

ORDINANCE NO. G-21-04

AN ORDINANCE AMENDING CHAPTER 42 OF THE CODE OF ORDINANCES OF THE CITY OF COFFEYVILLE, KANSAS, BY ADDING A NEW ARTICLE II, DIVISION 4, FOR PURPOSES OF ESTABLISHING WIRELESS AND WIRELINE INFRASTRUCTURE AND POLE ATTACHMENT STANDARDS AND REQUIREMENTS.

WHEREAS, K.S.A. 12-1001 et seq. and K.S.A. 13-101 et seq. confers on the City of Coffeyville, Kansas, certain powers of first-class cities with a commission/city manager form of government, including the authority and such powers as are consistent with the Constitution of the State of Kansas; and

WHEREAS, the City of Coffeyville, Kansas desires to promote the management of the Rights-of-Way in the overall interest of public health, safety and welfare, and encourage both wireline and wireless infrastructure investment by providing a fair and predictable process for the development of wireline and Wireless Facilities; and

WHEREAS, the City Commission of the City of Coffeyville wishes to create Chapter 42, Article II, Division 4, to provide regulations that are compliant with state and federal law.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF COFFEYVILLE, KANSAS, AS FOLLOWS:

SECTION 1. Chapter 42 of the Code of Ordinances is hereby amended, to add a new Article II, Division 4, as follows:

“DIVISION 4. WIRELINE AND WIRELESS INFRASTRUCTURE AND POLE ATTACHMENT STANDARDS AND REQUIREMENTS.

Section 42-122 - Purpose and Scope.

(a) The purpose and intent of this Division 4 is to provide a uniform and comprehensive set of regulations and standards for the Authorizing, Permitting, development, Collocation, installation, design, operation and maintenance of wireline and wireless telecommunications, cable, broadband, and video Facilities in the City of Coffeyville. These regulations are intended to prescribe clear and reasonable criteria to assess and process Applications in a consistent and expeditious manner, while reducing the impacts associated with wireline and wireless telecommunications, cable, broadband, and video Facilities. This Division 4 provides standards necessary to: (1) preserve and promote harmonious land uses and the public Rights-of-Way in the City; (2) promote and protect public health and safety, community welfare, visual resources, and the aesthetic quality of the City consistent with the goals, objectives and policies of the City; (3) provide for the orderly, managed, and efficient development of wireline and wireless telecommunications, cable, broadband, and video Facilities in accordance with the state and federal laws, rules, and regulations; and (4) encourage new and more efficient technology in the provision of wireline and wireless telecommunications, cable, broadband, and video Facilities.

(b) This Division 4 is not intended to, nor shall it be interpreted or applied to: (1) prohibit or effectively prohibit any personal wireless service provider's ability to provide personal wireless services; (2) prohibit or effectively prohibit any entity's ability to provide any interstate

or intrastate telecommunications, cable, broadband, or video service, subject to any competitively neutral and nondiscriminatory rules or regulation for Rights-of-Way management; (3) unreasonably discriminate among Providers of functionally equivalent services; (4) deny any request for Authorization to place, construct or modify personal wireless service Facilities on the basis of environmental effects of radio frequency emissions to the extent that such Wireless Facilities comply with the FCC's regulations concerning such emissions; (5) prohibit any Collocation or modification that the City may not deny under federal or state law; or (6) otherwise authorize the City to preempt any applicable federal or state law.

(c) This Division 4, along with any executed pole attachment agreement, Small Cell Facility deployment agreements, or Rights-of-Way agreements may be amended, modified, vacated or terminated at any time to comply with state and/or federal laws and/or regulations, as well as the ruling of a Court of Law of competent jurisdiction which addresses issues regarding utilization of Rights-of-Way, Pole Attachments or Wireless Facilities and/or any FCC order or ruling.

Section 42-123 - Severability.

