

COMMISSIONERS' ORDINANCE NO. 0-04-20

AN ORDINANCE REPEALING AND REENACTING CHAPTER 96 OF THE COVINGTON CODE OF ORDINANCES, STREETS AND SIDEWALKS

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WHEREAS, Chapter 96 of the Covington Code of Ordinances sets forth various regulations concerning streets and sidewalks; and

WHEREAS, Chapter 96 also includes processes for applying for and obtaining approval to temporarily occupy portions of City right of way; and

WHEREAS, the City has a responsibility to manage use of its streets and sidewalks by third-parties to ensure use of its streets and sidewalks does not result in unsafe conditions; and

WHEREAS, City staff proposes various changes to the current streets and sidewalks ordinance to improve organization of the ordinance, streamline permitting processes, and implement a comprehensive right of way management program.

NOW THEREFORE,
BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE CITY
OF COVINGTON, KENTON COUNTY, KENTUCKY:

Section 1

Chapter 96 of the Covington Code of Ordinances is repealed in entirety and replaced as follows:

GENERAL PROVISIONS

§ 96.01 DEFINITIONS.

For the purposes of this chapter, the following terms shall have their assigned meanings:

BENCH. A seat or seats located on public sidewalks, along any public way or right of-way, for the accommodation of persons awaiting transportation or for other purposes. This definition includes benches that may or may not have advertising located anywhere on their exterior.

CODE ENFORCEMENT OFFICER. A Covington police officer, safety officer, citation officer, or other public law enforcement officer with the legal authority to issue a citation. For purposes of this chapter, a citation officer is a City employee, who has been charged by the City with the authority to

issue citations for violations of this chapter. This shall include code enforcement officers.

MODULAR NEWSRACK. A newsrack which is designated with multiple separate enclosed compartments able to accommodate the display, sale or distribution of multiple distinct and separate newspapers, which exceeds the dimensions of an individual newsrack.

NEWSPAPER. A publication of general circulation that is printed and distributed, either daily or weekly, which contains news, current events, features, advertising and/or information of interest to the general public, often distributed through the use of newsracks.

NEWSRACK. Any type of unmanned device for the vending or free distribution of newspapers, periodicals or printed materials of any nature.

PUBLIC WAY/PUBLIC RIGHT-OF-WAY. All areas deeded to the public, or dedicated to the public by formal dedication or by operation of law, that are legally open to public use such as public streets, sidewalks, roadways, highways, parkways, alleys, parks, as well as areas surrounding and immediately adjacent to public buildings, and the airspace above them.

STREET FURNITURE. Miscellaneous objects such as poles, meters, utilities, traffic light boxes, street lights, news and information distribution boxes or corrals, refuse receptacles, mail boxes, telephone panels and booths, bus shelters with or without seating, outdoor restaurant furniture public seating, flower boxes or plant containers, bike racks, decorative objects, kiosks, objects of art and those structures erected or placed by authorized public agencies for public safety and/or public welfare purposes. Excluded from this definition are temporary roll-off waste containers and temporary storage containers.

VENDING MACHINE. Any machine that dispenses a product to the general public, including, but not limited to, soft drink machines, cigar or cigarette vending machines, food vending machines, and coffee vending machines, but excluding newsrack vending machines.

§ 96.02 RAILROADS OBSTRUCTING STREETS.

No person shall operate, direct, supervise, or permit the operation of any railroad locomotive, railroad cars, or railroad train in such a manner as to interfere with the use of any public street in the City for travel purposes for a period of more than five minutes. This provision shall apply to stopped or moving trains.

§ 96.03 RAILROAD CROSSINGS.

All railroad companies shall construct and keep it repair suitable crossings at the intersections of streets, alleys, ditches, sewers, and culverts, and shall light and guard the same.

§ 96.04 SPEED OF RAILROAD LOCOMOTIVE ENGINES.

No person shall operate, directly supervise, or permit the operation of any railroad locomotive engine, car, or railroad train in such a manner as to exceed the speed limit of 25 miles per hour within City limits.

OBSTRUCTIONS AND HAZARDS

§ 96.10 OBSTRUCTION OF PUBLIC WAYS.

(A) Structural obstructions.

(1) Impeding public use. It shall be unlawful for any person to erect, keep, or maintain any house, fence, wall, building, or permanent or immovable structure, post, rail, or object on or over any sidewalk, street, alley, or public way within the City that obstructs or impedes public use of such sidewalk, street, alley, or public way.

(2) Exceptions. The City may place or permit other government entities to place trees, posts, rails, or street furniture that it may deem appropriate upon the public way.

(3) Street furniture approval. Before any street furniture is placed in the public way, it shall be subject to review and approval by applicable City departments and shall be appropriate in scale and design.

(a) The City Manager or his or her designee shall consider:

(i) Whether the design, materials and color scheme of the street furniture comport with and enhance the quality and character of the streetscape, including nearby development and existing land uses; and

(ii) Whether the street furniture endangers public safety or property, or interferes with or impedes the flow of pedestrian or vehicular traffic, or is placed in such a manner as to impede or interfere with the reasonable use of a display window or display space.

(b) No street furniture shall be approved that wholly impedes the use of any sidewalk.

(B) Lights on obstructions. When any use of any street, sidewalk, alley, or public way is made as allowed by law, all obstructions shall be safely guarded in such manner and with sufficient necessary yellow lights at night, as to protect all those traveling or passing on such streets, alleys, sidewalks, or public ways against injury from the obstruction.

(C) Enclosures. It shall be unlawful for any person to enclose in any manner, either totally or partially, any sidewalk, street, alley, public way, or any part thereof, with any fence, wall, or other structure, or in any manner whatever, except as may be provided by ordinance.

(D) Use of cellar doors. It shall be unlawful for any person to permit or keep open any grating or cellar door or way in any sidewalk on any street, or thereby to prevent the free and unobstructed use by pedestrians of the entire sidewalk from the line of the property abutting on such street to the curb of the carriageway thereof, except for the time such opening on the sidewalk is being actually used for taking things into or out of the cellar or basement with which such openings shall communicate or be connected. When such actual use ceases, the grating or cellar door in the sidewalk shall be closed on a level with the sidewalk and securely fastened by the persons owning, occupying, or using it so that pedestrians may safely and without obstruction use the full width of the sidewalk, including the place therein covered by such grating or cellar door or way.

(E) Other regulations. Nothing in this section shall prevent the City Manager or his or her designee from establishing reasonable time, place, and manner regulations governing the placement of temporary objects on the right-of-way.

§ 96.11 MATERIALS ON PUBLIC WAYS.

(A) (1) General prohibition. It shall be unlawful for any person to place, keep, or maintain on any sidewalk, street, alley, or public way, any wood, coal, lime, sand, brick, stone, lumber, or anything whatever, except as herein provided.

(2) Removal of materials. Any person engaged in doing or causing to be done any construction or demolition work which makes it necessary for or results in bricks, stone, dirt, sand, gravel, vessels, or other litter or matter to be placed or to fall in or on any street, alley, sidewalk, or public way in the City, shall remove these materials together with all litter or other substance or refuse matter remaining after the work is completed within three days after the completion of the work. The owner of any building or structure of any kind destroyed in whole or in part by fire, windstorm, or other involuntary cause shall, within six days after the event causing the destruction,

remove or cause to be removed all debris resulting therefrom lying on any street, alley, sidewalk, or public way in the City.

(3) Dumping or spilling debris on streets. No person shall dump, spill, deposit, or track any foreign matter on any public way in the City. Any person who violates this provision shall be liable to the City for the cost of moving such foreign matter from the public way. The provisions of this subsection shall not apply to any person who has complied with the provisions of subsection (A)(2) above.

(4) Disintegrating substances on streets. No person shall place or cause to be placed any lime, mortar, or any disintegrating substance on any asphalt street within the City so that it will come in contact with the asphalt surface thereof.

