

ORDINANCE NO. 2015

AN ORDINANCE CREATING NEW POLICIES AND REGULATIONS TO MANAGE ACTIVITIES IN AND ACCESS TO THE CITY OF DANVILLE, KENTUCKY PUBLIC RIGHT OF WAY.

WHEREAS, the Board of Commissioners of the City of Danville, Kentucky, find it necessary and proper to manage activities in and access to the public right of way for the health, safety, and welfare of its citizens; and

WHEREAS, the Board of Commissioners of the City of Danville, Kentucky, have the power under home rule authority in Kentucky law to regulate same;

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE CITY OF DANVILLE, KENTUCKY, AS FOLLOWS:

Section 1:

Sec. 1. - Title.

This Ordinance shall be known as the "City of Danville Public Right-of-Way Ordinance", hereinafter the "Ordinance".

Sec. 2. - Purpose; not in lieu of franchise; not intended to impair existing contracts; reservation of regulatory powers.

- (a) *Purpose.* The purpose and intent of this Ordinance is to establish and promote a policy and regulations specifically pertaining to the Right-of-way that:
- (1) Govern the placement and maintenance of certain Facilities that are used to provide Utility or similar services;
 - (2) Promote their conservation;
 - (3) Provide for the granting and management of reasonable access thereto;
 - (4) Ensure that the Government's current and ongoing costs of granting and regulating private access thereto and use thereof are borne by the Party seeking such access and causing such cost;
 - (5) Provide for the payment of fair and reasonable fees to the Government to ensure that this Ordinance is properly administered and enforced;
 - (6) Minimize street cuts, damages to Persons or property, and hardship to the general public;
 - (7) Promote cooperation among Parties using the Right-of-way;
 - (8) Prescribe reasonable requirements regarding the placement and management of Facilities therein consistent with federal and state law.
- (b) *Ordinance not in lieu of franchise.* Compliance with the requirements of this Ordinance shall not excuse any Person from complying with all other requirements of law, including

holding a valid franchise, contract or easement of the Government. Any franchise, contract or easement may include additional rights, regulations, obligations, fees and costs.

- (c) *Ordinance not intended to impair existing contracts.* Nothing in this Ordinance is intended to impair the legal right or obligation of any contract, franchise, or easement previously granted by the Government.
- (d) *Reservation of regulatory and police powers.* The Government does not diminish or to any extent lose, waive, impair or lessen the lawful powers and rights which it now or may have hereafter to regulate the use of the Right-of-way or charge reasonable compensation for such use.

Sec. 3. - Definitions.

The following definitions apply to this Ordinance. References herein to "sections" are, unless otherwise specified, references to sections of this Ordinance.

Annual General Permit means a permit issued annually by the Department to perform the following types of activities within the Right-of-way in locations other than High Density Utility Areas:

- (1) Installation or replacement of wiring on existing Poles, Towers, and Support Structures;
- (2) Repair, replacement or maintenance of existing above-ground Facilities, including Poles, Towers, and Support Structures, in the same location with no street, curb, apron, or sidewalk cuts, provided any replacement Facilities are not more than twenty (20) percent larger in size than the existing Facilities;
- (3) Excavations of existing Facilities of up to one hundred(100) square feet with no street, curb, apron or sidewalk cuts, with the exception of subsection (4) immediately following;
- (4) Installation of new underground lines in trenches of less than two hundred fifty (250) linear feet with a width of twenty-four (24) inches or less and with no street, curb, apron or sidewalk cuts;
- (5) Any underground boring, except borings larger than six (6) inches in diameter which are performed in locations under a street, curb, apron or sidewalk; or
- (7) Any work performed inside existing conduits.

The Annual General Permit does not cover the installation of any Facility that is not listed above. The permittee shall be required to provide daily notifications to the Department as further provided in subsection 21(a). Any activity with respect to Facilities in the Right-of-way that is not listed above or otherwise exempted under this Ordinance shall require that either an Installation Permit or Surface Cut Permit, as appropriate, be obtained prior to performing the activity.

City Commission means the legislative body of the City of Danville.

City Engineer means the City Engineer, or his/her designee, unless otherwise specified.

Communications Facility means, collectively, the equipment at a fixed location or locations within the public Right-of-way that enables communication between user equipment and a communications network, including:

- (1) Radio transceivers, antennas, coaxial, fiber optic or other cabling, power supply (including backup battery), and comparable equipment, regardless of technological configuration; and
- (2) All other equipment associated with the foregoing. The term does not include the Pole, Tower, or Support structure to which the equipment is attached.

Degradation means a decrease in the useful life of the Right-of-way caused by Excavation in or disturbance of the Right-of-way, resulting in the need to reconstruct such Right-of-way earlier than would be required if the Excavation did not occur.

Department means the City of Danville's Department of Engineering.

Emergency means a situation when placement or maintenance of Facilities is needed to be undertaken immediately because of a danger to human life or health or of significant damage to property, including, but not limited to, unanticipated leaks interruptions or reductions in existing services, or other situations defined as being emergency or dangerous conditions pursuant to federal, state or local law. The installation of Facilities that only serve to expand existing service or provide new service shall not be considered an emergency.

Excavate or *Excavation* means to dig into or in any way remove or physically cut, disturb or penetrate any part of a Right-of-way.

Facility or *Facilities* means any tangible asset in the Right-of-way, including, but not limited to, equipment and apparatus such as pipes, conduits, wires, cables, amplifiers, transformers, fiber optic lines, antennae, Pole, Tower, or Support Structure, or ducts, required, necessary, used or useful in the provision of Utility or other services.

Government means the City of Danville, KY, a city and political subdivision of the Commonwealth of Kentucky.

- (1) *High Density Utility Areas* means geographic areas in which significant issues exist with respect to the location of Facilities because of space or density issues in the Right-of-way. The City Commission, through the adoption of a resolution or ordinance, may designate, add or delete geographic areas that constitute High Density Utility Areas upon the recommendation of the City Engineer. Prior to the consideration an area as a High Density Utility Area, or any subsequent change in the scope of the High Density Utility Areas by the City Commission, all Registrants shall be notified by the Government, and an attempt to reach a consensus on the scope of the designation or change shall be made.

Installation Permit means a permit issued by the Department to perform any construction, installation, repair, replacement or maintenance of Facilities in the Right-of-way that is not covered by an Annual General Permit or a Surface Cut Permit.

Lessee means a Person who provides services within the City of Danville solely by leasing Facilities and who has no control over what or where or how any Facilities are erected, installed, maintained, operated, repaired, removed, restored, or otherwise used.

Party or Person means any natural or corporate Person, business association or other business entity including, but not limited to, a partnership, a sole proprietorship, a political subdivision, a public or private agency of any kind, a Utility, a successor or assign of any of the foregoing, or any other legal entity.

Pole means a Utility, lighting, or similar pole made of wood, concrete, metal, or other material, located or to be located within a public Right-of-way. The term does not include a Tower or Support Structure.

Registrant means any Party filing a registration statement required by this Ordinance.

Reseller service provider means Person who provides services within the City of Danville solely by reselling services and who has no control over what, where or how any Facilities are erected, installed, maintained, operated, repaired, removed, restored or otherwise used.

Right-of-way means the surface of and the space above and below a public roadway, highway, street, freeway, lane, path, sidewalk, alley, court, boulevard, avenue, parkway, cartway, bicycle lane or path, public sidewalk, or easement held by the Government for the purpose of public travel and shall include Right-of-way as shall be now held or hereafter held by the Government. A Right-of-way does not include the airwaves above a Right-of-way with regard to cellular or other non-wire telecommunications or broadcast service.

