

**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 21st day of March, 2022,  
Ordinance No. 04-22 was adopted by the Centerville City Council; and
3. That a certified copy of Ordinance No. 04-22 was published in the  
posting locations prescribed by the City of Centerville Council.

  
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Clerk of Council

ORDINANCE NO. 04-22

CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER Bill Serr ON THE 21<sup>st</sup> DAY OF March, 2022.

**AN ORDINANCE TO AMEND CHAPTER 1080, RIGHTS-OF-WAY ADMINISTRATION OF THE CENTERVILLE MUNICIPAL CODE.**

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; and

WHEREAS, the City of Centerville periodically reviews the laws relating to public rights-of-ways; 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 1080.01 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:

**1080.01 DECLARATION OF FINDINGS AND PURPOSE;  
SCOPE; DEFINITIONS.**

(a) Findings and Purpose.

- (1) The City of Centerville, Ohio (the "City") is vitally concerned with the use of all rights-of-way in the City as such rights-of-way are a valuable, and potentially limited, resource which must be utilized to promote the public health, safety, and welfare including the economic development of the City.
- (2) Changes in the public utilities and communication industries have increased the demand and need for access to rights-of-way and placement of facilities and structures therein.
- (3) It is necessary to comprehensively plan and manage access to, and structures and facilities in, the rights-of-way to promote efficiency, discourage duplication of facilities, lessen the public inconvenience of

uncoordinated work in the rights-of-way, and promote the public health, safety, and welfare. Where it is in the best interest of the public health, safety, and welfare and the aesthetics of the City, the City shall take steps to encourage locating facilities underground.

- (4) The City has authority under the Laws and Constitution of the State of Ohio, including but not limited to Article 18, Sections 3, 4, and 7, to regulate the rights-of-way which are used by public and private entities.
- (5) *The City does recognize that certain federal laws and regulations may preempt the City's ability to regulate transportation and sale of gas and interstate gas pipelines.*

Section 2. That the following amendment to Section 1080.02 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:

#### **1080.02 RIGHTS-OF-WAY ADMINISTRATION**


- (a) Administration. The City Manager shall be the principal City official responsible for the administration of this chapter except as otherwise provided herein. The City Manager may delegate any or all of the duties hereunder to the Director of Public Works or other designee.
- (b) Rights-of-Way Occupancy. Each person who occupies, uses, or seeks to occupy or use the rights-of-way to operate a system located in the rights-of-way, or who has or seeks to have, a system located in any rights-of-way, shall apply for and obtain a certificate of registration pursuant to this chapter. Any person owning, operating or maintaining a system without a certificate of registration, including persons operating under a permit, license or franchise issued by the City prior to the effective date of this chapter, shall apply for and obtain a certificate of registration from the City within ninety days of the effective date of this chapter unless exempted by subsection (d) hereof. Applications will consist of providing the application information set forth in Section 1080.06 et seq. and as reasonably required by the Director of Public Works.
- (c) No Construction Without Certificate of Registration. Following the effective date of this chapter, no person shall construct or perform any work on or in, use any system or any part thereof located on or in, any rights-of-way without first obtaining a certificate of registration unless otherwise exempted pursuant to subsection (d) hereof. For the purposes of this section only, a person with a system in place at the time of the effective date of this chapter shall not be considered immediately in violation of this section, but

shall have up to six months from the effective date of this chapter to obtain a certificate of registration.

- (d) Exceptions. The following entities are not obligated to obtain a certificate of registration: the City; the county; cable television operators, for the occupancy or use of the public way related to the provision of any services provided by cable operator and operating pursuant to a valid cable television franchise to the extent that franchise fees are being paid for such services; resellers of services that do not own any system or facilities in the rights-of-way; RTA for purposes of public transportation; persons who own or install facilities in the rights-of-way, but not for the purpose of having or creating a system or providing service; and other governmental entities or charitable organizations recognized by the City, to the extent such entities are not competing with providers. Such entities shall be required to pay to the City fees pursuant to Section 1080.08(a) unless exempted by the City Manager. Cable operators shall be provided a credit, offset or deduction against any public way fee or like charge for all such payments and the retail value of any free service or other non-monetary compensation.
- (e) Systems in Place Without a Certificate of Registration. Beginning one year after the effective date of this chapter, any system or part of a system found in a rights-of-way for which a certificate of registration has not been obtained shall be deemed to be a nuisance and an unauthorized use of the rights-of-way. The City may exercise any remedies or rights under the law, including, but not limited to abating the nuisance; taking possession of the facilities and/or non-complying portion of such system; and/or prosecuting the violator.
- (f) Future Uses. In allowing facilities to be placed in the rights-of-way, the City is not liable for any damages caused thereby to any provider's facilities that are already in place. No provider is entitled to rely on the provisions of this chapter as creating a special duty to any provider.
- (g) Federal Preemption of interstate natural gas pipelines  
*An operator of a pipeline that engages in the interstate transmission and sale of gas shall be exempt from Sections 1080.02(e), 1080.06(e)(3), and 1080.06(e)(4) due to federal preemption.*

Section 3. This ordinance shall be effective from and after the earliest date allowed by law.

PASSED THIS 21<sup>st</sup> day of March, 2022.

  
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Mayor of the City of Centerville, Ohio

ATTEST:

  
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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. 04-22, passed by the Council of the City of Centerville, Ohio on the 21<sup>st</sup> day of March, 2022.

  
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Clerk of the Council

Approved as to form, consistency with the  
Charter and Constitutional Provisions.  
Department of Law  
Scott A. Liberman  
Municipal Attorney