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City of Sidney  
Engineering Dept.  
201 W Poplar Street, Sidney, OH 45365

19-431-AU-PWC

# transmittal

To: PUCO  
180 E. Broad Street  
Columbus, OH 43215

Date: February 27, 2019

Project: Public Way Ordinance

Attn:

Please find enclosed the following:

Quantity	Item Description
1 Revised	Chapter 907 with Modifications

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Comments:

Please rescind the modified Chapter 907 "Requirements for the Use or Occupation of Rights-of-Way and Public Property" previously sent on February 12, 2019 and replace with the attached document. Please review this attached revised document and contact us with any comments that you may have. We anticipate adopting proposed City Ordinance A-2963 at our April 8, 2019 City Council meeting.

Signed: Gary R. Clough, PE, Asst. City Manager/Public Works Director

c: file

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PUCO

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## CHAPTER 907

# Requirements for the Use or Occupation of Rights-of-Way and Public Property

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- 907.21 Pavement Cuts
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- 907.99 Penalty.

### 907.01 DECLARATION OF FINDINGS AND PURPOSE, SCOPE, DEFINITIONS.

#### (a) Findings and Purpose.

(1) The City of Sidney, Ohio (the "City") is vitally concerned with the control and use of all rights-of-way in the City as such rights-of-way are a valuable and 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 for the placement of facilities and structures therein.

(3) It is necessary to comprehensively plan and manage access to, and the placement of structures and facilities in, the rights-of-way to promote efficiency, discourage uneconomic duplication of facilities, lessen the public inconvenience of uncoordinated work in the rights-of-way, and promote the public health, safety, and welfare.

(4) It is the policy of the City to obtain the reasonable fair market value for the sale or disposition of any property interest that is no longer needed for use as a right-of-way.

(5) 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 public and private entities which use the rights-of-way.

(b) Scope. The provisions of this chapter shall apply to all users of the rights-of-way as provided herein. To the extent that anything in this chapter conflicts with any other provision of the Codified Ordinances, then the provisions of this chapter shall control.

(c) Definitions. For the purposes of this chapter the following terms, phrases, words, and their derivations have the meanings set forth herein. When not inconsistent with the context, words in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The words "shall" and "will" are mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning. References hereafter to "sections" are, unless otherwise specified, references to sections in this chapter. Defined terms remain defined terms

whether or not capitalized.

(1) "Affiliate" means each person who falls into one or more of the following categories: (i) each person having, directly or indirectly, a controlling interest in a provider, (ii) each person in which a provider has, directly or indirectly a controlling interest, (iii) each officer, director, general partner, limited partner or shareholder holding an interest of fifteen percent or more, joint venturer or joint venture partner, of a provider, and (iv) each person, directly or indirectly, controlling, controlled by, or under common control with the provider; provided that affiliate shall in no event mean any limited partner or shareholder holding an interest of less than fifteen percent of such provider, or any creditor of such provider solely by virtue of its status as a creditor and which is not otherwise an affiliate by reason of owning a controlling interest in, being owned by, or being under common ownership, common management, or common control with, such provider.

(2) "Applicant" means any person who seeks to obtain a certificate of registration and/or a permit.

(3) "Application" means the process by which an applicant submits a request to obtain certificate of registration and/or a permit.

(4) "Application fee" means the fee paid to the City for application for a certificate of registration pursuant to Section 907.03(a).

(6) "Bankruptcy Code" means the United States Bankruptcy Code of 1978, as amended including regulations promulgated by Title 11 of the United States Code.

(7) "Best effort(s)" means the best reasonable efforts under the circumstances, taking into consideration, among other appropriate matters, all applicable laws, regulations, safety, engineering and operational codes, available technology, human resources, and cost.

(8) "Cable franchise" means the same as "franchise" in the Cable Communications Policy Act of 1984, 98 Stat. 2779, 47 U.S.C.A. 522.

(9) "Cable operator" means the same as in the Cable Communications Policy Act of 1984, 98 Stat. 2779, 47 U.S.C.A. 522.

(10) "Cable service" means the same as in the Cable Communications Policy Act of 1984, 98 Stat. 2779, 47 U.S.C.A. 522.

(11) "Certificate of registration" means the document issued to each provider and its unique system to occupy the rights-of-way within the City that outlines the terms of that occupancy of the rights-of-way.

(12) "City" means the City of Sidney, Ohio.

(13) "City Law Director" means the duly appointed City Law Director of the City of Sidney, Ohio.

(14) "City Council" means the governing body of the City of Sidney, Ohio.

(15) "City Finance Officer" means the duly appointed Finance Officer of the City of Sidney, Ohio.

(16) "City Manager" means the administrative head of the municipal government known as the City of Sidney, Ohio, or his/her designee.

(17) "Code (or C.O.)" means the codified ordinances of the City of Sidney, Ohio.

(18) "Confidential/proprietary information" means all information that has been either identified or clearly marked as confidential/proprietary by the provider prior to any submission. Upon receipt of such clearly marked confidential/proprietary information from a provider, the City shall endeavor, in accordance with the requirements of Ohio R.C. Chapter 149 (the Ohio Public Records Act), to use all the same reasonable measures and exercise the same degree of care that the City uses to protect its own information of such a nature from disclosure to third parties. In the event that the City receives a request from a third party for disclosure of information a provider has clearly marked as confidential/proprietary information, then the City shall respond as required by Ohio R.C. Chapter 149, but will attempt to use all reasonable means to notify the provider as soon as possible.

(19) "Construct" means, but not be limited to, digging, boring, tunneling, trenching, excavating, obstructing, installing wires, installing conduit, installing pipes, installing transmission lines, installing poles, installing signs or other appurtenances such as benches, fences, etc., or installing facilities, other than landscaping, ornamental plantings in, on, above, within, over, below, under or through any part of the rights-of-way. Construct shall also include the act of opening and/or cutting into the surface of any paved or improved surface that is any part of the right-of-way.

(20) "Construction" means, but not limited to, the act or process of digging, boring, tunneling, trenching, excavating, obstructing, installing wires, installing conduit, installing pipes, installing transmission lines, installing poles, installing signs or installing facilities, other than landscaping, ornamental plantings in, on,

above, within, over, below, under or through any part of the rights-of-way. Construction shall also include the act of opening and/or cutting into the surface of any paved or improved surface that is part of the right-of-way.

(21) "Construction bond" means a bond posted to ensure proper and complete construction and/or repair of a facility and the affected rights-of-way pursuant to a permit.

(22) "Construction and major maintenance plan" means a written plan including maps of the expected location, design, other related equipment and facilities of a provider which describes in full the construction intended to be accomplished by the provider in the rights-of-way over the next calendar year.

(23) "County" means Shelby County, Ohio (except for the purpose of the provisions of sewer and water service within or through the City). County specifically excludes any and all contractors, agents or other persons acting on behalf of said county.

(24) "Credible" means worthy of being believed.

(25) "Emergency" means a condition that poses a clear and immediate danger to life or health, or of a significant loss of property.

(26) "Engineering standards" means the comprehensive technical standards and design criteria developed by the City to ensure quality and uniformity of the public infrastructure and various construction improvements within Sidney, Ohio. The City engineering standards have been approved by the City Council and are periodically amended and approved by City Council resolution to ensure best practice procedures.

(27) "Facility(ies)" means any tangible thing located in any rights-of-way within the City; but shall not include boulevard plantings, ornamental plantings or gardens planted or maintained in the rights-of-way between a person's property and the street edge of pavement.

(28) "FCC" means the Federal Communications Commission or any successor thereto.

(29) "Full" means unable to accommodate any additional facilities as determined by the City Manager in accordance with the principles of public health, safety and welfare, following a reasonable analysis taking into consideration all applicable law; commonly accepted industry standards; and routine engineering practices.

(30) "In" when used in conjunction with rights-of-way, means in, on, above, within, over, below, under or through a rights-of-way.

(31) "Inspector" means any person authorized by the City Manager to carry out inspections related to the provisions of this chapter.

(32) "Law" means any local, State and/or Federal legislative, judicial or administrative order, certificate, decision, statute, constitution, ordinance, resolution, regulation, rule, tariff or other requirement in effect either at the time of execution of this chapter or at any time during the location of, and/or while a provider's facilities are located in the public rights-of-way.

(33) "Minor maintenance permit" means a permit which must be obtained before a person can perform minor maintenance, as set forth in Section 907.17, in or on the rights-of-way.

(34) "Ohio Manual of Uniform Traffic Control Devices" means the uniform system of traffic control devices promulgated by the Ohio Department of Transportation pursuant to Ohio R.C. 4511.09.

(35) "O.R.C." means the Revised Code of the State of Ohio.

(36) "Ohio Utility Protection Service" means the utility protection service as defined in Ohio R.C. 153.64 and/or 3781.26 or a statutory successor thereto.

(37) "Permit" means a right-of-way permit or a minor maintenance permit, as the context requires.

(38) "Permit cost" means all direct, incidental and indirect costs actually incurred or realized by the City for permit issuance, permit oversight and pavement degradation resulting from construction activity.

(39) "Permit fee" means money paid to the City for a permit to construct, work, and/or occupy a portion of the rights-of-way as required by this chapter.

(40) "Permittee" means any person to whom a right-of-way permit and/or minor maintenance permit has been granted by the City and not revoked.

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

(42) "Property interest" means the City's fee simple estate or any lessor estate or interest in all of any part of a right-of-way.

(43) "Provider" means a person who owns or operates a system and has a valid certificate of registration.

The City, county, and cable television operators operating pursuant to a valid cable franchise shall also be considered providers.

(44) "Public Works Department" means the Public Works Department of the City.

(45) "Public Works Director" means the duly appointed Public Works Director of the City of Sidney, Ohio or his/her designee.

(46) "PUCO" means the Public Utilities Commission of Ohio as defined in Ohio R.C. 4901.02.

(47) "Registration maintenance fee" means the money paid to the City to maintain a certificate of registration and compensate the City for all actual costs incurred by the City in the management, administration and control of the rights-of-way of the City, and which are not reasonably recoverable by the City through right-of-way permit fees or other approved recovery mechanisms.

(48) "Removal bond" means a bond posted to ensure the availability of sufficient funds to remove a provider's facilities upon abandonment or disuse, or discontinuance of a provider's use or occupation of the rights-of-way.

(49) "Restoration" means the process and the resultant effects by which a rights-of-way is returned to a condition as good as or better than its condition immediately prior to the construction. Restoration shall occur in accordance with the Rules and Regulations for Making Openings in a Public Way as amended from time to time.