Small Wireless Facilities are Wireless Facilities that meet each of the following conditions:

- (1) The Facilities are mounted on Poles, Towers, or Support Structures fifty-five (55) feet or less in height including their antennas;
- (2) Each antenna associated with the deployment, excluding associated antenna equipment, is no more than three (3) cubic feet in volume;
- (3) All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any associated equipment on the structure, including collations, is no more than fifteen (15) cubic feet in volume, cumulatively. The following types of associated, ancillary equipment are not included in the calculation of equipment volume: electric meter, telecommunications demarcation box, grounding equipment, power transfer switch, cut-off switch, and vertical cable runs for connection of power and other services;
- (4) The Facilities do not require antenna structure registration under federal law;
- (5) The Facilities do not result in human exposure to radiofrequency radiation in excess of the applicable safety standards provided in federal law; and
- (6) Small Wireless Facilities do not include Poles, Towers, or Support Structures.

Support structure means a structure in the public Right-of-way other than a Pole or a Tower to which a Wireless Facility is attached at the time of the application for an Installation Permit.

Surface Cut Permit means a permit issued by the Department to Excavate, dig or cut into and through a paved street surface within the Right-of-way or to bore, dig or tunnel under such a paved street surface except as authorized by an Annual General Permit.

Tariff means the internal regulations or guidelines of the Utility industry as promulgated or adopted by the Kentucky Public Service Commission or the Federal Communications Commission.

Tower means any structure in the public Right-of-way built for the sole or primary purpose of supporting a Wireless Facility. A Tower does not include a Pole or a Support Structure.

Utility means a Party that is defined in KRS ch. 278 as a utility and (i) is subject to the jurisdiction of the Kentucky Public Service Commission, the FCC, or the Federal Energy Regulatory Commission, or (ii) is required to obtain a franchise from the Government to use and occupy the Right-of-way pursuant to Sections 163 and 164 of the Kentucky Constitution.

Wireless Facility means a Communications Facility that enables Wireless Services, but does not include: (i) the Support Structure, Tower, or Pole on, under, or within which the equipment is located or collocated; or (ii) coaxial, fiber-optic or other cabling that is between Communications Facilities or Poles or that is otherwise not immediately adjacent to or directly associated with a particular antenna. A Small Wireless Facility is one (1) example of a Wireless Facility.

Wireless Services means any wireless services using licensed or unlicensed spectrum, whether at a fixed location or mobile, provided to the public.

Sec. 4. - Incorporated documents.

- (a) A number of documents are incorporated herein by reference, including, but not limited to, certain other written and published ordinances, resolutions, regulations, requirements and standards. All such references are to have the same affect as if the documents were reproduced verbatim herein, and all such documents automatically include any and all subsequent amendments thereto as long as the Parties that will be effected by such amendments have the ability to meaningfully participate in the process that is utilized to amend such document, or unless expressly indicated otherwise by a provision of this Ordinance. This provision shall not be interpreted to require that work performed prior to the adoption or amendment of such a document be subject to any newly created standard.

Sec. 5. - Rules of construction.

- (a) *Shall* is mandatory, not merely directive.
- (b) *Applicable law*. The law of the Commonwealth of Kentucky, and the United States of America, if applicable, governs any construction, enforcement and performance of this Ordinance.
- (c) *Severability*. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held invalid or unconstitutional by any court or administrative agency of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof.

Sec. 6. - Administration; enforcement.

- (a) The City Engineer or the Person designated as the City Engineer in his/her absence is the principal Government official responsible for the administration of this Ordinance and he or she may delegate any or all of the duties hereunder, except those duties set forth in sections 11, 12 and 15.

- (b) The Department shall be responsible for enforcing compliance with this Ordinance and may adopt procedures consistent with this Ordinance that are necessary for its administration or enforcement and shall administer and enforce this Ordinance in a neutral and non-discriminatory manner.

Sec. 7. - General conditions related to Facilities located in the Right-of-way.

- (a) *Responsibility for costs.* Any act that a Party is required to perform under this Ordinance shall be performed at that Party's cost, unless expressly provided for otherwise in this Ordinance.
- (b) *Construction procedures and placement of Facilities; obligation to minimize interference with the Right-of-way:*
 - (1) All activities in the Right-of-way that are subject to this Ordinance shall be performed in compliance with all applicable laws, ordinances, departmental rules and regulations. Each Party subject to this Ordinance must obtain all other necessary permits, licenses, and authority and pay all fees required by this Ordinance or other applicable rule, law or regulation.
 - (2) The Government may require that Facilities be installed at a particular time, at a specific place or location, or in a particular manner as a condition of access to a particular Right-of-way; may deny access if a Party is not willing to comply with the Government's reasonable requirements; and may remove, or require removal of, any Facility that is not installed in compliance with the requirements of this Ordinance and charge that Party for all the costs associated with removal. The criteria to be utilized in making determinations regarding installation, relocation or removal of Facilities are contained in section 19. Regardless of any other criteria, in the event the placement or location of a Facility in a particular area of the Right-of-way would constitute a public safety concern, the City Engineer may deny the placement of that Facility in that area or order its relocation or removal.
 - (3) In order to minimize interference with the use of the Right-of-way by others, each Party subject to this Ordinance will make reasonable efforts to minimize the number of surface cuts made, will make reasonable efforts to coordinate such surface cuts with the Government's paving schedule, and, if appropriate, enter into joint trenching and other arrangements with other Parties.
 - (4) Any Right-of-way or public property that is disturbed or damaged during the construction, Excavation, installation, operation, maintenance or repair of a Facility shall be repaired within thirty (30) calendar days of the completion of those activities which caused the disturbance or damage by the Party that disturbed or damaged the Right-of-way or public property. This time may be extended by the City Engineer or his/her representative upon demonstration of reasonable cause by the subject Party. A Party's failure to take reasonable steps to complete all restoration work due under a Surface Cut Permit within the time period stated above will result in the cost of the permit fee required pursuant to subsection 22 being re-assessed as an additional fee each time there is a failure to meet the time limit. Any additional fee(s) shall be assessed at the time of inspection or re-inspection and payable to the City Engineer upon permit renewal pursuant to subsection 22 in addition to the amount of the original fee(s) provided for in subsection 22 of this Ordinance.

- (5) Parties subject to this Ordinance shall make every reasonable effort to stack or bundle conduit where feasible so as to occupy as little space as possible in the Right-of-way. Consistent with state law, or in the absence of state law the current edition of the National Electrical Safety Code.
- (6) The minimum clearance of wires and cables above the Right-of-way, and also the placement of underground Facilities shall conform to the standards established by state law, or in the absence of state law the current edition of the National Electrical Safety Code.
- (c) *Duty to maintain all property in Right-of-way.* All Parties subject to this Ordinance must maintain all of their Facilities located in the Right-of-way in a manner that promotes the public safety. By way of example, but not limitation, all Facilities, including, but not limited to, Poles, Towers, Support Structures, and manholes, must be maintained in a safe condition at all times. In the event any Facility in the Right-of-way is endangering the public safety, the Party responsible for such Facility shall take steps to rectify the situation immediately upon notification and in accordance with section 15.
- (d) *Street trees.* The removal or trimming of existing trees in the Right-of-way shall comply with the Government's street tree ordinance, and/or tree protection ordinance, as applicable.
- (e) *Standards.* All Parties subject to this Ordinance shall at all times use ordinary care and shall install and maintain in use commonly accepted methods and devices and utilize due diligence in performing any installation, construction, maintenance or other work in the Right-of-way.
- (f) *Relocation or removal.* Pursuant to section 19 and consistent with the procedures and criteria contained therein, all Parties subject to this Ordinance shall, upon the provision of reasonable written notice of, and at the direction of the City Engineer, promptly relocate or remove Facilities, or rearrange aerial Facilities, if required by a Tariff, state or federal law, a franchise agreement with the Government, or the City Engineer in exercising his/her authority under section 19.
- (g) *Other requirements specific to Registrant s.* In addition to the other requirements set forth herein, each Registrant shall use its best efforts to:
- (1) Cooperate with other Registrant s and the Government for the best, most efficient, most aesthetic and least obtrusive use of the Right-of-way, consistent with safety, and to minimize traffic and other disruptions including surface cuts;
 - (2) Participate in such joint planning, construction and advance notification of Right-of-way work, including coordination and consolidation of surface cut work;
 - (3) Cooperate with the Government in any Emergencies involving the Right-of-way as further provided in section 15, including the maintenance of a twenty-four (24) hour Emergency contact;
 - (4) Designate points of contact for all purposes hereunder, as well as comply with such other contact and notice protocols as required by this Ordinance or as promulgated by the City Engineer pursuant to this Ordinance;
 - (5) Require that any Party performing any work or service in the Right-of-way on behalf of said Registrant will comply with all applicable provisions of this Ordinance as well

any other additional local regulation pertaining to the performance of such work, and will identify the Registrant for whom such contractor is working. Said Registrant shall be responsible and liable hereunder only to the Government for any damage to the Right-of-way caused by the actions of any such subcontractor or others as if said Registrant had performed or failed to perform any such obligation;

