

ORDINANCE NO. **BG2020 - 19**

ORDINANCE AMENDING CODE OF ORDINANCES

ORDINANCE RESCINDING CHAPTER 21 (PUBLIC INFRASTRUCTURE, RIGHTS-OF-WAY AND STORMWATER), SUBCHAPTER 21-4 (CUTS, EXCAVATIONS AND WORK WITHIN RIGHT-OF-WAY) AND ADOPTING AN AMENDED SUBCHAPTER

WHEREAS, the City of Bowling Green Public Works Department has recommended various amendments to Chapter 21 (Public Infrastructure, Rights-of-Way and Stormwater), Subchapter 21-4 (Cuts, Excavations and Work Within Right-of-Way); and,

WHEREAS, the amendments caused a need to repeal the existing Subchapter and to replace it with amended language; and,

WHEREAS, the repeal of the existing Subchapter 21-4 and the adoption of an amended Subchapter 21-4 is in the best interest of the City.

NOW, THEREFORE, BE IT ORDAINED by the City of Bowling Green, Kentucky as follows:

1. Chapter 21 (Public Infrastructure, Rights-of-Way and Stormwater), Subchapter 21-4 (Cuts, Excavations and Work Within Right-of-Way) is hereby rescinded and replaced as follows:

21-4 CUTS, EXCAVATIONS AND WORK WITHIN RIGHT-OF-WAY.

21-4.01 Purpose.

a. The purpose and intent of this Subchapter is to establish and promote policies and regulations specifically pertaining to rights-of-way that:

i. Govern the placement and maintenance of certain facilities that are used to provide utility or similar services;

ii. Promote their conservation;

iii. Provide for the granting and management of reasonable access thereto;

(Ordinance No. BG2020 - 19)

iv. Ensure that the City's current and ongoing costs of granting and regulating private access thereto and use thereof are borne by the party seeking such access and causing such cost;

v. Provide for the payment of fair and reasonable fees to the City to ensure that this Subchapter is properly administered and enforced;

vi. Minimize street cuts, damages to persons or property and hardship to the general public;

vii. Promote cooperation among parties using rights-of-way; and

viii. Prescribe reasonable requirements regarding the placement and management of facilities therein consistent with federal and state law.

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 holding a valid franchise, contract or easement granted by 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.

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 rights-of-way or charge reasonable compensation for such use.

21-4.02 Definitions

The following definitions apply to this Subchapter.

“Board of Commissioners” shall mean the legislative body of the City of Bowling Green.

“City” shall mean the City of Bowling Green, KY.

“City Engineer” shall mean the City Engineer or his/her designee, unless otherwise specified.

“Degradation” shall mean a decrease in the useful life of the right-of-way caused by excavation in or disturbance of the right-of-way, resulting in the need to reconstruct such right-of-way earlier than would be required if the excavation did not occur.

“Department” shall mean the City of Bowling Green’s Public Works Department, Planning and Design Division.

“Emergency” shall mean 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 an 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” shall mean to dig into or in any way remove or physically cut, disturb or penetrate any part of a right-of-way. This includes work on city streets, curbs, gutters and sidewalks.

“Facility” or “Facilities” shall mean any tangible asset in the right-of-way, including but not limited to, equipment and apparatus such as cabinets, pipes, conduits, wires, cables, amplifiers, transformers, fiber optic lines, antennae, small cell, pole or ducts, required, necessary, used or useful in the provision of utility or other services.

“Lessee” shall mean a person who provides services within the City of Bowling Green 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” shall mean any natural or corporate person, business association or other business entity including, but not limited to, a partnership, a sole proprietorship, a political subdivision,

(Ordinance No. BG2020 - 19)

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” shall mean a party that is defined in KRS Chapter 278 as a utility and (i) is subject to the jurisdiction of the Kentucky Public Service Commission, the FCC or the Federal Energy Regulatory Commission, or (ii) is required to obtain a franchise from the City to use and occupy the right-of-way pursuant to Sections 163 and 164 of the Kentucky Constitution.

