

ORDINANCE NO. \_\_\_\_\_

An Ordinance to replace in its entirety Section 16-200 of the Crossville Municipal Code pertaining to excavation and cut fees in public right-of-way.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CROSSVILLE, TENNESSEE AS FOLLOWS:

SECTION I. That Title 16, Chapter 2, be deleted in its entirety and replaced as follows:

16-201. Definitions. For purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them:

- (A) *City* means the City of Crossville, including any agency of or any other entity acting on behalf of the city and any officer, official, employee, agent, representative or designee of the city, agency, or entity.
- (B) *Emergency* means a condition which: (i) poses clear and immediate danger to the life, safety, or health of one or more person, or (ii) is causing or threatens to cause significant damage to property.
- (C) *Emergency action* means any action in the public right-of-way, including repair, replacement, or maintenance of any existing equipment or facility, which is necessary to prevent an emergency from causing loss of life or injury or significant damage to property.
- (D) *Equipment* or *facility* mean any transmission or distribution line (e.g., a communications line, a power line, a gas pipeline, a water line, a sewer line), conduit or duct, utility pole, transmission or distribution equipment (e.g., an amplifier, power equipment, optical or electronic equipment, a transmission station, switching or routing equipment), cabinet or pedestal, handhole, manhole, or vault, drain, location marker, appurtenance, or other equipment or facility which is located in the public right-of-way.
- (E) *Person* means any natural person or any association, company, firm, partnership, joint venture, corporation, governmental entity, or other legal entity.
- (F) *Provider* means any person who owns or controls any equipment or facility.
- (G) *Public right-of-way* means the surface, the air space above the surface, and the area below the surface of any public street, highway, lane, path, alley, sidewalk, avenue, boulevard, drive, concourse, bridge, tunnel, park, parkway, waterway, dock, bulkhead, pier, easement, public easement, or similar property in the city, in which the city holds a property interest or over which the city exercises legal control, and for which the city may lawfully grant a right of use to any person for placement of any equipment or facility or similar use. The term, "public right-of-way", shall not include any other property owned or controlled by the city, including any building, fixture, structure, or other improvement, regardless of whether it is situated in the public right-of-way.
- (H) *Routine maintenance* or *repair* mean routine maintenance, repair, replacement, or removal of any existing equipment or facility or installation of a service connection to the premises of a customer but shall not include any work which involves: (i) Any excavation in the public right-of-way or making any break or cut in the surface of the public right-of-way; (ii) any installation of a new utility pole or extension of an existing utility pole; (iii) any installation of any fixture, equipment, or facility or any pedestal for any such fixture, equipment or facility on any paved surface or other ground level location in the public right-of-way; or (iv) any modification, impairment, or disturbance of the normal flow of vehicular or pedestrian traffic or use of the public right-of-way by any other person for 30 minutes or more.
- (I) *Service* means any cable, communications, electrical, gas, information, sewer, telecommunications, water, or other utility or public service.

16-202. Reservation of rights.

- (A) Any rights granted to a person pursuant to this article are subject to the police powers of the city to adopt and enforce any ordinance, regulation, or policy necessary to protect the public health, safety, and welfare. The city reserves the right to exercise its police powers, as it deems appropriate with respect to any matter not expressly covered by this article and to revise this article from time to time.
- (B) The city is not required to apply any provision of this article to the city or any other governmental entity.

16-203. Authority. The city has authority to regular placement, modification, or removal of equipment and facilities in the public right-of-way and excavation in and use of the public right-of-way as provided in this article and as otherwise deemed necessary by the city to protect the public health, safety, and welfare, including, without limitation, authority to regulate or prohibit any excavation in the public right-of-way, break or cut in the surface of the public right-of-way, and any related or similar activity in the public right-of-way.

16-204. Liability of the city. The city shall not be liable for any damage or injury caused by or arising from the performance of any work or other activity in the public right-of-way by the city or any other person. Further, the city shall not be deemed to assume any liability or responsibility for any such damage or injury by conducting an inspection, issuing or revoking a permit, or approving, allowing or stopping work or any other activity in the public right-of-way.