- (6) Comply in all respects with the requirements of KRS 367.4901, et seq., regarding an excavator's responsibilities pertaining to the location of Facilities; and
 - (7) Take reasonable steps to provide advance notice to all Persons who reside on property where any work or service in the Right-of-way is to be performed and attempt to notify such Persons prior to entering private property.
- (h) *Utility Coordinating Committee.* Each Registrant that provides Utility services shall assign, on an annual basis, a representative to serve on the Utility Coordinating Committee (the "Committee"), which shall be established by the City Engineer. The membership of the Committee shall consist of each Registrant's representative and the City Engineer, and it shall meet on at least a quarterly basis, and otherwise as often as the City Engineer deems necessary. The Committee shall:
- (1) Make technical recommendations to the City Engineer for the efficient implementation of this Ordinance and discuss general issues pertaining to the management of the Right-of-way, including but not limited to coordination of Utility activity in the Right-of-way, patching and restoration standards, permitting processes and inspections, the Government's annual pavement ratings and plan, and other matters pertaining to this Ordinance and the management of the Right-of-way; and
 - (2) Review annual work plans of each Utility that involve substantial activity in the Right-of-way and the Right-of-way management.

The Committee shall make any formal recommendation by a simple majority vote of its members, and may elect officers annually, including a chairperson. The City Engineer shall create an agenda for each quarterly meeting and distribute it to the members of the Committee along with any necessary supporting documentation at least five (5) days prior to the meeting.

Sec. 8. - Existing Facilities.

Facilities located in the Right-of-way prior to the effective date of this Ordinance may remain in the Right-of-way and shall not be considered in violation of this Ordinance provided the Party responsible for such Facilities under this Ordinance complies with the applicable provisions of this Ordinance

Sec. 9. - Requirement to register and pay fees; registration required; effect of registration; exceptions.

- (a) *Requirement to register and pay fees.* Unless otherwise excepted by this Ordinance, it shall be unlawful for any Party to install, operate, construct or maintain any Facilities within the Right-of-way unless such Facilities are registered with the Government by filing the registration statement required herein and all applicable registration, Annual General Permit and franchise fees are paid to the Government. Any Person who installs, operates, constructs, or maintains any Facilities within the Right-of-way before registering such Facilities or obtaining the necessary permits, certificates, letters, or other documentation required pursuant to this Ordinance shall not only be required to pay the initial Installation

Permit fee or Surface Cut Permit fee required pursuant to subsection 22, but shall also be subject to a reassessment of the Installation Permit fee or Surface Cut Permit fee upon discovery that such work has commenced.

- (b) *Registration.* Any Party who owns any Facilities within the Right-of-way or who seeks to occupy the Right-of-way to install, construct or maintain any Facilities within the Right-of-way shall file a registration statement as further described herein.
- (c) *Exceptions for reseller service providers and Lessees.* A Reseller service provider or a Lessee shall not be required to register those Facilities it utilizes solely for the purpose of reselling, or those Facilities it utilizes as a Lessee.
- (d) *Effect of registration.* Registration does not convey legal or equitable title to the Right-of-way nor does it place a Registrant in a position of priority with respect to other Registrants. Registration does not excuse a Party from having to obtain a franchise, lease or other agreement, if otherwise required; or from obtaining any required or necessary agreement with the Government or other Party with respect to the placement of Facilities on the Government's or another Party's Facilities.
- (e) *Exceptions.* The following types of Facilities are not required to be registered pursuant to this Ordinance and the Party responsible for such Facilities is not otherwise required to comply with the provisions of this Ordinance expressly pertaining to Registrants. However, the Party responsible for such Facilities is required to comply with all remaining provisions of this Ordinance that are not expressly limited to Registrants, unless otherwise exempted.
 - (1) Newspaper stands;
 - (2) Signage;
 - (3) Facilities associated with sidewalk cafes or the sale of goods or merchandise;
 - (4) Facilities owned by the Commonwealth of Kentucky;
 - (5) Facilities installed to provide new development with connections to Utility service and for which the Government is provided performance and warranty surety protection under its land development regulations; and
 - (6) Facilities installed by the Government that are not used to provide competitive Utility services to customers in the City of Danville, provided that such Facilities are not used at any future time for the provision of competitive Utility services.

Sec. 10. - Registration statement.

The registration statement required by subsection 9(b) shall be filed with the Department and shall be in a form to be promulgated by the Department, which shall include the following information:

- (1) The identity and legal status of the Registrant, including any affiliates who own or operate any Facilities in the Right-of-way and the name, title, address, and telephone number of the individual responsible for the accuracy of the registration statement.
- (2) The Registrant's address, telephone number, facsimile number, e-mail address, as well as a local point of contact available to be contacted in the event of an Emergency.

- (3) A general description of all services that the Registrant currently provides or offers to provide (i.e. water, sewer, gas, electric, telephony, internet, cable, video or other Utility services) through the utilization of its Facilities.
- (4) A statement of the authority pursuant to which the Registrant occupies the Right-of-way.
- (5) A statement of the amount, if any, of any fee to which the Registrant is subject pursuant to any franchise agreement, lease, or other agreement between the Registrant and the Government.
- (6) Proof that the Registrant is insured in the form of a copy of a certificate of insurance or self-insurance that is in compliance with the insurance requirements of section 16 or its franchise agreement. Registrant may satisfy the insurance requirements and conditions of this section under a self-insurance plan that is acceptable to the Department
- (7) If the Registrant is a Utility, the number of the Registrant 's certificate of authorization or license to provide Utility service issued by the Kentucky Public Service Commission, or other state or federal authority, if any.
- (8) *Notice of changes.* The Registrant shall notify the within thirty (30) days of any change in information contained in the registration statement.

Sec. 11. - Rejection or cancellation of registration.

- (a) Within ten (10) working days of the filing of the registration statement or the discovery of the inaccuracy of the registration statement by the Department, the City Engineer shall provide written notice to any Party who (1) does not possess proper authorization to occupy the Right-of-way with Facilities, (2) fails to pay the appropriate registration fee, or (3) fails to accurately complete the registration statement. Such written notice shall specify the deficiency and shall notify the Party what corrective action must be taken. If the Party fails to correct the deficiency within ten (10) days, the City Engineer shall reject or cancel the registration unless it can be shown by the Party that significant steps have been taken to correct the deficiency, upon which showing the City Engineer may provide an additional reasonable extension of time, or provide approval of the registration contingent upon the Party's ability to correct the deficiency to the satisfaction of the City Engineer.
- (b) A Registrant who no longer continues to place, maintain, or own any Facilities in the Right-of-way may cancel its registration upon providing the Department with written notice of at least thirty (30) days.

Sec. 12. - Reconsideration of rejection or cancellation.

