

AN ORDINANCE AMENDING SECTION 17C-3 OF THE CODE OF ORDINANCES TO AMEND THE DEFINITION OF “ANNUAL GENERAL PERMIT” AND “FACILITIES” AND INCLUDE DEFINITIONS FOR “COMMUNICATIONS FACILITY”, “POLE”, “SMALL WIRELESS FACILITIES”, “SUPPORT STRUCTURE”, “TOWER”, “TOWN BRANCH COMMONS”, “WIRELESS FACILITIES”, AND “WIRELESS SERVICES”; AMENDING SECTION 17C-7(C) TO INCLUDE TOWERS AND SUPPORT STRUCTURES; AMENDING SECTION 17C-19(E) TO INCLUDE ADHERENCE TO THE DEVELOPMENT PLAN FOR TOWN BRANCH COMMONS AND AESTHETIC STANDARDS IN THE CRITERIA FOR OBTAINING INSTALLATION PERMITS; CREATING SECTION 17C-19.2 TO PROVIDE SAID AESTHETIC STANDARDS; AMENDING SECTION 17C-20 TO CHANGE THE TITLE AND INCLUDE TOWERS AND SUPPORT STRUCTURES; AMENDING SECTION 17C-21(1) TO INCLUDE TOWERS AND SUPPORT STRUCTURES; AMENDING SECTION 17C-22(B) TO LIMIT ANNUAL GENERAL PERMIT FEES FOR SMALL WIRELESS FACILITIES; AND CREATING SECTION 17C-29 TO INCLUDE THE STANDARDS FOR UNDERGROUND FACILITIES, ABOVEGROUND FACILITIES, CONSTRUCTION, AND RESTORATION IN THE TOWN BRANCH COMMONS.

WHEREAS, United States Code, Title 47, Section 332, provides that a local government may exercise control regarding the placement, construction, and modification of personal wireless service facilities, provided the local government does not unreasonably discriminate among providers of functionally equivalent services, and does not effectively prohibit the provision of personal wireless services;

WHEREAS, Urban County Governments may enact regulations for the health, education, safety, welfare and convenience of the inhabitants of the county;

WHEREAS, new personal wireless technology, including 5G, require substantial access to the public right-of-way;

WHEREAS, the Federal Communications Commission requires local governments to publish aesthetic standards for wireless services by or about April 13, 2019;

WHEREAS, to comply with the Federal Communications Commission’s Order and to safely allow the roll-out of new wireless technologies for the enjoyment of residents and visitors of Lexington-Fayette County in such a way as to protect the public health and safety and to prevent visual blight in the public right-of-way, the Lexington-Fayette Urban County Government seeks to enact changes to Chapter 17C of the Code of Ordinances, including the implementation of aesthetic standards for all installations in the right-of-way;

WHEREAS, the Town Branch Commons will be, in part, an extensive trail project containing bioswales and water features that runs from Third Street &

Midland Avenue to Rupp Arena and is funded entirely through public resources;
and

WHEREAS, to provide a safe trail for residents and visitors to bicycle or walk in the downtown corridor; to protect the public's resources and the environmental landscape elements contained in Town Branch Commons; and to prevent visual blight in this special design area, the Lexington-Fayette Urban County Government seeks to enact an addition to Chapter 17C of the Code of Ordinances to include additional requirements and restrictions for above-ground and below-ground facilities, maintenance work, and restoration and maintenance in the right-of-way within Town Branch Commons.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE
LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT:

Section 1 – That Section 17C-3 of the Code of Ordinances, Definitions, be and hereby is amended to read as follows:

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

Annual general permit means a permit issued annually by the division to perform the following types of activities within the right-of-way in locations other than high density utility areas:

- (1) Installation or replacement of wiring on existing poles, towers, and support structures;
- (2) Repair, replacement or maintenance of existing above-ground facilities, including poles, towers, and support structures, in the same location with no street, curb, apron, or sidewalk cuts, provided any replacement facilities are not more than twenty (20) percent larger in size than the existing facilities;
- (3) Excavations of existing facilities of up to twenty-five (25) square feet with no street, curb, apron or sidewalk cuts, with the exception of subsections (4) and (5) immediately following;
- (4) Installation of new underground lines in trenches of less than two hundred fifty (250) linear feet with a width of six (6) inches or less and with no street, curb, apron or sidewalk cuts;
- (5) Installation of new underground lines in trenches of less than fifty (50) linear feet with a width of twenty-four (24) inches or less and with no street, curb, apron or sidewalk cuts;
- (6) Any underground boring, except borings larger than three (3) inches in diameter which are performed in locations under a street, curb, apron or sidewalk; or

(7) Any work performed inside existing conduits.

