CITY OF DAYTON

Regular Council Meeting

November 1, 2022

Dayton City Council held a Regular Council meeting on Tuesday, November 1, 2022, at 7:00 pm at the Dayton Community Center, 625 Second Avenue.

Roll Call:

Mayor Baker	Present	Member Kelly	Absent
Member Volter	Present	Member Lovins	Absent
Member Neary	Present	Member Beseler	Present
Member Nyman	Present	City Admin. Fossett	Present
City Atty Edmondson	Present		

Mayor Baker opened the meeting with a prayer and the pledge of allegiance.

Mayor's Report:

Mayor Baker stated that we were one week away from election day and encouraged everyone to vote. Motion by Member Neary, seconded by Member Nyman, to approve the minutes from the October 4, 2022, council meeting. Motion carried- so ordered.

Department Heads:

Fire Chief Adkins submitted a copy of his report. He said he had lost two more crew members to other cities and might lose another. He has received two applications and will conduct interviews shortly. The fire department will be checking fire hydrants in the next week.

Public Works Superintendent Rick Lucas stated that grass-cutting is slowing down, and leaf collection is getting started. Anyone who wants to schedule leaf pickup can contact the city or visit the city's website.

Police Sgt. Wilke said Chief Halfhill is out of town for training and will provide a report next month.

Code Enforcement Cassie Patterson submitted her report. Since grass-cutting has slowed down, she is working on vacant registrations, and with colder weather coming, she will start to focus on the exterior of houses with a compliance date in spring.

Second Reading:

CITY OF DAYTON, KENTUCKY
ORDINANCE NO. 2022#24

AN AMENDING SECTIONS 72.29 THROUGH 72.31 OF CHAPTER 72 OF THE DAYTON CODE OF ORDINANCES REGARDING THE ESTABLISHMENT AND OPERATION OF THE PARKING VIOLATION ENFORCEMENT HEARING BOARD, REGULATIONS FOR ENFORCEMENT OF PARKING CITATIONS AND THE TOWING AND IMPOUNDING VEHICLES, AND APPEALS TO THE BOARD FROM THESE ACTIVITIES.

NOW, THEREFORE, THE CITY OF DAYTON, CAMPBELL COUNTY, KENTUCKY, HEREBY ORDAINS AS FOLLOWS:

Sections § 72.29 through 72.31 of the Dayton Code of Ordinances ("Code") are hereby amended as follows:

§ 72.29 TITLE.

This subchapter may be cited as the "Parking Citation Enforcement Ordinance."

§ 72.30 CIVIL ENFORCEMENT.

(A) The city hereby elects to enforce its parking ordinances as civil violations, pursuant to the provisions of KRS 82.605.

(B) The city's parking ordinances shall be enforced pursuant to the procedures set forth in KRS 82.600 through 82.640.

§ 72.31 PARKING VIOLATION HEARING BOARD.

A hearing board is hereby re-established, which shall be called the "City of Dayton Parking Violation Hearing Board." The Board consists of the Chief of Police or his or her designee and the City Administrator or his or her designee. For all purposes under this subchapter, the one of the Board members shall constitute a quorum of the Board. The Board is hereby empowered to conduct hearings and make the decisions provided for in this subchapter and under the Local Government Parking Citation Enforcement Act, KRS 82.600 to 82.640.

§ 72.32 CITATION FOR VIOLATION; CONTENTS.

(A) If any automobile, truck, or other vehicle is found parked, standing, or stopped in violation of the parking regulations of this Chapter, the vehicle may be cited for the appropriate parking violation. The citing officer shall note the vehicle's registration number and any other information concerning the vehicle, which will identify it, and if the driver is not present, shall conspicuously affix to the vehicle a citation as notice of the parking violation.

(B) The form of the citation of the parking violation shall be designated by the Chief of Police, but shall contain in substance the following information:

(1) A statement that the citation represents a determination that a parking violation has been committed by the owner/operator of the vehicle and that the determination shall be final unless contested as provided herein;

(2) A statement that a parking violation may result in impoundment of the vehicle for which the owner may be liable for a fine and towing, handling, and storage charges or fees;

(3) A statement of the specific parking violation for which the citation was issued;

(4) A statement of the monetary penalty established for the parking violation; and

(5) A statement of the options provided in the Local Government Parking Citation Enforcement Act, being KRS 82.600 to 82.640, for responding to the notice and the procedures necessary to exercise these options.

(C) The citation, as notice of the parking violation, represents a determination that a parking violation has been committed, and such determination shall be final unless contested.

(D) The Chief of Police, or his or her designee, shall have the authority to void any erroneously issued parking citation written by the city's Police Department after an administrative review by the Chief, or his or her designee, to identify the error. When the authority under this division is invoked, the Chief of Police shall maintain a record of all parking citations taken under consideration for voidance and those citations that were actually voided.

§ 72.33 PAYMENT OF FINE OR REQUEST FOR HEARING.

(A) Any person who receives a citation for a parking violation shall respond to such citation, as provided herein, within seven days of the date of the notice, by either paying the fine set forth in the notice or requesting a hearing pursuant to these procedures.

(B) If the owner of a vehicle cited for a parking violation has not responded to the notice within seven days as provided in division (A) above, the owner shall be deemed to have waived his or her right to a hearing and the determination that a violation was committed shall be considered final. Any person who fails to request a hearing or pay the fine within the seven days shall be deemed to have refused to pay the fine levied by the citation.

(C) The registered owner of a vehicle at the time the violation occurred shall be liable for all fines, fees, and penalties that he or she has refused to pay.

§ 72.34 CITATIONS; HEARING; APPEAL.

(A) Any person cited for a parking violation under this chapter may contest the determination that a violation occurred by requesting in writing a hearing before the Parking Violation Hearing Board ("Board"). A request for a hearing must be submitted in writing to the Dayton Police Department as specified in paragraph (B) below. The hearing shall be held no later than 14 days from the date of receipt of the written request for hearing, unless prior to the hearing the person requesting the hearing requests an extension of time not to exceed 14 days. No less than seven days prior to the date set for the hearing, the Board shall notify the registered owner of the vehicle of the date, time, and place of the hearing. Any person requesting a hearing who fails to appear at the time and place set for the hearing shall be deemed to have refused to pay the fine levied by the citation.

(B) Written requests to contest the citation must be submitted to the Police Department on a form that is available at either from the Dayton Police Department or on the city's website ("Parking Citation: Impoundment Appeal" form at https://daytonky.com/forms-and-applications/).

(C) At the hearing, after consideration of the evidence, the Board shall determine whether a violation was committed. If the Board determines no violation was committed, the Board shall enter an order dismissing the citation. If the Board determines that a violation was committed, the Board shall uphold the citation and order the owner to pay the citation within seven days. A copy of the order shall be furnished to the owner. Any person ordered to pay the fine who fails to do so within seven days shall be deemed to have refused to pay the fine levied by the citation.

(D) The Board may consider the parking citation and any other written report made under oath by the officer who issued the citation in lieu of the officer's personal appearance at the hearing.

(E) An appeal from the Hearing Board's determination may be made to the Campbell County District Court within seven days after the date of the Board's determination. The appeal shall be initiated by filing a complaint and a copy of the Board's order in the same manner as any civil action brought under the rules of civil procedure. The action shall be tried de novo and the burden of proof shall be upon the city to establish that a violation occurred. If the court finds that a violation occurred, the owner shall be ordered to pay to the city all fines, fees, and penalties occurring as of the date of the judgment. If the court finds that a violation did not occur, the city shall be ordered to dismiss the citation and the plaintiff may be authorized to recover his or her costs.

(F) The judgment of the District Court may be appealed to the county's Circuit Court in accordance with the rules of civil procedure.

§ 72.35 AUTHORITY OF CITY TO IMPOUND OR IMMOBILIZE VEHICLES.

(A) At the time a citation is issued, the city, or its designee, may impound or immobilize a vehicle parked, stopped, or standing upon a street or public way within the city in violation of the parking regulations set forth in this Chapter and/or in any state statute and/or for any other lawful reason.

(B) A vehicle that has accumulated two or more unpaid parking citations that are not under appeal and to which notice has been issued pursuant to KRS 82.615(2) and other applicable laws shall not be parked on any public way within the city.

(C) Nothing in this subchapter shall be construed to limit the right of the city, or its designee, to subsequently tow an immobilized vehicle when the conditions for release of the vehicle have not been satisfied.

(D) The city or its designee, in addition to the fines levied for the parking or traffic offenses, may, by ordinance, impose reasonable towing, handling, and storage charges upon an impounded vehicle.

§ 72.36 CHARGES.

In addition to the penalties levied for the parking violations, the city or its designee, may impose towing, holding, and storage charges upon an impounded vehicle. In the event the condition of the vehicle or circumstances of the tow requires the employment of extraordinary services or equipment, the reasonable charges of the towing operator for such services shall be added to the fee.

§ 72.37 PAYMENT OF PENALTY AND CHARGES OR REQUEST FOR HEARING.

(A) The release of an impounded or immobilized vehicle is conditioned upon the payment of the penalty levied for the parking violations and any towing, holding, and storage charges imposed thereon by the city or its designee, unless the owner or other person entitled to possession of the vehicle challenges the validity of the impoundment or immobilization pursuant to §72.38 of this subchapter.

(B) An impounded or immobilized vehicle may be released to the owner or other person entitled to possession of it only upon proof of ownership or right to possession. The city or its designee, may require reasonable security, bond, or other assurances of indemnification from a person who is not the registered owner of the vehicle prior to releasing the vehicle to such person.

§ 72.38 IMPOUNDMENT; HEARING; APPEAL.

(A) The owner of a motor vehicle that has been impounded or immobilized pursuant to this subchapter or other person entitled to possession of the vehicle may challenge the validity of such impoundment or immobilization and request in writing a hearing before the Parking Violation Hearing Board. The hearing shall be conducted within ten business days from the date of the request, unless the owner or other person entitled to possession waives the limitation or the city shows good cause for such delay. The city or its designee shall retain possession of an impounded vehicle pending the hearing, unless the owner or other person claiming right of possession posts a bond in an amount equal to the fines and fees accrued as of the date of the hearing request, or $75, whichever is less. If the owner or person claiming possession of the impounded vehicle is unable to pay the amount of the bond, the hearing shall be held within 72 hours of the date the request for hearing is received, unless such person requests or agrees to a continuance.

(B) No less than five days prior to the date set for the hearing, the Board shall notify the person requesting the hearing of the date, time, and place of the hearing. In the case of a hearing required to be held within 72 hours of the date of the request as provided in division (A) above, the person requesting the hearing shall be informed at the time of his or her request, or as soon thereafter as is practicable, of the date and time of the hearing.

(C) Any person who refuses or fails to appear at the time and place set for the hearing, unless he or she has good cause for failure to do so, shall be deemed to have conceded to the validity of the impoundment or immobilization on his, her, or the owner's behalf.