(5) Heavy substances on pavements. No person shall place or cause to be placed on an asphalt pavement in the City, heavy rocks, timber, metals, or other heavy substances by which the surface of the pavement may be defaced or injured.

(6) Injurious matter on streets. It shall be unlawful for any person to leave, throw, or deposit on any street any glass bottles, glass, nails, tacks, hoops, wires, cans, or any other substances likely to injure any person, animal, or vehicle.

(B) Violations of subsection (A) of this section involving matter in an amount less than or equal to the capacity of a standard 20-gallon container shall constitute littering; violations involving substances in greater amounts shall constitute dumping.

(C) No provisions of this chapter shall be deemed to waive any requirement imposed by applicable City policies regarding the operations of a public utility on a street or in the right-of-way.

§ 96.12 BLOCKING SIDEWALKS.

It shall be unlawful for any person in or on any sidewalk or any premises in or abutting thereon to make any speech or harangue; to demonstrate, sell, or offer for sale goods, wares, or merchandise; or to display any signs, device, information, or exhibition in consequence of which there is caused or created such a gathering of persons on the sidewalk as to interfere with pedestrian traffic thereon.

§ 96.13 LIQUID OBSTRUCTIONS.

(A) It shall be unlawful to allow or permit the flow of water of any kind from any drain or other pipes in or on any street, alley, sidewalk, or public

way during the making, repairing, or reconstruction thereof in such manner as to interfere with, retard, or interrupt such work.

(B) It shall be unlawful for any person to throw, pour, or permit or cause to be run over any sidewalk, street, alley, or any part thereof, any slop, refuse matter of any kind, impure liquids, or offal of any kind, or to permit any person in his or her employ to do so.

§ 96.14 VEHICULAR OBSTRUCTIONS.

(A) It shall be unlawful for any person to leave any vehicle or any other thing that may be a nuisance, obstruction, or hindrance in or on any street, alley, or sidewalk within the City, either during the day or night.

(B) It shall be unlawful for any person to place or maintain any vehicle of any kind on or over any sidewalk or any part of any sidewalk.

(C) It shall be unlawful to remove any wrecked vehicle without removing broken glass or debris from the roadway.

(D) It shall be unlawful for any automobile repair shop, tire shop, accessory store, filling station, or any other establishment to use any part of any street, sidewalk, or the right-of-way for the storage, repair, adjustment, or equipment of vehicles and accessories therefor.

§ 96.15 OBSTRUCTIONS REGULATED.

(A) No party shall place, construct, or maintain within the right-of-way of any public way of the City any permanent or immovable object, street furniture, structure, sidewalk, entrance way, driveway, or other installation, except as otherwise permitted by applicable City ordinance or law.

(B) Before placing an object, structure, street furniture, or other installation, written approval, in the form of a permit or other legal document granting the privilege to occupy the right-of-way, shall be obtained from the City Manager or his or her designee.

(C) All objects, structures, street furniture and installations shall be maintained by the operator, owner and/or permit holder in a reasonably clean condition and shall be free of dirt and grease, rust and corrosion in visible metal areas, graffiti, discolored or bare surfaces, chipped, faded, cracked and peeling paint, cracked, dented, or broken components, pasted bills and other debris.

(D) No objects, structures, street furniture and/or installations shall be abandoned.

(E) The operator, owner and/or permit holder of a permanently mounted object, structure, street furniture and/or installation shall repair any damage to the right-of-way caused by the installation or the maintenance of the object, structure, street furniture and/or installation.

(F) On removal of an object, structure, street furniture and/or installation, the operator, owner and/or permit holder of a permanently mounted object, structure, street furniture and/or installation who removes the rack must completely remove or cut off all bolts or fasteners flush with the surface of the right-of-way and restore the right-of-way to its original condition.

(G) Newsracks. Newsracks may be placed in public right-of-ways, subject to the following conditions and/or restrictions:

(1) It shall be unlawful for any owner to place, affix, erect, construct or maintain a newsrack upon any public sidewalk or public right-of-way without first having obtained written permission for the placement and location from the City Manager or his or her designee, in accordance with the provisions of this subchapter.

(a) An applicant shall submit a written request for placement of a newsrack to the City Manager or his or her designee with the following information:

(i) The name, address, telephone number, and email address of the person/entity responsible for the newsrack;

(ii) The name, address, telephone number, and email address of the person who the City Manager should notify or contact at any time concerning the permittee's newsrack;

(iii) The number, location, position, and installation method of a newsrack shown on a reasonably scaled map/drawing or aerial photograph;

(iv) Names of publications to be contained in each newsrack, frequency of distribution, and re-stocking schedule; and

(v) A description and dimensions of the newsrack.

(b) The City Manager or his or her designee shall issue a written decision to an applicant within 30 days of the

submission of a written request containing required information indicated in division (G)(1)(a).

(c) Any denial or decision regarding an applicant's proposed placement of a newsrack in the right-of-way may be appealed to the Board of Commissioners within 30 days of the denial or decision. A decision of the Board of Commissioners may be appealed to Kenton Circuit Court within 30 days of the Board's decision.

(2) Newsracks shall have the following dimensions:

(a) The height shall not exceed 60 inches;

(b) The width, measured at the widest point, shall not exceed 25 inches;

(c) The depth, measured at the widest point, shall not exceed 25 inches.

(3) Newsracks may not be bolted or permanently affixed to any public sidewalk or improved right-of-way unless such installation is approved by the City Manager or his or her designee. If approved, installation will be in a manner that conforms with the requirements herein, and to ensure minimum damage to the right-of-way infrastructure.

(4) Newsracks which are not bolted or permanently attached to any public sidewalk or public right-of-way shall be secured by a weighted base or pedestal to prevent the newsrack from being tipped over, upset by the elements or by contact from pedestrians.

(5) Newsracks shall not be chained or otherwise attached to any tree, bench, signpost or any other fixture.

(6) Each newsrack shall be regularly maintained by its owner in a reasonable, clean, neat and attractive condition, and be in good repair at all times so that:

(a) It is kept free from graffiti;

(b) It is kept free of chipped, faded, peeling and cracked paint in the visible painted areas thereof;

(c) It is kept free of rust and corrosion in the visible unpainted metal areas thereof;

(d) The clear glass or plastic parts thereof, if any, through which the printed material being dispensed are not broken and are kept free of tears, peeling or fading; and

(e) The structural parts of the newsrack are not broken or unduly misshapen.

(7) In the event that an owner shall completely remove the newsrack and any mounting attachment, the owner shall be required to restore the location to a safe condition, leaving no defect or projection in the pavement.

(8) Any newsrack that is abandoned or that fails to comply with any of the requirements set forth herein, may be removed by the City after providing a seven-day notice to the owner that the newsrack has been deemed abandoned or is not in compliance. A newsrack will be considered abandoned when any newsrack that does not contain the newspaper specified therefore for more than seven consecutive days for a daily publication, or 14 consecutive days for a weekly publication or any other magazine or informational material.

(9) Newsracks shall be placed in locations that do not obstruct or interfere with ingress to or egress from abutting properties and which do not impede or endanger pedestrians or vehicular traffic.

(10) Newsracks shall not be placed:

(a) Upon a public sidewalk or public right-of-way in a manner that blocks ingress or egress to a building or readily identifiable or marked bus stop loading zone, or other loading zone, or handicapped parking space; or

(b) Within 15 feet of a fire hydrant;

(c) Within two feet of a parking meter, mailbox, bench, light post, planter or tree grates;

(d) On any portion of tree grate, manhole cover, meter and/or valve box cover, or vent cover for underground utilities;

(e) At any location whereby the clear, space on the public sidewalk for passageway of pedestrians is reduced to less than four feet;

(f) In such a manner as to obstruct the sight lines at street intersections that creates safety hazards for pedestrians and vehicle operators; or

(g) In such a manner where the door of the newsrack opens beyond the edge of a street curb.