16-205. Applicability; administration.

- (A) The provisions of this article will apply to all encroachments of any kind into the right-of-way, except the following:
  - (1) Temporary location of refuse for removal from the abutting property;
  - (2) Temporary location of equipment or furnishings such as barricades, tents, tables, and chairs, pursuant to the outdoor festival policy, provided that no cutting of or breaking into the surface of the right-of-way is involved; and
  - (3) Any other encroachments approved by the City Council, where application of this article is specifically waived.
- (B) In addition to complying with the requirements of this article, an applicant must also obtain City Council approval for any proposed encroachment into the right-of-way, except the following:
  - (1) Installation, maintenance, repair, replacement, or removal of equipment pursuant to the terms and conditions of a utility franchise with the city; and
  - (2) Installation, maintenance, repair, replacement, or removal of non-masonry mailboxes, or driveway surfacing within the right-of-way abutting single family, duplex, or triplex dwelling units; and
  - (3) Installation, maintenance, repair, replacement, or removal of other at- or below-grade encroachments unassociated with a change of use of the abutting property, where the provisions of this article are adequate to protect the public interest.
- (C) Culverts on official City rights-of-way (does not include any state or federal rights-of-way).
  - (1) Residential. Culverts and associated apparatus for residential properties must conform to the size and specifications of the City and furnished to the City. They will be a minimum of twenty (20') feet and a maximum of forty (40') feet in width. City forces will install culverts and associated apparatus for residential properties.
  - (2) Commercial. Culverts for commercial properties must conform to the size and specifications of the City.

- (D) Landscaping. Any landscaping, other than grass, on public right-of-way is installed at the risk of the property owner. The City shall not be responsible for any damages, repairs, or replacements.
- (E) The city manager shall be responsible for administration of this article and may delegate any or all authority to administer and enforce this article to the Public Works Department or other designee.

16-206. Permit required.

- (A) Except for those exempt activities specifically listed below, it shall be unlawful for any person to make any excavation in the public right-of-way, make any break or cut in any surface of the public right-of-way, deposit any earth or other material in the public right-of-way, place any equipment or facility in the public right-of-way, modify or remove any equipment or facility, or perform any other work in the public right-of-way, without first obtaining a written permit from the city.
- (B) The following activities are exempt from the permitting requirement of this article:
  - (1) Emergency actions, provided that the city reserves authority to require an after-the-fact permit;
  - (2) Installation or removal of a non-masonry mailbox;
  - (3) Signs in the public right-of-way, which are addressed in Title 14, Chapter 5 of the Crossville Municipal Code; and
  - (4) Power poles located within two (2') feet of the right-of-way line (not including guy wires); and
  - (5) Routine maintenance and repair of other equipment or facilities that are authorized by law to be located with the right-of-way.

An activity otherwise described in paragraphs (3) or (4) above, will not be deemed routine if such activity is likely to result in any damage to the public right-of-way or any other property, or injure any person.

- (C) Any provider who performs work (or on whose behalf work is performed) in the public right-of-way in connection with an emergency without a permit shall immediately notify the city of the emergency and of any such work which has been or may be performed and shall cause all such work to cease immediately upon completion of emergency action or determination by the city that the situation is not an emergency or that the emergency action is no longer warranted. Notwithstanding the foregoing, any person who commences work in an emergency without first obtaining a permit shall obtain a permit at the earliest possible time after commencement of such work.
- (D) Columns, decorative features, masonry structures, and masonry mailboxes more than 6" higher than the road surface must be located at least three (3') feet off the white line designating the edge of the travel lane of the road. They must be placed in such location as to allow the carrier to partially pull off the right-of-way for the delivery of mail. Prior to construction of the pull off, the Street Department must be contacted for specifications and direction.
- (E) The city may revoke any permit granted pursuant to this article, without refunding any fees, if it finds that a permittee has not complied with applicable law, including any provision of a permit, this Code, or any franchise, license, or other authorization, or that revocation is necessary to protect the public health, safety, or welfare.