- (a) If the City Engineer rejects or cancels a registration statement pursuant to section 11, the Registrant may file with the City Engineer within ten (10) days of receipt of the notice of rejection or cancellation a written request for reconsideration, which must include the basis for the Registrant 's position.
- (b) The City Engineer may hear any relevant evidence in deciding the reconsideration and will notify the Registrant if further information is required. The City Engineer shall render a final decision in writing within ten (10) days of receipt of the Registrant 's written request for reconsideration or the receipt of any further evidence, whichever is later, and will provide the Registrant the basis for his/her decision.

Sec. 13. - Term of registration.

A registration made pursuant to this Ordinance shall be effective for a period of one (1) year beginning January 1 of each year. By no later than January 1 of each year, each Registrant file with the Department a new registration statement or a renewal of such Registrant 's registration on such form as shall be required by the Department.

Sec. 14. - Intentionally left blank.

Sec. 15. - Emergencies; power to order repairs.

- (a) A Registrant shall notify the Department by no later than noon the next business day, via website, facsimile or e-mail, of any event regarding its Facilities already located within the Right-of-way that it considers to be an Emergency. The Registrant may proceed to take whatever actions are necessary to respond to an Emergency. Within five (5) business days of the discovery of the Emergency, the Registrant shall have applied for any necessary permit and provided the Department with a written notification of said Emergency, which notice shall include, at a minimum the time, date, location and extent of any Excavation or other work performed. If the Department becomes aware of an Emergency regarding a Registrant's Facilities, the City Engineer will attempt to contact that Registrant immediately.
- (b) If the Department determines that the Right-of-way associated with a surface cut has degraded or caved-in more than one-half (½) inches below grade, and within two (2) years after any surface cut, it shall notify the Party or Parties responsible for making the surface cut of this determination and:
 - (1) In the case of a clear and immediate danger or hazard to vehicular or pedestrian traffic, the Government shall order the Party or Parties responsible to take immediate precautionary measures to direct vehicular or pedestrian traffic around and away from the Degradation or cave-in. In addition, the Government shall order the Party or Parties responsible to make all necessary corrections and repairs to cure the immediate danger or hazard within five (5) days and perform any additional work consistent with the issuance of any necessary permit.
 - (2) In all other cases of Degradation or cave-in the Government shall order the Party or Parties responsible to take immediate precautionary measures to direct vehicular or pedestrian traffic around and away from the Degradation or cave-in, and shall order the Party or Parties responsible to make all necessary corrections and repairs within thirty (30) days.
 - (3) In the event the Department orders corrections or repairs and the Party responsible fails to respond to reasonable deadlines set forth in said order, the Department shall cause the necessary corrections and repairs to be made, and shall submit a statement for the costs incurred by the Government in making such corrections and repairs to the responsible Party, which statement shall include an additional administrative fee not to exceed five hundred dollars (\$500.00). In that event, and if the said statement of costs and fees is not paid by the said responsible Party within forty-five (45) days, the City Engineer shall suspend the issuance of all future permits to the said responsible Party until such time as the said costs are paid.
 - (4) This section shall not be interpreted to preclude the Government from taking any and all reasonable protective measures with respect to the Right-of-way and the health and safety of the general public, including but not limited to blocking the general public's

access to the area, temporarily repairing the Right-of-way or removing any Facility that constitutes an immediate health or safety concern. The Government shall not undertake to repair or remove a Facility unless all other reasonable methods of response to the Emergency have been exercised.

Sec. 16. - Insurance.

Unless otherwise provided in a valid franchise agreement with the Government:

Each Registrant shall maintain in full force and effect a commercial general liability insurance policy reasonably acceptable to the Department with a minimum policy limit of one million dollars (\$1,000,000.00) per occurrence and shall provide the Government with a certificate of insurance evidencing the insurance policy required by this section. The certificate shall state that the insurance policy shall not be canceled, materially changed or non-renewed until after thirty (30) days' notice has been provided to the Government; however, insurance may be canceled and replaced with a policy that continues to meet the requirements of this section. A Registrant may satisfy the insurance requirements and conditions of this section under a self-insurance plan that is acceptable to the Department. The Government reserves the right to impose additional insurance requirements as part of a franchise agreement.

Sec. 17. - Indemnification; hold harmless.

Unless otherwise provided in a valid franchise agreement with the Government:

- (a) Each Registrant shall defend, indemnify, and hold harmless the Government, its officials, boards, members, agents and employees (Indemnitees) against any and all claims, suits, causes of action, proceedings, judgments for damages or equitable relief, and costs and expenses, including reasonable attorney's fees, arising from liability or claims of liability for bodily injury or death to Persons or property damage in which the claim arises out of the installation, construction, repair, maintenance or operation of its Facilities, except to the extent such injury or damage is attributable, in whole or in part, to the fault of the Indemnitees including, without limitation, the Indemnitees' negligent or intentional acts or omissions. In the event of joint and concurrent negligence or fault of both Registrant and the Indemnitees, responsibility and indemnity, if any, shall be apportioned comparatively in accordance with the laws of the State of Kentucky without, however, waiving any governmental immunity available under Kentucky law and without waiving any of the defenses of the parties under Kentucky law.
- (b) The Government shall notify the Registrant in writing within a reasonable time of receiving notice of any issue it determines may require indemnification and the Registrant shall defend the Government at the cost of the Registrant.

Sec. 18. - Joint planning and construction; coordination of Excavation.

- (a) Any Registrant owning, operating or installing Facilities in the Right-of-way that provide water, sewer, gas, electric, telephony, internet, cable, video or other Utility services, shall prepare and submit to the City Engineer a master plan. Registrants shall submit an initial master plan no later than one hundred eighty (180) days after the effective date of this Ordinance. Thereafter, each such Registrant shall submit semi-annually, as required by the City Engineer, a revised and updated master plan. As used in this subsection, the term "master plan" refers to a document reflecting any known future activity planned by the Registrant to occur within one (1) year of its submission that would also require the issuance of a Surface Cut Permit.

- (b) The City Engineer shall keep all master plans confidential in accordance with the provisions of the Kentucky Open Records Act, KRS §§ 61.870, et seq., if directed by the Registrant, and shall establish procedures to ensure that said master plans are utilized and inspected only for the purposes intended by this Ordinance.
- (c) The Government shall annually prepare a listing of streets that are to be repaved in the current Government fiscal year, as well as an annual list of all streets eligible for resurfacing based on their pavement condition. The Government shall provide each Registrant with a proposed annual repaving list by no later than May 1 of each year, and the annual repaving list shall be made available for public inspection, including posting on the Government's web-site by no later than July 1 of each year, and the annual eligibility list available by no later than January 15 of each year. These lists shall be kept on file with the City Engineer for review by the Registrant s. The final annual repaving list is contingent upon the approval of the City Commission.
- (d) Prior to applying for a Surface Cut Permit, a Party shall review the lists referenced above and shall coordinate, to the extent practicable, with each Registrant, Utility and street work shown on such plan to minimize damage to, and avoid undue disruption and interference with the public use of the Right-of-way.
- (e) The issue of joint planning and coordination shall be discussed at each regularly scheduled meeting of the Utility Coordinating Committee pursuant to section 7(h).

Sec. 19. - Installation, relocation or removal of Facilities.

- (a) *Provisions apply unless direct conflict exists.* The provisions of this section shall apply unless they directly conflict with a Tariff, state or federal law, or the provisions of the applicant's franchise agreement with the Government. This section shall not be interpreted to impair the ability of a Party using an Annual General Permit to perform work under such a permit unless a public safety concern would arise if such work were to be performed.
- (b) *General application.* Upon the written notice of and at the direction of the City Engineer, a Registrant shall relocate or remove Facilities, or rearrange aerial Facilities, if required by a Tariff, state or federal law, a franchise agreement with the Government, or the City Engineer in exercising his/her authority under this section.
- (c) *Coordination.* Registrants are encouraged to coordinate the installation, relocation or removal of their Facilities with each other in order to avoid issues with respect to the location of Facilities within the Right-of-way.
- (d) *Appeal.* Any Party aggrieved by a determination of the City Engineer with respect to the installation, relocation, or removal of a Facility may appeal such decision pursuant to section 26.
- (e) *Installation.*
 - (1) *Definition.* For purposes of this section, the term "install," "installed" or "installation" shall mean placement of new Facilities within the Right-of-way, including the replacement of existing Facilities not covered under an Annual General Permit and the installation and collocation of Small Wireless Facilities. An installation requires the issuance of an Installation Permit or Surface Cut Permit.