(D) At the hearing, after consideration of the evidence, the Board shall determine whether the impoundment or immobilization was valid and reasonable. If the Board determines that the impoundment or immobilization was not justified, it shall enter an order releasing the vehicle. All fines and fees paid or amounts posted as bond because of the impoundment of a vehicle shall be returned and the owner shall not be responsible for any fees owed to a designated towing company. If the Board determines that the impoundment or immobilization was justified, the Board shall uphold the impoundment or immobilization and condition the release of the vehicle upon payment of all fines and fees accruing thereon. If a bond has been posted as security for release of the vehicle, the bond shall be forfeited to the city or its designee. All fines or fees in excess of the amount of the bond posted shall be ordered to be paid by the owner of the vehicle to the city. The Board shall furnish the owner or person appearing on the owner's behalf with a copy of its order.

(E) The Board may consider a parking citation and any other written report made under oath by the issuing citation officer in lieu of the officer's personal appearance at the hearing.

(F) An appeal from the Hearing Board's determination may be made to the Campbell County District Court within seven days after the date of the Board's determination. The appeal shall be initiated by the filing a complaint and a copy of the Board's order in the same manner as any civil action brought under the rules of civil procedure. The action shall be tried de novo and the burden of proof of proof shall be upon the city to establish that a violation occurred. If the court finds that a violation occurred, the owner shall be ordered to pay to the city all fines, fees, and penalties occurring as of the date of the judgment. If the court finds that a violation did not occur, the city shall be ordered to dismiss the citation and the plaintiff shall be authorized to recover his or her costs.

(G) The judgment of the county's District Court may be appealed to the county's Circuit Court in accordance with the rules of civil procedure.

§ 72.39 DISPOSITION OF VEHICLE.

(A) If within ten business days of impoundment a motor vehicle has not been claimed, or a hearing has not been requested, notice shall be mailed by certified mail to the registered owner, if known, and lienholders of record, if any, affording such parties the right within ten days from the

date of notice to claim the vehicle or request a hearing. The notice shall state that, if no hearing is requested, the vehicle shall be deemed abandoned unless the charges thereon are paid within 45 days of receipt of the notice.

(B) After 45 days from the date of notice required by division (A) above, an impounded vehicle shall be deemed abandoned and the vehicle shall escheat to and become the property of the city.

(C) (1) If the vehicle that has escheated to the city pursuant to division (B) above is judged suitable for use, the city may obtain a certificate of registration and ownership from the County Clerk pursuant to KRS 186.020 and either use the vehicle for governmental purposes or sell the vehicle at public auction to the highest bidder.

(2) If the vehicle is not suitable for use, it may be sold for its scrap or junk value.

(D) (1) The city shall possess a lien on a motor vehicle impounded pursuant to the provisions hereof for all fines and penalties and towing, handling, and storage charges and fees imposed thereon.

(2) Such lien shall be superior to and have priority over all other liens thereon.

First Reading: Oct. 4, 2022
Second Reading:

CITY OF DAYTON, KENTUCKY

By: _____
Mayor Ben Baker

ATTEST:

_____
Tiffany Myers, City Clerk

Motion by Member Neary, seconded by Member Beseler, to approve Ordinance 2022#24 as read.

Comments:

Member Neary wants to clarify that this ordinance does not change the ordinance, only the appeal process. City Admin. Fossett said that was correct.

Roll Call:

Member Lovins	Absent	Member Neary	Aye
Member Beseler	Aye	Member Nyman	Aye
Member Volter	Aye	Member Kelly	Absent

Motion carried- so ordered.

Second Reading:

CITY OF DAYTON, KENTUCKY
ORDINANCE NO. 2022#25

AN ORDINANCE AMENDING SECTION 91.99 OF CHAPTER 91 OF THE DAYTON CODE OF ORDINANCES TO AMEND THE CIVIL FEES IMPOSED FOR VIOLATION OF PROVISIONS OF THE CITY OF DAYTON ANIMAL CONTROL ORDINANCE.

WHEREAS, the City of Dayton, Kentucky ("City"), has enacted animal-control ordinances in in Chapter 91 of the Dayton Code of Ordinances;

WHEREAS, the City, along with other cities, has contracted with Campbell County, Kentucky ("County"), to provide animal-control services within the City; and

WHEREAS, the City needs to amend the civil fees it imposes in these ordinances to comply with the terms of an Interlocal Agreement it has entered into with the County to provide these services.

NOW, THEREFORE, THE CITY OF DAYTON, CAMPBELL COUNTY, KENTUCKY, HEREBY ORDAINS AS FOLLOWS:

Section § 91.99 of the Dayton Code of Ordinances ("Code") is hereby amended as follows:

§ 91.99 PENALTY.

(A) Any person, firm, or corporation who allows an animal, which has not been sprayed or neutered, to run at large or otherwise violate Section 91.05 of this Chapter has committed a civil offense with a civil fine of $100 for the first offense and $125 for the second offense and subsequent offenses.

(B) Any person who allows an animal, which has been sprayed or neutered, to run at large or otherwise violate Section 91.05 of this Chapter has committed a civil offense with a civil fine of $85 for the first offense and $100 for the second offense and subsequent offenses.

(C) Any person, firm, or corporation who violates §§ 91.04, 91.06, or 91.07 of this Chapter has committed a civil offense with a civil fine of $50 for the first offense and $100 for the second offense and subsequent offenses.

(D) Any person found in violation of any other section of Chapter 91 for which no other penalty has been specifically provided shall be guilty of a Class B misdemeanor and shall be subject to a fine of not more than $250 or confinement of not more than 90 days or both.

First Reading: Oct. 4, 2022
Second Reading:

CITY OF DAYTON, KENTUCKY

By: _____
Mayor Ben Baker

ATTEST:

_____
Tiffany Myers, City Clerk

Motion by Member Volter, seconded by Member Nyman, to approve Ordinance 2022# 25 as read.

Comments:

Member Neary questioned the penalty section in the ordinance. He wanted to know if this section under the TNR program would affect the animal shelter. They are the ones that spay and neuter the animals and bring them back into the city. City Admin. Fossett stated he would look into this for clarification.

Roll Call:

Member Beseler	Aye	Member Nyman	Aye
Member Volter	Aye	Member Kelly	Absent
Member Neary	Aye	Member Lovins	Absent

Motion carried- so ordered.

First Reading:

CITY OF DAYTON, KENTUCKY
ORDINANCE NO. 2022#26

AN ORDINANCE AMENDING SECTION 150.82 OF THE DAYTON CODE OF ORDINANCES TO CORRECT THE DEFINITION OF "BUSINESS LICENSE TAXES."

WHEREAS, Dayton City Council adopted a Rental License and Safety Inspection Program on Sept. 6, 2022;

WHEREAS, the definition of "Business License Taxes" in the definitions section of this ordinance was inadvertently truncated when the ordinance was passed;

WHEREAS, the Dayton City Council wishes to correct that mistake by adopting this

amendment; and

NOW, THEREFORE, IT IS HEREBY ORDAINED BY THE DAYTON CITY COUNCIL AS FOLLOWS:

Chapter 150 of the City of Dayton Code of Ordinances is hereby amended as follows, with the words in red being added or deleted to this section of the ordinance as shown below:

ARTICLE XV: LAND USES
CHAPTER 150: BUILDING REGULATIONS
SECTION 150.82 DEFINITIONS

§ 150.82 DEFINITIONS.

(A) Meaning of certain terms. Whenever the words "BUILDING," "BUILDING UNIT," "DWELLING," "DWELLING UNIT," "MOBILE HOME," "PREMISES" and "STRUCTURE" are used in this subchapter, they shall be construed as though they are followed by the words "or any part thereof or any premises accessory thereto." Words used in the singular include the plural and the plural the singular.

(B) Undefined words. Words not specifically defined in this subchapter shall have the common definition set forth in a standard dictionary, or the City's Code of Ordinances, the most current version of the International Property Maintenance Code, or the statewide Building Code or Fire Safety Code.

(C) For the purposes of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

"ADMINISTRATIVE SEARCH WARRANT." A written order of a judge or other officer authorized by statute to issue search warrants that commands the inspection of rental dwellings under this subchapter, which shall be obtained pursuant to Section 10.50 of the Dayton Code of Ordinances.

"BUILDING." A fixed construction with walls, foundation, and roof, such as a house, factory, or garage.

"BUSINESS ~~REG~~ LICENSE TAXES." Business license taxes required by §110.02 and §110.03 of the City Code of Ordinances.

"CITY." The City of Dayton, Kentucky

"CITY CODE OF ORDINANCES" or "CODE." The codification of the ordinances adopted by the City of Dayton, Kentucky, and published by American Legal Publishing Corporations, including supplements thereto.

"DILAPIDATED." No longer adequate for the purpose or use for which it was originally intended, or the City has deemed it blighted.

"DWELLING UNIT." Any enclosed space used or intended to be used -- wholly or in part -- for living and sleeping purposes, whether or not cooking and eating facilities are provided, including such space provided to third parties by the owner, including family members and friends, free of charge. Temporary housing, as defined hereinafter, shall not be classified as a "DWELLING UNIT." Industrialized housing and/or modular construction used or intended for use of living and sleeping purposes shall be classified as DWELLING UNIT. DWELLING UNIT shall not include hotels or motels that primarily rent rooms on a daily or weekly basis, but it does include short-term rentals.

"FIRE SAFETY CODE." The current NFPA Code (including NFPA 101, Life Safety Code), or any other code (such as electrical code or fire alarm code) adopted by the City and/or the Bellevue-Dayton Fire Department.

"HABITABLE ROOM." A room or enclosed floor area used or intended to be used for living or sleeping purposes, excluding bathrooms, basement laundries, furnace rooms, utility rooms of less than 50

square feet of floor space, corridors, stairways, closets, storage spaces, unheated areas, and workshops and hobby areas below ground level.

"HOUSEHOLD." One or more individuals living together in a single dwelling unit and sharing common living, sleeping, cooking, and eating facilities.

"HOUSING CODE." The current property maintenance code enforced by the ~~the~~ City, including the International Property Maintenance Code and nuisance ordinances adopted by the City.

"KENTUCKY BUILDING CODE." The statewide Building Code adopted pursuant to KRS 198B.010 *et seq.*, or other versions of the Building Code applicable to the particular structure or building.

"MOBILE HOME." A structure, transportable in one (1) or more sections, which is eight (8) feet or more in width and forty (40) body feet or more in length when in the traveling mode, has three hundred twenty (320) or more square feet when erected on site, is built on a permanent chassis, is designed to be used as a dwelling, with or without a permanent foundation, when connected to the required utilities, includes plumbing, heating, air-conditioning, and electrical systems and may be used as a place of residence, business, profession, or trade by the owner, lessee or their assigns, and may consist of one (1) or more units that can be attached or joined together to comprise an integral unit or condominium structure.

"OCCUPANT." Any individual having possession of a premises or any individual over one year of age, living, sleeping, cooking or eating in or having possession of a dwelling unit or a rooming unit, including family members and others who are living in the premises, whether or not they are paying rent to the owner or operator of the premises.

"OPERATOR." Any person who has ownership, charge, care, control, or management of a building, or part thereof, in which building units are leased.