(50) "Right(s)-of-way" means the surface and space in, above, within, over, below, under or through any real property in which the City has an interest in law or equity, whether held in fee, or other estate or interest, or as a trustee for the public, including, but not limited to any public street, boulevard, road, highway, freeway, lane, alley, court, sidewalk, parkway, river, tunnel, viaduct, bridge, conduit, or any other place, area, or real property owned by or under the legal or equitable control of the City that, consistent with the purposes for which it was intended, may be used for the purposes of constructing, operating, repairing, or replacing a system. Rights-of-way shall not include buildings, parks, or other public property or easements that have not been intended for compatible uses, except to the extent the use or occupation of such property is specifically granted in a permit or by law.

(51) "Right(s)-of-way cost" means all direct, incidental and indirect costs borne by the City for the management and administration of the rights-of-way and this chapter.

(52) "Right-of-way permit" means the permit specified in Section 907.15 and further defined by this section which must be obtained before a person may construct in, locate in, occupy, maintain, move or remove facilities from, in or on a rights-of-way.

(53) "Rule(s) and regulation(s)" means any rules or regulations adopted by the City Manager pursuant to Section 907.06(e).

(54) "Service(s)" means the offering of any service for a fee directly to the public, or to such classes of users as to be effectively available directly to the public.

(55) "Supplementary application" means any application made to construct on or in more of the rights-of-way than previously allowed or to extend a permit that had already been issued.

(56) "Surety fund" means a formal pledge made to secure against loss, damage or default.

(57) "System" means any system of conduit, cables, ducts, pipes, wires, lines, towers, vaults, manholes, antennae wave guides, optic fiber, microwave, laser beams and any associated converters, equipment or facilities or utilities or other such structures designed and constructed for the purpose of producing, receiving, amplifying, delivering or distributing services within the City. A system shall specifically include, but not necessarily be limited to: electric distribution and/or transmission systems, natural or artificial gas distribution and/or transmission systems, water distribution systems, storm sewer systems, sanitary sewer systems, cable television systems, telecommunications systems (whether voice, video, data, or other), fiber optic systems, wireless communications systems, and transit electrification systems.

(58) "System representative" means the specifically identified agent/employee of a provider who is authorized to direct field activities of that provider and serve as official notice agent for system related information. Any such system representative shall be required to be available at all times to receive notice of and immediately direct response to system related emergencies or situations.

(59) "Transfer" means the disposal by the provider, directly or indirectly, by gift, assignment, voluntary sale, merger, consolidation or otherwise, of fifty-one percent or more at one time of the ownership or controlling interest in the system, or fifty-one percent cumulatively over the term of a certificate of registration of such interests to a corporation, partnership, limited partnership, trust, or association or person

or group of persons acting in concert.

(60) "Trenchless technology" means, but is not limited to, the use of directional boring, horizontal drilling, microtunneling, and other techniques in the construction of underground portions of facilities which result in the least amount of disruption and damage to the rights-of-way as possible.

(61) "Underground facility(ies)" means all lines, cables, conduits, pipes, posts, tanks, vaults and any other facilities which are located wholly or partially underneath rights-of-way.

(62) "Unused facility(ies)" means facilities located in the rights-of-way which have remained unused for twelve months and for which the provider is unable to provide the City with a credible plan detailing the procedure by which the provider intends to begin actively using such facilities within the next twelve months, or that it has a potential purchaser or user of the facilities who will be actively using the facilities within the next twelve months, or that the availability of such facilities is required by the provider to adequately and efficiently operate its system.

(63) "Utility(ies)" means any water, sewer, gas, drainage, sprinkler or culvert pipe and any electric power, telecommunication, signal, communication, or cable television conduit, fiber, wire, trackless trolley wires, cable, or operator thereof.

(64) "Utility corridor(s)" means those specific areas of the rights-of-way designated as such by the Public Works Director pursuant to Section 907.03(f)(1).

(65) "Working day" means any Monday, Tuesday, Wednesday, Thursday, Friday, or Saturday but excluding legal holidays observed by the City.

(Ord. A-2853. Passed 4-11-16.)

#### **907.02 RIGHTS-OF-WAYS 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 Public Works Director 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 in the rights-of-way 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 division (d) of this section. Application will consist of providing the information set forth in Section 907.03 and as reasonably required by the Public Works Director.

(c) No Construction Without a Certificate of Registration. Following the effective date of this chapter, no person shall construct or perform any work on or in, or use any system or any part thereof located on or in any rights-of-way without first obtaining a certificate of registration. Whoever violates this section is guilty of a misdemeanor of the third degree as provided for in Section 907.99.

(d) Exceptions.

(1) The following entities are not obligated to obtain a certificate of registration: the City and resellers of services or persons that do not own any system or facilities in the rights-of-way.

(2) The following entities are required to participate in the certificate of registration process, but shall be exempt from the financial obligations of the application fee required by Section 907.03(a) and the registration maintenance fee required by Section 907.05(a): cable operators for the purpose of providing only cable service and operating pursuant to a valid cable franchise, the City, primary and secondary schools, and Shelby County. In addition, cable operators shall be exempt from any requirements of the certificate of registration process that is in direct conflict with the requirements of, and/or specifically exempted by a valid cable franchise.

(e) Systems in Place Without a Certificate of Registration. Any system or part of a system found in a right-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 it has at law or in equity, 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 providers and permittees to place facilities in the rights-of-way, the City shall not be liable for any damages caused thereby to any provider's facilities that are already in place or that

shall be placed in the rights-of-way unless those damages arise out of the sole negligence, gross negligence, willful misconduct, or fraud of the City. No provider is entitled to rely on the provisions of this chapter as creating a special duty to any provider. In issuing a certificate of registration, the City shall not be deemed to have waived the defense of governmental immunity, or any other applicable legal defense.

(g) Discontinuance of Operations, Abandoned and Unused Facilities.

(1) A provider who has discontinued or is discontinuing its operations of any system in the City shall:

A. Provide information satisfactory to the City that the provider's obligations for its system in the rights-of-way under this section and any other sections in the Code have been lawfully assumed by another applicant and/or provider;

B. Submit a written proposal to re-use its facilities in a manner that promotes the City's goals of providing innovative and economic solutions to efficiently and economically utilize limited rights-of-way capacity. Such proposal must be approved by the Public Works Director;

C. Submit a written proposal for abandonment of facilities in place indicating why good engineering practice would support this type of solution. The Public Works Director must approve said proposal;

D. Completely remove all specifically identified portion(s) of its system in a manner acceptable to the City within a reasonable amount of time if the City believes that there exists a reasonable justification for such removal; or

E. Submit to the City within a reasonable amount of time and in accordance with Ohio R.C. 4905.20 and 4905.21, a proposal for transferring ownership of its facilities to the City. If a provider proceeds under this clause, the City may, at its option where lawful:

1. Purchase the facilities; or

2. Unless a valid removal bond has already been posted pursuant to Section 907.19, require the provider to post a bond in an amount sufficient to reimburse the City for reasonably anticipated costs to be incurred in removing the facilities.

(2) Facilities of a provider who fail to comply with this section and which remain unused facilities shall be deemed to be abandoned. Abandoned facilities are deemed to be a nuisance. The City may exercise any remedies or rights it has at law or in equity, including, but not limited to:

A. Abating the nuisance;

B. Taking possession of the facilities and restoring them to a useable condition subject to a finding of the PUCO pursuant to the requirements of Ohio R.C. 4905.20 and 4905.21;

C. Requiring removal of the facilities by the provider or by the provider's surety.

(3) If the City requires a provider to remove unused facilities in any rights-of-way, the City shall use reasonable efforts to direct that this removal occur in conjunction with other scheduled excavations of the rights-of-way. If the City abates the nuisance it may take all action necessary to recover its costs and to abate said nuisance, including but not limited to, those methods set forth in Ohio R.C. 715.261.

(h) Nature of Issuance. A certificate of registration shall not convey equitable or legal title in the rights-of-way. A certificate of registration is only the nonexclusive, limited right to occupy rights-of-way in the City, for the limited purposes and for the limited period stated in the certificate of registration and in accordance with this chapter. For those providers with a valid gas or electric franchise, the provisions of a certificate of registration shall be deemed as regulatory in nature and shall not be interpreted to limit the right to occupy the rights-of-way which may have been granted by such franchise. The rights to occupy the right-of-way may not be subdivided or subleased; provided, however, that two or more providers may collocate facilities in the same area of the rights-of-way so long as each such provider complies with the provisions of this chapter. Collocating providers may file a joint application for a right-of-way permit. A certificate of registration does not excuse a provider from obtaining appropriate access or pole attachment agreements before co-locating its facilities on facilities of others, including the City's facilities. A certificate of registration does not prevent a provider from leasing space in or on the provider's system, so long as the sharing of facilities does not cause a violation of law, including the provisions of this chapter. A certificate of registration does not excuse a provider from complying with any provisions of the Code or other applicable law.

(i) Other Approvals, Permits, and Agreements. In addition to a certificate of registration, providers shall obtain any and all regulatory approvals, permits, authorizations, or licenses necessary for the offering or provision of such services from the appropriate Federal, State and local authorities and upon the City's reasonable request, shall provide copies of such documents to the City. Further, a certificate of registration

issued pursuant to this chapter shall not entitle a provider to use, alter, convert to, or interfere with, the facilities, easements, poles, conduits, lines, pipelines, wires, fiber, cable or any other real or personal property of any kind whatsoever under the management or control of the City.

(Ord. A-2853. Passed 4-11-16.)

### **907.03 CERTIFICATE OF REGISTRATION APPLICATIONS.**

(a) Certificate of Registration Applications. To obtain a certificate of registration to construct, own, or maintain any system within the City, 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 provided by the Public Works Department. Each applicant shall pay an application fee to reimburse the City for the actual and direct costs incurred by the City that are associated with receiving, reviewing, processing and granting (or denying) an application. At the time of its decision to either grant or deny an application, the City shall calculate and assess all actual and direct costs involved in receiving, reviewing, processing, and granting (or denying) the application and provide a written notice to the applicant for the appropriate amount. Such fee shall be paid within thirty days of invoice by the City. The certificate of registration, if granted, shall not be issued until such fee is paid. Any applicant who fails to timely remit such invoiced application fee amounts shall be subject to the penalties of this chapter, the imposition of any other legal or equitable remedies available to the City, the penalties of Section 907.99, and the immediate revocation of any certificate of registration having been issued.

(b) Information Required for Application to Obtain a Certificate of Registration.

