

ORDINANCE NO. 2015-16

AN ORDINANCE OF THE CITY OF WILLIAMSTOWN, GRANT COUNTY, KENTUCKY, AMENDING ORDINANCE NO. 2015-03, HEREBY ESTABLISHING AND ENACTING A "WILLIAMSTOWN PUBLIC RIGHT-OF-WAY ORDINANCE" AND BEING ESTABLISHED AND CODIFIED IN CHAPTER 105 OF THE WILLIAMSTOWN CODE OF ORDINANCES.

SECTION I

Chapter 105-1. TITLE

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

SECTION II

Chapter 105-2. PURPOSE; NOT IN LIEU OF FRANCHISE; NOT INTENDED TO IMPAIR EXISTING CONTRACTS; RESERVATION OF REGULATORY POWERS.

- (a) *Purpose.* The purpose and intent of this chapter is to establish and promote a policy and regulations specifically pertaining to the rights-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 chapter 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 rights-of-way;
 - (8) Prescribe reasonable requirements regarding the placement and management of facilities therein consistent with federal and state law.
- (b) *Chapter not in lieu of franchise.* Compliance with the requirements of this chapter 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 regulations, obligations, fees and costs.
- (c) *Chapter not intended to impair existing contracts.* Nothing in this chapter 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 rights-of-way or charge reasonable compensation for such use.

SECTION III

Chapter 105-3. DEFINITIONS

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

Annual general permit means a permit issued annually by the City to perform the following types of activities within the right-of-way in locations:

- (1) Installation or replacement of wiring on existing utility poles;
- (2) Repair, replacement or maintenance of existing above-ground facilities, including poles, 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 twenty-five (25) square feet with no street, curb, apron or sidewalk cuts, with the exception of subsections (4) and (5) immediately following;
- (4) 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;
- (5) Installation of new underground lines in trenches of less than fifty (50) linear feet with a width of twenty-four (24) inches or less and with no street, curb, apron or sidewalk cuts;
- (6) Any underground boring, except borings larger than three (3) 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. Any activity with respect to facilities in the right-of-way that is not listed above or otherwise exempted under this chapter shall require that either an installation permit or surface cut permit, as appropriate, be obtained prior to performing the activity.

Council means the legislative body of the City of Williamstown.

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, or ducts, required, necessary, used or useful in the provision of utility or other services.

Government or City means the City of Williamstown, Kentucky, a political subdivision of the Commonwealth of Kentucky created pursuant to Chapter 67A of the Kentucky Revised Statutes.

Installation permit means a permit issued by the City 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 Williamstown 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.

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 Government 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 chapter.

Reseller service provider means person who provides services within City of Williamstown 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 rights-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. The right-of-way shall not include greenways, and the ability to install facilities in a greenway shall require separate approval pursuant to the appropriate governmental legislation or regulation.

Surface cut permit means a permit issued by the City to excavate, dig or cut into and through a paved street surface within the rights-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.

SECTION IV

Chapter 105-4. INCORPORATED DOCUMENTS

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 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 chapter. 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.

SECTION V

Chapter 105-5. 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 chapter.
- (c) *Severability.* If any section, subsection, sentence, clause, phrase, or portion of this chapter 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.

SECTION VI

Chapter 105-6. ADMINISTRATION; ENFORCEMENT

- (a) The Mayor or the person designated by the Mayor is the principal government official responsible for the administration of this chapter and he or she may delegate any or all of the duties hereunder.
- (b) The City may adopt procedures consistent with this chapter that are necessary for its administration or enforcement.

SECTION VII

Chapter 105-7. 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 chapter shall be performed at that party's cost, unless expressly provided for otherwise in this chapter.
- (b) *Construction procedures and placement of facilities; obligation to minimize interference with the rights-of-way:*
 - (1) All activities in the rights-of-way that are subject to this chapter shall be performed in compliance with all applicable laws, ordinances, departmental rules and regulations. Each party subject to this chapter must obtain all other necessary permits, licenses, and authority and pay all fees required by this chapter 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 chapter and charge that party for all the costs associated with removal. 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 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 rights-of-way by others, each party subject to this chapter 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 twenty-one (21) calendar days of the completion of those activities which caused the disturbance or damage by the party that disturbed or damaged the rights-of-way or public property. This time may be extended by the Mayor or his representative upon demonstration of reasonable cause by the subject party.
 - (5) Parties subject to this chapter 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 rights-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 chapter 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 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.
 - (d) *Street trees.* The removal or trimming of existing trees in the right-of-way shall comply with the Government's street tree ordinance, tree protection ordinance, concerning street trees, as applicable.
 - (e) *Standards.* All parties subject to this chapter 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.* All parties subject to this chapter shall, upon the provision of reasonable written notice of, and at the direction of the City, 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 Mayor in exercising his authority under this chapter.
- (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 Government for the best, most efficient, most aesthetic and least obtrusive use of the rights-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 rights-of-way, 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 chapter or as promulgated by the City pursuant to this chapter;
 - (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 chapter 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.

