

FILE



TALLMADGE CITY COUNCIL

46 NORTH AVENUE
TALLMADGE, OHIO 44278

September 19, 2007

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Susan E. Wilson
Clerk of Council

Dennis A. DiMascio
Deputy Clerk

07-1059-ALL-PWN

The Public Utilities Commission of Ohio
180 East Broad Street
Columbus, OH 43215

Re: Ord. 100-2007 – Adding Chapter 961 – Right-of-Way

Gentlemen:

Please find attached a copy of Ord. 100-2007 which is amending and supplementing the Tallmadge Code of Ordinances by adding Chapter 961 – Right-of-Way.

As Clerk of Council, I am directed to provide you with a copy at least forty-five days prior to enactment according to Ohio Revised Code Section 4939.05.

Should you have any questions, please do not hesitate to contact the Council office Monday through Friday between the hours of 7:30 a.m. and 4:00 p.m. at (330) 633-0856.

Thank you for your time and consideration in this matter.

Sincerely

Susan E. Wilson

Susan E. Wilson
Clerk of Council
CITY OF TALLMADGE, OHIO

sw
Attachment
cc: Mayor
Dir. of Law
Dir. of Pub. Service
Dir. of Finance
Council

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AMENDING AND SUPPLEMENTING TALLMADGE CODE OF ORDINANCES
BY ADDING CHAPTER 961—RIGHT-OF-WAY

WHEREAS, controlling and regulating rights-of-way within the City is crucial to protect the health, welfare, and safety of our citizens; and

WHEREAS, due to the increasing demands for use of the City's rights-of-way, it is necessary to regulate and coordinate shared use of those areas.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TALLMADGE, COUNTIES OF SUMMIT AND PORTAGE, STATE OF OHIO:

SECTION 1. That Tallmadge Code of Ordinances is hereby amended and supplemented by adding Chapter 961—Right-of-Way, attached hereto and fully incorporated herein.

SECTION 2. That the Clerk of Council is hereby directed to file with the public utilities commission, at least forty-five days prior to enactment, a notice that this legislation is being considered pursuant to Ohio Revise Code Section 4939.05.

SECTION 3. That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees on or after November 28, 1975 that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

SECTION 4. That this ordinance shall take effect and be in force from and after the earliest period allowed by law.

Passed:

Susan E. Wilson, Clerk of Council
PKT/kl
09/13/07
Filed with the Mayor _____

Jack L. Sarver, President of Council

Approved:

Christopher B. Grimm, Mayor

This _____ day of _____, 2007

Committee Assignment: _____

Readings: 1st _____ 2d _____ 3d _____

961.01 SCOPE OF CHAPTER; DEFINITIONS.

(a) The purpose and intent of this Chapter is to:

- (1) Manage Occupancy or Use of the Public Right-of-Way.
- (2) Encourage the provision of advanced, competitive utility and telecommunications services on the widest possible basis to the businesses, institutions and residents of the City;
- (3) Permit and manage reasonable access to the Public Right-of-Way of the City for utility and telecommunications service purposes on a competitively neutral basis.
- (4) Conserve the limited physical capacity of the Public Right-of-Way held in trust by the City for the benefit of the public.
- (5) Assure that the City receives cost recovery for the Occupancy and Use of the Public Right-of-Way in accordance with law.
- (6) Assure that all Service Providers with Facilities in the Public Right-of-Way comply with the ordinances, rules and regulations of the City.
- (7) Assure that the City fairly and responsibly protects the public health, safety and welfare.
- (8) Enable the City to discharge its public trust consistent with rapidly evolving federal and State regulatory policies, industry competition and technological development.

(b) For the purpose of this Chapter, and the interpretation and enforcement thereof, the following words and phrases shall have the following meanings, unless the context of the sentence in which they are used shall indicate otherwise:

- (1) Affiliate means a Person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with another Person.
- (2) Cable Operator means a Person providing or offering to provide Cable Service within the City.
- (3) Cable Service means "cable service" as defined in the Cable Communications Policy Act of 1984, codified at 47 U.S.C. §532, et seq., as amended by the Cable Television Consumer Protection and Competition Act of 1992 and the Telecommunications Act of 1996, as each might be further amended.
- (4) Cable System means "cable system" as defined in the Cable Communications Policy Act of 1984, codified at 47 U.S.C. §532, et seq., as amended by the Cable Television Consumer Protection and Competition Act of 1992 and the Telecommunications Act of 1996, as each might be further amended.
- (5) Capital Improvement means an addition made to enhance the value or extend the useful life of an existing System or Facilities, including Construction, Reconstruction, installation, rehabilitation, renovation, improvement, enlargement and extension of Facilities, but not including ordinary or Routine Maintenance.
- (6) City means the City of Tallmadge, Ohio.
- (7) Service Director means the Director of Public Service, or his or her designee.
- (8) City Property means and includes all real property owned by the City, other than Public Streets and Public Easements as those terms are defined herein, and all property held in a proprietary capacity by the City, which are not subject to Public Right-of-Way consent and Permit requirements of this Chapter.
- (9) Construct, Constructing, Construction, etc. means installing, repairing, replacing or removing any Public or Private Facility, regardless of the methods employed.
- (10) Construction Permit or Permit means a permit issued pursuant to Section 961.07 of this Chapter.
- (11) Emergency means an unforeseen occurrence or condition calling for immediate action.

(12) Excavate, Excavating or Excavation means cutting, sawing, breaking, drilling into, boring under, or otherwise altering any Public Street or sidewalk pavement, and/or digging, drilling into or boring under any unpaved portion of the Public Right-of-Way, including any other work or activity which disturbs the existing surface or subsurface structure, composition, or soil compaction, for the purpose of carrying on any Construction activity.

(13) Excess Capacity means the volume or capacity in any existing or future duct, conduit, manhole, or other Facility in the Public Right-of-Way that is or will be available for use for additional Facilities.

(14) Facilities or Facility means the plant, equipment and property, including but not limited to, cables, fibers, wires, pipes, conduits, ducts, pedestals, antennae, electronics, poles, pipes, mains, plant, equipment and other appurtenances located under, on or above the surface of the ground in the Public Right-of-Way of the City and used or to be used to operate a System to transmit, receive, distribute, provide or offer a Service but also including Private System.

(15) Lane Obstruction means the blocking or diverting of vehicular and/or pedestrian traffic from a street or sidewalk for the purpose of Constructing, Excavating, installing, repairing, maintaining, operating, replacing or removing any Facility, including (A) the lifting or removing of manhole or handhole covers, and (B) the opening or accessing of at-grade or pole-mounted cabinets, pedestals, transformers, power supplies, amplifiers, splice enclosures, traps or other Facilities.

(16) New Service Orders means the connection from the Public Service Provider's existing Facilities on private property for the purpose of providing a new Service to a customer in the City.

(17) Occupancy, Occupy or Use means, with respect to the Public Right-of-Way, to place a tangible thing in the Public Right-of-Way for any purpose, including, but not limited to, constructing, repairing, positioning, maintaining or operating lines, poles, pipes, conduits, ducts, equipment or other structures, appurtenances or Facilities necessary to operate a System for the delivery of public utility-like Services, including Service provided by a Cable Operator, or other services over Private Facilities in the Public Right-of-Way.

