) A user who knowingly makes any false statements, representations or certifications in any application, record, report, plan or other documentation filed, or required to be maintained, pursuant to this article, wastewater discharge permit or order issued hereunder, or who falsifies, tampers with or knowingly renders inaccurate any monitoring device or method required under this article, shall, upon conviction, be guilty of a misdemeanor and be punished by a fine of not more than \$500.00 or imprisonment for not more than six months, or both.

- (4) In the event of a second conviction, a user shall be punished by a fine of not more than \$1,000.00 or imprisonment for not more than one year, or both.

(d) *Remedies nonexclusive.* The remedies provided for in this section are not exclusive. The director may take any, all or any combination of these actions against a noncompliant user. Enforcement of pretreatment violations will generally be in accordance with the city's enforcement response plan. However, the director may take other action against any user when the circumstances warrant. Further, the director is empowered to take more than one enforcement action against any noncompliant user. (G.O. 1742, 1-10-00; G.O. 2407, 10-18-10)

Sec. 29-220. Supplemental enforcement actions.

(a) *Performance bonds.* The director may decline to issue or reissue a wastewater discharge permit to any user who has failed to comply with any provision of this article, a previous wastewater discharge permit, or order issued hereunder or any other pretreatment standard or requirement, unless such user first files a satisfactory bond, payable to the city, in a sum not to exceed a value determined by the director to be necessary to achieve consistent compliance.

(b) *Liability insurance.* The director may decline to issue or reissue a wastewater discharge permit to any user who has failed to comply with any provision of this article, a previous wastewater discharge permit, or order issued hereunder or any other pretreatment standard or requirement, unless the user first submits proof that it has obtained financial assurances sufficient to restore or repair damage to the POTW caused by its discharge.

(c) *Water supply severance.* Whenever a user has violated or continues to violate any provision of this article, a previous wastewater discharge permit, or order issued hereunder or any other pretreatment standard or requirement, water service to the user may be severed. Service will only recommence at the user's expense, after it has satisfactorily demonstrated its ability to comply.

(d) *Public nuisances.* A violation of any provision of this article, a wastewater discharge

permit, or order issued hereunder or any other pretreatment standard or requirement is hereby declared a public nuisance and shall be corrected or abated as directed by the director. Any person(s) creating a public nuisance shall be subject to the provisions of the city code, as stated in Chapter 15 governing such nuisances, including reimbursing the city for any costs incurred in removing, abating or remedying said nuisance.

(e) *Contractor listing.* Users, which have not achieved compliance with applicable pretreatment standards and requirements, are not eligible to receive a contractual award for the sale of goods or services to the city. Existing contracts for the sale of goods or services to the city held by a user found to be in significant noncompliance with pretreatment standards or requirements may be terminated at the discretion of the director. (G.O. 1742, 1-10-00; G.O. 2682, 4-29-13)

Sec. 29-221. Affirmative defenses to discharge violations.

(a) *Upset.*

- (1) For the purposes of this section, "upset" means an exceptional incident in which there is unintentional and temporary noncompliance with pretreatment standards because of factors beyond the reasonable control of the user. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance or careless or improper operation.

- (2) An upset shall constitute an affirmative defense to an action brought for noncompliance with pretreatment standards if the requirements of Subsection (c), below, are met.

- (3) A user who wishes to establish the affirmative defense of upset shall demonstrate through properly signed, contemporaneous operating logs or other relevant evidence that:

- a. An upset occurred and the user can identify the cause(s) of the upset;

- b. The facility was at the time being operated in a prudent and workmanlike manner and in compliance with applicable operation and maintenance procedures; and
- c. The user has submitted the following information to the director within 24 hours of becoming aware of the upset. If this information is provided orally, a written submission must be provided within five working days:
1. A description of the indirect discharge and cause of noncompliance.
 2. The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue; and
 3. Steps being taken and/or planned to reduce, eliminate and prevent recurrence of the noncompliance.
- (4) In any enforcement proceeding, the user seeking to establish the occurrence of an upset shall have the burden of proof.
- (5) Users will have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for noncompliance with pretreatment standards.
- (6) Users shall control production of all discharges to the extent necessary to maintain compliance with pretreatment standards upon reduction, loss or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost or fails.
- (b) *Prohibited discharge standards.* A user shall have an affirmative defense to an enforcement action brought against it for noncompliance with the general prohibitions in Section 29-156 of this article or the specific prohibitions in Section 29-157 of this article if it can prove that it did not know, or have reason to know, that its discharge, alone or in conjunction with discharges from other sources, would cause pass through or interference and that either:
- (1) A local limit exists for each pollutant discharged and the user was in compliance with each limit directly prior to, and during, the pass through or interference; or
 - (2) No local limit exists, but the discharge did not change substantially in nature or constituents from the user's prior discharge when the city was regularly in compliance with its NPDES permit, and in the case of interference, was in compliance with applicable sludge use or disposal requirements.
- (c) *Bypass.*
- (1) For the purposes of this section:
 - a. "Bypass" means the intentional diversion of wastestreams from any portion of a user's treatment facility.
 - b. "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.
 - (2) A user may allow any bypass to occur which does not cause pretreatment standards or requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of Subsections (c)(3) and (c)(4) of this section.
 - (3) If a user knows in advance of the need for a bypass, it shall submit prior notice to the director at least ten working days before the date of the bypass, if possible. A user shall submit oral notice to the director of an unanticipated bypass that exceeds applicable pretreatment standards within 24 hours from the time it becomes aware of the bypass. A written

submission shall also be provided within five working days of the time that the user becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause, the duration of the bypass, including exact dates and times, and, if the bypass has not been corrected, the anticipated time it is expected to continue and steps taken or planned to reduce, eliminate and prevent reoccurrence of the bypass. The director may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

- (4) Bypass is prohibited, and the director may take an enforcement action against a user for a bypass unless:
- a. Bypass was unavoidable to prevent loss of life, personal injury or severe property damage;
 - b. There were not feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
 - c. The user submitted notices as required under Subsection (c)(3) of this section.
- (5) The director may approve an anticipated bypass, after considering its adverse effects, if the director determines that it will meet the three conditions listed in Subsection (c)(4)a. of this section.

(G.O. 1742, 1-10-00)

Sec. 29-222. Liability for expenses caused by violation.

Any person violating any of the provisions of this division, state or federal laws or regulations, orders of the director or the user's wastewater contribution permit shall be liable for any costs,

expenses, fines or damages incurred as a result thereof by the city.

(Code 1969, § 23-79(D); Gen. Ord. No. 1008, § 1(23-79(D)), 8-17-92; G.O. 1742, 1-10-00)

Sec. 29-223. Additional remedies for violation.

As a condition of any user's contribution to the city's POTW system, the user agrees that in addition to any other remedies available to the city as a result of a violation of this division, state or federal laws or regulations, orders of the director or the user's wastewater discharge permit, including, but not limited to, municipal criminal prosecution, the city shall have the right to prosecute a civil action for appropriate legal relief, including but not limited to damages or equitable relief. In no event shall any remedy for violation be deemed exclusive unless it shall be so held as a matter of law.

(Code 1969, § 23-79(E); Gen. Ord. No. 1008, § 1(23-79(E)), 8-17-92; G.O. 1742, 1-10-00; G.O. 2720, 3-3-14)

Sec. 29-224. Cost recovery at POTW due to industrial discharges.

In case of an intentional or unintentional discharge from an industry, caused by bypass, operational upset or pretreatment system cleaning or repair, additional charges related to the operational expenses incurred by the POTW for treatment may be imposed by the city. These charges are in addition to the surcharges addressed in Section 29-237. These charges may include, but are not limited to, recovery of expenses by the POTW for additional natural gas usage, personnel overtime directly related to discharge event, reagents, chemicals, polymers and repairs directly related to discharge event.

(G.O. 1742, 1-10-00)

Secs. 29-225--29-234. Reserved.

DIVISION 4. SEWAGE TREATMENT AND SEWER USER CHARGES*

Sec. 29-235. Definitions and abbreviations.

The definitions and abbreviations in Division 3 apply to this division.

(Gen. Ord. No. 747, § 1(23-100), 1-8-90; G.O. 1742, 1-10-00; G.O. 2735, 6-23-14)

Cross reference(s)--Definitions and rules of construction generally, § 1-2.

Sec. 29-236. Wastewater sampling and billing calculation method.

The provisions contained in this section shall apply to surcharges and other pollutant-based billing amounts described in this division.

(a) *Sampling and analysis.*

(1) *Procedure.* Analysis of wastewater discharge samples taken for the purposes of calculating a surcharge or limit fee billed pursuant to this division shall be performed in accordance with the requirements of this section and other standard requirements established by the director.

(2) *Basis for charges.* Charges based upon pollutants contained in wastewater shall be based upon wastewater samples taken from the user's wastewater discharge. The wastewater samples taken to determine the charges imposed by this division shall be taken daily or may, if approved by the director, be taken on any three or more days during a billing month as those days are selected by the superintendent.

(b) *Total monthly pollutant discharge calculation.* For the purposes of determining surcharges and limit fees billed pursuant to this division, the pounds of discharge of each pollutant for which such charges are issued shall be determined as described below.

(1) *Daily sample users.* For users whose wastewater is sampled and analyzed on a daily, or near daily, basis, the user's total pollutant discharge (in pounds) shall be calculated as described below:

a. *Daily total pollutant discharge calculation.* On each day during which a valid wastewater sample and analysis is available, pounds of pollutant content contained in wastewater shall be calculated using the following method:

Pollutant content [stated in mg/l] multiplied by gallons of wastewater discharged on that day multiplied by 8.34 divided by 1,000,000.

b. *Unavailable or invalid samples and analysis.* If samples or analysis are unavailable or invalid for any day or days during the billing month, the total pounds of pollutants determined to be in the user's wastewater on such day or days shall be:

Average pounds of the pollutant per cubic foot of wastewater for the days immediately before and immediately after the day or days on which valid samples and analyses are unavailable multiplied by gallons of wastewater discharged on the days on which a valid sample and analysis are unavailable multiplied by 8.34.

c. *Total monthly pollutant discharge.* On a monthly basis, the sum of the pounds of daily pollutant content, including estimated pounds of pollutant content for days on which samples or analysis are unavailable or invalid, shall be determined and, for the purposes of this division, shall constitute the total monthly pollutant discharge.

(2) *Periodic sample users.* For users whose wastewater is sampled and analyzed for a period less than nearly daily, the user's total monthly pollutant discharge (in pounds) shall be calculated as described below:

Average pollutant content [stated in mg/l] of samples taken and analyzed multiplied by gallons of wastewater discharged during the month multiplied by 8.34 divided by 1,000,000.

(c) *Allowable pollutant discharge calculation.* For the purposes of determining surcharges and limit fees billed pursuant to this division, the pounds of allowable pollutant discharge of each pollutant for which such charges are issued shall be determined based upon the following:

Total cubic feet of discharged wastewater multiplied by pounds per cubic foot of allowable pollutant discharge.

(d) *Surcharge/other pollutant-based charge.* When a user discharges more pounds of a pollutant in a billing month than the pounds of

allowable pollutant discharge, as both amounts are calculated in this section, then, for the purposes of determining surcharges and limit fees billed pursuant to this division, the billed amount shall be determined based upon the following:

Pollutant surcharge or limit fee per pound multiplied by the sum of the following:

Total pounds of pollutant discharge *less*
Total pounds of allowable pollutant discharge [as such amounts are calculated pursuant to this section]

(G.O. 2735, 6-23-14)

Sec. 29-237. Schedule and application of user charges.

(a) *General provisions.*

- (1) *Sewer use and treatment charge levied.* There is levied a sewage treatment and sewer user charge upon all sewage system users in accordance with the schedules in this section based upon the wastewater discharge as being discharge of a commercial user, industrial user, residential user, wholesale user, or hauled wastewater user.
- (2) *Effective dates.* All detailed rates and limits described in this section below shall be applicable to sewer use billed after July 1, 2017. All sewer use charges billed prior to July 1, 2017, shall be due based upon the rates and limits applicable at the time such sewer use charges were initially billed.
- (3) *Implementation.* When this section cannot be strictly implemented based upon the nature of a user's use or when strict implementation would cause unreasonable cost or effort based upon the billed charges that would be collected, the director may authorize reasonable alternative methods of implementation and calculation of charges, provided such charges are amounts similar to the charges the user would incur if this section were strictly implemented. The director may further authorize reasonable alternative methods of implementing the surcharge and limit fee provisions of this section when necessary to temporarily accommodate

new user processes that do not substantially increase the city's total cost of wastewater treatment.

- (4) *User types.* As used in this section, the following terms shall have the meanings ascribed below:
- a. *Commercial users or commercial customers* means users of the city's POTW that are not industrial or wholesale users, but that discharge wastewater from buildings or structures which are used primarily for purposes other than single family residential or individually-metered residential purposes.
 - b. *Industrial users or industrial customers* means users of the city's POTW that are industrial users pursuant to this chapter, but which are not wholesale users.
 - c. *Residential users or residential customers* means users of the city's POTW that (1) discharge wastewater from buildings or structures used exclusively for residential purposes and (2) are reported by a Public Service Commission-regulated water supplier as residential in nature if such suppliers report the user's water use for the purposes of sewer billing.
 - d. *Wholesale users or wholesale customers* means users of the city's POTW that are wholesale users as such users are defined in this chapter.
 - e. *Hauled wastewater users or hauled wastewater customers* means users of the city's WPF which deliver wastewater directly to the WPF using an automobile or trailer-mounted tank, but who do not utilize the city's POTW collection system.

The type of user described above shall be based upon the physical location of the use and not on the same person's or entity's sewer use at other locations.

- (5) *User classes.* For the purposes of applying sewer user charges, wholesale users are deemed to be part of the wholesale customer class and all other users are deemed to be part of the retail customer class.

(b) *Residential users—applicable charges.*

(1) *Base service charge.* During each billing period, residential users shall pay the following for being connected to the POTW:

- a. Connection of a user’s facility located within the city: \$37.69
- b. Connection of a user’s facility located outside the city: \$88.45

(2) *Flow service charge; residential user rules.* Residential users shall pay for the discharge of wastewater to the POTW based upon the amount of water supplied to the user, rounded to the nearest 100 CF, as such amount of water supplied is provided by the Missouri Public Service Commission-regulated supplier of the water or by another reporting method allowed by this article. Flow service charges established under this subsection based upon a flow amount rounded to the nearest 100 CF may remain in effect until a new flow service amount is established by winter average or other method allowed by this section.

- a. *Flow service charge rates:* Rates for residential users’ discharge of wastewater to the POTW shall be the following:
 - 1. Amount per 1 CF of water supplied to a user’s facility located within the city: \$.0557
 - 2. Amount per 1 CF of water supplied to a user’s facility located outside the city: \$.1273

b. *Winter average.* Flow charges for residential users receiving water from Missouri American Water Company shall be based upon water received during Missouri American Water Company’s consumption ending read dates in January, February and March of each year. The average quantity of water used during those months shall be deemed the water received by the residential user each month until a

new average is determined in the subsequent year.

c. *New occupancy.* When a new residential user takes occupancy of a premises served as a residential user, the usage for the purposes of calculating the flow service charge applicable until the next winter average rate is set shall be the average of all residential users’ use during the previous January, February and March unless the new occupant makes a request to the director of administrative services for an adjustment based on that occupant’s first three months’ average usage and provides copies of actual water billing statements reflecting such use.

In the event a lower flow use rate is used, the residential user’s use during the first three months of service shall be recalculated based on the actual water usage data and a credit shall be applied to the residential user’s account for any overpayment of the flow service charge during the initial three months.

d. *New construction.* Users discharging from newly constructed buildings that will qualify as residential users following completion of construction shall not be subject to the base service charge and flow service charge set forth in this subsection, but shall pay a monthly fee of \$5.00 for being connected to the POTW. Upon the sale of the newly constructed residential use building, the provisions of this subsection regarding residential new occupancy shall apply.

This new construction provision shall not apply to residential rental property that will be operated as residential rental property by the builder or developer.

(c) *Commercial and industrial users—applicable charges.*

(1) *Base service charge.* During each billing period, commercial and industrial users shall pay the following for being connected to the POTW:

- a. Connection of a user's facility located within the city: \$37.69
- b. Connection of a user's facility located outside the city: \$88.45

(2) *Flow service charge.* Commercial and industrial users shall pay for the discharge of wastewater to the POTW based upon either (a) the amount of water supplied to the user, rounded to the nearest 100 CF, as such amount of water supplied is provided by the Missouri Public Service Commission-regulated supplier of the water or by another reporting method allowed by this article or (b) readings from a flow meter meeting all requirements of this chapter and measuring outflow of wastewater discharged to the POTW.

a. *Flow service charge rates:* Rates for commercial and industrial users' discharge of wastewater to the POTW shall be the following:

- 1. Amount per 1 CF of water supplied to, or discharged from, a user's facility located within the city: \$.0557
- 2. Amount per 1 CF of water supplied to, or discharged from, a user's facility located outside the city: \$.1273

(3) *Surcharge.* Commercial and industrial users shall be charged a surcharge for their discharge of pollutants in excess of the amounts allowable by this subsection.

a. *Allowable pollutants.* A surcharge shall be assessed pursuant to this subsection for the discharge of any of the pollutants listed below in amounts above those specified:

- 1. BOD: 1.871 lbs per 100 CF
- 2. SS: 2.185 lbs per 100 CF

- 3. FOG:0.624 lbs per 100 CF
- 4. Sulfides:0.093 lbs per 100 CF
- 5. Ammonia: ...0.187 lbs per 100 CF
- 6. TKN: [reserved]

b. *Surcharge schedule.* The surcharge applicable to commercial and industrial users for each pound of pollutants discharged in excess of the allowable pollutant discharge amounts shall be the following:

- 1. BOD:
 - i. Discharge from a facility located within the city: \$0.254.
 - ii. Discharge from a facility located outside the city: \$0.377.
- 2. SS:
 - i. Discharge from a facility located within the city: \$0.196
 - ii. Discharge from a facility located outside the city: \$0.465
- 3. FOG:
 - i. Discharge from a facility located within the city: \$0.286.
 - ii. Discharge from a facility located outside the city: \$0.657.
- 4. Sulfides:
 - i. Discharge from a facility located within the city: \$0.335.
 - ii. Discharge from a facility located outside the city: \$0.750.
- 5. Ammonia:
 - i. Discharge from a facility located within the city: \$0.105.
 - ii. Discharge from a facility located outside the city: \$0.249.

- 6. TKN:
 - i. Discharge from a facility located within the city: [reserved].
 - ii. Discharge from a facility located outside the city: [reserved].