(1) The applicant shall keep all of the information required in this section current at all times, provided further that applicant or provider shall notify the Public Works Director of any changes to the information required by this section 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:

A. Each applicant's name, legal status (i.e. partnership, corporation, etc.), street address and e-mail address, if applicable, and telephone and facsimile numbers;

B. The name, address and e-mail address, if applicable, 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; and

C. A certificate of insurance provided to meet the requirements of this section which shall provide evidence of the following:

1. That applicant maintains insurance as required herein provided by insurance companies licensed to do business in the State of Ohio and that all such insurance companies have a current A.M. Best rating of A:VII or better, unless otherwise acceptable to the City Manager;

2. That the applicant maintains commercial general liability insurance including products and completed operations coverage on an occurrence basis against claims for bodily injury, personal injury, including death, as well as claims for property damage arising out of the:

a. Use and occupancy of the rights-of-way by the applicant, its officers, agents, employees and contractors; and

b. 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 and collapse of property;

3. That the City, its elected and appointed officials, officers, employees, agents and volunteers have been endorsed as additional insureds as to whom the commercial 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;

4. That for any claims related to placement and use of facilities in the right-of-way, the applicant's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, agents and volunteers. Any insurance, self-insurance or similar protection maintained by the City, its officers, officials, employees, agents or volunteers shall be excess of the applicant's insurance required herein and shall not contribute with it;

5. That the City shall be notified at least thirty days in advance of cancellation of, or coverage



changes in, the policy. The commercial general liability insurance policies required by this section shall contain the following endorsement:

a. "It is hereby understood and agreed that this policy may not be diminished in value, 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 furnish to the City Manager a certificate of insurance evidencing replacement insurance policies.

6. That applicant satisfies the requirements for comprehensive liability coverage and automobile liability coverage as follows:

a. Commercial general liability insurance: commercial general liability insurance including products and combined operations coverage to cover liability, bodily injury, personal injury, and property damage must be maintained. Coverage must be written on an occurrence basis, with minimum limits of one million dollars (\$1,000,000) per occurrence and three million dollars (\$3,000,000) annual aggregate and including the following provisions or their equivalent:

i. Completed operations and products liability shall be maintained for six months after the termination of a certificate of registration.

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

b. Automobile liability insurance: automobile liability insurance to cover owned, hired, and non-owned vehicles must be maintained with minimum limits of one million dollars (\$1,000,000) per accident for bodily injury and property damage.

(2) Applicant may satisfy the minimum liability limits required above for commercial general liability or automobile liability under an umbrella or excess liability policy. Applicant agrees to endorse the City, its elected and appointed officials, officers, employees, agents and volunteers as additional insureds on the umbrella or excess policy, unless the certificate of insurance states the umbrella or excess policy provides coverage on a "follow form" basis.

(3) Additional insurance: The City reserves the right to require any other insurance coverage it deems necessary after review of any proposal submitted by applicant.

(4) Self-insurance: Those applicants maintaining a book value in excess of fifty million dollars (\$50,000,000) may submit a statement requesting to self-insure. If approval to self-insure is granted, applicant shall assure the City that such self-insurance shall provide the City with no less monetary protection and guarantee 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. Audited financial statements for the previous year.

B. A description of the applicant's self-insurance program.

C. 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 fifty million dollars (\$50,000,000).

D. The City Manager may modify or waive these requirements if they are not necessary in determining the sufficiency of the self-insurance. The City Manager may request applicable and pertinent additional information if it is necessary in determining the sufficiency of the self-insurance. The applicant may be required to provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

(5) 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.

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

(7) If the person is a corporation, a copy of the certificate of incorporation and certificate of current good standing (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.

(8) A copy of the person's certificate of authority from the PUCO and/or the FCC, if the person is lawfully required to have or actually does possess such certificate from said commission(s) and any other approvals, permits, or agreements as set out in Section 907.02(i).

(9) 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 to the City's satisfaction 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.

(1) In deciding whether to issue a certificate of registration, the City shall consider:

A. Whether the issuing of the certificate of registration will contribute to the health, safety, and welfare of the City and its citizens.

B. Whether the issuing of the certificate of registration will be consistent with this chapter.

C. 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.

D. Whether the applicant is delinquent on any taxes or other obligations owed to the City, County or State of Ohio.

E. Except as otherwise exempted by the Ohio Revised Code, 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.

F. Whether the applicant has a current City general contractor license.

G. Any other applicable law or information which the City deems necessary, advisable, or appropriate.

(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 to enable applicant to prospectively obtain such consent.

(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 Public Works Director, promptly remove or rearrange facilities as necessary for public safety;

(4) Perform all work, construction, maintenance or removal of facilities within the rights-of-way, in accordance with good engineering, construction and arboricultural practice (if applicable), 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 Public Works Director 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 Code;

(5) Construct, install, operate and maintain its facilities and system in a manner consistent with all applicable laws, ordinances, construction standards and governmental requirements including, but not limited to, The National Electric Safety Code, National Electric Code and applicable FCC or other Federal, State and/or local regulations;

(6) Be on notice that removal or trimming of trees within the rights-of-way of the City requires prior written approval by the Public Works Director or his/her designee and must be completed by a certified arborist. Any such tree that is removed without the Public Works Director's written permission shall be replaced, at the sole expense of the responsible person, with a healthy tree of a kind approved by the Public Works Director and shall be replaced inch for inch (i.e. a fifteen inch tree removal may require replacement

with five three inch trees) of a species and at a location approved by the Public Works Director;

(7) Warrant that all worker facilities, conditions and procedures that are used during construction, installation, operation and maintenance of the provider's facilities within the rights-of-way shall comply with all applicable standards of the Federal Occupational Safety and Health Administration;

(8) Use its best efforts to cooperate with the City in any emergencies involving the rights-of-way;

(9) Weather permitting; remove all graffiti within ten calendar days of notice. Provider shall use all reasonable efforts to remove any and all graffiti on any of the provider's facilities located within the City rights-of-way. Should the provider fail to do so, the City may take whatever action is necessary to remove the graffiti and bill the provider for the cost thereof;

(10) Use all reasonable efforts to field identify their facilities in the rights-of-way whenever providers are notified by the City that the City has determined that such identification is reasonably necessary in order for the City to begin planning for the construction, paving, maintenance, repairing, relocating or in any way altering any street or area in the rights-of-way as defined in this chapter. The City shall notify the providers of the City's date to begin the process at least thirty days prior to the commencement of said activities. In field identifying facilities:

A. Providers shall identify all facilities that are within the affected rights-of-way using customary industry and City of Sidney standards, maps, and distinct identification;

B. Facilities will be so marked as to identify the provider responsible for said facilities;

C. Should any such marking interfere with the facilities function, create a safety problem or violate any safety code, alternative methods of marking the facilities may be approved by the Public Works Director; and

D. All marking should be clearly readable from the ground and include the product name or logo. No advertising will be permitted.

(11) When replacing an existing utility pole, shall be responsible to coordinate with all other providers to insure the orderly transfer of all lines or cables to the replacement utility pole, the removal of the existing utility pole, and the restoration of the rights-of-way within sixty days after the replacement utility pole is installed. Upon request, the Public Works Director may grant the provider additional time for good cause.

(f) Establishment of Utility Corridors.

(1) The Public Works Director may assign specific corridors within the rights-of-way, or any particular segment thereof as may be necessary, for each type of facilities that are, or that the Public Works Director expects, may someday be, located within the rights-of-way.

(2) Any provider whose facilities are in the rights-of-way and are in a position at variance with utility corridors established by the Public Works Director shall at the time of the next construction of the area, excluding normal maintenance activities, move such facilities to their assigned position within the rights-of-way. Existing underground facilities located within a designated utility corridor shall not be required to relocate into adjacent or alternative portions of the rights-of-way unless they are in conflict with an actual or proposed public improvement project. The above requirements may be waived by the Public Works Director for good cause shown including, but not limited to, consideration of such factors as: the remaining economic life of the facilities, public safety, customer service needs, and hardship to the provider. If a provider is denied a requested waiver from the above requirements, the provider may appeal the denial of the Public Works Director to the City Manager.

(3) The Public Works Director shall make every good faith attempt to accommodate all existing and potential users of the rights-of-way as set forth in this chapter.

(4) Providers may enter into written agreements to use existing poles and conduits with the owners of same and shall use best efforts to install their facilities within the rights-of-way.

(5) No facility placed in any rights-of-way shall be placed in such a manner that interferes with normal travel, access, or sight distance on such rights-of-way.

(6) Unless otherwise stated in a certificate of registration or permit, all facilities within the rights-of-way shall be constructed and located in accordance with the Code and with the following provision:

A. Whenever all existing facilities that have been traditionally located overhead are located underground in a certain area within the City, a provider who desires to place its facilities in the same area must also locate its facilities underground. The location of such facilities is subject to the approval of the Public Works Director.

(Ord. A-2853. Passed 4-11-16.)

#### **907.04 REPORTING REQUIREMENTS.**

(a) Reporting Obligations of Providers. At the time of initial application and by January 1st of each following year, each provider shall file a construction and major maintenance plan with the Public Works Director. Such construction and major maintenance plan shall be provided for all geographical areas requested by the Public Works Director up to and including the entire geographical area of the City. It shall be submitted using a format(s) mutually agreeable to the provider and the City and shall contain the information determined by the Public Works Director to be necessary to facilitate the coordination and reduction in the frequency of construction in the rights-of-way. The construction and major maintenance plan shall include, but not be limited to, all currently scheduled and/or anticipated construction or maintenance for the next calendar year; if none are scheduled or anticipated then the plan should so state. The provider shall use its best efforts in supplying this information and shall update the construction and major maintenance plan on file with the Public Works Director whenever there is a material change in scheduled and/or anticipated construction projects. In an effort to assist providers with the completion of their annual construction and major maintenance plan, the Public Works Department on or before November 1st of each year will send each provider's system representative a descriptive narrative (and any mapping information reasonably available) for all the planned right-of-way improvements and/or scheduled maintenance that the City then currently intends to undertake during the next calendar year.

(b) Mapping Data.