(18) ODOT means the Ohio Department of Transportation.

(19) Other Ways means the highways, streets, alleys, Utility Easements or other rights-of-way within the City, but under the jurisdiction and control of a governmental entity other than the City.

(20) Overhead Facilities means utility poles and wires, cables and other such equipment running between and on such poles, including the underground supports and foundations for such Facilities.

(21) Person means and includes corporations, companies, associations, joint stock companies or associations, firms, partnerships, limited liability companies, trusts and individuals and includes their lessors, trustees and receivers.

(22) Private Facility means the plant, equipment and property, including but not limited to, cables, fiber optics, wires, pipes, conduits, ducts, pedestals, antennae, electronics and other appurtenances or Facilities used or to be used to operate a system to transmit, receive, distribute or provide telecommunications or other services between or among private buildings or facilities where there is no offer of service to the public.

(23) Private Service Provider means any Person who, pursuant to the consent to Occupy or Use the Public Right-of-Way pursuant to Section 961.02 of this Chapter, directly or indirectly owns, controls, operates or manages Private Facilities within the City's Public Right-of-Way used or to be used for the purpose of operating a System to transmit, receive, distribute or provide telecommunications or other services between or among private buildings or facilities where there is no offer of Service to the public.

(24) Public Easement means any easement under the jurisdiction and control of the City and acquired, established, dedicated or devoted for public purposes, including utility purposes.

(25) Public Right-of-Way means the surface of, and the space within, through, on, across, above or below, any public street, public road, public highway, public freeway, public lane, public path, public alley, public court, public sidewalk, public boulevard, public parkway, public drive, public easement and any other land dedicated or otherwise designated for a compatible public use, which is owned or controlled by the City but excludes a private easement.

(26) Public Service Provider means any Person that, pursuant to the consent to Occupy or Use the Public Right-of-Way pursuant to Section 961.02 of this Chapter, directly or indirectly owns, controls, operates or manages Facilities within the City's Public Right-of-Way, used or to be used for the purpose of operating a System offering Service to the public within the City or outside of the City's boundaries.

(27) Public Street means the paved and unpaved portion of any street, road, boulevard, drives, highway, freeway, parkway, lane court, alley or other Public Right-of-Way in which the City has an interest in law or equity and which has been acquired, established, dedicated or devoted to street purposes.

(28) Public Way Fee means a fee levied to recover the costs incurred by the City and associated with the occupancy or use of a Public Right-of-Way.

(29) PUCO or Public Utilities Commission of Ohio means the State Administrative agency, or lawful successor, authorized to regulate and oversee certain Public or Private Service Providers and Services in the State of Ohio.

(30) Reconstruct, Reconstruction, etc. means substantial physical change to or Capital Improvement of all or a portion of an existing System or Facilities including a change in location, or additional locations, of Facilities along the same Right-of-Way involving Construction in Public Streets, Utility Easements, or Public Right-of-Way.

(31) Routine Maintenance means repair, upkeep, replacement or restoration of existing Facilities located in the Public Right-of-Way that requires no more than three (3) working days to complete, is not an Emergency and does not include Excavation of the Public Right-of-Way.

(32) Service means the offering of water, sewer, electric, gas, telephone, telecommunications, cable television, information or other utility-like service for a fee directly to the public, or to such classes of users as to be effectively available to the public, regardless of the Facilities used.

(33) Service Provider means any Public Service Provider and/or Private Service Provider.

(34) State means the State of Ohio.

(35) Surplus Space means that portion of the Usable Space on a utility pole which has the necessary clearance from other Public or Private Service Providers using the pole, as required by the orders and regulations of PUCO and other applicable State and local orders and regulations, to allow its use by an additional Public or Private Service Provider for a pole attachment.

(36) System means a network of Facilities for the transmission and/or distribution of a Service.

(37) Trenchless Technology means the use of directional boring, horizontal drilling and micro-tunneling and other techniques in the Construction of underground portions of Facilities that result in the least amount of disruption and damage to the Public Right-of-Way as possible.

(38) Underground Facilities means that portion of a System located under the surface of the ground, excluding the underground foundations or supports for Overhead Facilities.

(39) Usable Space means the total distance between the top of a utility pole and the lowest possible attachment point that provides the minimum allowable vertical clearance as specified in the orders and regulations of the PUCO.

(40) Utility Easement means any easement owned by a Service Provider and acquired, established, dedicated or devoted for the purpose of providing Service to the public.

961.02 CONSENT TO OCCUPY OR USE THE PUBLIC RIGHT-OF-WAY.

(a) Consent Required to Occupy Public Right-of-Way. No Person shall Occupy or Use the Public Right-of-Way without obtaining prior consent from the City to do so.

(b) Initial Consent Presumed.

(1) A Person with existing Facilities in the Public Right-of-Way on the effective date of this Chapter, and who either

(A) Is subject to jurisdiction by the PUCO;

(B) Has a valid franchise agreement with the City to provide Cable Services or other Services in the City, and/or

(C) Is any other Person whose existing Facilities lawfully Occupy the Public Right-of-Way on the effective date of this Chapter

shall be presumed to have initial consent of the City for its existing Facilities to Occupy or Use the Public Right-of-Way.

(2) Initial presumed consent for Occupancy or Use of the Public Right-of-Way is limited to the Service or Private Service Provider's existing facilities.

(3) A Person with initial presumed consent is not relieved from compliance with this Chapter with respect to the ongoing Occupancy or Use of the Public Right-of-Way including, but not limited to, the Insurance, Indemnity, Performance Bond and Registration requirements pursuant to Sections 961.02(e), (f) and (g) and 961.03(a) and (b) of this Chapter.

(4) Any Person with presumed initial consent to Occupy or Use the Public Right-of-Way for existing Facilities shall comply with the Initial Registration requirements pursuant to Sections 961.02(c)(2) and 961.03(a) within ninety (90) days of the effective date of this Chapter.

(c) Application for Consent to Occupy or Use Public Right-of-Way.

(1) The following Persons shall apply to the City for consent to Occupy or Use the Public Right-of-Way on a form provided by the Service Director; any Person who:

(A) Does not currently have an existing System or Facilities in the City's Public Right-of-Way and desires to Construct a System, Facilities or Private Facilities in the Public Right-of-Way;

(B) Has an existing System, Facilities or Private Facilities in the Public Right-of-Way on the effective date of this Chapter and does not have presumed initial consent under Section 961.02(b)(1) above; or

(C) Has initial presumed consent or City consent to Occupy or Use the Public Right-of-Way for an existing System, Facilities or Private Facilities, but is planning

(i) A Capital Improvement or Reconstruction of existing Facilities; or

(ii) To Construct an additional System anywhere in the City.

