

NOTICE OF ADOPTION

I, Teri Davis, do hereby certify:

1. That I am the Clerk of Council of the Council of the City of Centerville, Ohio;
and
2. That on the 17th day of February, 2020,
Ordinance No. 04-20 was adopted by the Centerville City Council; and
3. That a certified copy of Ordinance No. 04-20 was published in the
posting locations prescribed by City of Centerville Council Rules.



Clerk of Council

ORDINANCE NO. 04-20

CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER JoAnne Rau ON THE 17th DAY
OF February, 2020 .

**AN ORDINANCE TO AMEND SECTION
1080.06 OF THE CENTERVILLE MUNICIPAL
CODE TO UPDATE THE CERTIFICATE OF
REGISTRATION INSURANCE
APPLICATIONS FOR RIGHTS-OF-WAY
ADMINISTRATION**

WHEREAS, the City had enacted regulations in the Centerville Municipal Code for the regulations for, use of and access to the public rights-of-ways in Chapter 1080 of the Municipal Code; and

WHEREAS, the City of Centerville periodically reviews the laws relating to public rights-of-ways to update where needed; and

WHEREAS, it is determined necessary to update and clarify the insurance requirements for applications for Certificate of Registrations in the Rights-of-way; and

WHEREAS, the City has determined that it be in the best interests of the City to promote the public health, safety, and welfare of the City to regulate the public rights-of-ways.

NOW THEREFORE, THE MUNICIPALITY OF CENTERVILLE
HEREBY ORDAINS:

Section 1. That the following amendment to Section 1080.06 of the Centerville Municipal Code is hereby enacted as follows with new language to be added in *italics* and text to be deleted in ~~strikeout~~ as provided in Section 5.02 of the Centerville Charter:

1080.06 CERTIFICATE OF REGISTRATION APPLICATIONS.

(a) Certificate of Registration Applications. To obtain a certificate of registration or to obtain a renewal of a certificate of registration issued pursuant to this chapter, an application must be filed with the City on the

form adopted by the Department of Public Works which is hereby incorporated by reference.

(b) Application Information. The applicant shall keep all of the information required in this section current at all times, provided that applicant or provider shall notify the City of any changes to the information required by subsection (b)(2) hereof within fifteen days following the date on which the applicant or provider has knowledge of any such change and shall notify the City of any changes to other information required by this subsection within thirty days following the date on which the applicant or provider has knowledge of such change. The information provided to the City at the time of application shall include, but not be limited to:

- (1) Each applicant's name, legal status (i.e. partnership, corporation, etc.), street address, and telephone and facsimile numbers.
- (2) The name, street address, and telephone and facsimile numbers of a system representative. The system representative shall be available at all times. Current information regarding how to contact the system representative in an emergency shall be provided at the time of application and shall be updated as necessary to assure accurate contact information is available to the City at all times.
- (3) A certificate of insurance provided to meet the requirements of this section shall:

A. Verify that ~~an~~ insurance ~~policy~~ *policies meeting the specifications required herein* ~~has~~ been issued to the applicant by an insurance company licensed to do business in the State of Ohio;

B. Verify that the applicant is insured on an occurrence basis against claims for personal injury, including death, as well as claims for property damage arising out of the: use and occupancy of the rights-of- way by the applicant, its officers, agents, employees and contractors; and placement and use of facilities in the rights-of-way by the applicant, its officers, agents, employees and contractors, including, but not limited to, protection against liability arising from any and all operations, damage of underground facilities, explosion, environmental release, and collapse of property;

~~C. Name the City, its elected officials, officers, employees, agents and volunteers as additional insureds as to whom the comprehensive general liability and completed operation and products liability insurance required herein are in force and applicable and for whom defense will be provided as to all such coverages;~~

~~— D. Require that the City be notified thirty days in advance of cancellation of, or coverage changes in, the policy. The liability insurance policies required by this section shall contain the following endorsement: "It is hereby understood and agreed that this policy may not be diminished in value, be canceled, nor the intention not to renew be stated, until thirty (30) days after receipt~~

by the City, by registered mail, return receipt requested, of a written notice addressed to the City Manager or her/his designee of such intent to cancel, diminish, or not to renew." Within thirty days after receipt by the City of said notice, and in no event later than five days prior to said cancellation, the provider (or applicant) shall obtain and provide to the City Manager a certificate of insurance evidencing appropriate replacement insurance policies.