- (2) *Procedure.* The City Engineer shall notify the applicant if the City Engineer determines that a Facility may not be installed as requested by the applicant. Upon determining that a Facility may not be installed as requested, the City Engineer shall provide written notice to the applicant as early as practicable and in conformity with any specific applicable notice requirement. The notice shall contain a description of the area affected as well as the reason for the City Engineer's determination. The City Engineer may issue a permit that is contingent upon certain condition(s) being fulfilled with respect to the criteria contained below.
- (3) *Criteria.* A decision by the Government to deny an Installation Permit or Surface Cut Permit application must be based on at least one (1) of the following criteria:
- a. It significantly conflicts with the location of existing Facilities or Facilities that are planned or permitted for installation, or Government improvements or Facilities that are planned in that area;
 - b. It significantly conflicts with the timing of other ongoing activity taking place in the same area of the Right-of-way, or with a previously scheduled activity;
 - c. It conflicts with the planned grading, re-grading, construction, reconstruction, widening or altering of any Right-of-way or the construction, reconstruction, repair, maintenance or alteration of a public improvement, including, but not limited to, storm sewers, sanitary sewers and street lights;
 - d. It conflicts with an approved development plan in that geographic area that requires all or certain types of Facilities to be located in certain locations, areas, or parts of the Right-of-way, or is located in a High Density Utility Area;
 - e. It is an above-ground Facility other than a fire hydrant or other Government-owned Facility, that because of its size presents significant public safety concerns or violates guidelines or procedures pertaining to aesthetics found in section 19.2 or as otherwise duly authorized by City Commission or the City Engineer;
 - f. It fails to take reasonable measures to disguise or cover the Facility as required by the Government pursuant to guidelines or procedures pertaining to aesthetics found in section 19.2 or as otherwise duly authorized by City Commission or the City Engineer
 - g. It conflicts with a requirement contained in the applicant's franchise agreement;
 - h. It is located in a type of Right-of-way, such as a bicycle lane or path, in which the Government has made a determination that Facilities are not to be installed;
 - i. It would threaten public health, safety, or welfare or otherwise constitute a violation of the provisions of this Ordinance; or
 - j. The applicant is not otherwise in material compliance with the provisions of this Ordinance.
- (4) *Reservation of rights.* Notwithstanding any other provision in this Ordinance, the Government specifically reserves the right to order the removal or relocation of any Facility installed after the effective date of this Ordinance, at no cost to the Government, for which an Installation Permit or Surface Cut Permit was not obtained.

- (5) *Preclusion on cutting newly paved surfaces.* If any street is about to be resurfaced by the Government, on advance written notice from the City Engineer pursuant to section 18(c), the Registrant shall make any extensions, changes, or installations of or to its Facilities ahead of such activity. Registrant shall notify City Engineer by July 15 of its desire to perform such extensions, changes, or installations, and may be allowed up to ninety (90) additional days to complete the work. If any street is about to be constructed, reconstructed, widened, altered, or paved by the Government, upon receipt of final plans from the City Engineer, the Registrant shall make any extensions, changes, or installations of or to its Facilities ahead of such activity. Depending on the amount of such extensions, changes, or installations to be performed, the Registrant may be allowed up to one hundred twenty (120) days to complete the work. If the Registrant fails to do such extensions, changes, or installations, it shall be precluded for a period of one (1) year from disturbing such paving without the express permission of the City Engineer. The City Engineer shall only grant such permission upon a sufficient showing by the Registrant that undue hardship would be caused if the Registrant were not allowed to disturb the pavement and that it shall satisfactorily comply with all other relevant provisions of this Ordinance, including the requirements contained in section 24(a) pertaining to resurfacing.
- (f) *Relocations.* The Government shall have the ability to order the relocation of any Facility located within the Right-of-way. The Government shall not normally direct the exact location that the Facility is to be relocated to, but instead shall work with the Registrant or permittee as part of the permitting process. There shall be no fee associated with a permit required as a result of a relocation ordered by the Government.
- (1) *Public projects.* Whenever the Government shall grade, regrade, construct, reconstruct, widen or alter any Right-of-way or shall construct, reconstruct, repair, maintain or alter a public improvement, including, but not limited to, storm sewers, sanitary sewers and street lights therein, it shall be the duty of the Registrant, when so ordered by the Government, to change, relay and relocate its Facilities in the Right-of-way at no cost to the Government so as to conform to the established grade or line of such Right-of-way and so as not to interfere with such public improvements so constructed, reconstructed or altered. However, notwithstanding the above, if as part of said public improvement the Government orders that Facilities that were previously and lawfully located above-ground, to be relocated to underground, the Government shall bear the cost for the difference in cost between an aerial and underground Facility of the same type, unless an agreement to the contrary is otherwise entered into by the appropriate Parties.
- (2) *Relocation for public safety reasons.* If the basis for the Government ordering the relocation of a Facility is a public safety concern, the Registrant shall relocate the Facility at no cost to the Government.
- (3) *Relocations to assist in the placement of other Facilities.* If the reason the Government is ordering the relocation is to assist in the installation of Facilities by another Registrant or permittee, the Party seeking to install the Facilities shall bear the costs of said relocation, unless an agreement is otherwise reached.

- (4) *Relocations where the cost is borne by the Government.* Notwithstanding any language in this Ordinance to the contrary, unless an agreement to the contrary is otherwise entered into by the appropriate Parties, the cost of the following types of relocations shall be borne by the Government:
- a. If the reason the Government is ordering the relocation is that it has adopted a plan or policy requiring that Facilities be placed underground in that location, if, at the time the Facility was installed, such a plan was not in place;
 - b. If, at the time the Facility was installed, the location in which the Facility is currently sited was not a part of the Right-of-way or was not otherwise owned or controlled by the Government;
 - c. If the Government has already ordered that the Facility be relocated to comply with a public improvement project, the Registrant or Party has substantially complied with such order, and the Government then orders the Registrant or Party to relocate that Facility to a different area as part of the same project; or
 - d. If the Government orders the relocation of a Facility to accommodate a public improvement project and the construction of such project is subsequently terminated by the City Commission.