If any section, subsection, sentence, clause, phrase, or word of this Division 4 is, for any reason, deemed or held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, or preempted by legislative enactment, such decision or legislation shall not affect the validity of the remaining portions of this ordinance. The City Commission of the City of Coffeyville hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase, or word thereof, regardless of the fact that any one or more sections, subsections, clauses, phrases, or words might subsequently be declared invalid or unconstitutional or preempted by subsequent legislation.

Section 42-124 - Definitions.

(a) For the purposes of this Division 4, the following defined terms shall have the meaning set forth in this Division unless the context clearly indicates or requires a different meaning.

- (1) "Accessory Equipment" means any equipment serving or being used in conjunction with an Attachment or Facility or Facility Support Structure including, but not limited to, utility or transmission equipment, switches, wiring, power supplies, generators, batteries, cables, equipment buildings, cabinets and storage sheds, shelters or similar structures associated with an Antenna located at the same fixed location as the Antenna, and, when Collocated on a structure, is mounted or installed at the same time as such Antenna.
- (2) "Antenna" means communications equipment that transmits or receives electromagnetic radio signals used in the provision of wireless services.
- (3) "Applicable Codes" means uniform building, fire, electrical, plumbing or mechanical codes adopted by a recognized national code organization or local amendments to those codes, as adopted by the City of Coffeyville, Kansas, (i.e., NEC, NESC, OSHA, etc.).

- (4) “Applicable Standards” means all applicable engineering and safety standards governing the installation, maintenance, and operation of Attachments and Facilities and the performance of all work in or around electric Utility Facilities and includes the most current versions of National Electric Safety Codes (“NESC”), the National Electrical Code (“NEC”), and the regulations of the Occupational Safety and Health Administration (“OSHA”), each of which is incorporated by reference in this ordinance, and other reasonable safety and engineering requirements of the City, provided such requirements of the City are applied on a non-discriminatory basis to utility and attaching entities and all other users, and provided further that such requirements of the City are consistent with this ordinance. All future updates or revisions of said Applicable Standards are hereby incorporated herein.
- (5) “Applicant” means any person or entity that submits a Collocation, Attachment or Authorization Application and the agents, employees and contractors of such person or entity.
- (6) “Application” means a written submission to the City of Coffeyville, Kansas requesting a Permit or Authorization of the deployment, or Collocation of an Attachment or Facility at a specified location.
- (7) “Attachment(s)” means any equipment that is placed on or around City Poles or Support Structure. All such Attachments are subject to the requirements in this ordinance and the associated Agreement with the City.
- (8) “Capacity” means the ability of a Pole to accommodate an additional Attachment based on Applicable Standards, including space and loading considerations.
- (9) “City” means the City of Coffeyville, Montgomery County, Kansas.
- (10) “Collocate or Collocation” means to install or mount an Antenna on a Wireless Support Structure for the purpose of transmitting and/or receiving radio frequency signals whether or not there is an existing Antenna on the Wireless Support Structure and/or to modify an existing Wireless Support Structure for the purpose of installing or mounting an Antenna on such structure all in compliance with Applicable Standards, Codes, regulations and/or ordinances.
- (11) “Communications Service” means a cable service, as defined in 47 U.S.C. 522(6), as amended; information service, as defined in 47 U.S.C. 153(24), as amended; telecommunications service, as defined in 47 U.S.C. 153(53), as amended; mobile service, as defined in 47 U.S.C. 153(53), as amended; or wireless service other than mobile service.
- (12) “Communications Service Provider” means a cable operator, as defined in 47 U.S.C. 522(5), as amended; a Provider of information service, as defined in 47 U.S.C. 153(24), as amended; a telecommunications carrier, as defined in 47 U.S.C. 153(51), as amended; or a Wireless Provider.

