

**CITY OF CRESTVIEW HILLS
ORDINANCE NO. 2018-11-01**

AN ORDINANCE OF THE CITY OF CRESTVIEW HILLS IN KENTON COUNTY, KENTUCKY ESTABLISHING STANDARDS RELATED TO THE INSTALLATION, OPERATION, CONSTRUCTION, MAINTENANCE, AND DISCONTINUANCE OF FACILITIES LOCATED WITHIN THE RIGHTS-OF-WAY CONTROLLED BY THE CITY; ESTABLISHING A REGISTRATION AND PERMITTING PROCESS FOR PARTIES OPERATING AND MAINTAINING FACILITIES IN THE RIGHT-OF-WAY; AND PROVIDING FOR IMPROVED COORDINATION BETWEEN PARTIES WITH FACILITIES IN THE RIGHT-OF-WAY.

Whereas, it is the intent of the Crestview Hills City Council to establish regulations specifically pertaining to rights-of-way and govern the placement and maintenance of certain facilities that are used to provide utility or similar services; and

Whereas, the Crestview Hills City Council further desires to promote the conservation of facilities within the rights-of-way; provide for the granting and management of reasonable access thereto; and minimize street cuts, damages to persons or property, and hardship to the general public; and

Whereas, the Crestview Hills City Council further desires to ensure that the City's current and ongoing costs of granting and regulating private access to facilities located in the rights-of-way and the use thereof are borne by the party seeking such access and causing such cost; and

Whereas, the Crestview Hills City Council further desires to promote cooperation among parties using the rights-of-way; and

Whereas, the Crestview Hills City Council further desires to prescribe reasonable requirements regarding the placement and management of facilities within the rights-of-way consistent with federal and state law.

NOW THEREFORE, BE IT ORDAINED BY THE CRESTVIEW HILLS CITY COUNCIL, CRESTVIEW HILLS, KENTUCKY, IN KENTON COUNTY, KENTUCKY, AS FOLLOWS:

SECTION 1

Sections 91.01 to 91.07 of the City of Crestview Hills Code of Ordinances, which comprise a subchapter entitled "Excavations and Construction", are hereby repealed in their entirety.

SECTION 2

The following sections are hereby added to and amend Chapter 91 of the City of Crestview Hills Code of Ordinances as a new subchapter entitled “Public Rights-of-Way”:

§ 91.40 GENERAL PROVISIONS.

(A) Title. This subchapter shall be known as the “City of Crestview Hills Right-of-Way Ordinance” and shall apply to all facilities located in right-of-way controlled by the City.

(B) Subchapter not in lieu of franchise. Compliance with the requirements of this subchapter shall not excuse any person from complying with all other requirements of law, including, to the extent applicable, holding a valid franchise, contract, or easement from or with the City. Any franchise, contract, or easement may include additional regulations, obligations, fees, and costs.

(C) Subchapter not intended to impair existing contracts. Nothing in this subchapter is intended to impair the legal right or obligation of any contract, franchise, or easement previously granted by the City or authorized under state or federal law.

(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 rights-of-way or charge reasonable compensation for such use. Any public utility or special purpose governmental entity, as defined herein, does not diminish or to any extent lose, waive, impair, or lessen the lawful powers and rights which it now has or may have hereafter.

§ 91.41 DEFINITIONS.

The following definitions apply to this subchapter.

Above-Ground Facilities means any facilities located above ground, which are capable of being installed without significant underground excavation, including, but not limited to, utility poles and miniature cellular phone towers.

Degradation means a material decrease in the useful remaining 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.

Director means the City’s Director of Public Works, or his or her designee, unless otherwise specified.

Emergency means a situation when placement, repair, 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, poles, towers, or ducts, which are required, necessary, used, or useful in the provision of utility or other services.

Install, installed, or installation shall mean placement of facilities within the rights-of-way, including the replacement of existing facilities.

Lessee means a person who provides services within the City 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.

Material, with respect to degradation, means of a nature that causes or results in an alteration or disruption to the City right-of-way.

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.

Planned public project means any beautification, installation, excavation, re-paving, or restoration activity in the rights-of-way that is undertaken by the City as part of a budgeted public improvements plan approved by the City Council and which is funded in whole or in part with public tax dollars in any given fiscal year.

Public utility or utility means a party that is defined in KRS Chapter 278 as a utility, and (1) is subject to the jurisdiction of the Kentucky Public Service Commission, the FCC, or the Federal Energy Regulatory Commission, or (2) 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.