(g) *Removal.*

- (1) If the Government requires a Facility that is no longer being used to provide service, as defined below, to be taken out of the Right-of-way, such removal shall be pursuant to the requirements of this subsection.
- (2) *Definition.* A Facility shall be considered to be "no longer in use" if such Facility has not been used to provide service for a period of one (1) year, or the Registrant or the Party responsible for the Facility has notified the City Engineer that it no longer intends to use the Facility. If the Government determines that a Facility is "no longer in use" based on the fact that it has not been used for a period of more than one (1) year, the responsible Party may petition the City Engineer for a reasonable extension of time based on that Party's desire to use the Facility to provide service or to sell or transfer such Facility within a reasonable amount of time. Such an extension of time shall not be unreasonably withheld.
- (3) *Procedure for notification.* Any Party discontinuing use of a Facility shall notify the City Engineer in writing of such discontinued use within 90 (90) days. Said notice shall describe the Facilities for which the use is to be discontinued and include a statement as to whether the Registrant intends to leave the Facilities in place for potential future use, remove the Facilities, or abandon the Facilities in place. The Registrant shall remain responsible for the maintenance, repair and condition of discontinued Facilities at all times.
- (4) *Criteria and procedure for removal.* Upon providing reasonable advanced written notice to the Registrant or other responsible Party, the City Engineer may order the removal of any Facility that has been determined to be "no longer in use", if any of the following arise with respect to that Facility:

- a. It significantly conflicts with the location of existing Facilities or Facilities that are planned or permitted for installation, or Government improvements or Facilities that are planned in that area;
 - b. It conflicts with the planned grading, re-grading, construction, reconstruction, widening or altering of any Right-of-way or the construction, reconstruction, repair, maintenance or alteration of a public improvement, including, but not limited to, storm sewers, sanitary sewers and street lights;
 - c. It conflicts with an approved development plan in that geographic area that requires all or certain types of Facilities to be located in certain locations, areas, or parts of the Right-of-way, or is located in a High Density Utility Area;
 - d. It conflicts with a requirement contained in that Party's franchise agreement;
 - e. The current location of the Facility threatens public health, safety, or welfare or otherwise constitutes a violation of the provisions of this Ordinance; or
 - f. It is an above-ground Facility that has been determined to be "no longer in use" for a period of more than ninety (90) days.
- (5) *Facilities located underground.* Notwithstanding the foregoing, the Government shall not order the removal of any underground Facility unless the surface above the Facility is currently being, or will be, substantially Excavated, or the presence of that Facility causes an Emergency or threatens public health, safety, or welfare. In any event, the removal of such a Facility shall be limited to that portion of the Facility that actually presents an issue.
- (6) *Cost of removal.* The Government shall not normally bear any portion of the cost of the removal of any Facility, unless it is part of a Government project and the costs of such removal are minimal. Depending on the circumstances, the City Engineer may order that the Party responsible for such Facility, the Party seeking a permit, or both, bear the costs and the responsibility of such removal. However, in the event that the Facility is being removed to accommodate the placement of a non-Government Facility, the cost of such removal shall be the responsibility of the Party or Parties applying for the permit, so long as the existing Facility was lawfully installed. The City Commission may agree, upon a recommendation from the City Engineer, that the Government will share in the costs of removal or limit the scope of removal based on extenuating circumstances.
- (7) In the event the Registrant or other responsible Party elects to abandon the Facility in place and the City Commission approves such abandonment, the Registrant or Party shall convey full title and ownership of such abandoned Facility to the Government in consideration of the abandonment in place and without the need of the Government to pay compensation to the Registrant. The Registrant shall, however, continue to be responsible for all taxes on such Facilities or other liabilities associated therewith, until the date the same is conveyed to the Government.
- (8) Should any Registrant or other responsible Party fail, after notice, to remove a Facility upon the order of the City Engineer as specified in this section, the Government may, at its option and in addition to the imposition of any other remedies hereunder or in a franchise agreement with that Party, undertake or cause to be undertaken, such

necessary removal. The Government shall have no liability for any damage caused by such removal and the Registrant or other responsible Party shall be liable to the Government for all reasonable costs incurred by the Government in such removal.

Sec. 19.2. - Aesthetic standards.

Unless otherwise approved by the Government, in order to prevent an effective prohibition of service in accordance with federal regulations, as applicable, no Person shall locate or maintain a Facility, Pole, Tower, or Support Structure, except in accordance with the following design standards:

- (1) All Facilities shall be located and designed to minimize visual impact on surrounding properties and from public Right-of-way.
- (2) All new or replacement Poles, Towers, or Support Structures placed in the Right-of-way shall be the same color, shape, material, and general height as those existing Poles or Towers adjacent to the location of the new or replacement Pole, Tower, or Support Structure.
- (3) All coaxial, fiber-optic, or other cabling and wires shall be contained inside any new or replacement Tower, Pole, or other Support Structure. On existing Poles or Support Structures, or new wooden Poles, where it is impossible to place wiring inside the Pole or Support Structure, all coaxial, fiber-optic, or other cabling and wires shall be flush-mounted and covered with a metal, plastic, or similar material which, to the extent feasible, shall match the color of the Pole or Support Structure. All coaxial, fiber-optic, or other cabling and wires shall be contained inside any new Tower or Pole placed in the Right-of-way
- (4) No Tower shall be placed in the Right-of-way within two hundred fifty (250) feet on the same street of an existing Tower. Replacing an existing Tower with a Tower, or a lighted Pole with another lighted Pole housing Wireless Facilities, in the same location shall not violate this provision.
- (5) All new Towers and Poles should be located on the same side of the street as existing Towers, Poles, or Support Structures. However, this does not preclude an applicant from locating its Wireless Facilities on existing lighted Poles under a decommissioning agreement in which the applicant takes ownership of the lighted Pole.
- (6) The centerline of any new Pole or Tower shall be aligned with the centerline of adjacent Poles or trees, unless the new structure's height conflicts with overhead power Utility lines. Replacing an existing Pole, Support Structure, or Tower with another Pole, Support Structure, or Tower in the same location shall not violate this provision.
- (7) All new Poles, Towers, or Facilities proposed to be fronting a dwelling shall be placed on property lines, unless it would obstruct sight distance at driveways or other accesses to roadways. In those instances where placement of a new Pole or Tower, or Facilities on the property line would obstruct sight distance, the Pole or Tower, or Facilities shall be placed in such a location as to prevent the obstruction of sight distance at driveways or other accesses to roadways. Replacing an existing Pole, Support Structure, Tower or Facility with a Pole, Support Structure, Tower, or Facility in the same location shall not violate this provision.

- (8) New Poles, Towers, or Facilities shall not be placed in front of store front windows, walkways, entrances or exits, or in such a way that would impede deliveries. Replacing an existing Pole, Support Structure, Tower, or Facility with a Pole, Support Structure, Tower, or Facility in the same location shall not violate this provision.
- (9) No new Poles or Towers shall be placed in front of driveways, entrances, or walkways. Replacing an existing Pole, Support Structure, or Tower with a Pole, Support Structure, or Tower in the same location shall not violate this provision.
- (10) No applicant shall locate or maintain a Pole, Support Structure, Tower, or equipment associated with a Wireless Facility, as to interfere with the health of a tree.
- (11) In areas where the undergrounding of utilities has occurred but lighted Poles are present, the applicant shall locate its Wireless Facilities on existing lighted Poles or seek to decommission the lighted Pole to replace it with a lighted Pole to house its Wireless Facilities.
- (12) If the applicant elects to decommission an existing lighted Pole in order to install a Wireless Facility in its location, the applicant shall comply with this Ordinance including these aesthetic standards, and any decommissioning agreement between the applicant, the City, and Kentucky Utilities, or its equivalent.
- (13) In those locations where the undergrounding of utilities has occurred, all Facilities shall be placed underground except that Facilities that would impact a large number of residents and businesses if they failed, and that are at risk of chronic and repeat failures if placed underground, including but not limited to network nodes, power supplies, and amplifiers, may be placed above ground, provided that the applicant makes commercially reasonable efforts to mitigate adverse visual impacts.
- (14) No equipment associated with any Facility shall impede, obstruct, or hinder ADA access, or pedestrian or vehicular access, or block driveways, entrances, or walkways.
- (15) To protect the health and safety of the public from the harms of noise pollution, all Facilities shall be prohibited from making unreasonably loud, disturbing and/or unnecessary noises.
- (16) Within twenty-one (21) calendar days from the date the operator receives notice thereof, operator shall remove all graffiti on any of its Facilities located in the Right-of-way.
- (17) All Facilities, Poles, Towers, and Support Structures shall comply with such additional design standards as may be set forth in any written policies or guidelines issued by Department.

Sec. 20. - Poles, Towers, and Support Structures.

- (a) To the extent possible, Registrants shall use existing Poles, Towers, Support Structures, and conduit existing at the time of permitting in installing their Facilities.
- (b) All Poles, Towers, Support Structures, or wire holding structures are subject to any applicable, duly adopted regulations regarding location, height, type, or other pertinent aspect, including those found in subsection 19.2.