The annual general permit does not cover the installation of any facility that is not listed above. The permittee shall be required to provide daily notifications to the division as further provided in subsection 17C-21(a). Any activity with respect to facilities in the right-of-way that is not listed above or otherwise exempted under this chapter shall require that either an installation permit or surface cut permit, as appropriate, be obtained prior to performing the activity.

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

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

(2) all other equipment associated with the foregoing. The term does not include the pole, tower, or support structure to which the equipment is attached.

Council means the legislative body of the Lexington-Fayette Urban County Government.

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

Director means the director of the government's division of engineering, or his designee, unless otherwise specified.

Division means the Lexington-Fayette Urban County Government's division of engineering.

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

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

Facility or facilities means any tangible asset in the right-of-way, including but not limited to equipment and apparatus such as pipes, conduits, wires, cables, amplifiers, transformers, fiber optic lines, antennae, pole, tower, or support structure, or ducts, required, necessary, used or useful in the provision of utility or other services.

Government means the Lexington-Fayette Urban County Government, an urban county government and political subdivision of the Commonwealth of Kentucky created pursuant to Chapter 67A of the Kentucky Revised Statutes.

Greenway means any area designated as a greenway in the comprehensive plan, as amended.

High density utility areas means geographic areas in which significant issues exist with respect to the location of facilities because of space or density issues in the right-of-way. The following geographic areas are currently identified as high density utility areas:

- (1) The area located inside and abutting to Third Street on the northeast, Midland Avenue and Rose Street on the south, Maxwell Street on the southwest and Cox Street and Newtown Pike on the northwest;
- (2) The area abutting Corporate Drive;

The council, through the adoption of a resolution or ordinance, may add or delete geographic areas that constitute high density utility areas upon the recommendation of the director. Prior to the consideration of change in the scope of the high density utility areas by the council, all registrants shall be notified by the government, and an attempt to reach a consensus on the scope of the change shall be made.

Installation permit means a permit issued by the division to perform any construction, installation, repair, replacement or maintenance of facilities in the right-of-way that is not covered by an annual general permit or a surface cut permit.

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

Party or person means any 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.

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

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

Registrant means any party filing a registration statement required by this chapter.

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

Right-of-way means the surface of and the space above and below a public roadway, highway, street, freeway, lane, path, sidewalk, alley, court, boulevard, avenue, parkway, cartway, bicycle lane or path, public sidewalk, or easement held by the government for the purpose of public travel and shall include rights-of-way as shall be now held or hereafter held by the government. 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. The right-of-way shall not include greenways, and the ability to install facilities in a greenway shall require separate approval pursuant to the appropriate governmental legislation or regulation.

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

- (1) The facilities are mounted on poles, towers, or support structures fifty-five (55) feet or less in height including their antennas;

- (2) Each antenna associated with the deployment, excluding associated antenna equipment, is no more than three cubic feet in volume;
- (3) All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any associated equipment on the structure, including collations, is no more than fifteen (15) cubic feet in volume, cumulatively. The following types of associated, ancillary equipment are not included in the calculation of equipment volume: electric meter, telecommunications demarcation box, grounding equipment, power transfer switch, cut-off switch, and vertical cable runs for connection of power and other services;
- (4) The facilities do not require antenna structure registration under federal law;
- (5) The facilities do not result in human exposure to radiofrequency radiation in excess of the applicable safety standards provided in federal law; and
- (6) Small Wireless Facilities do not include poles, towers, or support structures.

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

Surface cut permit means a permit issued by the division to excavate, dig or cut into and through a paved street surface within the rights-of-way or to bore, dig or tunnel under such a paved street surface except as authorized by an annual general permit.

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

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

Town Branch Commons includes:

- (1) The portion of multi-use path that runs from West Main Street (US 25) at Tucker Street to the slip lane at the northwest corner of Triangle Park, via the southern side of West Vine Street.
- (2) The bicycle facility and pedestrian path from the southern side of West Main Street (US 25) at the northwest corner of Triangle Park via the southern side of West Vine Street, crossing to the north side of West and East Vine Street (US 25) at Broadway for the full length of Vine Street until Vine Street intersects with Main Street.
- (3) The multi-use path from the northwest corner of Main Street and Vine Street to the corner of East Third Street, via the western side of Midland Avenue (US 60).