- (13) “Communication Space” means that space located above the common space on the Pole and below the Communication Worker Safety Zone. No Communications Facilities shall be located in the common space or the Communications Worker Safety Zone under this ordinance unless mutually agreed otherwise by the Applicant and the City.
- (14) “Communication Worker Safety Zone” means that dedicated space on a Pole that separates the City’s Supply Space from the Communication Space. No power supply facilities or Wireless Facilities shall be allowed in the Communication Worker Safety Zone.
- (15) “Electrical Supply Space” or “Supply Space” means that portion of a Utility Pole which is determined to be usable for electric power supply and that is located between the topmost location of the Communication Worker Safety Zone and the top of the Pole.
- (16) “Emergency” means a situation exists which, in the reasonable discretion of the City or an Occupant, if not remedied immediately, poses an imminent threat to public health, life, safety, damage to property or a service outage.
- (17) “Facility” means any equipment that is placed on or about any Poles or Support Structures, including underground, for the provision of wireline or wireless telecommunication, broadband, cable or video services.
- (18) “FCC” means the Federal Communications Commission of the United States.
- (19) “Fee” means a one-time charge.
- (20) “Franchise” or “State Franchise” means an agreement between the state of Kansas and an Applicant which grants the Applicant the privilege to provide telecommunication, broadband, cable and/or video services within the state of Kansas.
- (21) “Historic District” or “Historic Landmark” means a building, property, or site, or group of buildings, properties, or sites that are either (i) listed in the National Register of Historic Places or formally determined eligible for listing by the Keeper of the National Register, the individual who has been delegated the authority by the federal agency to list properties and determine their eligibility for the National Register, in accordance with Section VI.D.1.a.i through Section VI.D.1.a.v of the Nationwide Programmatic Agreement codified at 47 CFR Part 1, Appendix C.
- (22) “Infrastructure Provider” means any person that builds or installs communication transmission equipment, Facilities, support structures, or Utility Poles and that is not a telecommunication, broadband, cable, or video services Provider but is acting as an agent or a contractor for such a Provider.
- (23) “Law” means a federal or State statute, common law, code, rule, regulation, order, or local ordinance or resolution.

- (24) “Make Ready” means all work that the City or the Occupant reasonably determine to be required prior to attachment by the Applicant to accommodate the Attachment or Facilities and/or to comply with all Applicable Standards. Such work includes, but is not limited to, rearrangement and/or transfer of existing Attachments and/or Facilities, inspections, engineering work, Permitting work, tree trimming (other than tree trimming performed for normal maintenance purposes), Pole replacement and construction, but does not include routine maintenance.
- (25) “Micro Wireless Facility” means a Small Wireless Facility that is not larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height and that has an exterior Antenna, if any, no longer than 11 inches.
- (26) “Pole,” unless specified otherwise, means a utility Pole owned or operated by the City in the public Rights-of-Way.
- (27) “Occupant” means any person, firm, corporation, association, utility, or entity, which enters upon the Rights-of-Way of the City, or in any manner establishes a physical presence on, upon, in or over the Rights-of-Way of the City, for the purpose of installing, construction, maintaining or operating lines, conduits, wires, fiber optic wires, cables, pipes, pipelines, poles, towers, vaults or appliances, or related Facilities or appurtenances thereto.
- (28) “Permit” or “Authorization” means the approved Application issued by the City after all reviews are completed by the appropriate City departments in response to a Permit or Authorization Application being granted. A Permit or Authorization, after all Make Ready work is completed, provides permission to an Occupant to utilize the City’s Rights-of-Way for the placement, Modification, or removal on or from the City’s Poles, Support Structures, or area within the City’s Rights-of-Way of a specific Attachments or Facilities identified in the Application.
- (29) “Person” means an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization.
- (30) “Pole,” “City Pole,” “Municipal Pole” or “Utility Pole” means an electrical distribution Pole, which the highest voltage on such Pole is equal to or less than 15 kilo volts, or any other Pole, a street light Pole, or similar structure that is used in whole or in part for electric distribution, lighting, traffic control, or a similar function; that the City owns and is maintained by the City. It shall not include electric transmission structures, or any other structure(s) owned and/or maintained by the City.
- (31) “Provider” means a person who provides wireline or wireless telecommunications, broadband, cable, or video services and includes a person who provides the infrastructure either wireline or wireless for the provision of such telecommunications, broadband, cable and/or video services. It includes without limitation, Communication Service Providers, Cable and Video Service Providers and Infrastructure Provides for these services.

