

CITY OF ELSMERE, KENTUCKY
ORDINANCE NO. 1818-2022

AN ORDINANCE REGULATING THE PUBLIC RIGHT-OF-WAY IN ELSMERE, KY

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ELSMERE,
KENTUCKY:

Sec. 1. - Title.

This ordinance shall be known as the "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 City'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 City 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, interlocal agreement, contract, or easement of the City. Any franchise, contract or easement may include additional regulations, obligations, fees, and costs. In the event of a conflict between this Ordinance and any existing franchise or interlocal agreement, the provisions of the franchise or interlocal agreement shall control.
- (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 City.
- (d) *Reservation of regulatory and police powers.* The City 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.

(e) *Exemption of City-owned Facilities.* Facilities installed by the City that are not used to provide competitive Utility services to customers in the City of Elsmere, provided that such Facilities are not used at any future time for the provision of competitive Utility services, including, but not limited to, Facilities owned by the City, are not required to be registered pursuant to this Ordinance and are expressly not required to comply with the provisions of this Ordinance.

Sec. 3. - Definitions.

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

City means the City of Elsmere, a city and political subdivision of the Commonwealth of Kentucky.

City Administrator means the City Administrator of the City of Elsmere or his/her designee.

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.

Council or City Council means the legislative body of the City.

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.

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.

Installation permit means a permit issued by the City Administrator to perform any construction, installation, repair, replacement, or maintenance of Facilities in the Right-of-way that is not covered by a Surface cut permit or a Pole, Tower, or Support Structure permit.

Lessee means a Person who provides services within the City of Elsmere 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 individual, partnership, association, corporation, joint venture, legal entity or organization of any kind, or a successor or assign of any of the foregoing.

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

Pole, Tower, or Support Structure permit means a permit issued by the City Administrator to place a new Pole, Tower, or Support Structure in the Right-of-way.

Public Utility or 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 City to use and occupy the Right-of-way pursuant to Sections 163 and 164 of the Kentucky Constitution.

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

Reseller service provider means Person who provides services within City of Elsmere 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 City for the purpose of public travel and shall include Right-of-way as shall be now held or hereafter held by the City. 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 City Administrator 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.

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.

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 effect as if the documents were reproduced verbatim herein, and all such documents automatically include any and all subsequent amendments thereto. 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 or 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; and fines.

- (a) The City Administrator shall be the City official responsible for the administration of this Ordinance and he or she may delegate any or all of the duties hereunder.
- (b) The City Administrator 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/or enforce this Ordinance in a neutral and non-discriminatory manner.

- (c) If, after a Party is provided the opportunity to appear and present evidence before the City Administrator, the City Administrator finds that the Party has violated any of the provisions of this Ordinance, the following fines shall be recoverable:
- 1) For failure to pay a permit fee when due pursuant to this Ordinance, the Party shall forfeit two hundred dollars (\$200.00) per day or part thereof that the violation continues.
 - 2) For failure to comply any other provision of this Ordinance, the Party shall forfeit one hundred dollars (\$100.00) per day or part thereof that the violation continues.
- (d) A Party shall not be excused from complying with any of the terms and conditions of this Ordinance by any failure of the City, upon any one or more occasions, to insist upon the Party's performance or to seek the Party's compliance with any one or more of such terms or conditions. Payment of fines shall not excuse non-performance under this Ordinance. The right of the City to seek and collect fines as set forth in this section is in addition to all legal remedies that the City may have, including, but not limited to, any other rights the City may have to terminate and cancel any permits issued pursuant to this Ordinance and terminating any franchise granted to the Party by the City.