"OWNER." Any person who alone, jointly, or severally with others, as of January 1 of each calendar year, beginning on January 1, 2022:

a) Has legal title to any premises, building, or dwelling unit, with or without accompanying actual possession thereof, including property for which the owner has granted or has attempted to grant equitable interest to an occupant, whether by land contract or other legal document; or

(b) Shall have charge, care, or control of any premises, building, or dwelling unit, as owner, as an agent of the owner, or as executor, administrator, trustee, or guardian of the estate of the owner. Any such person thus representing the owner shall be bound to comply with the provisions of this subchapter and of rules and regulations adopted pursuant to it to the same extent as if he or she were the owner.

"PERSON." Any individual, firm, corporation, limited liability company, association, partnership, cooperative, trust, or governmental agency.

"PREMISES." A platted lot or part thereof or unplatted lot or parcel of land or plat of land, either occupied with a dwelling or other structure or unoccupied, and includes any such building or part thereof, accessory structure, or other structure thereon.

"SHORT-TERM RENTAL." (a) Any residential dwelling unit or part thereof; (b) Offered or held out to the public or rented on a hosting website, web, or mobile application, or other online platform through which short-term rentals are listed, advertised, solicited, or otherwise held out for rent; and (c) For a duration of occupancy of less than thirty consecutive days, or longer if the short-term rental otherwise meets the definition herein.

"RENTAL DWELLING." Any residential structure or residential or commercial building containing one or more units, which the owner and/or operator either actually rents or leases or intends to rent or lease to the public for residential purposes, excluding those buildings not covered by this subchapter.

"RENTAL INSPECTION LICENSE" or "INSPECTION LICENSE." The rental dwelling license established and required by this subchapter.

"RENTAL DWELLING UNIT." Any residential unit within a rental dwelling that is actually rented, leased, or otherwise made available to the public or is intended to be rented, leased, or otherwise made available to the public for residential purposes, excluding those units not covered by this subchapter. With

regard to mixed-use properties, only those units within the parcel that are rented, leased, or made available to the public for residential purposes shall require a rental dwelling license.

"RENTAL OCCUPATIONAL LICENSE" or "OCCUPATIONAL LICENSE." The occupational license for every person engaged in the business of leasing or renting real property as required by Section 110.03(A)(2) of the City Code or Ordinances.

"RENTAL UNIT INSPECTOR" or "INSPECTOR." Any authorized City employee or contractor, including, but not limited to, a License Inspector, Code Enforcement Officer, City Administrator, Assistant City Administrator, inspectors with the Campbell County Planning, Zoning, and Building Department, and inspectors with the Bellevue-Dayton Fire Department.

"RESIDENT." Any adult or child residing within the City.

"SAFETY." The condition of being reasonably free from danger and hazards that may cause accidents or disease.

"SUPPLIED." Paid for, furnished by, provided by, or under the control of the owner, operator, or its agent.

"TEMPORARY HOUSING." Any tent, trailer, transient mobile home, or any other structure used for human shelter that is designed to be transportable and that is not attached to the ground, to another structure, or to any utility system and remains on the same premises for more than 30 consecutive days.

"UNIT." A room or group of rooms located within a building forming a single habitable unit.

First Reading: November 1, 2022
Second Reading:

CITY OF DAYTON, KENTUCKY

By: _____
Mayor Ben Baker

ATTEST:

_____
Tiffany Myers, City Clerk

City Admin. Fossett stated that this ordinance is cleaning up the previous ordinance, so terms are clearly defined.

First Reading:

CITY OF DAYTON, KENTUCKY
ORDINANCE NO. 2022#27

AN ORDINANCE CREATING A NEW SUBCHAPTER OF CHAPTER 96 OF THE DAYTON CODE OF ORDINANCES, TITLED THE "PUBLIC RIGHT-OF-WAY ORDINANCE,"

TO REGULATE USE OF PUBLIC RIGHT-OF-WAYS IN THE CITY OF DAYTON, KENTUCKY.

NOW, THEREFORE, THE CITY OF DAYTON, CAMPBELL COUNTY, KENTUCKY, HEREBY ORDAINS AS FOLLOWS:

New Sections § 96.50 through § 96.77 of the Dayton Code of Ordinances ("Code"), titled the "Public Right-of-Way Ordinance," is hereby enacted as follows:

§ 96.50 TITLE.

This ordinance shall be known as the "Public Right-of-Way Ordinance" ("Ordinance").

§ 96.51 PURPOSE; NOT IN LIEU OF FRANCHISE; NOT INTENDED TO IMPAIR EXISTING CONTRACTS; RESERVATION OF REGULATORY POWERS.

(a) *Purpose.* The purpose and intent of this Ordinance is to establish and promote a policy and regulations specifically pertaining to the right-of-way that:

(1) Govern the placement and maintenance of certain facilities that are used to provide utility or similar services;

(2) Promote their conservation;

(3) Provide for the granting and management of reasonable access thereto;

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

(5) Provide for the payment of fair and reasonable fees to the City to ensure that this Ordinance is properly administered and enforced;

(6) Minimize street cuts, damages to persons or property, and hardship to the general public;

(7) Promote cooperation among parties using the right-of-way;

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

(b) *Ordinance not in lieu of franchise.* Compliance with the requirements of this Ordinance shall not excuse any person from complying with all other requirements of law, including holding a valid franchise, interlocal agreement, contract, business license, or easement of the City. Any franchise, contract, or easement may include additional regulations, obligations, fees, and costs. In the event of a conflict between this Ordinance and any existing franchise or interlocal agreement, the provisions of the franchise or interlocal agreement shall control.

(c) *Ordinance not intended to impair existing contracts.* Nothing in this Ordinance is intended to impair the legal right or obligation of any contract, franchise, or easement previously granted by the City.

(d) *Reservation of regulatory and police powers.* The City does not diminish or to any extent lose, waive, impair, or lessen the lawful powers and rights which it now or may have hereafter to regulate the use of the right-of-way or charge reasonable compensation for such use.

(e) *Exemption of City-owned facilities.* Facilities installed by the City that are not used to provide competitive utility services to customers in the City of Dayton, provided that such facilities are

not used at any future time for the provision of competitive utility services, including, but not limited to, facilities owned by the City, are not required to be registered pursuant to this Ordinance and are expressly not required to comply with the provisions of this Ordinance.

§ 96.52 DEFINITIONS.

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

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

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

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

(1) Radio transceivers, antennas, coaxial, fiber-optic, or other cabling, power supply (including backup battery), and comparable equipment, regardless of technological configuration; and

(2) All other equipment associated with the foregoing. The term does not include the Pole, Tower, or Support Structure to which the equipment is attached.

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

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

Emergency means a situation when placement or maintenance of Facilities is needed to be undertaken immediately because of a danger to human life or health or of significant damage to property, including, but not limited to, unanticipated leaks interruptions or reductions in existing services, or other situations defined as being 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* means to dig into or in any way remove or physically cut, disturb, or penetrate any part of a Right-of-way.

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

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

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

Party or Person means any individual, partnership, association, corporation, joint venture, legal entity or organization of any kind, or a successor or assign of any of the foregoing.

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

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

Public Utility or Utility means a Party that is defined in KRS 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.

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

Reseller service provider means Person who provides services within City of Dayton 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 or walking lane or path, public sidewalk, or easement held by the City for the purpose of public travel and shall include Right-of-way as shall be now held or hereafter held by the City. A Right-of-way does not include the airwaves above a Right-of-way with regard to cellular or other non-wire telecommunications or broadcast service.

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

(1) The Facilities are mounted on Poles, Towers, or Support Structures fifty-five (55) feet or less in height, including their antennas;

(2) Each antenna associated with the deployment, excluding associated antenna equipment, is no more than three (3) cubic feet in volume;

(3) All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any associated equipment on the structure, including collations, is no more than fifteen (15) cubic feet in volume, cumulatively. The following types of associated, ancillary equipment are not included in the calculation of equipment volume: electric meter, telecommunications demarcation box, grounding equipment, power transfer switch, cut-off switch, and vertical cable runs for connection of power and other services;

(4) The Facilities do not require antenna structure registration under federal law;

(5) The Facilities do not result in human exposure to radiofrequency radiation in excess of the applicable safety standards under federal law; and

(6) Small Wireless Facilities do not include Poles, Towers, or Support Structures.

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

Surface cut permit means a permit issued by the City Administrator or his or her designee to Excavate, dig, or cut into and through a paved street surface within the Right-of-way or to bore, dig or tunnel under such a paved street surface.

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

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

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

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

§ 96.53 INCORPORATED DOCUMENTS.

A number of documents are incorporated herein by reference, including, but not limited to, certain other written and published ordinances, resolutions, regulations, requirements, and standards. All such references are to have the same effect as if the documents were reproduced verbatim herein, and all such documents automatically include any and all subsequent amendments thereto. This provision shall not be interpreted to require that work performed prior to the adoption or amendment of such a document be subject to any newly created standard.

§ 96.54 RULES OF CONSTRUCTION.

(a) *Shall or shall* is mandatory, not merely directive.

(b) *Applicable law*. The law of the Commonwealth of Kentucky, and the United States of America, if applicable, governs any construction, enforcement, and performance of this Ordinance.

(c) *Severability.* If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held invalid or unconstitutional by any court or administrative agency of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof.

§ 96.55 ADMINISTRATION, ENFORCEMENT, AND FINES.

(a) The City Administrator shall be the City official responsible for the administration of this Ordinance and he or she may delegate any or all of the duties hereunder.

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

(c) If, after a Party is provided the opportunity to appear and present evidence before the City Administrator, the City Administrator finds that the Party has violated any of the provisions of this Ordinance, the following fines shall be recoverable:

1) For failure to pay a permit fee when due pursuant to this Ordinance, the Party shall pay to the City a civil fine two hundred dollars ($200.00) per day or part thereof that the violation continues.

2) For failure to comply any other provision of this Ordinance, the Party shall pay a civil fine of one hundred dollars ($100.00) per day or part thereof that the violation continues.

(d) A Party shall not be excused from complying with any of the terms and conditions of this Ordinance by any failure of the City, upon any one or more occasions, to insist upon the Party's performance or to seek the Party's compliance with any one or more of such terms or conditions. Payment of fines shall not excuse non-performance under this Ordinance. The City's right to seek and collect fines as set forth in this section is in addition to all legal remedies that the City may have, including, but not limited to, any other rights the City may have to terminate and cancel any permits issued pursuant to this Ordinance and terminating any franchise granted to the Party by the City.

§ 96.56 GENERAL CONDITIONS RELATED TO FACILITIES LOCATED IN THE RIGHT-OF-WAY.

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

(b) *Construction procedures and placement of Facilities; obligation to minimize interference with the Right-of-way:*

(1) All activities in the Right-of-way that are subject to this Ordinance shall be performed in compliance with all applicable laws, ordinances, and city, state, and federal rules and regulations. Each Party subject to this Ordinance must obtain all other necessary franchises, permits, licenses, and authority and pay all fees required by this Ordinance or other applicable rule, law, or regulation.