16-207. Application for permit. No permit shall be issued unless a written application for a permit is submitted to the Public Works Department in accordance with this article. Applicants shall allow for a review period of three (3) weeks, following submittal of all required information, before a permit is issued. An application for a permit shall be filed in the form and manner specified by the city (e.g., the city may require that any or all parts of such requests be filed in an electronic form of the city's choosing) and contain such information as may be required by the city, including, at a minimum, the following information:

- (A) The name and address of the applicant who is requesting the permit and written evidence that such applicant has legal authority to place, maintain, or remove the equipment or facilities covered by the requested permit in the public right-of-way and will own and control all such equipment and facilities after completion of construction;
- (B) A description of the functions, dimensions, and proposed locations of all equipment and facilities covered by the requested permit;
- (C) The specific location, depth, dimensions, and length of each proposed new or replacement duct, conduit, or other underground facility and the specific location, depth, dimensions, and height of any utility pole covered by the requested permit;
- (D) A description of the manner in which the work covered by the requested permit is to be undertaken (i.e., proposed construction methods and techniques) and a proposed date for commencement of work and an estimate of the time required to complete all such work;
- (E) Identification and description of any utility or other distribution or transmission system to which any equipment or facility covered by the requested permit is to be connected or attached;
- (F) Maps (in such detail and form as may be specified by the city) which show: (i) Public right-of-way in the area of the proposed construction; (ii) locations of all existing equipment and facilities in the area of proposed construction; (iii) all equipment and facilities to be installed or removed; and (iv) the routes of all transmission and distribution lines to be installed or removed and the sites of all other equipment and facilities to be installed or removed in the public right-of-way;
- (G) As-built maps (in such detail and form as may be specified by the city) which show the locations of all the applicant's existing equipment and facilities in the city; and
- (H) Construction maps (in such detail and form as may be specified by the city) which show the locations of all new equipment and facilities in the city which the applicant plans to place in the public right-of-way in the next 12 months or such other time period as may be specified by the city.

16-208. Additional information required. The city may require the applicant to provide such additional information as the city deems necessary to complete its review of a requested permit, including the following:

- (A) A videotape (or other visual record in a format of the city's choosing) which shows in such form and detail as may be required by the city the condition of the public right-of-way in the area to be affected by the proposed work;
- (B) A traffic control plan for vehicular and pedestrian traffic in the area to be affected by the proposed work; and
- (C) Proof of insurance.

16-209. Permit conditions.

- (A) No permit shall be issued to make any excavation in the public right-of-way or any break or cut in any surface of the public right-of-way, deposit any earth or other material in the public right-of-way, place any equipment or facility in the public right-of-way, modify or remove any equipment or facility, or perform any other work in the public right-of-way which is not in compliance with this article or related regulations or policies.
- (B) Every permit shall be conditioned upon compliance with: (i) all provisions of this article, (ii) the construction schedule set forth or referenced in the permit, (iii) any construction and restoration standards established by the city, and (iv) such other restrictions and limitations as the city may deem necessary to protect the public health, safety, and welfare. These additional restrictions may include but are not limited to interim or temporary restoration, patching, or resurfacing of the public right-of-way during the construction period.

(C) As a condition for issuance of a permit authorizing installation of decorative pavers abutting a residential lot, the owner of the residential lot will be required to execute a license agreement in a form approved by the city attorney. The license agreement will include the following terms and conditions:

- (1) The owner will be responsible for maintenance and replacement, including re-bordering, cleaning, re-sanding, replacing, resetting, and washing, regardless of the reason such maintenance or repair may be required, at the owner's sole cost; and
- (2) The owner will be responsible for removal, including required restoration work within the right-of-way such as construction of a driveway apron meeting applicable city standards, regardless of the reason such removal may be required, at the owner's sole cost; and
- (3) The city will be authorized, at any time, to require the owner to perform any or all of the actions described in paragraphs (a) and (2) above, in order to protect public health, safety, or welfare; and
- (4) The city will be authorized to perform or cause the performance of any or all of the actions described in paragraphs (1) and (2) above, at the owner's cost, whenever the owner has failed or refused to perform such actions when required, or the city determines that immediate action is required; and
- (5) The owner will indemnify and hold the city harmless from and against all claims for damages of any kind arising from the city's enforcement of or failure to enforce the right-of-way permit, the license agreement, or the provisions of this article;
- (6) The city will be authorized at any time to revoke the license agreement for reasons such as owner non-compliance or protection of the public health, safety, or welfare; and
- (7) The license agreement will be fully binding on all successors-in-interest in the residential lot.