“Reseller Service Provider” shall mean a person who provides services within the City of Bowling Green 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” shall mean the surface of and the space above and below a public roadway, highway, street, freeway, lane, path, sidewalk, alley, court, boulevard, avenue, parkway, cartway, bicycle lane or path, public sidewalk or easement held by the City for the purpose of public travel and shall include right-of-way as shall be now held or hereafter held by the City. A right-of-way does not include the airwaves above a right-of-way with regard to cellular or other non-wire telecommunications or broadcast service.

“Right-of-Way Work Permit” shall mean a permit issued by the Department to perform any construction, installation, repair, replacement or maintenance of facilities in the right-of-way that is not already covered by an active building permit issued by the City.

21-4.03 Administration; Enforcement.

a. The City Engineer or the person designated as the City Engineer in his/her absence shall be the principal City official responsible for the administration of this Subchapter and he or she may delegate any or all of the duties hereunder,

b. The Department shall be responsible for enforcing compliance with this Subchapter and may adopt procedures consistent with this Subchapter that are necessary for its administration or enforcement.

21-4.04 General Conditions Related to Work in the Right-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 right-of-way:

i. All activities in the right-of-way that are subject to this Subchapter shall be performed in compliance with all applicable laws, ordinances and departmental rules and regulations. Each party subject to this Subchapter shall obtain all other necessary permits, licenses and authority and pay all fees required by this Subchapter or other applicable rules, laws or regulations.

ii. 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. The criteria to be utilized in making determinations regarding installation, relocation or removal of facilities are contained in Subsection 24-4.15 hereinbelow. Regardless of any other criteria, in the event the placement or location of a facility in a particular area of the right-of-way would constitute a public safety concern, the City Engineer may deny the placement of that facility in that area or order its relocation or removal.

iii. In order to minimize interference with the use of the right-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.

iv. 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 ten (10) calendar days of the completion of those activities which caused the disturbance or damage by the party that disturbed or damaged the right-of-way or public property. This time may be extended by the City Engineer upon demonstration of reasonable cause by the subject party. In all cases, the party will be required to keep the right-of-way in a passable condition until the disturbance or damage is repaired as approved by the City Engineer.

v. 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. Installation shall be consistent with state law, or in the absence of state law, the current edition of the National Electrical Safety Code.

vi. The minimum clearance of wires and cables above the right-of-way and 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, whichever is more stringent.

vii. The City may require parties subject to this Subchapter to plant shrubs or other plantings around facilities and maintain the shrubs or other plantings.

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,

(Ordinance No. BG2020 - 19)

shall 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.

d. Street trees. The removal or trimming of existing trees in the right-of-way shall require the written consent of the City and shall comply with all City ordinances and regulations.

e. 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.

f. Relocation or removal. Pursuant to Subsection 21-4.15 of the City Code of Ordinances and consistent with the procedures and criteria contained therein, all parties subject to this Subchapter shall, upon the provision of reasonable written notice of, and at the direction of the City Engineer, promptly relocate or remove facilities or rearrange aerial facilities, if required by state or federal law, a franchise agreement with the City or the City Engineer in exercising his/her authority under Subsection 21-4.15.

g. Other requirements specific to permittees. In addition to the other requirements set forth herein, each permittee shall use its best efforts to:

i. Cooperate with other permittees and the City for the best, most efficient, most aesthetic and least obtrusive use of the right-of-way, consistent with safety, and to minimize traffic and other disruptions including surface cuts;

ii. Participate in such joint planning, construction and advance notification of right-of-way work, including coordination and consolidation of surface cut work;

iii. Cooperate with the City regarding safety precautions within the right-of-way as further provided in Subsection 21-4.17, including the maintenance of a twenty-four (24) hour emergency contact;

(Ordinance No. BG2020 - 19)

iv. 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 City Engineer pursuant to this Subchapter;

v. Require that any party performing any work or service in the right-of-way on behalf of the permittee comply with all applicable provisions of this Subchapter as well any other additional local regulations pertaining to the performance of such work and to identify the permittee for whom the contractor is working. Permittee shall be responsible and liable hereunder to the City for any damage to the right-of-way caused by the actions of any such subcontractor or others as if the permittee had performed or failed to perform any such obligation;

vi. 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 the current edition of the Manual on Uniform Traffic Control Devices (MUTCD) regarding property maintenance of traffic during construction; and

vii. Take reasonable steps to provide advance notice to all persons who reside on or adjacent to property where any work or service in the right-of-way is to be performed and attempt to notify such persons prior to entering private property.

h. Utility agency coordination. Each permittee that provides utility services shall:

i. Make technical recommendations to the City Engineer for the efficient implementation of this Subchapter and discuss general issues pertaining to the management of the right-of-way, including, but not limited to, coordination of utility activity in the right-of-way, patching and restoration standards, permitting processes and inspections, the City's annual pavement ratings and plan and other matters pertaining to this Subchapter and the management of the right-of-way; and

ii. Review annual work plans of each utility that involve substantial activity in the right-of-way.