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 franchises, permits, licenses, and authority and pay all fees required by this Ordinance or other applicable rule, law, or regulation.
 - (2) The City 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 City's reasonable requirements; and may, unless prohibited by law, 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 18. 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 Administrator 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 City'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 ninety (90) 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 Administrator 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(b) 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 in addition to the amount of the original fee(s) provided for in Subsections 22(b) and 22(c) 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 14.
- (d) *Street trees.* The removal or trimming of existing trees in the Right-of-way shall comply with the City's street tree ordinance, tree protection ordinance, or the provisions subdivision regulations, concerning street trees, 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.* Unless prohibited by law, pursuant to section 18 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 Administrator, promptly relocate or remove Facilities, or rearrange aerial Facilities, if required by a Tariff, state or federal law, a franchise agreement with the City, or the City Administrator in exercising his/her authority under section 18.
- (g) *Other requirements specific to Registrants.* In addition to the other requirements set forth herein, each Registrant shall use its best efforts to:

- (1) Cooperate with other Registrants and the City 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 City in any emergencies involving the Right-of-way as further provided in section 14, including the maintenance of a twenty-four (24) hour Emergency contact;
- (4) Designate a single point 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 Administrator 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 to the City 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.

Sec. 8. - Existing Facilities.

Facilities located in the Rights-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. Parties who are governmental entities, or with an existing franchise agreement or interlocal agreement with the City shall be automatically deemed to have complied with all registration requirements hereunder. A Party shall be deemed a "Registrant" for the duration of its franchise authorization or interlocal agreement and/or any renewal thereof.

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 City by filing the registration statement required herein and all applicable fees (including franchise fees) are paid to the City. 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, Surface cut permit fee or Pole, Tower or Support Structure permit 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.* Unless otherwise excepted by this Ordinance, 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 City or other Party with respect to the placement of Facilities on the City'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; and
 - (4) Facilities owned by the City of Elsmere.

Sec. 10. - Registration statement.

The registration statement required by subsection 9(b) shall be filed with the City Administrator and shall be in a form to be promulgated by the City, 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 City, and/or state law.
- (6) Proof that the Registrant is insured in the form of a copy of a certificate of insurance that is in compliance with the insurance requirements of section 15 or its franchise agreement or interlocal agreement.
- (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 City Administrator 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 City, the City Administrator 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 Administrator 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 Administrator 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 Administrator.
- (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 City Administrator with written notice of at least thirty (30) days.

Sec. 12. - Reconsideration of rejection or cancellation.

- (a) If the City Administrator rejects or cancels a registration statement pursuant to section 11, the Registrant may file with the City Administrator 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 Administrator may hear any relevant evidence in deciding the reconsideration and will notify the Registrant in the event that further information is required. The City Administrator 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 or for so long as the Registrant holds a valid franchise agreement or interlocal agreement with the City, whichever is longer. By no later than January 1 of each year, each Registrant not holding a valid franchise agreement or a valid interlocal agreement with the City shall file with the City Administrator a new registration statement or a

renewal of such Registrant's registration on such form as shall be required by the City Administrator.

Sec. 14. - Emergencies; power to order repairs.

- (a) A Registrant shall notify the City Administrator by no later than two (2) days, via 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 City Administrator 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 City Administrator becomes aware of an Emergency regarding a Registrant's Facilities, the City Administrator will attempt to contact that Registrant immediately.
- (b) If the City Administrator 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 City 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 City 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 City 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 City Administrator orders corrections or repairs and the Party responsible fails to respond to reasonable deadlines set forth in said order, the City Administrator shall cause the necessary corrections and repairs to be made and shall submit a statement for the costs incurred by the City 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 Administrator 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 City 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 City shall not undertake to repair or remove a Facility unless all other reasonable methods of response to the Emergency have been exercised.

Sec. 15. - Insurance.

Unless otherwise provided in a valid franchise agreement or interlocal agreement with the City, each Registrant shall procure and maintain the following insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance hereunder by the Registrant:

(1) Commercial General Liability Insurance with:

- A. Limits of not less than \$3,000,000.00.
- B. Products-Completed Operations coverage.
- C. Personal and Advertising Injury coverage.
- D. Explosion, collapse & underground coverage

Additionally, such insurance shall endorse as additional insureds, "Elsmere, its elected and appointed officials, employees, and, to the extent they have an insurable interest, its agents, boards, consultants, assigns, volunteers and successors in interest."