(11) Modular newsracks are prohibited unless provided by the City.

(12) As a condition to receiving the written permission, the newsrack permittee shall release and indemnify, defend and save harmless the City, its officers, elected officials, agents, and employees from and against any and all claims, actions, demands, judgment costs expenses, and damages of every kind and nature incurred by or incurring to any person whatsoever predicated upon injury to or death of any person, or loss of or damage to property, public or private, or whatever ownership, or damages to business, provided such injury, death, or loss or damage shall arise out of or be connected directly or indirectly to the exercise of any right or privilege granted by any written permission issued under this chapter.

(I) Temporary Roll-Off Containers and Construction Debris. No person shall place a dumpster, temporary roll-off container, or other receptacle for demolition or construction debris in or on any yard, street, or sidewalk until he or she submits an application to and obtains a permit (hereinafter "dumpster permit") from the Code Enforcement Department.

(1) The Code Enforcement Department may issue a dumpster permit for a period not to exceed 90 days, for the purpose of containing demolition or construction debris while the applicant conducts rehabilitation or construction work at the location identified in the application.

(2) Every person desiring a dumpster permit shall make application therefor, in writing, to the Code Enforcement Department, stating the location where the dumpster is to be placed, the name, address and phone number of the owner or agent of the property to be served by the dumpster, the name and phone number of the solid waste company or owner of the dumpster, and any other information that the Code Enforcement Department may reasonably require. The permit application must be accompanied with a dumpster permit fee of \$20.

(3) Every person responsible for the placement of a dumpster or other receptacle for demolition or construction debris must comply with the requirements listed on the dumpster permit.

(4) The City may cause to have a dumpster or other receptacle for demolition or construction debris removed from its location in the City, at the expense of the person responsible for its placement, if:

(a) The person responsible for the placement of the dumpster has not obtained a dumpster permit from the Code Enforcement Department; or

(b) The dumpster permit issued by the Code Enforcement Department - or an extension thereof - has expired; or

(c) A person who obtains a dumpster permit places the dumpster at a location different than the location identified in the application for the permit; or

(d) Refuse is placed in the dumpster from location(s) other than the location identified in the application.

(J) Portable Storage Units. (1) No person shall place a portable storage unit or similar container on any yard, driveway, street or sidewalk, unless authorized by other applicable laws and regulations, until he or she submitted an application to do so and obtains a permit (hereinafter "portable storage unit permit") from the City's Code Enforcement Department.

(2) For purposes of this section a portable storage unit is defined as a transportable unit designed and used primarily for temporary storage of building material, household goods, personal items and other material for use on a limited basis on residential property.

(3) The Code Enforcement Department may issue a portable storage unit permit to allow the placement of a unit not to exceed 30 days from the date of the issuance of the permit. The Code Enforcement Department may allow an extension of the 30-day period for good cause with written request by the applicant, but in no event shall a placement of the temporary portable storage unit exceed 60 days. Only one permit is allowed in a one-year period (Beginning on the day the permit is issued).

(4) Every applicant shall provide the location of the temporary portable storage unit, the name, address, phone number and e-mail address (if applicable) of the owner or agent of the property to be served by the temporary portable storage unit; and the name address, phone number and e-mail address (if applicable) of the service company that provides the temporary portable storage unit and any other information that the Code Enforcement Department may reasonably require.

(5) The permit application must be accompanied with a temporary portable storage unit fee of \$20.

(6) The Code Enforcement Department shall issue citation(s) to any person(s) violating this section.

(K) Notwithstanding any other provision of this section, the City may cause to be removed from the public rights-of-way, without prior notice to the operator, owner and/or permit holder an object which:

(1) Presents a clear and present danger to the public, or substantially impedes the use of the public rights-of-way by pedestrians.

(2) An object, structure, street furniture, and/or installation which has not been granted a permit or other written permission to occupy the right-of-way.

(L) Within 48 hours after an object, structure, street furniture, and/or installation has been impounded under this section, the City shall give written notice of the impoundment and shall issue a citation for violation of this section to the operator, owner and/or permit holder, using the name and address listed thereon. If there is no name, address or telephone number listed on the object, then the City shall make a reasonable effort to determine the operator, owner and/or permit holder for the purpose of notifying such person of the citation and the impoundment. The notice shall inform the operator, owner and/or permit holder of the procedure to claim the impounded object, structure, street furniture, and/or installation, including the administrative cost of impoundment and storage, the procedure for contesting the citation and impoundment, the time within which the object, structure, street furniture, and/or installation must be claimed, and the legal consequences of failure to claim the object in a timely manner.

(1) The operator, owner and/or permit holder of an object, structure, street furniture, and/or installation that has been cited and impounded pursuant to this section, may challenge the validity of a citation and an impoundment and request in writing a hearing before the Code Enforcement Board. The hearing shall be conducted within seven business days of the date of the request, unless the owner, operator and/or permit holder waives the limitation or the City shows good cause for such delay. The City shall retain possession of the object, structure, street furniture, and/or installation pending the hearing, unless the operator, owner and/or permit holder posts a bond in an amount equal to the fines and fees accrued as of the date of the hearing request, or \$100, whichever is less. If the operator, owner and/or permit holder is unable to pay the amount of the bond, the

hearing shall be held within 48 hours of the date the request for hearing is received, unless such person requests or agrees to a continuance.

(2) No sooner than 30 days after the date of notice of impoundment, or 30 days after the date of impoundment in which the City has made a reasonable effort to determine the operator, owner and/or permit holder for the purpose of notifying such person notice of impoundment, the City may dispose of any impounded and unclaimed objects. The City may not dispose of any impounded and unclaimed objects in which an appeal of the citation and the impoundment is pending pursuant to the administrative procedures outlined in this section.

(3) The operator, owner and/or permit holder of an object, structure, street furniture, and/or installation that has been cited and impounded pursuant to this section, shall be assessed an impoundment fee of \$50 for each object, structure, street furniture, and/or installation that has been impounded. In the event that the operator, owner and/or permit holder has been found not to have violated this section, no impoundment fee shall be assessed.

(M) Any permanent or immovable object, street furniture, structure, sidewalk, entrance way, driveway, or other installation that has been designated as public art or an object of art by the City, shall be exempt from any design requirements contained in this section or in any regulations promulgated by applicable City departments.

§ 96.16 EXCEPTIONS.

(A) Nothing in this subchapter shall be construed to prohibit the necessary, temporary use of the sidewalks, by night or day, while actually shipping or receiving goods, wares, or merchandise of every kind, and for putting up coal or other fuel, provided sufficient passageway is left for pedestrians.

(B) The provisions of any section to the contrary notwithstanding, the City Manager or his or her designee is authorized to issue a permit for the erection of temporary bleacher seats along the route of any duly-authorized parade. Such permit shall be effective only for the period of time specified therein, and shall specify the exact location or locations of such temporary bleacher seats.

MAINTENANCE

§ 96.20 PERMIT REQUIRED.

No person shall, directly or indirectly, as principal, agent, or employee, construct or attempt to construct any sidewalk or driveway or cut any curb without having obtained a permit to do so from the Public Works Department or other designated City representative.

§ 96.21 APPLICATION AND FEE.

(A) Any person desiring to construct a sidewalk or driveway across a sidewalk or driveway or cut any curb for the purpose of constructing a driveway across a sidewalk or any street within the City shall file an application to do so with the Public Works Department or other designated City representative. The application shall contain:

(1) A statement or plan showing the location of the proposed sidewalk, driveway, or curb cut;

(2) The exact number of lineal feet of sidewalk, driveway, or curb involved;

(3) The name and address of the owner of the abutting property;

(4) The name and address of the contractor who is to do the work; and

(5) Any other pertinent information which the Public Works Department or other designated City representative may require.