Permit means an Encroachment Permit issued pursuant to this subchapter.

Permittee means a party holding an Encroachment Permit.

Registrant means any party filing or required to file a registration statement pursuant to this subchapter.

Reseller service provider means a person who provides services within the City 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 rights-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.

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.

§ 91.42 ADMINISTRATION AND ENFORCEMENT.

The Director or the person designated by the Director in his or her absence is the principal City official responsible for the administration of this subchapter, and he or she may delegate any or all of the duties hereunder. The Director shall be responsible for enforcing compliance with this subchapter and may adopt reasonable procedures consistent with this chapter that are necessary for its administration or enforcement.

§ 91.43 GENERAL CONDITIONS RELATED TO FACILITIES LOCATED IN THE RIGHTS-OF-WAY.

(A) Responsibility for costs. Any act that a party is required to perform under this subchapter shall be performed at that party's cost, unless expressly provided for otherwise in this subchapter.

(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 subchapter shall be performed in compliance with all applicable laws, ordinances, rules, and regulations. Each party subject to this subchapter shall obtain all other necessary permits, licenses, and authority as required by this subchapter 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 remove, or require removal of, any facility that is not installed in compliance with the requirements of this subchapter and charge that party for all the costs associated with removal. 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 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 subchapter shall make reasonable efforts to minimize the number of surface cuts made, shall make reasonable efforts to coordinate such surface cuts with the City's

paving schedule, and, if appropriate, shall 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 sixty (60) 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 Director upon demonstration of reasonable cause by the subject party. Reasonable cause shall include, but not be limited to, inclement weather, natural disasters, and similar emergencies, including natural disasters and emergencies in other regions where a utility has sent local crews to provide assistance. Reasonable cause shall also include delay due to unforeseen public bidding complications and/or contractor nonavailability for public utilities that are subject to state laws governing bidding and public procurements.

(5) Parties subject to this subchapter 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, and to the extent permitted by, applicable codes, standards, and regulations.

(6) The minimum clearance of wires and cables above the rights-of-way, and the placement of underground facilities, shall conform to Applicable codes, standards, and regulations.

(C) *Duty to maintain all property in right-of-way.* All parties subject to this subchapter shall 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, shall be maintained in a safe condition at all times. In the event any facility in the right-of-way endangers the public safety, the party responsible for such facility shall take reasonable steps to rectify the situation immediately upon notification and in accordance with this subchapter.

(D) *Standards.* All parties subject to this subchapter 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.

(E) *Relocation or removal.* Pursuant to § 91.54 and consistent with the procedures and criteria contained therein, all parties subject to this chapter shall, upon the provision of reasonable written notice of, and at the direction of the Director, 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 for a public purpose pursuant to this subchapter.

§ 91.44 EXISTING FACILITIES.

Facilities located in the rights-of-way prior to the effective date of this subchapter may remain in the rights-of-way and shall not be considered in violation of this subchapter, provided

the party responsible for such facilities under this subchapter complies with the provisions of this subchapter, including the filing of a registration statement and the payment of any applicable 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 subchapter is adopted shall contain a general description of such registrant's facilities and the types of services offered. Upon request by the City, the party responsible for such facilities shall provide a map or other information regarding the location of existing facilities. In addition, upon the request of the City and in order to assist the City with implementing or enforcing the provisions of this subchapter, each registrant shall make available for inspection on a reasonable basis more detailed information, if available, regarding the location of its facilities.

§ 91.45 REGISTRATION.

(A) Requirement to register. Unless otherwise indicated by this subchapter, 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 City by filing the registration statement required herein and all applicable franchise fees are paid to the City.

(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, which shall be filed with the Director on a form provided by the City. **The registration statement 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, and 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 facilities that the registrant will be installing in the right-of-way.

(4) 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.

(5) Proof that the registrant is insured in the form of a copy of a certificate of insurance or self-insurance that is in compliance with the insurance requirements of this subchapter or its franchise agreement.

(6) 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.

(C) Fee. In order to compensate the City for its costs in administering this subchapter, each registrant shall submit a fee of fifteen dollars (\$15.00) with each registration filed with the City.

(D) Notice of changes. The registrant shall notify the City within thirty (30) days of any change in information contained in the registration statement.