Registrant's insurance coverage shall be primary insurance with respect to the City. Any insurance or self-insurance maintained by the City shall be in excess of the Registrant's insurance and shall not contribute to it.

Registrant agrees coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice to the City.

- (2) Comprehensive Automobile Liability Insurance providing limits of not less than \$3,000,000.00.
- (3) Workers' Compensation Insurance as required by the Kentucky Revised Statutes.
- (4) The Registrant shall abide by all local, state, and federal insurance regulations.
- (5) Acceptability of Insurers

Insurance is to be placed with insurers qualified to do business in the Commonwealth of Kentucky.

(6) Evidence of Insurance

The City is to be furnished Certificates of Insurance reflecting the above coverages, and Registrant agrees to provide the City, the following:

- (a) Signed renewal Certificates for expiring policies; and
- (b) New Certificates of Insurance if policies or carriers change, showing compliance with the above Insurance requirements.

Sec. 16. - Indemnification; hold harmless. Unless otherwise prohibited by law or otherwise provided in a valid franchise agreement or interlocal agreement with the City:

- (a) Each Registrant shall defend, indemnify, and hold harmless the City, its officials, boards, members, agents and employees 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, and in the event of a final judgment being obtained against the City either independently or jointly with the Registrant, the Registrant shall pay such judgment with all costs and hold the City harmless thereon.

- (b) The City 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 City at the cost of the Registrant.

Sec. 17. - 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, telecommunications, internet, cable, video, or other Utility services, shall prepare and submit to the City Administrator, a master plan to the extent it has planned future activity as defined herein. Registrants shall submit an initial master plan no later than one hundred eighty (180) days after the effective date of the Ordinance. Thereafter, each such Registrant shall submit annually, as required by the City Administrator, 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 Administrator shall keep all master plans confidential in accordance with the provisions of the Kentucky Open Records Act, KRS §§ 61.870, et seq., and shall establish procedures to ensure that said master plans are utilized and inspected only for the purposes intended by this Ordinance.
- (c) Prior to applying for a surface cut permit, a Party shall contact the City Administrator and shall coordinate, to the extent practicable, with each Registrant, to minimize damage to, and avoid undue disruption and interference with the public use of the Right-of-way.

Sec. 18. - 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 or interlocal agreement with the City.
- (b) *General application.* Unless otherwise prohibited by law, upon the written notice of and at the direction of the City Administrator, 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 City, or the City Administrator 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 Administrator 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 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 Administrator shall notify the applicant if the City Administrator 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 Administrator 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 Administrator's determination. The City Administrator 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 City 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 City 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 streetlights;
 - 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;
 - e. It is an above-ground Facility other than a fire hydrant or other City-owned Facility, that because of its size presents significant public safety concerns or violates guidelines or procedures pertaining to aesthetics found in section 19 or as otherwise duly authorized by Council or the City Administrator;
 - f. It fails to take reasonable measures to disguise or cover the Facility as required by the City pursuant to guidelines or procedures pertaining to aesthetics found in section 19 or as otherwise duly authorized by Council or the City Administrator;
 - g. It conflicts with a requirement contained in the applicant's franchise agreement or interlocal agreement;
 - h. It is located in a type of Right-of-way, such as a bicycle lane or path, in which the City 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 City 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 City, 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 City, on advance written notice from the City Administrator 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 Administrator 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 City, upon receipt of final plans from the City Administrator, 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 Administrator. The City Administrator 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.* Unless otherwise prohibited by law, the City shall have the ability to order the relocation of any Facility located within the Right-of-way. The City 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 City.
- (1) *Public projects.* Whenever the City 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 City, to change, relay and relocate its Facilities in the Right-of-way at no cost to the City 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 City orders that Facilities that were previously and lawfully located above-ground, to be relocated to underground, the City 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 City ordering the relocation of a Facility is a public safety concern, the Registrant shall relocate the Facility at no cost to the City.
- (3) *Relocations to assist in the placement of other Facilities.* If the reason the City 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 City.* 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 City:

- a. If the reason the City 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 City;
- c. If the City 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 City then orders the Registrant or Party to relocate that Facility to a different area as part of the same project; or
- d. If the City orders the relocation of a Facility to accommodate a public improvement project and the construction of such project is subsequently terminated by the Council.