(4) *Pollutant limit fee.* Commercial and industrial users shall be charged a limit fee for their discharge of pollutants in excess of the amounts allowed in their wastewater discharge permits.

a. *Limit fee schedule.* The limit fee for each pound of pollutants discharged in excess of pollutant limits stated in commercial and industrial users' wastewater discharge permit shall be the amounts stated in the following limit fee schedule:

- 1. BOD: Discharge from a facility located within the city - \$0.381.
- 2. SS: Discharge from a facility located within the city - \$0.239.
- 3. FOG - Discharge from a facility located within the city - [reserved].
- 4. Sulfides: Discharge from a facility located within the city- [reserved].
- 5. Ammonia: Discharge from a facility located within the city – \$0.158.
- 6. TKN: Discharge from a facility located within the city - [reserved].

b. *Daily sampling.* If a commercial or industrial user whose wastewater is sampled and analyzed for a period less than nearly daily, violates a daily permit limit, the limit fee shall be multiplied by the result of the following:

Number of days in the billing month multiplied by total of the following:

Number of days for which a permit limit was exceeded divided by number of days for which a valid wastewater sample was taken and analyzed

c. *Less than daily sampling.* If a commercial or industrial user whose wastewater is sampled and analyzed for a period less than nearly daily, violates a daily permit limit, the limit fee shall be multiplied by the result of the following

Number of days in the billing month multiplied by total of the following:

Number of days for which a permit limit was exceeded divided by number of days for which a valid wastewater sample was taken and analyzed

(5) *Flow limit fee.* Commercial and industrial users shall be charged a limit fee for their discharge of flow rate in excess of the amounts allowed in their wastewater discharge permits. The limit fee for each gallon in excess of a permit limit shall be the following:

a. Inside city:

- 1. Per gallon charge for amounts in excess of daily limit: \$1.96
- 2. Per gallon charge for amounts in excess of monthly limit for users with daily flow reporting: ... \$1.96
- 3. Per gallon charge for amounts in excess of monthly limit for users with daily flow reporting: .. \$1.96

b. Outside city:

- 1. Per gallon charge for amounts in excess of daily limit: \$4.48
- 2. Per gallon charge for amounts in excess of monthly limit for users with daily flow reporting: ... \$4.48
- 3. Per gallon charge for amounts in excess of monthly limit for users with daily flow reporting: \$4.48

(6) *Costs incurred.* Commercial and industrial users may be charged fees approximately equivalent to the costs incurred by the city to collect and analyze wastewater for the purpose of computing a bill.

(d) *Wholesale users—applicable charges.*

(1) *Base service charge.* Unless otherwise agreed by the user, wholesale users shall not be required to pay a base service charge for being connected to the POTW.

(2) *Loadings charge.* Wholesale users shall pay a loadings charge for each pound of pollutants discharged in the following amounts:

- a. BOD:\$0.275
- b. SS:\$0.114
- c. FOG:\$0.286
- d. Sulfides:\$0.335
- e. Ammonia:\$0.105
- f. TKN:[reserved]

(3) *Flow service charge.* Wholesale users shall pay for the discharge of wastewater to the POTW, based upon readings from a flow meter meeting all requirements of this chapter and measuring outflow of wastewater discharged to the POTW. Rates for wholesale users' discharge of wastewater to the POTW shall be the following:

- a. South St. Joseph
Industrial Sewer District: ...\$0.279/ccf
- b. South St. Joseph
Industrial Sewer District
Pump Station:\$0.393/ccf
- c. National Beef Leathers:.....\$0.207/ccf
- d. Triumph Foods:\$0.210/ccf

(4) *Ammonia project fixed charges.* Wholesale users shall pay fixed charges for ammonia removal capital costs in the following amounts:

- a. South St. Joseph
Industrial Sewer
District:\$40,490.00/month

- b. National Beef
Leathers: \$13,410.00/month
- c. Triumph Foods:.....\$26,680.00/month

(5) *Pollutant limit fee.* Wholesale users shall be charged a limit fee for their discharge of pollutants in excess of the amounts allowed in their wastewater discharge permits. The limit fee for each pound of pollutants discharged in excess of pollutant limits stated in wholesale users' wastewater discharge permit shall be the following:

- a. BOD:\$0.413
- b. SS:\$0.171
- c. FOG:\$0.000
- d. Sulfides:[reserved]
- e. Ammonia:\$0.158
- f. TKN:[reserved]

(6) *Flow limit fee.* Wholesale users shall be charged a limit fee for their discharge of flow rate in excess of the amounts allowed in their wastewater discharge permits. The limit fee for each gallon in excess of a permit limit shall be the following:

- a. South St. Joseph
Industrial Sewer District: ...\$0.419/ccf
- b. National Beef Leathers:.....\$0.310/ccf
- c. Triumph Foods:.....\$0.315/ccf

(7) *Costs incurred.* Wholesale users may be charged fees for the costs incurred by the city to collect and analyze wastewater for the purpose of computing a bill.

(e) *All users—toxic or incompatible substances.* Any user who discharges any toxic substance or substance that is incompatible with the POTW processes, including incompatibility solely as a result of quantity, as so determined by the Missouri Department of Natural Resources or the U.S. Environmental Protection Agency, which would cause damage to the biological process or increase the cost of managing the effluent or the sludge of the POTW shall pay for such increased costs. Costs will be determined by actual costs incurred to restore the system to normal operation or necessary change in the process to meet effluent discharge limits or maintain the sludge in a nontoxic category.

(f) *Hauled wastewater users—applicable charges.*

- (1) *Flow service charge.* Hauled wastewater users shall pay the following for the discharge of each gallon of hauled wastewater to the POTW: \$0.079.
- (2) *Surcharge.* Hauled wastewater users may be charged a surcharge for their discharge of pollutants; the surcharge shall be calculated using the same method and rates, and subject to the same allowable pollutants, established for commercial and industrial users.
- (3) *Costs incurred.* Hauled wastewater users may be charged fees for the costs incurred by the city to collect and analyze wastewater for the purposes of computing a bill.

Flow charges for hauled wastewater must be paid by the user hauling such wastewater. Other user charges for all other amounts due for hauled wastewater are deemed owed by both the hauler of the wastewater and the user generating the wastewater and must be paid within five days of notification that such charges are owed. Notification that such charges are owed may be validly submitted to the hauler or generator of the hauled wastewater within fifteen days of discharge of the wastewater to the POTW.

(G.O. No. 1187, § 1(23-101), 6-20-94; G.O. 1235, 11-7-94; G.O. 1429, 7-1-96; G.O. 1548, 8-11-97; G.O. 1654, 8-24-98; G.O. 1719, 9-7-99; G.O. 1742, 1-10-00; G.O. 1793, 9-18-00; G.O. 1847, 9-17-01; G.O. 1893, 9-3-02; G.O. 1904, 10-28-02; G.O. 1959, 8-4-03; G.O. 2051, 8-30-04; G.O. 2123, 8-29-05; G.O. 2199, 9-25-06; G.O. 2254, 9-12-07; G.O. 2299, 8-25-08; G.O. 2332, 6-15-09; G.O. 2386, 6-14-10; G.O. 2404, 10-4-10; G.O. 2427, 5-2-11; G.O. 2429, 5-31-11; G.O. 2646, 5-29-12; G.O. 2689, 5-28-13; G.O. 2709, 10-28-13; G.O. 2735, 6-23-14; G.O. 2756, 10-27-14; G.O. 2779, 6-22-15; G.O. 2816, 7-18-16; G.O. 2835, 6-5-17; G.O. 2930, 10-7-19)

Sec. 29-238. Discharge from users supplied with water from private sources.

(a) *Registration of source.* If an occupant of property discharging sewage, industrial waste, water or other liquids, either directly or indirectly, into the city's sewage system or which ultimately enters the sewage system is supplied either in whole or in part with water from wells or any source other than the city water company, then such wells or other sources of supply shall be registered with the city.

(b) Sewer use charges shall be based upon the Missouri American Water Company's average residential customer use, unless the customer chooses to base calculation on the method in Subsection (c) below.

(c) *Meter required.* If the water from such well or other source of supply is not measured by a water meter or is measured by a water meter not acceptable to the city, the owner or other interested party, at his own expense, shall install and maintain water meters satisfactory to the city on all supplies, and the quantity of water used to determine the sewer service charge shall be the quantity as measured by the single meter or the sum of the quantities measured by the several meters.

(d) *Failure to install meter.* Should the occupant fail to install such meter or measuring device, the city shall compute the amount of water used, and such computation shall be the basis of the sewer service charge.

(e) *Access to meter.* Access to such meter as may be installed shall be given to city employees for the purpose of reading, inspecting or testing such meter at any reasonable time.
(Gen. Ord. No. 747, § 1(23-102), 1-8-90; G.O. 1742, 1-10-00; G.O. 1904, 10-28-02)

Sec. 29-239. Separated meter billing.

Where it can be shown that all water measured by a single water meter and reported to the city by the water supplier has not entered the sewage system, no sewer fee shall be issued for use from that meter. The city may, however, inspect and test the meter and attached lines at any time in order to verify that the water supplied by those lines does not enter the sewer system.
(Gen. Ord. No. 747, § 1(23-103), 1-8-90; G.O. 1742, 1-10-00; G.O. 2717, 2-18-14)

Sec. 29-240. Exemption for water diverted from system.

If certain types of business and industrial users discharge into the sewage system clear water, not contaminated as the usual sewage entering the system and such users shall install and have in operation equipment to dispose of or divert the water from entering the system, they shall be exempt from payment of sewer service charges for the water so disposed of or diverted. When the equipment is installed and in operation, the city

shall require the installation of meters to measure the amount of water so disposed or diverted.
(Gen. Ord. No. 747, § 1(23-104), 1-8-90; G.O. 1742, 1-10-00)

Sec. 29-241. Alternate method of determining charge.

If, under Sections 29-238, 29-239 or 29-240, the city finds that it is not practicable to accurately measure sewer waste by metered water usage, it shall determine the waste in any manner or method it may find practicable, in order to arrive at the percentage of metered water entering the sewage system, and the quantity of water used to determine the sewer service charge shall be that percentage so determined. Any refund, credit or other billing adjustment resulting from past sewer waste uses must be requested within twelve months of the issuance of a bill for which a user claims an alternate method of determining sewer use charges should be utilized.
(Gen. Ord. No. 747, § 1(23-105), 1-8-90; G.O. 1742, 1-10-00; G.O. 1904, 10-28-02; G.O. 2717, 2-18-14)

Sec. 29-242. Reports.

(a) The owner of any establishment discharging commercial or industrial wastes to the city sewers shall submit a report to the director at such intervals as he may prescribe. In order to ensure compliance with this division, the director may at any time take such measurements, collect such samples and run such laboratory analyses on representative samples of any wastes as may be deemed necessary.

(b) All tests performed by the owner or by the director shall be in accordance with 40CFR136.
(Gen. Ord. No. 747, § 1(23-106), 1-8-90; G.O. 1742, 1-10-00)

Sec. 29-243. Free services.

No sanitary sewerage service shall be furnished or rendered by the city's sanitary sewage system or any of the facilities thereof free of charge to any customer or user thereof other than the city itself.
(Gen. Ord. No. 747, § 1(23-107), 1-8-90; G.O. 1742, 1-10-00)

Sec. 29-244. Payment of charges.

Sewerage service charges prescribed in this division shall be remitted to the City of St. Joseph. (Gen. Ord. No. 1055, § 1(23-108), 1-4-93; G.O. 1359, 12-4-95; G.O. 1742, 1-10-00; G.O. 2689, 5-28-13)

Sec. 29-245. Penalty for nonpayment.

All bills for sewerage service amounts that remain uncollected past the date upon which said amounts were billed and, are thereafter, reflected on the next sewer bill shall be immediately subject to a penalty of 10% on any current charges submitted after the posted due date. An additional monthly penalty of one percent will be assessed on the previous balance due for each billing period thereafter.

(Gen. Ord. No. 952, § 1(23-109), 4-27-92; G.O. 1360, 12-4-95; G.O. 1742, 1-10-00; G.O. 1904, 10-28-02; G.O. 2787, 8-17-15)

State law reference(s)—Collection remedies, RSMo 250.234.

Sec. 29-246. Special discharge charges.

In case of an intentional or unintentional discharge from an industry, caused by bypass, operational upset or pretreatment system cleaning or repair, additional charges related to the operational expenses incurred by the POTW for treatment may be imposed by the city. These charges are additional charges above the surcharges addressed in Section 29-237. These charges may include, but are not limited to, recovery of expenses by the POTW for additional natural gas usage, personnel overtime directly related to discharge event, reagents, chemicals, polymers and cleaning and repairs directly related to discharge event.

(G.O. 1742, 1-10-00; G.O. 2735, 6-23-14)

Sec. 29-247. Services outside city limits.

(a) *Agreement.* Sewerage services shall be provided to premises outside of the corporate limits of the city only after execution of a user agreement between the city and the recipient. Such service shall be provided to residents of another municipal corporation only after execution of a user agreement between the city and the other municipal corporation.

(b) *Rate.* The rate for any such service shall be assessed as determined by the most recent rate study completed by the city in accordance with

(2/1/23)

Section 29-249 of this code. Any such user shall be notified of the new rate as provided by Section 29-250 of this code.

(c) *Connection.* Any owner or occupant of property located outside the corporate limits of the city may apply for connection to the sanitary system of the city. An applicant shall be liable for any fees and charges associated with the application, including, but not limited to, fees for filing the application, necessary permits, connection, inspection and all other applicable fees required by the code of ordinances. All costs for application, connection and inspection shall be borne by the applicant. All collection system infrastructures outside the city limits shall be maintained by the applicant, except that the director of public works and transportation may, as a condition of connection necessary to protect the public health and safety, require that any portion of the infrastructure and all necessary easements be conveyed to the city.

(d) *Regulations to apply.* All regulatory provisions of Article IV of Chapter 29 shall apply to users whose premises are connected to the sanitary system of the city pursuant to this section.

(e) *Connection a privilege.* Any premises located outside of the corporate limits of the city that are connected to the sanitary system of the city under the provisions of this section shall be deemed so connected as a privilege extended by the city and not as a matter of right. The filing of any necessary application and the payment of fees shall not be construed so as to create any right to connect to the sanitary system of the city.

(Gen. Ord. No. 747, § 1(23-111), 1-8-90; G.O. 1742, 1-10-00; G.O. 1782, 8-21-00)

Sec. 29-248. Inspection authority.

Any duly authorized representative of the director, possessing proper credentials and

identification, shall be permitted to enter all properties at reasonable times for the purpose of inspection, observation, measurement, sampling and testing in accordance with the provisions of this division.

(Gen. Ord. No. 747, § 1(23-112), 1-8-90; G.O. 1742, 1-10-00)

Sec. 29-249. Review of user charges.

(a) The director or his representative will review the wastewater contribution of users and user classes, the total cost of operation and maintenance of the treatment works and this division. This review will be made every two years. After the review, this division shall be revised as necessary to maintain the adequacy and proportionality of the revenues and rates.

(b) The director will apply excess revenues collected from a class of users to the costs of operation and maintenance attributable to that class for the next year and adjust the rates for that class accordingly.

(c) Part of the review will be verification of the strength of normal domestic sewage to be accomplished by monitoring to ensure the domestic waste strength is realistic and representative, and the charge will be adjusted accordingly.

(Gen. Ord. No. 747, § 1(23-114), 1-8-90; G.O. 1742, 1-10-00)

Sec. 29-250. Notice to user of rates and charges.

The director or his representative will annually notify each user of the rates and charges levied, respectively.

(Gen. Ord. No. 747, § 1(23-115), 1-8-90; G.O. 1742, 1-10-00)

Sec. 29-251. Amount of monthly depreciation and replacement deposits.

(a) So long as any bonds are outstanding, the city shall deposit in the Sewage System Refunding Revenue Bond Series 1977, Depreciation and Replacement Account, all amounts specified and required by bond covenants.

(b) Funds deposited in such account must not be jeopardized by other competing interests.

(c) If at any time the city must transfer funds from another city account to meet shortages in any of the operation, maintenance and replacement (OM&R) accounts, the transferred money must be refunded and the user charge rates adjusted accordingly.

(d) The city will set up a separate O & M account to allow for separate accounting of expenditures for primary treatment, secondary treatment, and collection system. These OM&R accounts will be nonlapsing, and funds allocated for OM&R will not be used for any other purpose.

(Gen. Ord. No. 747, § 1(23-116), 1-8-90; G.O. 1742, 1-10-00)

Sec. 29-252. Applicability to South St. Joseph Sewer District.

The city has entered into a special sewer service agreement with the South St. Joseph Industrial Sewer District as per PL 92-500. All sections of this division shall apply to the district except Section 29-237(b)(1) and (b)(2).

(Gen. Ord. No. 747, § 1(23-117), 1-8-90; G.O. 1742, 1-10-00)

Sec. 29-253. Appeals of sewer use surcharges.

Any person, including the user, may petition the director to reconsider sewer use surcharges or limit fees within 15 working days of billing. Prior to meeting with the director, an appeal shall be made to the superintendent or pretreatment coordinator of the POTW. This appeal shall be made within the 15 working days of the billing.

- (1) Failure to submit a timely petition for review shall be deemed to be a waiver of the administration appeal.
- (2) In its petition, the appealing party must indicate the portion of sewer use surcharges objected to and the reasons for this objection.
- (3) The undisputed portion of the surcharges or limit fee must be paid prior to the date on which they are due.

- (4) The surcharges and interest shall not be stayed pending the appeal.
- (5) The director shall issue a decision within 15 working days of receipt of an appeal of a sewer use surcharge. A decision not to reconsider a sewer use surcharge, or not to modify a sewer use surcharge, shall be considered the final administrative action for purposes of judicial review.
- (6) Aggrieved parties seeking judicial review of the final administrative sewer use surcharge decision must do so by filing a complaint in the circuit court of Buchanan County, Missouri.
(G.O. 1742, 1-10-00; G.O. 2735, 6-23-14)

Secs. 29-254--29-274. Reserved.

DIVISION 5. SEWER SERVICE
SUBSCRIPTION AGREEMENTS

Sec. 29-275. Applicability.

This Division 5 of Article IV of Chapter 29 of the Code of Ordinances is applicable to any political subdivision and municipality to which the city provides sewage transportation and treatment services under a sewer service subscription agreement with the city that does not contain provisions governing the sewage transportation and treatment services that are provided by the city to such entity in accordance with city policies. Each such political subdivision and municipality is referred to herein as an "entity."
(G.O. 2072, 1-31-05; G.O. 2095, 5-9-05)

Subdivision I. Service Conditions

Sec. 29-276. Scope.

The city shall provide transportation and treatment for sewage delivered into the city's sewage system by the entity, under the terms and conditions set forth in this article and subject in all respects to compliance by the entity with all the limitations and requirements for such treatment and transportation set forth in this article. The city will only be responsible to provide adequate capacity at its corporate limits for the reception of existing customers discharging at existing volumes and strengths, and at existing interconnection points, as of the

date that a sewer service subscription agreement is entered, as more fully set forth in this division.
(G.O. 2072, 1-31-05)

Sec. 29-277. Operation and maintenance.

The entity shall be solely responsible for the construction, operation and maintenance of its sewage collection system in an orderly manner and sanitary condition, at no expense to the city, and in accordance with applicable rules of the United States Environmental Protection Agency (EPA) and the Missouri Department of Natural Resources (MoDNR).

The entity shall conform to and be governed by the city ordinances now in effect or hereafter enacted and any amendments thereto, pertaining to sewers and sewage disposal and, including all the city building codes and public works standards as set out in the code of the city as they relate to construction of sewers, sewage collection system, sewer service line connections and other sewer facilities, including without limitation this article. The city shall inspect, monitor and enforce compliance with such requirements.

The entity shall control, own, operate, and maintain its sewerage system according to standard engineering practices and the requirements of this code, and, in doing so, will effectively police and control its sanitary sewerage system so as to preclude to the maximum extent practicable the entrance of storm waters and illicit discharges therein.
(G.O. 2072, 1-31-05)

Sec. 29-278. Construction and inspection of facilities.