(2) The application for Consent to Occupy or Use the Public Right-of-Way and/or initial registration pursuant to Section 961.03(a) for Service Providers with initial presumed consent to Occupy or Use the Public Right-of-Way shall include the following information with respect to the applicant's or Service Provider's planned or existing System and/or Facilities in the Public Right-of-Way as well as plans for any planned Capital Improvements or Reconstruction for the following twelve (12) months:

(A) The identity, legal status and federal tax identification number of the applicant, including all Affiliates of the applicant or Service Provider that will Use or Occupy the Public Right-of-Way or are in any way responsible for Services provided over the System in the Public Right-of-Way.

(B) The name, address and telephone number of the local officer, agent or employee responsible for the accuracy of the application or initial registration and available at all reasonable times to be notified in case of emergency.

(C) A general description of the Services provided or to be provided by the applicant or Service Provider over its System or Facilities. Where Services are or will be

provided by a nonaffiliated provider, the applicant or Service Provider shall identify that provider.

(D) A description of the type of transmission medium used, or to be used, by the applicant or Service Provider to operate a System.

(E) A description of the existing or proposed Facilities in the City's Public Right-of-Way, all in sufficient detail to identify:

(i) The location and route of the applicant's or Service Provider's Facilities or proposed Facilities.

(ii) The location of all known existing Overhead and/or Underground Facilities in the Public Right-of-Way along the route or proposed route of the applicant's or Service Provider's Facilities or proposed Facilities that is sufficient to show the impact of the applicant's Facilities on other existing Facilities.

(iii) The location of all known overhead and underground Utility Easements.

(F) A preliminary Construction schedule and completion date for all Capital Improvements planned for the twelve (12) month period following the date of application.

(G) If the applicant or Service Provider is providing Services in the City:

(i) A description of the access and line extension policies or a copy of their PUCO tariff.

(ii) The area or areas of the City in which the applicant or Service Provider is currently providing Service and a schedule for build-out of the entire area addressed by the Permit, if applicable.

(H) Evidence that the applicant or Service Provider has complied, or will comply, with indemnification, Insurance, Performance Bond and Construction Bond requirements of this Chapter.

(I) Information sufficient to determine that the applicant or Service Provider has received any certificate of authority required by the PUCO to operate a System and provide Services in the City.

(J) Such other and further information as may reasonably be requested by the Service Director.

(3) The City shall grant or deny, in writing, a Person's application for consent to Occupy or Use the Public Right-of-Way within sixty (60) days of the date on which the Person filed the application with the City.

(A) The City may withhold, deny or delay its consent to a Person's application to Occupy or Use the Public Right-of-Way based on the Person's failure to possess the financial, technical and managerial resources necessary to protect the public health, safety and welfare, or for other reasons based on the health, safety and welfare of the City and in accordance with Ohio law.

(B) If the City denies a Person's application to Occupy or Use the Public Right-of-Way, the City shall provide its reasons in writing for denying the application, and shall provide any information that the Person may reasonably request necessary for the Person to obtain the City's consent to Occupy or Use the Public Right-of-Way.

(4) The City's grant of consent for a Person to Occupy or Use the Public Right-of-Way shall be in the form of a Right-of-Way Occupancy Certificate which shall set forth the specific terms of the City's consent for such Person to Occupy or Use the Public Right-of-Way.

(5) Each Person submitting an application for Consent to Occupy or Use the Public Right-of-Way shall pay a fee as determined by the Service Director to reimburse the City for its administrative costs related to the application as provided in Section 961.08.

(d) Application to Existing Franchise Ordinances and Agreements. For purposes of this Chapter, a franchise ordinance or agreement shall be deemed consent authorizing the Franchisee's Occupancy or Use of the Public Right-of-Way to the extent described in the franchise agreement or ordinance. The Franchisee's use of the Public Right-of-Way beyond

that authorized by the franchise agreement or ordinance shall require additional consent for such additional Occupancy or Use. Franchisees shall comply with the Registration provisions and Construction Standards to the extent that the provisions of this Chapter do not directly conflict with the franchise agreement or ordinance. If there is a direct conflict between the franchise agreement or ordinance and the provisions of this Chapter, the franchise agreement or ordinance shall control.

(e) Service Provider Insurance. As a condition of the consent to Occupy or Use the Public Right-of-Way, a Service Provider must secure and maintain, at a minimum, the following liability insurance policies insuring both the Service Provider and the City, and its elected and appointed officers, officials, agents, employees and representatives as additional insureds:

- (1) Comprehensive general liability insurance with limits not less than
 - (A) Five Million Dollars (\$5,000,000) for bodily injury or death to each Person;
 - (B) Five Million Dollars (\$5,000,000) for property damage resulting from any one accident; and
 - (C) Five Million Dollars (\$5,000,000) for all other types of liability.
- (2) Automobile liability for owned, non-owned and hired vehicles with a limit of Three Million Dollars (\$3,000,000) for each Person and Three Million Dollars (\$3,000,000) for each accident.
- (3) Worker's Compensation within statutory limits and employer's liability insurance with limits of not less than One Million Dollars (\$1,000,000).
- (4) Comprehensive form premises-operations, explosions and collapse hazard, underground hazard and products completed hazard with limits of not less than Three Million Dollars (\$3,000,000).
- (5) The liability insurance policies required by this Section shall be maintained by the Service Provider throughout the period of time during which the Service Provider is Occupying or Using the Public Right-of-Way, or is engaged in the removal of its Facilities. Each such insurance policy shall contain the following endorsement:

"It is hereby understood and agreed that this policy may not be canceled nor the intention not to renew be stated until ninety (90) days after receipt by the City, by registered mail, of a written notice addressed to the Service Director of such intent to cancel or not to renew."

(6) Within sixty (60) days after receipt by the City of said notice, and in no event later than thirty (30) days prior to said cancellation, the Service Provider shall obtain and furnish to the City replacement insurance policies meeting the requirements of this Section.

(7) Upon written application to, and written approval by, the Service Director, a Service Provider may be self-insured to provide all of the same coverages as listed in this Section; except that all coverages for Workers' Compensation shall be in compliance with State law. No approval for self-insurance shall be given until the Service Director has made a complete review of the Service Provider's financial ability to provide such self-insurance. As part of the review process, the Service Director may require, and the self-insurance applicant shall provide, any and all financial documents necessary to make a valid determination of the applicant's ability to meet the needs of this Chapter.

(f) General Indemnification. Each application for consent to Occupy or Use the Public Right-of-Way, and each annual registration, shall include, to the extent permitted by law, the Service Provider's express undertaking to defend, indemnify and hold the City and its elected and appointed officers, officials, employees, agents, representatives and subcontractors harmless from and against any and all damages, losses and expenses, including reasonable attorney's fees and costs of suit or defense, arising out of, resulting from or alleged to arise out of or result from the negligent, careless or wrongful acts, omissions, failures to act or misconduct of the Service Provider or its Affiliates, officers, employees, agents, contractors or subcontractors in the construction, reconstruction, installation, operation, maintenance, repair

or removal of its System or Facilities, and in providing or offering Services over the Facilities or System, whether such acts or omissions are authorized, allowed or prohibited by this Chapter.