(g) *Removal.*

- (1) If the City 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. However, abandoned sewer and water Facilities shall not be required to be removed, but shall be required to be filled and capped.
- (2) *Definition.* A Facility shall be considered to be "no longer in use" if such Facility has not been used to provide service or support the provision of service for a period of one (1) year, or the Registrant or the Party responsible for the Facility has notified the City Administrator that it no longer intends to use the Facility. If the City 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 Administrator 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 Administrator in writing of such discontinued use within thirty (30) 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 Administrator 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 City 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 streetlights;
 - 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;
 - d. It conflicts with a requirement contained in that Party's franchise agreement or interlocal 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 City 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 City shall not bear any portion of the cost of the removal of any Facility or filling and capping water or sewer Facilities, unless it is part of a City project, and the costs of such removal (or filling and capping) are minimal. Depending on the circumstances, the City Administrator 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 (or filling and capping). However, in the event that the Facility is being removed to accommodate the placement of a non-City 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.
- (7) In the event the Registrant or other responsible Party elects to abandon the Facility in place and the Council approves such abandonment, the Registrant or Party shall convey full title and ownership of such abandoned Facility to the City in consideration of the abandonment in place and without the need of the City to pay compensation to the Registrant, except as otherwise provided by applicable law. 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 City.
- (8) Should any Registrant or other responsible Party fail, after notice, to remove a Facility (or in in the case of water or sewer Facilities, fill and cap abandoned Facilities) upon the order of the City Administrator as specified in this section, the City may, at its option and in addition to the imposition of any other remedies hereunder or in a franchise agreement or interlocal agreement with that Party, undertake or cause to be undertaken, such necessary removal. The City shall have no liability for any damage caused by such removal and the Registrant or other responsible Party shall be liable to the City for all reasonable costs incurred by the City in such removal.

Sec. 19. - Aesthetic standards.

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

- (1) All Facilities shall be located and designed so as 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 to the extent technically and commercially feasible. On existing Poles or Support Structures, or new wooden Poles, where it is impossible or infeasible 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 to the extent technically and commercially feasible.
- (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. However, an Applicant must consider the aesthetics of the existing utilities and neighborhoods adjacent to a proposed Wireless Facility location prior to submitting an application. Applicants shall consider and make best efforts to match existing, adjacent streetscape character. Also, when a Wireless Facility is proposed to be installed within Downtown Elsmere, the Applicant must consider and propose infrastructure that most closely matches adjacent themed infrastructure to the maximum extent feasible. The characteristics of unique assemblies may include mast arms, decorative pole bases, architectural luminaires, mounting heights, pole colors, etc.
 - (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 of Elsmere, and Kentucky Utilities, or its equivalent.
 - (13) In those locations where the undergrounding of utilities has occurred, all new Facilities shall be placed underground.
 - (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. The installation of new ground furniture is prohibited.
 - (15) To protect the health and safety of the public from the harms of noise pollution, all Facilities shall have a low noise profile.
 - (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 the City.
 - (18) All 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 in order to concentrate the drops in as small an area as possible to minimize visual clutter and interference with the use of private property.

- (19) In areas already served by overhead utilities within an alley, Wireless Facilities must also be located in the alley. No Wireless Facilities will be permitted in front of residential properties if the area does not currently have overhead utilities or streetlights along the Right-of-way frontage. Relief from this requirement will require a written statement from the Utility owning the existing Poles within the alley that said Poles will not accommodate the proposed Facilities.

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 19.
- (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 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 in order 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) Each time that a Registrant is performing any of the activities listed below, it shall provide the City written notification. Text messages shall not be considered written notice. Any work performed without proper written 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.