(E) Exceptions for reseller service providers and lessees. A reseller service provider shall not be required to register those facilities it utilizes solely for the purpose of reselling, or those facilities it utilizes as a lessee.

(F) 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 City or other party with respect to the placement of facilities on the City's or another party's facilities.

(G) Exceptions. The following types of facilities are not required to be registered pursuant to this subchapter, and the party responsible for such facilities is not otherwise required to comply with the provisions of this subchapter expressly pertaining to registrants. However, the party responsible for such facilities is required to comply with all remaining provisions of this subchapter that are not expressly limited to registrants, unless otherwise exempted.

(1) Newspaper stands;

(2) Signage;

(3) Facilities associated with sidewalk cafes or the sale of goods or merchandise;

(4) Facilities owned by the Commonwealth of Kentucky;

(5) Facilities installed by the City that are not used to provide competitive utility services.

(H) Rejection or cancellation of registration.

(1) 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 Director shall provide written notice to any party who (a) does not possess proper authorization to occupy the rights-of-way with facilities, or (b) 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 Director 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 Director 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 Director.

(2) 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.

(3) *Reconsideration.*

(a) If the Director rejects or cancels a registration statement, the registrant may file with the Director within ten (10) days of receipt of the notice of rejection or cancellation a written request for reconsideration, which shall include the basis for the registrant's position.

(b) The Director may hear any relevant evidence in deciding the reconsideration and will notify the registrant in the event that further information is required. The Director 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 or her decision.

§ 91.46 REQUIREMENTS FOR REGISTRANTS.

In addition to the other requirements set forth herein, each registrant shall use reasonable efforts to:

(A) Cooperate with other registrants and the City to reasonably minimize traffic and other disruptions, including surface cuts, taking into account the efficiency, aesthetics, obtrusiveness, safety and costs of the use;

(B) Participate in such joint planning, construction, and advance notification of right-of-way work, including, but not limited to, coordination and consolidation of surface cut work, as currently coordinated by Planning and Development Services of Kenton County (PDS);

(C) Cooperate with the City in any emergencies involving the rights-of-way as further provided in this subchapter, including the maintenance of a twenty-four (24) hour emergency contact;

(D) 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 subchapter or as promulgated by the Director pursuant to this subchapter;

(E) 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 subchapter 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 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; and

(F) Take reasonable steps to provide notice to all occupants where any work or service which requires an Encroachment Permit is scheduled to be performed and may have an adverse effect on those properties that abut the impacted site or impedes access to those properties abutting the impacted site. Registrants shall make a good faith attempt to notify occupants regardless of whether the registrant holds an easement on or over the property so that occupants know which utility to contact with questions or concerns.

§ 91.47 PERMITS.

(A) Unless otherwise exempted by this subchapter, any party performing an activity within the rights-of-way requires an Encroachment Permit issued by the City.

(B) Activities which may be performed by registrants without a permit. Any registrant maintaining a valid registration pursuant to this subchapter may perform the following activities without a permit, unless such work will require the registrant to block a portion of a street in a manner that obstructs traffic:

(1) Installation or replacement of cable or wiring on existing above-ground utility poles;

(2) Repair, replacement, or maintenance of existing above-ground facilities, including poles or miniature cellular towers, in the same location with no street, curb, apron, sod, or sidewalk cuts, provided any replacement facilities are of comparable size as the existing facilities; or

(3) Any work performed inside existing conduits, vaults, or similar structures that do not otherwise require an Encroachment Permit.

(4) Any work which temporarily blocks or occupies a right-of-way, unless the temporary blockage or occupation occurs on high volume traffic areas. For the purpose of this sub-chapter high volume traffic areas are: Thomas More Parkway, Center View Blvd., Rhine Valley Drive, and Horse Branch Road. These high volume traffic areas require an Encroachment Permit prior to any activity undertaken by registrants; however if the blockage or occupation of these rights of ways shall only be for two (2) hours or less, the permit fee shall be waived.

(C) Encroachment Permit. Except for those activities authorized without a permit by division (B), a registrant shall apply to the City for an Encroachment Permit in order to:

(1) Perform any excavating, digging, cutting, boring, or tunneling into, through, or under any paved street surface, curb, sidewalk, sod, or apron within the rights-of way, and said permit shall include all aspects of the anticipated activities without the need for multiple permits;

(2) Perform any construction, installation, repair, replacement, or maintenance of facilities in the right of way; or

(3) Temporarily occupy the right-of way.

(D) Time for application.