SECTION VIII

Chapter 105-8. EXISTING FACILITIES

Facilities located in the rights-of-way prior to the effective date of this chapter may remain in the rights-of-way and shall not be considered in violation of this chapter provided the party responsible for such facilities under this chapter complies with the provisions of this chapter, including the filing of a registration statement and the payment of any applicable registration or franchise fee within one hundred twenty (120) days of its effective date. The registration statement of each party having any facilities within the rights-of-way as of the date this chapter is adopted shall contain a general description of such registrant's facilities to include the types of services offered and the locations within City of Williamstown in which such services are offered and a map of the registrant's general service area within City of Williamstown. In addition, upon the request of the City and in order to assist the City with implementing or enforcing the provisions of this chapter, each registrant shall make available for inspection on a timely basis more detailed information, if available, regarding the location of its facilities.

SECTION IX

Chapter 105-9. REQUIREMENT TO REGISTER AND PAY FEES; REGISTRATION REQUIRED; EFFECT OF REGISTRATION; EXCEPTIONS.

- (a) *Requirement to register and pay fees.* Unless otherwise excepted by this chapter, it shall be unlawful for any party to install, operate, construct or maintain any facilities within the rights-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.
- (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 rights-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 rights-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 chapter and the party responsible for such facilities is not otherwise required to comply with the provisions of this chapter expressly pertaining to registrants. However the party responsible for such facilities is required to comply with all remaining provisions of this chapter 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; and
- (5) Facilities owned by the Government.

SECTION X

Chapter 105-10. REGISTRATION STATEMENT

A registration statement shall be filed with the City 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 rights-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 rights-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 this chapter or its franchise 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 within thirty (30) days of any change in information contained in the registration statement.

SECTION XI

Chapter 105-11. 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 shall provide written notice to any party who (1) does not possess proper authorization to occupy the rights-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 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 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.

- (b) A registrant who no longer continues to place, maintain, or own any facilities in the rights-of-way may cancel its registration upon providing the City with written notice of at least thirty (30) days.

SECTION XII

Chapter 105-12. RECONSIDERATION OF REJECTION OR CANCELLATION

- (a) If the City rejects or cancels a registration statement, the registrant may file with the City 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 Mayor, or his designee, may hear any relevant evidence in deciding the reconsideration and will notify the registrant in the event that further information is required. The Mayor, or his designee, 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 decision.

SECTION XIII

Chapter 105-13. TERM OF REGISTRATION

A registration made pursuant to this chapter 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 shall file with the City a new registration statement or a renewal of such registrant's registration on such form as shall be required by the City.

SECTION XIV

Chapter 105-14. REGISTRATION FEE

Each registrant that is not otherwise exempted under this chapter at the time of filing any registration statement and that does not have a valid current annual general permit from the Government, shall pay an annual registration fee in the amount of two hundred fifty dollars (\$250.00).

SECTION XV

Chapter 105-15. EMERGENCIES; POWER TO ORDER REPAIRS

- (a) A registrant shall notify the City 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 City 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 becomes aware of an emergency regarding a registrant's facilities, the City will attempt to contact that registrant immediately.

- (b) If the City determines that the right-of-way associated with a surface cut has degraded or caved-in more than one-half (1/2) 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 City orders corrections or repairs and the party responsible fails to respond to reasonable deadlines set forth in said order, the City 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 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.

SECTION XVI

Chapter 105-16. INSURANCE

Each registrant shall maintain in full force and effect a commercial general liability insurance policy reasonably acceptable to the City 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 City. The Government reserves the right to impose additional insurance requirements as part of a franchise agreement.

SECTION XVII

Chapter 105-17. IDEMNIFICATION; HOLD HARMLESS

- (a) Each registrant shall defend, indemnify, and hold harmless the Government, 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 Government either independently or jointly with the registrant, the registrant shall pay such judgment with all costs and hold the Government harmless thereon.
- (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.

SECTION XVIII

Chapter 105-18. 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 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, 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 Mayor in exercising his 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) *Installation.*
 - (1) *Definition.* For purposes of this section, the term "install", "installed" or "installation" shall mean placement of new facilities within the rights-of-way, including the replacement of existing facilities not covered under an

annual general permit. An installation requires the issuance of an installation permit or surface cut permit.

- (2) *Procedure.* The City shall notify the applicant if the City 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 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's determination. The City 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 is an above-ground facility other than a utility pole, fire hydrant, or street light that because of its size presents significant public safety concerns or violates guidelines or procedures pertaining to aesthetics that are duly adopted by the council;
 - e. 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 that are duly adopted by the Council;
 - f. It conflicts with a requirement contained in the applicant's franchise agreement;
 - g. 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;
 - h. It would threaten public health, safety, or welfare or otherwise constitute a violation of the provisions of this chapter; or

- i. The applicant is not otherwise in material compliance with the provisions of this chapter.
- (e) *Reservation of rights.* Notwithstanding any other provision in this chapter, the Government specifically reserves the right to order the removal or relocation of any facility installed after the effective date of this chapter, at no cost to the Government, for which an installation permit or surface cut permit was not obtained.
- (f) *Preclusion on cutting newly paved surfaces.* If any street is about to be resurfaced by the Government, on advance written notice from the City, the registrant shall make any extensions, changes, or installations of or to its facilities ahead of such activity. Registrant shall notify City 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, 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. The City 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 chapter.
- (g) *Relocations.* The Government shall have the ability to order the relocation of any facility located within the rights-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.
- (h) *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.