- (32) “Public Safety Agency” means the functional division of the federal government, the State, a unit of local government, or a special purpose district located in whole or in part within this State, that provides or has authority to provide firefighting, police, ambulance, medical, or other emergency services to respond to and manage emergency incidents.
- (33) “Rate” means a recurring charge.
- (34) “Rights-of-Way” means the area on, below, or above a public roadway, highway, street, public sidewalk, alley, or utility easement dedicated for compatible use. Rights-of-Way does not include any City-owned aerial lines.
- (35) “Small Cell Facility” means a Wireless Facility that meets each of the following qualifications:
- (i) Each Antenna is located inside an enclosure of no more than six cubic feet in volume, or in the case of an Antenna that has exposed elements, the Antenna and all of the Antenna’s exposed elements could fit within an imaginary enclosure of no more than six cubic feet in volume; and
 - (ii) Accessory Equipment enclosures that are no larger than 17 cubic feet in volume; and
 - (A) The Wireless Facilities are mounted on structures 50 feet or less in height including their Antennas, or
 - (B) are mounted on structures no more than 10 percent taller than other adjacent structures, or
 - (C) do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater; and
 - (iii) The Facilities do not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified by the FCC.
- (36) “Support Structure” means a Pole, tower, base station, or other structure, whether or not it has an existing Antenna Facility, that is used or to be used for the provision of telecommunication, broadband, cable, or video service.
- (37) “Unauthorized Attachment” means any Attachment or Facility of any kind placed on or around a City Pole(s) or Support Structure without such Authorization as is required by this ordinance.
- (38) “Wireless Facility” means equipment at a fixed location that enables wireless communications between user equipment and a communications network, including:
- (i) equipment associated with wireless communications; and (ii) radio transceivers, Antennas, coaxial or fiber-optic cable, regular and backup power supplies, and

comparable equipment, regardless of technological configuration. Wireless Facility includes Small Cell Facilities.

Wireless Facility does not include Wireline Backhaul Facilities, coaxial or fiber optic cable that is between Wireless Support Structures or Utility Poles or coaxial, or fiber optic cable that is otherwise not immediately adjacent to or directly associated with an Antenna.

- (39) “Wireline Backhaul Facility” means a physical transmission path all, or part, of which is within the Rights-of-Way, used for the transport of communication data by wire from a Wireless Facility to a network.

Section 42-125 – Authority for Attachments

- (a) The City is authorized to negotiate and enter into pole attachment agreements, small cell wireless facility deployment agreements and Rights-of-Way license agreements to Authorize or Permit Occupants to utilize the City’s Rights-of-Way.
- (b) No Attachment or Wireless Facility shall be placed on or around any City Poles or modified until (i) Applicant has a pole attachment agreement, small cell wireless facility deployment agreement or a Rights-of-Way license agreement executed by the City, (ii) an Application has been submitted by the Provider, a Permit or Authorization is granted by the City, and all Make Ready work is completed, all in accordance with Section 42-126 of this ordinance, and (iii) Applicant has obtained all necessary permits, licenses, consents, certifications and approvals from all governmental authorities and other parties in connection therewith.