(2) The City may require that Facilities be installed at a particular time, at a specific place or location, or in a particular manner as a condition of access to a particular Right-of-way; the City may deny access if a Party is not willing to comply with the City's reasonable requirements; and may, unless prohibited by law, remove or require removal of any Facility that is not installed in compliance with the requirements of this Ordinance and charge that Party for all costs associated with its removal. The criteria to be utilized in making determinations regarding installation, relocation, or removal of Facilities are contained in Section 96.67. Regardless of any other criteria, in the event the placement or location of a Facility in a particular area of the Right-of-way would constitute a public-safety concern, the City Administrator may deny the placement of that Facility in that area or order its relocation or removal.

(3) To minimize interference with the use of the Right-of-way by others, each Party subject to this Ordinance will make reasonable efforts to minimize the number of surface cuts made, will make reasonable efforts to coordinate such surface cuts with the City's paving schedule, and, if appropriate, enter into joint trenching and other arrangements with other Parties.

(4) Any Right-of-way or public property that is disturbed or damaged during the construction, Excavation, installation, operation, maintenance, or repair of a Facility shall be repaired within ninety (90) calendar days of the completion of those activities that caused the disturbance or damage by the Party who disturbed or damaged the Right-of-way or public property. This time may be extended by the City Administrator upon a Party demonstrating reasonable cause for the extension. A Party's failure to take reasonable steps to complete all restoration work due under a Surface cut permit within the time period stated above will result in the cost of the permit fee required pursuant to Section 96.71 being re-assessed as

an additional fee each time there is a failure to meet the time limit. Any additional fee(s) shall be assessed at the time of inspection or re-inspection and payable to the City in addition to the amount of the original fee(s) provided for in Section 96.71(b) and 22(c) of this Ordinance.

(5) Parties subject to this Ordinance shall make every reasonable effort to stack or bundle conduit where feasible so as to occupy as little space as possible in the Right-of-way in a manner that is consistent with state law, or in the absence of state law, the current edition of the National Electrical Safety Code.

(6) The minimum clearance of wires and cables above the Right-of-way, and also the placement of underground Facilities shall conform to the standards established by state law, or in the absence of state law, the current edition of the National Electrical Safety Code.

(c) *Duty to maintain all property in Right-of-way.* All Parties subject to this Ordinance must maintain all of their Facilities located in the Right-of-way in a manner that promotes the public safety. By way of example, but not limitation, all Facilities, including, but not limited to, Poles, Towers, Support Structures, and manholes, must be maintained in a safe condition at all times. In the event any Facility in the Right-of-way is endangering the public safety, the Party responsible for such Facility shall take steps to rectify the situation immediately upon notification and in accordance with Section 96.63.

(d) *Street trees.* The removal or trimming of existing trees in the Right-of-way shall comply with the City's ordinances, including those addressing street trees and the protection thereof, or the subdivision regulations concerning street trees, as applicable.

(e) *Standards.* All Parties subject to this Ordinance shall at all times use ordinary care and shall install and maintain in use commonly accepted methods and devices and utilize due diligence in performing any installation, construction, maintenance, or other work in the Right-of-way.

(f) *Relocation or removal.* Unless prohibited by law, pursuant to Section 96.67 and consistent with the procedures and criteria contained therein, all Parties subject to this Ordinance shall, upon the provision of reasonable written notice of, and at the direction of the City Administrator, promptly relocate or remove Facilities, or rearrange aerial Facilities, if required by a Tariff, state or federal law, a franchise agreement with the City, or the City Administrator in exercising his/her authority under Section 96.67.

(g) *Other requirements specific to Registrants.* In addition to the other requirements set forth herein, each Registrant shall use its best efforts to:

(1) Cooperate with other Registrants, Parties, and the City for the best, most efficient, most aesthetic, and least obtrusive use of the Right-of-way, consistent with safety, and to minimize traffic and other disruptions, including surface cuts;

(2) Participate in such joint planning, construction, and advance notification of Right-of-way work, including coordination and consolidation of surface cut work, with other Registrants, Parties, and the City;

(3) Cooperate with the City in any emergencies involving the Right-of-way as further provided in Section 96.63, including maintaining a twenty-four (24) hour Emergency contact;

(4) Designate a single point of contact for all purposes hereunder, as well as to comply with such other contact and notice protocols as required by this Ordinance or as promulgated by the City Administrator pursuant to this Ordinance;

(5) Prior to the start of any work in the Right-of-way, identify the name, address, and point of contact with any third-party contractors who will be working on Facilities in the Right-of-way on behalf of the Registrant, and provide evidence that these contractors have obtained occupational licenses from the City before they start work in the City.

(6) Require that any Party performing any work or service in the Right-of-way on behalf of the Registrant comply with all applicable provisions of this Ordinance as well any other additional local regulations pertaining to the performance of such work. Registrant shall be responsible and liable hereunder to the City for any damage to the Right-of-way caused by the actions of any such subcontractor or others as if the Registrant had performed or failed to perform any such obligation;

(7) 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

(8) Take reasonable steps to provide advance notice to all Persons who reside on property where any work or service in the Right-of-way is to be performed and attempt to notify such Persons prior to entering private property.

§ 96.57 EXISTING FACILITIES.

Facilities located in the Rights-of-way prior to the effective date of this Ordinance may remain in the Right-of-way and shall not be considered a violation of this Ordinance provided the Party responsible for such Facilities under this Ordinance complies with the applicable provisions of this Ordinance. Parties who are governmental entities or with an existing franchise agreement or interlocal agreement with the City shall be automatically deemed to have complied with all registration requirements hereunder for Facilities installed before the effective date of this Ordinance. A Party shall be deemed a "Registrant" for the duration of its franchise authorization or interlocal agreement and/or any renewal thereof.

§ 96.58 REQUIREMENT TO REGISTER AND PAY FEES; REGISTRATION REQUIRED; EFFECT OF REGISTRATION; EXCEPTIONS.

(a) *Requirement to register and pay fees.* Unless otherwise excepted by this Ordinance, it shall be unlawful for any Party to install, operate, construct, or maintain any Facilities within the Right-of-way unless such Facilities are registered with the City by filing the registration statement required herein and all applicable fees (including franchise fees) are paid to the City. Any Person who installs, operates, constructs, or maintains any Facilities within the Right-of-way before registering such Facilities or obtaining the necessary permits, certificates, letters, or other documentation required pursuant to this Ordinance shall not only be required to pay the initial Installation permit fee, Surface cut permit fee or Pole, Tower or Support Structure permit required pursuant to Section 96.71, but shall also be subject to a reassessment of the Installation permit fee or Surface cut permit fee upon discovery that such work has commenced.

(b) *Registration.* Unless otherwise excepted by this Ordinance, any Party who owns any Facilities within the Right-of-way or who seeks to occupy the Right-of-way to install, construct, or maintain any Facilities within the Right-of-way shall file a registration statement as described herein.

(c) *Exceptions for Reseller service providers and Lessees.* A Reseller service provider or a Lessee shall not be required to register those Facilities it utilizes those Facilities solely for the purpose of reselling, or uses those Facilities as a Lessee.

(d) *Effect of registration.* Registration does not convey legal or equitable title to the Right-of-way, nor does it place a Registrant in a position of priority with respect to other Registrants. Registration

does not excuse a Party from having to obtain a franchise, lease, or other agreement, if otherwise required, or from obtaining any required or necessary agreement with the City or other Party with respect to the placement of Facilities on the City's or another Party's Facilities.

(e) *Exceptions.* The following types of Facilities are not required to be registered pursuant to this Ordinance and the Party responsible for such Facilities is not otherwise required to comply with the provisions of this Ordinance expressly pertaining to Registrants. However, the Party responsible for such Facilities is required to comply with all remaining provisions of this Ordinance that are not expressly limited to Registrants, unless otherwise exempted, and shall comply with any other city ordinances addressing these Facilities.

(1) Newspaper stands;

(2) Signage;

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

(4) Facilities owned by the City of Dayton.

§ 96.59 REGISTRATION STATEMENT.

The registration statement required by Section 96.58(b) shall be filed with the City Administrator and shall be in a form to be promulgated by the City, which shall include the following information:

(1) The identity and legal status of the Registrant, including any affiliates who own or operate any Facilities in the Right-of-way and the name, title, address, and telephone number of the individual responsible for the accuracy of the registration statement.

(2) The Registrant's address, telephone number, e-mail address, as well as a local point of contact who will be available to be contacted in the event of an Emergency.

(3) A general description of all services that the Registrant currently provides or offers to provide (i.e., water, sewer, gas, electric, telephony, internet, cable, video, or other Utility services) through the utilization of its Facilities.

(4) A statement of the authority pursuant to which the Registrant occupies the Right-of-way.

(5) A statement of the amount, if any, of any fee to which the Registrant is subject pursuant to any franchise agreement, lease, or other agreement between the Registrant and the City, and/or state law.

(6) Proof that the Registrant is insured in the form of a copy of a certificate of insurance that complies with the insurance requirements of Section 96.64 or its franchise agreement or interlocal agreement.

(7) If the Registrant is a Utility, the number of the Registrant's certificate of authorization or license to provide Utility service issued by the Kentucky Public Service Commission, or other state or federal authority, if any.

(8) *Notice of changes.* The Registrant shall notify the City Administrator within thirty (30) days of any change in information contained in the registration statement.

§ 96.60 REJECTION OR CANCELLATION OF REGISTRATION.

(a) Within ten (10) working days of the filing of the registration statement or the discovery of the inaccuracy of the registration statement by the City, the City Administrator shall provide written

notice to any Party who (1) does not possess proper authorization to occupy the Right-of-way with Facilities, (2) fails to pay the appropriate registration fee, or (3) fails to accurately complete the registration statement. Such written notice shall specify the deficiency and shall notify the Party what corrective action must be taken. If the Party fails to correct the deficiency within ten (10) days, the City Administrator shall reject or cancel the registration unless it can be shown by the Party that significant steps have been taken to correct the deficiency, upon which showing the City Administrator may provide an additional reasonable extension of time, or provide approval of the registration contingent upon the Party's ability to correct the deficiency to the satisfaction of the City Administrator.

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

§ 96.61 RECONSIDERATION OF REJECTION OR CANCELLATION.

(a) If the City Administrator rejects or cancels a registration statement pursuant to Section 96.60, the Registrant may file with the City Administrator within ten (10) days of receipt of the notice of rejection or cancellation a written request for reconsideration, which must include the basis for the Registrant's position.

(b) The City Administrator may hear any relevant evidence in deciding the reconsideration and will notify the Registrant in the event further information is required. The City Administrator shall render a final decision in writing within ten (10) days of receipt of the Registrant's written request for reconsideration or the receipt of any further evidence, whichever is later, and will provide the Registrant the basis for his/her decision.

§ 96.62 TERM OF REGISTRATION.

A registration made pursuant to this Ordinance shall be effective for a period of one (1) year beginning on January 1 of each year or for so long as the Registrant holds a valid franchise agreement or interlocal agreement with the City, whichever is longer. By no later than January 1 of each year, each Registrant not holding a valid franchise agreement or a valid interlocal agreement with the City shall file with the City Administrator a new registration statement or a renewal of such Registrant's registration on such form as shall be required by the City Administrator.