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

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

Section 2 – That Section 17C-7(c) of the Code of Ordinances be and hereby is amended to read as follows:

(c) Duty to maintain all property in right-of-way. All parties subject to this chapter must maintain all of their facilities located in the right-of-way in a manner that promotes the public safety. By way of example, but not limitation, all facilities, including but not limited to poles, towers, support structures, and manholes, must be maintained in a safe condition at all times. In the event any facility in the right-of-way is endangering the public safety, the party responsible for such facility shall take steps to rectify the situation immediately upon notification and in accordance with section 17C-15.

Section 3 – That Section 17C-19(e) of the Code of Ordinances be and hereby is amended to read as follows:

(e) *Installation.*

- (1) *Definition.* For purposes of this section, the term "install", "installed" or "installation" shall mean placement of new facilities within the rights-of-way, including the replacement of existing facilities not covered under an annual general permit and the installation and collocation of Small Wireless Facilities. An installation requires the issuance of an installation permit or surface cut permit.
- (2) *Procedure.* The director shall notify the applicant if the director 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 director 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 director's determination. The director may issue a permit that is contingent upon certain condition(s) being fulfilled with respect to the criteria contained below.
- (3) *Criteria.* A decision by the government to deny an installation permit or surface cut permit application must be based on at least one (1) of the following criteria:
 - a. It significantly conflicts with the location of existing facilities or facilities that are planned or permitted for installation, or government improvements or facilities that are planned in that area;
 - b. It significantly conflicts with the timing of other ongoing activity taking place in the same area of the right-of-way, or with a previously scheduled activity;
 - c. It conflicts with the planned grading, re-grading, construction, reconstruction, widening or altering of any right-of-way or the construction, reconstruction, repair, maintenance or alteration of a public improvement, including, but not limited to, storm sewers, sanitary sewers and street lights;

- d. It conflicts with an approved development plan in that geographic area that requires all or certain types of facilities to be located in certain locations, areas, or parts of the rights-of-way, including in the Town Branch Commons corridor, or is located in a high density utility area;
- e. It is an above-ground facility other than a fire hydrant or other government-owned facility, that because of its size presents significant public safety concerns or violates guidelines or procedures pertaining to aesthetics found in section 17C-19.2 or as otherwise duly authorized by Council or the Director.
- f. It fails to take reasonable measures to disguise or cover the facility as required by the government pursuant to guidelines or procedures pertaining to aesthetics found in section 17C-19.2 or as otherwise duly authorized by Council or the Director.
- g. It conflicts with a requirement contained in the applicant's franchise agreement;
- h. It is located in a type of right-of-way, such as a bicycle lane or path, in which the government has made a determination that facilities are not to be installed;
- i. It would threaten public health, safety, or welfare or otherwise constitute a violation of the provisions of this chapter; or
- j. The applicant is not otherwise in material compliance with the provisions of this chapter.

(4) *Reservation of rights.* Notwithstanding any other provision in this chapter, the government 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 government, for which an installation permit or surface cut permit was not obtained.

(5) *Preclusion on cutting newly paved surfaces.* If any street is about to be resurfaced by the government, on advance written notice from the director pursuant to section 17C-18(c), the registrant shall make any extensions, changes, or installations of or to its facilities ahead of such activity. Registrant shall notify director by July 15 of its desire to perform such extensions, changes, or installations, and may be allowed up to ninety (90) additional days to complete the work. If any street is about to be constructed, reconstructed, widened, altered, or paved by the government, upon receipt of final plans from the director, the registrant shall make any extensions, changes, or installations of or to its facilities ahead of such activity. Depending on the amount of such extensions, changes, or installations to be performed, the registrant may be allowed up to one hundred twenty (120) days to complete the work. If the registrant fails to do such extensions, changes, or installations, it shall be precluded for a period of one (1) year from disturbing such paving without the express permission of the director. The director shall only grant such permission upon a sufficient showing by the registrant that undue hardship would be caused if the registrant were not allowed to disturb the pavement and that it shall satisfactorily comply with all other relevant provisions of this chapter, including the requirements contained in section 17C-24(a) pertaining to resurfacing.

Section 4 – That Section 17C-19.2, Aesthetic Standards, be and hereby is created to read as follows:

Unless otherwise approved by the Lexington-Fayette Urban County Government in order to prevent an effective prohibition of service in accordance with federal regulations, as applicable, no person shall locate or maintain a Facility, Pole, Tower, or Support Structure, except in accordance with the following design standards:

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

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

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

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

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

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

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

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

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

10. No applicant shall locate or maintain a Pole, Support Structure, Tower, or equipment associated with a Wireless Facility, as to interfere with the health of a tree.