21-4.05 Existing Facilities.

Facilities located in the right-of-way prior to the effective date of this Subchapter may remain in the right-of-way and shall not be considered in violation of this Subchapter provided the party responsible for such facilities complied with the applicable law, rules and regulations at the time of installation.

21-4.06 Permits Required; Notice of Activities; Exceptions; Denials.

a. Unless otherwise exempted by this Subchapter, any party performing any activity within the right-of-way that requires a permit pursuant to this Subchapter shall obtain the applicable permit prior to the performance of such activity and pay any applicable permit fee.

b. A right-of-way work permit for the performance of non-emergency work shall be applied for at least five (5) days before the planned activity. Notwithstanding the foregoing, the City Engineer may waive the time period for good cause shown. The Department must approve, deny or conditionally approve a permit application within five (5) business days of the receipt of the application and in the case of a conditional approval or denial, state in writing the basis for such determination and what conditions must be met by the applicant in order to obtain a permit. Any work performed without proper notification shall constitute work being done without a permit and shall be subject to the levy of fines.

c. A permit issued pursuant to an emergency shall be applied for no later than two (2) business days after the discovery of the emergency.

d. Applications for permits can be obtained from the Department and on the City's website.

e. A right-of-way permit shall be required for any cut or excavation or work in any City right-of-way. This includes any work that may require any lane closure and/or complete closure on a City-maintained street, alley, sidewalk or multi-use path.

f. A right-of-way permit shall be required prior to the placement of new poles and associated infrastructure, conduit or overhead wires for new utility services.

g. A right-of-way permit shall be required for placement of any dumpster or oversized waste receptacle in City right-of-way.

h. A single permit may be issued for multiple surface cuts or installations; provided, that no such surface cut or installation covered in a single permit shall be more than three hundred (300) feet apart. Notwithstanding the foregoing, the City Engineer may grant a single permit for multiple surface cuts or installations that are more than three hundred (300) feet upon a showing by the permit applicant that such an expansion of activity shall not significantly affect the Department's ability to efficiently administer this Subchapter.

i. Notification of excavation or backfilling. The permittee shall notify the Department at least twenty-four (24) hours in advance, except in the cases of emergency, as to the exact time any cut or excavation or backfilling activities will begin and final repair of any such cut or excavation will commence.

j. Denial or revocation. The City Engineer, in his/her reasonable discretion, may deny or revoke a permit for failure to satisfy the material requirements and conditions of this Subchapter, including, but not limited to, the criteria contained in Subsection 24-4.14, or if the denial is otherwise necessary to protect the health, safety, and welfare of the citizens of the City of Bowling Green. In addition, the City Engineer may issue a permit that is contingent upon the applicant performing certain requirements that shall be specified in the permit.

k. Exceptions. Permits are not required to be obtained pursuant to this Subchapter if the facilities installed are 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.

(Ordinance No. BG2020 - 19)

However, the party responsible for such facilities is required to comply with all remaining provisions of this Subchapter as well as any other Subchapter that may apply, unless otherwise exempted.

21-4.07 Permit Fees.

Permit fees in the amount of seventy-five dollars (\$75) are required by this Subchapter and shall be paid at the time of application.

21-4.08 Surety Bond Requirements.

No right-of-way work permit shall be issued until the permittee has provided a surety bond. This bond is to ensure that the repair of any cuts or excavations is made in accordance with the standards adopted by the Department. The bond amount shall be based upon the total square footage of disturbance and the unit cost determined by a representative from the Department and adjusted annually based on recent construction pricing data. Bonding may be provided by a cash bond, performance bond or letter of credit. The minimum bond amount shall be two hundred and fifty dollars (\$250). A performance bond or letter of credit may be utilized as a "running bond." This type of bonding may be used to cover multiple permits up to but not to exceed the amount of surety. Running bonds must be renewed on an annual basis. The minimum amount for running bonds shall be one hundred thousand dollars (\$100,000). A bond release inspection will be conducted ninety (90) days after the final repair of a cut or excavation. The surety posted shall be returned to the permittee upon inspection and approval by the Department.