(1) An Encroachment 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 Director may waive said time period for good cause shown. The City shall 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 constitute a violation of this subchapter.

(2) A permit issued pursuant to an emergency shall be applied for no later than three (3) business days after the discovery of the emergency. Notwithstanding the foregoing, the Director may waive said time period for good cause shown. Emergency work, as defined by this subchapter, may be completed without first obtaining a permit.

(E) Application for permit.

(1) 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, the locations and estimated dates and times of commencement and completion thereof.

(d) The number of all surface cuts, if any, to be covered by the permit, and the approximate dimensions of each cut.

(2) 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 five hundred (500) feet apart, or upon a showing by the permit applicant that the granting of a single permit shall not significantly affect the City's ability to efficiently administer this subchapter.

(F) Fee.

(1) In order to compensate the City for its costs in administering this subchapter, each registrant shall be assessed a fee of:

(a) Fifty dollars (\$50.00) upon application for a permit authorizing a street surface cut;

(b) Twenty dollars (\$20.00) upon application for a permit authorizing a sidewalk or bike path cut, or for a permit authorizing a bore cut; and/or

(c) Fifteen dollars (\$15.00) upon application for a permit authorizing a sod cut, for a permit authorizing the blocking of any street in a manner that obstructs traffic, or for any other encroachment not listed above.

(2) The appropriate fee shall be assessed for each category applied for on one permit, but no applicant shall be assessed a fee of more than fifty dollars (\$50.00) total per project or permit application.

(3) The City shall invoice all permit fees to the applicant on a quarterly basis, which shall be due to the City thirty (30) days after the date of the invoice.

(G) Notification of inspections. If the City knows at the time of the issuance of the permit that it shall require an inspection pursuant to this subchapter, it shall notify the permittee that such an inspection is required.

(H) Denial. The Director, in his or her reasonable discretion, may deny or revoke an Encroachment Permit, or may issue a permit that is contingent upon the applicant performing certain requirements that shall be specified in the permit. A decision by the Director to deny an Encroachment Permit application shall be based on at least one (1) of the following criteria:

(1) 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;

(2) 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;

(3) It conflicts with the planned grading, re-grading, construction, reconstruction, widening, or altering of any right-of-way, including streets and sidewalks, or the construction, reconstruction, repair, maintenance, or alteration of a public improvement, including, but not limited to, storm sewers, sanitary sewers, and street lights;

(4) 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;

(5) 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 City;

(6) It fails to take reasonable measures to disguise or cover the facility as required by the City;

(7) It conflicts with a requirement contained in the applicant's franchise agreement;

(8) 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;

(9) It would threaten public health, safety, or welfare, or otherwise constitute a violation of the provisions of this subchapter; or

(10) The applicant is not otherwise in material compliance with the provisions of this subchapter.

(I) *Exceptions.* Permits shall not be required to be obtained pursuant to this subchapter if the facilities involved are of the following nature. However, the party responsible for such facilities shall comply with all remaining provisions of this subchapter, as well as any other chapter that may apply, unless otherwise exempted.

(1) Newspaper stands;

(2) Signage;

(3) Facilities associated with sidewalk cafes or the sale of goods or merchandise;

(4) Facilities owned by the Commonwealth of Kentucky;

(5) Facilities installed to provide new development with connections to utility service and for which the City is provided performance and warranty surety protection under its land development regulations; and

(6) Facilities installed by the City that are not used to provide competitive utility services.

(J) *Permit availability.* Permits issued pursuant to this subchapter shall be available at all times at the indicated work site and shall be available for inspection by the Director or other City employees or officials upon request.

§ 91.48 EMERGENCIES; POWER TO ORDER REPAIRS.

(A) Because emergency repairs can be disruptive to the community, including planned business activities of residents, a registrant shall notify the City within two (2) business days from discovery of the emergency, via telephone, facsimile, text, e-mail, or in-person communication with a City Official, 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 three (3) 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 Director or his or her designee shall attempt to contact that registrant immediately.

(B) If the City determines that the right-of-way associated with a surface cut has been degraded or caved in more than one-half (1/2) inch below grade, and within two (2) years after any surface cut, it shall notify the party or parties responsible for such degradation or cave-in of this determination and, 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 necessary corrections and repairs, which may be temporary in nature, to cure the immediate danger or hazard within two (2) days and perform any additional work consistent with the issuance of any necessary permit. The City shall thereafter order the party or parties responsible to make all necessary permanent corrections and repairs within ninety (90) days.

