COUNCIL BILL NO. 2019-125 ORDINANCE NO

AN ORDINANCE amending Chapter 106, "Streets, Sidewalks and Other Public Places," by enacting a new Article VI, "Rights-of-Way Management;" and containing an emergency clause.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI, as follows:

WHEREAS, the City of Joplin, Missouri ("City") as a constitutional city has specifically been granted authority pursuant to its charter and other law, including Section 67.1830 RSMo. to establish permitting requirements for structures or equipment for facilities in the public right-of-way ("ROW") and the City desires to reaffirm its intent to regulate and enforce permitting requirements for the facilities in the ROW; and,

WHEREAS, the City Council's legislative findings include that: (a) the ROW is a unique and physically limited resource; (b) the ROW is critical to the travel and transportation of persons and property in the City; (c) the ROW is intended for public uses and must be managed and controlled consistent with that intent and can be partially occupied by Facilities and public service entities to the enhancement of the health, welfare, and general economic well-being of the City and its citizens; (d) such findings require adoption of specific additional regulations to ensure to the extent permitted by various applicable laws that the ROW is managed so as to coordinate users, maximize available space, reduce maintenance and costs to the public and protect the public from any harm caused by private commercial use of Rights-of-Way, avoid unlawful discrimination among providers and protect the regulatory authority of the City in a manner consistent with federal and state law, and facilitate entry of a maximum, most efficient number of Right-of-Way Users that will serve the public interest and provide compensation for use of the public property that benefits the public and avoids distortion of the marketplace; and,

WHEREAS, Missouri law authorizes the City to regulate the use and occupancy of Rights-of-Way for placement of a Facilities as hereinafter defined, and to require compensation and to adopt rules and regulations regarding such use and occupancy; and,

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

WHEREAS, numerous changes in federal and state law have occurred relating to specific ROW uses and specific types of ROW users, including requirements relating to video service providers, wireless facilities, telecommunications providers, and other types of users, and therefore City Council desires to update and codify its requirements for use of the Rights-of-Way within the City of Joplin, Missouri, consistent with applicable law.

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

Section 1. The City's Chapter 106 on Streets, Sidewalks and Other Public Places is hereby amended by adding a VI, entitled "Rights-of-Way Management," in substantially the form as

attached hereto as Exhibit A and fully incorporated herein by this reference.

Section 2. The portions of this Ordinance shall be severable. In the event that any portion of this Ordinance is found by a court of competent jurisdiction to be invalid, the remaining portions are valid, unless the court finds the valid portions of this Ordinance are so essential and inseparably connected that it cannot be presumed that the City Council would not have enacted such provisions without the others.

Section 3. This Ordinance, dealing with preserving the public peace, property, health, safety, or morals of the citizens, and relating to a public improvement, is an emergency within the meaning of Section 2.12(1) and (6) of THE HOME RULE CHARTER OF THE CITY OF JOPLIN, MISSOURI, and shall be in full force and effect immediately from and after its passage and approval. Specifically, this Ordinance deals with and relates to management of public rights-of-way.

PASSED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI, this _____ day of _____, 2019, by a vote of _____.

_____
Gary L. Shaw, Mayor

ATTEST:

_____
Barbara J. Gollhofer,
City Clerk

APPROVED AS TO FORM:

_____
Peter C. Edwards,
City Attorney