Section 42-126 – Authorization from City Required

- (a) Authorization from City Required. No person, firm, corporation, association, utility, or entity, shall enter upon the Rights-of-Way of the City, or in any manner establish a physical presence on, upon, in or over the Rights-of-Way of the City, for the purpose of installing, construction, maintaining or operating lines, conduits, wires, fiber optic wires, cables, pipes, pipelines, poles, towers, vaults or appliances, or related Facilities or appurtenances thereto, without the express written permission of the City. The permission of the City may be granted by a pole attachment agreement, a small cell wireless facilities deployment agreement, a Rights-of-Way license agreement or such other agreement as the City determines best protects the public interest in the Rights-of-Way.
- (b) Permitted Use. Wireline Pole Attachments, Small Cell Facilities, Wireless Facilities, overhead and underground fiber Facilities shall be classified as Permitted Uses and subject to administrative review in accordance with the requisite agreement or such other agreement with the City as authorized by this Division 4 and subject to zoning review.

- (c) City May Deny Authorization or Permission. The City may prohibit the use or occupation of specific portions of the City's Rights-of-Way due to a reasonable public interest necessitated by public health, safety, and welfare so long as the authority is exercised in a competitively neutral manner and is not unreasonable or discriminatory. A reasonable public interest shall include the following: (i) The prohibition is based upon a recommendation of the city engineer, is related to public health, safety and welfare and is nondiscriminatory among Providers, including incumbent Providers; (ii) the Provider has rejected a reasonable, competitively neutral and nondiscriminatory justification offered by the City for requiring an alternate method or alternate route that will result in neither unreasonable additional installation expense nor a diminution of service quality; (iii) the City reasonably determines, after affording the Provider reasonable notice and an opportunity to be heard, that a denial is necessary to protect the public health and safety and is imposed on a competitively neutral and nondiscriminatory basis; or (iv) the specific portion of the public Rights-of-Way for which the Provider seeks use and occupancy is environmentally sensitive as defined by state or federal law or lies within a previously designated Historic District as defined by this ordinance.
- (d) If the City denies a request to use or occupy a specific portion of the public Rights-of-Way, the requester shall be served a notice of such denial by first class mail. The notice shall indicate that the requester shall have ten (10) days from the date of receipt of the notice to request a public hearing by the Coffeyville City Commission concerning the denial. Failure to make a timely request for a hearing shall constitute a waiver of the person's right to contest the denial before the City Commission. The hearing shall be held by the City Commission within thirty (30) days after the filing of the request therefore, and the potential occupant shall be advised by the City of the time and place of the hearing. Following the public hearing, if the City Commission denies a potential occupant's request to use or occupy a specific portion of the public Rights-of-Way, such determination may be appealed to district court.

Section 42-127 – Fees, Rates, and Make Ready Work

- (a) Fees and Rates. The City may assess Fees and Rates for Application for and use of the City's Rights-of-Way to include: (i) A recurring Rate ; (ii) a recurring Attachment Rate; (iii) a one-time Application or Permit Fee; (iv) a recurring underground license Fee;(v) an excavation Fee for each street or pavement cut; (iv) An inspection Fee for each inspection conducted; (vi) repair, restoration or corrective costs associated with repairing and restoring the City's Rights-of-Way because of damage caused by the Provider, its assigns, contractors, and/or subcontractors in the Rights-of-Way or failure to maintain Attachments or Facilities; (vii) an Unauthorized Attachments Fee; and (viii) require a performance bond, in a form acceptable to the City, from a surety licensed to conduct surety business in the state of Kansas, insuring appropriate and timely performance in the construction and maintenance of Facilities located in the City's Rights-of-Way. All such Fees and Rates shall be in accordance with federal and state laws.

- (b) Make Ready. The Cost of all Make Ready shall be solely the responsibility of the Provider. The Applicant will cause the Make Ready work to be performed in accordance with the executed agreement with the City and pursuant to a schedule that avoids conflict or interference with the City's prior work commitments and regular business operations.
- (c) Costs.
 - (i) Applicants shall be responsible for entering into an agreement with any existing other attaching entities to reimburse them for any costs that they incur in rearranging or transferring their Facilities to accommodate the Applicant's Attachment(s) or Facilities.
 - (ii) Applicants shall pay the actual and documented costs incurred by the City to upgrade or replace Poles or Support Structures to which the Applicant's Facilities are Attached if the upgrade or replacement is required solely due to the addition or Modification of the Applicant's Facilities or equipment, and to pay its proportionate share of the costs incurred by City to upgrade or replace Poles or Support Structures if the upgrades or replacements directly benefit the Applicant and other users to such Poles or Support Structures and are made to meet the City's service needs, are made at the request of the Provider or an additional Attaching party, or are made as a result of governmental order or regulation.