(a) The prior, written consent of the city is required for any new construction of any trunk or collection line that extends additional service for a new connection, or any service line extension to properties not abutting or encompassing the existing and approved sewer collection system, or for any other extension of services which otherwise increases the flow from the entity's sewage system. Any such extension of the entity system shall be requested of the city in advance and shall not be approved without the express, written consent of the city. Unapproved extensions shall in no way obligate the city to convey or treat subsequent flow and shall constitute a conscious act of the entity to plan,

construct and operate its own collection and treatment system, diverting unauthorized flow from the city to systems for which the entity is solely responsible for funding and maintaining.

(b) A sewer connection permit issued by the city shall be required prior to any and all connections to the entity's sewage collection system. The city shall charge a fee for each approved sewer connection permit issued by the city as provided in the code, payable to the city prior to the issuance of the permit. The city reserves the right to deny any permit for non-compliance with any of the requirements of this code and to take any action the city deems necessary to prevent connection of sewers prior to compliance with the code including, but not limited to, terminating a sewer service subscription agreement with the entity or otherwise terminating sewage transportation and treatment service to the entity.

Prior to the issuance of a sewer connection permit by the city, the entity shall be required to have previously established an approved sewer district for the area in or for which the connection is to be made. The face of the building permit issued for the property for which the sewer connection permit is sought must include a notation which shall designate the sewer district in which the connection is to be made.

(c) The entity shall notify each applicant for a building permit that the city will also require that a plumbing permit for a sewer connection be obtained from the city for the inspection of the sewer connection, and that the applicant is required to apply for such city permit immediately following the application for the building permit. All sewer connections must be constructed and inspected in accordance with the requirements of this article. The entity shall provide the entity with a copy of each building permit within five working days of the date of issuance of such building permit. The entity shall include, or cause the issuing body to include, on the face of each such building permit, notice to each recipient of a building permit that the permit is conditioned on compliance by the recipient with the terms of the code.

(d) The city shall inspect construction of all building sewer connections and new main line sewers and sewer systems connected to the city's sewage system under such conditions as the director shall establish. The entity shall

reimburse the city for the inspection of main line sewers. At the option of the city, the entity shall, in lieu of inspection by the city, obtain the services of an independent on-site inspector approved by the city to conduct such inspection. Reimbursement of such independent on site inspectors shall be entirely at the expense of the entity. Final approval shall, in any event, rest with the city. No connection of sewer systems shall be accepted or utilized without the prior approval of the city.

(e) The director will cause periodic inspections of the entity's existing sewage system to be conducted to determine conditions, verify system locations, inspect connection points and otherwise as the city may require. Such inspections will be made either by the city or by an independent inspector approved by the city, and inspections shall be conducted at such intervals as deemed appropriate by the city based on the age and condition of the system. The cost of such inspection shall be paid by the entity and the users.

(f) The entity will, at its sole cost and expense, complete an infiltration and inflow study. Such study will be conducted by an independent contractor approved by the city. The entity shall complete the rehabilitation, repairs and replacements which the director shall require according to the study and construction schedule set forth below:

- (1) By October 1, 2005 (or such other date as the director may determine), for parts of system that are five years old or older.

By July 1, 2007 (or such other date as the director may determine), for newer parts of system.

The entity is to complete a comprehensive infiltration and inflow study in all major drainage areas. This study to determine all sewer lines, manholes, etc. that need rehabilitation, repair or replacement to reduce infiltration and inflow into the sewer system. A copy of this study showing the rehabilitation, repair, and replacement work is to be supplied to the city.

- (2) By July 1, 2006 (or such other date as the director may determine), for parts of system that are five years old or older.

By July 1, 2008 (or such other date as the director may determine), for newer parts of system.

The entity is to have completed 25% of the rehabilitation, repair, and replacement work identified in the infiltration and inflow study.

- (3) By July 1, 2007 (or such other date as the director may determine), for parts of system that are five years old or older.

By July 1, 2009 (or such other date as the director may determine), for newer parts of system.

The entity is to have completed 50% of the rehabilitation, repair and replacement work identified in the infiltration and inflow study.

- (4) By July 1, 2008 (or such other date as the director may determine), for parts of system that are five years old or older.

By July 1, 2010 (or such other date as the director may determine), for newer parts of system.

The entity is to have completed 75% of the rehabilitation, repair, and replacement work identified in the infiltration and inflow study.

- (5) By July 1, 2009 (or such other date as the director may determine), for parts of system that are five years old or older.

By July 1, 2011 (or such other date as the director may determine), for newer parts of system.

The entity is to have completed 100% of the rehabilitation, repair, and replacement work identified in the infiltration and inflow study.

(G.O. 2072, 1-31-05; G.O. 2095, 5-9-05)

Sec. 29-279. Interconnection Monitoring Facilities (IMFs).

(a) The city may install metering and sampling equipment at any location where sanitary sewage

and wastes are received by the city, if the director determines that it is appropriate to meter and sample such wastes at such location. At each location where metering and sampling equipment is to be installed, the entity will provide a suitable manhole, which is a manhole with flow characteristics as per the flow meter manufacturer's requirements, for installation of metering equipment. The entity will be responsible for obtaining all needed rights-of-way and easements for construction and operation of the installations located within the corporate boundaries of the entity. The entity shall compensate the city for installation of each such interconnection monitoring facility.

(b) The city may also install IMFs at any interconnection point that meets any of the following criteria:

- (1) The interconnection point serves any commercial establishments; or
- (2) Average flow exceeds 25,000 gallons per day during a one year period; or
- (3) Wet weather flow exceeds dry weather flow by a factor of six times the peak max hour. In addition, the city may assess a surcharge against the entity for storm water flow received by the city from the entity system.

(c) At all other points of interconnection, the entity shall provide at such interconnection point a standard city manhole.

(d) Following installation of IMFs directed by the city, the city shall be responsible for all the maintenance and replacement of such facilities, and the testing and calibration of equipment therein, including sampling equipment at the cost and expense of the entity. The city and the entity shall supply to each other any data generated during any inspection or testing of the facilities or equipment.

(e) The city shall have the right to access all monitoring facilities.
(G.O. 2072, 1-31-05)

Sec. 29-280. Rights of use.

The sole responsibility of the city is to provide adequate capacity at its corporate limits for the reception of existing customers and users of the entity who use the existing and approved sewer

§29-374

collection system of the entity, and discharging at existing volumes and strengths, as of the date that an agreement is entered with the city, and only to the extent that the city has been made aware of such existing use, provided that the entity is otherwise in compliance with the terms and provisions of the code. The entity shall provide the city information as to its existing and

approved sewer collection system. Such information shall be subject in all respects to the approval of the director. If the entity fails to provide such information, or if such information is incomplete or incorrect as determined by the director, the director is empowered to establish the approved levels of service without consultation with the entity.

Any extension of the entity's existing and approved sewer collection system, or additional connection, or increase of flow as provided herein, requires the prior written consent of the city. The entity shall notify the city of any such proposed addition.

The following procedure shall be followed to determine existing flow:

- (1) The city shall monitor, in a manner deemed appropriate by the city, average flow for a period of one year, or such other period as the city may decide, to determine base line flow, and shall then meet with the entity to discuss average flow. The flow will be evaluated every year thereafter for four years to determine a five year average.
- (2) The entity shall not add connections, extend its system or otherwise increase its flow over the average base line flow and without the express written consent of the city. In the event that the entity violates these provisions, in addition to any other remedies available to the city, the city may exercise any of the following remedies against the entity:
 - a. Obtain an injunction from the Buchanan County Circuit Court or other court of competent jurisdiction to have the facilities carrying the unauthorized waste disconnected from any portion of the entity's system that carries waste to an interconnection point with the city.
 - b. Require the entity to construct treatment facilities to treat the unauthorized waste.
 - c. Assess a penalty against the entity commensurate with the extent of the breach.
 - d. Terminate its sewer service subscription agreement with the entity or otherwise terminate sewage

transportation and treatment services to the entity.

- e. Exercise any other remedy at law or in equity that may be available.

The entity shall reimburse the city for its costs and expenses of exercising any such remedy or remedies, including, but not limited to, administrative costs and reasonable attorneys' fees.

(G.O. 2072, 1-31-05)

Sec. 29-281. Regulation of flows.

(a) *Source.* The entity shall not allow any public agency, individual, private corporation or political subdivision located outside of the boundaries of the entity, other than the city, to connect with or use any entity wastewater improvement which connects to and discharges into any wastewater improvement of the city regardless of whether such agency, individual, corporation or subdivision is in the same natural drainage areas or basins as the entity unless without first obtaining the express written consent of the city. The city has no duty or obligation to accept any flows from jurisdictions or areas not named or described in its agreement with the entity and/or not otherwise consented to by the city.

(b) *Quantity.* As provided in this division, the city shall limit the quantity of wastewater received through any existing interconnection and shall not authorize any new connections except as provided herein. It is the intention of the city to continue serving those properties that currently have access to a sewer; however, no sewer line extensions, new connections, or increased flow due to infiltration and inflow (I&I) will be allowed without the prior express, written consent of the city. Documented I&I flows will be billed as a surcharge in accordance with standard city billing practices.

(c) *Quality.*

- (1) The quality of the wastewater received through any new or existing interconnection shall meet the general prohibitions contained in this article, including, but not limited to, the following specific pollutant limitations (or as reflected in the current discharge permit issued by the State of Missouri):

POLLUTANT DAILY MAXIMUM

Arsenic	0.100 mg/l
Benzene	0.100 mg/l
Cadmium	0.240 mg/l
Chromium	0.500 mg/l
Cooper	0.300 mg/l
Cyanide	0.800 mg/l
Ethylbenzene	0.200 mg/l
Lead	0.300 mg/l
Mercury	0.004 mg/l
Nickel	1.200 mg/l
Phenols	1.000 mg/l
Silver	0.500 mg/l
Thallium	0.400 mg/l
Toluene	0.200 mg/l
Xylene	0.200 mg/l
Zinc	0.800 mg/l
PCB's	0.002 mg/l
TKN	Applicable Missouri or EPA limits
Ammonia	Applicable Missouri or EPA limits

Total Toxic Organics (TTOs) as defined by 40 CFR 433.11(e) shall not exceed 1.0 mg/l at any time.

The pH of the wastewater at the interconnection point shall be between 6.0 and 11.0 s.u. Surcharges for exceedance of pollutant limitations will be as set forth in Subsection 29-310(d).

- (2) The city shall sample and analyze flows, at each interconnection point and on such frequency basis as the director shall determine, and shall be reimbursed by the entity for such sample and analysis as the director shall determine.
- (3) Surcharges for concentrations of biochemical oxygen demand (BOD), suspended solids (SS), and total fats, oil and grease (FOG) in excess of normal sewage (BOD – 250 mg/l, SS – 250 mg/l, FOG – 30 mg/l) will be as set forth in this article.
- (4) The city, or the entity at the direction of the city, shall investigate all instances of pH outside of the allowable range, and the entity shall take adequate measures to prevent re-occurrence.

- (5) The city shall collect and record the continuous flow data obtained by each IMF. The city shall provide a summary of the collected data from each interconnection to the entity.
(G.O. 2072, 1-31-05; G.O. 2095, 5-9-05)

Sec. 29-282. Pretreatment standards.

The city, as a pretreatment program authority approved by the United States Environmental Protection Agency and the Missouri Department of Natural Resources, is subject to certain federal and state regulations. Such regulations, as now exist or may be promulgated in the future, may require the city to change its sewer use ordinances and regulations and its inspection, monitoring and enforcement activities. The entity shall abide by such changes and shall require compliance by all of its customers and users who discharge directly or indirectly to the city's system, under such requirements as the director shall determine.
(G.O. 2072, 1-31-05)

Sec. 29-283. Rights of the city.

The city has the right to perform any and all technical and administrative duties, including, but not limited to, those set forth in this article, including Section 29-296, to enforce the requirements of the code relating to operation and maintenance of the entity's sewerage system, construction and inspection of its facilities, monitoring, regulation of flows, and other requirements as set forth herein, with respect to all users of the entity's system.
(G.O. 2072, 1-31-05)

Secs. 29-284--29-290. Reserved.

Subdivision II. Commercial and Industrial Wastes No Approved Entity Pretreatment Program

Sec. 29-291. Scope.

This subdivision applies when the entity does not have or maintain an EPA or state-approved pretreatment program for the control of commercial and industrial discharges to its publicly owned treatment works (POTW) or does not have any POTW. Provided, however, that nothing in this article shall negate or limit the requirement that the approval of the city is required for any entity sewer line extensions,

additional connections thereto or increased flow to the city's system.
(G.O. 2072, 1-31-05)

Sec. 29-292. Sewer use ordinance.

The entity shall adopt and enforce sewer use rules, local limits, regulations and/or ordinances for the regulation of commercial and industrial discharges to the city's wastewater treatment plant, which shall be similar to and at least as stringent as the city's ordinances that regulate commercial and industrial waste. If the entity does not have sewer use rules, local limits, regulations and/or ordinances for the regulation of commercial and industrial discharges, then such discharges shall be regulated by the standards set forth in the code, including in this article. The entity shall either adopt said rules, local limits, regulations and/or ordinances and provide a certified copy of said rule, ordinance and/or regulation to the city within 90 days of the city's demand upon the entity therefor, or will regulate and allow the city to regulate any such discharges by the standards set forth in the city ordinances.
(G.O. 2072, 1-31-05)

Sec. 29-293. Commercial/Industrial User Survey.

The entity shall provide to the city a list of all commercial and industrial users within its jurisdiction that discharge to the city's wastewater treatment plant within 60 days of the city's demand therefor. The entity shall notify the city of any new significant commercial or industrial users within its jurisdiction prior to such commercial or industrial user's discharge to the city's wastewater treatment plant. Any and all requested extensions of the collection system or new connections shall not be allowed without the prior, express written consent of the city.

The term "significant industrial or commercial user" shall be any non-residential user which:

- (1) Is subject to categorical pretreatment standards; or
- (2) Purchases, uses, or discharges an average of 25,000 gallons per day or more of water; or
- (3) Discharges a process wastestream which makes up five percent or more of the average dry weather hydraulic or organic

capacity of the wastewater treatment plant serving the said user; or

- (4) Accepts waste from another location outside the facility's boundaries for treatment, storage or disposal; or
- (5) Provides "recycling" services for materials from another location outside the facility's boundaries; or
- (6) Provides laundering services for commercial/industrial accounts; or
- (7) Has the potential for discharge of silver in significant quantities; or is designated as significant by the director on the basis that the user has a reasonable potential for adversely affecting the POTW's operations, for violating pretreatment standards or requirements or sewer use ordinances or regulations of the city or the entity.

(G.O. 2072, 1-31-05)

Sec. 29-294. Monitoring authority.

(a) The city has the authority to inspect and monitor any commercial and/or industrial customer's compliance with the entity's and the city's sewer use rules, regulations or ordinances. If the entity has sewer use rules, regulations and/or ordinances, the entity shall include therein a provision recognizing that the city has such authority, and the entity shall perform those duties directed by the city to implement and enforce said rules, regulations and/or ordinances.

(b) If at any time, the city's inspection or monitoring discloses that a sewer user has violated the entity's or the city's sewer use rules, regulations and/or ordinances, and warrants prosecution, the city will so notify the entity and provide the entity with sufficient information to allow the entity to pursue any available enforcement remedy.

(c) If the entity does not initiate enforcement within 30 days of being notified of a violation, the city may prosecute the violation in the Buchanan County Circuit Court, or any court of competent jurisdiction, or its own behalf or as the entity's agent, and the entity will reimburse the city for its costs of prosecution, including reasonable attorneys' fees.

§29-374

(d) If the entity does not vigorously prosecute any such violator, the city may terminate the sewer service subscription agreement with the entity after 60 days' written notification to the entity.

(G.O. 2072, 1-31-05)

Sec. 29-295. Commercial and industrial monitoring.

(a) *Right of access for inspection and sampling.* The director shall make any inspections, measurements and wastewater samplings he deems appropriate, in his sole discretion, to enforce provisions of current and future sewer use ordinances of the city, as well as any sewer use ordinances, rules and/or regulations adopted by the entity. The entity shall cooperate or assist as necessary in such monitoring and to provide to the city any documentation required to perform these functions.

(b) *Monitoring structures.* The entity shall require all new and/or significant commercial or industrial customers within the boundaries of the entity which discharge to the city's wastewater treatment plant, to install and maintain monitoring structures that meet or exceed the city's specifications on the building sewer just prior to connection with the public sewer. The current standard monitoring structure is a 48-inch inside diameter manhole with straight-through flow and no other connections to the manhole, or within ten feet upstream of the manhole. The city reserves the right to revise this specification from time to time as technology and equipment change and evolve.

(G.O. 2072, 1-31-05; G.O. 2735, 6-23-14)

Sec. 29-296. Rights of the city.

(a) The city shall perform technical and administrative duties necessary to implement and enforce either the city's or the entity's sewer use ordinances, rules and/or regulations, including, but not limited to, the following:

- (1) Determining the acceptability of commercial and/or industrial waste for discharge to the entity's and the city's sewer systems from commercial and industrial users within the entity's jurisdiction;

- (2) Providing technical services such as sampling and analysis of effluent from industrial users;
- (3) Issuing discharge permits to commercial and industrial users discharging to the entity's sewer system;
- (4) Conducting inspections and compliance monitoring of commercial and industrial users;
- (5) Receiving and analyzing commercial and industrial self-monitoring reports;
- (6) Performing enforcement against non-compliance with the city's or the entity's ordinances, rules and/or regulations in accordance with this section;
- (7) Notifying the entity of all activities and providing copies of all reports and correspondence to the entity; and
- (8) Reviewing and auditing the entity's enforcement of its sewer use rules, regulations and/or ordinances regulating commercial and industrial waste, and notifying the entity of any additional enforcement activities that may be necessary.

(b) As required by federal regulations (40 CFR 403 et seq.), the minimum functions that the city shall perform regarding significant industrial users are annual inspections and permit issuance, semi-annual receipt and analysis of self-monitoring reports, annual sampling and analysis of wastewater discharges, and all necessary correspondence pertaining to said functions. The entity shall be provided copies within ten days of preparation and/or receipt of all such reports and correspondence.

(G.O. 2072, 1-31-05)

Secs. 29-297--29-305. Reserved.

Subdivision III. Reports and Payments

(G.O. 2072, 1-31-05)

Sec. 29-306. Scope.

In consideration of the wastewater treatment, wastewater transportation, and pretreatment program services provided for in the sewer service subscription agreement:

- (1) The city and the entity will report their various activities as detailed in this subdivision; and
- (2) The entity and the users of the entity system will pay to the city or its designee, fees and costs described in this article.

(G.O. 2072, 1-31-05)

Sec. 29-307. Reporting requirements for areas with unmetered interconnections (no IMF).

(a) For each unmetered interconnection for the previous two months, on or before the 15th day of each bi-monthly period, the entity will advise or cause the applicable water company to advise the city of:

- (1) The water consumption, and total number of all residential customers;
- (2) The water consumption, and total number of all commercial and industrial customers;
- (3) Names and addresses of residential, commercial and industrial customers;
- (4) The total number of residential customers for which water consumption records are not available and the reason such records are not available; and
- (5) The sampling results if sampled by the entity.