(1) Upon application for a certificate of registration, or within thirty days after initial application, a provider shall provide the City with information regarding the location of its facilities in the rights-of-way in a format acceptable to the City. In such submission, the provider shall be required to accurately inform the City of the number of miles (rounded to the nearest tenth of a mile) of the right-of-way that the provider's system then currently occupies. Any person owning, operating, or maintaining a system in the rights-of-way prior to the effective date of this chapter must comply with this section within ninety days of the effective date. Following that initial provision of information and upon the reasonable request of the Public Works Director, which request shall not occur more than once annually, every provider shall provide to the City all location information for all facilities which it owns or over which it has control and which are located in any rights-of-way. All such information as described above shall be provided for the geographical area (up to and including the entire geographical area of the City) as requested by the Public Works Director with the specificity then currently available to the provider in hard copy or in the most advanced format (including but not limited to, electronic and/or digital format) then currently being used by provider that is then currently capable of technologically being read (or readily converted to a readable form) by the City. The mapping data is only required to be at the "Atlas" level of detail necessary for the City to reasonably determine the location of the provider's facilities in the rights-of-way. The provider shall supply the mapping data on paper if the Public Works Director determines that the format currently being used by the provider is not capable of being read by the City. Any time after the issuance of a certification of registration, and upon the reasonable request of the Public Works Director, a provider shall be required to provide to the City any additional location information for any facilities which it owns or over which it has control that are located in any rights-of-way of the City required by the City. Any and all actual direct, incidental and indirect costs incurred by the City during the process of reviewing, inputting and/or converting a provider's mapping information to comport with the City's then current standard format (whether electronic or otherwise) shall be directly billed to, and must be timely remitted by, the provider. Failure to pay such mapping costs within sixty days of receipt of an invoice shall subject an applicant or provider to revocation of its certificate of registration and the penalties of Section 907.99. Further, each provider that has been issued a certificate of registration shall accurately inform the City on or before each subsequent January 1st of the number of miles (rounded up to the nearest mile) of right-of-way the provider's system then occupied as of the immediately previous December 1st.

(2) The Public Works Director may in the future adopt specifications and further define the mapping data requirement(s) under this section. In each instance a provider shall be served with a copy of the specifications by regular U.S. Mail to the company representative identified in Section 907.03(b)(1)B. provided, however, that failure to actually receive such notice shall not in any way effect the validity or enforceability of said specifications.

(c) Exemption from Disclosure. A provider shall notify the City if the provider believes that any specific document or portion of a document being submitted to the City is exempt from the public records disclosure

requirements of Ohio R.C. 149.43. The notification shall be in writing and indicate the specific document or portion of a document that the provider believes is exempt from disclosure. The notification shall include the legal basis for the claimed exemption, including the applicable statutory reference and any additional information necessary to make a determination of exemption for each specific document or portion of a document. If a public records request is made for documents submitted by a provider, the City will consider the written notification in making its own independent determination of whether a specific document or a portion of a document is exempt from the disclosure requirements of Ohio R.C. 149.43. To the extent permitted by law, the City will endeavor to use reasonable best efforts to notify the provider of the request prior to making the document available for inspection or copying.

(Ord. A-2853. Passed 4-11-16.)

#### **907.05 COMPENSATION FOR CERTIFICATE OF REGISTRATION.**

(a) Compensation. As compensation for the City's costs to administer this chapter, manage, administer and control the rights-of-way and maintain each certificate of registration issued, every provider or any person operating a system shall pay registration maintenance fees to the City beginning January 1, 2017. The registration maintenance fee shall be determined and assessed to providers and other persons operating a system or otherwise using and occupying the rights-of-way in accordance with the following process and formula:

(1) The City by January 31 of each year shall calculate all actual and incurred costs associated with rights-of-way management, administration and control for the previous calendar year that the City was not able to reasonably recover through right-of-way permit fees or other recovery mechanisms provided for in this chapter.

(2) Providers and applicants, as required in Section 907.04(b), shall accurately inform the City upon application for a certificate of registration and on or before each subsequent January 1st of the number of miles (rounded up to the nearest mile) of right-of-way the provider's system then occupied as of the immediately previous December 1st.

(4) The City shall total the entire number of miles of right-of-way reported as being used or occupied by all providers.

(4) The City shall divide the calculated costs referenced in division (a)(1) of this section by the total number of miles of right-of-way reported as being used or occupied by all providers as referenced in division (a)(3) of this section to arrive at a per-mile cost number.

(5) The City shall then multiply each Provider's mileage calculation as referenced in division (a)(2) of this section by the per-mile cost calculation referenced in division (a)(4) of this section. The product shall be a provider's then current annual registration maintenance fee.

(5) The City shall perform its annual calculation of registration maintenance fees following receipt of the Providers required January 1 mileage report. Registration maintenance fees shall be invoiced to providers on or about February 1 of each calendar year and shall be due thirty days following receipt.

(6) Cable companies operating under non-exclusive cable franchises for the purposes of providing cable service, and providers of open video system services, which compensate the City under other mechanisms, shall have the mileage of the right-of-way they use and/or occupy included in the calculations described in this section, but shall not be required to contribute to the recovery of rights-of-way costs as defined by this chapter with the exception of permit costs.

(7) The City shall act, on or about January 31st of each year, in accordance with the results of division (a)(6) of this section, to codify a new annual registration maintenance fee (per mile) by appropriately increasing or decreasing the previous year's registration maintenance fee (per mile) as then listed on the schedules. Revised registration maintenance fees shall be effective upon passage.

(b) Timing. Registration maintenance fees shall be paid in full for the first year of the registration as a condition of the certificate of registration becoming effective. Fees may be prorated from the effective date of the certificate of registration to the end of the calendar year if less than one full year.

(c) Taxes and Assessments. To the extent taxes or other assessments are imposed by taxing authorities on the use of City property as a result of a provider's use or occupation of the rights-of-way, the provider shall be responsible for payment of such taxes. Such payments shall be in addition to any other fees payable pursuant to this chapter and shall not be considered an offset to, or in lieu of, the fees and charges listed in this chapter. The registration maintenance fee is not in lieu of any tax, fee, or other assessment except as

specifically provided in this chapter, or as required by applicable law.

(d) Interest on Late Payments. In the event that any registration maintenance fee is not paid to the City by the date due, the provider shall pay a monthly late charge of one percent of the unpaid balance for each month or any portion thereof for which payment is not made.

(e) No Accord and Satisfaction. Acceptance by the City of any registration maintenance fee shall not be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of such registration maintenance fee payment be construed as a release of any claim the City may have for additional sums due and payable.

(Ord. A-2853. Passed 4-11-16.)

#### **907.06 OVERSIGHT AND REGULATION.**

(a) Reports. Upon reasonable request of the Public Works Director, a provider shall provide the City with a list of any and all material communications, public reports, petitions, or other filings, either received from or submitted to any municipal, county, State or Federal agency or official (and any response thereto submitted by or received by a provider), and any other information or report reasonably related to a provider's obligations under this chapter which in any way materially affects the operation of the system or a provider's representations and warranties set forth herein, but not including tax returns or other filings which are confidential. Upon request, a provider shall promptly, but in no case later than thirty business days following the request, deliver to the City a complete copy of any item on said list. Upon the request of the City, a provider shall promptly submit to the City any information or report reasonably related to a provider's obligations under this chapter, its business and operations with respect to the system or its operation, in such form and containing such information as the City shall specify. Such information or report shall be accurate and complete and supplied within thirty days.

(b) Confidentiality. All information submitted to the City that is considered confidential information, trade secret and/or proprietary information or information that upon public its disclosure would be highly likely to place critical portions of the provider's system in real danger of vandalism, sabotage or an act of terrorism, must be clearly marked as such when submitted. The City shall exercise all reasonable legal protections so as not to publicly disclose to any third party such information unless required by law. The City shall, following receipt of a request for public disclosure of clearly marked trade secret and/or proprietary information submitted by a provider, endeavor to use reasonable best efforts to timely place the provider's system representative on notice that such a request for public disclosure has been made.

(c) Provider's Expense. All reports and records required under this chapter shall be furnished at the sole expense of the provider.

(d) Right of Inspection and Audit. The City's designated representatives shall have the right to inspect, examine, or audit during normal business hours and upon reasonable notice to a provider under the circumstances: documents, records, or other information which pertain to a provider's operation of a system within the City that are related to its obligations under this chapter. All such documents shall be made available within the City or in such other place that the City may agree upon in writing in order to facilitate said inspection, examination, or audit provided, however, that if such documents are located outside of the City, then the provider shall pay the reasonable expenses incurred by the City's designated representative in traveling to such location. Also, provider shall reimburse the City for at least fifty percent of the total cost incurred by the City for utilizing a third party to assist with or conduct an investigation or audit.

(e) Rules and Regulations. The Public Works Director may propose and adopt (and from time to time amend) the Rules and Regulations regarding this chapter and engineering standards. Prior to the adoption or amendment of the Rules and Regulations, the Public Works Director shall provide written notice and a copy of the proposed language of such adoption or amendment, via United States regular mail, to each provider who holds a then current certificate of registration. Each provider shall then have thirty days following the date of the City's mailing to provide written comments regarding the proposed language to the Public Works Director. At least forty-five days, but not more than sixty days following the date of the City's mailing, the Public Works Director shall schedule and hold a meeting, to make available a forum at which all then current providers may address any questions, concerns and make reasonable suggestions regarding the proposed new Rules and Regulations to the Public Works Director. The Public Works Director shall, following said meeting and the review of the providers' comments and suggestions, adopt or amend the Rules and Regulations in a manner that best serves the City.

(Ord. A-2853. Passed 4-11-16.)

#### **907.07 REGISTRATION TERM.**

The term of each certificate of registration granted under this chapter shall be valid from the date of issuance until such time as it is revoked, terminated, has lapsed or is properly amended.

(Ord. A-2853. Passed 4-11-16.)

#### **907.08 INDEMNITY.**

(a) Indemnity Required. Each certificate of registration issued pursuant to this chapter shall contain provisions whereby providers agree to defend, indemnify and hold the City and its agents, officers, elected and appointed officials, employees, volunteers, and subcontractors harmless from, and against all damages, costs, losses or expenses:

(1) For the repair, replacement, or restoration of City property, equipment, materials, structures and facilities which are damaged, destroyed or found to be defective as a result of such provider's acts or omissions.

(2) From and against any and all claims, demands, suits, causes of action, and judgments:

A. For damage to or loss of the property of any person, and/or the death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person;

B. Arising out of, incident to, concerning or resulting from the act or omissions of such provider, its agents, employees, and/or subcontractors, in the performance of activities pursuant to such certificate of registration, no matter how, or to whom, such loss may occur.

(3) In any event, all persons using or occupying the rights-of-way agree to defend, indemnify and hold harmless the City as set forth above as a condition of their use and occupancy of the rights-of-way.

(Ord. A-2853. Passed 4-11-16.)