- (4) ~~Commercial general liability insurance: Satisfy the requirements for comprehensive liability coverage, automobile liability coverage and umbrella coverage as follows: Applicant shall obtain and maintain during the term of the certificate of registration and for six months thereafter commercial~~ —A. ~~Comprehensive general liability insurance: Comprehensive general liability insurance to cover damages to property and injuries to persons, including products-completed operations and personal & advertising injury liability, bodily injury, and property damage must be maintained. Coverage must be written on an occurrence basis, with the following minimum limits not less than Two Million Dollars (\$2,000,000.00) per occurrence, Four Million Dollars (\$4,000,000) aggregate. of liability and provisions, or their equivalent:~~

~~1. Bodily injury:~~

~~Each occurrence: Two million dollars (\$2,000,000)~~

~~Annual aggregate: Four million dollars (\$4,000,000)~~

~~2. Property damage:~~

~~Each occurrence: Two million dollars (\$2,000,000)~~

~~Annual aggregate: Four million dollars (\$4,000,000)~~

~~3. Personal injury:~~

~~Annual aggregate: Four million dollars (\$4,000,000).~~

~~B. Completed operations and products liability shall be maintained for six months after the termination of or expiration of a certificate of registration.~~

~~C. A. Property damage liability insurance shall include coverage for the following hazards: E - explosion; C - collapse; U - underground.~~

~~B. The City, its elected officials, officers, employees, agents and volunteers shall be covered as additional insureds under the commercial general liability insurance required herein.~~

~~C. The coverage required herein shall be primary insurance in respect to the City, its elected officials, officers, employees, agents and volunteers. Any insurance, or self-insurance, maintained by the City, its elected officials, officers, employees, agents and volunteers shall be excess of the applicant's insurance and shall not contribute with it.~~

- (5) ~~Comprehensive auto~~ Automobile liability insurance:

A. Applicant shall obtain and maintain during the term of the certificate of registration ~~comprehensive~~ auto liability insurance to cover owned, hired, and non-owned vehicles ~~must be maintained~~. Applicant may maintain ~~comprehensive auto liability insurance as part of applicant's comprehensive general liability insurance~~, however, said insurance is subject to approval by the City Manager or her or his designee.

B. Coverage must be written on an occurrence basis, with the following limits of ~~not less than liability and provisions, or their equivalent~~:

~~A. Bodily injury:~~

~~Each occurrence: Two million dollars (\$2,000,000) per occurrence, Four Million Dollars (\$4,000,000.00) aggregate.~~

~~Annual aggregate: Four million dollars (\$4,000,000)~~

~~B. Property damage:~~

~~Each occurrence: Two million dollars (\$2,000,000)~~

~~Annual aggregate: Four million dollars (\$4,000,000).~~

(6) *Umbrella or Excess Liability:*

A. Applicant may satisfy the minimum liability limits required above for Commercial General Liability or Auto Liability under an Umbrella or Excess Liability policy.

B. Applicant agrees to endorse the City as an Additional Insured on the Umbrella or Excess policy, unless the Umbrella or Excess policy provides coverage on a "Follow Form" basis and such fact is disclosed on the certificate of insurance.

(7) *Contractor's Pollution Legal Liability:*

A. If project involves environmental hazards, applicant shall obtain and maintain for the duration of the certificate of registration contractor's pollution legal liability coverage with limits no less than \$1,000,000 per occurrence or claim, and \$2,000,000 policy aggregate.

B. Claims-made coverage is permissible. If coverage is written on a claims-made coverage form: 1) the retroactive date must be shown and this date must be before the beginning of work pursuant to the certificate of registration; and 2) insurance must be maintained and evidence must be provided for at least five (5) years after completion of work.

(8) *Notice of Cancellation or Material Change in Coverage: Each insurance policy required herein shall provide that coverage shall not be*

cancelled except with prior notice to the City. Further, if the applicant receives a non-renewal or cancellation notice from an insurance carrier providing coverage required herein, or receives notice that coverage no longer complies with the requirements herein, applicant agrees to notify the City by fax or email within five (5) business days with a copy of the non-renewal or cancellation notice, or written explanation of how coverage is no longer in compliance. Applicant shall cease operations on the occurrence of any such non-renewal, cancellation, or material change and shall not resume operations until insurance is in force that complies with these requirements.

(9) Additional insurance: The City reserves the right in unusual or unique circumstances to require any other insurance coverage it deems reasonably necessary after review of any proposal submitted by applicant.

(10) The City reserves the right to require complete, certified copies of all insurance policies required by these specifications, including endorsements, at any time.