(B) Separate applications and permits shall be required for each lot or parcel of real estate abutting upon the proposed improvement.

(C) All applicants for permits under the provisions of this subchapter shall pay a fee in the amount of \$50.00.

§ 96.22 DUTY OF PROPERTY OWNER TO MAINTAIN AND REPAIR.

(A) It shall be the duty of every person owning lots or real estate fronting and abutting on any sidewalk in the City to maintain, at his or her own expense and in a suitable state of repair, the sidewalk, so far as it fronts or abuts upon his or her lots or real estate.

(1) The City shall be solely and fully responsible for the repair, replacement or reconstruction of that portion of any sidewalk damaged by a City-owned tree.

(2) The City shall pay for ADA required components on City-owned sidewalks.

(3) While the sidewalks are the responsibility of the abutting property owner, the City is responsible for curbs and gutters abutting City-owned sidewalks.

(B) Every property owner shall repair all holes, uneven surfaces, and other defects in the sidewalk, and he or she shall reconstruct or replace all or any part of the sidewalk that is not capable of ordinary restoration or repair. The material used for the repair, replacement, or reconstruction shall be of similar grade and texture as that used in the construction of the sidewalk.

(C) The grade of any sidewalk or driveway constructed in accordance with the specifications for the construction and repair of sidewalks and driveways shall conform to the curb grades of the street and slope regularly from the top of the curb to the property line at a rate of from one-fourth to one-half of an inch to each foot, as the Public Works Department or other designated City staff may direct. At street intersections the slope of the sidewalk or driveway shall be worked out under the direction of the City Manager's designee. If, in any particular case, the provisions of this section shall be found to be impracticable, the City Manager's designee is authorized to modify their strict application. Where the owner is dissatisfied with the modification proposed by the City Manager's designee, he or she may appeal to the City Manager, whose decision shall be final

(D) If a City of Covington Code Enforcement Officer issues a notice of violation to a person or business entity or someone responsible for maintaining real property (hereafter "person") for violating the City's codes related to sidewalk maintenance and repair, that person shall have the following options:

(1) Repair the sidewalk using the person's own resources or own contractor; or

(2) Repair the sidewalk with the use of a City-approved contractor at rates established by the City and the Contractor, paying the City directly or through a three-year tax assessment plan; or

(3) Repair the sidewalk with the use of a City-approved contractor, and apply for a City match-grant in accordance with guidelines to be established by the City Engineer and staff.

(E) To be eligible to participate in a three-year tax assessment plan or a match-grant, a person must be in good standing with the City pursuant to applicable Covington Ordinances.

(F) To be eligible for a match-grant, the person must live in and own the property.

(G) Any person repairing a sidewalk must obtain an appropriate permit from the City, and build the sidewalk in accordance with applicable standards approved by the City.

(H) Financing Options.

(1) Owner-occupied properties, absentee owned properties and commercial properties may pay the cost of sidewalk repair, replacement or reconstruction through a three-year tax assessment plan, added to their City property tax bill. The City Finance Department is directed to develop the terms and conditions of the sidewalk repair assessment, including interest charges.

(2) Low Income owner-occupants may be eligible for a 50-50 match from city resources or a 75-25 match depending on their income. Eligible income levels shall be established by the City Manager of his designee. Low income property owners are also eligible for the three-year tax assessment plan for their portion of the cost.

§ 96.23 BROKEN SIDEWALKS AND CURBS.

(A) All broken and unsafe sidewalks and curbing within the City are declared to be a public nuisance.

(B) No person owning property in the City shall permit or suffer the existence of any broken or unsafe sidewalk and curbing, fronting or abutting their property.

§ 96.24 DUTY TO REMOVE SNOW AND ICE.

The owner or tenant of lands abutting or bordering upon the sidewalks of public streets shall remove all snow and ice from that part of any paved sidewalk lying in front of his respective premises within 12 hours of daylight after the snow and ice has fallen or formed thereon.

§ 96.25 FAILURE TO REMOVE; LIEN FOR COSTS.

(A) Whenever the owner or tenant of lands abutting or bordering upon the sidewalks of public streets shall refuse or neglect to remove snow or ice as

required by § 96.20, the snow or ice may be removed under the direction of the Public Works Department and Code Enforcement Department.

(B) In the event of removal by the City, the cost thereof may be recovered through the processes authorized in Chapter 92 of the Covington Code of Ordinances.

RIGHT-OF-WAY ENCROACHMENT MANAGEMENT

§ 96.30 GENERAL PROVISIONS.

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

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

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

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

§ 96.31 DEFINITIONS.

The following definitions apply to this subchapter:

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

Degradation. A material decrease in the useful remaining life of the right-of-way caused by excavation in or disturbance of the right-of-way,

resulting in the need to reconstruct such right-of-way earlier than would be required if the excavation did not occur.

City Manager. The City Manager or his or her designee, unless otherwise specified.

Emergency. A situation when placement, repair, or maintenance of facilities is needed to be undertaken immediately because of a danger to human life or health or of significant damage to property, including, but not limited to, unanticipated leaks, interruptions, or reductions in existing services, or other situations defined as being emergency or dangerous conditions pursuant to federal, state, or local law. The installation of facilities that only serve to expand existing service or provide new service shall not be considered an emergency.

Excavate or excavation. To dig into or in any way remove or physically cut, disturb or penetrate any part of a right-of-way.

Facility or facilities. Any tangible asset in the right-of-way, including but not limited to, equipment and apparatus such as pipes, conduits, wires, cables, amplifiers, transformers, fiber optic lines, antennae, poles, towers, ducts, or steel plates which are required, necessary, used, or useful in the provision of utility or other services.

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

Lessee. A person who provides services within the City solely by leasing facilities and who has no control over what or where or how any facilities are erected, installed, maintained, operated, repaired, removed, restored, or otherwise used.

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

Party or person. Any natural or corporate person, business association, or other business entity including, but not limited to, a partnership, a sole proprietorship, a political subdivision, a public or private agency of any kind, a utility, a successor or assign of any of the foregoing, or any other legal entity.

Planned public project. Any beautification, installation, excavation, repaving, or restoration activity in the rights-of-way that is undertaken by the City as part of a budgeted public improvements plan approved by the City Commission and which is funded in whole or in part with public tax

dollars in any given fiscal year.

Public utility or utility. A party that is defined in KRS Chapter 278 as a utility, and (1) is subject to the jurisdiction of the Kentucky Public Service Commission, the FCC, or the Federal Energy Regulatory Commission, or (2) is required to obtain a franchise from the City to use and occupy the right-of-way pursuant to Sections 163 and 164 of the Kentucky Constitution.

Permit. An encroachment permit issued pursuant to this subchapter.

Permittee. A party holding an Encroachment Permit.

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

Reseller service provider. A person who provides services within the City solely by reselling services and who has no control over what, where, or how any facilities are erected, installed, maintained, operated, repaired, removed, restored or otherwise used.

Right-of-way. The surface of and the space above and below a public roadway, highway, street, freeway, lane, path, sidewalk, alley, court, boulevard, avenue, parkway, cartway, bicycle lane or path, public sidewalk, or easement held by the City for the purpose of public travel and shall include rights-of-way as shall be now held or hereafter held by the City. A right-of-way does not include the airwaves above a right-of-way with regard to cellular or other non-wire telecommunications or broadcast service.

Special Purpose Governmental Entity. Any agency, authority, or political subdivision of the state which exercises less than statewide jurisdiction and which is organized for the purpose of performing governmental or other prescribed functions within limited boundaries. It includes all political subdivisions of the state except a city, a county, or a school district.

Tariff. The internal regulations or guidelines of the utility industry as promulgated or adopted by the Kentucky Public Service Commission or the Federal Communications Commission.