#### **907.09 CIVIL FORFEITURES.**

In addition to any other penalties set forth in this chapter and the remedy of specific performance, which may be enforced in a court of competent jurisdiction, the Public Works Director may assess an additional penalty of civil forfeiture for failure to comply with any provision of this chapter. Such penalty shall be a monetary sum, payable to the City, in the amount of five hundred dollars (\$500.00) per twenty-four hour day of violation and any subsequent portion of a day less than twenty-four hours in length. Prior to assessing said penalty, the Public Works Director will provide written notice to the provider detailing the failure to comply with a specific provision of this chapter. Such notice shall also indicate that said penalty shall be assessed in fifteen calendar days subsequent to the date of receipt if compliance is not achieved. If a provider desires to challenge such penalty, provider must request a public hearing before the City Manager within ten days of service of the notice. Such public hearing shall be held within thirty days of the provider's request. If provider requests such hearing before the City Manager, such penalty shall be temporarily suspended. However, if, after the public hearing, the City Manager determines that provider failed to comply with the specific provision(s) of this chapter referenced in the notice, such penalty shall be assessed starting with the fifteen calendar days after receipt of the notice referenced in this section and continuing each day thereafter until compliance is achieved. The determination of the City Manager shall be final. The provider may file an administrative appeal pursuant to Ohio R.C. Chapter 2506. The penalty shall continue to accrue during the appeal unless the provider obtains a stay and posts a bond pursuant to Ohio R.C. 2505.09 or the provider comes into full compliance with this chapter.

(Ord. A-2853. Passed 4-11-16.)

#### **907.10 TERMINATION OF CERTIFICATE OF REGISTRATION.**

(a) Default Notice Provided. The City through its Public Works Director, shall give written notice of default to a provider if the City, in its sole discretion, determines that a provider has:

(1) Violated any material provision or requirement of the issuance or acceptance of a certificate of registration or any law and failed to cure as may be required;

(2) Attempted to evade any provision of the issuance of a certificate of registration or the acceptance of it;

(3) Practiced any fraud or deceit upon City;

(4) Made a material misrepresentation of fact in the application for a certificate of registration; or

(5) Failed to pay a required registration maintenance fee.

(b) Cure Required. If a provider fails to cure a default within thirty calendar days after such notice is served by the City then such default shall be a material default and the City may exercise any remedies or rights it has at law or in equity to terminate the certificate of registration. If the Public Works Director



decides there is cause or reason to terminate, the following procedure shall be followed:

(1) City shall serve a provider with a written notice of the reason or cause for proposed termination and shall allow a provider a minimum of ten calendar days to cure its breach.

(2) If the provider fails to cure within ten calendar days, the Public Works Director may declare the certificate of registration terminated.

(3) The provider shall have ten calendar days to appeal the termination to the City Manager. All such appeals shall be in writing. If the City Manager determines there was not a breach, then the City Manager shall overturn the decision of the Public Works Director. Otherwise, the City Manager shall affirm the decision of the Public Works Director to terminate. The determination of the City Manager shall be final.

(Ord. A-2853. Passed 4-11-16.)

#### **907.11 UNAUTHORIZED USE OF PUBLIC RIGHTS-OF-WAY.**

(a) No Use Without Authorization. No person shall use the rights-of-way to operate a system that has not been authorized by the City in accordance with the terms of this chapter and been issued a certificate of registration.

(b) No Use Without Certificate of Registration. No person shall place or have placed any facilities in, on, above, within, over, below, under, or through the rights-of-way, unless allowed under this chapter or having been issued a certificate of registration.

(c) Unauthorized Use a Violation. Each and every unauthorized use shall be deemed to be a violation and a distinct and separate offense. Each and every day any violation of this chapter continues shall constitute a distinct and separate offense.

(d) Distinct and Separate Offense. No person shall fail to comply with the provisions of this chapter. Each and every failure to comply shall be deemed a distinct and separate offense. Each and every day any violation of this chapter continues shall constitute a distinct and separate offense.

(e) Penalty Assessed. The violation of any provision of this chapter shall be unlawful. The penalty for any violation of this chapter shall be as provided in Section 907.99.

(Ord. A-2853. Passed 4-11-16.)

#### **907.12 RIGHTS OF INDIVIDUALS.**

(a) No Discrimination. No provider shall deny service, deny access, or otherwise discriminate against any other person on the basis of race, color, religion, national origin, disability, age, gender or sexual preference. A provider shall comply at all times with all other applicable law relating to nondiscrimination.

(b) Equal Employment. A provider shall adhere to the applicable equal employment opportunity requirements of law, as now written or as amended from time to time.

(c) Privacy. A provider shall adhere to subscriber privacy laws and shall take reasonable steps to prevent the invasion of any other person's right of privacy or other personal rights through the use of the system as such rights are delineated or defined by applicable law. A provider shall not, without lawful court order or other legal authority, utilize any system's capability for unauthorized personal surveillance of any person.

(Ord. A-2853. Passed 4-11-16.)

#### **907.13 PEG REQUIREMENTS FOR CABLE SERVICES.**

Any provider that receives a certificate from the FCC to provide cable services in the City shall notify the City of such certification. Any provider that operates cable services shall comply with all applicable FCC Rules, including those regarding channel capacity support for public educational and governmental access ("PEG"), and any additional requirements imposed by the City which are not inconsistent with such FCC rules.

(Ord. A-2853. Passed 4-11-16.)

#### **907.14 ASSIGNMENT OR TRANSFER OF OWNERSHIP AND RENEWAL.**

(a) Assignment or Transfer Approval Required. A certificate of registration shall not be assigned or transferred, either in whole or in part, other than to an affiliate, without the prior written consent of the City Manager, which consent shall not be unreasonably withheld. Any assignment or transfer of certificate of registration, including an assignment or transfer by means of a fundamental corporate change, requires the written approval of the City.

(b) Procedure to Request Assignment or Transfer Approval. The parties to the assignment or transfer of a certificate of registration shall make a written request for consent to the Office of the City Manager in the form of the certificate of registration application. The City shall reply in writing within sixty days of actual receipt of the request and shall indicate its approval of the request or its determination that a public hearing is



necessary. City may conduct a public hearing on the request within thirty days of such determination if it determines that a sale or transfer of the certificate of registration adversely affects the City.

(c) Notice and Hearing. Notice of a hearing shall be given fourteen days prior to the hearing by publishing notice thereof once in a newspaper of general circulation in the City. The notice shall contain the date, time and place of the hearing and shall briefly state the substance of the action to be considered by City.

(d) Review by City. City will review the qualifications (including, but not limited to legal, technical and financial where appropriate) of the proposed assignee or transferee and terms of the existing certificate of registration. City will make its decision in writing setting forth any conditions for assignment or transfer. Within 120 days of actual receipt of the request for assignment or transfer, the City shall approve or deny such assignment or transfer request in writing.

(e) Fundamental Corporate Change. For purposes of this section, fundamental corporate change means the sale or transfer of a controlling interest in the stock of a corporation or the sale or transfer of all or a majority of a corporation's assets, merger (including a parent and its subsidiary corporation), consolidation or creation of a subsidiary corporation. For the purposes of this section, fundamental partnership change means the sale or transfer of all or a majority of a partnership's assets, change of a general partner in a limited partnership, change from a limited to a general partnership, incorporation of a partnership, or change in the control of a partnership.

(f) Certificate of Registration and Assignee/Transferee Replacement Issuance Required. In no event shall a transfer or assignment of ownership or control be ultimately acceptable to the City without transferee or assignee requesting and being issued a replacement certificate of registration within ninety days of transfer or assignment.

(g) Not a Transfer. Notwithstanding anything to the contrary, no such consent or approval shall be required for a transfer or assignment to any person controlling, controlled by or under the same common control of the original holder of the certificate of registration.

(Ord. A-2853. Passed 4-11-16.)

#### **907.15 RIGHT-OF-WAY PERMITS.**

All persons seeking to perform work activity in the right-of-way which involves construction, reconstruction, installation, maintenance or repair of facilities or other activity which results in excavation in the right-of-way or involves the safety of the traveling public shall obtain a right-of-way permit from the Public Works Director.

(a) In the event of unexpected repair or emergency work, a person required to obtain a permit under this section may commence such repair and emergency work as required, provided that person notify the Public Works Director as promptly as possible before commencing or within twenty-four hours after commencing such repair or emergency work if advance notice is not practicable. Any person performing repair or emergency work under this section shall apply for a right-of-way permit within five days of commencing such work.

(1) Except in the case of an emergency, any provider who constructs in, on, above, within, over, below or through a right-of-way without a valid right-of-way permit must subsequently obtain a permit, pay double the normal fee for said permit, pay double all the other fees required by the Code, deposit with the City the fees necessary to correct any damage to the rights-of-way and comply with all of the requirements of this chapter.

(b) Applications for permits under this chapter shall be submitted in a format to be determined by the Public Works Director and shall be accompanied by drawings, plans and specifications in sufficient detail to demonstrate the following.

(1) The facilities will be constructed in accordance with all applicable codes, rules and regulations.

(2) 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 within the public ways. Included with the installation shall be tracer wire or another method acceptable to the City for the purpose of locating the facility during future construction activities.

(3) The location of all existing facilities which are within the public ways along the underground route proposed by the applicant, including, but not limited to, manholes, valve boxes, conduits, pipes, mains, utility boxes, posts, and visible street cut repairs.

(4) The construction methods to be employed for protection of existing structures, fixtures and facilities within or adjacent to the public ways.

(5) The location and dimension of all trees within or adjacent to the public ways along the route proposed by the applicant.

(6) A preliminary construction schedule and completion date.

(7) A City approved traffic control plan demonstrating the protective measures and devices that will be employed, consistent with the Ohio Manual of Uniform Traffic Control Devices, to prevent injury or damage to persons or property and to minimize disruptions to efficient pedestrian and vehicular traffic.

(8) If the applicant intends to install new facilities, evidence that there is no surplus space and evidence that the applicant has received an appropriate permit and is adhering to the City's Rules and Regulations.

(9) If applicant is proposing an underground installation within new ducts or conduits to be constructed within the rights-of-way, the applicant must provide credible information satisfactory to the City to sufficiently detail and identify:

A. The location, depth, size, and quantity of proposed new ducts or conduits; and

B. The excess capacity for like or similar equipment that will exist in such ducts or conduits after installation of applicant's facilities.

(10) Payment of all money due to the City for:

A. Permit fees,

B. Any loss, damage, or expense suffered by the City as a result of applicant's prior construction in the rights-of-way or any emergency actions taken by the City,

C. Any certificate of registration issued to the applicant/person whose facilities are being constructed, and/or

D. Any other money due to the City from the applicant/person whose facilities are being constructed.

(11) When a right-of-way permit is requested for purposes of installing additional systems or any part of a system, the posting of a construction bond and removal bond, acceptable to the City and subject to this chapter, for the additional systems or any part of a system is required.