§ 96.63 EMERGENCIES; POWER TO ORDER REPAIRS.

(a) A Registrant shall notify the City Administrator by no later than two (2) days, via e-mail, of any event regarding its Facilities already located within the Right-of-way that it considers to be an Emergency. The Registrant may proceed to take whatever actions are necessary to respond to an Emergency. Within five (5) business days of the discovery of the Emergency, the Registrant shall have applied for any necessary permit and provided the City Administrator with a written notification of the Emergency, which notice shall include, at a minimum the time, date, location and extent of any Excavation or other work performed. If the City Administrator becomes aware of an Emergency regarding a Registrant's Facilities, the City Administrator will attempt to contact that Registrant immediately.

(b) If the City Administrator determines that the Right-of-way associated with a surface cut has degraded or caved-in more than one-half (½) inches below grade, and within two (2) years after any surface cut, it shall notify the Party or Parties responsible for making the surface cut of this determination and:

(1) In the case of a clear and immediate danger or hazard to vehicular or pedestrian traffic, the City shall order the Party or Parties responsible to take immediate precautionary measures to direct vehicular or pedestrian traffic around and away from the Degradation or cave-in. In addition, the City shall order the Party or Parties responsible to make all necessary corrections and repairs to cure the immediate danger or hazard within five (5) days and perform any additional work consistent with the issuance of any necessary permit.

(2) In all other cases of Degradation or cave-in the City shall order the Party or Parties responsible to take immediate precautionary measures to direct vehicular or pedestrian traffic around and away from the Degradation or cave-in and shall order the Party or Parties responsible to make all necessary corrections and repairs within thirty (30) days.

(3) In the event the City Administrator orders corrections or repairs and the Party responsible fails to respond to reasonable deadlines set forth in this order, the City Administrator shall take action to make the necessary corrections and repairs and shall submit a statement for the costs incurred by the City in making such corrections and repairs to the responsible Party, which statement shall include an additional administrative fee not to exceed five hundred dollars ($500.00). In that event, and if the statement of costs and fees is not paid by the responsible Party within forty-five (45) days, the City Administrator shall suspend the issuance of all future permits to the responsible Party until such time as the costs are paid.

(4) This section shall not be interpreted to preclude the City from taking any and all reasonable protective measures with respect to the Right-of-way and the health and safety of the general public, including but not limited to blocking the general public's access to the area, temporarily repairing the Right-of-way, or removing any Facility that constitutes an immediate health or safety concern. The City shall not undertake to repair or remove a Facility unless all other reasonable methods of response to the Emergency have been exercised.

§ 96.64 INSURANCE.

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

(1) Commercial General Liability Insurance with:

A. Limits of not less than $3,000,000.

B. Products-Completed Operations coverage.

C. Personal and Advertising Injury coverage.

D. Explosion, collapse & underground coverage

(a) In addition, such insurance shall name the following as additional insureds on the policy: "Dayton, its elected and appointed officials, employees, and, to the extent they have an insurable interest, its agents, boards, consultants, assigns, volunteers and successors in interest."

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

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

(2) Comprehensive Automobile Liability Insurance providing limits of not less than $3,000,000.

(3) Workers' Compensation Insurance as required by the Kentucky Revised Statutes.

(4) The Registrant shall abide by all local, state, and federal insurance regulations.

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

(6) Registrant shall furnish to the City Certificates of Insurance reflecting the above coverages, and Registrant agrees to provide the City with the following:

(a) Signed renewal Certificates for expiring policies; and

(b) New Certificates of Insurance if policies or carriers change, showing compliance with the above Insurance requirements.

§ 96.65 INDEMNIFICATION; HOLD HARMLESS. Unless otherwise prohibited by law or otherwise provided in a valid franchise agreement or interlocal agreement with the City:

(a) Each Registrant shall defend, indemnify, and hold harmless the City, its officials, boards, members, agents, and employees against any and all claims, suits, causes of action, proceedings, judgments for damages or equitable relief, and costs and expenses, including reasonable attorney's fees and court costs, 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 entered against the City, either independently or jointly with the Registrant, the Registrant shall pay such judgment and all costs and hold the City harmless thereon.

(b) The City shall notify the Registrant in writing within a reasonable time of receiving notice of any issue it determines may require indemnification and the Registrant shall defend the City at the cost of the Registrant.

§ 96.66 JOINT PLANNING AND CONSTRUCTION; COORDINATION OF EXCAVATION.

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

(b) The City Administrator shall keep all master plans confidential in accordance with the provisions of the Kentucky Open Records Act, KRS §§ 61.870, *et seq.*, and shall establish procedures to ensure that said master plans are utilized and inspected only for the purposes intended by this Ordinance.

(c) Prior to applying for a surface-cut permit, a Party shall contact the City Administrator and coordinate, to the extent practicable, with each Registrant to minimize damage to and avoid undue disruption and interference with the public use of the Right-of-way.

§ 96.67 INSTALLATION, RELOCATION, OR REMOVAL OF FACILITIES.

(a) *Provisions apply unless direct conflict exists.* The provisions of this section shall apply unless they directly conflict with a Tariff, state or federal law, or the provisions of the applicant's franchise agreement or interlocal agreement with the City.

(b) *General application.* Unless otherwise prohibited by law, upon the written notice of and at the direction of the City Administrator, a Registrant shall relocate or remove Facilities, or rearrange aerial Facilities, if required by a Tariff, state or federal law, a franchise agreement with the City, or the City Administrator in exercising his/her authority under this section.

(c) *Coordination.* Registrants are encouraged to coordinate the installation, relocation, or removal of their Facilities with each other to avoid issues with respect to the location of Facilities within the Right-of-way.

(d) *Appeal.* Any Party aggrieved by a determination of the City Administrator with respect to the installation, relocation, or removal of a Facility may appeal such decision pursuant to Section 96.75.

(e) *Installation.*

(1) *Definition.* For purposes of this section, the term "install," "installed", or "installation" shall mean placement of new Facilities within the Right-of-way, including the replacement of existing Facilities and the installation and collocation of Small Wireless Facilities. An installation requires the issuance of an Installation permit or surface-cut permit.

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

(3) *Criteria.* A decision by the City to deny an Installation permit or surface-cut permit application must be based on at least one (1) of the following criteria:

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

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

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

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

e. It is an above-ground Facility other than a fire hydrant or other City-owned Facility, which because of its size presents significant public-safety concerns or violates guidelines or procedures pertaining to aesthetics found in Section 96.68 or as otherwise duly authorized by Council or the City Administrator;

f. It fails to take reasonable measures to disguise or cover the Facility as required by the City pursuant to guidelines or procedures pertaining to aesthetics found in Section 96.68 or as otherwise duly authorized by Council or the City Administrator;

g. It conflicts with a requirement contained in the applicant's franchise agreement or interlocal agreement;

h. It is located in a type of Right-of-way, such as a bicycle lane or path, in which the City has determined that Facilities are not to be installed;

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

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

(4) *Reservation of rights.* Notwithstanding any other provision in this Ordinance, the City specifically reserves the right to order the removal or relocation of any Facility installed after the effective date of this Ordinance, at no cost to the City, for which an Installation permit or surface-cut permit was not obtained.

(5) *Preclusion on cutting newly paved surfaces.* If any street is about to be resurfaced by the City, on advance written notice from the City Administrator pursuant to Section 96.67(c), the Registrant shall make any extensions, changes, or installations of or to its Facilities ahead of such activity. Registrant shall notify City Administrator by July 15 of its desire to perform such extensions, changes, or installations, and may be allowed up to ninety (90) additional days to complete the work. If any street is about to be constructed, reconstructed, widened, altered, or paved by the City, upon receipt of final plans from the City Administrator, the Registrant shall make any extensions, changes, or installations of or to its Facilities ahead of such activity. Depending on the amount of such extensions, changes, or installations to be performed, the Registrant may be allowed up to one hundred twenty (120) days to complete the work. If the Registrant fails to do such extensions, changes, or installations, it shall be precluded for a period of one (1) year from disturbing such paving without the express permission of the City Administrator. The City Administrator shall only grant such permission upon a sufficient showing by the Registrant that undue hardship would be caused if the Registrant were not allowed to disturb the pavement and that it shall satisfactorily comply with all other relevant provisions of this Ordinance, including the requirements contained in Section 96.73(a) pertaining to resurfacing.

(f) *Relocations.* Unless otherwise prohibited by law, the City shall have the ability to order the relocation of any Facility located within the Right-of-way. The City shall not normally direct the exact location where that the Facility is to be relocated, but instead shall work with the Registrant or permittee as part of the permitting process. There shall be no fee associated with a permit required as a result of a relocation ordered by the City.

(1) *Public projects.* Whenever the City decides to 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, sanitary sewers and street lights,

it shall be the duty of the Registrant, when so ordered by the City, to change and relocate its Facilities in the Right-of-way at no cost to the City so as to conform to the established grade or line of such Right-of-way so as not to interfere with such public improvements. However, notwithstanding the above, if as part of said public improvement the City orders that Facilities previously and lawfully located above-ground to be relocated underground, the City shall bear the cost for the difference in cost between an aerial and underground Facility of the same type, unless an agreement to the contrary is otherwise entered into by the appropriate Parties.

(2) *Relocation for public safety reasons.* If the basis for the City ordering the relocation of a Facility is a public-safety concern, the Registrant shall relocate the Facility at no cost to the City.

(3) *Relocations to assist in the placement of other Facilities.* If the basis for the City ordering the relocation of a Facility is to assist in the installation of Facilities by another Registrant or permittee, the Party seeking to install the Facilities shall bear the costs of said relocation, unless an agreement is otherwise reached.

(4) *Relocations where the cost is borne by the City.* Notwithstanding any language in this Ordinance to the contrary, unless an agreement to the contrary is otherwise entered into by the appropriate Parties, the cost of the following types of relocations shall be borne by the City:

a. If the reason the City is ordering the relocation is because it has adopted a plan or policy requiring that Facilities be placed underground in that location, if, at the time the Facility was installed, such a plan was not in place;

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

c. If the City has already ordered that the Facility be relocated to comply with a public-improvement project, the Registrant or Party has substantially complied with such order, and the City then orders the Registrant or Party to relocate that Facility to a different area as part of the same project; or

d. If the City orders the relocation of a Facility to accommodate a public-improvement project and the construction of such project is subsequently terminated by the Council.

(g) *Removal.*

(1) If the City requires a Facility that is no longer being used to provide service, as defined below, to be taken out of the Right-of-way, such removal shall be pursuant to the requirements of this subsection. However, abandoned sewer and water Facilities shall not be required to be removed, but shall be required to be filled and capped.

(2) *Definition.* A Facility shall be considered to be "no longer in use" if such Facility has not been used to provide service or support the provision of service for a period of one (1) year, or the Registrant or the Party responsible for the Facility has notified the City Administrator that it no longer intends to use the Facility. If the City determines that a Facility is "no longer in use" based on the fact that it has not been used for a period of more than one (1) year, the responsible Party may petition the City Administrator for a reasonable extension of time based on that Party's desire to use the Facility to provide service or to sell or transfer such Facility within a reasonable amount of time. Such an extension of time shall not be unreasonably withheld.