16-210. Inspections and audits. The city may conduct any inspection or audit it deems necessary to administer and enforce this article or any other city Codes, ordinances, or regulations, or to enforce the conditions of any permit granted, or to enforce related regulations or policies. The city may order a work stoppage or revoke a permit, as it deems necessary in the case of a failure to comply with the provisions of this article or the conditions of any permit, or to otherwise protect the public health, safety, and welfare.

16-211. Clean up and maintenance required.

- (A) Any rubbish, excess earth, rock, or other debris arising from or associated with any work performed in the public right-of-way shall be removed from the public right-of-way and any other property affected by such work on a frequent and regular basis (or as specifically directed by the city), to the satisfaction of the city, and at the expense of the permittee.
- (B) Any building material, machinery, motor vehicle, equipment, facility, or other object placed in the public right-of-way in connection with any work performed in the public right-of-way shall be illuminated by red lanterns, red lights, or torches or as otherwise specified by the city between sunset and sunrise (or at such other times as may be specified by the city) and shall be placed at a distance of not more than five feet from each other along the width of any affected portion of the public right-of-way (or as may otherwise be specified by the city) and not more than 15 feet from each other along the length of the

affected portion of the public right-of-way (or as may otherwise be specified by the city).

16-212. Restoration and maintenance.

- (A) Any work performed in the public right-of-way, including restoration, shall be completed by the completion date specified in the permit or as otherwise specified or provided by the city. Upon completion of work (or at such time as may be specified by the city if construction is not completed by the completion date or is terminated for any reason, including revocation of the permit), the public right-of-way shall be restored to a condition which is at least as good as its condition prior to commencement of work. Restoration of the public right-of-way shall be performed in accordance with any specifications or standards regarding materials or any other matter specified by the city. The city may establish generally applicable restoration standards, which apply unless the city specified other standards in a particular situation or may establish restoration standards on a case-by-case basis.
- (B) If a provider (or other person if no provider is involved) fails to restore the public right-of-way, including any paved surface, curbs, or fixtures, to a condition at least as good as its condition prior to commencement of construction or to complete such restoration work by the completion date specified in the permit or as otherwise specified or provided by the city, the city may perform any work or undertake any other activity which it deems necessary to complete such work and/or restore the public right-of-way. The provider (or other person if no provider is involved) shall reimburse the city for any such costs in an amount equal to the sum of the actual cost of any work or other activity undertaken by the city and twenty-five (25%) percent of such cost as compensation to the city for general overhead and administrative expenses associated with such work and shall pay such costs as directed by the city and not later than 20 calendar days after receipt of a bill.
- (C) A provider (or other person if no provider is involved) shall guarantee and maintain any public right-of-way which the city determines has been affected or altered by any excavation in the public right-of-way of any break or cut in any surface of the public right-of-way made by such provider or person for the 24 months following the date of completion of restoration of the affected or altered public right-of-way either by the provider or person or by the city. Such provider or person shall take such action as the city deems necessary to correct any deficiencies in such restoration work within such 24-month period. Shall commence such action not later than five calendar days after receipt of notice from the city or such other date as may be specified by the city, and complete such action promptly but not later than the date or any other deadline established by the city. The city may elect to perform any such work itself or undertake any other activity, which it deems necessary to correct any such deficiency during such 24-month period. Such provider or person shall be liable to the city for any costs incurred in connection with any such corrective action in an amount equal to the sum of the actual cost of any work or other activity undertaken by the city plus twenty-five (25%) percent of such cost as compensation to the city for general overhead and administrative expenses associated with such work and shall pay such costs as directed by the city and not later than 20 calendar days after receipt of a bill.