(12) Upon request, the Public Works Director may modify or waive the information requirements if they are not necessary in evaluating the right-of-way permit application. The Public Works Director may request applicable and pertinent additional information if it is necessary in evaluating the right-of-way permit application.

(13) If the applicant proposes an above-ground installation on existing poles within the rights-of-way, the applicant shall provide information satisfactory to the City to detail and identify:

A. The size and height of the existing poles;

B. The excess capacity available on the existing poles; and

C. The excess capacity for like or similar facilities that will exist on the poles after installation of the facilities proposed by the applicant.

(14) If the applicant proposes to install new poles within the rights-of-way, the applicant shall provide:

A. Evidence satisfactory to the City that it is not financially and/or technically practicable for the applicant to make an underground installation or locate its facilities on existing poles;

B. The location, size, height, color, and material of the proposed poles; and

C. Evidence satisfactory to the City that the applicant will adhere to all applicable laws concerning the installation of new poles.

All plan submissions shall be in accordance with the submission requirements as established and maintained by the Public Works Director. In cases such as major projects involving construction or relocation of multiple utilities or other facilities in the rights-of-way, situations where the structural integrity of surrounding facilities is at issue, or other such construction concerns, such plans, upon request of the Public Works Director, shall be certified by a State of Ohio registered professional engineer, or by the public utility as defined by Ohio R.C. 4905.03 as the right-of-way occupant, that the drawings, plans and specifications submitted comply with the applicable codes, rules and regulations. The Public Works Director shall specify the basis for requiring certification of the plans.

(c) Issuance of Permit.

(1) Upon submission of all plans and documents required of the applicant and payment of the permit fees required by this chapter, the Public Works Director, if satisfied that the applications, plans and documents comply with all requirements of this chapter, shall issue a right-of-way permit authorizing work in the right-of-way, subject to such further conditions, restrictions or regulations affecting the reasonable time, place and manner of performing the work as he may deem necessary or appropriate. The Public Works

Director may withhold the issuance of a permit if the applicant or owner has outstanding work covered under an expired permit.

(2) The permit shall expire 120 days from the date of issuance unless otherwise specified on the permit. An additional permit fee equal to the original permit fee assessed pursuant to division (o) of this section will be assessed for any work not completed within 120 days of the date of issuance of the permit or as required under divisions (i) or (k)(3) of this section.

(3) The City may impose reasonable conditions upon the issuance of the right-of-way permit and the performance of the permittee thereunder in order to protect the public health, safety and welfare, to insure the structural integrity of the rights-of-way, to protect the property and safety of other users of the rights-of-way, and to minimize the disruption and inconvenience to the traveling public.

(d) Notice of Construction.

(1) Any person performing work in the right-of-way and subject to the provisions of this chapter must provide the City forty-eight hours' notice prior to beginning such work, except as otherwise permitted under division (a) of this section.

(2) Upon the issuance of a permit under this chapter, the City reserves the right to require a pre-construction meeting, the submission of a construction schedule, and/or the submission of a traffic control plan demonstrating that the protective measures and devices that will be employed are consistent with the Ohio Manual on Uniform Traffic Control Devices, latest edition, to prevent injury or damage to persons or property and to minimize disruptions to efficient pedestrian and vehicular traffic.

(3) All permittees are required to cooperate with the City and with each other. All construction, locations, activities and schedules shall be coordinated, as ordered by the Public Works Director, to minimize public inconvenience, disruption or damages.

(e) All construction practices and activities shall be in accordance with the permit and approved final plans and specifications for the facilities. The Public Works Director and his representatives shall be provided access to the work and such further information as may be required to ensure compliance with such requirements.

(f) The permittee shall maintain a copy of the right-of-way permit and approved plans at the construction site, which shall be displayed and made available for inspection by the Public Works Director or his representatives at all times when construction work is occurring.

(g) If the right-of-way permit specifies the location of facilities by depth, line, grade, proximity to other facilities or other standard, the permittee shall cause, upon the request of the City, at the permittee's cost, the location of such facilities to be verified by a registered Ohio land surveyor, the person obtaining the permit, or an authorized representative of such person if it is a business entity. The permittee shall relocate any facilities which are not located in compliance with permit requirements.

(h) Upon order of the Public Works Director, all work which does not comply with the right-of-way permit, the approved plans and specifications for the work, or the requirements of this chapter, shall be removed.

(i) The permittee shall promptly complete all construction activities so as to minimize disruption of the public ways and other public and private property. All construction work authorized by a permit within the public ways, including restoration, must be completed in a time period established by the Public Works Director not to exceed 120 days from the date of issuance of the right-of-way permit, unless specified otherwise on the permit.

(j) Within sixty days after completion of construction, the permittee shall furnish the City with one complete set of as-built plans certified to the City as accurately depicting the location of all facilities constructed pursuant to the permit.

(k) Inspection. When the construction under any permit hereunder is completed, the permittee shall notify the Public Works Director.

(1) The permittee shall make the construction site available to the inspector and to all others as authorized by law for inspection at all reasonable times during the execution and upon completion of the construction.

(2) At the time of inspection, the inspector may order the immediate cessation of any work which poses a serious threat to the life, health, safety or well-being of the public, violates any law or which violates the term and conditions of the permit and/or this chapter.

(3) The inspector may issue an order to the permittee for any work which does not conform to the permit

and/or applicable standards, conditions or codes. The order shall state that failure to correct the violation will be cause for revocation of the permit. The order may be served on the permittee as provided in Section 907.21(d). An order may be appealed to the Public Works Director. The decision of the Public Works Director may be appealed to the City Manager whose decision shall be final. If not appealed, within ten days after issuance of the order, the provider shall present proof to the Public Works Director that the violation has been corrected. If such proof has not been presented within the required time, the Public Works Director may revoke the permit pursuant to division (n) of this section.

(l) Upon completion of any construction work the permittee shall, at its own expense, promptly repair any and all public ways and restore property improvements, fixtures, structures and facilities, which were damaged during the course of construction, as nearly as practicable to their condition before the start of construction.

(1) If weather or other conditions do not permit the complete restoration required by this section, the permittee shall temporarily restore the affected public ways or property in accordance with standards established by the City. Such temporary restoration shall be at the permittee's sole expense and the permittee shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration.

(2) A permittee 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 ways or property.

(3) If the Public Works Director approves the permittee's restoration of the project, such restoration shall be deemed reasonable and complete and the City shall not require further restoration work related to the project at a later date. The City shall reserve the right to provide conditional approval on restoration work where, in the opinion of the Public Works Director, the adequacy of such restoration may not be fully known at the time of completion.

(4) If the permittee fails to restore the rights-of-way in the manner and to the condition required by the City, or fails to satisfactorily and timely complete all repairs required by the City, the City, at its option, may do such work. In that event, the permittee shall pay to the City, within thirty days of billing, the cost of restoring the rights-of-way and any other related costs incurred by the City. Upon failure to pay, the City may call upon any bond or letter of credit posted by permittee and/or pursue any and all legal and equitable remedies.

(5) By restoring the rights-of-way itself, the permittee guarantees its work and shall maintain it for twelve months following its completion. During this twelve month period, it shall, upon notification from the Public Works Director, correct all restoration work to the extent necessary using the method required by the Public Works Director. Weather permitting, said work shall be completed within five calendar days of the receipt of the notice from the Public Works Director, unless otherwise extended by the Public Works Director.

(m) Landscape Restoration. All trees, landscaping and grounds removed, damaged or disturbed as a result of the construction, 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. A proper application to the City Tree Board for construction shall be made by the appointment through the Public Works Director.

(n) Revocation of Permits.

(1) Permittees hold permits issued pursuant to the Code as a privilege and not as a right. The City reserves its right, as provided herein, to revoke any permit, without refunding any fees, in the event of a substantial breach of the terms and conditions of any law, or any provision or condition of the permit. A substantial breach by permittee shall include, but shall not be limited to, the following:

- A. The violation of any provision or condition of the permit;
- B. An evasion or attempt to evade any provision or condition of the permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the City or its citizens;
- C. Any material misrepresentation of fact in the application for a permit;
- D. The failure to maintain the required construction or removal bonds and/or insurance;
- E. The failure to obtain and/or maintain, when required, a certificate of registration;
- F. The failure to complete the construction in a timely manner; or

G. The failure to correct a condition of an order issued pursuant to division (k)(3) of this section.

(o) Permit Fees. Each person applying for a permit shall pay a fee, as determined by the City, for its costs related to the application and inspection and review of the work performed in the rights-of-way. Such costs may include the costs of degradation and/or reduction of the useful life of rights-of-way.

(Ord. A-2853. Passed 4-11-16.)

#### **907.16 RELOCATION.**

##### **(a) Relocation of Facilities.**

(1) A provider shall as promptly as reasonably possible and at its own expense, permanently remove and relocate its facilities in the rights-of-way whenever the City finds it necessary to request such removal and relocation. In instances where the City requests removal and/or relocation, the City shall waive all applicable right-of-way permit fees. Upon removal and/or relocation, the provider shall restore the rights-of-way to the same or better condition it was in prior to said removal or relocation. If existing poles are required to be removed and/or relocated, then the existing poles will be replaced with poles of the same or similar size. In accordance with law, the City Manager may request relocation and/or removal in order to prevent unreasonable interference by the provider's facilities with:

A. A public improvement undertaken or approved by the City.

B. When the public health, safety, and welfare requires it, or when necessary to prevent interference with the safety and convenience of ordinary travel over the rights-of-way.

C. The sale, conveyance, vacation, or narrowing of all or any part of a right- of-way.

(2) If, in the reasonable judgment of the City, a provider fails to commence removal and/or relocation of its facilities as designated by the City, within thirty days after the City's removal order, or if a provider fails to substantially complete such removal, including all associated repair of the rights-of-way of the City, within twelve months thereafter, then, to the extent not inconsistent with applicable law, the City shall have the right to:

A. Declare that all rights, title and interest to the facilities belong to the City with all rights of ownership, including, but not limited to, the right to connect and use the facilities or to effect a transfer of all right, title and interest in the facilities to another person for operation;

B. Authorize removal of the facilities installed by the provider in, on, over or under the rights-of-way of the City at provider's cost and expense, by another person; however, the City shall have no liability for any damage caused by such action and the provider shall be liable to the City for all reasonable costs incurred by the City in such action; and

C. To the extent consistent with applicable law, any portion of the provider's facilities in, on, over or under the rights-of-way of the City designated by the City for removal and not timely removed by the provider shall belong to and become the property of the City without payment to the provider, and the provider shall execute and deliver such documents, as the City shall request, in form and substance acceptable to the City, to evidence such ownership by the City.