(g) Performance Bond. As a condition of consent to Occupy or Use the Public Right-of-Way, and to ensure the full and complete compliance with, and performance under this Chapter, including any costs, expenses, damages or loss the City pays or incurs because of any failure attributable to the Service Provider to comply with the codes, ordinances, rules, regulations or permits of the City, each Service Provider shall, in the amount of Fifty Thousand Dollars (\$50,000) or such lesser amount as the Service Director may determine to be necessary (i) provide an unconditional letter of credit, or other instrument acceptable to the City, or (ii) furnish and file with the City a Performance Bond running to the City in the required amount from a company licensed to do business in the State of Ohio; which performance bond or letter of credit or other instrument shall be maintained at the sole expense of the Service Provider so long as any of the Service Provider's Facilities are located within the Public Right-of-Way of the City.

(1) Before claims are made against the Performance Bond or letter of credit or other instrument, the City shall give written notice to the Service Provider:

(A) Describing the act, default or failure to be remedied, or the damages, cost or expenses which the City has incurred by reason of the Service Provider's act or default;

(B) Providing a reasonable opportunity for the Service Provider to first remedy the existing or ongoing default or failure, if applicable;

(C) Providing a reasonable opportunity for the Service Provider to pay any monies due the City before the City makes a claim against the Performance Bond or letter of credit or other instrument;

(D) That the Service Provider will be given an opportunity to review the act, default or failure described in the notice with the Service Director.

(2) Service Providers shall maintain the full value of the Performance Bond or letter of credit or other instrument regardless of claims against the Performance Bond or letter of credit or other instrument made by, or paid to, the City.

961.03 INITIAL AND ANNUAL REGISTRATION OF SERVICE PROVIDERS.

(a) Initial Registration. Any Service Provider with initial presumed consent to Occupy or Use the Public Rights-of-Way as provided in Section 961.02(b) shall file an initial registration with the City within ninety (90) days of the effective date of this Chapter, on a form provided by the Service Director, which shall include the information in Section 961.02(c)(2) of this Chapter.

(b) Annual Registration Required. All Service Providers with consent to Occupy or Use the Public Right-of-Way as provided in Section 961.02 shall register with the City each calendar year between January 1 and January 31 on a form provided by the Service Director. Service Providers who file an Initial Registration after October 1, 2007 but before January 1, 2008 need not file an Annual Registration for calendar year 2008.

(c) Purpose of Registration. The purpose of registration under this Section 961.03 is to:

(1) Compile, update and supplement the City's database so that the City has accurate and current information concerning the Service Providers that own or operate Facilities, and/or provide Services, in the City's Public Right-of- Way;

(2) Assist the City in monitoring the usage of the Public Right-of-Way in order to ensure that the public receives the maximum possible benefit from that use and the use is consistent with the best management and care of the Public Right-of-Way;

(3) Assist the City in the collection and enforcement of any municipal taxes, franchise fees, compliance fees or charges that may be due the City;

(4) Assist the City in monitoring compliance with local, State and federal laws.

(d) Information Required for Registration. Registration forms will be provided by the City and shall require the following information:

(1) Any material changes to the information the Service Provider provided the City in the application for consent to Occupy or Use the Public Right-of- Way, including, but not limited to:

(A) The identity, legal status, and federal tax identification number of the Service Provider, including any Affiliates.

(B) The name, address and telephone number of the local officer, agent or employee responsible for the accuracy of the Service Provider's registration statement and available at all reasonable times to be notified in case of emergency.

(2) Evidence that the Service Provider is in compliance with the Insurance, Indemnity and Performance Bond requirements pursuant to Sections 961.02(e), (f) and (g) of this Chapter.

(3) Information regarding, and a preliminary Construction schedule and completion date for, any Capital Improvements the Service Provider plans in the City's Public Right-of-Way for the twelve (12) months following the date of registration, including:

(A) A description clearly showing the location of all the proposed Capital Improvements, including horizontal and vertical information; Facility type, size, depth, and capacity; or such other information the Service Director determines is necessary. In no event shall the description of the proposed Capital Improvement be less than by City quadrant and/or street name and Facility type. The Service Provider shall update all required information as soon as it becomes available.

(B) If the Service Provider is Constructing a new System or Reconstructing all or a portion of its existing System, general description of the proposed System and the Facilities utilized to provide the Service that the Service Provider intends to offer or provide over the System within the City. Where a Service will be provided by a nonaffiliated provider, the Service Provider shall identify that provider.

(C) Information sufficient to determine that the Service Provider has applied for and received any certificate of authority required by PUCO to provide Services or operate a System in the City.

(D) Information sufficient to determine that the Service Provider has applied for and received any construction permit, operating license, certification, or other approvals required by the Federal Communications Commission to provide telecommunications or Cable Services over a System in the City.

(4) Such other information as the Service Director may reasonably require.

(e) Facilities Maps. The City shall have the right to access and review all the Service Provider's maps and/or as-built plans showing the location of its Facilities in the City's Rights-of- Way, upon ten (10) days notice to the Service Provider.

(f) Registration to be Kept Current. In addition to the annual registration requirement, each Service Provider shall keep all required registration information current at all times and shall provide the City with notice of changes to the required information within fifteen (15) days following the date on which the Service Provider has notice of such change.

(g) Registration Fee. Each Service Provider, except as provided in Section 961.09, shall pay an annual registration fee as determined by the Service Director to reimburse the City for its administrative costs related to maintaining annual registration and as provided in Section 961.08.

961.04 GENERAL PUBLIC RIGHT-OF-WAY USE REGULATIONS.

(a) Public Right-of-Way Route. Consent granted to a Service Provider to Occupy or Use the Public Right-of-Way under Section 961.02 shall be limited to a grant to Occupy or Use the specific Public Right-of-Way and defined portions thereof including the specific Facilities and location along the Public Right-of-Way.

(b) Nonexclusive Consent to Occupy the Public Right-of-Way. No consent granted under Section 961.02 shall confer any exclusive right, privilege, license or franchise to Occupy or Use the Public Right-of-Way of the City to operate a System for delivery of Services or any other purposes.

(c) Rights Permitted. No consent granted under Section 961.02 shall convey any right, title or interest in the Public Right-of-Way, but shall be deemed a consent only to Occupy or Use the Public Right-of-Way for the limited purposes granted by the consent. Further, no consent shall be construed as any warranty of title.

(d) Nondiscrimination. A Public Service Provider providing Service to the public in the City shall make its Services available to any customer within the designated service area who shall request such Service, without discrimination as to the terms, conditions, rates or charges for the Public Service Provider's Services; provided, however, that nothing in this Section shall prohibit a Public Service Provider from making any reasonable classifications among differently- situated customers.

(e) Maintenance of Facilities. Each Service Provider shall maintain its System or Facilities in good and safe condition and in a manner that complies with all applicable federal, State and local requirements.

(f) Safety Procedures. A Service Provider or other Person acting on its behalf shall use suitable barricades, flags, flagmen, lights, flares and other measures as necessary and in accordance with applicable State and local requirements for the safety of all members of the general public and to prevent injury or damage to any Person, vehicle or property by reason of such work in or affecting such Public Right-of-Way or property.

(g) Interference with the Public Rights-of-Way. No Service Provider may locate or maintain its Facilities so as to unreasonably interfere with the use of the Public Right-of-Way by the City, by the general public or by other Persons authorized to use or be present in or upon the Public Right-of-Way. All such Facilities shall be moved by the Service Provider, temporarily or permanently, as determined by the Service Director.