(C) In all other cases of degradation or cave-in, the City shall order the party or parties responsible for such degradation or cave-in 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.

(D) In the event the City orders corrections or repairs pursuant to this section, and the party responsible fails to respond within the time allotted, the City 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 of five hundred dollars (\$500.00). In that event, and if the said statement of costs and fees is not paid by the responsible party within forty-five (45) days, the City shall suspend the issuance of all future permits to the responsible party until such time as the costs are paid.

(E) 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.

(F) Any other provision in this section notwithstanding, the Director may extend **any time period under this section** for good cause, and the requested extension upon a showing of good cause by the applicant, shall not be unreasonably withheld or denied. Good cause shall include, but not be limited to, inclement weather, natural disasters, and similar emergencies,

including natural disasters and emergencies in other regions where a utility has sent local crews to provide assistance.

§ 91.49 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 City 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 or non-renewed until after thirty (30) days' notice has been provided to the City; 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 reasonably acceptable self-insurance plan. The City reserves the right to impose reasonable additional insurance requirements as part of a franchise agreement.

§ 91.50 INDEMNIFICATION; HOLD HARMLESS.

(A) Consistent with Kentucky law, each registrant shall defend, indemnify, and hold harmless the City, its elected and appointed 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.

Within ten (10) business days of learning of any claim, suit, cause of action, proceeding judgement for damages or equitable relief that might trigger the indemnification obligation, the City shall notify the registrant of the existence of the claim, suit, cause of action, proceeding or judgment in writing and shall provide all information known to the City regarding same. Registrant shall defend against the claim, suit, cause of action, proceeding or judgment on behalf of the City and may select the counsel to represent the City in such an action or proceeding. The City shall not agree to any settlement or compromise for which an indemnification obligation applies unless the registrant consents to the settlement or compromise.

(B) This section shall not apply to registrants which are political subdivisions of the Commonwealth of Kentucky, municipal corporations, special districts, or special purpose governmental entities.

§ 91.51 JOINT PLANNING AND CONSTRUCTION; COORDINATION OF EXCAVATION.

(A) Any registrant owning, operating, or installing facilities in the rights-of-way that provide water, sewer, gas, electric, telephone, internet, cable, video, cellular, or other utility services, may at their discretion prepare and submit to the Director a master plan or future plans for right of way work in the City.

(B) The City shall annually prepare a listing of planned public improvements including, but not limited to, streets, sidewalks, bike paths, storm water improvements or other such improvements along with their anticipated bid date. The list of planned public improvements shall be prepared and be available at least six (6) months prior to their intended bid date. The list shall be provided to utilities on record as having filed a registration with the City at that time. The list of public improvements shall also be submitted to Planning and Development Services of Kenton County. Implementation of planned public improvements shall be contingent upon approval by City Council and the availability of necessary funding.

(C) Prior to applying for a permit for work involving a surface cut in the right-of-way, a party shall review the City's current repaving and resurfacing and shall coordinate, to the extent practicable with each registrant, utility and street work shown on such plan to minimize damage to, and avoid undue disruption and interference with, the public use of the rights-of-way.

(D) Any item of information provided by a registrant consistent with this sub-chapter which the registrant considers to be proprietary must be clearly and conspicuously designated "proprietary" by the registrant. Any item clearly and conspicuously designated as proprietary by the registrant shall be maintained confidentially by the City and not publicly disclosed, disseminated, or shared with third parties without specific written consent of the registrant. Any item not labeled proprietary shall be not be considered proprietary by the City and may be subject to public disclosure under Kentucky's Open Records laws.

§ 91.52 INSTALLATION, RELOCATION, OR DISCONTINUATION 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 City. This section shall not be interpreted to impair the ability of a registrant to perform work not requiring 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 Director, 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 provisions of this subchapter.

(C) Coordination. To the extent reasonably possible, registrants shall coordinate the installation, relocation, and 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) Procedure. The Director shall notify the applicant if the Director 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 Director 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 Director's determination. The Director may issue a permit that is contingent upon certain condition(s) being fulfilled with respect to the criteria contained below.

(E) Reservation of rights. Notwithstanding any other provision in this subchapter, the City 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 City, for which the appropriate permit was not obtained.

(F) Preclusion on cutting newly paved surfaces.