§ 96.32 ADMINISTRATION AND ENFORCEMENT.

The City Manager or the person designated by the City Manager in his or

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

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

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

(B) Construction procedures and placement of facilities; obligation to minimize interference with the rights-of-way.

(1) All activities in the rights-of-way that are subject to this subchapter shall be performed in compliance with all applicable laws, ordinances, rules, and regulations. Each party subject to this subchapter shall obtain all other necessary permits, licenses, and authority as required by this subchapter or other applicable rule, law, or regulation.

(2) The City may require that facilities be installed at a particular time, at a specific place or location, or in a particular manner, as a condition of access to a particular right-of-way; may deny access if a party is not willing to comply with the City's reasonable requirements; and may remove, or require removal of, any facility that is not installed in compliance with the requirements of this subchapter and charge that party for all the costs associated with removal. Regardless of any other criteria, in the event the placement or location of a facility in a particular area of the right-of-way would constitute a public safety concern, the City may deny the placement of that facility in that area or order its relocation or removal.

(3) In order to minimize interference with the use of the rights-of-way by others, each party subject to this subchapter shall make reasonable efforts to minimize the number of surface cuts made, shall make reasonable efforts to coordinate such surface cuts with the City's paving schedule, and, if appropriate, shall enter into joint trenching and other arrangements with other parties.

(4) Any right-of-way or public property that is disturbed or damaged during the construction, excavation, installation, operation, maintenance, or repair of a facility shall be repaired

within sixty (60) calendar days of the completion of those activities which caused the disturbance or damage by the party that disturbed or damaged the rights-of-way or public property. This time may be extended by the City Manager upon demonstration of reasonable cause by the subject party. Reasonable cause shall include, but not be limited to, inclement weather, natural disasters, and similar emergencies, including natural disasters and emergencies in other regions where a utility has sent local crews to provide assistance. Reasonable cause shall also include delay due to unforeseen public bidding complications and/or contractor nonavailability for public utilities that are subject to state laws governing bidding and public procurements.

(5) Parties subject to this subchapter shall make every reasonable effort to stack or bundle conduit where feasible so as to occupy as little space as possible in the right-of-way, consistent with, and to the extent permitted by, applicable codes, standards, and regulations.

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

(C) Duty to maintain all property in right-of-way. All parties subject to this subchapter shall maintain all of their facilities located in the right-of-way in a manner that promotes the public safety. By way of example, but not limitation, all facilities, including but not limited to poles and manholes, shall be maintained in a safe condition at all times. In the event any facility in the right-of-way endangers the public safety, the party responsible for such facility shall take reasonable steps to rectify the situation immediately upon notification and in accordance with this subchapter at their cost.

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

(E) Relocation or removal. Pursuant to § 96.42 and consistent with the procedures and criteria contained therein, all parties subject to this chapter shall, upon the provision of reasonable written notice of, and at the direction of the City Manager, promptly relocate or remove facilities, or rearrange aerial facilities, if required by a tariff, state or federal law, a franchise agreement with the City, or for a public purpose pursuant to this subchapter.

§ 96.34 EXISTING FACILITIES.

Facilities located in the rights-of-way prior to the effective date of this subchapter may remain in the rights-of-way and shall not be considered in violation of this subchapter, provided the party responsible for such facilities under this subchapter complies with the provisions of this subchapter, including the filing of a registration statement and the payment of any applicable franchise fee within one hundred twenty (120) days of its effective date. The registration statement of each party having any facilities within the rights-of-way as of the date this subchapter is adopted shall contain a general description of such registrant's facilities and the types of services offered. Upon request by the City, the party responsible for such facilities shall provide a map or other information regarding the location of existing facilities. In addition, upon the request of the City and in order to assist the City with implementing or enforcing the provisions of this subchapter, each registrant shall make available for inspection on a reasonable basis more detailed information, if available, regarding the location of its facilities.

§ 96.35 REGISTRATION.

(A) Requirement to register. Unless otherwise indicated by this subchapter, it shall be unlawful for any party to install, operate, construct, or maintain any facilities within the rights-of-way unless such facilities are registered with the City by filing the registration statement required herein and all applicable franchise fees are paid to the City.

(B) Registration. Any party who owns any facilities within the right-of-way or who seeks to occupy the right-of-way to install, construct, or maintain any facilities within the rights-of-way shall file a registration statement, which shall be filed with the City Manager on a form provided by the City. The registration statement shall include the following information:

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

(2) The registrant's address, telephone number, facsimile number, and e-mail address, as well as a local point of contact available to be contacted in the event of an emergency.

(3) A general description of all facilities that the registrant will be installing in the right-of-way.

(4) Upon Request of the City, the Registrant shall provide a detailed inventory and map of all of its facilities installed in the city's 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.

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

(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.

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

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

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

(F) Effect of registration. Registration does not convey legal or equitable title to the rights-of-way, nor does it place a registrant in a position of priority with respect to other registrants. Registration does not excuse a party from having to obtain a franchise, lease, or other agreement, if otherwise required, or from obtaining any required or necessary agreement with the City or other party with respect to the placement of facilities on the City's or another party's facilities.

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

(1) Newspaper stands;

(2) Signage;

(3) Facilities associated with sidewalk cafes;

(4) Facilities owned by the Commonwealth of Kentucky;

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

(6) Temporary solid waste roll-off containers and temporary storage units or containers;

(7) Any facilities or objects that are registered in accordance with other applicable licenses, regulations, ordinances, and law.

(H) Rejection or cancellation of registration.

(1) Within ten (10) working days of the filing of the registration statement or the discovery of the inaccuracy of the registration statement by the City, the City Manager shall provide written notice to any party who (a) does not possess proper authorization to occupy the rights-of-way with facilities, or (b) fails to accurately complete the registration statement. Such written notice shall specify the deficiency and shall notify the party what corrective action must be taken. If the party fails to correct the deficiency within ten (10) days, the City Manager 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 Manager 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 Manager.

(2) A registrant who no longer continues to place, maintain, or own any facilities in the rights-of-way may cancel its registration upon providing the City with written notice.

(3) Reconsideration.

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

(b) The City Manager may hear any relevant evidence in

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

§ 96.36 REQUIREMENTS FOR REGISTRANTS.

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

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

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

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

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

(E) Require that any party performing any work or service in the right-of-way on behalf of said registrant will comply with all applicable provisions of this subchapter as well any other additional local regulation pertaining to the performance of such work, and will identify the registrant for whom such contractor is working. Said registrant shall be responsible and liable hereunder only to the City for any damage to the right-of-way caused by the actions of any such subcontractor or others as if said registrant had performed or failed to perform any such obligation; and

(F) Take reasonable steps to provide notice to all occupants where any work or service which requires an encroachment permit is scheduled to be performed and may have an adverse effect on those properties that abut

the impacted site or impedes access to those properties abutting the impacted site. Registrants shall make a good faith attempt to notify occupants regardless of whether the registrant holds an easement on or over the property so that occupants know which utility to contact with questions or concerns.

§ 96.37 PERMITS.

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

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

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

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

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

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

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

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

(3) Temporarily occupy the right-of-way.

(D) Time for application.

(1) An encroachment permit for the performance of non-emergency work shall be applied for at least ten (10) days prior to such planned activity. Notwithstanding the foregoing, the City Manager may waive said time period for good cause shown. The City shall approve, deny, or conditionally approve a permit application within five (5) business days of the receipt of the application, and in the case of a conditional approval or denial, state in writing the basis for such determination and what conditions must be met by the applicant in order to obtain a permit. Any work performed without proper notification shall constitute work being done without a permit, and as such constitute a violation of this subchapter.

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

(E) Application for permit.

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

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

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

(c) A description of all activities covered by the permit, the locations and estimated dates and times of commencement and completion thereof, and a site plan where appropriate.