(3) *Procedure for notification.* Any Party discontinuing use of a Facility shall notify the City Administrator in writing of such discontinued use within thirty (30) days. This 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 after its discontinuance.

(4) *Criteria and procedure for removal.* Upon providing reasonable advanced written notice to the Registrant or other responsible Party, the City Administrator may order the removal of any Facility that has been determined to be "no longer in use", if any of the following arise with respect to that Facility:

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

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

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

d. It conflicts with a requirement contained in that Party's franchise agreement or interlocal agreement;

e. The current location of the Facility threatens public health, safety, or welfare or otherwise constitutes a violation of the provisions of this Ordinance; or

f. It is an above-ground Facility that has been determined to be "no longer in use" for a period of more than ninety (90) days.

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

(6) *Cost of removal.* The City shall not bear any portion of the cost of the removal of any Facility or filling and capping water or sewer Facilities, unless it is part of a City project, and the costs of such removal (or filling and capping) are minimal. Depending on the circumstances, the City Administrator may order that the Party responsible for such Facility, the Party seeking a permit, or both, bear the costs and the responsibility of such removal (or filling and capping). However, in the event that the Facility is being removed to accommodate the placement of a non-City Facility, the cost of such removal shall be the responsibility of the Party or Parties applying for the permit, so long as the existing Facility was lawfully installed.

(7) In the event the Registrant or other responsible Party elects to abandon the Facility in place and the Council approves such abandonment, the Registrant or Party shall convey full title and ownership of such abandoned Facility to the City in consideration of the abandonment

in place and without the need of the City to pay compensation to the Registrant, except as otherwise provided by applicable law. The Registrant shall, however, continue to be responsible for all taxes on such Facilities or other liabilities associated therewith, until the date the same is conveyed to the City.

(8) Should any Registrant or other responsible Party fail, after notice, to remove a Facility (or in in the case of water or sewer Facilities, fill and cap abandoned Facilities) upon the order of the City Administrator as specified in this section, the City may, at its option and in addition to the imposition of any other remedies hereunder or in a franchise agreement or interlocal agreement with that Party, undertake or cause to be undertaken, the removal of the Facility. The City shall have no liability for any damage caused by such removal and the Registrant or other responsible Party shall be liable to the City for all reasonable costs incurred by the City in such removal.

§ 96.68 AESTHETIC STANDARDS.

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

(1) All Facilities shall be located and designed so as to minimize visual impact on surrounding properties and from public Right-of-way.

(2) All new or replacement Poles, Towers, or Support Structures placed in the Right-of-way shall be the same color, shape, material, and general height as those existing Poles or Towers adjacent to the location of the new or replacement Pole, Tower, or Support Structure.

(3) All coaxial, fiber-optic, or other cabling and wires shall be contained inside any new or replacement Tower, Pole, or other Support Structure to the extent technically and commercially feasible. On existing Poles or Support Structures, or new wooden Poles, where it is impossible or infeasible to place wiring inside the Pole or Support Structure, all coaxial, fiber-optic, or other cabling and wires shall be flush-mounted and covered with a metal, plastic, or similar material, which, to the extent feasible, shall match the color of the Pole or Support Structure. All coaxial, fiber-optic, or other cabling and wires shall be contained inside any new Tower or Pole placed in the Right-of-way to the extent technically and commercially feasible.

(4) No Tower shall be placed in the Right-of-way within two hundred fifty (250) feet on the same street of an existing Tower. Replacing an existing Tower with a Tower, or a lighted Pole with another lighted Pole housing Wireless Facilities, in the same location shall not violate this provision.

(5) All new Towers and Poles should be located on the same side of the street as existing Towers, Poles, or Support Structures. However, this does not preclude an applicant from locating its Wireless Facilities on existing lighted Poles under a decommissioning agreement in which the applicant takes ownership of the lighted Pole.

(6) The centerline of any new Pole or Tower shall be aligned with the centerline of adjacent Poles or trees unless the new structure's height conflicts with overhead power Utility lines. Replacing an existing Pole, Support Structure, or Tower with another Pole, Support Structure, or Tower in the same location shall not violate this provision.

(7) All new Poles, Towers, or Facilities proposed to be fronting a dwelling shall be placed on property lines, unless it would obstruct sight distance at driveways or other accesses to roadways. In those instances where placement of a new Pole or Tower or Facilities on the property line would obstruct sight distance, the Pole or Tower or Facilities shall be placed in such a location as to prevent the obstruction of sight distance at driveways or other access points to roadways. Replacing an existing Pole, Support Structure, Tower, or Facility with a new Pole, Support Structure, Tower, or Facility in the same location shall not violate this provision.

(8) New Poles, Towers, or Facilities shall not be placed in front of store front windows, walkways, entrances, or exits, or in such a way that would impede deliveries. Replacing an existing Pole, Support Structure, Tower, or Facility with a new Pole, Support Structure, Tower, or Facility in the same location shall not violate this provision.

(9) No new Poles or Towers shall be placed in front of driveways, entrances, or walkways. Replacing an existing Pole, Support Structure, or Tower with a Pole, Support Structure, or Tower in the same location shall not violate this provision.

(10) No applicant shall locate or maintain a Pole, Support Structure, Tower, or equipment associated with a Wireless Facility in a manner that interferes with the health of a tree.

(11) In areas where the undergrounding of utilities are located, but lighted Poles are present, the applicant shall locate its Wireless Facilities on existing lighted Poles or seek to decommission the lighted Pole to replace it with a lighted Pole to house its Wireless Facilities. However, an Applicant must consider the aesthetics of the existing utilities and neighborhoods adjacent to a proposed Wireless Facility location prior to submitting an application. Applicants shall consider and make best efforts to match the existing, adjacent streetscape character. Also, when a Wireless Facility is proposed to be installed within Central Business District in Dayton, the Applicant must consider and propose infrastructure that most closely matches adjacent themed infrastructure to the maximum extent feasible. The characteristics of unique assemblies may include mast arms, decorative pole bases, architectural luminaires, mounting heights, pole colors, etc.

(12) If the Applicant elects to decommission an existing lighted Pole to install a Wireless Facility in its location, the applicant shall comply with this Ordinance, including these aesthetic standards and any decommissioning agreement between the Applicant, the City of Dayton, and Kentucky Utilities, or its equivalent.

(13) In those locations where the underground utilities are located, all new Facilities shall be placed underground.

(14) No equipment associated with any Facility, including guide wires, shall impede, obstruct, or hinder ADA access, or pedestrian or vehicular access, or block driveways, entrances, or walkways. The installation of new ground furniture is prohibited.

(15) To protect the health and safety of the public from the harms of noise pollution, all Facilities shall have a low-noise profile.

(16) Within twenty-one (21) calendar days from the date the operator receives notice thereof, operator shall remove all graffiti on any of its Facilities located in the Right-of-way.

(17) All Facilities, Poles, Towers, and Support Structures shall comply with such additional design standards as may be set forth in any written policies or guidelines issued by the City.

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

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

§ 96.69 POLES, TOWERS, AND SUPPORT STRUCTURES.

(a) To the extent possible, Registrants shall use existing Poles, Towers, Support Structures, and conduit existing at the time of permitting in installing their Facilities.

(b) All Poles, Towers, Support Structures, or wire holding structures are subject to any applicable, duly adopted regulations regarding location, height, type, or other pertinent aspect, including those found in Section 96.68.

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

§ 96.70 PERMITS REQUIRED; NOTICE OF ACTIVITIES; EXCEPTIONS; DENIALS.

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

(1) Each time a Registrant is performing any of the activities listed below, it shall provide written notification to the City. Text messages shall not be considered written notice. Any work performed without proper written notification shall constitute work being done without a permit and subject to the levy of fines. Activities requiring written notification to the City are:

a. Installation or replacement of wiring on existing Towers, Support Structures, or Poles when the work (a) necessitates presence in the Right-of-way for more than one (1) day, or (b) involves more than one thousand (1,000) line feet of cable or wire;

b. Replacement of existing Towers, Support Structures, or Poles when the work (a) necessitates presence in the Right-of-way for more than two (2) days, or (b) involves more than one thousand (1,000) line feet of cable or wire;

c. Excavations of existing Facilities from ten (10) to twenty-five (25) square feet with no street or sidewalk cuts;

d. Installation of new underground lines in trenches of less than two hundred fifty (250) linear feet with a width of six (6) inches or less and with no street, curb, apron, or sidewalk cuts;

e. Installation of new underground lines in trenches of fifty (50) linear feet or less with a width of twenty-four (24) inches or less and with no street, curb, apron, or sidewalk cuts;

f. An underground boring larger than three (3) inches in diameter; or

g. Any underground boring located under a paved street.

The notification shall consist of, at a minimum, the name of the Registrant, a general description of the location (by address(es) or street(s)), and the nature or type of the activity performed (e.g., installation of wiring, boring, Tower/Support Structure/Pole replacement, etc.). Said notification may be provided in writing via e-mail to the City Administrator or his designee. Notwithstanding the above, permits shall not be required for inspections, CCTV inspections, or clearing debris from Facilities.

(2) An Installation permit or a surface-cut permit for the performance of non-Emergency work shall be applied for at least ten (10) days prior to such planned activity. Notwithstanding the foregoing, the City Administrator may waive said time period for good cause shown. The City Administrator must approve, deny, or conditionally approve a permit application within five (5) business days of the receipt of the application and in the case of a conditional approval or denial, state in writing the basis for such determination and what conditions must be met by the applicant to obtain a permit. The failure of the City Administrator to respond to an Installation permit within five (5) business days shall constitute approval of the permit. Any work performed without proper notification shall constitute work being done without a permit and subject to the levy of fines.

(3) A permit issued pursuant to an Emergency shall be applied for no later than five (5) business days after the discovery of the Emergency.

(4) All applications for permits shall contain the following information:

a. The identity and legal status of the applicant (the Party to whom the permit is issued).

b. The name, address, and telephone number of the officer, agent or employee requesting the permit.

c. A description of all activities covered by the permit, and in the case of an Installation permit or a surface-cut permit, the locations and estimated dates and times of commencement and completion thereof.

d. The number of all surface cuts covered by the surface-cut permit, and the number of square feet of Right-of-way surface to be removed; or the number of linear feet included in the installation.

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

(6) *Notification of inspections.* If the City Administrator knows at the time of the issuance of the permit that it shall require an inspection(s), it will notify the permittee that such an inspection(s) is required.

(7) *Denial or revocation.* The City Administrator, in his/her reasonable discretion, may deny or revoke a permit for failure to satisfy the material requirements and conditions of this Ordinance, including but not limited to the criteria contained in Section 96.68 or if the denial is otherwise necessary to protect the health, safety, and welfare of the citizens of the City of Dayton. In addition, the City Administrator may issue a permit that is contingent upon the applicant performing certain requirements that shall be specified in the permit.