(b) For each unmetered interconnection for the previous month the city will advise the entity before the last day of the month of charges, fees and other costs due the city and also:

- (1) Flow data and sampling results, if monitored; and
- (2) The applicable surcharge rate, if any, for each commercial and industrial customer.

Sec. 29-308. Reporting requirements for areas with metered interconnections (IMF operational).

For each metered interconnection for the previous month, the city will endeavor to advise the entity before the last day of the month of charges, fees and other costs due the city and will also endeavor to notify the entity of:

- (1) Flow data and sampling results if monitored; and
- (2) The applicable surcharge rate, if any, for each interconnection point.

(G.O. 2072, 1-31-05)

Sec. 29-309. Reporting requirements in general.

(a) On or before January 15 of each year, the entity shall provide the city with current maps of those parts of its wastewater collection system flowing into the city's system. Information shall be transmitted in electronic form if possible.

(b) The entity shall provide mylars to the city of all subdivision plats, "as built" sewer plans and sewer districts approved by the entity.

(G.O. 2072, 1-31-05)

Sec. 29-310. Computation of charges.

(a) Users of the entity system will be billed for sewer charges. If any user does not pay sewer charges when due, the city may enforce against the user all of the remedies which the city has available against delinquent users of the city system, including, but not limited to, termination of water service, imposition of a lien against the property of such user and other available remedies. The city will be entitled to recover its costs in collecting any unpaid bills, including, but not limited to, administrative costs and reasonable attorneys' fees. The entity shall provide such assistance as the city may reasonably request in the collection of unpaid bills.

(b) *Unmetered and metered interconnections:* In addition to any other charges set forth in this article, the following charges will be billed by or on behalf of the city:

- (1) For each sewer customer (residential, commercial or industrial), a sewer charge equal to a service charge as established in this article, as now exists or as may be revised, plus a volume charge equal to the actual volume of water consumed multiplied by the volume rate as established in this article as now exists or as may be revised.
- (2) For each dwelling unit for which actual water consumption records are not available, a sewer charge as established in this article, as now exists or as may be revised, multiplied by the applicable factor as established said article, as now exists or as may be revised.
- (3) For wastes from commercial or industrial establishments containing suspended solids (SS), five-day 20°C biochemical oxygen demand (BOD) or fats, oil & grease (FOG) in excess of the limits set forth in this article, there shall be added to these charges a surcharge equal to the charge defined in this article, as now exists or as may be revised.

(c) *Metered interconnections:*

For areas with metered interconnections, for which the interconnection is regularly monitored by the city, if the metered flow indicates that there is significantly more flow and/or users than water usage would indicate, rates to the users, or any user, or to the entity are subject to adjustment, and further, surcharges may be imposed against said user(s) or the entity.

Furthermore, a surcharge for wastes containing SS, BOD or FOG in excess of the limits set forth in this article, as same now exists or as may be revised, shall be added to the charges in an amount equal to the charge defined in this article, as now exists or as may be revised.

(d) For exceedances of pollutant limitations as set forth in Section 29-281, a surcharge for each pollutant for each exceedance to be calculated as follows:

$$\text{Daily Maximum Exceeded; per pollutant} \\ ((AD/LD)-1) \times \text{MGD} \times \$10,000.$$

The symbols, letters or figures employed in the formula signify the following:

AD = Average concentration of a particular pollutant discharged in any one sampling period.

LD = Daily maximum concentration of a particular pollutant that may be discharged as defined in Section 29-281.

MGD = Average daily flow rate in million gallons per day for the reporting period.

The pollutant surcharges described in this subsection shall be waived if the contributing party has delegated industrial pretreatment enforcement to the receiving party and has made a good faith effort to assist in compliance actions, provided that the pollutant overage is directly attributable to a permitted significant commercial user or industrial user.

(e) The city will assess a billing and administrative fee against the entity, or at the city's option, against the user, to recover its costs. A fee schedule will be maintained in the director's office.

(G.O. 2072, 1-31-05)

Sec. 29-311. Payments for construction of monitoring stations.

For each monitoring structure constructed by the city, the entity will pay to the city the cost of the structure, either in a lump sum or in equal monthly payments over a period of time not to exceed 30 months. The payment by the entity to the city for each monitoring structure will start in the first full month after construction of the monitoring structure is completed and continue each consecutive month until the applicable number of payments have been made.

(G.O. 2072, 1-31-05)

Sec. 29-312. Connection fees.

The city will charge a fee for each approved sewer connection permit issued by the city, payable to the city prior to the issuance of the permit, in accordance with the fee structure as established in this article, as now exists or as may be revised.

(G.O. 2072, 1-31-05)

Sec. 29-313. Other fees and charges.

In addition to the fees and charges described herein, the entity and the users will be responsible to pay all applicable fees and charges set forth in this article, as now exists or as may be revised.

(G.O. 2072, 1-31-05)

Sec. 29-314. Payments.

Payments shall be made to the city or its designee for all charges billed hereunder by no later than the due date shown on the invoice, as applicable, and in any event by no later than 30 days after receipt of invoice.

(G.O. 2072, 1-31-05)

Sec. 29-315. Late payments/payment plans.

Balances unpaid after the applicable date shown on the invoice shall accrue interest at the maximum allowable rate.

(G.O. 2072, 1-31-05)

Secs. 29-316--29-320. Reserved.

Subdivision IV. Additional Conditions

Sec. 29-321. Boundaries.

The entity shall notify the city immediately upon any changes of the existing and approved sewer collection system of the entity. The city will not agree to the provision of service in any areas other than the existing and approved sewer collection system of the entity without the city's express, written consent. Any expansion of the approved area of service without the city consent shall constitute a breach of the sewer subscription service agreement for which the city may exercise appropriate remedies, including, but not limited to, any remedy set forth in this article.

(G.O. 2072, 1-31-05)

Sec. 29-322. Notification of ordinance amendments.

Whenever the entity amends its sewer use ordinance, or any regulations for use of its sewerage system, it shall immediately notify the

city. A copy of any amendment adopted shall be forwarded to the city within ten business days of adoption.

(G.O. 2072, 1-31-05)

Sec. 29-323. Breach of duties.

Whenever the entity has failed to comply with the requirements of this code, the city shall have the right to take whatever action at law or in equity may appear necessary or desirable to collect the amounts then due and to become due or to enforce and performance and observation of any obligation or agreement of the city.

The city may seek immediate legal recourse in the Buchanan County Circuit Court in the event that court intervention is necessary to prevent imminent harm to the health, safety and welfare of the residents of the city or damage to the city's POTW (publicly owned treatment works) or the residents of the entity.

The city may exercise any remedy set forth in this article for a breach of duties, including but not limited to those set forth in Division 3, Subdivision IV, and in Section 29-280 and Section 29-294 and this Section 29-323.

(G.O. 2072, 1-31-05)

Sec. 29-324. Emergency actions.

The city may take emergency action whenever necessary to stop or prevent any discharge into either the city's or the entity's sewerage system that presents, or may present, an imminent danger to the health, safety, or welfare of humans, which reasonably appears to threaten the environment or which threatens to interfere with the operation of the city's sewer system and/or wastewater treatment plant. Before taking such action, the city will attempt to provide informal notice (i.e., a telephone call) to the entity of its intent to take emergency action. The city will notify the entity within 48 hours after taking or initiating any such emergency action. Nothing contained within this paragraph shall be construed to be inconsistent with the enforcement duties of the city as set forth in its ordinances or regulations for use. The entity will reimburse the city for its costs and expenses associated with any such emergency action, including, but not limited to, investigative costs, administrative costs and reasonable attorneys' fees, and the entity will be responsible for any fines, penalties, fees and the like which may be assessed as a result of such discharge.

§29-374

(G.O. 2072, 1-31-05)

Secs. 29-325--2-329. Reserved.DIVISION 6. FATS, OILS, AND GREASES
CONTROLS**Sec. 29-330. Intent.**

The city council finds that the enactment of regulations for fats, oils, and greases controls will have a beneficial impact on the citizens of the city. Such an ordinance allows for the management of wastes generated within the city in an environmentally sound manner. It provides for permitting and monitoring to ensure that the regulations are followed, and provides for the establishment of fees governing all regulated activities.

(G.O. 2670, 2-4-13)

Sec. 29-331. Definitions

The following words, terms, and phrases, when used in this division, shall have the meanings ascribed to them in this division, except where the context clearly indicates a different meaning:

- (1) *Best management practices (BMP)* include but are not limited to a schedule of activities, prohibitions, maintenance policies and other management procedures that are implemented to prevent or reduce the discharge of pollutants into the public sewer system. BMP also includes pretreatment requirements, operating procedures and practices to control plant site runoff, spillage or leaks, sludge or wastes disposal or drainage from raw material storage.
- (2) *City* means “The City of St. Joseph, Missouri.”
- (3) *City sewer* means a sewer, which is owned and controlled by public authority.
- (4) *Director* means the director of public works and transportation designated by the city to administer and enforce the provisions of this division or the person designated by the city to supervise the operation of the publicly owned treatment works and who is charged with certain duties and responsibilities by this

division, or his duly authorized representative.

- (5) *Fats, oils, and greases (FOG)* means organic polar compounds derived from animal or plant sources that contain multiple carbon chain triglyceride molecules. These organic polar compounds include, but are not limited to cooking oil, fat, lard, grease, butter, tallow, shortening, and margarine.
- (6) *FOG administrator* means the person or persons, regardless of the job title held by such persons, designated by the director to administer the FOG controls regulations and to perform duties as described in this division.
- (7) *FOG Inspector* means the person or persons, regardless of the job title held by such persons, designated by the director to perform inspections as described in the FOG controls regulations and to perform other duties related thereto.
- (8) *FOG user* means any user to whom or to which the “fats, oils, and greases controls” division applies.
- (9) *Food service establishments (FSEs)* means any person, entity, or establishment that is considered a “restaurant,” “food establishment,” “food service establishment,” or substantially similar entity under the health and sanitation code of the City of St. Joseph and such code’s successor code of ordinances provision, as amended.
- (10) *Grease interceptor* or *grease trap* means a device designed to use differences in specific gravities to separate and retain light density liquids, waterborne fats, oils, and greases, and may serve to collect settleable solids prior to the wastewater entering the city sewer.
- (11) *Grease discharge permit (GDP)* means a permit issued by the city’s water protection division, or other division as directed by the city manager, authorizing the discharge of wastewater to the city sewer from an FSE or other required permittee.

(2/1/23)

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(12) *Grease waste hauler* means an entity which collects and transports FOG to a disposal facility and that is required to comply with applicable federal, state, and local laws and ordinances for such activities.

(13) *Sewer* means a pipe or conduit for carrying sewage.

(14) *User* means any person or industrial user who contributes, causes, or permits the contribution of wastewater into the city sewer.

(G.O. 2670, 2-4-13)

Sec. 29-332. Applicability.

Users to whom or to which this division applies include:

- (1) All FSEs that generate or have the potential to generate FOG.
- (2) All other users who discharge into the city sewer for whom grease interceptors are deemed by the director to be necessary for the removal of FOG from a waste in order to prevent accumulation of FOG in the lateral and tributary downstream city sewer.

Notwithstanding the foregoing, this division shall not apply to significant industrial users who are in full compliance with the requirements established by this chapter for significant industrial users.

(G.O. 2670, 2-4-13)

Sec. 29-333. General requirements and prohibitions.

(a) *Required practices.* All FOG users shall implement BMP as defined by the FOG administrator to prevent visible accumulation of FOG in respective lateral and tributary downstream city sewer.

(b) *Prohibitions.* No FOG user may:

- (1) Dispose of waste cooking oil or discharge of any solid or liquid food waste containing FOG into any drain connected to the city sewer.
- (2) Connect any kitchen fixture to a drain connected to the city sewer without

maintaining a non-removable, secured food strainer of such integrity to withstand daily operational usage that prevents solid food from entering the city sewer.

- (3) Install new garbage grinders.
- (4) Maintain existing functioning garbage grinders, without an express written permit to maintain such garbage grinder, for more than 180 days after notification that such garbage grinders must be removed or rendered permanently inoperable.
- (5) Discharge wastewater from dishwashers to any grease interceptor or alternative FOG control devices.
- (6) Discharge wastewater with temperatures in excess of 140°F to any grease interceptor or alternative FOG control devices.
- (7) Discharge solvents or additives that emulsify grease into the drainage pipes connected to the city sewer.
- (8) Use biological additives for grease remediation or as a supplement to grease interceptor maintenance, without prior authorization from the director.
- (9) Operate grease interceptors with FOG and solids accumulation exceeding 25% of the total design hydraulic depth of the grease interceptor.

(c) *Record keeping and reporting.* All FOG users shall maintain the following documents on site and readily available for review for a period of twelve months following completion of the activities described therein:

- (1) A logbook containing dates and times of all grease interceptor cleaning and maintenance activities and a brief description of such activities.
- (2) A logbook of BMPs being implemented, including employee training.
- (3) Any required self-monitoring reports or sampling data and/or sludge height

monitoring for FOG and solids accumulation in the grease interceptors.

- (4) Any other information as deemed necessary by FOG administrator to achieve objectives of this division.

FOG users may, be required to submit periodic reports regarding the status of implementation of BMPs and maintenance of grease interceptors. Other reports, such as compliance schedule progress reports, may be required to ensure compliance with the rules and requirements of this division.

(d) *Inspections.* All FOG users shall be subject to inspection to assure compliance with this division.

(G.O. 2670, 2-4-13)

Sec. 29-334. Grease interceptors.

(a) *When required.* Unless subject to an exception or conditional waiver as specifically described herein, the following are required to install grease interceptors to remove FOG prior to discharge into the city sewer:

- (1) FOG users located in newly constructed facilities or in facilities for which a plumbing permit is issued pursuant to requirements of the plumbing code in conjunction with any expansion, or renovation of the facilities.
- (2) If required by FOG administrator, existing FOG users to which any of the following apply:
 - a. Are found to be contributing FOG in quantities sufficient to contribute to sewer line stoppages or which necessitate increased maintenance on the city sewer.
 - b. Do not have functioning grease interceptors or other mechanisms to properly control FOG.
 - c. Remodel or perform other work on the food preparation or kitchen waste plumbing systems which requires a plumbing permit to be issued pursuant to the plumbing code.
 - d. Do not have plumbing connections to a grease interceptor in compliance

with the requirements of this division.

(b) *Minimum requirements.* All grease interceptors required by this section shall be of a type, construction, and capacity sufficient to prevent visible accumulation of FOG in the lateral and tributary downstream city sewer and shall comply with the following requirements:

- (1) *Location.* All required grease interceptors shall be located in an area in which they are readily and easily accessible for cleaning and inspection.
- (2) *Plumbing code.* The design, construction, installation, and testing of grease interceptors shall be in accordance with the plumbing code of the city.
- (3) *Operation and maintenance.* Grease interceptors and other FOG removal devices must be operated and maintained properly at all times. Users of grease interceptors must follow the grease interceptor manufacturers' recommendations and guidelines for appropriate operation and maintenance and must:
 - a. Remove accumulated FOG, including floating materials, sludge, and solids, with sufficient frequency to maintain the grease interceptor in efficient operating condition.
 - b. Clean grease interceptors with sufficient frequency to prevent combined FOG and solids accumulation from exceeding 25% of the total liquid depth of the grease interceptor.
 - c. Clean grease interceptors on at least a daily basis.
 - d. Visually inspect grease interceptors on at least a daily basis to ensure:
 1. there are no leaking seams and pipes and
 2. baffles and flow regulating devices are operating properly.
 - e. Prevent caked-on FOG and food waste on grease interceptors and their baffles.
 - f. Remove and clean grease interceptor baffles.

- g. Maintain grease interceptors free of all food residues and any FOG waste dislodged during the cleaning and scraping processes.

Any waste, including FOG and solid material, removed from the grease interceptors shall be prevented from discharging into the city sewer.

(c) *Exceptions to grease interceptor requirements.* The FOG administrator may issue an exception from the requirement to install, operate, and maintain a grease interceptor to FOG users who demonstrate that it is impossible or impracticable to install, operate, or maintain a grease interceptor. In order to obtain an exception, FOG users must demonstrate their ability to use alternative FOG control technology or practices that are equally or more effective in controlling FOG discharge than the equipment and processes otherwise required in this Section.

If an exception to the grease interceptor requirements is granted, downstream visual monitoring of the City sewer must demonstrate that no visible accumulation of FOG occurs in the lateral and tributary downstream city sewer. Such downstream visual monitoring must be completed at the FOG user's expense.

(d) *Conditional waiver from grease interceptor requirement.*

- (1) *Grant of conditional waiver.* The FOG administrator may grant a FOG user a conditional waiver of the requirement to install grease interceptor if such user:
 - a. Disposes of all food waste directly into the trash or garbage receptacles that are not connected to the city sewer.
 - b. Dry wipes all pots, pans, dishware, utensils, equipment and work areas prior to washing such items and prior to contents entering the city sewer.
 - c. Collects all waste cooking oil and other FOG and stores it properly in recycling barrels or drums.
 - d. Complies with all other conditions deemed appropriate by the FOG administrator both at the time of granting the waiver and subsequent to such time to prevent visible

accumulation of FOG in the lateral and tributary downstream city sewer.

(2) *Revocation of conditional waiver.* Conditional waivers may be revoked if:

- a. the recipient of the conditional waiver fails to meet the requirements for the conditional waiver,
- b. the recipient of the conditional waiver is confirmed to have contributed to FOG accumulation within the city sewer, or
- c. the FOG administrator determines such revocation is otherwise necessary or desirable to prevent visible accumulation of FOG in the lateral and tributary downstream city sewer.

(G.O. 2670, 2-4-13)

Sec. 29-335. Violations and penalties.

Any violation of any provision of this division, including the standards adopted by reference, shall be punishable as a misdemeanor and, upon conviction, punishment shall be assessed as follows except when specifically addressed otherwise:

- (1) Any person who has been found guilty of an unlawful act under this division by the municipal court shall be required to pay a minimum fine of \$100.00 for the first offense.
- (2) Any person who has been found guilty of violating this division a second time, during the same 12 month period, shall pay a minimum fine of \$125.00.
- (3) Any person who is found guilty of violating this division a third time, during the same 12 month period, shall be fined a minimum of \$150.00.
- (4) Any person who is found guilty of violating this division four or more times during the same 12 month period shall be fined a minimum of \$200.00 for the fourth offense and each subsequent offense that occurs during the same 12 month period.

Each day that a violation continues shall be deemed a separate offense.

(G.O. 2670, 2-4-13)

Sec. 29-336. Administrative and civil remedies.

(a) *Enforcement action.* The city is hereby authorized to institute any appropriate administrative action or proceeding, and file any suit for injunctive relief, in order to prevent or abate violations of this Division 6. The city is also authorized to impose and recover an administrative fine for each violation of this Division 6 in an amount not to exceed \$200.00 for each offense.

(b) *Notice of Violation.* When the city finds that a FOG user has violated any provision of this Division 6, the city may serve upon that FOG user a written notice of violation. This notice may be issued in conjunction with an administrative fine as described below. Within ten days of the receipt of this notice, an explanation of the violation and a plan for the satisfactory correction and prevention thereof shall be submitted by the FOG user to the city. Submission of this plan in no way relieves the FOG user of liability for any violations occurring before or after receipt of the notice of violation. Nothing in this section shall limit the authority of the city to take any other enforcement action without first issuing a notice of violation.