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

(e) The name of the contractor or other entity actually performing the work;

(f) The name, address and telephone number and email address of the contact person for the contractor or other entity actually performing the work;

(g) The date by which the construction work will be complete and the roadway surface restored

(2) A single permit may be issued for multiple surface cuts or installations, provided that no such surface cut or installation covered in a single permit shall be more than five hundred (500) feet apart, or upon a showing by the permit applicant that the granting of a single permit shall not significantly affect the City's ability to efficiently administer this subchapter.

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

- (1) Fifty dollars (\$50.00) upon application for a permit authorizing a street surface cut;**
- (2) Twenty dollars (\$20.00) upon application for a permit authorizing a sidewalk or bike path cut, or for a permit authorizing a bore cut; and/or**
- (3) Fifteen dollars (\$15.00) upon application for a permit authorizing a sod cut, for a permit authorizing the blocking of any street in a manner that obstructs traffic, or for any other encroachment not listed above.**

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

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

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

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

- (1) It significantly conflicts with the location of existing facilities or facilities that are planned or permitted for installation, or City improvements or facilities that are planned in that area;**

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

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

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

(5) It is an above-ground facility other than a utility pole, fire hydrant, or street light that, because of its size, presents significant public safety concerns or violates historic preservation guidelines, design standards or procedures pertaining to aesthetics that are duly adopted by the City;

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

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

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

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

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

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

(1) Newspaper stands;

(2) Temporary Signage which complies with all other applicable laws and regulations;

(3) Facilities associated with sidewalk cafes or the sale of goods or merchandise, which are otherwise permitted by applicable laws and regulations;

(4) Facilities owned by the Commonwealth of Kentucky;

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

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

(7) Facilities that are registered or authorized pursuant to other applicable licenses, permits, laws or regulations.

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

§ 96.38 EMERGENCIES; POWER TO ORDER REPAIRS.

(A) Because emergency repairs can be disruptive to the community, including planned business activities of residents, a registrant shall notify the City within two (2) business days from discovery of the emergency, via telephone, facsimile, text, e-mail, or in-person communication with a City Official, of any event regarding its facilities already located within the right-of-way that it considers to be an emergency. The registrant may proceed to take whatever actions are necessary to respond to an emergency. Within three (3) business days of the discovery of the emergency, the registrant shall have applied for any necessary permit and provided the City with a written notification of said emergency, which notice shall include, at a minimum, the time, date, location, and extent of any excavation or other work performed. If the City becomes aware of an emergency regarding a registrant's facilities, the City Manager or his or her designee shall attempt to contact that registrant immediately.

(B) If the City determines that the right-of-way associated with a surface cut has been degraded or caved in more than one-half (½) inch below grade, and within two (2) years after any surface cut, it shall notify the

party or parties responsible for such degradation or cave-in of this determination and, in the case of a clear and immediate danger or hazard to vehicular or pedestrian traffic, the City shall order the party or parties responsible to take immediate precautionary measures to direct vehicular or pedestrian traffic around and away from the degradation or cave-in. In addition, the City shall order the party or parties responsible to make necessary corrections and repairs, which may be temporary in nature, to cure the immediate danger or hazard within two (2) days and perform any additional work consistent with the issuance of any necessary permit. The City shall thereafter order the party or parties responsible to make all necessary permanent corrections and repairs within ninety (90) days.

(C) In all other cases of degradation or cave-in, the City shall order the party or parties responsible for such degradation or cave-in to take immediate precautionary measures to direct vehicular or pedestrian traffic around and away from the degradation or cave-in, and shall order the party or parties responsible to make all necessary corrections and repairs within thirty (30) days.

(D) In the event the City orders corrections or repairs pursuant to this section, and the party responsible fails to respond within the time allotted, the City shall cause the necessary corrections and repairs to be made, and shall submit a statement for the costs incurred by the City in making such corrections and repairs to the responsible party, which statement shall include an additional administrative fee of five hundred dollars (\$500.00). In that event, and if the said statement of costs and fees is not paid by the responsible party within forty-five (45) days, the City shall suspend the issuance of all future permits to the responsible party until such time as the costs are paid.

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

(F) Any other provision in this section notwithstanding, the City Manager may extend any time period under this section for good cause, and the requested extension upon a showing of good cause by the applicant, shall not be unreasonably withheld or denied. Good cause shall include, but not be limited to, inclement weather, natural disasters, and similar emergencies, including natural disasters and emergencies in other regions where a utility has sent local crews to provide assistance.

§ 96.39 INSURANCE.

Each registrant shall maintain in full force and effect a commercial general liability insurance policy reasonably acceptable to the City with a minimum policy limit of one million dollars (\$1,000,000.00) per occurrence and shall provide the City with a certificate of insurance evidencing the insurance policy required by this section. The certificate shall state that the insurance policy shall not be canceled or non-renewed until after thirty (30) days' notice has been provided to the City; however, insurance may be canceled and replaced with a policy that continues to meet the requirements of this section. A registrant may satisfy the insurance requirements and conditions of this section under a reasonably acceptable self-insurance plan. The City reserves the right to impose reasonable additional insurance requirements as part of a franchise agreement.

§ 96.40 INDEMNIFICATION; HOLD HARMLESS.

(A) Consistent with Kentucky law, each registrant shall defend, indemnify, and hold harmless the City, its elected and appointed officials, boards, members, agents, and employees against any and all claims, suits, causes of action, proceedings, judgments for damages or equitable relief, and costs and expenses, including reasonable attorney's fees, arising from liability or claims of liability for bodily injury or death to persons or property damage in which the claim arises out of the installation, construction, repair, maintenance, or operation of its facilities, and in the event of a final judgment being obtained against the City either independently or jointly with the registrant, the registrant shall pay such judgment with all costs and hold the City harmless thereon.

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

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

§ 96.41 JOINT PLANNING AND CONSTRUCTION; COORDINATION OF EXCAVATION.

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

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

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

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

§ 96.42 INSTALLATION, RELOCATION, OR DISCONTINUATION OF FACILITIES.

(A) Provisions apply unless direct conflict exists. The provisions of this section shall apply unless they directly conflict with a tariff, state or federal law, or the provisions of the applicant's franchise agreement with the City. This section shall not be interpreted to impair the ability of a registrant to perform work not requiring a permit unless a public safety

concern would arise if such work were to be performed.

(B) General application. Upon the written notice of and at the direction of the City Manager, a registrant shall relocate or remove facilities, or rearrange aerial facilities, if required by a tariff, state or federal law, a franchise agreement with the City, or the provisions of this subchapter.

(C) Coordination. To the extent reasonably possible, registrants shall coordinate the installation, relocation, and removal of their facilities with each other in order to avoid issues with respect to the location of facilities within the right-of-way.

(D) Procedure. The City Manager shall notify the applicant if the City Manager 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 Manager 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 Manager's determination. The City Manager may issue a permit that is contingent upon certain condition(s) being fulfilled with respect to the criteria contained below.

(E) Reservation of rights. Notwithstanding any other provision in this subchapter, the City specifically reserves the right to order the removal or relocation of any facility installed after the effective date of this chapter, at no cost to the City, for which the appropriate permit was not obtained.

(F) Preclusion on cutting newly paved surfaces.

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

(2) If any street is about to be constructed, reconstructed, widened, altered, or paved by the City, the City Manager shall provide notice to registrants, and the registrant shall make any extensions, changes, or installations of or to its facilities ahead of such activity. Depending on the amount of such extensions, changes, or installations to be performed, the registrant may be allowed up to one hundred twenty (120) days to complete the work, which the City Manager may extend for good cause. It is expected that the registrant shall not disturb the City's improvements within the

following two year period, so as to minimize the premature degradation of the right-of-way caused by multiple alterations and surface cuts. Upon a registrant's showing of undue hardship or emergency, the City Manager may grant permission for limited disturbance of the newly paved surface within the two year period. Registrant shall in those instances comply with all other relevant provisions of this chapter pertaining to restoration of the right-of-way.