(1) If any street is designated for resurfacing or reconstruction by the City on the list maintained pursuant to this subchapter, the registrant shall make any extensions, changes, or installations of or to its facilities ahead of such activity. The registrant shall notify the Director no less than 45 days prior to the City's anticipated bid date of its desire to perform such extensions, changes, or installations, and may be allowed up to ninety (90) additional days to complete the work.

(2) If any street is about to be constructed, reconstructed, widened, altered, or paved by the City, the Director shall provide notice to registrants, and 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, which the Director may extend for good cause. It is expected that the registrant shall not disturb the City's improvements within the following two year period, so as to minimize the premature degradation of the right-of-way caused by multiple alterations and surface cuts. Upon a registrant's showing of undue hardship or emergency, the Director may grant permission for limited disturbment of the newly paved surface within the two year period. Registrant shall in those instances comply with all other relevant provisions of this chapter pertaining to restoration of the right-of-way.

(G) Relocation.

(1) Upon providing reasonable advanced written notice to the registrant or other responsible party, the Director may order the relocation or rearrangement of any facility, in his or her reasonable discretion and in good faith, if any of the following arise with respect to that facility:

(a) The relocation or rearrangement is necessary for the purpose of public safety.

(b) The relocation or rearrangement is required by a tariff, state or federal law, or a franchise agreement with the City.

(c) The relocation or rearrangement is necessary to assist in the installation of facilities by another registrant or permittee.

(d) The relocation or rearrangement is necessary as a result of the City adopting a planned public project or policy requiring that facilities be relocated.

(e) So as to conform to the established grade or line of a right-of-way or so as not to interfere with public improvements whenever the City shall grade, regrade, construct, reconstruct, widen, or alter any right-of-way, or construct, reconstruct, repair, maintain or alter a public improvement, including, but not limited to, storm sewers, or street lights therein.

(2) The City shall coordinate the new location with the registrant or permittee as part of the permitting process.

(3) Relocation underground. If, as a result of a planned public project, a registrant is required to relocate facilities that were previously and lawfully located above-ground, and the City requests, as part of the relocation, that the facilities 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.

(4) 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.

(5) Relocations to assist in the placement of other facilities. If a registrant is required to relocate facilities 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 to the contrary is otherwise entered into by the appropriate parties.

(6) Relocations where the cost is borne by the City. Notwithstanding any language in this subchapter 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) The relocation is the result of the City adopting 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) 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 at the time the facility was installed;

(c) The City has previously 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) 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 City.

(H) *Discontinuance of Use.*

(1) Any party discontinuing use of a facility shall notify the Director 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.

(2) The Director may order that the responsible party remove, replace, or repair any discontinued facility which significantly interferes with the City's maintenance of the right of way.

§ 91.53 ABOVE-GROUND FACILITIES.

(A) The following regulations shall apply to above-ground facilities:

(1) To the extent possible, registrants shall use poles and conduit existing at the time of permitting in installing above-ground facilities.

(2) All poles or wire holding structures are subject to any applicable, duly adopted regulations regarding location, height, type, or other pertinent aspect.

(3) All transmission and distribution structures, poles, and other lines and equipment installed or erected by registrant under this subchapter 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.

§ 91.54 PATCHING AND RESTORATION STANDARDS

(A) *Minimum Standards.* Patching and restoration of the rights-of-way shall be performed according to the applicable standards and with materials comparable to those used by the City, and at a minimum shall comply with the applicable standard engineering drawing. All edges of a

surface cut made to a paved street shall be sawed, and such surface cuts shall be sealed with a sealant approved by the City. In addition, the City shall approve all backfill material utilized.

(B) Additional Standards. In special circumstances, the Director may impose additional restoration requirements upon a determination that the minimum patching and restoration standards are inadequate because of at least one (1) of the following considerations:

- (1) The number, size, depth, and duration of the excavations;
- (2) Disruptions or damage to the right-of-way;
- (3) The traffic volume carried by the right-of-way;
- (4) The pre-excavation condition of the right-of-way;
- (5) The remaining life expectancy of the right-of-way affected by the excavation;

(C) Guarantees. Each party performing excavations pursuant to a permit required by this subchapter guarantees its restoration work and shall maintain it for one (1) year following its completion. During this period, it shall, upon notification from the Director, correct all restoration work to the extent necessary, using the method required by the Director.

§ 91.55 INSPECTIONS.

(A) Site inspection.