##### **(b) Damage to Other Facilities.**

(1) In the case of an emergency, and if possible after reasonable efforts to contact the provider seeking a timely response, when the City performs work in the rights-of-way and finds it necessary to maintain, support, or move a provider's facilities to protect those facilities, the costs associated therewith will be billed to that provider and shall be paid within thirty days from the date of billing. Upon failure to pay, the City may pursue all legal and equitable remedies in the event a provider does not pay or the City may call upon any bond or letter of credit posted by the permittee and pursue any and all legal or equitable remedies. Each provider shall be responsible for the cost of repairing any damage to the facilities of another provider caused during the City's response to an emergency occasioned by that provider's facilities.

(2) Each provider shall be responsible for the cost of repairing any City-owned facilities in the rights-of-way which the provider or its facilities damage.

##### **(c) Rights-of-Way Vacation.**

(1) If the City sells or otherwise transfers a right-of-way which contains the facilities of a provider, such sale or transfer shall be subject to any existing easements of record and any easements granted pursuant to Section 907.20.

(2) If the sale or transfer requires the relocation of the provider's facilities:

A. If the sale or transfer is for the primary benefit of the provider, the provider must pay the relocation costs;

B. If the sale or transfer is for the primary benefit of the City, the provider or permittee must pay the relocation costs unless otherwise agreed to by the City, the provider or permittee; or

C. If the sale or transfer is for the primary benefit of a person other than the provider or the City, such person must pay the relocation costs unless otherwise agreed to by the City, the provider or permittee.  
(Ord. A-2853. Passed 4-11-16.)

#### **907.17 MINOR MAINTENANCE PERMIT.**

(a) Right-of-Way Minor Maintenance Permit Requirement. No person shall perform minor maintenance of facilities in the rights-of-way without first having obtained a right-of-way permit as set forth in this chapter. Minor maintenance means:

(1) The routine repair or replacement of facilities with like facilities not involving construction and not requiring traffic control for more than two hours at any one location;

(2) The routine repair or replacement of facilities with like facilities not involving construction and taking place on thoroughfares and arteries between the hours of 9:00 a.m. and 3:00 p.m.;

(3) The routine repair or replacement of facilities with like facilities not involving construction on all rights-of-ways, other than thoroughfares and arterials, that does not impede traffic and is for a period of less than eight contiguous hours; or construction other than on thoroughfares and arterials that takes less than eight contiguous hours to complete, does not impede traffic and does not involve a pavement cut. The Public Works Director may adopt Rules and Regulations that clarify the definition of minor maintenance and/or provide a process for a provider to determine whether particular activity constitutes minor maintenance.

A. A right-of-way minor maintenance permit allows the right-of-way minor maintenance permittee to perform all minor maintenance in any part of the rights-of-way as required.

B. A right-of-way minor maintenance permit is valid from the date of issuance until revoked by the Public Works Director.

C. A right-of-way minor maintenance permit must be displayed or upon request produced within twelve business hours.

D. A right-of-way minor maintenance permit by itself shall under no circumstances provide a permittee with the ability to cut pavement without seeking additional authority from the Public Works Director.

(b) Right-of-Way Minor Maintenance Permit Applications. Application for a right-of-way minor maintenance permit shall be made to the Public Works Director. In addition to any information required by the Public Works Director, all right-of-way minor maintenance permit applications shall contain, and will only be considered complete upon compliance with the following provisions:

(1) Credible evidence that the applicant has obtained a certificate of registration or proof that the applicant has written authority to apply for a right-of-way minor maintenance permit on behalf of a party that has been issued a certificate of registration.

(2) Submission of a completed right-of-way minor maintenance permit application in the form required by the Public Works Director.

(3) A statement that the applicant will employ protective measures and devices that, consistent with the Ohio Manual of Uniform Traffic Control Devices, will prevent injury or damage to persons or property and to minimize disruptions to the efficient movement of pedestrian and vehicular traffic.

(c) Issuance of Right-of-Way Minor Maintenance Permits; Conditions.

(1) If the Public Works Director determines that the applicant has satisfied the requirements of this chapter and the right-of-way minor maintenance permit process, the Public Works Director shall issue a right-of-way minor maintenance permit subject to the provisions of this chapter.

(2) The City may impose reasonable conditions, in addition to the Rules and Regulations enacted by the Public Works Director, upon the issuance of the right-of-way minor maintenance permit and the performance of the right-of-way minor maintenance permittee thereunder in order to protect the public health, safety, and welfare, to insure the structural integrity of the rights-of-way, to protect the property and safety of other users of the rights-of-way, and to minimize the disruption and inconvenience to the traveling public.

(d) Right-of-Way Minor Maintenance Permit Fees. The Public Works Director shall charge a ten dollar (\$10.00) fee for the issuance of the right-of-way minor maintenance permit but may revoke the right-of-way minor maintenance permit as any other permit may be revoked under this chapter.

(Ord. A-2853. Passed 4-11-16.)

#### **907.18 CONSTRUCTION AND REMOVAL BONDS.**

(a) Construction Bond. Prior to the commencement of any construction, a construction permittee, excluding the City and the county, shall deposit with the Public Works Director an irrevocable, unconditional letter of credit and/or surety bond or cash payment in an amount determined by the Public Works Director to be appropriate based upon fair and reasonable criteria. Unless a construction default, problem or deficiency involves an emergency or endangers the safety of the general public, the Assistant City Manager/Public Works Director shall serve written notice to the construction permittee detailing the construction default, problem or deficiency. If the Public Works Director determines that correction or repair of the construction default, problem or deficiency has not occurred or has not been substantially initiated within ten calendar days after the date following service and notification and detailing the construction default, problem or deficiency, then the City may attach the letter of credit or surety bond or the cash deposit which will be made whole again by the permittee within five working days of notice. Upon attachment, written notice shall be served on the construction permittee by the Public Works Director.

(b) Blanket Bond. In lieu of the construction bond required by division (a) of this section, provider may deposit with the Public Works Director an irrevocable, unconditional letter of credit and/or surety bond or cash in the amount of fifty thousand dollars (\$50,000), or such greater amount deemed appropriate in the sole discretion of the Public Works Director. Unless a construction default, problem or deficiency involves an emergency or endangers the safety of the general public, the Public Works Director shall make all reasonable effort to allow permittee a period of ten calendar days after sending notification in writing to correct or repair any default, problem or deficiency prior to Public Works Director's attachment of the letter of credit or surety bond.

(c) Self Bonding. In lieu of the construction bond required by division (a) of this section and the blanket bond required by division (b) of this section, those providers maintaining a book value in excess of fifty million dollars (\$50,000,000) may submit a statement to the City Manager requesting to self-bond. If approval to self-bond is granted, a provider shall assure the City that such self-bonding shall provide the City with no less protection and security than would have been afforded to the City by a third party surety providing provider with the types and amounts of bonds detailed in the above named divisions. This statement shall include:

- (1) Audited financial statements for the previous year;
- (2) A description of the applicant's self-bonding program.

(3) The City Manager may modify or waive these requirements if they are not necessary in determining the sufficiency of the self-bonding. The City Manager may request applicable and pertinent additional information if it is necessary in determining the sufficiency of the self-bonding.

(d) Purposes.

(1) The bonds required by this section, and any self-bonding to the extent it has been permitted, shall serve as security for:

A. The faithful performance by the permittee or provider of all terms, conditions and obligations of this chapter;

B. Any expenditure, damage, or loss incurred by the City occasioned by the permittee or provider's violation of this chapter or its failure to comply with all rules, regulations, orders, permits and other directives of the City issued pursuant to this chapter;

C. The payment of all compensation due to the City, including permit fees;

D. The payment of premiums (if any) for the liability insurance required pursuant to this chapter;

E. The removal of facilities from the rights-of-way pursuant to this chapter;

F. The payment to the City of any amounts for which the permittee or provider is liable that are not paid by its insurance or other surety; and

G. The payment of any other amounts which become due to the City pursuant to this chapter or the law.

(e) Form. The bond documents required by this section and any replacement bond documents shall contain the following endorsement: "It is hereby understood and agreed that this bond may not be canceled or not renewed by the surety nor the intention to cancel or not to renew be stated by the surety until ninety (90) days after completion of construction of the Facilities and, notwithstanding the foregoing, shall in no case be canceled or not renewed by the surety until at least ninety (90) days' written notice to City of surety's intention to cancel or not renew this bond."

(Ord. A-2853. Passed 4-11-16.)



#### **907.19 INDEMNIFICATION AND LIABILITY.**

(a) City Does Not Accept Liability. By reason of the acceptance of an application, the grant of a permit or the issuance of a certificate of registration, the City does not assume any liability:

- (1) For injuries to persons, damage to property, or loss of service claims; or
- (2) For claims or penalties of any sort resulting from the installation, presence, maintenance or operation of facilities.

(b) Indemnification.

(1) By applying for and being issued a certificate of registration with the City, a provider is required, or by accepting a permit a permittee is required to defend, indemnify, and hold harmless the City, its agents, elected and appointed officials, officers, employees, volunteers and subcontractors from all costs, liabilities, claims, and suits for damages of any kind arising out of the construction, presence, installation, maintenance, repair or operation of its facilities, or out of any activity undertaken in or near a rights-of-way, whether any act or omission complained of is authorized, allowed, or prohibited by a permit. A provider or permittee shall not bring, nor cause to be brought, any action, suit or other proceeding claiming damages, or seeking any other relief against the City's agents, elected and appointed officials, officers, employees, volunteers, and subcontractors for any claim nor for any award arising out of the presence, installation, maintenance or operation of its facilities, or any activity undertaken in or near a rights-of-way, whether the act or omission complained of is authorized, allowed or prohibited by a permit. This section is not, as to third parties, a waiver of any defense or immunity otherwise available to the provider, permittee or to the City; and the provider or permittee, in defending any action on behalf of the City, shall be entitled to assert in any action every defense or immunity that the City could assert in its own behalf. Any and all exercise of the above shall be consistent with, but not limited to, the following:

A. To the fullest extent permitted by law, all providers and permittees shall, at their sole cost and expense, fully indemnify, defend and hold harmless the City, its elected and appointed officials, agents, officers, employees, volunteers and subcontractors from and against any and all lawsuits, claims (including without limitation worker's compensation claims against the City or others), causes of actions, actions, liability, and judgments for injury or damages (including, but not limited to, expenses for reasonable legal fees and disbursements assumed by the City in connection therewith); and (i) persons or property, in any way arising out of or through the acts or omissions of provider or permittee, its subcontractors, agents or employees attributable to the occupation by the provider or permittee of the rights-of-way, to which provider's or permittee's negligence shall in any way contribute, and regardless of whether the City's negligence or the negligence of any other party shall have contributed to such claim, cause of action, judgment, injury or damage; and (ii) arising out of any claim for invasion of the right of privacy, for defamation of person, firm or corporation, or the violation or infringement of any copyright, trademark, trade name, service mark or patent or any other right of any person, firm and corporation by the provider, but excluding claims arising out of or related to City programming; and (iii) arising out of provider or permittee's failure to comply with the provisions of law applicable to provider or permittee in its business hereunder.