- (c) All transmission and distribution structures, Poles, Towers, Support Structures, and other lines and equipment installed or erected by Registrant under this Ordinance shall be located so as to minimize any interference with the proper use of the Right-of-way with the rights and reasonable convenience of property owners whose property adjoins or abuts any affected Right-of-way. Subject to applicable codes, overhead drops shall be as close as possible to other Utility drops to concentrate the drops in as small an area as possible to minimize visual clutter and interference with the use of private property.

Sec. 21. - Permits required; notice of activities; exceptions; denials.

Unless otherwise exempted by this Ordinance, any Party performing an activity within the Right-of-way that requires a permit pursuant to this Ordinance must obtain the applicable permit prior to the performance of such activity and pay any applicable permit fee.

- (1) An Annual General Permit shall be obtained at the time of the submission of the registration statement or immediately upon the Registrant or the Department determining that the Registrant is performing activity within the Right-of-way that requires the issuance of such a permit. Each time that a Registrant is performing any of the activities listed below, it shall provide the Government notification via the Government's website or other means as determined by the Department. Any work performed without proper notification shall constitute work being done without a permit, and as such subject to the levy of fines.
- a. Installation or replacement of wiring on existing Towers, Support Structures, or Poles when the work (a) necessitates presence in the Right-of-way for more than one (1) day or (b) involves more than one thousand (1,000) line feet of cable or wire;
 - b. Replacement of existing Towers, Support Structures, or Poles when the work (a) necessitates presence in the Right-of-way for more than two (2) days or (b) involves more than one thousand (1,000) line feet of cable or wire;
 - c. Excavations of existing Facilities from ten (10) to twenty-five (25) square feet with no street or sidewalk cuts;
 - d. Installation of new underground lines in trenches of less than two hundred fifty (250) linear feet with a width of six (6) inches or less and with no street, curb, apron or sidewalk cuts;
 - e. Installation of new underground lines in trenches of fifty (50) linear feet or less with a width of twenty-four (24) inches or less and with no street, curb, apron or sidewalk cuts;
 - f. An underground boring larger than three (3) inches in diameter; or
 - g. Any underground boring located under a paved street.

Any other activity performed pursuant to an Annual General Permit need not be reported to the Government unless otherwise required under this Ordinance. The notification shall consist of, at a minimum, the name of the Registrant, a general description of the location (by address(es) or street(s)) and the nature or type of the activity performed (e.g. installation of wiring, boring, Tower/Support Structure/Pole replacement, etc.). In the event that the notification cannot be

provided to the Government's website said notification may be provided in writing via e-mail or facsimile transmission.

- (2) An Installation Permit or a Surface Cut Permit for the performance of non-Emergency work shall be applied for at least ten (10) days prior to such planned activity. Notwithstanding the foregoing, the City Engineer may waive said time period for good cause shown. The Department must approve, deny, or conditionally approve a permit application within five (5) business days of the receipt of the application and in the case of a conditional approval or denial, state in writing the basis for such determination and what conditions must be met by the applicant in order to obtain a permit. Any work performed without proper notification shall constitute work being done without a permit, and as such subject to the levy of fines.
- (3) A permit issued pursuant to an Emergency shall be applied for no later than ten (10) business days after the discovery of the Emergency.
- (4) All applications for permits shall contain the following information:
 - a. The identity and legal status of the applicant (the Party to whom the permit is issued).
 - b. The name, address and telephone number of the officer, agent or employee requesting the permit.
 - c. A description of all activities covered by the permit, and in the case of an Installation Permit or a Surface Cut Permit the locations and estimated dates and times of commencement and completion thereof.
 - d. The number of all surface cuts covered by the Surface Cut Permit, and the number of square feet of Right-of-way surface to be removed; or the number of linear feet included in the installation.
- (5) A single permit may be issued for multiple surface cuts or installations; provided that no such surface cut or installation covered in a single permit shall be more than three hundred (300) feet apart. Notwithstanding the foregoing, the City Engineer may grant a single permit for multiple surface cuts or installations that are more than three hundred (300) feet upon a showing by the permit applicant that such an expansion of activity shall not significantly affect the Department's ability to efficiently administer this Ordinance.
- (6) *Notification of inspections.* If the Department knows at the time of the issuance of the permit that it shall require an inspection(s), it will notify the permittee that such an inspection(s) is required.
- (7) *Denial or revocation.* The City Engineer, in his/her reasonable discretion, may deny or revoke a permit for failure to satisfy the material requirements and conditions of this Ordinance, including but not limited to the criteria contained in section 19, or if the denial is otherwise necessary to protect the health, safety, and welfare of the citizens of the City of Danville. In addition, the City Engineer may issue a permit that is contingent upon the applicant performing certain requirements that shall be specified in the permit.
- (8) *Exceptions.* Permits are not required to be obtained pursuant to this Ordinance if the Facilities involved are of the following nature. However, the Party responsible for such

Facilities is required to comply with all remaining provisions of this Ordinance as well as any other ordinance that may apply, unless otherwise exempted.

- a. Newspaper stands;
- b. Signage;
- c. Facilities associated with sidewalk cafes or the sale of goods or merchandise;
- d. Facilities owned by the Commonwealth of Kentucky;
- e. Facilities installed to provide new development with connections to Utility service and for which the Government is provided performance and warranty surety protection under its land development regulations;
- f. Facilities installed by the Government that are not used to provide competitive Utility services to customers in the City of Danville, provided that such Facilities are not used at any future time for the provision of competitive Utility services.

Sec. 22. - Permit fees; credits; display.

- (a) Every Registrant shall pay the fees associated with permitting under this Ordinance annually based upon the provisions of this Ordinance.
- (b) It is the intent of the Government that its permit fees shall comply with the applicable federal law or regulation as it may be amended from time to time. The annual fee for the Annual General Permit shall be no greater than the annual fees presumed reasonable by the Federal Communications Commission per small wireless facility installed during the applicable calendar year. The Government reserves the right to require payment of the full amount if the results of a cost study, or similar administrative review, show that the additional cost is necessary to recoup the costs of maintaining the Right-of-way, maintaining the structures within the Right-of-Way, and the administrative costs associated with the issuance and regulation of Annual General Permits and the activities allowed by the permits, or the federal regulations relating to the "reasonable" governmental fees for small wireless facilities are amended by the federal government or invalidated by a valid court order.
- (c) *Annual General Permit.* Unless otherwise prohibited by law, or otherwise exempted, each Registrant that occupies the Right-of-way shall obtain an annual general permit. The type of Annual general permit that the Registrant shall be required to obtain shall be based upon the level of both documented and undocumented maintenance and repair activities the Registrant would be anticipated to perform within the Right-of-way; and, as a corollary for such, the extent to which the Registrant's Facilities occupied the Right-of-way as it existed at the end of the preceding calendar year. The extent of occupation of the Registrant's Facilities shall be determined by measuring the enclosed surface of the Registrant's existing service area as defined by mapping provided annually by the Registrant. Registrants with Facilities occupying ___ acres, the equivalent of ten (10) percent of the area of the City of Danville, or less shall pay an annual fee of \$500 in order to obtain a Type I annual general permit. Registrants with Facilities occupying more than ___ acres, the equivalent of more than ten (10) percent of the area of the City of Danville, shall pay an annual fee of \$3,000 in order to obtain a Type II annual general permit. Any Registrant, as determined by the City, with Facilities occupying less than ___ acres, the equivalent of less than one tenth of one (0.10) percent of the area of the

City of Danville, shall be, if so requested, exempt from obtaining an Annual general permit and shall only be required to pay a registration fee annually. Any Registrant exempted from obtaining an Annual general permit shall be required to obtain either a Surface cut permit or an Installation permit for each and every occupation of the Right-of-way regardless of the scope of the occupation. Facility installation by a non-Registrant for a property owner pursuant to a contractual agreement shall not require possession of an Annual general permit by either the non-Registrant contractor or the property owner.