(8) *Exceptions.* Permits are not required to be obtained pursuant to this Ordinance if the Facilities involved are of the following nature:

a. Newspaper stands;

b. Signage;

c. Facilities associated with sidewalk cafes or the sale of goods or merchandise; and

d. Facilities owned by the City of Dayton.

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

§ 96.71 PERMIT FEES; CREDITS; DISPLAY.

(a) *Installation permit.* Unless otherwise prohibited by law, every Party obtaining an Installation permit shall pay a fee of one hundred dollars ($100.00) for each installation permit. Any immediately adjoining real property owner cited to replace, repair, restore, or otherwise maintain any sidewalk, curb, apron, or Utility strip for which that real property owner is legally responsible shall be exempt from paying any fees for obtaining an Installation permit for these activities. This fee shall be reassessed in the event that at any work commences without approval as provided in Section 96.67(a).

(b) *Surface cut permit.* Unless otherwise prohibited by law, every Party obtaining a surface-cut permit shall pay a fee of one hundred dollars ($100.00) for each surface-cut permit. This fee shall be re-assessed each time a Party fails to comply with Section 96.56(b)(4), or in the event that any work commences without approval as provided in Section 96.58(a).

(c) *New Pole, Tower, or Support Structure permit.* Unless otherwise prohibited by law, every Party obtaining a Pole, Tower or Support Structure permit shall pay a fee of two hundred seventy dollars ($270.00) for each new Pole, Tower, or Support Structure permit. This fee shall be re-assessed each time a Party fails to comply with Section 96.56(b)(4), or in the event that any work commences without approval as provided in Section 96.58(a).

(d) The Installation permit fees, surface-cut permit fees and Pole, Tower and Support Structure permit fees required by this section shall be paid at the time of application for the permit unless such fees have been paid in accordance with Section 96.71(a).

(e) *Permit display.* Permits issued pursuant to this Ordinance shall be conspicuously displayed or otherwise available at all times at the indicated work site and shall be available for inspection by the City Administrator or other City employees or officials upon request.

§ 96.72 PERFORMANCE BOND.

(a) Unless otherwise prohibited by law or otherwise provided in a valid franchise agreement or interlocal agreement with the City, to ensure performance, each Registrant seeking a surface-cut permit must establish a performance bond in favor of the City to be issued by an entity subject to jurisdiction and venue in the City in an amount to be determined by the City Administrator in consultation with the City Engineer, which shall be in effect for and cover all surface cuts made by that Party for a period of two (2) years after the final inspection and approval of the surface cut by the City Administrator. There shall be recoverable, jointly, and severally, from the principal and surety of the bond, any damages or losses suffered by the City as a result, including the full amount of any Right-of-way repair, compensation, indemnification, or cost of removal or abandonment of any property of the Registrant, plus attorney's fees and court costs, up to the full amount of the bond.

(b) The bond shall contain the following endorsement:

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

(c) In no event shall the amount required by the City Administrator for the performance bond exceed the reasonable costs of repairing the activity affiliated with the surface-cut permits. This provision

shall not apply to the City. In lieu of a performance bond, the City Administrator may allow the applicant for a surface-cut permit to deposit with the City Administrator an amount appropriate to cover the City's cost of repairing the surface cut; to be held for a similar period. The City reserves the right to impose additional security requirements as part of any surface-cut permit or franchise agreement.

§ 96.73 PATCHING AND RESTORATION STANDARDS.

(a) *Standards.* Patching and restoration of the Right-of-way shall be performed according to the applicable standards and with the materials specified by the City Administrator, and at a minimum shall comply with the applicable standard engineering drawing. The City Administrator shall have the authority to prescribe the manner and extent of the restoration and may do so in written procedures of general application or on a case-by-case basis in accordance with the criteria listed below. All edges of a surface cut made to a paved street must be sawed and such surface cuts must be sealed with a sealant approved by the City Administrator. In addition, the City Administrator must approve all backfill material utilized. In most instances, the minimum standards will apply. However, in certain limited instances, the City Administrator may determine that the minimum standards do not adequately protect the City because of at least one (1) of the following considerations:

(1) The number, size, depth and duration of the excavations, disruptions, or damage to the Right-of-way;

(2) The traffic volume carried by the Right-of-way;

(3) The pre-excavation condition of the Right-of-way;

(4) The remaining life-expectancy of the Right-of-way affected by the Excavation; or

(5) The surface cut was made in violation of Section 96.67(e)(5).

(b) *Replacement with similar materials*. Every cut, Excavation, or alteration to a street, sidewalk, or other Right-of-way shall be fully repaired and restored to substantially same condition with the same type of materials as before this work was done. Concrete, including stamped or colored concrete, must be replaced with similar concrete; hot asphalt installations must be replaced hot asphalt, not cold-mix asphalt; and brick pavers must be replaced with brick pavers of similar type, including historic pavers that are the same size and weight of those removed during construction. However, if the Excavation work is located in an area where past repair work was done and the previously placed material in this Excavation area is different than the surrounding area -- such as an asphalt patch installed in a concrete street or in the middle of brick pavers -- the Excavation must be restored using the same type of material found in surrounding area, i.e., concrete, brick pavers, etc.

(c) *Guarantees.* Each Party performing excavations pursuant to a permit required by this Ordinance guarantees its restoration work and shall maintain it for two (2) years following its completion. During this period, it shall, upon notification from the City Administrator, correct all restoration work to the extent necessary, using the method required by the City Administrator.

§ 96.74 INSPECTION.

(a) *Site inspection.* Any Party issued a permit pursuant to this Ordinance shall make the worksite available to the City Administrator and to all others as authorized by law for inspection at all

reasonable times during the execution of and upon completion of the work. No Excavation shall be covered until it has been inspected and approved by the City Administrator if the City Administrator has given that Party notice of its intent to inspect the Excavation. The permittee shall provide the City Administrator with advance notice of at least one (1) day when the appropriate portion of the activity is ready for inspection, and if the City Administrator fails to inspect after being provided such notice, the permittee may continue to perform the permitted activity. Any Excavation that has been covered without a required approval or inspection shall be uncovered for inspection at that Party's expense, upon request of the City Administrator. If the construction or restoration does not meet the standards under this Ordinance, the City Administrator may order corrective measures.

(b) *Authority of the City Administrator.*

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

(2) The City Administrator may issue an order to the permittee for any work that does not conform to the terms of the permit or other applicable ordinance, resolution, regulation, standard, condition, or code. The order shall state that failure to correct the violation will be cause for revocation of the permit. The permittee shall proceed with the corrective work before undertaking any additional work under the permit. Within ten (10) days after issuance of the order, the permittee shall present proof to the City Administrator that the violation has been corrected. If such proof has not been presented within the required time, the City Administrator may revoke the permit, or for good cause shown, extend the period of time allowed for the corrective work to be completed.

§ 96.75 APPEAL.

Any Party that:

(1) Has been denied registration after the reconsideration process provided for in Section 96.61;

(2) Has been denied a permit or has been issued a conditional permit for which the Party disagrees with certain of the conditions(s) imposed;

(3) Is aggrieved by a decision pertaining to installation, relocation, or removal of a Facility pursuant to Section 96.67;

(4) Has had a permit revoked; or

(5) Believes that the fees imposed are invalid;

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

§ 96.76 RIGHT-OF-WAY VACATION.

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

§ 96.77 This Ordinance shall become effective on the date of its publication.

CITY OF DAYTON, KENTUCKY

By: _____
Mayor Ben Baker

ATTEST:

_____
Tiffany Myers, City Clerk

First Reading:

Second Reading:

Publication:

Comments: City Admin. Fossett said this ordinance is complex, and the council received an outline today to help explain this in more detail. Other cities have similar ordinances like this.

CITY OF DAYTON, KENTUCKY

ORDER/RESOLUTION 2022#36R

AN ORDER/RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DAYTON, KENTUCKY, APPOINTING BRYAN BRULPORT AND KATLYN GEIGER TO DAYTON BOARD OF ADJUSTMENT.

WHEREAS, the City of Dayton, Kentucky, has established a Board of Adjustment ("Board") pursuant to KRS 100.217; and

WHEREAS, under Title XV, Article XVIII, Section 18.0 of the Dayton Code of City Ordinances, the Mayor of the City appoints members of the Board, subject to the approval of City Council; and

WHEREAS, the City wishes to appoint two new members to the Board.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DAYTON, KENTUCKY THAT:

The City appoints Bryan Brulport and Katlyn Geiger to the City of Dayton, Ky. Board of Adjustment.

That this Order/Resolution shall become effective immediately upon approval by the City Council of the City of Dayton, Kentucky.

AND IT IS SO RESOLVED. Passed and approved by the City Council of the City of Dayton, Kentucky, on this 1st day of November 2022.

This Order/Resolution shall be maintained and indexed in the Official Resolution and Order Book by the City Clerk/Treasurer.

_____

MAYOR BENJAMIN BAKER

ATTEST:

_____

TIFFANY MYERS

CITY CLERK/TREASURER

Motion by Member Neary, seconded by Member Volter, to approve Order/ Resolution 2022#36R as read.

Roll Call:

Member Neary	Aye	Member Lovins	Absent
Member Nyman	Aye	Member Beseler	Aye
Member Kelly	Absent	Member Volter	Aye

Motion carried- so ordered.

Order/Resolution:

CITY OF DAYTON, KENTUCKY
ORDER/RESOLUTION NO. 2022#37R

AN ORDER/RESOLUTION AUTHORIZING THE DISPOSITION OF CERTAIN CITY-OWNED REAL PROPERTY VIA QUITCLAIM DEED TO MBS MARINA, LLC, A KENTUCKY LIMITED LIABILITY COMPANY, FOR THE PURPOSE OF FURTHERING ECONOMIC DEVELOPMENT, IN CONSIDERATION FOR AND SUBJECT TO THE CITY'S RIGHT TO INSTALL, CONSTRUCT, AND EQUIP THIS REAL PROPERTY WITH A RECREATIONAL TRAIL PURSUANT TO AN EASEMENT AGREEMENT; FURTHER AUTHORIZING THE MAYOR TO EXECUTE AND DELIVER A QUITCLAIM DEED AND THIS EASEMENT; AND FURTHER AUTHORIZING THE EXECUTION AND DELIVERY OF SUCH OTHER INSTRUMENTS AND AGREEMENTS AS MAY BE REQUIRED TO FACILITATE THE DISPOSITION OF THE REAL PROPERTY AND THE INSTALLATION, CONSTRUCTION, AND EQUIPPING OF THE REAL PROPERTY WITH THE RECREATIONAL TRAIL.