21-4.09 Insurance Requirements; Indemnification; Hold Harmless

a. Insurance Requirements. Any person or party applying for a right-of-way permit shall maintain in full force and effect commercial general liability insurance reasonably acceptable to the City and shall provide the City with a certificate of insurance evidencing the insurance policy required by this Subchapter. 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 City; however,

(Ordinance No. BG2020 - 19)

insurance may be canceled and replaced with a policy that continues to meet the requirements of this Subchapter. The City reserves the right to impose additional insurance requirements as part of a franchise agreement.

b. Indemnification; hold harmless. Each permittee 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 the City's 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 permittee, the permittee shall pay such judgment with all costs and hold the City harmless thereon. The City shall notify the permittee in writing within a reasonable time of receiving notice of any issue it determines may require indemnification and the permittee shall defend the City at the cost of the permittee.

21-4.10 Joint Planning and Construction; Coordination of Excavation.

a. Any party owning, operating or installing facilities in the right-of-way that provide water, sewer, gas, electric, telephone, internet, cable, video or other utility services shall prepare and submit to the City Engineer a master plan as available and shall submit annually, as required by the City Engineer, a revised and updated master plan. As used in this Subsection, the term "master plan" refers to a document reflecting any known future activity planned by the agency or entity to occur within one (1) year of its submission that would also require the issuance of a right-of-way work permit.

b. The City Engineer shall keep all master plans confidential in accordance with the provisions of the Kentucky Open Records Act, KRS §§ 61.870, et seq., if directed by the

(Ordinance No. BG2020 - 19)

agency/entity, and shall establish procedures to ensure that the master plans are utilized and inspected only for the purposes intended by this Subchapter.

c. The City shall annually prepare a listing of streets that are to be repaved in the current City fiscal year, as well as an annual list of all streets eligible for resurfacing based on their pavement condition. The City shall provide each permittee with a proposed annual repaving list. The final annual repaving list is contingent upon the approval of the Board of Commissioners.

d. Prior to applying for a right-of-way permit, an agency/entity shall review the annual paving list as well as any other master plans made available by other parties. Coordination of work, to the extent practical, shall be made to avoid undue disruption to public use of the right-of-way as well as to the facilities within the right-of-way.

e. The issue of joint planning and coordination is also discussed at regularly scheduled Utility Managers' meetings.

21-4.11 Site Inspection.

Any party issued a permit pursuant to this Subchapter shall make the work-site available to the Department and to all others as authorized by law for inspection at all reasonable times during the execution of and upon completion of the work. The permittee shall provide the Department with advance notice of at least one (1) day when the appropriate portion of the activity is ready for inspection, and if the Department fails to inspect within five (5) business days after receipt of the notice, the permittee may continue to perform the permitted activity. Any excavation that has been covered without a required approval or inspection shall be uncovered for inspection at that party's expense upon request of the Department. If the construction or restoration does not meet the standards under this Subchapter, the Department may order corrective measures.

21-4.12 Time Limit for Temporary and Permanent Repairs.

(Ordinance No. BG2020 - 19)

a. Each permitted activity shall be temporarily repaired within forty-eight (48) hours of the completed work (e.g. utility repair) unless otherwise approved by the Department. All permanent repairs must be completed within ten (10) calendar days of commencement of the permitted activity. The specified time limit shall include all clean-up which is required by the Department.

b. Large scale projects in right-of-way must be reviewed and approved by the Department prior to issuance of a permit and commencement of work. Large scale projects shall mean cuts running with lanes for greater than fifty (50') feet, where multiple cuts occur in close proximity or where timely permanent repairs are not feasible due to the scope of the project. The permittee shall have regular meetings with Department during construction to monitor quality and schedule. Permanent repair timelines may be adjusted as approved by the Department. Temporary repairs for large scale projects shall be cold patch unless otherwise approved by the Department and must be completed as set forth hereinabove and maintained until permanent repairs are complete.