(G) Relocation.

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

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

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

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

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

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

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

(3) Relocation underground. If, as a result of a planned public project, a registrant is required to relocate facilities that were previously and lawfully located above-ground, and the City requests, as part of the relocation, that the facilities be relocated to underground, the City may 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 and unless applicable Kentucky law requires otherwise.

(4) Relocation for public safety reasons. If the basis for the City ordering the relocation of a facility is a public safety concern, the registrant shall relocate the facility at no cost to the City.

(5) Relocations to assist in the placement of other facilities. If a registrant is required to relocate facilities to assist in the installation of facilities by another registrant or permittee, the party seeking to install the facilities shall bear the costs of said relocation, unless an agreement to the contrary is otherwise entered into by the appropriate parties.

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

(a) The relocation is the result of the City adopting a plan or policy requiring that facilities be placed underground in that location, if, at the time the facility was installed, such a plan was not in place;

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

(c) The City has previously ordered that the facility be relocated to comply with a public improvement project, the registrant or party has substantially complied with such order, and the City then orders the registrant or party to relocate that facility to a different area as part of the same project; or

(d) The City orders the relocation of a facility to accommodate a public improvement project, and the construction of such project is subsequently terminated by the City.

(H) Discontinuance of Use.

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

Manager in writing of such discontinued use within thirty (30) days. Said notice shall describe the facilities for which the use is to be discontinued and include a statement as to whether the registrant intends to leave the facilities in place for potential future use, remove the facilities, or abandon the facilities in place. The registrant shall remain responsible for the maintenance, repair, and condition of discontinued facilities at all times.

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

§ 96.43 ABOVE-GROUND FACILITIES.

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

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

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

(3) All transmission and distribution structures, poles, and other lines and equipment installed or erected by registrant under this subchapter shall be located so as to minimize any interference with the proper use of the right-of-way with the rights and reasonable convenience of property owners whose property adjoins or abuts any affected right-of-way. Subject to applicable codes, overhead drops shall be as close as possible to other utility drops in order to concentrate the drops in as small an area as possible to minimize visual clutter and interference with the use of private property.

(4) The utility is responsible for the cost of compliance with safety standards that may impact the rights and reasonable convenience of property owners whose property adjoins or abuts any affected right-of-way

§ 96.44 PATCHING AND RESTORATION STANDARDS.

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

comply with the applicable standard engineering drawing. All edges of a surface cut made to a paved street shall be sawed, and such surface cuts shall be sealed with a sealant approved by the City. In addition, the City shall approve all backfill material utilized.

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

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

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

§ 96.45 INSPECTIONS.

(A) Site inspection.

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

(2) Any excavation with a required approval or inspection that has been covered prior to the two (2) day notification period shall be

uncovered for inspection at that permittee's expense, upon request of the City.

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

(B) Authority of the City Manager.

(1) At the time of inspection, the City Manager 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 Manager may issue an order to the permittee for any work that does not conform to the terms of the permit or other applicable ordinance, resolution, regulation, standard, condition, or code. The order shall state that failure to correct the violation will be cause for revocation of the permit. The permittee shall proceed with the corrective work before undertaking any additional work under the permit. Within thirty (30) days after issuance of the order, the permittee shall present proof to the City Manager that the violation has been corrected. If such proof has not been presented within the required time, the City Manager may revoke the permit, or for good cause shown, extend the period of time allowed for the corrective work to be completed.

§ 96.46 APPEAL.

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

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

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

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

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

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

(6) The imposition of any fee, penalty, or charge under this

subchapter which the party believes to be invalid.

(B) The appealed action shall be reviewed, upon written request, by the City Manager, or his or her designee, who shall act within a period of ten (10) days from the receipt of the written request. The appealing party shall be afforded the opportunity to be heard and present relevant evidence to the City Manager should it desire to do so, and the decision by the City Manager shall be in writing and provide the basis for the decision.

(C) Any party aggrieved by a decision of the City Manager pursuant to division (B) may appeal the City Manager's decision, in writing, to the Board of Commissioners within ten (10) days of the City Manager's decision. The appealing party shall be afforded the opportunity to be heard and present relevant evidence to the Board of Commissioners should it desire to do so, and the decision by the Board of Commissioners, shall be in writing and provide the basis for the decision. The written decision of the Board of Commissioners shall constitute a final administrative decision, which may be appealed to the Kenton Circuit Court within thirty (30) days of the Board of Commissioner's written decision.

TABLE AND SEATING PLACEMENT

§ 96.70 PERMIT REQUIRED.

(A) (1) No person or entity shall place tables or seating for tables (hereinafter collectively "seating") on the public right-of-way, including public sidewalks, (hereafter "public sidewalks") unless that person first has obtained a license for the tables and seating from the City Manager or his or her designee (hereafter collectively "City Manager") and has had such seating approved by the City Engineer. This license must be obtained for all tables and seating on public sidewalks or plazas ("the licensed premises") and this license shall be automatically renewed on an annual basis upon the payment of the annual fee as set forth in division (G) below. The City Manager is authorized to promulgate written regulations that define appropriate seating.

(2) Licenses for tables and seating shall only be issued for areas located throughout the City of Covington that are designated "Commercial" zones as indicated in Article 3 of the Zoning Ordinance, and the ART Zones as indicated in Article 4 of the Zoning Ordinance.

(3) Licenses for tables and seating shall only be issued for tables and seating that are of a design, size and scale appropriate to the character of the neighborhood in which the tables are to be located. The City Manager shall be empowered to enforce this provision, using the Historic Covington Design Guidelines or other guidelines as

approved and maintained by the Community Development Department as a guide to making such a determination.

(4) Licenses for tables and seating may only be permitted in locations on the public right-of-way that are deemed appropriate by the City Manager. The City Manager may refuse to grant a license that he or she believes may be injurious to the health, safety and well-being of the pedestrians and the general public, causes non-compliance with the Americans with Disabilities Act, blocks or inhibits vehicle sightlines, or creates a public nuisance, as defined by the City's nuisance ordinance. No license shall be issued to an applicant that is not current on his/her/its obligations to the City, including taxes, loans, liens, and unremediated violations of the City building or nuisance codes.

(B) The license shall specify the number of tables and chairs and the specific location of the tables and seating. The licensee shall place the tables and seating only in the areas designated in the license. The applicant shall provide the following to the City Manager before qualifying for the issuance of a license:

(1) The name of the applicant, including the type of organization, e.g. proprietorship, partnership, corporation, limited liability company, and the person responsible for compliance with this subchapter;

(2) The address of the applicant;

(3) A map or diagram drawn to scale depicting the number, type and dimensions of tables and seating. The map shall illustrate the width of the sidewalk and specifically identify where the tables and seating or benches will be located;

(C) The following provisions and certifications shall be conditions of any license granted by the City Manager:

(1) Inclusion of a release and indemnification provision releasing and indemnifying the city from personal injury and property damage liability resulting from the use of the tables and seating;

(2) Certification that the applicant will provide adequate trash receptacles outdoors for the tables and seating and certification that the applicant will empty these receptacles at reasonable time intervals to ensure that the receptacles do not overflow with trash and debris onto the public right-of-way;

(3) Certification that the licensee will clean the right-of-way on which tables and seating are placed, including sidewalks and

abutting curbs and gutters, of all litter and debris each night after outdoor service is finished;

(4) Certification that the license will permit outdoor service until 12:45 a.m, with all outside seating prohibited after 1:00 a.m. every night of the week. An exception shall be the public plaza around the Goose Girl Fountain, where on Sunday through Thursday, the license will permit outdoor service until 10:45 p.m. with all outside seating prohibited after 11:00 p.m., and on Friday and Saturday nights, the license will permit outdoor service until 11:45 p.m. with, all outside seating prohibited after 12:00 a.m. midnight;

(5) Certification that all outdoor music over public sidewalks or plazas, whether live or amplified by outdoor speakers, will cease at 10:00 p.m. This provision preempts all other City ordinances allowing outdoor music to be played until a later time, except provisions concerning special events and festivals. This restriction applies to all areas located in the City as indicated in § 96.70(A)(2) unless otherwise indicated in § 96.70(C)(5)(a) and (b) below.