11. In areas where the undergrounding of utilities has occurred but lighted Poles are present, the applicant shall locate its Wireless Facilities on existing lighted poles or seek to decommission the lighted Pole to replace it with a lighted Pole to house its Wireless Facilities.

12. If the applicant elects to decommission an existing lighted Pole in order to install a Wireless Facility in its location, the applicant shall comply with chapter 17C, including these aesthetic standards, and any decommissioning agreement between the applicant, the Lexington-Fayette Urban County Government, and Kentucky Utilities, or its equivalent.

13. In those locations where the undergrounding of utilities has occurred, all Facilities shall be placed underground.

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

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

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

17. All Facilities, Poles, Towers, and Support Structures shall comply with such additional design standards as may be set forth in any written policies or guidelines issued by the Lexington-Fayette Urban County Division of Engineering.

Section 5 – That Section 17C-20, Utility poles, be and hereby is retitled as “Poles, Towers, and Support Structures” and amended to read as follows:

(a) To the extent possible, registrants shall use existing poles, towers, support structures, and conduit existing at the time of permitting in installing their facilities.

(b) All poles, towers, support structures, or wire holding structures are subject to any applicable, duly adopted regulations regarding location, height, type, or other pertinent aspect, including those found in 17C-19.2.

(c) All transmission and distribution structures, poles, towers, support structures, and other lines and equipment installed or erected by registrant under this chapter 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.

Section 6 – That Section 17C-21(1) of the Code of Ordinances be and hereby is amended to read as follows:

(1) An annual general permit shall be obtained at the time of the submission of the registration statement or immediately upon the registrant or the division determining that the registrant is performing activity within the right-of-way that requires the issuance of such a permit. Each time that a registrant is performing any of the activities listed below, it shall provide the government notification via the government's website. Any work performed without proper notification shall constitute work being done without a permit, and as such subject to the levy of fines.

a. Installation or replacement of wiring on existing towers, support structures, or poles when the work (a) necessitates presence in the right-of-way for more than one (1) day or (b) involves more than one thousand (1,000) line feet of cable or wire;

b. Replacement of existing towers, support structures, or poles when the work (a) necessitates presence in the right-of-way for more than two (2) days or (b) involves more than one thousand (1,000) line feet of cable or wire;

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

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

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

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

g. Any underground boring located under a paved street.

Any other activity performed pursuant to an annual general permit need not be reported to the government unless otherwise required under this chapter. The notification shall consist of, at a minimum, the name of the registrant, a general description of the location (by address(es) or street(s)) and the nature or type of the activity performed (e.g. installation of wiring, boring, tower/support structure/pole replacement, etc). In the event that the notification cannot be provided to the government's website said notification may be provided in writing via e-mail or facsimile transmission.

Section 7 - That Section 17C-22(b) of the Code of Ordinances be and hereby is amended to read as follows:

(b) *Annual general permit.* Unless otherwise prohibited by law, or otherwise exempted, each registrant that occupies the right-of-way shall obtain an annual general permit. The type of annual general permit that the registrant shall be required to obtain shall be based upon the level of both documented and undocumented maintenance and repair activities the registrant would be anticipated to perform within the rights-of-way; and, as a corollary for such, the

extent to which the registrant's facilities occupied the rights-of-way as it existed at the end of the preceding calendar year. The extent of occupation of the registrant's facilities shall be determined by measuring the enclosed surface of the registrant's existing service area as defined by mapping provided annually by the registrant. Registrants with facilities occupying eighteen thousand two hundred seventy-six and three-tenths (18,276.30) acres, the equivalent of ten (10) percent of the area of Fayette County, or less shall pay an annual fee of three thousand dollars (\$3,000.00) in order to obtain a Type I annual general permit. Registrants with facilities occupying more than eighteen thousand two hundred seventy-six and three-tenths (18,276.30) acres, the equivalent of more than ten (10) percent of the area of Fayette County, shall pay an annual fee of fifteen thousand dollars (\$15,000.00) in order to obtain a Type II annual general permit. Any registrant, as determined by the government, with facilities occupying less than one hundred eighty-two and seventy-six one hundredths (182.76) acres, the equivalent of less than one tenth of one (0.10) percent of the area of Fayette County, shall be, if so requested, exempt from obtaining an annual general permit and shall only be required to pay a registration fee annually. Any registrant exempted from obtaining an annual general permit shall be required to obtain either a surface cut permit or an installation permit for each and every occupation of the right-of-way regardless of the scope of the occupation. Facility installation by a non-registrant for a property owner pursuant to a contractual agreement shall not require possession of an annual general permit by either the non-registrant contractor or the property owner.