(c) *Consent orders; compliance agreements.* The city may enter into consent orders, compliance agreements, assurances of voluntary compliance or other similar documents establishing an agreement with any FOG user responsible for noncompliance. Such documents will include specific actions to be taken by the FOG user to correct the noncompliance within a time period specified by the document. Such documents shall be judicially enforceable. A consent order may include, but shall not be limited to, the following items:

- (1) Required corrective actions, including, but not limited to, submittal of service records for interceptor maintenance, immediate pump-out of the grease interceptor or establishment of an ongoing contract with a permitted grease waste hauler. When required by the city, the FOG user's facility manager and/or other designated employee shall attend an educational program approved by the city. This program will cover kitchen practices, food handling and waste disposal procedures to minimize loading on the grease interceptor, as well as

explaining grease interceptor design, operation and maintenance.

- (2) Required submission of plans for installation or upgrade of grease interceptors, including time frames for preparation of plans, acquisition of necessary equipment, initiation of construction (including time for permit approval, where required), completion of construction and a date for achievement of final compliance with the provisions of the consent order and of this ordinance; and
- (3) An order requiring payment of a monetary settlement or administrative fine in an amount not to exceed \$200.00.

(d) *Administrative fine.* When the city finds that an FOG user has violated any provision of this Division 6, the city may institute a civil action in a court of competent jurisdiction to penalize such FOG user in an amount not to exceed \$200.00. Such administrative fines shall be assessed on a per violation, per day basis. Administrative fines may be issued in conjunction with other administrative enforcement actions. In determining the amount of civil liability, the court shall take into account all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the magnitude and duration of the violation, any economic benefit gained through the FOG user's violation, corrective actions by the FOG user, the compliance history of the FOG user and any other factor as justice requires. Depending upon the nature and severity of the violation, administrative fines may be waived for the first instance.

(e) *Cost recovery.* The city may recover reasonable attorneys' fees, court costs and other expenses associated with enforcement activities,

including sampling and monitoring expenses, as well as the cost of any actual damages incurred by the city in enforcement of this ordinance.

(f) *Judicial remedies.* Filing a suit for civil penalties shall not be a bar against, or a prerequisite for, taking any other action against a FOG user.

(g) *Additional enforcement.* Any violation of this Division 6 may also be enforced in the same manner as a violation of Division 3 (Sewer use requirements and rules) of this Article IV (Sewers and sewage disposal) as such enforcement is more particularly described in Subdivision IV (Enforcement, violations and remedies). (G.O. 2670, 2-4-13; G.O. 2749, 8-18-14)

Secs. 29-337--2-349. Reserved.

ARTICLE V. PUBLIC UTILITY RIGHT-OF-WAY MANAGEMENT ORDINANCE

Sec. 29-350. Intent.

The city council finds that the enactment of a Right-of-Way Management Ordinance will have a beneficial impact on all of the citizens of the city. The use of the right-of-way is increasing due to the advancements in technology, changes in federal and state law and increased demand for services from residents, businesses, educational institutions, governmental offices located in the city and other public and private institutions. The city council further finds that the public convenience, health, safety and welfare can be best served by establishing regulatory power and procedures to protect the right-of-way, ensure the orderly development of infrastructure which effectively serves the city, while at the same time not creating barriers which prohibit or effectively prohibit competition. The city council further finds that such regulatory powers should be vested in the city or such persons as the city shall designate. This article further addresses the various regulatory schemes as may be imposed by state and federal law as to distinct types of right-of-way users. No provision of this article shall apply to any circumstance in which such application shall be unlawful under superseding federal or state law and furthermore, if any section, subsection, sentence, clause, phrase, or portion of this article is now or in the future superseded or preempted by state or federal law

or found by a court of competent jurisdiction to be unauthorized, such provision shall be automatically interpreted and applied as required by law.

(G.O. 1932, 4-28-03; G.O. 2111, 6-20-05; G.O. 2892, 12-17-18)

Sec. 29-351. Definitions.

For the purpose of this article the following terms, phrases, words, abbreviations and their derivations shall have the meaning given in this section. Words used in the present tense include the future tense, words in the single number include the plural number, words in the plural number include the single number. The words “shall” and “will” are mandatory and the word “may” is permissive. Words not defined shall be given their common and ordinary meaning.

- (1) “Abandoned equipment or facilities” shall mean any equipment, materials, apparatuses, devices or facilities that are:
 - a. Declared abandoned by the owner of such equipment, materials, apparatuses, devices or facilities; or
 - b. No longer in active use, physically disconnected from a portion of the operating facility or any other facility that is in use or in service, and no longer capable of being used for the same or similar purpose for which the equipment, materials, apparatuses or facilities were installed; or
 - c. No longer in active use and the owner of such equipment, materials, apparatuses, devices or facilities fails to respond within 30 days to a written notice sent by the city that the city deems such equipment, materials, apparatuses, devices or facilities abandoned.
- (2) “Antenna” shall mean communications equipment that transmits and/or receives electromagnetic radio frequency signals used in the provision of wireless services.
- (3) “Applicant” shall mean any right-of-way user that applies for a permit.
- (4) “Application” shall mean the process by which an applicant submits a request to be issued a permit. An application

- includes all written documentation and representations, in whatever form, made by the applicant to the city regarding the matters pertaining to a requested permit.
- (5) “Article” shall mean this Public Utility Right-of-Way Management Ordinance.
 - (6) “Cable Communications System”, “Cable System” and “Cable Communications Service” shall have the meanings set forth in Section 9-3 of the code.
 - (7) “Cable Franchise” shall mean a franchise to construct and operate a cable system or provide cable service granted pursuant to Chapter 9 of the code.
 - (8) “City” shall mean the City of St. Joseph, Missouri as now incorporated and including all future annexations.
 - (9) “City Council” or “Council” shall mean the governing body of the city.
 - (10) “Clear Zone” shall mean an unobstructed, traversable roadside area that allows a driver to stop safely, or regain control of a vehicle that has left the roadway. The width of the clear zone should be based on risk (also called exposure).
 - (11) “Code” shall mean the Code of Ordinances of the City of St. Joseph, Missouri.
 - (12) “Completed application” shall mean when an applicant has submitted all documents, plans, specifications and information required by this article, the applicant has fully paid all applicable fees required by this article and satisfied all other requirements for consideration of the application by the city under this article.
 - (13) “Disguised Support Structure” shall mean any free-standing, man-made structure designed for the support of Antenna, the presence of which is camouflaged or concealed as an appropriately placed and designed architectural or natural feature. Depending on the location and type of disguise used, such concealment may require placement underground of the utilities leading to the structure. Such structures may include but are not limited to clock towers, campaniles, observation towers, light standards, flag poles, and artificial trees. For purposes of this definition, a structure “camouflaged or concealed as an appropriately-placed and designed architectural or natural feature” shall mean:
 - a. it is consistent with and contributes to and does not detract from the character and property values and use of the area and neighborhood in which it is located,
 - b. it does not contain distorted proportions, size, or other features not typically found on the type of structure or feature to which it is designed to replicate,
 - c. it cannot be identified as a support structure by persons with reasonable sensibilities and knowledge,
 - d. its equipment, accessory buildings, or other aspects or attachments relating to the disguised support structure are wholly concealed using a manner consistent with and typically associated with the architectural or natural structure or feature being replicated, and
 - e. it is of a height, design, and type that would ordinarily occur at the location and neighborhood selected.
 - (14) “Emergency” includes, but is not limited to, the following:
 - a. An unexpected or unplanned outage, cut, rupture, leak or any other failure of a public utility facility that prevents or significantly jeopardizes the ability of a public utility to provide service to customers; or
 - b. An unexpected or unplanned outage, cut, rupture, leak or any other failure of a public utility facility that results or could result in danger to the public or a material delay or hindrance to the provision of service to the public if the outage, cut, rupture, leak or any other such failure of public utility facilities is not immediately repaired, controlled, stabilized or rectified; or
 - c. Any occurrence involving a public utility facility that a reasonable person could conclude under the

circumstances that immediate and undelayed action by the public utility is necessary and warranted.

(15) "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 the following shall not be deemed excavation:

- a. Any de minimis displacement or movement of ground caused by pedestrian or vehicular traffic; or
- b. The replacement of utility poles and related equipment at the existing general location that does not involve either a street or sidewalk cut; or
- c. 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.

(16) "Existing structure" shall mean any structure capable of supporting wireless communication facilities (other than a support structure) in full conformance with the design and other requirements of this article and is: (1) existing prior to the date of all applicable permit applications seeking city authorization for installation of such facilities thereon and (2) not built or installed in anticipation of such specific installation or erected as a means to evade approvals applicable to a non-existing structure.

(17) "Facilities" shall mean any tangible thing located wholly or partially in, above or underneath the right-of-way, including, but not limited to, lines, pipes, wires, cables, conduit facilities, poles, towers, vaults, pedestals, boxes, appliances, antennas, transmitters, gates, motors, appurtenances or other equipment and systems.

(18) "Facilities Maintenance Permit" shall mean a permit issued by the city for the right-of-way user to provide maintenance to its facilities or otherwise perform work in the right-of-way that does not involve excavation but requires physical access to

the facilities in the right-of-way.

(19) "Fast-track small wireless facility" or "Fast-track" shall mean a small wireless facility that meets the following requirements for an antenna and associated equipment:

- a. No more than seven cubic feet in volume (comprised of no more than 27 square feet of exterior surface area, excluding the surface width equal to the width of the existing structure or utility pole to which it is mounted, on an imaginary enclosure around the perimeter thereof, excluding cable or cable conduit of four inches or less). Volume shall be the measure of the exterior displacement of the antenna and associated equipment;
- b. Located with the consent of the owner on an existing structure or utility pole, or concealed within or on a replacement utility pole if the appearance is not materially altered and the existing structure or utility pole is no more than five feet taller;
- c. Not exceeding six feet above the top of an existing structure or utility pole for a total height not exceeding 45 feet (nor taller than more than six feet above the average of similar poles within 300 feet).

(20) "Law" shall mean all duly enacted and applicable federal, state, county or generally applicable city laws, ordinances, resolutions, regulations, orders or other enactments now in force or hereafter adopted.

(21) "Micro wireless facilities" shall mean a wireless facility that (a) is not larger in dimension that 24 inches in length, 15 inches in width, and 12 inches in height; and (b) any exterior antenna no longer than 11 inches.

(22) "Missouri One Call" means the procedural requirements for excavation and utility safety established by Sections 319.010, et seq. of the Revised Statutes of Missouri as amended and the terms and conditions of Missouri One Call System, Inc.

- (23) “Person” shall mean any natural person and all domestic and foreign corporations, closely-held corporations, limited liability companies, associations, syndicates, joint stock corporations, partnerships of every kind, clubs, businesses, common law trusts, societies and any other legal entity.
- (24) “Public improvement” means any project undertaken by the city, or its agents, contractors, or subcontractors, for the construction, reconstruction, maintenance, or repair of any public infrastructure, and including without limitation, streets, alleys, bridges, bikeways, parkways, sidewalks, sewers, drainage facilities, traffic control devices, street lights, public facilities, public buildings or land owned by the city.
- (25) “Right-of-way” shall mean the surface, the air space above the surface (to the extent such air space may be regulated by the city under federal law) and the area below the surface of any public roadway, highway, street or alleyway, in which the city has an interest, in fee or easement, but not including:
- a. The airwaves above a right-of-way with regard to cellular or other nonwire telecommunications or broadcast service; or
 - b. Easements obtained by utilities or private easements in platted subdivisions or tracts; or
 - c. Railroad right-of-way and ground utilized or acquired for railroad facilities; or
 - d. Poles, pipes, cables, conduits, wires, optical cables, or other means of transmission, collection or exchange of communications, information, substances, data, or electronic or electrical current or impulses utilized by a municipally owned or operated utility pursuant to Chapter 91, RSMo, or pursuant to a charter form of government.
- (26) “Public utility” shall mean every cable television service provider, every pipeline corporation, gas corporation, electrical corporation, rural electric cooperative, telecommunications company, water corporation, heating or refrigerating corporation or sewer corporation under the jurisdiction of the public service commission; every municipally owned or operated utility pursuant to Chapter 91, RSMo, or pursuant to a charter form of government or cooperatively owned or operated utility pursuant to Chapter 394, RSMo; every street light maintenance district; every privately owned utility; and every other entity, regardless of its form of organization or governance, whether for profit or not, which in providing a public utility-type of service for members of the general public, utilizes pipes, cables, conduits, wires, optical cables, facilities, or other means of transmission, collection or exchange of communications, information, substances, data, or electronic or electrical current or impulses, in the collection, exchange or dissemination of its product or services through the right-of-way. “Public utility” shall include a public utility provider that does not own facilities in the right-of-way but uses the right-of-way by interconnecting with or using the network elements of another public utility utilizing the right-of-way, and/or by purchasing or leasing excess capacity from another public utility.
- (27) “Public utility right-of-way user” shall mean a public utility owning, controlling, or utilizing a facility in the right-of-way except that neither the city nor its departments shall be considered a public utility right-of-way user under this article but such users shall comply with the requirements herein as may be required to be applied pursuant to application of state or federal law.
- (28) “Public works and transportation director” or “director” shall mean the director of the department of public works and transportation of the city, or his or her designee.
- (29) “Right-of-way permit” shall mean a permit issued under this Chapter 29 by the city authorizing the performance of excavation for installation or alteration of facilities in, on or above the right-of-way by a right-of-way user.

- (30) "Reseller service provider" shall mean a person doing business in the city by providing a service to locations within the city that who does not have ownership, possessory interest, or control of identifiable facilities in the right-of-way, but instead uses the right-of-way by interconnecting with or using the network elements of another right-of-way user in the right-of-way without any physical access or entry on or to facilities in the right-of-way.
- (31) "Right-of-way user" shall mean any person, including but not limited to a public utility right-of-way user, owning, controlling, or utilizing a facility in the right-of-way or otherwise using the right-of-way for excavation, provision of services, or to install, construct, maintain, repair facilities, equipment or structures thereon, except that a right-of-way user shall not include:
- a. The city or its departments, provided that such users shall be subject to all such requirements as may be required to be applied pursuant to application of state or federal law; or
 - b. Uses of the right-of-way for incidental and ordinary uses by adjacent property owners specifically exempted or specially permitted by the director of public works and transportation including but not limited to mail boxes, authorized obstructions, and individual private lateral sewer or water lines; or
 - c. Lawful incidental uses having obtained a special permit issued by the director of public works and transportation for special incidental uses of the right-of-way pursuant to Chapter 25 of the code, provided that the excavation and construction standards otherwise required herein and in Chapter 25 of the code, or as specified by the director of public works and transportation are satisfied.
- (32) "Small wireless facility" shall mean an antenna and associated equipment that meets the following:
- a. An antenna of no more than six cubic feet in volume; and
 - b. All other associated equipment, to the extent permitted by applicable law to be calculated, of cumulatively no more than twenty-eight cubic feet in volume; provided that no single piece of equipment on the utility pole shall exceed nine cubic feet in volume, and no single piece of ground mounted equipment shall exceed 15 cubic feet in volume.
- (33) "Support structure" shall mean a tower or disguised support structure.
- (34) "Tower" shall mean a structure designed for the support of one or more antenna and including guyed towers, self-supporting (lattice) towers, or monopoles, but not disguised support structures, utility poles, or buildings. The term shall also not include any support structure that includes attachments of sixty-five feet or less in height owned and operated solely for use by an amateur radio operator licensed by the FCC.
- (35) "Trenchless technology" shall mean the use of directional boring, horizontal drilling and microtunneling and other techniques in the construction of facilities underground which results in the least amount of disruption and damage to the right-of-way as possible.
- (36) "Utility pole" shall mean a pole or similar structure that is or may be used for wireline communications, lighting, traffic control, signage, or a similar function, which may also support a small wireless facility or "fast-track".
- (37) "Wireless communications facility" shall mean any antenna, small wireless facility, "fast-track" and support structure and associated equipment.
- (G.O. 1932, 4-28-03; G.O. 2111, 6-20-05; G.O. 2892, 12-17-18)

Sec. 29-352. Franchise or right-of-way agreement required.

- (a) Except when otherwise authorized by applicable law, no right-of-way user may construct, maintain, own, control, or lease

facilities located in the right-of-way without a franchise or right-of-way use agreement with the city as provided herein. All such franchises and agreements shall be approved by ordinance of the council on a non-discriminatory basis provided that the applicant is in compliance with all applicable requirements. Such franchises and agreements shall be deemed to incorporate the terms of this article and other applicable laws of the city, except as may be expressly stated in such agreements and franchises. Reseller service providers shall not be required to obtain a franchise or agreement but shall be required to obtain an otherwise applicable business license and shall provide notification to the city of its status as reseller service provider prior to providing any such service within the city.

- (1) *Franchise.* A franchise shall be obtained by a right-of-way user seeking to use of the right-of-way for purposes of providing or distribution or supply of light, water, electricity, heat, gas, steam, or sewer public utility service in the city or as may be otherwise required by city charter, subject to any applicable superseding law. Such franchise shall be obtained prior to any use of the right-of-way and shall be granted only in conformance with the franchise procedures and requirements set forth in Article XIII of the city charter, after public hearing and on satisfaction of all other applicable ordinances and requirements.
- (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 applicable law. Such agreements shall conform to all applicable law but shall not be subject to procedures applicable to franchises and the council may authorize form agreements that may be executed by the city administrator in substantially the form approved by council ordinance.

(b) The authority granted by the city in any agreement or franchise shall be for nonexclusive use of the right-of-way, unless otherwise provided therein consistent with applicable law. 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 law.

(c) An application for franchise or right-of-way use agreement shall be presented to the director in writing and shall include all such information as is provided for on an initial registration application pursuant to Section 29-353 for right-of-way users. To the extent permitted by law, after the effective date of this article, no current or future registration or permit shall be valid or effective until a franchise or right-of-way agreement has been duly executed by the applicant and by the city granting consent to such use; provided that the city will refrain from enforcement of this provision for a period of six months from and after the effective date of this article to provide time for submission of applications and approval by the city of franchise or right-of-way use agreements. An application fee for review, documentation and approval of such agreement or franchise shall be established by the department to recover any actual costs incurred by the city in reviewing, documenting, or negotiating such agreement or franchise, provided that no costs, if any, of litigation or interpretation of RSMo. Section 67.1830 or 67.1832, shall be included if such inclusion is prohibited by law as to that applicant. If the actual costs are less than the application fee, such amount shall be returned to the applicant after written request therefrom; if the actual costs exceed the application fee, applicant shall pay such additional amount prior to issuance of any final city approval after written notice from the city. Nothing herein shall be construed to prohibit the city from also charging reasonable compensation for use of the right-of-way where such a fee is not contrary to applicable law. Upon submission by the right-of-way user of a duly signed franchise or right-of-way use agreement to the city in conformity with the requirements of this article and all applicable law, the city shall execute such approved form franchise or right-of-way use agreement (or modified agreement otherwise acceptable to the city consistent with the purposes of this article), and such executed franchise or agreement shall constitute consent to use the right-of-way; provided that nothing herein shall preclude the rejection or modification of any executed franchise or agreement submitted to the city to the extent such applicable law does not prohibit such rejection or modification such as where necessary to reasonably and in a uniform or nondiscriminatory manner reflect the distinct engineering, construction, operation, maintenance

or public work or safety requirements applicable to the applicant.