(a) For purposes of § 96.70(C)(5), the Roebeling Point Business District is defined as the area bounded by the corner of Court and East Third Streets going east to the corner of East Third and Sanford Alley going south to the corner of Sanford Alley and East Fourth Street going west to the corner of East Fourth Street and Scott Boulevard going north to the corner of Scott Boulevard and Park Place going east to the corner of Park Place and Court Street going north to the corner of Court and East Third streets.

(b) Table and seating licenses located in the Roebeling Point Business District shall provide certification that all outdoor music over public sidewalks or plazas, whether live or amplified by outdoor speakers, will cease at 11:00 p.m. Sunday through Thursday, and midnight on Friday and Saturday.

(6) Certification that the applicant is the owner of the property abutting the sidewalk, or if a lessee of the property, a certification of ownership from the lessee's landlord must be submitted;

(7) Licensee, at its sole expense, shall maintain comprehensive general liability insurance, protecting against all claims for personal injury, death or property damage occurring upon, in or about the licensed premises resulting from the use of occupancy thereof, with a minimum of \$50,000 in coverage and limits acceptable to the City for the entire term of the license agreement and any extension thereof. The City must be named in this policy as an additional insured entity.

The licensee shall include copies of all policies of insurance with evidence of the payment of the premiums thereon with his, her or its application. Licensee shall deliver to the City at least ten days prior to the expiration of such policy, evidence that it has been renewed. All policies of insurance carried hereunder shall provide that they cannot be canceled without giving at least ten days prior written notice to the City and shall be written by insurance companies licensed by the Commonwealth of Kentucky and reasonably satisfactory to the City. Any insurance carried by a licensee on his, her or its own property or for his, her or its own benefit in connection with this section shall contain a clause waiving any claim by the insurance company for subrogation against the City;

(8) Licensee shall ensure that no part of the right-of-way, sidewalk or curb is damaged by his/her/its outdoor seating, including prevention of stains on sidewalks and curbs caused by the seating. Licensee shall refrain from using any harsh or damaging chemicals to clean any stamped concrete sidewalks or surfaces upon which tables or seating is placed. Licensee further agrees that any damage caused to a Covington right-of-way, sidewalk or curb by the licensee's seating will be repaired or repair costs reimbursed by the licensee;

(9) Licensee shall maintain the right-of-way used for outdoor dining during the winter months (November to February), including cleaning the paved surface, and shall ensure that all seating is removed from the sidewalk during these months when not in use; and

(10) Any other information reasonably required by the City Manager to properly administer the intent of this subchapter.

(D) A four-foot pedestrian way shall be kept clear through the licensed premises at all times ("pedestrian easement"). Tables and seating shall not be allowed in this pedestrian easement. Service and consumption of the licensee's food and drink shall be allowed only to those who are seated in the licensed premises. All seating must accompany tables. Tables and chairs may be moved together to allow patrons to sit together so long as the pedestrian way is maintained. This requirement shall be strictly enforced.

(E) No alcoholic beverages shall be served or consumed on the public sidewalk, unless the portion of the public sidewalk where the permitted tables and seating are located is included in the "licensed premises" for a licensed liquor by the drink restaurant, tavern, or dining facility as approved by the City Alcoholic Beverage Control Administrator and the state Department of Alcoholic Beverage Control or otherwise allowed by law and the license holder enters into a separate license agreement with the City.

(F) It shall be the responsibility of the licensee to maintain the licensed premises in orderly fashion, including requiring that all persons within the licensed premises behave in an orderly fashion and not generate excessive noise. This requirement shall be strictly enforced.

(G) The cost of the license shall be \$20 per two-top table and \$40 per four-top table annually for tables placed on public sidewalks or plazas. Payment shall be made to the office of the City Manager by December 1 of each year for the following calendar year. Upon issuance of a license agreement by the City and payment of the annual license fee by the licensee, the licensee shall be permitted to place tables and seating on the public sidewalks on a continuous basis from March 1 until October 31. Tables and seating may not be placed on public sidewalks on a continuous basis from November 1 until February 28. If the licensee makes improvements to the sidewalk and curbs adjacent to his/her/its business, has obtained a revocable easement from the City for this area, and receives permission of the City to construct such improvements, then the licensee may apply to the City Manager to have these fees waived on a yearly basis, up to the actual amount paid for the construction of the improvements. These fees may be waived for a maximum period of three years, commencing from the completion date of the improvement.

(H) Any license issued by the City to allow for placement of tables and seating on the public sidewalks shall not be assigned or transferred to third party without the prior written consent of the City Manager.

(I) A license may be revoked by the City upon seven days' written notice upon a finding by the City Manager that the licensee has violated any terms of this section, has failed to abide by the terms or conditions set forth in the license, or upon a finding by the City Manager that the licensee has violated city ordinances or state or federal law. A license may also be revoked by the City Manager if the licensed establishment has two or more convictions for violating the City's noise control ordinance within a 12-month period, or the licensee or an employee of the establishment has been convicted of serving alcohol to a minor. If a license is revoked, the licensee shall not be eligible to reapply for a license until one year has passed from the date of the license revocation. The licensee may appeal this revocation to the City Board of Commissioners within seven days of the notice of revocation. If a former licensee fails to appeal a license revocation within the time frame set forth herein, such decision shall not be subject to further review.

§ 96.99 PENALTY.

(A) Any violation of any provision of Chapter 96, except for § 96.70, is classified as a civil offense pursuant to the authority of KRS 65.8808. The Code Enforcement Board shall have power to issue remedial orders and

impose civil fines to enforce this section. Enforcement of this section shall be in accordance with the procedures outlined in the Code Enforcement Board guidelines located in §§ 92.16 through 92.23. Civil fines for violations of this section shall be those set forth in § 92.99. The City shall possess a lien on property, real or personal, for all fines, penalties, charges, attorney's fees, and other reasonable costs associated with enforcing this code, and the cost of placing of a lien on a personal or real property pursuant to this code. The lien shall be superior to and have priority over all other liens, except state, county, school district, and city taxes if all legal requirements are satisfied.

(B) Any person or entity who violates any portion of § 96.70 may be issued a civil citation, with a fine in the amount of \$100 per day per violation and not to exceed a total of \$5,000 if the citation is contested.

(1) When a citation is issued under this division, the person or entity to whom the citation is issued shall respond to the citation within seven days of the date that the citation is issued by either paying the civil fine set forth in the citation or requesting, in writing, a hearing before the Code Enforcement Board to contest the citation. If a hearing is requested, the person requesting the hearing shall pay an administrative hearing fee in the amount of \$50 at the time of the written request of the hearing. If the person fails to respond to the citation within seven days, the citation shall become a final order pursuant to Chapter 92 of these ordinances. The City may assess a lien against a violator who owns real property in accordance with the terms and procedures of § 92.20.

(C) In addition, a person found to have committed a violation of this Chapter shall be personally responsible for the amount of the lien, including all civil fines for violation and for all charges, fees, and abatement costs incurred by the City in connection with the enforcement of this ordinance. The City may bring a civil action against the person and shall have the same remedies as provided for the recovery of a debt.

Section 2

That this ordinance shall take effect and be in full force when passed, published, and recorded according to law.


MAYOR

ATTEST:

Margaret M. Kyhan
CITY CLERK

Passed: 1-28-20 (Second Reading)

1-14-20 (First Reading)