16-213. Post-construction obligations. No person may permanently activate or place in service any equipment or facility in the public right-of-way or obtain any permit pursuant to this article from the city if notice of completion of construction of such equipment or facility has not been provided to the city as required herein, as-built maps have not been submitted to the city in such form and detail as the city may require, or any inspection, repair, or restoration requirement of the city has not been fully satisfied. As-built maps must be

submitted in digital format, AutoCAD DWG or ESRI Shapefile, in Tennessee State Plane Coordinates NAD 83 to a positional tolerance of 6 inches, and must include a contact name and number of the person or persons responsible for the equipment or facility as well as a description of the infrastructure. The contact name and number and description can be in a digital document or as a field in the database attached to the Shapefile.

16-214. Performance guarantee.

(A) Except as provided in subsections (D) and (E) of this section, no person may make any excavation in the public right-of-way, make any cut or break in any surface of the public right-of-way, deposit any earth or other material in the public right-of-way, place any equipment or facility in the public right-of-way, modify or remove any equipment or facility, or perform any other work in the public right-of-way requiring a permit pursuant to this article unless, prior to the commencement of any such work, such person furnishes to the city a guarantee meeting the requirements of subsection (C) of this section, as security for the faithful completion of all permit terms and conditions, including restoration of the public right-of-way, relocation of equipment and facilities, removal of equipment and facilities from the public right-of-way, and payment of all amounts due to the city (e.g., delinquent or unpaid permit fees, expenses, damages, or losses incurred by the city as a result of such person's violation of or failure to comply with a permit condition).

(B) Except as provided in subsections (D) and (E) of this section, any persons who owns or controls any equipment or facility in the public right-of-way shall furnish a guarantee meeting the requirements of subsection (C) of this section, as security for the faithful performance of the person's obligation, whether under franchise, license, or the provisions of this article to: (i) from time to time relocate or remove the equipment and facilities from the public right-of-way, (ii) restore the public right-of-way when the person performs or has work performed on such equipment or facilities, and (iii) pay any amounts due to the city (e.g., delinquent or unpaid permit, license or franchise fees; or expenses, damages, or losses incurred by the city as a result of such person's violation of or failure to comply with a permit condition).

(C) Every guarantee required pursuant to this section shall be in the form of a surety bond, certified check, irrevocable letter of credit, or cash. In the case of a surety bond, the surety company shall be authorized to do business in Tennessee, the bond shall be accompanied by evidence of authority of the issuing agent, and the bond form and the evidence of authority shall be subject to approval by the city attorney before the permit may be issued. Every guarantee required pursuant to this section shall be maintained until 180 calendar days after removal of all such equipment and facilities from the public right-of-way or such other date as may be agreed to by the city, in an amount sufficient to cover the estimated cost of the work required to meet the conditions of the permit.

(D) A person shall not be required to provide a guarantee pursuant to this section if such person: (i) is authorized by a franchise, license or other authorization granted by the city to place equipment or facilities in the public right-of-way, (ii) required as a condition of such authorization to furnish and maintain a performance guarantee, and (iii) provides evidence that it has furnished and maintained such guarantee as required by the franchise or other authorization throughout the period since the date it was first obligated to furnish such guarantee.

(E) The city may, in its sole discretion, waive or reduce the amount of the guarantee otherwise required pursuant to this section for a small project which involves minimal use of the public right-of-way and is not likely to result in any damage to the public right-of-way, any other property, or any person. Any such waiver must be in writing.

16-215. Indemnification. Any provider or other person who makes any excavation in the public right-of-way, makes any break or cut in any surface of the public right-of-way, deposits any earth or other material in the public right-of-way, places any equipment or facility in the public right-of-way, modifies any equipment or facility, or performs any other work in the public right-of-way shall defend, indemnify, and hold harmless the city from and against any liability or claim for damages or any other relief (including reasonable costs and expenses (e.g., attorneys' fees)) arising from or in connection with any act or failure to act by such provider or person in or near the public right-of-way, whether such act or failure to act is authorized, allowed, or prohibited by the city. In connection with its obligations under this section, any attorney selected by such provider or person to defend the city shall be subject to the city's approval. Issuance of a permit or inspection of work shall not affect the city's right to indemnification. This section does not constitute a waiver of any defense or immunity as to any third party, which would otherwise be available to the city.