(d) Unless otherwise provided herein or by law, use or installation of any facilities in, on or over public lands of the city not constituting right-of-way 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 and conditions as the city may require.

(e) 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 damages 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, facilities maintenance, or other work performed prior to obtaining the location of all facilities that have been properly identified prior to such work. 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.

(f) As a condition for use of the right-of-way, 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 right-of-way use agreement, franchise, or special permit, or because of the enforcement thereof by said city, or from the use of right-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.

(g) No action hereunder shall be deemed a taking of property and no person shall be entitled to any compensation therefor. No location of any facilities in the right-of-way shall be a vested interest or property right.

(G.O. 2111, 6-20-05; G.O. 2892, 12-17-18)

Sec. 29-353. Public utility right-of-way user registration.

(a) All public utility right-of-way users shall maintain a registration with the director of financial services of the city. No registration shall be valid except during the term of a franchise or right-of-way agreement as required herein and no existing permit or registration shall be deemed to exempt any entity from the requirement to obtain a franchise or agreement per Section 29-352.

(b) No public utility right-of-way user shall be authorized to use the right-of-way without registering with the director of financial services of the city and obtaining any necessary right-of-way permit required by this article. A public utility right-of-way user shall be responsible for all costs incurred by the city due to the failure to provide any information to the city required for registration.

(c) A public utility right-of-way user shall report any changes in its registration within 60 days of the change or upon application for a right-of-way permit, whichever occurs first. Failure to report any change shall be a violation of this article. No change shall occur that violates any provision of a franchise or right-of-way use agreement.

(d) The valid registration shall be on the form provided by the city and at a minimum shall include the following:

- (1) Identity and legal status of the public utility right-of-way user; and
- (2) Name, address, telephone number and e-mail address of the employee, agent or officer of the public utility right-of-way user responsible for the accuracy of the registration statement. Such employee, agent or officer shall be the person to whom notices shall be sent, and shall be responsible for facilitating all necessary communications; and
- (3) Telephone number for the city to call in the case of an emergency and the name, address, telephone number of employee(s) of the public utility right-of-way user for the city to contact, if necessary, in the case of an emergency; and
- (4) Proof of any necessary permit, license, certification, grant, registration, franchise

agreement or any other authorization required by any appropriate governmental entity, including, but not limited to, the Federal Communications Commission or the Missouri Public Service Commission; and

- (5) Information which identifies any public utility right-of-way user that does not own facilities in the right-of-way but uses the right-of-way by interconnecting with or using the registering public utility right-of-way user's facilities in the right-of-way and/or by purchasing or leasing any excess capacity from the registering public utility right-of-way user to the extent allowed by state and/or federal law; and
- (6) A list of authorized agents, contractors or subcontractors eligible to obtain permits on behalf of the public utility right-of-way user. A registration may be updated to add such person at the time of an application if the updated registration is submitted by an authorized representative of the public utility right-of-way user; and
- (7) Information sufficient to determine the amount of net assets of the public utility right-of-way user.

(e) Except as provided in this article, or as otherwise required by law, no registration may be transferred without the written consent of the city. Any person not named on a valid registration, including any affiliates or successors in interest to a registered public utility right-of-way user, must register in accordance with this article or receive written authorization to transfer the registration. Written authorization to transfer a registration shall be granted according to the same standards for a registration. The city shall not unreasonably withhold its consent to transfer as provided herein, provided that a registration may only be transferred in conjunction with approval of or transfer of a franchise or right-of-way agreement granting consent to use the right-of-way to transferee.

(G.O. 1932, 4-28-03; G.O. 2111, 6-20-05; G.O. 2892, 12-17-18)

Sec. 29-354. Permit required.

(a) Except in the case of an emergency as set forth in Section 29-364, a right-of-way user shall not perform any excavation within a right-of-way without obtaining a right-of-way permit. Such permit shall be issued pursuant to and subject to the provisions of this chapter and shall be deemed to incorporate all additional provisions and requirements set forth in Chapter 25 of the city code relating to use or excavation in the right-of-way.

(b) No person shall perform facilities maintenance at a specified location in the right-of-way without first obtaining a facilities maintenance permit or ROW user permit from the director of public works and transportation, except where such facilities maintenance is expressly authorized by an existing valid right-of-way permit for the applicable facilities maintenance location or is exempt herein. Such application and permit shall be in the form proscribed by the director. In addition to the applicable conditions and obligations set forth in this article, conditions of a facilities maintenance permit shall be as established in such permit and shall include requirements of notice to and approval by the city whenever traffic lanes are to be obstructed, manhole covers or safety barriers removed or altered, temporary or other barricades installed, and other events set forth in the facilities maintenance permit. All facilities maintenance permits shall expire after 60 days from the date of issuance, unless otherwise specified in such permit. A facilities maintenance permit shall not be required for:

- (1) Right-of-way users performing routine maintenance which does not require excavation, does not disrupt traffic or pedestrians, and requires no more than four hours to complete, provided that at minimum two hours' notice is provided to the city during normal business hours;
- (2) Emergency situations as more fully described in Section 29-364 below;
- (3) Contractors working on the construction or reconstruction of public improvements and which are operating pursuant to a contract with the city for such construction; or
- (4) Routine maintenance on previously approved small wireless facilities, replacement of small wireless facilities

that are the same or smaller in size, weight, and height, or installation placement, maintenance, operation, or replacement of micro wireless facilities that are strung on cables between utility poles in compliance with applicable safety and building codes, when such work will not involve excavation, affect traffic patterns, obstruct traffic in the right-of-way, or materially impede the use of a sidewalk, and provided the right-of-way user submits as-builts of the new small wireless facilities or micro wireless facilities so the city may maintain an accurate inventory of facilities installed in the right-of-way.

(G.O. 1932, 4-28-03; G.O. 2111, 6-20-05; G.O. 2892, 12-17-18)

Sec. 29-355. Permit application and submittal requirements.

(a) Right-of-way users may seek bulk permits as may be established by administrative rules. An application for a permit by a right-of-way user shall be in the form provided by the city and must be filed with the director of public works and transportation to obtain a permit either by an authorized right-of-way user or an authorized agent of the right-of-way user who will perform or furnish the excavation or facilities work.

(b) A right-of-way user desiring to perform excavation in the right-of-way to construct or install new facilities, extend facilities, or replace existing facilities in the right-of-way shall submit with the application the following information:

- (1) The location of all visible topographic features affected by the project within the right-of-way; and
- (2) Engineering drawings, construction plans, profiles, specifications, record drawings and similar documents, in the form maintained by the utility right-of-way user, showing the horizontal and vertical location of the proposed project and all existing and proposed facilities at such location, and the design details of the proposed project; and
- (3) Complete plan and profile drawings and specifications detailing the restoration of the right-of-way and the design details of such restoration, including the proposed

pavement and right-of-way restoration, all in compliance with Section 29-362 of this article. The drawings and specifications required herein shall be sealed by a professional engineer duly licensed in the State of Missouri to the extent required by the public works and transportation director after considering the complexity, scope or difficulty of the restoration work; and

- (4) An erosion control plan in compliance with applicable provisions of the code; and
- (5) A safety plan indicating the methods used to protect the general public from injury including, but not limited to, the proposed use of barricades, signs, lights, fencing and other barriers. Such safety plan shall be in compliance with all applicable law, including, but not limited to, as applicable, the rules, regulations and standards adopted pursuant to the Williams-Steiger Occupational Safety and Health Act of 1970 and applicable amendments (“OSHA”); and
- (6) A traffic control plan in compliance with the applicable provisions of the code; and
- (7) A landscape plan; and
- (8) A work plan including a schedule indicating the extent and duration of excavation work and restoration work, including a proposed start and end date; and
- (9) The information required by Section 29-356; and
- (10) Proof that the applicant has obtained and secured all certificates and other authorizations required by law in order to construct and operate the proposed facilities in the manner proposed by the applicant.

(c) A right-of-way user desiring to excavate in the right-of-way for the purpose of repairing or maintaining existing facilities that results in no material change to the facilities, shall submit with the application for a right-of-way permit the following information:

- (1) Engineering drawings, construction plans, profiles, specification and record drawings, and similar documents in the form maintained by the right-of-way user showing the standard details of the project including the type and nature of the work; and
 - (2) A safety plan indicating the methods used to protect the general public from injury including, but not limited to, the proposed use of barricades, signs lights, fencing and other barriers. Such safety plan shall be in compliance with applicable law, including but not limited to, as applicable, OSHA; and
 - (3) An erosion control plan as required by applicable provisions of the code; and
 - (4) Traffic control plan in compliance with the applicable provisions of the code; and
 - (5) Drawings and specifications detailing the restoration of the right-of-way, including, proposed pavement and right-of-way restoration all in compliance with Section 29-362 of this article. The public works and transportation director may require that such drawings and specifications be sealed by a professional engineer duly licensed in the State of Missouri after considering the complexity, scope or difficulty of the restoration work; and
 - (6) A landscape plan; and
 - (7) A schedule for excavation work and restoration work, including a proposed start and end date.
- (G.O. 1932, 4-28-03; G.O. 2111, 6-20-05; G.O. 2892, 12-17-18)

Sec. 29-356. Other facilities study.

(a) Prior to commencement of any construction or extension or replacement of facilities, in the right-of-way pursuant to Subsection 29-355(b), an applicant shall complete the following tasks and provide the city the following information:

- (1) Contact Missouri-One-Call to mark the location of facilities located underground in accordance with Missouri-One-Call; and

- (2) Provide the city drawings, maps and other similar documents, in the form maintained by the utility right-of-way user, of facilities located underground in the right-of-way along the proposed system route; and
- (3) Where the design of the proposed system and the location of facilities located underground appear to conflict, utilize reasonable methods to locate all critical points of conflict as precisely as possible in accordance with the rules and regulations adopted by the public works and transportation director pursuant to Chapter 25, Article II, Division 3 of the code and provide any information and documents required by the rules and regulations adopted by the director pursuant to Chapter 25, Article II, Division 3 of the code.

(b) The applicant shall bear the cost of compliance with this section of this article. (G.O. 1932, 4-28-03; G.O. 2111, 6-20-05; G.O. 2892, 12-17-18)

Sec. 29-357. Design and location of facilities.

(a) The construction plans and specifications required by Subsection 29-355(b) and Subsection 29-355(c) shall comply with all law and the code including, but not limited to, the rules and regulations adopted by the public works and transportation director pursuant to Chapter 25, Article II, Division 3 of the code. The design shall not provide for the disruption or interference with any other facilities or public improvement. The design, location, and nature of all facilities shall be subject to the review and approval of the director of the department of public works and transportation to the extent permitted by law. Such review shall be on a non-discriminatory basis in application of city policy (including Article V of Chapter 25 relating to poles, wires and conduits) and approvals shall not be unreasonably withheld. City height limitations, applicable zoning restrictions, and general city policies with regard to all users of the right-of-way shall be applicable to all facilities.

(b) Except as provided herein or where prohibited by applicable law, no person may erect, construct, or install facilities above the surface of the right-of-way without the written permission of the city based on good cause

established by applicant and found by the city. In addition, all new fiber optics, coaxial, and similar cable facilities shall be located 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 and written permission granted by the city. Such permission may be granted by the city council when other similar facilities exist above-ground and conditions are such that underground construction is impossible, impractical or unfeasible, as determined by the city, and when in the city's judgment the above-ground construction has minimal aesthetic impact on the area where the construction is proposed. Where reasonable and appropriate and where adequate right-of-way exists, the right-of-way user shall place above-ground facilities underground in conjunction with city capital improvement projects and/or at specific locations requested by the city provided that such placement is practical, efficient, and economically feasible. New utility poles and related ground mounted equipment shall be permitted to be installed above ground; provided, however, that to ensure unobstructed pedestrian use and city maintenance of the right-of-way and minimize visual obstructions or a "clear zone" for vehicular traffic, a new utility pole and any ground mounted equipment related to that utility pole or the equipment thereon shall not be installed within 150 feet of another utility pole or other ground mounted equipment on the same side of the right-of-way. A replacement utility pole that is installed in lieu of an existing utility pole and is installed within ten feet of the existing utility pole, shall not be considered a new utility pole subject to the spacing requirements herein. Such spacing regulations as applied to that specific site may be altered by the public works and transportation director upon good cause shown by the applicant including: (1) when and where nearby utility poles exist that are spaced closer than 150 feet apart; (2) when conditions are such that no existing structure is available for placement of facilities; and (3) the utility pole can be placed to be minimally visually intrusive.

(c) Except where prohibited by applicable law, the public works and transportation director shall assign specific corridors within the right-of-way,

or any particular segment thereof as may be necessary, for facilities, that are, or pursuant to current technology the director expects will someday be, located in right-of-way. All facilities shall be designed and constructed in the proper corridor as designated by the public works and transportation director pursuant to the authority contained in this article. All persons whose facilities are located in right-of-way in a position at variance with the corridors established by the director shall, no later than at the time of the next reconstruction or excavation of the area where its facilities are located, move the facilities to the proper corridor designated by the director.

(d) All construction or maintenance of facilities shall be accomplished in the manner resulting in the least amount of damage and disruption of the right-of-way. Specifically, every applicant shall utilize trenchless technology and specify the use of trenchless technology in the design of projects located below or under pavements or other locations that will require cutting or patching of right-of-way. Except when prohibited by applicable law, if and when the city requires a right-of-way user to cease using existing poles, all other right-of-way users utilizing the same poles shall also relocate their facilities underground at the same time. The cost of such relocations shall be borne in accordance with this article and approved applicable tariffs governing that right-of-way user. The design of each project shall be the design that will result in the least amount of disruptions to the right-of-way.

(e) All right-of-way users shall construct and maintain its facilities so as not to interfere with other users of the right-of-way. The right-of-way user shall not interfere with or alter the facilities of the city or other right-of-way user without their consent and shall be solely responsible for such. All facilities and other structures shall be installed and located to cause minimum interference with the rights and convenience of property owners, right-of-way users, and the city. Facilities and other structures shall not be placed where they will disrupt or interfere with other facilities, structures, or public improvements or obstruct or hinder in any manner the various utilities serving the residents and businesses in the city or public improvements. Above-ground facilities shall be constructed and maintained in such a manner so as not to emit any unnecessary or intrusive noise. When reasonable and necessary to accomplish such purposes, the public works and

transportation director may require as alternatives to the proposed work either less disruptive methods or different locations for facilities consistent with applicable law.

(f) Pursuant to city authority, including Section 67.1830(6)(f) RSMo. and the Uniform Small Wireless Facility Deployment Act (§§ 67.5110 *et seq.* 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, while also seeking to facilitate delivery of broadband technologies to city residents and businesses, wireless facilities shall be permitted in the right-of-way in compliance with the requirements applicable to other facilities and users in the right-of-way, and the additional requirements set forth in this section for wireless antennas and facilities.

- (1) Any wireless facility in the right-of-way 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 director of the department of public works and transportation to address changing infrastructure, technology, and uses of the right-of-way and/or city facilities. A wireless facility shall not be located or installed in a manner that results in interference with or impairs the operation of existing utility facilities or city or third-party attachments. Wireless antennas or facilities shall further comply with (1) all applicable requirements for installation of any facilities in the right-of-way as set forth in this article including a right-of-way permit, (2) the requirements of this section, and (3) requirements for installation of wireless antennas and facilities set forth in the Uniform Wireless Communications Infrastructure Deployment Act (§§ 67.5090 *et seq.* RSMo.), Uniform Small Wireless Facility Deployment Act (§§ 67.5110 *et seq.* RSMo.), applicable zoning, building, and

other regulations and approvals, specifically including Chapter 31.

(2) Specific Conditions.

- a. Any small wireless facility meeting the requirements for small wireless facility and as provided in section 31-304 of the zoning code shall be authorized to be located in the right-of-way with approval of the director subject to the following additional requirements:
 - i. If proposing to install a new utility pole, compliance with the spacing requirements in subsection b of this section;
 - ii. Compliance with § 67.5113.3(9) RSMo. to the satisfaction of the city;
 - iii. For collocations on city utility poles, all make-ready estimates for the utility pole, including replacement costs where necessary for the safety and reliability of the utility pole, as determined by the city;
 - iv. Attestation that the proposed small wireless facility meets the volumetric requirements to meet the definition of a small wireless facility; and
 - v. Any other requirements which may be applicable to the proposed small wireless facility pursuant to the Uniform Small Wireless Facility Deployment Act (§§ 67.5110 *et seq.* RSMo.).
- b. Any wireless facility meeting the requirements of a "fast-track" and as provided in section 31.305, may be authorized to be located in the right-of-way with approval of the director subject to the following additional requirements:
 - i. Attestation that the proposed facilities meet the volumetric requirements to meet the definition of "fast track";
 - ii. Only one "fast-track" small wireless facility shall be permitted per structure or utility pole in the right-of-way;

- iii. No ground equipment shall be authorized;
 - iv. If the proposed structure the applicant proposes to locate its “fast-track” is not structurally sound, but the director finds such to be a desired location, the director can require the applicant to install a new substantially similar structure at its cost; and
 - v. Compliance with the spacing requirements in subsection b of this section if granted a waiver under the “fast-track” zoning procedure to install a new structure.
- c. Any wireless facility located on a utility pole or existing structure but not meeting the requirements of Subsection (2)(a) or (2)(b) 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,” “fast-track” or otherwise, 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.
- (3) If the small wireless facility or fast track is to be located on a city owned structure or utility pole, an annual payment of \$150.00 per attachment shall be required.
- (g) All new or replaced facilities located within the right-of-way shall be placed in accordance with city standards and shall be located entirely within the right-of-way unless an exception is granted in writing by the public works and transportation director and included in the permit. Unless good cause is shown to and
- found to exist by the public works and transportation director,
- (1) No facilities shall be permitted to meander or cross onto private property or in easements thereon except for approved crossings of right-of-way, and
 - (2) No easement other than a public easement dedicated to the city shall be granted, nor shall facilities be placed in any private property other than in such public easement, within 15 feet directly adjacent and parallel to any right-of-way, or within the applicable zoning setback, whichever distance is less.
- Good cause shall be deemed to exist where application of this requirement would constitute a taking of property without required compensation or where no alternative location is feasible.
- (h) Upon completion of the right-of-way work involving installation of new facilities, the right-of-way user shall supply the city copies of as-built and detailed maps showing the exact location of facilities installed in the right-of-way in the electronic format maintained by the right-of-way user. As a condition of continued right-of-way use, all right-of-way users shall, on an annual basis, provide the city with as-builts or other detailed maps of the right-of-way user’s current facilities in electronic form maintained by the right-of-way user. Any abandoned equipment or facilities shall also be identified on record drawings in the form maintained by the right-of-way user and provided to the city. Such annual requirement may be waived by the public works and transportation director upon written request.
- (i) Right-of-way user’s use shall be in all situations subordinate and subject to public municipal use.
- (j) Right-of-way users shall comply with the requirements of site triangles and nothing shall be erected, placed, planted, or allowed to grow in such a manner as to materially impede vision within the triangular area formed by the right-of-way lines and a line connecting them at points as reasonably determined by the director from their point of intersection.
(G.O. 1932, 4-28-03; G.O. 2111, 6-20-05; G.O. 2236, 5-7-07; G.O. 2892, 12-17-18)

Sec. 29-358. Processing of applications and approval.