Section 42-128 – Placement and Collocation Requirements and Conditions

The following represent requirements and conditions applicable to the placement of Attachments and Facilities under this Division 4.

- (a) City Priority. The City's use of Poles or Support Structures for its own business operations will take precedence over all other uses of Poles or Support Structures.
 - (i) The City is not required to maintain any Poles or Support Structures for a period longer than is necessitated by its own service requirements. In the event the City determines that it will no longer maintain a Pole or Support Structure upon which any Attachment or Facilities are attached, the City will send the relevant Providers written notice that it will no longer maintain the Pole or Support Structure. In such event, the City may, in its sole discretion, offer the Provider alternative space on another Pole or Support Structure for the Provider's Attachment or Facilities, provided that such alternative space on a Pole or Support Structure are available. However, the City is not obligated to offer such alternative to a Provider.

- (b) Space Reservation. The City is authorized to grant access to Utility Poles and Support Structures subject to a reservation of space to reclaim such space, when and if needed, to meet the City's core utility purpose or documented City plan projected at the time of the Application.
- (c) Installation and Maintenance. All Providers are required, at their sole cost and expense, to install, maintain, repair, Modify and remove their Attachments or Facilities in safe condition and good repair in accordance with all Applicable Standards and Specifications and of all applicable national, regional, state, local and municipal laws, statutes, ordinances, rules, and regulations.
- (i) In the event the City provides maintenance, transfer, removal replacement and/or relocation services to any Provider as a result of the Provider failing to perform such services after notice given, then that Provider is required to the City all actual and documented costs incurred as a result of the maintenance, transfer, removal, replacement and/or relocation of that Provider's Attachments, Facilities, or ground equipment.
- (ii) In the event that notice is provided by a governmental body that a Provider's or its Carrier's use of any City Pole hereunder is in violation of any municipal, state or federal law, statute, ordinance, rule or regulation, over which said governmental entity has jurisdiction, or is not authorized by Permit, license or other approval required from any governmental body, or in the event notice is provided by a property owner or joint owner of the pole of such violation or unauthorized use, the City may elect, in its sole discretion, by written notice to the Provider to revoke any Permit or Authorization granted under this ordinance authorizing the Provider's use of said Pole. In the event the City elects to revoke such Permit or Authorization, the Provider is required to remove its Attachments and Facilities at Provider's sole cost and expense, within sixty (60) days from the date of the City's revocation notice.
- (iii) The City is authorized to make periodic inspections of all Attachments and Facilities located on or about City Poles or City Support Structures, or a portion of same, as often as conditions warrant. If the City determines that corrections or changes need to be made to meet the Applicable Standards and Specifications, all Wireless Services Providers are required to make such corrections or changes to be made at their own expense.
- (iv) Due to safety concerns, all Poles where Antennas are to be installed must be bucket truck accessible and only on distribution or street light Poles.
- (v) All Providers are required to discuss design and mounting of all Antennas with Coffeyville City Electric Department prior to installation.