21-4.13 Repairs Made by City; Reimbursement Authorized; Fee Schedule; Use of Bond to Cover Costs.

a. If a permittee fails or refuses to comply with any corrective action or to properly repair any cut or excavation in compliance with the standards and requirements of the Department or this Subchapter, the Planning and Design Division shall then instruct the Public Works Operations Division or other selected contractors to make all necessary repairs. In this event, the City shall be reimbursed by the permittee for all repairs based upon time and material cost plus twenty-five (25%) percent for overhead expenses.

b. Any work required and fees covered under this Subchapter shall be billed to the permittee. If the permittee refuses to pay the bill within thirty (30) days, the City shall use the proceeds from the bond required hereinabove to cover the bill. Should the surety bond not be sufficient to cover expenses incurred by the City during repairs, liens or other recovery methods may be used.

(Ordinance No. BG2020 - 19)

c. In addition to the above, if a permittee fails or refuses to make corrective action, the Department may revoke the existing permit. If a permittee fails to reimburse the City for its costs in making repairs, no new permits or approvals from any other City department shall be issued until the outstanding balance is paid.

21-4.14 Warranty of Repair and Cutting of Recently Paved Roads.

a. The permittee shall make proper repairs to ensure minimal future impact to motorists. The permittee shall warrant the excavation repair for a period of two (2) years from the completion of the permanent repair. Excavation repair failure shall be deemed as trench variation or cracking in or immediately adjacent to the repaired area. Trench variation of one half inch ($\frac{1}{2}$ ") or greater along a ten (10') foot straightedge shall constitute failure. Additionally, cracking within one (1') foot outside of the repair shall constitute failure. Should the repair fail, the permittee shall make necessary corrections at the direction of the Planning and Design Division.

b. Should a permittee cut a recently paved street, the permittee shall be required to repave the entire paved section. The use of seamless, thermal bonded asphalt repair, such as infrared repair, may be used in lieu of repaving an entire section. The entire section shall be deemed as the section from the cut to the nearest intersection or one hundred (100') feet on both sides of the cut, whichever is less. A recently paved section shall be defined as paved within two (2) years prior to the excavation.

21-4.15 Installation, relocation or removal of facilities.

a. Provisions apply unless direct conflict exists. The provisions of this Subsection shall apply unless they directly conflict with a state or federal law, the City's Code of Ordinances or the provisions of the applicant's franchise agreement with the City.

b. General application. Upon the written notice of and at the direction of the City Engineer, a party shall relocate or remove facilities, or rearrange aerial facilities, if required by a state

or federal law, a franchise agreement with the City or the City Engineer in exercising his/her authority under this section.

c. Coordination. Parties 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.

i. Definition. For purposes of this section, the term "install," "installed" or "installation" shall mean placement of new facilities within the right-of-way, including the replacement of existing facilities and requires the issuance of a right-of-way work permit.

ii. Procedure. The City Engineer shall notify the applicant if the City Engineer determines that a facility may not be installed as requested by the applicant. Upon determining that a facility may not be installed as requested, the City Engineer shall provide written notice to the applicant as early as practicable and in conformity with any specific applicable notice requirement. The notice shall contain a description of the area affected as well as the reason for the City Engineer's determination. The City Engineer may issue a permit that is contingent upon certain condition(s) being fulfilled with respect to the criteria contained below.

iii. Criteria. A decision by the City to deny a right-of-way work permit application shall be based on at least one (1) of the following criteria:

a) It significantly conflicts with the location of existing facilities or facilities that are planned or permitted for installation or City improvements or facilities that are planned in that area;

b) It significantly conflicts with the timing of other ongoing activity taking place in the same area of the right-of-way or with a previously scheduled activity;

(Ordinance No. BG2020 - 19)

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

d) It conflicts with an approved development plan in that geographic area that requires all or certain types of facilities to be located in certain locations, areas or parts of the right-of-way;

e) 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 Board of Commissioners;

f) It fails to take reasonable measures to disguise or cover the facility as required by the City pursuant to guidelines or procedures pertaining to aesthetics that are duly adopted by the Board of Commissioners;