(117) Self-insurance: Those applicants maintaining at all times a book value in excess of twenty million dollars (\$20,000,000) may submit a statement requesting to self-insure. Said request must be in writing and contain proof of applicants' book value. If approval to self-insure is granted, applicant shall assure the City that such self-insurance shall provide the City with no less than would have been afforded to the City by a third party insurer providing applicant with the types and amounts of coverage detailed in this section. This statement shall include a description of the applicant's self-insurance program and may be required to include:

A. Audited financial statements for the previous year; and

B. A listing of any and all actions against or claims made against applicant for amounts over one million dollars (\$1,000,000) or proof of available excess umbrella liability coverage to satisfy all total current claim amounts above twenty million dollars (\$20,000,000).

(128) City's examination of, or failure to request or demand, any evidence of insurance in accordance with this chapter, shall not constitute a waiver of any requirement of this section and the existence of any insurance shall not limit applicant's obligations under this chapter.

(139) Documentation that applicant or provider maintains standard workers' compensation insurance as required by law. Similarly, provider shall require any subcontractor to provide workers' compensation insurance in amounts required by law for all of the subcontractor's employees.

(140) If the person is a corporation, a copy of the certificate of incorporation (or its legal equivalent), as recorded and certified to by the secretary of state (or legal equivalent) in the state or country in which incorporated.

(154) A copy of the person's certificate of authority (or other acceptable evidence of authority to operate) from the PUCO and/or the FCC

and any other approvals, permits, or agreements as set out in Section 1080.05.

(162) Unless applicant is a public utility as defined in R.C. § 4939.01, upon request of the City, a narrative (or if applicable PUCO/FCC application information) describing applicant's proposed activities in the City including credible information detailing applicant's financial, managerial, and technical ability to fulfill applicant's obligations under this chapter and carry on applicant's proposed activities.

(c) Criteria For Issuance of a Certificate of Registration. In deciding whether to issue a certificate of registration, the City shall consider:

- (1) Whether the issuing of the certificate of registration will contribute to the health, safety, and welfare of the City and its citizens;
- (2) Whether issuing of the certificate of registration will be consistent with this chapter;
- (3) Whether applicant has submitted a complete application and has secured all certificates and other authorizations required by law in order to construct and operate a system in the manner proposed by the applicant;
- (4) Whether the applicant is delinquent on any taxes or other obligations owed to the City or Montgomery or Greene Counties or State of Ohio;
- (5) Except for public utilities as defined in R.C. § 4939.01 subject to the jurisdiction of the PUCO or a cable operator possessing a valid franchise, whether the applicant has the requisite financial, managerial, and technical ability to fulfill all its obligations under this chapter and the issuance of a certificate of registration; and
- (6) Any other applicable law.

(d) Grant or Denial of an Application for a Certificate of Registration.

- (1) The City, not later than sixty days after the date of filing by an applicant of a completed application, shall grant or deny the application.
- (2) If an application for a certificate of registration is denied, the City shall provide to the applicant, in writing, the reasons for denying the application and such other information as the applicant may reasonably request.


(e) Obligations of a Provider Upon Receipt of a Certificate of Registration. In addition to the other requirements set forth herein and in the rules and regulations each provider shall:

- (1) Use its best efforts to cooperate with other providers and users of the rights-of-way and the City for the best, most efficient, and least obtrusive use of rights-of-way, consistent with safety, and to minimize traffic and other disruptions including street cuts;

- (2) When possible, participate in joint planning, construction and advance notification of rights-of-way work, as may be required by the City;
- (3) Upon reasonable written notice, and at the direction of the Director of Public Works, promptly remove or rearrange facilities as necessary for public safety; and
- (4) Perform all work, construction, maintenance or removal of facilities within the rights-of-way, including tree trimming, in accordance with good engineering, Construction and arboricultural practice including any appropriate state building codes, safety codes and law and use best efforts to repair and replace any street, curb or other portion of the rights-of-way, or facilities located therein, to a condition to be determined by the Director of Public Works to be adequate under current standards and not less than materially equivalent to its condition prior to such work and to do so in a manner which minimizes any inconvenience to the public, the City and other providers, all in accordance with all applicable provisions of this chapter, any rules and regulations the City may adopt and the Codified Ordinances.

Section 2. This ordinance shall be effective from and after the earliest date allowed by law.

PASSED THIS 17th day of February, 2020.



Mayor of the City of
Centerville, Ohio

ATTEST:



Clerk of Council
City of Centerville, Ohio

CERTIFICATE

The undersigned, Clerk of Council of the City of Centerville, Ohio, hereby certifies the foregoing to be a true and correct copy of Ordinance No.

04-20, passed by the Council of the City of Centerville, Ohio on the 17th day of February, 2020.


Clerk of the Council

Approved as to form, consistency with the
Charter and Constitutional Provisions.

Department of Law
Scott A. Liberman
Municipal Attorney