- (d) Code and Law Compliance. All Providers shall comply with all Applicable Standards, Codes, and local code provisions and/or regulations that concern public safety. Disconnect, meter, and Antenna equipment must be installed to comply with Coffeyville City Utility Department construction standards. Driven Pole grounds shall be required for each Antenna installation and installed per Applicable Code at a distance of four (4) feet from the Pole. Providers shall also comply with all Historic District preservation laws and requirements.
- (e) Protective Equipment. All Providers, their carriers, their employees, and contractors, at their own expense, shall utilize and install adequate protective equipment as required by the Applicable Standards and Specifications to ensure the safety of people and Facilities. The Wireless Services Providers shall at their own expense install protective devices designed to handle the voltage and current impressed on their Facilities in the event of a contact with the supply conductor. The City shall not be liable for any actual or consequential damages to the Wireless Services Providers' employees or Facilities.
- (f) Aesthetic Standards. Providers shall comply with written aesthetic standards that are generally applicable for decorative utility Poles, or reasonable stealth, concealment and aesthetic requirements that are published by the City. All aesthetics must be mutually agreed to by the Provider and the City prior to installation. The City's published Aesthetic Standards are located on the City's web page and are incorporated herein by reference.

Section 42-129 – Audits and List of Attachments/Facilities and Locations

- (a) Providers and Occupants shall install their Attachments and Facilities only in the locations Authorized and Permitted by the City.
- (b) The City may revoke a Provider's or Occupant's Permit or Authorization to use a Pole or Support Structure for non-compliance with a term or terms of this ordinance or non-compliance with the Agreement with the City, subject to the notice and right to cure procedures for a default in the Agreement with the City.
- (c) Upon request by the City or an Occupant, but not more often than once every five (5) years, an official audit will be conducted to determine the number, type and locations of all Facilities located on or about City Poles and/or City Support Structures. The Cost of said audit shall be split proportionally between all the Providers.
- (d) All Providers shall maintain a list of their Attachments and Facilities with locations and shall provide said list to the City on December 31st of each year.

Section 42-130 - Exceptions to Applicability

- (a) Nothing in this Division 4 authorizes a person to Attach or Collocate Facilities as follows:
 - (i) Unless otherwise mutually agreed, this ordinance does not authorize the use of the City's transmission structures, which are those structures used to support electric circuits of 69,000 volts and higher.
 - (ii) Property owned by a private party or property owned or controlled by the City or another unit of local government that is not located within Rights-of-Way, or a privately-owned utility pole or Support Structure without the consent of the property owner; or
 - (iii) Property owned, leased, or controlled by a park district, forest preserve district, or conservation district for public park, recreation or conservation purposes without the consent of the affected district.

Section 42-131 - Abandonment

An Attachment or Facility that is not operated for a continuous period of 12 months shall be considered abandoned. The owner of the Attachment or Facility is required to remove the Attachment or Facility within ninety (90) days after receipt of written notice from the City notifying the Provider of the abandonment. If the Attachment or Facility is not removed within ninety (90) days of such notice, the City may remove or cause the removal of such Attachment or Facility pursuant to the terms of its agreement with the City at the sole cost of the Provider and without any liability to City arising therefrom.

Section 42-132 – Insurance.

At all times, a Provider has Facilities or Attachments on or around City Poles or Support Structures, the Provider shall keep in force and affect all insurance policies as required in the Agreement with the City.

Section 42-133 – Indemnification.

- (a) Any Providers who place Attachment(s) or Facilities on or about the City's Pole or Support Structures shall defend and hold harmless the City, its commissioners, officers, employees, agents, contractors, subcontractors, successors and assigns from and against any and all third party claims, including any claims by its carriers, demands, actions, causes of action, liabilities, judgments, obligations, costs or expenses for any damage to property, or for injury to or death of any person or persons, or any other costs or expenses, including without limitation reasonable attorneys' fees and costs, as required by the Provider's agreement with the City.