WHEREAS, MBS Marina, LLC, a Kentucky limited liability company ("MBS"), owns certain real property located within the City of Dayton, Kentucky ("the City)" at and around 1301 4th Avenue (the "MBS Property"), and MBS Property operates a marina commonly known as the Manhattan Harbour Yacht Club that is located adjacent to Manhattan Boulevard, the final section of which was substantially completed by Manhattan Harbour Project, LLC, an affiliate of MBS in October 2022;

WHEREAS, to facilitate ingress and egress to and from the MBS Property and the efficient operations of the marina, MBS has proposed to acquire and maintain certain city-owned real property located adjacent to the MBS Property (the "City Property"), which real property is more particularly described in the attached Exhibit A;

WHEREAS, pursuant to Section 82.083 of the Kentucky Revised Statutes ("KRS") and related provisions, the City is authorized to dispose of real property in furtherance of economic development purposes upon such terms and conditions as the City may deem advisable;

WHEREAS, by virtue of facilitating ingress and egress to the MBS Property, the disposition of the City-Owned Property to MBS will promote economic development, will encourage commerce, and will improve the economic welfare of the people of the City; and

WHEREAS, in consideration for the City-Owned Property, MBS has agreed to grant an easement in favor of the City for the purpose of installing, equipping, maintaining, and operating an approximately 10-foot-wide recreational trail over and through this property;

NOW, THEREFORE, BE IT ORDERED AND RESOLVED BY THE CITY COUNCIL OF DAYTON, KENTUCKY, AS FOLLOWS:

Pursuant to Section 82.083 of the KRS, City Council hereby makes the following findings and written determinations with respect to the disposition and transfer of the City-Owned Property to MBS:

The City-Owned Property is fully and accurately described and depicted under attached Exhibit A;

At the time of acquisition, the intended use for the City-Owned Property was as public-right-of-way adjacent to a public road;

It is in the public interest to dispose of the City-Owned Property based upon the opportunity to (i) promote economic development and (ii) generate economic activity; and

That the method for the disposition of the City-Owned Property is via quitclaim deed (the "Deed") pursuant to which the City will transfer the City-Owned Property to MBS in consideration for certain rights under the Easement Agreement (defined herein and attached as Exhibit B) and in furtherance of economic development purposes, including but not limited to for the purpose of development.

The disposition of the City-Owned Property to MBS is hereby approved, and the Mayor is hereby authorized to execute and deliver the Deed in the form currently on file with the City Clerk/Treasurer. In furtherance of the above-described disposition, the Mayor is further authorized to execute and deliver the easement agreement in the form currently on file with the City Clerk/Treasurer (the "Easement Agreement") together with such other commercially reasonable instruments and agreements as may be required to facilitate the disposition of the City-Owned Property and the installation, construction, and operation of the recreational trail.

It is hereby found and determined that all formal actions of the City Council concerning and relating to the passage of this Order/Resolution were taken in an open meeting of the City Council, and that all deliberations of this City Council and of any of its committees, if any, that resulted in such formal action, were taken in meetings open to the public, in full compliance with applicable legal requirements of the Kentucky Revised Statutes.

SO ORDERED and approved by the City Council of the City of Dayton, Kentucky, on this 1st day of November 2022.

That this Order/Resolution shall be signed by the Mayor, attested to by the City Clerk/Treasurer, recorded and be effective upon adoption.

[*Signatures below*]

ADOPTED: November 1, 2022

By:_____
Ben Baker
Mayor

Attest:

By: _____
Tiffany Myers
City Clerk/Treasurer

Motion by Member Volter, seconded by Member Neary, to approve Order/Resolution 2022#37R as read.

Comments:

City Admin. Fossett stated that this ordinance is giving a small strip of city-owned land back to the developer because it would be less of a liability for the city. With the land given back to the developer, it will help with retaining walls and developing a parking lot.

Roll Call:

Member Nyman	Aye	Member Beseler	Aye
Member Kelly	Absent	Member Volter	Aye
Member Lovins	Absent	Member Neary	Aye

Motion carried- so ordered.

Order/Resolution:

CITY OF DAYTON, KENTUCKY

ORDER/RESOLUTION NO. 2022#38R

AN ORDER/RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF A FIRST AMENDMENT TO AGREEMENT OF LEASE WITH RIVER COMMONS AT MANHATTAN HARBOUR LLC, AND FURTHER AUTHORIZING THE EXECUTION AND DELIVERY OF SUCH OTHER INSTRUMENTS AND AGREEMENTS AS MAY BE REQUIRED TO EFFECTUATE THE AMENDMENT TO THE LEASE.

WHEREAS, the City of Dayton, Kentucky (the "Issuer" and the "City"), by virtue of the laws of the Commonwealth of Kentucky, including Chapter 103 of the Kentucky Revised Statutes, issued its maximum aggregate principal amount $10,000,000 City of Dayton, Kentucky, Taxable Industrial Building Revenue Bonds, Series 2021A (the "Series 2021A ,Bonds"), and its maximum aggregate principal amount $2,000,000 City of Dayton, Kentucky, Taxable Industrial Building Revenue Bonds Series 2021B (the "Series 2021B Bonds") (with the Series 2021A Bonds and the Series 2021B Bonds collectively being referred to herein as the "Bonds"), to provide financing for the acquisition, development, and construction of residential condominium units, together with the development of facilities ancillary thereto to be located within the City of Dayton, Kentucky (the "Commons Project").

WHEREAS, the Commons Project was initially leased to River Commons at Manhattan Harbour LLC, a Florida limited liability company (the "Company"), and the Bonds initially purchased by River Commons at Manhattan Harbour LLC, a Florida limited liability company (the "Purchaser"); and

WHEREAS, in conjunction with the issuance and sale of the Bonds, the Company and the Issuer entered into an Agreement to Lease dated December 29, 2021 (the "Lease") relating to the Commons Project; and

WHEREAS, the Lease incorporates a section detailing Permitted Transfers (as such term is defined in Section 302 of the Lease), which the Issuer and the Company now desire to amend

for the purpose of clarifying the term to mean and include certain other assignments and transfers of the leasehold interest in the Commons Project, and certain other matters.

NOW, THEREFORE, BE IT ORDERED AND RESOLVED BY THE CITY COUNCIL OF DAYTON, KENTUCKY, AS FOLLOWS:

The Mayor is hereby authorized to execute a First Amendment to Agreement of Lease (the "Amendment") with such changes as may be approved by special counsel to the City of Dayton, Kentucky, to memorialize the agreement related to the Lease.

That Frost Brown Todd LLC is hereby approved as special counsel to the City in conjunction with the Amendment. The customary and reasonable fees of the City's special counsel in conjunction with the Amendment shall be paid from the proceeds of the closing associated with the Amendment together with all other customary costs and expenses of the City in conjunction with the closing associated with the Amendment.

It is hereby found and determined that all formal actions of the City Council concerning and relating to the passage of this Order/Resolution were taken in an open meeting of the City Council, and that all deliberations of this City Council and of any of its committees, if any, that resulted in such formal action, were taken in meetings open to the public, in full compliance with applicable legal requirements of the Kentucky Revised Statutes.

That this Order/Resolution shall be signed by the Mayor, attested to by the City Clerk/Treasurer, recorded, and be effective upon adoption.

ADOPTED: November 1, 2022

By:_____
Ben Baker
Mayor

Attest:

By: _____
Tiffany Myers
City Clerk/Treasurer

CERTIFICATION

I, the undersigned, do hereby certify that I am the duly qualified and acting Clerk of the City Council of Dayton, Kentucky, (the "City") is a true, correct and complete copy of an Order/ Resolution duly adopted by the City Council of the City at a regular meeting properly held on November 1, 2022, signed by the Mayor and is now in full force and effect, all as appears from the official records of the City in my possession and under my control.

IN WITNESS WHEREOF, I have hereunder set my hand this _____ day of November 2022.

Tiffany Myers
City Clerk/Treasurer

Comments:

City Admin. Fossett stated this is a Brendan Sullivan project which it paid for through IRBS. This order will allow for financing.

Motion by Member Neary, seconded by Member Beseler, to approve Order/Resolution 2022#38R as read.

Roll Call:

Member Beseler	Nay	Member Nyman	Aye
Member Volter	Aye	Member Kelly	Absent
Member Neary	Aye	Member Lovins	Absent

Motion carried- so ordered.

Order/Resolution:

CITY OF DAYTON, KENTUCKY

ORDER/RESOLUTION ORDER/RESOLUTION 2022#39R

AN ORDER/RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DAYTON, KENTUCKY, APPOINTING BRIAN DAVID MEYER AS A PART-TIME LICENSE INSPECTOR IN THE CODE ENFORCEMENT DEPARTMENT.

WHEREAS, City Council created the position of part-time License Inspector in the Code Enforcement Department and funded this position in the 2022-23 Fiscal Year Budget; and

WHEREAS, Brian David Meyer has accepted an offer of employment from the City for this position.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DAYTON, KENTUCKY THAT:

The City appoints Brian David Meyer as the part-time License Inspector in the Code Enforcement, effective Nov. 7, 2022, at a rate of $25 an hour for 20 hours per week and no benefits.

AND IT IS SO ORDERED AND RESOLVED. Passed and approved by the City Council of the City of Dayton, Kentucky, on this 1st of November, 2022.

This Resolution shall be maintained and indexed in the Official Resolution and Order Book by the City Clerk/Treasurer.

_____

MAYOR BENJAMIN BAKER

ATTEST:

_____

TIFFANY MYERS

CITY CLERK/TREASURER

Comments:

City Admin Fossett said we need to hire a part-time inspector with the passing of the rental ordinance. Member Neary questioned if this person would report to Cassie. City Admin. Fossett stated yes. Motion by Member Volter, seconded by Member Nyman, to approve Order/Resolution 2022#39R as read.

Member Volter	Aye	Member Kelly	Absent
Member Neary	Aye	Member Lovins	Absent
Member Nyman	Aye	Member Beseler	Aye

Motion carried- so ordered.

City Administrator's Report:

SD1 has been repairing a sewer line at Sixth Avenue and Walnut. When they started the project, they found a large void that caused the sewer to wash out, so SD1 will be on this project a little longer. All street repaving is done for the year. KYTC paved from Mary Ingles to Tower Hill Rd. Member Neary asked if the drainage problem was fixed and who was responsible for the repairs. City Admin. Fossett said that this is still a State Highway, and they are responsible for this road.

Adleta completed the work by the Floodwall. The new road by the Marina has gas lines installed, and we are waiting on Duke to install the powerlines. In addition, we are still waiting for Duke to move the poles for the bump-outs.

Audience:

Abby on Third Ave. wanted to know if the city could get reflective flags in the crosswalks because it's hard to see the kids. City Admin. Fossett will look into this.

Unfinished Business:

Member Beseler said he liked the new microphones the council is using, which seem to be working. City Admin. Fossett said the microphones are hard-wired. This might be a temporary solution, but this will help us save $14,000.00 until we can budget this. Assistant City Admin. Barks explained that with the wired microphones, you do not have to turn off the microphone; they stay on all the time. He also explained how the amplifier worked. Member Neary wanted to know why the city does not have the cable board handle the meetings. City Admin. Fossett said this is a cost to the city, and the last time this was looked into, it would have cost the city $38,000.00.

Adjournment:

Motion by Member Volter, seconded by Member, to adjourn the meeting. Motion carried- so ordered.

Tiffany Myers

City Clerk/Treasurer

ATTEST:

Ben Baker

Mayor