(a) The public works and transportation director shall promptly, but not longer than 31 days, process each completed application for a right-of-way permit. The public works and transportation director may require an applicant to separate proposed work into individual or distinct applications due to the complexity of a proposed project or for other reasonable reasons.

(b) If the public works and transportation director determines that an applicant has complied with the requirements of this article, the public works and transportation director shall issue a right-of-way permit or facilities maintenance permit or bulk permit. Installation and collocation of a small wireless facility shall be completed within one year of issuance of the right-of-way permit or the right-of-way permit shall become null and void and shall no longer authorize installation or collocation of the small wireless facility.

(c) Issued permits are not transferable without prior written consent of the public works and transportation director. The public works and transportation director shall not unreasonably withhold consent for transfer of a permit.

(d) A permit shall only be valid for the area of the right-of-way specified within the permit. No right-of-way user may cause any excavation to be done outside the area specified in the right-of-way permit. Any right-of-way user who determines that an area greater than that which is specified in the right-of-way permit must be excavated must do the following prior to the commencement of excavation in that greater area:

- (1) Make an application for a right-of-way permit amendment describing the area in which the excavation will occur; and
- (2) Pay any additional fees required thereby.

(e) Permits issued shall be available by the right-of-way user at all times at the indicated work site and shall be available for inspection by the public works and transportation director, other city employees and the public.

(G.O. 1932, 4-28-03; G.O. 2111, 6-20-05; G.O. 2892, 12-17-18)

Sec. 29-359. Denial of application for right-of-way permit.

The public works and transportation director may deny an application for a right-of-way permit for any of the following reasons:

- (1) The right-of-way user fails to provide all the necessary information and documents required by this article and reasonably requested by the city for managing the right-of-way; or
- (2) The right-of-way user has failed to return the right-of-way to its previous condition under a previous right-of-way permit; or
- (3) A reasonable, competitively neutral, and nondiscriminatory justification for requiring an alternative method for performing the work identified in the application or a reasonable alternative route that will result in neither additional installation expense up to 10% to the right-of-way user nor a declination of service quality; or
- (4) The public works and transportation director determines that the denial is necessary to protect the public health, safety or welfare. In determining whether denial of a right-of-way permit application is necessary to protect the public health, safety or welfare, the public works and transportation director may consider one or more of the following factors:
 - a. The extent to which the right-of-way space where the right-of-way permit is sought is available, including the consideration of competing demands for the particular space in the right-of-way, or other general conditions of the right-of-way;
 - b. The applicability of any ordinance, code provision, or other regulations that affect the location of facilities in the right-of-way;
 - c. The degree of disruption to surrounding communities and businesses that will result from the use of that part of the right-of-way, including whether the issuance of a right-of-way permit for the particular dates and/or times requested would

cause a conflict or interfere with an exhibition, celebration, festival or any other event.

- (5) The area is environmentally sensitive as defined by law or is a historic district as defined by law; or
- (6) Any other reason in the public interest permissible under applicable law as may be necessary or appropriate to protect the public welfare and reasonably manage the right-of-way consistent with the purposes of this article.

(G.O. 1932, 4-28-03; G.O. 2111, 6-20-05; G.O. 2892, 12-17-18)

Sec. 29-360. Other conditions.

(a) The public works and transportation director in issuing a permit is authorized to impose such conditions as is necessary to protect the public health, safety or welfare, to properly manage the right-of-way and to properly restore the right-of-way.

(b) The public works and transportation director may establish in the right-of-way permit limitations on the amount of excavation which may occur at one time and the amount of right-of-way which may be obstructed during construction.

(c) The right-of-way user shall not permit excavation to remain open longer than is necessary to complete the repair or installation, and in no event may excavation remain open beyond the expiration of the right-of-way permit or any approved extension.

(d) Non-emergency excavation on arterial and collector streets shall be performed during the hours allowed by law.

(e) The public works and transportation director may limit the number of conduits that may be installed by each right-of-way user based on the reasonable needs so that no one right-of-way user may unreasonably consume a disproportionate amount of the available right-of-way to deter competition.

(G.O. 1932, 4-28-03; G.O. 2111, 6-20-05; G.O. 2892, 12-17-18)

Sec. 29-361. Construction.

(a) Before the start date of any excavation, each right-of-way user who has facilities located in the area to be excavated shall be responsible to mark the horizontal and approximate vertical placement of all its facilities in accordance with Missouri One Call System. A right-of-way user shall be solely liable for any damages caused by its mismarks. Any right-of-way user whose facilities are less than 20 inches below a concrete or asphalt surface shall notify and work closely with the person performing excavation in an effort to establish the exact location of its facilities and the best procedure for excavation.

(b) Before the commencement of any excavation, the right-of-way user shall provide the director of public works and transportation 48 hours written notice before commencing any such work.

(c) Before the commencement of any excavation, the right-of-way user shall provide each affected occupant of premises adjacent to the project 48 hours written notice before commencing any such work. The notification required herein may be satisfied through the use of door hangers or similar means.

(d) The right-of-way user shall provide the public works and transportation director 72 hours prior written notice before the closure of any roadway, highway or street or interruption in traffic flow.

(e) All work permitted by the permit shall be in accordance with the terms of the permit, and all applicable law and the code. All restoration work required shall be completed in accordance with the approved plans and specifications, the terms of the permit and all applicable law and the code, including, but not limited to, rules and regulations adopted by the public works and transportation director pursuant to Chapter 25, Article II, Division III of the code.

(f) All work allowed under the permit shall be completed by the time required in the right-of-way permit.

(G.O. 1932, 4-28-03; G.O. 2111, 6-20-05; G.O. 2892, 12-17-18)

Sec. 29-362. Restoration.

(a) In the event that the city does not exercise its rights to perform restoration work under Subsection (b) below, each right-of-way user shall provide for the restoration of the right-of-way and surrounding areas in accordance with the following requirements:

- (1) Any right-of-way within the city which are disturbed or damaged during the work under a right-of-way permit shall be repaired and restored by the right-of-way user pursuant to the terms of the approved plans and specifications, the terms of the right-of-way permit and the rules and regulations adopted by the public works and transportation director pursuant to Chapter 25, Article II, Division III of the code and in all events the right-of-way shall be repaired and restored to a condition as good as that previously existed before such work was commenced; and
- (2) The restoration of the right-of-way as required herein must be completed within the time set forth in the right-of-way permit. In addition to its own work, the right-of-way user must restore the general area of the work, and the surrounding areas, including the paving and its foundations. The right-of-way user shall also inspect the area of the work and maintain the restored right-of-way in the condition required hereunder for four years thereafter; and
- (3) If the right-of-way user fails to restore the right-of-way as required by this section, the city may restore the right-of-way itself and the right-of-way user shall reimburse the city for the cost of restoration as provided in Subsection (5) below; and
- (4) For four years following completion of any restoration, each right-of-way user guarantees that the restoration work shall comply with the applicable requirements of this article ("guarantee period"). The guarantee period shall commence when the restoration work and all required corrections have been inspected and completed to the satisfaction of the public works and transportation director.

During the guarantee period, each right-of-way user shall, upon notification from the city, perform all follow-up restoration work required to correct, repair or replace restoration work performed by a right-of-way user which fails to conform to the applicable requirements under this article using any method or materials specified by the city. Such follow-up work shall be completed within five working days after the receipt of notice from the city that such follow-up restoration work is necessary. Follow-up restoration work required because of an emergency shall be performed by a right-of-way user immediately upon verbal or written notification from the city; and

- (5) Upon the failure, refusal or neglect of a right-of-way user to comply with the provisions of this section, the public works and transportation director, after reasonable notice is given to such right-of-way user, may cause the work or other activity required by this section to be completed or performed, in whole or in part, to the satisfaction of the city. Upon so doing, the city shall submit to such right-of-way user an itemized statement of the cost for repairing and restoring the right-of-way. The right-of-way user shall, within 30 days after receipt of the statement, pay to the city the entire amount thereof, or such amounts may be charged against any performance bond required by Section 29-373.
- (6) All excavation shall have a metal or plastic marker of a color, size and shape approved by the public works and transportation director inserted into restored pavement which shall identify the right-of-way user.

(b) The city shall have the option to perform or caused to be performed street restoration work, in which case the right-of-way user shall reimburse the city any reasonable and actual restoration work costs within 30 days from a right-of-way user's receipt of a statement from the city for such costs.

(G.O. 1932, 4-28-03; G.O. 2111, 6-20-05; G.O. 2892, 12-17-18)

Sec. 29-363. Revocation of right-of-way permit.

(a) The city may, after reasonable notice and an opportunity to cure, revoke a right-of-way permit granted to a right-of-way user, without fee refund, but only in the event of a substantial breach of the terms and material conditions of the right-of-way permit. A substantial breach by a right-of-way user includes, but is not limited to:

- (1) A material violation of a provision of the right-of-way permit; or
- (2) An evasion or attempt to evade any material provision of the right-of-way permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the city or its citizens; or
- (3) A material misrepresentation of fact in the application for a right-of-way permit; or
- (4) A failure to complete work by the date specified in the right-of-way permit, unless a permit extension is obtained; or
- (5) A failure to correct, within the time specified by the city, work that does not conform to applicable law, this article and other provisions of the code.

(G.O. 1932, 4-28-03; G.O. 2111, 6-20-05; G.O. 2892, 12-17-18)

Sec. 29-364. Emergencies.

In case of an emergency, a right-of-way user may proceed with required work without a right-of-way permit, however, in such event, the right-of-way user shall, within five working days following the emergency, submit the documents and information required by Section 29-355 of this article and pay the right-of-way permit fee(s) required by Section 29-374 of this article. In case of an emergency, a right-of-way user shall immediately notify the public works and transportation director of such emergency and the excavation necessary to address such emergency. All required work necessitated by the emergency and restoration work shall satisfy all requirements of this article. If such required work necessitated by the emergency or the restoration work fails to satisfy the requirements of this article, then the right-of-way user shall promptly correct such unsatisfactory work. In the event the right-of-way user fails to correct such unsatisfactory work,

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then the city shall be entitled to correct such unsatisfactory work. The city shall submit to the right-of-way user an itemized statement of the costs for such work. The right-of-way user shall pay the amount of the statement within 30 days from receipt.

(G.O. 1932, 4-28-03; G.O. 2111, 6-20-05; G.O. 2892, 12-17-18)

Sec. 29-365. Abandonment of equipment or facilities.

(a) Unless otherwise permitted by the city in writing, a right-of-way user shall remove all abandoned equipment or facilities which prevents or significantly impairs the right-of-way use, repair, excavation or construction, upon receipt of written notice from the city and shall restore any affected right-of-way in accordance with the standards set forth in this article. In the event a right-of-way user fails to remove such abandoned equipment or facilities, the city may do so at such right-of-way user's cost and expense.

(b) The city, upon such terms as it may impose, may give a right-of-way user permission to abandon, without removing, any equipment or facilities, so long as such equipment or facilities abandoned in place do not materially interfere with the use of the right-of-way.

(G.O. 1932, 4-28-03; G.O. 2111, 6-20-05; G.O. 2892, 12-17-18)

Sec. 29-366. Facilities relocation.

(a) The public works and transportation director may order a right-of-way user, at the right-of-way user's own cost, to permanently or temporarily remove, relocate, protect, support or disconnect its facilities, in the right-of-way for the following reasons:

- (1) To prevent interference with a public improvement undertaken by the city;
- (2) When necessary, because of traffic conditions, street vacations, freeway grading, sewer or drainage or to otherwise prevent interference with the safety and convenience of ordinary travel over the right-of-way;
- (3) When required to protect the public health, safety or welfare or

(4) When such is required by public necessity, or public convenience and security require it, or such other findings in the public interest that may require relocation, adjustment or removal at the cost of the right-of-way user

(b) With respect to any permanent or temporary removal, relocation, protection, support or disconnection of facilities, in the right-of-way pursuant to Subsection (a) above, the city shall be liable to a right-of-way user only for damages caused by the sole negligence of the city; provided, however, that nothing herein shall relieve any other person from liability for damage to a right-of-way user's facilities.

(c) Except in the case of an emergency, the city shall provide a right-of-way user written notice if, in the reasonable judgment of the city, facilities must be permanently or temporarily removed, relocated, protected, supported or disconnected pursuant to this section. If the right-of-way user fails to promptly commence such work and substantially complete such removal, relocation, protection, support or disconnection, including all associated repair of the right-of-way, within a reasonable time thereafter, then, to the extent not inconsistent with law, the city shall have the right to authorize removal of the facilities installed by the right-of-way user on, over or under the right-of-way at the right-of-way user's cost and expense. Unless otherwise provided in the written order from the director of public works and transportation, such relocation shall be completed within 30 days of the first written request by the city to relocate the facilities. Failure to relocate facilities at the cost of the right-of-way user within such 30 days or other time period reasonably specified in writing shall constitute a violation of this article subject to the violations provisions herein and shall further constitute basis for denial or revocation of any other use of the right-of-way until remedied.

(d) In the event of an emergency or where construction equipment or facilities create or are contributing to an imminent danger to health, safety or property, the city may, to the extent allowed by law, permanently or temporarily removed, relocated, protected, supported or disconnected such construction equipment or the pertinent parts of such facilities without charge to the city for such action or for restoration or repair. The city shall attempt to notify the person having facilities in the right-of-way prior to

taking such action, but the inability to do so shall not prevent same. Thereafter, the city shall notify the person having facilities in the right-of-way as soon as practicable.

(e) Any damages suffered by the city, its agents or its contractors to the extent caused by the right-of-way user's failure to timely or properly permanently or temporarily remove, relocate, protect, support or disconnect such facilities, shall be borne by the right-of-way user. Where the right-of-way user shall fail to relocate facilities as required by the city, the city may, but shall not be required to, upon notice to the right-of-way user remove the obstructing facilities with or without further delay and the right-of-way user shall bear all responsibility and liability for the consequences therefrom, and the city shall bear no responsibility to the right-of-way user or others for damage resulting from such removal. (G.O. 1932, 4-28-03; G.O. 2111, 6-20-05; G.O. 2892, 12-17-18)

Sec. 29-367. Damage to property.

Each right-of-way user shall be responsible for the cost of repairing any property owned by other persons in the public right-of-way caused by the right-of-way user or its facilities. Each right-of-way user shall be responsible for the cost of repairing any damage to the property of another person caused during the city's response to an emergency caused by a right-of-way user or its facilities, except for damage caused solely by the city's gross negligence or willful misconduct. (G.O. 1932, 4-28-03; G.O. 2111, 6-20-05; G.O. 2892, 12-17-18)

Sec. 29-368. Right-of-way vacation.

If the city vacates a right-of-way, the city shall reserve for itself and all public utility right-of-way users having facilities in the vacated right-of-way, the right to install, maintain and operate the facilities in the vacated right-of-way and to enter upon such right-of-way at any time for the purpose of reconstructing, inspecting, maintaining, repairing or restoring the same. The city shall retain all necessary easements in vacated right-of-way in existence at the time of vacation. (G.O. 1932, 4-28-03; G.O. 2111, 6-20-05; G.O. 2892, 12-17-18)

Sec. 29-369. Extensions of time and inspection.

(a) Any construction, excavation, or restoration work required under this article shall be completed in the time set forth in the right-of-way permit, unless extended. If a right-of-way user is unable to complete the construction, excavation or restoration work within the time set forth in the right-of-way permit due to reasons beyond the utility right-of-way user's control, upon application to the public works and transportation director, the time required for such work shall be extended to the extent of the delay caused by the reason beyond utility right-of-way user's control. Upon completion of such work, the right-of-way user shall immediately notify the public works and transportation director. The right-of-way user shall make the work site available to the public works and transportation director and to all others as authorized by law for inspection at any reasonable times during the execution and upon completion of the work.

(b) At the time of inspection, the public works and transportation director may order the immediate cessation of any work which poses a serious threat to the public health, safety or welfare.

(c) The public works and transportation director may order a right-of-way user to perform or redo any work which does not conform to this article, or other applicable standards, conditions or the code. An order issued pursuant to this section shall state that failure to correct the violation will be cause for revocation of the right-of-way permit. Within ten days after issuance of the order, the right-of-way user shall present proof to the public works and transportation director that the violations have been corrected. If such proof has not been presented within the required time, the public works and transportation director may revoke the right-of-way permit. (G.O. 1932, 4-28-03; G.O. 2111, 6-20-05; G.O. 2892, 12-17-18)

Sec. 29-370. Other obligations.

(a) Obtaining a right-of-way permit does not relieve the right-of-way user of its duty to obtain all other necessary permits, licenses and authority and to pay all fees required by any other law.

(b) A right-of-way user shall comply with all requirements of law, including Missouri One Call System.

(c) A right-of-way user shall perform all work in conformance with all law, and is responsible for all work done in the right-of-way pursuant to the issued permit, regardless of who performs the work.

(d) Except in the case of an emergency, and with the approval of the public works and transportation director, no excavation may be performed when conditions are unreasonable for such work.

(e) A right-of-way user shall not obstruct a right-of-way to the extent that the obstruction interferes with the natural free and clear passage of water through gutters or other waterways. (G.O. 1932, 4-28-03; G.O. 2111, 6-20-05; G.O. 2892, 12-17-18)

Sec. 29-371. Trimming of trees.

A right-of-way user shall have the authority to trim trees, in accordance with the city tree ordinance, upon and above public right-of-way so as to prevent the branches of such trees from coming in contact with facilities. (G.O. 1932, 4-28-03; G.O. 2111, 6-20-05; G.O. 2892, 12-17-18)

Sec. 29-372. Indemnification.

(a) Each right-of-way user shall indemnify, hold harmless, release and defend the city, its municipal officials, elected officials, boards, commissions, agents, attorneys and employees, from and against any and all lawsuits, claims, causes of action, liability, contractual damages and losses, economic damages and losses, all other damages and losses, and expenses, including reasonable attorneys' fees, resulting or in any manner arising from the action or inaction of a right-of-way user, its agents, representatives, employees, contractors, subcontractors or any other person for whose acts such right-of-way user may be liable, in constructing, operating, maintaining, repairing, restoring or removing facilities, or in carrying on a public utility right-of-way user's business or operations in the city. This indemnity shall apply, without limitation, to any claim or cause of action for invasion of privacy, defamation, antitrust, negligence, theft, fire, violation or infringement of any copyright, trademark, trade name, service mark or patent or intellectual property right of any person, whether or not any act or omission complained of is authorized, allowed or prohibited by this article.

Provided however, that in accordance with § 67.5121(2), a right-of-way user solely to the extent a right-of-way user is operating “Small Wireless Facility” as defined in the Uniform Small Wireless Facility Deployment Act within the right-of-way shall only indemnify and hold the city, its officers and employees, harmless against any damage or personal injury caused by the negligence of the right-of-way user, its employees, agents, or contractors. This exception shall only apply to the right-of-way user’s “Small Wireless Facilities” and shall not otherwise alter the obligations of a right-of-way user to provide indemnification to the city for any other activities or operations.

(b) The city shall notify a right-of-way user of any claims subject to indemnification by a right-of-way user and shall cooperate with all reasonable requests by a right-of-way user for information, documents, testimony or other assistance appropriate to a resolution of such claims. A right-of-way user shall have full responsibility for and control of any action or undertaking directed at the resolution of such claims.