- (d) *Installation Permit.* Unless otherwise prohibited by law, every Party obtaining an Installation Permit shall pay a fee of one hundred dollars (\$100.00) for each Installation Permit. Any immediately adjoining real property owner cited to replace, repair, restore, or otherwise maintain any sidewalk, curb, apron, or Utility strip for which that real property owner is legally responsible shall be exempt from paying and fees for obtaining an Installation Permit for these activities. This fee shall be re-assessed in the event that any work commences without approval as provided in subsection 9(a).
- (e) *Surface Cut Permit.* Unless otherwise prohibited by law, every Party obtaining a Surface Cut Permit shall pay a fee of two hundred fifty dollars (\$250.00) for each Surface Cut Permit. This fee shall be re-assessed each time a Party fails to comply with subsection 7(b)(4), or in the event that any work commences without approval as provided in subsection 9(a).
- (f) The Installation Permit and Surface Cut Permit fees required by this section shall be paid at the time of application for the permit unless such fees have been paid in accordance with subsection 22(a).
- (g) *Permit display.* Permits issued pursuant to this Ordinance shall be conspicuously displayed or otherwise available at all times at the indicated work site and shall be available for inspection by the City Engineer or other Government employees or officials upon request.

Sec. 23. - Performance bond.

Unless otherwise provided in a valid franchise agreement with the Government, in order to ensure performance, each Registrant seeking a Surface Cut Permit must establish a performance bond in favor of the Government to be issued by an entity subject to jurisdiction and venue in the City of Danville, Kentucky, in an amount to be determined by the Department , which shall be in effect for and cover all surface cuts made by that Party for a period of two (2) years after the final inspection and approval of the surface cut by the Department . In no event shall the amount required by the Department for the performance bond exceed the reasonable costs of repairing the activity affiliated with the Surface Cut Permits. This provision shall not apply to the Government. In lieu of a performance bond, the City Engineer may allow the applicant for a Surface Cut Permit to deposit with the Department an amount appropriate to cover the Government's cost of repairing the surface cut; to be held for a similar period. The Government reserves the right to impose additional security requirements as part of any Surface Cut Permit or franchise agreement.

Sec. 24. - Patching and restoration standards.

- (a) *Standards.* Patching and restoration of the Right-of-way shall be performed according to the applicable standards and with the materials specified by the Department, and at a

minimum shall comply with the applicable standard engineering drawing. The City Engineer shall have the authority to prescribe the manner and extent of the restoration and may do so in written procedures of general application or on a case-by-case basis in accordance with the criteria listed below. All edges of a surface cut made to a paved street must be sawed, and such surface cuts must be sealed with a sealant approved by the Department. In addition, the Department must approve all backfill material utilized. In developing any additional procedures, the City Engineer shall seek input and participation from the Registrants as part of the Utility Coordinating Committee process. In most instances, the minimum standards will apply. However, in certain limited instances, the City Engineer may determine that the minimum standards do not adequately protect the Government because of at least one (1) of the following considerations:

- (1) The number, size, depth and duration of the Excavations, disruptions or damage to the Right-of-way;
 - (2) The traffic volume carried by the Right-of-way;
 - (3) The pre-Excavation condition of the Right-of-way;
 - (4) The remaining life-expectancy of the Right-of-way affected by the Excavation; or
 - (5) The surface cut was made in violation of section 19(e)(5).
- (b) *Guarantees.* Each Party performing Excavations pursuant to a permit required by this Ordinance guarantees its restoration work and shall maintain it for two (2) years following its completion. During this period it shall, upon notification from the City Engineer, correct all restoration work to the extent necessary, using the method required by the City Engineer.

Sec. 25. - Inspection.

- (a) *Site inspection.* Any Party issued a permit pursuant to this Ordinance shall make the work-site available to the Department and to all others as authorized by law for inspection at all reasonable times during the execution of and upon completion of the work. No Excavation shall be covered until it has been inspected and approved by the Department if the Department has given that Party notice of its intent to inspect the Excavation. The permittee shall provide the Department with advance notice of at least one (1) day when the appropriate portion of the activity is ready for inspection, and if the Department fails to inspect after being provided such notice, the permittee may continue to perform the permitted activity. Any Excavation that has been covered without a required approval or inspection shall be uncovered for inspection at that Party's expense, upon request of the Department. If the construction or restoration does not meet the standards under this Ordinance, the Department may order corrective measures.
- (b) *Authority of the City Engineer and the Department.*
- (1) At the time of inspection, the Department may order the immediate cessation of any work that it in good faith believes poses a serious threat to the life, health, safety or well-being of the public.
 - (2) The City Engineer may issue an order to the permittee for any work that does not conform to the terms of the permit or other applicable ordinance, resolution, regulation, standard, condition, or code. The order shall state that failure to correct the violation will be cause for revocation of the permit. The permittee shall proceed with the

corrective work before undertaking any additional work under the permit. Within ten (10) days after issuance of the order, the permittee shall present proof to the City Engineer that the violation has been corrected. If such proof has not been presented within the required time, the City Engineer may revoke the permit, or for good cause shown, extend the period of time allowed for the corrective work to be completed.

Sec. 26. - Appeal.

Any Party that:

- (1) Has been denied registration after the reconsideration process provided for in section 12;
- (2) Has been denied a permit or has been issued a conditional permit for which the Party disagrees with certain of the conditions(s) imposed;
- (3) Is aggrieved by a decision pertaining to installation, relocation, or removal of a Facility pursuant to section 19;
- (4) Has had a permit revoked; or
- (5) Believes that the fees imposed are invalid;

may have such action reviewed, upon written request, by the City Manager, or his/her designee, who shall act within a period of ten (10) days from the receipt of the written request. The appealing Party shall be afforded the opportunity to be heard and present relevant evidence to the City Manager should it desire to do so, and the decision by the City Manager, which shall be the final administrative decision on the request subject to appeal to court, shall be in writing and provide the basis for the decision. Nothing in this Ordinance shall prevent a Party from filing at any time a legal action in any permissible court or tribunal seeking a declaration or enforcement of the Party's rights or obligations under this Ordinance or its franchise agreement.

Sec. 27- Right-of-way vacation.

- (a) If the Government vacates a Right-of-way which contains the Facilities of a Registrant and if the vacation does not require the relocation of Registrant 's Facilities, the Government shall reserve, to and for itself and all Registrants having Facilities in the vacated Right-of-way, the right to install, maintain and operate any Facilities in the vacated Right-of-way and to enter upon such Right-of-way at any time for the purpose of adding additional Facilities, expanding existing service, or replacing, reconstructing, inspecting, maintaining or repairing the same.

Section 2: The provisions of this Ordinance are severable. If any section, sentence, clause, or section of this Ordinance or the application thereof to any particular case is for any reason found to be unconstitutional or invalid, such unconstitutionality or invalidity shall not affect or repeal any of the remaining provisions, sentences, clauses or sections or part of this Ordinance.

Section 3: This Ordinance shall be effective upon its final passage and publication, and the City Clerk is hereby directed to publish this Ordinance in the Danville Advocate-Messenger of Danville, Kentucky.

GIVEN FIRST READING AND PASSED _____.

GIVEN SECOND READING AND PASSED _____.

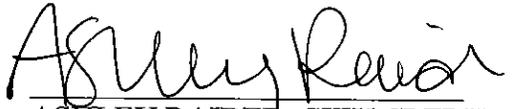
DATE OF PUBLICATION _____.

APPROVED:



J. H. ATKINS, MAYOR
CITY OF DANVILLE, KENTUCKY

ATTEST:



ASHLEY RAIDER, CITY CLERK
CITY OF DANVILLE, KENTUCKY

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