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

h) It is located in a type of right-of-way, such as a bicycle lane or path, in which the City has made a determination that facilities are not to be installed;

i) It would threaten public health, safety or welfare or otherwise constitute a violation of the provisions of this Subchapter; or

j) The applicant is not otherwise in material compliance with the provisions of this Subchapter.

iv. 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 Subchapter, at no cost to the City, for which a right-of-way permit was not obtained.

v. Preclusion on cutting newly paved surfaces. If any street is about to be resurfaced by the City, on advance written notice from the City Engineer pursuant to section 21-4.10, the permittee shall make any extensions, changes or installations of or to its facilities ahead of such activity. Permittee shall notify City Engineer of its desire to perform such extensions, changes or installations and may be allowed up to ninety (90) additional days to complete the work. If any street is about to be constructed, reconstructed, widened, altered or paved by the City, upon receipt of final plans from the City Engineer, the permittee 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 permittee may be allowed up to ninety (90) days to complete the work. If the permittee fails to do such extensions, changes or installations, it shall be precluded for a period of two (2) years from disturbing such paving without the express permission of the City Engineer. The City Engineer shall only grant such permission upon a sufficient showing by the permittee that undue hardship would be caused if the permittee were not allowed to disturb the pavement and that it shall satisfactorily comply with all other relevant provisions of this Subchapter.

e. Relocations. The City shall have the ability to order the relocation of any facility located within the right-of-way. The City shall not normally direct the exact location that the facility is to be relocated to, but instead shall work with the permittee as part of the permitting process. There shall be no fee associated with a permit required as a result of a relocation ordered by the City.

i. Public projects. Whenever the City shall grade, regrade, construct, reconstruct, widen or alter any right-of-way or shall construct, reconstruct, repair, maintain or alter a public facility, including, but not limited to, gas, electric, telephone, internet, cable, storm sewers, water lines, sanitary sewers and utility poles therein, it shall be the duty of the party responsible for maintenance of the

(Ordinance No. BG2020 - 19)

facility, when so ordered by the City, to change, relay and relocate its facilities in the right-of-way 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. If a franchise agreement is in place with the party responsible for the maintenance of the facility, relocation costs shall be paid as agreed to in the agreement.

ii. Relocation for public safety reasons. If the basis for the City ordering the relocation of a facility is a public safety concern, the party responsible for the maintenance of the facility shall relocate the facility at no cost to the City.

iii. Relocations to assist in the placement of other facilities. If the reason the City is ordering the relocation is to assist in the installation of facilities by another permittee, the party seeking to install the facilities shall bear the costs of said relocation, unless an agreement is otherwise reached.

iv. 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) If the City has adopted a plan or policy requiring that facilities be placed underground in that location and at the time the facility was installed, such a plan was not in place;

b) If, at the time the facility was installed, the location in which the facility is currently sited was not a part of the right-of-way or was not otherwise owned or controlled by the City; or

c) If the City has already ordered that the facility be relocated to comply with a public improvement project, the party responsible for the maintenance of the facility has substantially complied with such order, and the City then orders the party to relocate that facility to a different area as part of the same project.

f. Removal.

i. If the City requires a facility that is no longer being used to provide service, as defined below, to be taken out of the right-of-way, such removal shall be pursuant to the requirements of this Subsection.

ii. 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 permittee or the party responsible for the facility has notified the City Engineer that it no longer intends to use the facility. If the City determines that a facility is "no longer in use" based on the fact that it has not been used for a period of more than one (1) year, the responsible party may petition the City Engineer for a reasonable extension of time based on that party's desire to use the facility to provide service or to sell or transfer such facility within a reasonable amount of time. Such an extension of time shall not be unreasonably withheld.

iii. Procedure for notification. Any party discontinuing use of a facility shall notify the City Engineer in writing of such discontinued use within thirty (30) days. The notice shall describe the facilities for which the use is to be discontinued and include a statement as to whether the responsible party intends to leave the facilities in place for potential future use, remove the facilities, or abandon the facilities in place. The responsible party shall remain responsible for the maintenance, repair and condition of discontinued facilities at all times.