(h) Damage to Public and Private Property. No Service Provider nor any Person acting on the Service Provider's behalf shall take any action or permit any action to be done which may impair or damage any City Property, Public Right-of-Way, Other Ways or other public or private property located in, on or adjacent thereto.

(i) Restoration of Public Right-of-Way, Other Ways and City Property.

(1) When a Service Provider, or any Person acting on its behalf, does any work in or affecting any Public Right-of-Way, Other Ways or City Property, it shall, after the work is completed and at its own expense, promptly remove any obstructions therefrom and restore such ways or property, within ten (10) to thirty (30) days, at the Service Director's discretion, to as good a condition as existed before the work was undertaken, unless otherwise directed by the City.

(2) If weather or other conditions do not permit the complete restoration required by this Section, the Service Provider shall temporarily restore the affected ways or property as directed by the Service Director. Such temporary restoration shall be at the Service Provider's sole expense and the Service Provider shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration.

(j) Duty to Provide Information.

(1) Within ten (10) days of a written request from the Service Director each Service Provider shall furnish the City with documentation sufficient to show that the Service Provider has complied with all requirements of this Chapter.

(2) In addition, within ten (10) days of a written request from the Service Director, each Service Provider shall make available for inspection by the City at reasonable times all books, records, maps and other documents, maintained by the Service Provider with respect to its Facilities in the Public Right-of-Way.

(k) Leased Capacity. A Service Provider shall have the right, without prior City approval, to lease capacity or bandwidth to an unaffiliated Service Provider, provided:

(1) The Service Provider shall notify the City of the lease agreement within thirty (30) days of such lease agreement.

(2) The lessee has complied, to the extent applicable, with the requirements of this Chapter.

(l) Assignments or Transfers of Consent. Consent to Occupy or Use the Public Right-of-Way may be, directly or indirectly, transferred, assigned or disposed of by sale, lease, merger, consolidation or other act of the Service Provider, by operation of law or otherwise, without consent of the City, so long as:

(1) The City is notified of the proposed transfer on or before the date of transfer; and

(2) The transferee shall fully comply with this Chapter within sixty (60) days of the transfer, including, but not limited to:

(A) All information required by the application for consent to Occupy or Use the Public Right-of-Way pursuant to Section 961.02, and/or Registration required by Section 961.03 of this Chapter; and

(B) Any other information reasonably required by the Service Director.

(m) Transactions Affecting Control of Consent. Any transactions that singularly or collectively result in a change of twenty-five percent (25%) or more of the ownership or ultimate working control of a Service Provider, of the ownership or working control of the Service Provider's Facility, or of control of the capacity or bandwidth of the Service Provider's System, Facilities or substantial parts thereof, shall be considered an assignment or transfer pursuant to Section 961.04(l) hereof. Transactions between Affiliated entities are not exempt from Section 961.04(l).

(n) Revocation of Consent. Consent granted by the City to Occupy or Use the Public Right-of-Way of the City may be revoked for any one of the following reasons:

(1) Construction, Reconstruction, installation, location, operation or Excavation at an unauthorized location.

(2) Construction, Reconstruction, installation, location, operation or Excavation in violation of City safety and/or Construction requirements.

(3) Material misrepresentation or lack of candor by or on behalf of a Service Provider in any Permit application or registration required by the City.

(4) Failure to relocate or remove Facilities, or failure to restore the Public Right-of-Way, as required by this Chapter.

(5) Failure to pay fees, costs, taxes or compensation when and as due the City.

(6) Insolvency or bankruptcy of the Service Provider.

(7) Violation of material provisions of this Chapter.

(o) Notice and Duty to Cure. In the event that the Service Director believes that grounds exist for revocation of consent to Occupy or Use the Public Right-of-Way or Construction Permit, he shall give the Service Provider written notice of the apparent violation or noncompliance, providing a short and concise statement of the nature and general facts of the violation or noncompliance, and providing the Service Provider a reasonable period of time not exceeding thirty (30) days to furnish evidence:

- (1) That corrective action has been, or is being actively and expeditiously pursued, to remedy the violation or noncompliance;
- (2) That rebuts the alleged violation or noncompliance; and/or
- (3) That it would be in the public interest to impose some penalty or sanction less than revocation.

(p) Waiver of Requirements. It is within the Service Director's reasonable discretion to waive a portion or portions of this Chapter where such requirements, in the Service Director's judgment, are not necessary or appropriate to protect the City's interests and the purposes and intent of this Chapter.

961.05 LOCATION, RELOCATION AND REMOVAL OF FACILITIES.

(a) Location of Facilities. All Facilities shall be Constructed, Reconstructed, installed and located in accordance with the following terms and conditions:

- (1) Facilities shall be installed within an existing compatible underground duct or conduit whenever Excess Capacity exists within such Facility.
- (2) A Service Provider with permission to install Overhead Facilities shall install its Facilities on pole attachments to existing utility poles only, and then only if Surplus Space is available.
- (3) Whenever the existing electric, cable, telecommunications and other similar Facilities are located underground in a Public Right-of-Way, a Service Provider with permission to Occupy the same Public Right-of-Way with the electric, cable, telecommunications or other similar Facilities, must also locate its Facilities underground.
- (4) Except for Overhead Facilities as provided herein, no Facilities shall be located above ground in a Public Right-of-Way without the express written permission of the Service Director.
- (5) The City reserves the right to require a Service Provider to provide Excess Capacity in the Public Right-of-Way at the time of Construction, Reconstruction, installation, location or relocation of Facilities.

(b) Excess Capacity. To reduce Excavation in the Public Right-of-Way, it is the City's goal to encourage Service Providers to share occupancy of underground conduit as well as to construct, whenever possible, excess conduit capacity for occupancy of future Facilities in the Public Right-of-Way. Therefore, if a Service Provider is constructing underground conduit in the Public Right-of-Way for its own Facilities, and the City reasonably determines such construction is in an area in which other Service Providers would likely construct Facilities in the future, the City may require the Service Provider to construct the conduit in the Public Right-of-Way with Excess Capacity in the Public Right-of-Way, provided the Service Provider shall be reimbursed for the use of the Excess Capacity by another Service Provider. The Service Provider may charge a reasonable market lease rate for occupancy of the additional conduit space as reimbursement.

(c) City Owned Conduit. If the City owns or leases conduit in the path of a Service Provider's proposed Facilities, and provided it is technologically feasible for the Service Provider's Facilities to Occupy the conduit owned or leased by the City, the Service Provider shall be required to Occupy the conduit owned or leased by the City in order to reduce the necessity to Excavate the Public Right-of-Way. The Service Provider shall pay to the City a fee for such Occupancy which shall be the cost the Service Provider would have expended to construct its own conduit, as certified by the Service Provider's engineer and approved by the

City Engineer. The City and the Service Provider may agree to amortize the fee through annual payments to the City.