It is the intent of the government that its permit fees shall be in compliance with the applicable federal law or regulation as it may be amended from time to time. The annual fee for the annual general permit shall be no greater than the annual fees presumed reasonable by the Federal Communications Commission, per Small Wireless Facility installed during the applicable calendar year. The Government reserves the right to require payment of the full amount if the results of a cost study, or similar administrative review, show that the additional cost is necessary to recoup the costs of maintaining the ROW, maintaining the structures within the ROW, and the administrative costs associated with the issuance and regulation of annual general permits and the activities allowed by the permits, or the federal regulations relating to the "reasonable" governmental fees for small wireless facilities are amended by the federal government or invalidated by a valid Court order.

Section 8 – That Section 17C-29, Town Branch Commons, be and hereby is created to read as follows

(a) Intent

(1) The intent of this section is to support the following three major policies as it applies to any installation, construction, maintenance or other work in the right-of-way, recognizing that Town Branch Commons is a distinct park and trail system, and as such has a unique identity and an established set of design standards that must be maintained.

(b) Incorporation by Reference

(1) The Town Branch Commons Masterplan & Design Standards, as amended now or in the future, is incorporated herein by reference. All references to the Town Branch Commons Masterplan & Design Standards are to have the same effect as if the documents were reproduced verbatim herein, and all such documents automatically include any and all subsequent amendments thereto as long as the parties that will be effected by such amendments have the ability to meaningfully participate in the process that is utilized to amend such document, or unless expressly indicated otherwise by a provision of this

chapter. This provision shall not be interpreted to require that work performed prior to the adoption or amendment of such a document be subject to any newly created standard.

(c) Additional Definitions

In addition to the definitions that apply for this chapter, the following definitions also apply to this section:

Bicycle Facility or *Bicycle Path* shall mean the path used exclusively for bicycles that runs from West Main Street (US 25) at Tucker Street via the southern side of West Vine Street, crossing to the north side of West and East Vine Street (US 25) at Broadway for the full length of Vine Street until it intersects with Main Street. The Bicycle Facility or Bicycle Path is located closer to the street than the Pedestrian Path.

Bioswale shall mean landscape elements designed to concentrate or remove debris and pollution out of surface runoff water. Bioswales consist of a swaled drainage course with sloped sides and filled with vegetation. Bioswales are referenced in the Town Branch Commons Masterplan & Design Standards as the Karst Streambed, Karst Cascade, and Karst Embankment.

Multi-use Path shall mean 1) the path used for both bicycles and pedestrians that runs from West Main Street (US 25) at Tucker Street to the slip lane at the northwest corner of Triangle Park, via the southern side of West Vine Street; and 2) the path used for both bicycles and pedestrians that begins at the northwest corner of Main Street and Vine Street and runs along the western side of Midland Avenue in its entirety, to the corner of Third Street.

Pedestrian Path shall mean the path used for the exclusive use of pedestrians that runs from West Main Street (US 25) at Tucker Street via the southern side of West Vine Street, crossing to the north side of West and East Vine Street (US 25) at Broadway for the full length of Vine Street until it intersects with Main Street.

(d) Limits on New Underground Facilities

(1) New underground facilities shall be placed directly under the pedestrian paths, bicycle paths, or multi-use paths, at least eighteen (18) inches below the subbase, wall foundation, or soil cell (whichever is deeper).

(2) Utility and construction work shall be prohibited from the bioswale portions of the Town Branch Commons. These areas are referenced in the Town Branch Commons Masterplan & Design Standards. If boring is required under plant beds, trees, bioswales, or similar feature, there shall be a minimum of eighteen (18) inch clearance below the underdrain or soil media (whichever is deeper) or as otherwise required by the Director.

(3) Existing utilities located directly beneath a bioswale shall provide justification as to why it cannot be accessed elsewhere, as well as a construction and restoration plan. Any such plan must be created in conjunction with a Licensed Professional Engineer and a Registered Landscape Architect to ensure the functionality of the storm water system is retained per the Town Branch Commons Masterplan & Design Standards.