- (i) *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.
- (j) *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.
- (k) *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 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 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 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 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 rights-of-way;
 - 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 chapter; 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 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 council may agree, upon a recommendation from the City, 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 council 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 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.

SECTION XIX

Chapter 105-19. PERMITS REQUIRED; NOTICE OF ACTIVITIES; EXCEPTIONS; DENIALS

Unless otherwise exempted by this chapter, any party performing an activity within the rights-of-way that requires a permit pursuant to this chapter 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 City determining that the registrant is performing activity within the right-of-way that requires the issuance of such 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.
 - a. Installation or replacement of wiring on existing utility 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 utility 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 chapter. 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, pole replacement, etc). 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 may waive said time period for good cause shown. The City 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 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's ability to efficiently administer this chapter.
- (6) *Notification of inspections.* If the City 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, in its reasonable discretion, may deny or revoke a permit for failure to satisfy the material requirements and conditions of this chapter or if the denial is otherwise necessary to protect the health, safety, and welfare of the citizens of City of Williamstown. In addition, the City 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 chapter 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 chapter as well as any other chapter 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, including the University of Kentucky; and
- e. Facilities owned by the Government

SECTION XX

Chapter 105-20. PERMIT FEES; CREDITS; DISPLAY

- (a) Every registrant shall pay the fees associated with permitting under this chapter annually based upon the provisions of this chapter so as to equitably assess the impact of the activities performed in the rights-of-way by all registrants and permittees. Franchisees may elect to pay these fees as either a portion of their franchise fees, or in addition to their franchise fees, as so allowed by their franchise agreement and consistent with state laws.
- (b) *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. Registrants shall pay an annual fee of ~~fifteen thousand zero~~ dollars (\$~~15,000.00~~) in order to obtain an annual general permit.
- (c) *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 maintenance any sidewalk, curb, apron, or utility strip for which that real property owner is legally responsible shall be exempt from paying any fees for obtaining an installation permit for these activities.
- (d) *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.
- (e) The installation and surface cut permit fees required by this section shall be paid at the time of application for the permit.
- (f) *Permit display.* Permits issued pursuant to this chapter shall be conspicuously displayed or otherwise available at all times at the indicated work site and shall be available for inspection by the City or other government employees or officials upon request.

SECTION XXI

Chapter 105-21. PERFORMANCE BOND

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 City of Williamstown, Kentucky, in an amount to be determined by the City, 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. In no event shall the amount required by the City 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 may allow the applicant for a surface cut permit to deposit with the City 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.

SECTION XXII

Chapter 105-22. PATCHING AND RESTORATION STANDARDS

- (a) *Standards.* Patching and restoration of the rights-of-way shall be performed according to the applicable standards and with the materials specified by the City, and at a minimum shall comply with the applicable standard engineering drawing. The City 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. In addition, the City must approve all backfill material utilized. In developing any additional procedures, the City 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 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 this chapter.
- (b) *Guarantees.* Each party performing excavations pursuant to a permit required by this chapter 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, correct all restoration work to the extent necessary, using the method required by the City.

SECTION XXIII

Chapter 105-23. INSPECTION

- (a) *Site inspection.* Any party issued a permit pursuant to this chapter shall make the work-site available to the City 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, if the City has given that party notice of its intent to inspect the excavation. The permittee shall provide the City with advance notice of at least one (1) day when the appropriate portion of the activity is ready for inspection, and if the City 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. If the construction or restoration does not meet the standards under this chapter, the City may order corrective measures.

(b) *Authority of the City.*

- (1) At the time of inspection the City 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 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 that the violation has been corrected. If such proof has not been presented within the required time, the City may revoke the permit, or for good cause shown, extend the period of time allowed for the corrective work to be completed.

SECTION XXIV

Chapter 105-24. **RIGHT-OF-WAY MAINTENANCE FUND**

- (a) There is hereby established the right-of-way maintenance fund as a non-reverting operating fund of the Government.
- (b) The revenues received by the City from all registration fees, permit fees, and the portion of any franchise fee attributable to permitting shall be deposited into the right-of-way maintenance fund to be used exclusively for the repair and resurfacing (but not new construction or reconstruction) of streets, roads and other rights-of-way within the City of Williamstown, the employment of such administrative and inspection personnel necessary to enable the City to carry out its responsibilities under this chapter, and the administrative costs of implementing this chapter.
- (c) Amounts shall be paid from such fund only pursuant to appropriations authorized by the Council.

SECTION XXV

Chapter 105-25. **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.

This Ordinance shall become effective on the date of its passage.

Rick Skinner, Mayor
City of Williamstown, Kentucky

ATTEST:

Vivian Link, City Clerk/Treasurer

2015-16

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