(d) Relocation or Removal of Facilities. Within thirty (30) days following written notice from the City, a Service Provider shall, at its own expense, temporarily or permanently remove, relocate, change or alter the position of any Facilities in the Public Right-of-Way whenever the City shall have determined that such removal, relocation, change or alteration is reasonably necessary for:

(1) The Construction, Reconstruction, repair, maintenance or installation of any City or other public improvement in or upon the Public Right-of-Way.

(2) The operations of the City or other governmental entity in or upon the Public Right-of-Way.

Notwithstanding the above, no Service Provider shall be required to bear the expense of removal, relocation, change or alteration of position of any Facilities if such requirement would be prohibited by law.

(e) Removal of Unauthorized Facilities. Within thirty (30) days following written notice from the City, any Service Provider or other Person that owns, controls or maintains any unauthorized System, Facility or related appurtenances in the Public Right-of-Way shall, at its own expense, remove those Facilities or appurtenances from the Public Right-of-Way of the City or shall arrange to sell the System, Facilities or appurtenances to the City. After the thirty (30) days have expired, the City may remove the Facilities or appurtenances from the Public Right-of-Way at the other party's expense. A System or Facility is unauthorized and subject to removal in the following circumstances:

(1) Upon revocation of the Service Provider's consent to Occupy or Use the Public Right-of-Way;

(2) If the System or Facility was Constructed, Reconstructed, installed, operated, located or maintained without the consent to do so, except as otherwise provided by this Chapter;

(3) Upon abandonment of a Facility in the Public Right-of-Way of the City, with the exception of underground facilities abandoned in a manner authorized and approved by the City;

(4) If the System or Facility was Constructed, Reconstructed, installed, operated, located or maintained, or any Excavation of a Public Right-of- Way was performed, without prior issuance of a required Construction Permit, except as otherwise provided by this Chapter;

(5) If the System or Facility was Constructed, Reconstructed, installed, operated, located or maintained, or any Excavation of a Public Right-of- Way was performed, at a location not permitted pursuant to the City's consent to Occupy or Use the Public Right-of-Way or Construction Permit;

(6) If the Service Provider fails to comply with the Registration requirements of Section 961.03 of this Chapter.

(f) Emergency Removal or Relocation of Facilities. The City retains the right and privilege to cut or move any Facilities, or stop work on any Construction, Reconstruction, installation, operation or Excavation, located in the Public Right-of-Way of the City, as the City may determine to be necessary, appropriate or useful in response to any need to protect the public health, safety or welfare; except to the extent that the City's actions would cause a dangerous or potentially dangerous situation.

961.06 NOTICE OF WORK, ROUTINE MAINTENANCE AND EMERGENCY WORK.

(a) Notice of Work. Except in case of Emergency, as provided in Section 961.06(c), or for Routine Maintenance as provided in Section 961.06(b), no Service Provider, or any Person acting on the Service Provider's behalf, shall commence any work in the Public Right-of-Way

of the City or Other Ways without twenty-four (24) hours advance notice to the City, obtaining a Construction Permit pursuant to Section 961.07, if required, and obtaining consent to Occupy or Use the Public Right-of-Way pursuant to Section 961.02, if required.

(b) Routine Maintenance and New Service Orders.

(1) A Service Provider need not obtain a Construction Permit or notify the City prior to or after commencing any Routine Maintenance or New Service Orders that do not include the Construction in, or Excavation or Lane Obstruction of, a Public Right-of-Way or closing of a Public Street.

(2) For Routine Maintenance and New Service Orders that require the Service Provider to cause a Lane Obstruction in a Public Street for more than four (4) hours, the Service Provider shall provide the City with forty-eight (48) hours advance notice prior to commencing the Routine Maintenance or New Service Order, and shall submit a drawing showing the planned traffic maintenance and indicating how the Service Provider will meet all requirements of ODOT's Manual of Traffic Control Devices or other applicable ODOT regulations.

(c) Emergency Work. In the event of the need for any unexpected repair or Emergency work, a Service Provider may commence such Emergency response work as required under the circumstances, provided that for Emergency work that requires Excavation of a Public Right-of-Way or Lane Obstruction or closing of a Public Street, the Service Provider shall notify the City as promptly as possible before commencing such Emergency work, or as soon as possible thereafter if advance notice is not practicable. When notice is required, the Service Provider shall notify the Service Director.

961.07 CONSTRUCTION PERMIT AND STANDARDS.

(a) Construction Permit.

(1) No Construction Permit is required for Routine Maintenance and New Service Orders that do not include Excavation in a Public Street.

(2) No Person shall commence or continue with the Construction, Reconstruction, installation, maintenance or repair of Facilities or Excavation in the Public Right-of-Way without obtaining a Construction Permit from the Service Director as provided in this Section 961.07, including but not limited to the following circumstances:

(A) The Construction of a new System;

(B) The extension of a Service Provider's System in the Public Right-of-Way in an area of the City not currently serviced by that Service Provider. This does not include New Service Orders unless a Public Street will be Excavated;

(C) The relocation or replacement of more than two hundred (200) lineal feet of a Service Provider's existing System or Facilities in the Public Right-of-Way;

(D) Any Reconstruction or replacement of Facilities requiring more than one (1) working day to complete work in the Public Right-of-Way;

(E) Any Construction, Reconstruction, installation, maintenance, repair or New Service Orders in the Public Right-of-Way requiring more than one (1) working day to complete; or

(F) Any Construction, Reconstruction, installation, maintenance, repair or New Service Orders requiring the Excavation of a Public Street.

(3) No Construction Permit shall be issued for the Construction, Reconstruction, installation, maintenance or repair of Facilities, or Excavation, in the Public Right-of-Way unless the Service Provider has obtained consent from, and filed a current registration statement with, the City pursuant to Section 961.02 and Section 961.03, respectively, of this Chapter.

(4) The Service Director may waive or modify the construction permit requirements for Service Providers with Underground Facilities whose routine maintenance of Facilities requires Excavation.

(b) Construction Permit Applications. Applications for permits to Construct, Reconstruct or install Facilities, or Excavate, shall be submitted upon forms provided by the City, provide the following information, if applicable, and be accompanied by drawings, plans and specifications in sufficient detail to demonstrate:

- (1) A preliminary construction schedule.
- (2) That the Facilities will be Constructed, Reconstructed, installed, maintained or repaired, or the Public Right-of-Way Excavated, in accordance with all applicable codes, rules and regulations.
- (3) If the applicant is proposing to Construct, Reconstruct, install, maintain, repair or locate Facilities above ground:
 - (A) Evidence that Surplus Space is available for locating its Facilities on existing utility poles along the proposed route;
 - (B) The location and route of all Facilities to be located or installed on existing utility poles.
- (4) If the applicant is proposing an underground installation of new Facilities in existing ducts, pipes or conduits in the Public Right-of-Way, information in sufficient detail to identify:
 - (A) The Excess Capacity currently available in such ducts or conduits before the installation of the applicant's Facilities.
 - (B) The Excess Capacity, if any, that will exist in such ducts or conduits after installation of the applicant's Facilities.
- (5) If the applicant is proposing an underground installation of new Facilities in new ducts or conduits to be Constructed in the Public Right-of-Way:
 - (A) The location and depth proposed for the new ducts or conduits; and
 - (B) The Excess Capacity that will exist in such ducts or conduits after installation of the applicant's Facilities.
- (6) The location and route of all Facilities to be located under the surface of the ground, including the line and grade proposed for the burial at all points along the route which are in the Public Right-of-Way. Included with the installation shall be magnetic and florescent tape placed at a minimum of one foot to a maximum of two (2) feet above the entire Facility as installed for the purpose of locating the Facility during future Construction activities or other such location device as approved by the Service Director. The tape shall be marked with the type of Facility installed as approved by the City.
- (7) The location of all known existing underground utilities, conduits, ducts, pipes, mains and installations that are in the Public Right-of-Way along the underground route proposed by the applicant.
- (8) The location(s), if any, for interconnection with the Facilities of other Service Providers.
- (9) The construction methods to be employed for protection of existing structures, fixtures and Facilities in or adjacent to the Public Right-of-Way.
- (10) The structures, improvements, Facilities and obstructions, if any, that the applicant proposes to temporarily or permanently remove or relocate.
- (11) The impact of Construction, Reconstruction, installation, maintenance or repair of Facilities on trees in or adjacent to the Public Right-of-Way along the route proposed by the applicant, together with a landscape plan for protecting, trimming, removing, replacing and restoring any trees or areas disturbed during Construction.
- (12) Information to establish that the applicant has obtained all other governmental approvals and permits to Construct and operate the Facilities and to offer or provide the Services.

(c) Construction Codes. Facilities shall be Constructed, Reconstructed, installed, repaired, operated, Excavated and maintained in accordance with all applicable federal, State

and local codes, rules, regulations and technical codes including, but not limited to, the National Electrical Safety Code.

(d) Traffic Control Plan. All Permit applications which involve a Lane Obstruction or work on, in, under, across or along any Public Right-of-Way shall be accompanied by a traffic control plan demonstrating the protective measures and devices that will be employed, consistent with the ODOT's Uniform Manual of Traffic Control Devices and other applicable ODOT regulations, to prevent injury or damage to Persons or property and to minimize disruptions to efficient pedestrian and vehicular traffic. The Service Director may require the Service Provider to use and employ the City Police Force for Traffic Control.

(e) Issuance of Permit. Within ten (10) business days after submission of all plans and documents required of the applicant, the Service Director, if satisfied that the applications, plans and documents comply with all requirements of this Chapter, shall issue a Construction Permit authorizing the Construction, Reconstruction, installation, maintenance or repair of the Facilities, or Excavation in the Public Right-of-Way, subject to such further conditions, restrictions or regulations affecting the time, place and manner of performing the work as the Service Director may deem necessary or appropriate. Such ten (10) business day period shall begin after all submissions are deemed by the Service Director to be in accordance with the requirements of, including information submitted in the form required by, this Chapter.

(f) Coordination of Construction Activities. All Service Providers are required to cooperate with the City, including its Service and Safety forces, and with each other. All Construction, Reconstruction, installation, Excavation, activities and schedules shall be coordinated, as ordered by the Service Director, to minimize public inconvenience, disruption or damages.

(g) Modification of Construction Schedule. The Service Provider may modify the construction schedule at any time provided that forty-eight (48) hours advance notice is given to the Service Director. The Service Provider shall further notify the Service Director and the Ohio Utility Protection Service (OUPS) not less than forty-eight (48) hours in advance of any Excavation or work in the Public Right-of-Way.

(h) Least Disruptive Technology. To the extent reasonably possible, all Facilities shall be Constructed, Reconstructed, installed, maintained or repaired in the manner resulting in the least amount of damage and disruption of the Public Right-of-Way. Unless otherwise authorized by the Service Director for good cause, Service Providers Constructing, Reconstructing, installing, maintaining or repairing Underground Facilities shall utilize Trenchless Technology, including, but not limited to, horizontal drilling, directional boring, and microtunneling, if technically and/or technologically feasible.

(i) Compliance with Permit. All Construction practices and activities shall be in accordance with the Construction Permit and approved final plans and specifications for the Facilities. The Service Director shall be provided access to the work and such further information as he or she may require to ensure compliance with such requirements. Field changes may be approved by the Service Director if such changes are determined to be necessary due to site conditions or other changed circumstances.

(j) Display of Permit. The Service Provider shall maintain a copy of the Construction Permit and approved plans at the construction site, which shall be displayed and made available for inspection by the Service Director at all times when construction work is occurring.

(k) Joint Applications. Any Service Provider planning a Capital Improvement may submit a joint application for (1) Consent to Occupy or Use the Public Right-of-Way pursuant to Section 961.02 and (2) a Construction Permit. The City is not required to take action on the Construction Permit until ten (10) days after granting consent to Occupy or Use the Public Right-of-Way.

(l) Noncomplying Work. Upon order of the Service Director, all work that does not comply with the Permit, the approved plans and specifications for the work, or the requirements of this Chapter, shall immediately cease and shall be immediately removed and/or corrected by the Service Provider.

(m) Record Drawings. Within sixty (60) days after completion of Construction, the Service Provider shall furnish the City with two (2) complete sets of plans, drawn to scale and certified to the City as accurately depicting the location of all Facilities Constructed pursuant to the Permit. At such time, the Service Provider shall submit the Record Drawings in a digital format compatible with the City's current computer software.

(n) Restoration of Improvements. Upon completion of any Construction work, the Service Provider shall promptly repair any and all Public Rights-of-Way and provide property improvements, fixtures, structures and Facilities which were damaged during the course of Construction, restoring the same as nearly as practicable to its condition before the start of Construction.

(o) Landscape Restoration.

(1) All trees, landscaping and grounds removed, damaged or disturbed as a result of the Construction, Reconstruction, installation, maintenance, repair or replacement of Facilities must be replaced or restored as nearly as may be practicable, to the condition existing prior to performance of work, except to the extent that tree trimming is necessary to prevent the interference of tree branches with Overhead Facilities.

(2) All restoration work within the Public Right-of-Way shall be done in accordance with landscape plans approved by the Service Director.

(p) Construction and Completion Bond. Prior to issuance of a Construction Permit the Service Provider shall provide the City with a Construction Bond written by a corporate surety acceptable to the City equal to at least one hundred percent (100%) of the estimated cost of Constructing, Reconstructing, installing or repairing the Service Provider's Facilities or Excavation in the Public Right-of-Way of the City, or such lesser amount as the Service Director may determine to adequately protect the City's interest. The Construction Bond shall be deposited with the City prior to commencing Construction.

(1) The Construction Bond shall remain in force until eighteen (18) months after substantial completion of the work, as determined by the Service Director, including restoration of Public Right-of-Way and other property affected by the Construction.

(2) The Construction Bond shall guarantee, to the satisfaction of the City:

(A) Timely completion of Construction;

(B) Construction in compliance with applicable plans, permits, technical codes and standards;

(C) Proper location of the Facilities as specified by the City;

(D) Restoration of the Public Right-of-Way and other property affected by the Construction;

(E) The submission of Record Drawings, in both written and digital format, after completion of the work as required by this Chapter; and

(F) Timely payment and satisfaction of all claims, demands or liens for labor, material or services provided in connection with the work.