(G.O. 1932, 4-28-03; G.O. 2111, 6-20-05; G.O. 2892, 12-17-18)

Sec. 29-373. Insurance and bonds.

(a) Each right-of-way user shall secure and maintain commercial general liability insurance (“CGL Insurance”) with a combined single limit per occurrence of not less than the amount required by the requirements for CGL Insurance established by the public works and transportation director. The CGL Insurance required herein shall be written on a comprehensive form and shall cover claims and liability in connection with or resulting from the right-of-way user’s operations and activities for personal injuries, occupational sickness, disease, death or damage to property of others, including loss of use resulting therefrom, arising out of any operations or activities of the right-of-way user, its agents, or any person directly or indirectly employed by them. The CGL Insurance required herein shall include premises, operations, independent contractors, products-completed operations, personal injury and advertising injury and liability assumed under an insured contract (including the tort liability of another assumed in a business contract) coverages. In particular, and not by way of any limitation, the CGL Insurance shall cover

the right-of-way user’s indemnity obligations contained herein.

(b) Each right-of-way user shall secure and maintain commercial automobile liability insurance (“auto insurance”) with a combined single limit for bodily injury and property damage per accident of not less than the amount required by the requirements for auto insurance established by the public works and transportation director. This insurance, to be in comprehensive form, which shall cover claims and liability for all injuries and all damage to property arising from the use of automobiles, trucks and motorized vehicles, and shall cover the operation on or off the site of the work of all motor vehicles licensed for highway use whether they are owned, non-owned or leased.

(c) The right-of-way user shall purchase and maintain workers' compensation insurance which shall protect the right-of-way user against claims for injury, sickness, disease or death of the right-of-way user's employees or statutory employees in accordance with law.

(d) The city shall be endorsed as an additional insured under the policies described in Subsections (a) and (b) above. However, nothing contained in this Section 29-373, including that the right-of-way user maintain insurance, is intended or shall be construed to be a waiver of the sovereign immunity protections afforded the city under law.

(e) Before commencing any work allowed by the right-of-way permit, the right-of-way user shall procure and furnish to the department of public works and transportation a performance bond in the amount of the estimated cost of the required right-of-way restoration work to be performed by the right-of-way user and approved by the department of public works and transportation. Such bonds shall be in effect through the duration of the work allowed by the right-of-way permit and for the four year guarantee period. The bonds required hereunder shall be in a form approved by the public works and transportation director and executed by a responsible surety licensed in the State of Missouri. The right-of-way user shall require the attorney in fact who executes the required bond on behalf of the surety to affix thereto a certified and current copy of this power of attorney indicating the monetary limit of such power. If the surety of any bond furnished by the right-of-way user is declared bankrupt or becomes insolvent or its right to conduct business in the State of Missouri is terminated, or it ceases to meet the requirements of this paragraph, the right-of-way user shall within ten days substitute another bond and surety, both of which must be acceptable to the public works and transportation director. If the right-of-way user fails to make such substitution, the city may procure such required bonds on behalf of the right-of-way user at the right-of-way user's expense.

(f) If the right-of-way user can demonstrate through certified documents reasonably acceptable to the public works and transportation director that the right-of-way user has \$25,000,000.00 in net assets and does not have a history of permitting noncompliance within the city, the requirements of Subsections (a) through

(e) of this Section 29-373 shall not apply to such public utility right-of-way user. Additionally, (1) in accordance with § 67.5121(3), a self-insured right-of-way user shall not be required to obtain insurance naming the city as an additional insured solely to the extent such right-of-way user is utilizing "Small Wireless Facilities" as defined in the Uniform Small Wireless Facility Deployment Act within the right-of-way, and (2) in accordance with § 67.5121(4), the bonds required for "Small Wireless Facilities" as defined in the Uniform Small Wireless Facility Deployment Act shall not exceed \$1,500.00 per "Small Wireless Facility" or more than \$75,000.00 for all "Small Wireless Facilities" within the right-of-way of a right-of-way user; provided these exceptions to the city's bonding and insurance requirements shall only apply as related to such "Small Wireless Facilities" and shall not otherwise alter the obligations of a right-of-way user to provide appropriate bonds and insurance to the city for any other activities or operations.

(g) In the event the right-of-way user contracts with any other person to perform the work allowed by the permit, such person shall comply with all the terms and provisions of the permit, this article, including all applicable insurance and bonding requirements, all law and the code and shall have the same obligations as the right-of-way user under this article. The right-of-way user shall provide a written guaranty that the work allowed by the permit and performed by another person shall be in accordance with the permit, this article, applicable law and the code. The right-of-way user shall be responsible for correcting acts or omissions by any other person performing the work allowed by the permit. The form of the written guaranty shall be approved by the public works and transportation director.
(G.O. 1932, 4-28-03; G.O. 2111, 6-20-05; G.O. 2892, 12-17-18)

Sec. 29-374. Permit fees for work in the right-of-way.

(a) Each applicant shall pay to the city a right-of-way permit fee for each application for a right-of-way permit as follows:

- (1) Utility permits (for areas less than 300 lineal feet):
 - a. For excavations of 100 square feet or less, a permit fee of \$38.00, and a fee

- of \$19,00 for each subsequent 100 square feet; and
- b. For horizontal direct drilling installations, a permit fee of \$88.00 per project.
- (2) Right-of-way permits (for areas greater than 300 lineal feet), a permit fee of \$50.00, plus \$0.15 per foot of installed/repaired/rehabbed/maintained infrastructure.
- (3) Bulk permits, pursuant to administrative rules promulgated under the authority of Chapter 25 for issuance, a permit fee of \$50.00.
- (4) Any fee required pursuant to this section shall be doubled for each activity requiring a permit under this section but not obtained, in violation of this section.

Such right-of-way permit fee shall be based upon all of the city's costs in issuing, processing and verifying applications and inspections of the project site and restoration work up to two hours. Such right-of-way permit fee shall be paid by each applicant to the city at the time the applicant submits its application for a right-of-way permit.

(b) Each right-of-way user shall pay to the city a supplemental right-of-way permit fee in the amount of all of the city's costs associated with the following:

- (1) Inspecting the project site and the restoration work in excess of two hours; and
- (2) Protecting or moving the right-of-way user's equipment or facilities after reasonable notification to the right-of-way user doing the right-of-way work; and
- (3) Determining the adequacy of right-of-way restoration; and
- (4) Inspecting and/or testing restoration work after rejection of improper or defective restoration work;
- (5) Restoring work inadequately performed after the city has provided notice and five working days for the right-of-way user to correct such inadequate work; and

(6) Revoking the right-of-way permit.

(c) Fees paid for a right-of-way permit, which is subsequently revoked by the public works and transportation director, are not refundable.

(d) In the event the scope of the project is revised during the course of the project, the public works and transportation director may reevaluate the fee based on the actual size of the excavation and may require an additional fee.

(e) The amount of the right-of-way permit fee set forth in Section 29-374(a) shall be reviewed annually by the public works and transportation director and adjusted based upon the costs to the city as set forth in Subsection 29-374(a) as approved by the city council.

(G.O. 1932, 4-28-03; G.O. 1951, 6-9-03; G.O. 2111, 6-20-05; G.O. 2892, 12-17-18; G.O. 3053, 11-28-23)

Sec. 29-375. Violations.

(a) No right-of-way user shall excavate in the right-of-way in violation of Section 29-354 of this article. Any violation of Section 29-354 of this article shall result in the immediate issuance of a citation to the right-of-way user and enforcement action pursuant to Section 29-375(d) hereof.

(b) Except as provided in Subsection (a) of this section, if the public works and transportation director determines that a right-of-way user has committed a violation of this Article, any law, or a condition of the permit, the public works and transportation director shall make written demand upon the right-of-way user to remedy such violation, which may include the issuance of a stop work order.

(c) The right-of-way user shall, within seven calendar days of receiving a notification of a violation, propose a plan to promptly correct such violation. The right-of-way user shall promptly correct such violation in accordance with an approved plan. If the violation creates a threat to public safety, the right-of-way user upon verbal or written notice from the public works and transportation director shall immediately correct such violation. A right-of-way user's failure to submit an acceptable plan, or to promptly cure a violation shall in addition to all other remedies provided by law be cause for immediate revocation of the right-of-way permit.

(d) Any right-of-way user violating any provision of this article is guilty of a public offense, and upon conviction thereof shall be fined in a sum of not less than \$200.00 nor more than \$500.00. Every day that this article is violated shall constitute a separate offense. The city shall have the authority to maintain civil suits or actions in any court of competent jurisdiction for the purpose of enforcing the provisions of this article. In addition to any other remedies, the city attorney may institute injunction, mandamus or other appropriate actions or proceedings to prevent violations of this article.

(G.O. 1932, 4-28-03; G.O. 2111, 6-20-05; G.O. 2892, 12-17-18)

Sec. 29-376. Appeals.

A right-of-way user that has been denied a right-of-way permit, has had its right-of-way permit revoked, believes that the fees imposed upon it by the city do not conform to the requirements of RSMo. Section 67.1840 or asserts any other issues related to the use of the right-of-way shall be entitled to have its disputes reviewed in accordance with the Chapter 2, Article XIII, of the code, provided however, that a decision affirming the denial, revocation, fee imposition or dispute resolution shall be in writing and supported by written findings establishing the reasonableness of the decision. Nothing herein shall deny or preclude any applicable appeal remedy that may be granted and required by federal or state law.

(G.O. 1932, 4-28-03; G.O. 2111, 6-20-05; G.O. 2892, 12-17-18)

Sec. 29-377. Separability.

If any provision of this article is held by any federal, state or local court, or by any federal or state agency of competent jurisdiction, to be invalid as conflicting with any Law, or is held by such court or agency to be modified in any way in order to conform to the requirements of any such law or regulation, such provision shall be considered a separate, distinct and independent part of this article and such holding shall not affect the validity and enforceability of all other provisions hereof. In the event that such law or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision which had been held invalid or modified is no longer in conflict with such law, said provision shall return to full force and effect and shall again be binding on the city and each

right-of-way user, provided that the city shall give the right-of-way user 30 days, or a longer period of time as may be reasonably required for the right-of-way user to comply with such a rejuvenated provision, written notice of the change before requiring compliance with such provision.

(G.O. 1932, 4-28-03; G.O. 2111, 6-20-05; G.O. 2892, 12-17-18)

Sec. 29-378. Exceptions.

(a) Regardless of any contrary provisions of this article, nothing contained in this article shall relieve the city of any obligations under an existing franchise agreement in effect on May 1, 2001.

(b) Regardless of any contrary provisions of this article, nothing contained in this article shall relieve a right-of-way user of the provisions of an existing franchise, franchise fees, license or other agreement or permit in effect on May 1, 2001.

(c) Regardless of any contrary provisions of this article, nothing contained in this article shall prohibit the city or a right-of-way user from renewing or entering into a new franchise or right-of-way use in compliance with applicable law.

(d) Regardless of any contrary provisions of this article, nothing contained in this article shall prohibit the city from enacting, renewing or enforcing ordinance articles allowed by applicable law.

(e) Regardless of any contrary provisions of this article, nothing contained in this article shall prevent the city from imposing a franchise fee and other terms and conditions permitted by law in connection with the city granting or renewing a cable franchise and the city may fully enforce all such cable franchise and cable ordinance provisions notwithstanding any contrary term or provisions herein to the full extent permitted by law.

(G.O. 1932, 4-28-03; G.O. 2111, 6-20-05; G.O. 2892, 12-17-18)

Sec. 29-379. Reservation of rights and special exceptions.

(a) In addition to any rights specifically reserved to the city of by this article, the city reserves unto itself every right and power which its required to be reserved by a provision of any ordinance under any registration, permit or other authorization granted under this article.

(b) The city may grant a special exception to the requirements of this article if an applicant, upon application, demonstrates with written evidence that the exception will not create any threat to the public health, safety or welfare, and:

- (1) The applicant demonstrates that the increased economic burden and the potential adverse impact on the applicant's construction schedule resulting from the strict enforcement of the requirement actually or effectively prohibits the ability of the applicant to provide public utility services in the city; or
- (2) The applicant demonstrates that the requirement unreasonably discriminates against the applicant in favor of another right-of-way user.
- (3) The applicant demonstrates that under the facts clearly shown, an exception is required by superseding applicable law.

(c) A grant of special exception to the requirements of this section pursuant to Subsection 29-379(b) shall not be deemed to be a waiver of any other requirement of this section or this article or constitute a waiver of any requirement with respect to a new or separate permit.

(G.O. 1932, 4-28-03; G.O. 2111, 6-20-05; G.O. 2892, 12-17-18)

Sec. 29-380. City's failure to enforce.

The city's failure to enforce or remedy any noncompliance of the terms and conditions of this article or of any right-of-way permit granted hereunder shall not constitute a waiver of the city's rights nor a waiver of any right-of-way user's obligations as herein provided.

(G.O. 1932, 4-28-03; G.O. 2111, 6-20-05; G.O. 2892, 12-17-18)

ARTICLE VI. WASTEWATER SYSTEM DEVELOPMENT CHARGES

Sec. 29-381. Wastewater system development charge; general.

In addition to other rates, deposits, and fees established by law, the requirement of wastewater system development charges for certain connections to the wastewater system is hereby established as further provided in this article.

(G.O. 2268, 1-14-08)

Sec. 29-382. Wastewater system development charge; meter type, size and charge.

As required in this section, the wastewater system development charge shall be as follows:

Table 1 System Development Charge Fee Schedule		
Residential Meter Size	Commercial/ Industrial Meter Size	System Development Charge
5/8"		\$ 500.00
3/4"		\$ 500.00
1"		\$ 500.00
	1"	\$1,000.00
	1-1/2"	\$1,000.00
	2"	\$1,000.00
	3" and larger	\$1,000.00

The methodology used to determine this wastewater system development charge is contained in a letter report by Black & Veatch Corporation, dated May 25, 2007. The charges help to reimburse the city for costs of the capacity in the existing wastewater system facilities that are available to serve development that is issued a permit, pursuant to Sections 29-106, 29-107 and 29-278(b), to connect to the system after the adoption of this wastewater development charge by the city. The charge is developed based on the equity that the city's existing customers have invested in the system. These charges are designed to cover the wastewater system's "backbone" facilities, which include large sewer mains (>= 10"), pumping and lift stations, and treatment facilities.

(G.O. 2268, 1-14-08)

Sec. 29-383. Wastewater system development charge; administration.

Prior to the issuance of a building permit, the applicant for wastewater service shall pay to the city a wastewater system development charge as established in Section 29-382.

For purposes of wastewater system development charge administration, master water meters shall be considered non-residential usage. For each new water connection, a separate wastewater system development charge shall be assessed, unless the water connection is not sewerred. All new wastewater sewer service connections to the city wastewater sewer system shall be covered by this article.

The assistant director of public works and transportation, or his or her designee, shall have the authority to promulgate rules and regulations to implement the provisions of this article and to make final decisions with regard thereto.

(G.O. 2268, 1-14-08)

Sec. 29-384. Collection, expense and annual report of wastewater system development charges.

(a) The wastewater system development charge shall be deposited by the director of financial services into a separate account within the sewer fund and shall be used only for the reimbursement of costs attributable to the design and construction, maintenance, and related improvement costs, including but not limited to, interest and debt issuance costs, of capital improvements of the wastewater system. Wastewater system development charges shall only be expended on wastewater system maintenance and improvements that provide capacity used to accommodate new connections to the system. The director of financial services

shall maintain and keep adequate financial records for the receipt and expense of the wastewater system development charges.

(b) The director of public works and transportation, or his or her designee, in cooperation with other appropriate city personnel, shall prepare an annual report detailing the receipt and expenditure of wastewater system development charges. The report shall be presented to the city council annually. The report shall:

- (1) Detail the receipt of wastewater system development charges,
 - (2) Detail the expenditure of wastewater system development charges,
 - (3) Review the rates of the wastewater system development charges, and
 - (4) Report on those other matters as may be appropriate for the administration of the wastewater system development charges.
- (G.O. 2268, 1-14-08)

Sec. 29-385. Exemptions for wastewater system development charge.

(a) The following service connections shall be exempt from the wastewater system development charge:

- (1) The establishment of a new sanitary sewer tap for existing structures that are being altered, remodeled, rehabilitated, or restored and that do not require a change of the existing meter size; and
- (2) Service connections for properties with a valid building permit issued prior to the date the ordinance adopting this article takes effect.

(b) Upon recommendation by the city staff, the city council may exempt a specific certain service connection or service connections from the requirement of wastewater system development charges, provided that the city council finds that the exemption(s) serves the public interest, pursuant to an adopted policy concerning exemptions. The city council may direct the transfer of other lawfully budgeted funds to the sewer fund in addition to the wastewater system development charge.

(G.O. 2268, 1-14-08)

Sec. 29-386. Credit for wastewater system development charge.

For existing structures that are being altered, remodeled, rehabilitated, or restored with an increased sized meter, the applicant shall be credited in the payment of a wastewater system development charge an amount equal to the wastewater system development charge for the applicant's existing meter.

(G.O. 2268, 1-14-08)

Sec. 29-387. Termination of service for failure to pay charge.

The failure of an applicant to pay the wastewater system development charge as provided by this article shall provide the city with the authority, after lawful notice, to terminate sewer service on the subject property. Prior to the reconnection of service, the applicant for service shall pay to the city all lawfully required fees and charges.

(G.O. 2268, 1-14-08)

Sec. 29-388. Appeals.

A decision made under this article may be appealed to the director of public works and transportation within ten days of the date of the decision. The director of public works and transportation shall schedule a hearing on the appeal. In considering the appeal, the director of public works and transportation may affirm, modify, or overrule the decision in a manner that is consistent with the provisions of this article. All decisions of the director of public works and transportation shall be in writing and the decision rendered shall be a final administrative decision. The director of public works and transportation may delegate responsibilities of this section to other city personnel as the director determines appropriate.

(G.O. 2268, 1-14-08)

Sec. 29-389. Update of Wastewater System Development Charges.

The city shall update its calculation of the wastewater system development charge and shall recalculate its wastewater system development charge not less than once every five years, in conjunction with the rate study.

(G.O. 2268, 1-14-08)

Sec. 29-390 Wastewater system development charges as additional and supplemental regulations.

Wastewater system development charges established by this article are additional and supplemental to, and not in substitution for, any other requirement proposed by the city on the development of land or the issuance of building permits. Wastewater system development charges are intended to be consistent with and to implement the policies of the city's comprehensive plan, the capital improvements plan (CIP), the zoning ordinance, subdivision regulations, and other city policies, ordinances and resolutions by which the city seeks to ensure the provision of adequate public facilities in conjunction with the development of land.

(G.O. 2268, 1-14-08)

Sec. 29-391 Use of other funding mechanisms.

(a) The city may finance wastewater system facilities or facility expansions through the issuance of bonds, through the formation of special, benefit, or improvement districts or other assessment districts or through any other authorized mechanism, in any manner and subject to any limitations as may be provided by law, in addition to the use of wastewater system development charges.

(b) Except as hereinafter provided, the assessment and collection of wastewater system development charges shall be additional and supplemental to, and not in substitution of, any other tax, fee, charge or assessment that is lawfully imposed on and due against the property.

(G.O. 2268, 1-14-08)