- (b) In no event will the City be liable for any noise, induced voltages, currents or other interference affecting any Providers' Attachments or Facilities, unless caused by the City's intentional misconduct. All Providers who construct or Attach any device or Facility to any City Pole or City Support Structure accepts the use of those City Poles and City Support Structures in their as-is, where -is condition, with all faults.
- (c) All Providers shall conduct their operations, and insure those of its carriers, and otherwise use or occupancy of City's Rights-of-Way in compliance with all applicable Environmental Laws and shall not cause any hazardous materials to be introduced to or handled on or about the City's Rights-of-Way. Licensee shall indemnify and shall defend and hold harmless the City and all other Indemnitees from and against any suits, damages, injuries, costs and expenses of any kind including, without limitation, court costs, reasonable attorney and consultant fees, remediation costs, fines and penalties, whether asserted under Environmental Laws or at common law, arising out of or related to (a) any violation hereunder by the Provider, its carriers, its employees, agents, or contractors of any Environmental Laws; or (b) the presence, release or threatened release of any hazardous materials at, on or about the City's Rights-of-Way caused by the Provider, its carriers, its agents, employees, contractors, subcontractors, or any entity in privity with or providing a benefit to the Provider; provided, however, that the Provider shall have no obligation to so indemnify any Indemnatee from such Indemnatee's own negligence or misconduct. The foregoing indemnification provisions and obligations shall survive any repeal of this ordinance or termination of the Agreement with the City.
- (d) Municipal Liability Limits. No provision of this ordinance or any agreement between the Provider and the City is intended, or shall be construed, to be a waiver for any purpose by the City of any applicable state limits on municipal liability or governmental immunity. No indemnification provision contained in this ordinance or in any agreement between the Provider and the City under which a Provider indemnifies the City shall be construed in any way to limit any other indemnification provision contained in this ordinance or in any agreement between the Provider and the City.

Section 42-134 - Notification.

- (a) All Providers are required to maintain a staffed 24-hour emergency telephone number, not available to the general public, where the City can contact the Provider to report damage to that Provider's Attachments or Facilities or other situations requiring immediate communications between the Provider and the City. Such contact person shall be qualified and able to respond to the City's concerns and requests regarding its Attachments or Facilities. Failure to maintain an emergency contact shall eliminate the City's liability to that Provider for any actions that the City deems reasonably necessary given the specific circumstances.

Section 42-135 - Force Majeure.

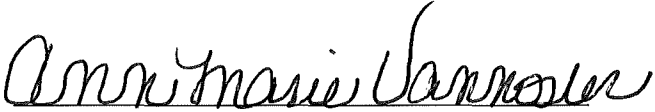
If either the City or a Provider is prevented or delayed from fulfilling any provision of this ordinance or any provision of the agreement between the Provider and the City by reason of fire, flood, earthquake, or like acts of nature, wars, revolution, civil commotion, explosion, acts of terrorism, embargo, acts of the government in its sovereign capacity, material changes of laws or regulations, labor difficulties, including without limitation, strikes, slowdowns, picketing or boycotts, unavailability of equipment of vendor, or any other such cause not attributable to the negligence or fault of the City or the Provider delayed in performing the acts required by this ordinance of the agreement between the Provider and the City, then performance of such acts shall be excused for the period of the unavoidable delay, and the entity affected shall endeavor to remove or overcome such inability as soon as reasonably possible.

Section 42-136 - Penalty and Repeal Provision.

- (a) Any person, firm, corporation, association, utility, or entity, or agent, contractor or subcontractor thereof, violating any provision of this article, shall be guilty of a municipal offense, and shall upon conviction be subject to a maximum fine of \$500.00. Each day of violation shall constitute a separate and distinct offense.
- (b) All ordinances or portions of ordinances in conflict with this Division 4 are hereby repealed.”

SECTION 2. This ordinance shall be in full force and effect from and after the date of its passage and publication of a summary thereof.

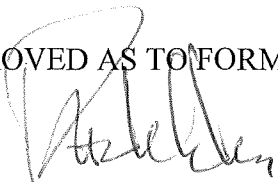
PASSED BY THE CITY COMMISSION OF COFFEYVILLE, KANSAS THIS 8th DAY OF JUNE, 2021.


Ann Marie Vannoster, Mayor

ATTEST:


Melissa Carter, City Clerk

APPROVED AS TO FORM:


Paul Kritz, City Attorney