(3) In lieu of filing a Construction Bond with the City for each Construction Permit, a Service Provider with the approval of the Service Director may file an Annual Construction Bond (or Annual Bond) in the form described above in an amount that the Service Director may determine will adequately protect the City's interests as described above.

(q) Responsibility of Owner. The owner of the Facilities to be Constructed, Reconstructed, installed, located, operated, maintained or repaired and, if different, the

Service Provider, are responsible for performance of and compliance with all provisions of this Section.

(r) Recovery of Costs. The Service Director may recover the City's costs related to issuance and enforcement of any construction permits issued under this Section 961.07 in the manner prescribed in Section 961.08. This provision shall supersede any other provisions in the City's codes or regulations relating to construction fees or construction permit fees for Service Providers' facilities within the City's rights-of-way.

961.08 RECOVERY OF CITY COSTS IN MANAGING THE PUBLIC RIGHT-OF-WAY.

(a) Purpose. It is the purpose of this Section to provide for the recovery of all direct and indirect costs and expenses actually incurred by the City and associated with a Public or Private Service Provider's Occupancy or Use of the Public Right-of-Way and related to the enforcement and administration of this Chapter. All fees related to the Occupancy or Use of the Public Right-of-Way shall be considered to be Public Way Fees as that term is defined in this Chapter and shall be assessed by the Service Director in a manner which is in accordance with Chapter 4939 of the Ohio Revised Code and any other applicable law.

(b) Regulatory Fees and Compensation Not a Tax. The regulatory fees and costs provided for in this Chapter are separate from, and additional to, any and all federal, State, local and City taxes as may be levied, imposed or due from a Service Provider, its customers or subscribers, or on account of the lease, sale, delivery or transmission of Services.

961.09 CABLE TELEVISION FRANCHISE.

(a) Cable Television Franchise. Any Person who desires to Construct, Reconstruct, install, operate, maintain or locate Facilities in any Public Right-of-Way of the City for the purpose of providing Cable Service to Persons in the City shall first obtain a non-exclusive franchise to provide Cable Services from the City.

(b) Compliance with Chapter Required. All Cable Operators providing Cable Service within the City pursuant to a valid franchise shall comply with the registration and Construction Permit requirements of this Chapter.

(c) Cable Television Franchise Expiration.

(1) In the event a franchise expires by its terms, the franchise shall be automatically renewed on a month-to-month basis until the parties enter into a renewal franchise or until terminated by either party in accordance with law.

(2) At the expiration of the franchise or upon revocation of the franchise, the City may, in lawful manner and upon the payment of fair market value, determined on the basis of the Cable System as valued as a going concern exclusive of any value attributable to the franchise itself, lawfully obtain, purchase, condemn, acquire, takeover and hold the Cable System.

(d) Cable System Capacity. No Cable Operator shall provide Service other than Cable Service without obtaining consent from the City, pursuant to Section 961.02 of this Chapter, which consent shall not be unreasonably withheld.

(e) Credit for Payment of Franchise Fee. Any Cable Operator paying a franchise fee or providing free service or other non-monetary compensation to the City pursuant to a franchise agreement shall be entitled to a credit, offset or deduction against any reimbursement of City costs assessed under this Chapter for all such franchise fees and the retail value of the free service or other non-monetary compensation.

(f) Maximum Fee. Franchise fees shall not exceed five percent of gross revenue or the maximum payable allowed by law, and shall be the lowest percentage in effect in the calendar quarter for all franchise cable operators currently within the City. The Service Director shall

provide written notice of the appropriate percentage to the Cable Operator within ten days after the City receives notice that the Cable Operator will commence to provide service in the City.

961.10 PRIVATE FACILITIES IN THE PUBLIC RIGHT-OF-WAY.

Private Facilities. Persons who wish to use the Public Right-of-Way of the City for Private Facilities shall obtain a consent from the City pursuant to Section 961.02, register pursuant to Section 961.03, obtain a Construction Permit (if applicable) pursuant to Section 961.07 and comply with all provisions of this Chapter.

961.11 MISCELLANEOUS PROVISIONS.

(a) Preemption by State and Federal Law. Except as may be preempted by applicable State or Federal laws, rates, regulations, and orders, this Chapter shall apply and be controlling over each Service Provider engaged in the business of transmitting, supplying or furnishing of Services originating, passing through, or terminating in the City.

(b) Exemption for City-Owned or Operated Facilities. Nothing in this Chapter shall be construed to apply the provisions of this Chapter to Facilities owned or operated by the City or any of its operations.

(c) Application to Existing Code Provisions. In the event of a direct conflict between any provision of this Chapter and any other section of the City's Codified Ordinances, the provisions of this Chapter shall apply.

(d) Severability. If any section, subsection, sentence, clause, phrase, or other portion of this Chapter, or its application to any Person, is, for any reason, declared invalid, in whole or in part by any court or agency of competent jurisdiction, said decision shall not affect the validity of the remaining portions hereof.

961.99 PENALTIES AND OTHER REMEDIES.

(a) Criminal Penalties. Any Person found guilty of violating, disobeying, omitting, neglecting or refusing to comply with any of the provisions of this Chapter shall be guilty of a misdemeanor of the fourth (4th) degree. A separate and distinct offense shall be deemed committed each day on which a violation occurs or continues.

(b) Civil Violations and Forfeiture.

(i) In lieu of the criminal penalties set forth above, the Service Director may make an initial finding of a civil violation by the Service Provider for violating, disobeying, omitting, neglecting or refusing to comply with any of the provisions of this Chapter.

(ii) The Civil Forfeiture shall be in an amount payable to the City of not less than \$100.00 nor more than \$500.00 for each offense. A separate and distinct offense shall be deemed committed each day on which a violation occurs or continues.

(iii) An action for civil forfeiture shall be commenced by providing the Service Provider with written notice describing in reasonable detail the Service Provider's alleged violation of one or more provisions of this Chapter and the amount of the penalty that will be assessed against it.

(iv) The Service Provider shall have fifteen (15) days subsequent to receipt of the notice of violation in which to correct the violation before the City may assess penalties against the Service Provider. The time in which to cure the violation may be extended by the City if additional time is required to correct the violation; provided that the Service Provider commences corrective action within seven (7) days of the notice of violation and proceeds with reasonable diligence.

(v) The Service Provider may dispute the alleged violation by providing the City with written notice within five (5) days of receipt of the notice of violation, setting forth in reasonable detail the reasons for its dispute. The City shall set a date for hearing of the alleged

violation no sooner than thirty (30) days and no later than sixty (60) days from receipt of the notice of dispute.

(vi) The City shall issue a written decision on the Service Provider's alleged violation within thirty (30) days of the hearing, which decision shall be final and subject to the administrative appeal procedures under Ohio law. If the City finds after hearing that the alleged violation(s) did occur, the penalty shall be assessed starting fifteen (15) days from the notice of violation and shall continue until the violation has been corrected.

(c) Other Remedies. Nothing in this Chapter shall be construed as limiting any judicial remedies that the City may have, at law or in equity, for enforcement of this Chapter.