(e) Limits on Aboveground Facilities

(1) New aboveground facilities shall be prohibited from portions of Town Branch Commons that contain bioswales. However, overhead

utility lines that pass at least thirty-five (35) feet overhead are acceptable.

(2) Existing facilities located directly on or above a bioswale shall provide justification as to why it cannot be accessed elsewhere, as well as a construction and restoration plan. Any such plan must be created in conjunction with a Licensed Professional Engineer and a Registered Landscape Architect to ensure the functionality of the storm water system is retained per the Town Branch Commons Masterplan & Design Standards.

(3) Aesthetics

(a) Any installation of new facilities, including poles and street lights, that are visible to the public must be an approved detail from, or meet the aesthetic standards of the Town Branch Commons Masterplan & Design Standards and Chapter 17C.

(b) New facilities may be integrated within existing street lights. However, the quantity of communication facilities allowed on a street light shall be limited to the quantity the street light was designed to hold.

(c) A clear vertical zone of 8.3 feet above ground must remain clear of all obstructions, including, but not limited to overhead signs, banners, etc. on all pedestrian paths, bicycle paths, or multi-use paths, per the AASHTO Bike Guide.

(d) Nothing in this section shall limit the installation of new facilities on those sides of the affected streets not containing Town Branch Commons.

(f) Construction

(1) All bicycle facilities and paths, pedestrian paths, and multi-use paths shall remain clear and passable during any construction, excavation, installation, operation, maintenance, or repair within Town Branch Commons. If a partial or complete closure is required, plans must be submitted and approved for rerouting pedestrian and bicycle traffic in a safe manner prior to construction.

(2) 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 twenty-one (21) calendar days of the completion of those activities that caused the disturbance or damage.

(g) Restoration and Maintenance

(1) All projects occurring within the Town Branch Commons corridor must comply with the applicable restoration and maintenance standards found in the Town Branch Commons Masterplan & Design Standards.

(2) In addition, any disturbance to any of the following areas of Town Branch Commons shall be returned to its previous and intended condition as outlined below:

(a) Multi-Use Paths, Pedestrian Paths, Bicycle Facilities, and intersections with specialty paving shall be restored in accordance with the Town Branch Commons Masterplan & Design Standards.

(b) Landscaping: The landscaped areas of Town Branch Commons shall be restored in accordance with the Town Branch Commons Masterplan & Design Standards. Any vegetation damaged during construction must be replaced with the same plant species. The removal or trimming of existing trees in the right-of-way shall comply with the government's street tree ordinance, tree protection ordinance, the provisions of article 6-10, or subdivision regulations concerning street trees, as applicable. All trees must be replaced by a minimum of 4" caliper.

(c) Bioswales: Bioswales located within Town Branch Commons shall be restored in accordance with the Town Branch Commons Masterplan & Design Standards. Any vegetation damaged during construction must be replaced with the same plant species. The removal or trimming of existing trees in the right-of-way shall comply with the government's street tree ordinance, tree protection ordinance, the provisions of article 6-10, or subdivision regulations concerning street trees, as applicable. All trees must be replaced by a minimum of 4" caliper. Due to the performative nature of the bioswale system, a construction and restoration plan must be created and submitted for approval by the Director. The plan must be created in conjunction with a Licensed Professional Engineer and Registered Landscape Architect to ensure the functionality of the bioswale system is retained per the Town Branch Commons Masterplan & Design Standards. After restoration of the affected bioswale(s) is complete, a Licensed Professional Engineer and Registered Landscape Architect shall sign off on the condition of the bioswale(s) to ensure the restoration was performed properly on this sensitive feature.

(3) *Guarantees.* Each party performing work required by this subsection guarantees its work conforms to the requirements of the Town Branch Commons Masterplan & Design Standards and shall maintain it for two (2) years following its completion. During this period it shall, upon notification from the director, correct all restoration work to the extent necessary, using the method required by the director.

Section 9 - That if any provision of this Ordinance, or the application of such provision, should be rendered or declared invalid by any court of jurisdiction or be found in conflict with state and/or federal laws or by reason of any existing or subsequently enacted legislation, the remaining portions or parts of this Ordinance shall remain in full force and effect.

Section 10 – This Ordinance shall become effective on April 13, 2019, to provide an opportunity for the Lexington-Fayette Urban County Government Division of Engineering to educate utilities on new requirements of this Ordinance.

PASSED URBAN COUNTY COUNCIL:

MAYOR

ATTEST:

CLERK OF URBAN COUNTY COUNCIL
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