(2) The foregoing indemnification is conditioned upon the City:

A. Giving provider or permittee prompt notice of any claim or the commencement of any action, suit or proceeding for which indemnification is sought;

B. Affording the provider or permittee the opportunity to participate in any compromise, settlement, or other resolution or disposition of any claim or proceeding subject to indemnification; and

C. Cooperate in the defense of such claim and making available to the provider or permittee all pertinent information under the City's control.

(3) The City shall have the right to employ separate counsel in any such action or proceeding and to participate in the investigation and defense thereof, and the provider or permittee shall pay all reasonable fees and expenses of such separate counsel if employed.

(Ord. A-2853. Passed 4-11-16.)

#### **907.20 VACATION.**

(a) The vacation of a property interest pursuant to Ohio R.C. 723.04 or 723.05 shall require a determination by City Council that the property interest is no longer needed by the City for use as a right-of-way. The ordinance approving the vacation of the property interest shall describe the property interest to be vacated and any interests to be retained by the City. The ordinance may also describe any easements or other interests to be granted by the City to providers having facilities in the rights-of-way or to



property owners abutting the rights-of-way.

(b) The vacation of a property interest pursuant to Ohio R.C. 723.09 shall require a determination by the Shelby County Court of Common Pleas that the property interest is no longer needed by the City for use as a right-of-way. The order approving the vacation of the property interest shall describe the property interest to be vacated and any interests to be retained by the City. The order may also describe any easements or other interests to be granted to providers having facilities in the rights-of-way or to property owners abutting the rights-of-way.

(Ord. A-2853. Passed 4-11-16.)

#### **907.21 PAVEMENT CUTS.**

(a) All pavement cuts made by any person or entity shall be repaired in accordance with the pavement cut standards established by the Public Works Director and on file in his/her office.

(b) Any person or entity making a pavement cut or multiple cuts within a close proximity within the right of way exceeding 25 square feet or 25 linear feet measured in the direction of travel within five (5) years of the completion of a contract for the resurfacing or microsurfacing of such pavement shall provide for the resurfacing of the entire width of the travel lane within which the pavement cut was made. The resurfacing of the lane shall be accomplished within six (6) months of the completion of said work within the right of way. The resurfacing shall consist of the planing (1.5") and paving (1.5") of the surface course of asphalt for a minimum length of 25 feet measured in the direction of travel. The person or entity making the pavement cut shall be responsible for the resurfaced lane for a period of two (2) years from the date of the final inspection. A sufficient bond in an amount determined by the Public Works Director shall be kept during this period.

#### **907.22 SMALL CELL FACILITIES AND WIRELESS SUPPORT STRUCTURES**

(a) Small cell facilities and wireless support structures, both regulated and unregulated, shall comply with the regulations as defined in Chapter 909 of the City of Sidney's Code of Ordinances.

#### **907.23 GENERAL PROVISIONS.**

(a) Non-Exclusive Remedy. The remedies provided in this chapter are not exclusive or in lieu of other rights and remedies that the City may have at law or in equity. The City is hereby authorized at any time to seek legal and equitable relief for actual or threatened injury to the public rights-of-way, including damages to the rights-of-way, whether caused by a violation of any of the provisions of this chapter or other provisions of the Code.

(b) Severability. If any section, subsection, sentence, clause, phrase, or portion of this chapter for any reason held invalid or unconstitutional by any court or administrative agency of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof. If a regulatory body or a court of competent jurisdiction should determine by a final, non-appealable order that any permit, right or any portions of this section are illegal or unenforceable, then any such permit or right granted or deemed to exist hereunder shall be considered as a revocable permit with a mutual right in either party to terminate without cause upon giving sixty days written notice to the other. The requirements and conditions of such a revocable permit shall be the same requirements and conditions as set forth in the permit, right or registration, respectively, except for conditions relating to the term of the permit and the right of termination. If a permit or right shall be considered a revocable permit as provided herein, the permittee must acknowledge the authority of the City to issue such revocable permit and the power to revoke it.

(c) Reservation of Regulatory and Police Powers. The City, by the granting of a permit or by issuing a certificate of registration pursuant to this chapter, does not surrender or to any extent lose, waive, impair, or lessen the lawful powers and rights, which it has now or may be hereafter vested in the City under the Constitution and Laws of the United States, State of Ohio and under the Charter of the City of Sidney to regulate the use of the rights-of-way. The permittee by its acceptance of a permit, or provider by applying for and being issued a certificate of registration, is deemed to acknowledge that all lawful powers and rights, regulatory power, or police power, or otherwise as now are or the same as may be from time to time vested in or reserved to the City, shall be in full force and effect and subject to the exercise thereof by the City at any time. A permittee or provider is deemed to acknowledge that its rights are subject to the regulatory and police powers of the City to adopt and enforce general ordinances necessary to the safety and welfare of the public and is deemed to agree to comply with all applicable general Laws and ordinances enacted by the City pursuant to such powers.

(d) Method of Service. Any notice or order of the City Manager or Public Works Director shall be

deemed to be properly served if a copy thereof is:

- (1) Delivered personally;
- (2) Successfully transmitted via facsimile transmission to the last known fax number of the person to be served;
- (3) Left at the usual place of business of the person to whom it is to be served upon and with someone who is eighteen years of age or older;
- (4) Sent by certified, preposted U.S. mail to the last known address;
- (5) If the notice is attempted to be served by certified, preposted U.S. mail and then returned showing that the letter was not delivered, or the certified letter is not returned within fourteen days after the date of mailing, then notice may be sent by regular, preposted, first-class U.S.; or
- (6) If the notice is attempted to be served by regular, first class U.S. mail, postage prepaid, and the letter is then returned showing that the letter was not delivered, or is not returned within fourteen days after the date of mailing, then notice shall be posted in a conspicuous place in or about the structure, building, premises or property affected by such notice.

(e) This chapter shall apply to all providers and all permittees unless expressly exempted.

(f) Police Powers. This chapter shall apply to all providers and all permittees unless expressly exempted. All persons' rights are subject to the police powers of the City to adopt and enforce ordinances necessary to the health, safety and welfare of the public. All persons shall comply with all applicable laws enacted by the City pursuant to its police powers. In particular, all persons shall comply with City zoning and other land use requirements pertaining to the placement and specifications of facilities.

(g) Compliance. No person shall be relieved of its obligation to comply with any of the provisions of this chapter by reason of any failure of the City to enforce prompt compliance.

(h) Foreclosure and Receivership.

(1) Upon the filing of any voluntary or involuntary petition under the Bankruptcy Act by or against any provider and/or permittee, or any action for foreclosure or other judicial sale of the provider and/or permittee facilities located within the rights-of-way, the provider and/or permittee shall so notify the City Manager within fourteen calendar days thereof and the provider and/or permittee's certificate of registration or permit (as applicable) shall be deemed void and of no further force and effect.

(2) The City shall have the right to revoke, pursuant to the provisions of the Code, any certificate of registration or permit granted pursuant to this chapter, subject to any applicable provisions of law, including the Bankruptcy Act, 120 days after the appointment of a receiver or trustee to take over and conduct the business of the provider and/or permittee, whether in receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said 120 days or unless:

A. Within 120 days after election or appointment, such receiver or trustee shall have fully complied with all the provisions of the relevant certificate of registration, any outstanding permit, this chapter, and remedied all defaults thereunder; and

B. Said receiver or trustee, within said 120 days, shall have executed an agreement, duly approved by a court having jurisdiction over the facilities, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of the relevant certificate of registration, permit and this chapter.

(i) Choice of Law and Forum. This chapter and the terms and conditions of any certificate of registration or permit shall be construed and enforced in accordance with the substantive laws of the City, State of Ohio and United States, in that order. As a condition of the grant of any permit or issuance of any certificate of registration all disputes shall be resolved in a court of competent jurisdiction in Shelby County, Ohio.

(j) Force Majeure. In the event any person's performance of any of the terms, conditions or obligations required by this chapter is prevented by a cause or event not within such person's control, such inability to perform shall be deemed excused and no penalties or sanctions shall be imposed as a result thereof. For the purpose of this section, causes or events not within the control of a provider shall include, without limitation, acts of God, strikes, sabotage, riots or civil disturbances, failure or loss of, explosions, acts of public enemies, and natural disasters such as floods, earthquakes, landslides, and fires.

(k) No Warranty. The City makes no representation or warranty regarding its right to authorize the construction of facilities on any particular rights-of-way. The burden and responsibility for making such determination shall be upon the person installing facilities in the rights-of-way.

(l) Continuing Obligation and Holdover. In the event a provider or permittee continues to operate all or

any part of the facilities after the termination, lapse, or revocation of a certificate of registration, such provider or permittee shall continue to comply with all applicable provisions of this chapter and other laws throughout the period of such continued operation, provided that any such continued operation shall in no way be construed as a renewal or other extension of the certificate of registration, nor as a limitation on the remedies, if any, available to the City as a result of such continued operation after the term, including, but not limited to, damages and restitution. Any conflict between the issuance of a certificate of registration or of a permit and any other present or future lawful exercise of the City's regulatory or police powers shall be resolved in favor of the latter.

(m) Appeals. All appeals provided for by this chapter and any notification to the City required by this chapter shall be in writing and sent via certified U.S. mail to the City Manager or Public Works Director as specified in this chapter.

(n) City Facilities. As part of City required standards wherever rights-of-way are under construction, if deemed advisable and practicable by the Public Works Director, the City may install all such facilities deemed necessary to accommodate future provider needs. Any such installed facilities shall be City property and may be conveyed to any person under such terms and conditions as are deemed advisable by the City Manager.

(o) Section Headings. Section headings are for convenience only and shall not be used to interpret any portion of this chapter.

(Ord. A-2853. Passed 4-11-16.)

#### **907.99 PENALTY.**

In addition to any other penalties set forth in this chapter, and the remedy of specific performance which may be enforced in a court of competent jurisdiction the following penalties shall apply:

(a) Any person violating the provisions of this chapter shall be guilty of a misdemeanor for the third degree, as defined by applicable Ohio law. Each day such violation continued shall be deemed a separate offense.

(Ord. A-2853. Passed 4-11-16.)