16-216. Moving, altering, relocating, or moving equipment and facilities.

- (A) Upon demand by the city, a provider shall move, alter, relocate, or remove equipment or facilities and restore any affected public right-of-way as may be required by the city and shall complete any such work promptly or by such date as may be specified by the city.
- (B) A provider shall move, alter, relocate, or remove equipment or facilities and restore the public right-of-way pursuant to subsection (A) of this section at its own cost if the request is made for a governmental or public purpose. If the request is made for a purpose which is not a governmental or public purpose, the provider shall be entitled to recover the reasonable and direct costs of moving, altering, relocating or removing such equipment or facility and restoring any affected public right-of-way from the person or persons on whose behalf the request is made prior to commencing any work or at such other time as is acceptable to such provider.
- (C) In the event of an emergency, the city may in its sole discretion, move, alter, relocate, or remove any equipment or facility and restore the affected public right-of-way. The provider shall be responsible for repairing or replacing any affected equipment or facility at its own cost and shall reimburse the city for any costs incurred by the city in moving, altering, relocating, or removing any equipment or facility and in restoring the affected public right-of-way in an amount equal to the sum of the actual cost of moving, altering, relocating, or removing any equipment or facility and restoring the affected public right-of-way and twenty-five (25%) percent of such costs as compensation to the city for general overhead and administrative expenses associated with such work and shall make any payment due as directed by the city and not later than 20 calendar days after receipt of a bill.
- (D) If a provider fails to fully comply with a demand by the city pursuant to section (A) of this section promptly or by the date specified by the city, the city shall have the right to: (i) declare that all rights and title to and interest in the affected equipment or facilities are the property of the city; and/or (ii) move, alter, relocate, or remove any such equipment or facilities and restore the affected public right-of-way as it deems necessary. The provider shall reimburse the city for any costs incurred in moving, altering, relocating, or removing any equipment or facilities and restoring the affected public right-of-way in an amount equal to the sum of the actual cost of moving, altering, relocating, or removing any equipment or facilities and restoring the affected public right-of-way and twenty-five (25%) percent of such costs as compensation to the city for general overhead and administrative expenses associated with such work and shall make any payment due as directed by the city and not later than 20 calendar days after receipt of a bill.



16-217. Fees for permits. A minimum fee of Fifty (\$50.00) Dollars shall be due to the City with the application for the permit. However, depending on the work to be done, the City may, at its discretion, require an irrevocable letter of credit or bond in an amount sufficient to cover the estimated cost of the work required to meet the conditions of the permit in addition to a cash payment of \$50.

16-218. Non-conforming structures.

(A) All non-conforming structures located in public right-of-way which, prior to enactment of this chapter, were legally erected, and which are existing and properly maintained, shall be allowed to remain and shall be considered as “grandfathered” in place. These structures may not be enlarged in any manner.

(B) As of the effective date of this chapter, the structure may not be totally replaced. Maintenance and repairs to the structure will only be allowed if over fifty (50%) percent of the structure is in good condition. If the structure is over fifty (50%) in disrepair, it must be removed completely.

16-219. Severability. If any provision of this ordinance or if any policy, or order thereunder of the application of such provision to any person or circumstances shall be held invalid, the remainder of this ordinance, and the application of such provision of this ordinance or of such policy, or order to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

SECTION II. This ordinance shall take effect upon and after its final date of passage, the public welfare requiring it.

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Mayor

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Councilmember

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Councilmember

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Councilmember

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Councilmember

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
City Attorney

Passed 1<sup>st</sup> Reading: \_\_\_\_\_  
Passed 2<sup>nd</sup> Reading: \_\_\_\_\_  
Passed 3<sup>rd</sup> Reading: \_\_\_\_\_