iv. Criteria and procedure for removal. Upon providing reasonable advanced written notice to the responsible party, the City Engineer may order the removal of any facility that has been determined to be "no longer in use," if any of the following arise with respect to that facility:

a) It significantly conflicts with the location of existing facilities or facilities that are planned or permitted for installation or City improvements or facilities that are planned in that area;

(Ordinance No. BG2020 - 19)

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

c) It conflicts with an approved development plan in that geographic area that requires all or certain types of facilities to be located in certain locations, areas, or parts of the right-of-way;

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 Subchapter; 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.

v. Facilities located underground. Notwithstanding the foregoing, the City shall not order the removal of any underground facility unless the surface above the facility is currently being, or will be, substantially excavated, or the presence of that facility causes an emergency or threatens public health, safety or welfare. In any event, the removal of such a facility shall be limited to that portion of the facility that actually presents an issue.

vi. Cost of removal. The City shall not normally bear any portion of the cost of the removal of any facility, unless it is part of a City project and the costs of such removal are minimal. Depending on the circumstances, the City Engineer may order that the party responsible for such facility, the party seeking a permit, or both, bear the costs and the responsibility of such removal. However, in the event that the facility is being removed to accommodate the placement of a non-City facility, the cost of such removal shall be the responsibility of the party or parties applying for the

(Ordinance No. BG2020 - 19)

permit, so long as the existing facility was lawfully installed. The Board of Commissioners may agree, upon a recommendation from the City Engineer, that the City will share in the costs of removal or limit the scope of removal based on extenuating circumstances.

vii. In the event the permittee or other responsible party elects to abandon the facility in place and the Board of Commissioners approves such abandonment, the permittee or party shall convey full title and ownership of such abandoned facility to the City in consideration of the abandonment in place and without the need of the City to pay compensation to the permittee. The permittee shall, however, continue to be responsible for all taxes on such facilities or other liabilities associated therewith until the date the same is conveyed to the City.

viii. Should any permittee or other responsible party fail, after notice, to remove a facility upon the order of the City Engineer as specified in this Subsection, the City 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 City shall have no liability for any damage caused by such removal and the permittee or other responsible party shall be liable to the City for all reasonable costs incurred by the City in such removal.

21-4.16 Poles and Attachments.

a. To the extent possible, permittees shall use existing poles and conduit existing at the time of permitting in installing their facilities.

b. Should an existing pole be utilized or should the permittee require electric service on their proposed pole, the permittee must obtain all permits and approval from the owner of the pole prior to the City permit approval. This may include but is not limited to the execution of a pole attachment agreement, approval of all construction drawing and specifications by the applicable agency and the completion of a "power walk" with both the City and the appropriate agency to determine availability of electric service.

c. If colocation cannot be achieved, the permittee will be required to submit the number and kind of poles to be erected, the height of each pole, location of each and the purpose for which the poles are to be used.

d. All poles or wire holding structures are subject to any applicable, duly adopted regulations regarding location, height, type or other pertinent aspects.

e. All transmission and distribution structures, poles, facilities and other lines and equipment installed or erected by permittee 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.

f. The permittee shall work with the City Engineer on the placement of new poles and associated infrastructure so as to minimize visual clutter and interference with the use of private property. Placement should be as near a property line as possible if conditions permit. Additionally the distance from existing utility poles should be considered in the installation so as to reduce unnecessary clutter in the right-of-way. All pole attachments, including equipment and wires, shall be enclosed and meet the requirement of the owner of the utility pole. Other details of the installation, including size of antennas, equipment boxes, inclusion of equipment within the pole base rather than on the outside of the pole and cabling (if included) shall be presented to the City Engineer at the start of the permitting process.

g. The pole should be consistent in color, material and style of existing street light poles in the area where decorative light poles are present (if not wooden poles). Application for new infrastructure shall be in keeping with the character of historic neighborhoods.

h. It will be the responsibility of the permittee to contact and coordinate with the adjacent property owner regarding installation of a new pole should the City deem necessary.

i. No permittee may erect any pole or facility on any right-of-way or other public places of the City or erect or string any wire or wires on any such pole or facility or change the lines, location or height or make an extension of any such lines, poles or facilities already erected or to be erected in the City, for any of such purposes, without first having obtained from the City Engineer a permit to do so.

j. Any pole erected by any permittee must be reasonably straight, of first-class material, neatly shaven and well-painted and shall be so kept at all times.