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 City's website said notification may be provided in writing via e-mail or facsimile transmission. Notwithstanding the above, permits shall not be required for inspections, CCTVs or clearing debris from Facilities.

- (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 Administrator may waive said time period for good cause shown. The City Administrator 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 five (5) 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 Administrator 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 City Administrator's ability to efficiently administer this Ordinance.
- (6) *Notification of inspections.* If the City Administrator 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 Administrator, 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 Elsmere. In addition, the City Administrator 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; and
- d. Facilities owned by the City of Elsmere.

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

- (a) *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 at any work commences without approval as provided in Subsection 18(a).
- (b) *Surface cut permit.* Unless otherwise prohibited by law, every Party obtaining a Surface cut permit shall pay a fee of one hundred dollars (\$100.00) 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).
- (c) *New Pole, Tower, or Support Structure permit.* Unless otherwise prohibited by law, every Party obtaining a Pole, Tower or Support Structure permit shall pay a fee of two hundred seventy dollars (\$270.00) for each new Pole, Tower, or Support Structure 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).
- (d) The Installation permit fees, Surface cut permit fees and Pole, Tower and Support Structure 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).
- (e) *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 Administrator or other City employees or officials upon request.

Sec. 23. - Performance bond.

- (a) Unless otherwise prohibited by law or otherwise provided in a valid franchise agreement or interlocal agreement with the City, in order to ensure performance, each Registrant seeking a Surface cut permit must establish a performance bond in favor of the City to be issued by an entity subject to jurisdiction and venue in the City in an amount to be determined by the City Administrator in consultation with the City Administrator and the City Engineer, 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 City Administrator. There shall be recoverable, jointly, and severally, from the principle and surety of the bond, any damages or loss suffered by the City as a result, including the full amount of any Right-of-way repair, compensation, indemnification, or cost of removal or abandonment of any property of the Registrant, plus attorney's fees and costs, up to the full amount of the bond.

(b) The bond shall contain the following endorsement:

"It is hereby understood and agreed that this bond may not be canceled by the surety nor the intention not to renew be stated by the surety until thirty (30) days after receipt by the City of Elsmere, via registered mail, a written notice of such intent to cancel or not to renew."

(c) In no event shall the amount required by the City Administrator 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 City. In lieu of a performance bond, the City Administrator may allow the applicant for a Surface cut permit to deposit with the City Administrator an amount appropriate to cover the City's cost of repairing the surface cut; to be held for a similar period. The City 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 City Administrator, and at a minimum shall comply with the applicable standard engineering drawing. The City Administrator 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 City Administrator. In addition, the City Administrator must approve all backfill material utilized. In most instances, the minimum standards will apply. However, in certain limited instances, the City Administrator may determine that the minimum standards do not adequately protect the City 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 18(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 Administrator, correct all restoration work to the extent necessary, using the method required by the City Administrator.

Sec. 25. - Inspection.

- (a) *Site inspection.* Any Party issued a permit pursuant to this Ordinance shall make the work-site available to the City Administrator 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 City Administrator if the City Administrator has given that Party notice of its intent to inspect the Excavation. The permittee shall provide the City Administrator with advance notice of at least one (1) day when the appropriate portion of the activity is ready for inspection, and if the City Administrator 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 City Administrator. If the construction or restoration does not meet the standards under this Ordinance, the City Administrator may order corrective measures.
- (b) *Authority of the City Administrator.*
 - (1) At the time of inspection, the City Administrator 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 Administrator 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 Administrator that the violation has been corrected. If such proof has not been presented within the required time, the City Administrator 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 18;
- (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 Mayor 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 Administrator should it desire to do so, and the decision by the City Administrator, 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 City 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 City 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.

Sec. 28.- This Ordinance shall become effective on the date of its publication.

CITY OF ELSMERE, KENTUCKY


MAYOR D. MARTY LENHOF

1st Reading: August 9, 2022

2nd Reading: September 13, 2022

Ayes: 5 Nays: 0

Published: _____

ATTEST:


Misty Ezell, City Clerk