(1) Any party issued a permit pursuant to this subchapter shall make the worksite 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. If the City has given the party notice of its intent to inspect the excavation, the permittee shall provide the City with advanced notice of at least two (2) business days when the appropriate portion of the activity is ready for inspection. If the permittee was not notified of the City's intent to inspect the excavation site as a condition of the permit or the City failed to inspect after being provided the required notice, the excavation may be permanently covered.

(2) Any excavation with a required approval or inspection that has been covered prior to the two (2) day notification period shall be uncovered for inspection at that permittee's expense, upon request of the City.

(3) If the construction or restoration does not meet the standards under this chapter, the City may order reasonable corrective measures.

(B) Authority of the Director.

(1) At the time of inspection, the Director may order the immediate cessation of any work that he or she in good faith believes poses a serious threat to the life, health, safety or well-being of the public.

(2) The Director 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 thirty (30) days after issuance of the order, the permittee shall present proof to the Director that the violation has been corrected. If such proof has not been presented within the required time, the Director may revoke the permit, or for good cause shown, extend the period of time allowed for the corrective work to be completed.

§91.56 APPEAL.

(A) Any party aggrieved by the following actions of the Director or the City may appeal pursuant to this section:

(1) The denial of registration following the reconsideration process provided for in this subchapter;

(2) The denial of a permit under this subchapter;

(3) The issuance of a conditional permit under this subchapter, where the party disagrees with certain of the conditions(s) imposed;

(4) The revocation of any permit under this subchapter;

(5) A decision pertaining to installation, relocation, or removal of a facility pursuant to this subchapter;

(6) The imposition of any fee, penalty, or charge under this subchapter which the party believes to be invalid.

(B) The appealed action shall be reviewed, upon written request, by the City Administrator, or his or 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 shall be in writing and provide the basis for the decision.

(C) Any party aggrieved by a decision of the City Administrator pursuant to division (B) may appeal the City Administrator's decision, in writing, to the City's Public Works Committee within ten (10) days of the City Administrator's decision. The appealing party shall be afforded the opportunity to be heard and present relevant evidence to the Public Works Committee should it desire to do so, and the decision by the Public Works Committee, shall be in writing and

provide the basis for the decision. The written decision of the Public Works Committee shall constitute a final administrative decision, which may be appealed to the Kenton Circuit Court within thirty (30) days of the Public Works Committee's written decision.

SECTION 3

Section 91.99 of the City of Crestview Hills Code of Ordinances is hereby amended as follows:

§ 91.99 PENALTY.

(A) Whoever violates any provision of [this chapter] §§ 91.30 to 91.33 shall be guilty of a misdemeanor and shall, upon conviction, be fined not more than one hundred dollars (\$100) per day, and each day that a violation exists shall be deemed a separate day and subject to separate penalty.

(B) Any entity which violates the provisions of § 91.45(A) or 91.45(B) shall be assessed a civil penalty in the amount of one thousand dollars (\$1,000.00).

(C) Any entity which violates the provisions of § 91.47 shall be assessed a civil penalty in the amount of one hundred dollars (\$100.00) for the first violation within a four (4) year period; five hundred dollars (\$500.00) for the second violation within a four (4) year period; one thousand dollars (\$1,000.00) for the third violation within a four (4) year period; and three thousand dollars (\$3,000.00) for each subsequent violation within a four (4) year period.

(D) Any entity which violates any provision of §§ 91.40 to 91.55, other than §§ 91.45(A), 91.45(B), or 91.47, shall be assessed a civil penalty in the amount of one hundred dollars (\$100.00) per violation

SECTION 4

Any ordinances, or parts of ordinances, inconsistent with the provisions of this Ordinance shall be and are hereby repealed.

SECTION 5

The provisions of this Ordinance are severable. Any invalidity of any provision of this Ordinance shall not affect the validity of any other provision thereof, and such other provisions shall remain in full force and effect so long as they remain valid, in the absence of Court determination otherwise.

SECTION 6

This Ordinance shall take effect and be in full force when passed, published, and recorded according to law. Publication may be in summary form.

CITY OF CRESTVIEW HILLS, KENTUCKY

By: _____
PAUL W. MEIER, MAYOR

ATTEST: _____
JAIME MAHONEY, CITY CLERK

DATE OF FIRST READING: November 8th, 2018

DATE OF SECOND READING AND ENACTMENT: December 13th, 2018

DATE OF PUBLICATION: _____