k. Any pole erected by any permittee is required to be erected independent of any and all shade trees or other trees planted by the City or any property owner. No person shall injure, climb such trees or attach wires thereto or saw or break the limbs thereof.

l. The City Engineer shall, at all times, reserve and have the authority to cause any and all of such poles to be removed or replaced by other poles of a different character or of a different height; to regulate the height above the ground at which such wires shall be strung; to require the removal of any poles or wires not in use as the public good may require; and shall not be liable for any of the cost or damage occasioned by such changes, and it shall reserve the right and power to regulate and control same and the streets, alleys and public ways over which same shall be constructed. The City Engineer may impose other conditions and terms in addition to and not inconsistent with those herein enumerated. The City Engineer shall also have the right and power to supervise and control the location of any of the poles, wires and appliances in such manner as he/she may deem best. Whenever it shall become necessary to change any of the poles for the improvement of any street, alley, sidewalk or other property, public or private, the City Engineer may order any such person to change the poles and if not done upon notice so to do, the City Engineer may have the poles changed at the cost and

(Ordinance No. BG2020 - 19)

expense of any such person. The time in which such change shall be made after receiving notice from the City Engineer shall be specified in such grant or permit.

21-4.17 Safety Precautions.

It shall be the duty of the permittee making any cut or excavation in any city street, alley or sidewalk to provide safety precautions related to their construction. These precautions shall include, but are not limited to: signs, markings, barricades, fencing and other measures.

a. Permittee shall provide barricades or construction fencing sufficient to enclose the work-zone for safety.

b. Construction work-zone shall be barricaded and lighted when the work zone is open during night time for the safety of motorists and pedestrians.

c. All work-zone signage shall comply with the current edition of the Manual on Uniform Traffic Control Devices (MUTCD). Detailed traffic control plans may be required at the discretion of the Public Works Director or designee.

d. It shall be the permittee's responsibility to comply with all laws and regulations including, but not limited to, those from the Occupational Safety and Health Administration (OSHA).

21-4.18 Applicability to All Public Utilities and Agencies of All Governments.

a. All of the provisions of this Subchapter shall apply to all public utilities and to all agencies and instrumentalities of all City, County, State and Federal Governments, since the dangers of blocked streets or improperly repaired cuts or excavations are the same, whether caused by private or public parties.

b. However, no agency or instrumentality of the City of Bowling Green, County, State or Federal government shall be required to pay the permit fee as required hereinabove.

21-4.19 Penalties; Stop Work Orders; Abatement.

(Ordinance No. BG2020 - 19)

a. Any party involved in right-of-way excavation or work without the required permit or involved in work that does not comply with the standards of the City's Public Works Department shall be required to make repairs that meet standards and subject to the following:

i. Enforcement proceedings for this Subchapter shall be initiated by the issuance of a notice of violation or citation by a code official as set out in the procedures in Chapter 2 of this Code. The City may also take immediate action to remedy a violation of this Subchapter, including the issuance of a Stop Work Order.

ii. A Stop Work Order may be issued if the City determines any of the following conditions exist:

- a) An imminent safety concern;
- b) Construction prior to final permit/plan approval;
- c) Construction without permit application or plan submittal; or
- d) Non-compliance with approved permit/plan.

b. Any person violating any portion of this Subchapter shall be subject to civil penalties as set out in Chapter 27 of this Code.

3. The provisions of this Ordinance are hereby declared to be severable, and if any section, phrase or provision shall for any reason be declared invalid, such declaration of invalidity shall not affect the validity of the remainder of this Ordinance.

4. All prior Municipal Orders or Ordinances or parts of any Municipal Order or Ordinance in conflict herewith are hereby repealed.

5. This Ordinance is adopted pursuant to KRS 83A.060 in that it was introduced on July 21, 2020, and given final reading on August 4, 2020, and said Ordinance shall be in full force and effect upon signature, recordation and publication in summary pursuant to KRS Chapter 424.

(Ordinance No. BG2020 - 19)

ADOPTED: August 4, 2020

APPROVED: Brian Wilson
Mayor, Chairman of Board of Commissioners

ATTEST: Ashley Jackson
City Clerk

SPONSORED BY: Jeffery B. Meisel, City Manager