

CHAPTER 911

Use of Public Right-of-Way

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911.01 DEFINITIONS.

- (a) Excavation means the cutting, sawing, breaking, drilling into, boring under, or otherwise altering any Public Street or sidewalk pavement, and/or digging, drilling into or boring under any unpaved portion of the Right-of-Way, including any other work or activity which disturbs the existing surface or subsurface structure, composition, or soil compaction. “Excavation” excludes any activity by a governmental entity, which activity does not penetrate the earth to a depth of more than twelve inches.
- (b) Facilities or Facility means the plant, equipment and property, including but not limited to, cables, fibers, wires, lines, pipes, conduits, ducts, pedestals, antennae, electronics, poles, pipes, mains, plant, equipment and other appurtenances located under, on or above the surface of the ground in the Right-of-Way.
- (c) Right-of-Way means the surface of, and the space within, through, on, across, above or below, any public street, road, highway, freeway, lane, path, alley, court, sidewalk, boulevard, parkway, drive, easement and any other land dedicated or otherwise designated for a compatible public use, which is owned or controlled by the Village.
- (d) Person means and includes individuals, Service Providers, subcontractors, corporations, companies, associations, joint stock companies or associations, firms, partnerships, limited liability companies, trusts and includes their lessors, trustees and receivers.
- (e) Routine Maintenance means a Service Provider’s repair, upkeep, replacement or restoration of existing Facilities located in the Right-of-Way that requires no more than three (3) working days to complete, is not an emergency and does not include Excavation of the Right-of- Way.
- (f) Service means the offering of water, sewer, electric, gas, telephone, telecommunications, cable television, video, information or other utility-like service for a fee directly to the public, or to such classes of users as to be effectively available to the public, regardless of the Facilities used.
- (g) Service Provider means any Person that directly or indirectly owns, controls, operates or manages Facilities within the Village’s Right-of-Way, used or to be used for the purpose of offering Service within or outside the Village’s boundaries or to provide any services between or among private buildings or facilities where no Service is offered to the public. For the purposes and requirements of this Chapter, “Service Provider” shall also include its subcontractors.

911.02 ANNUAL REGISTRATION OF SERVICE PROVIDERS.

(a) Annual Registration Required.

- (1) Each Service Provider with Facilities located in the Right-of-Way shall register with the Village every calendar year between January 1 and January 31 on a form provided by the Chief Building Official.
- (2) The Chief Building Official shall issue a Certificate of Registration to a Service Provider after determining that the Service Provider has complied with the annual registration requirements.
- (3) The Certificate of Registration shall be valid for the calendar year in which it is issued and shall be renewed on an annual basis thereafter.

(b) Information Required for Annual Registration. Registration application forms will be provided by the Chief Building Official and shall require the following information:

- (1) The identity, legal status and federal tax identification number of the Service Provider, including affiliates, with Facilities in the Right-of-Way or who are in any way responsible for Facilities located in the Right-of-Way.
- (2) The name, address and telephone number of the local officer, agent or employee responsible for the accuracy of the registration information and available at all reasonable times to be notified in case of emergency.
- (3) A general description of the Service provided, or to be provided, by the Service Provider over its Facilities, and a description of the type of transmission medium used by the Service Provider.
- (4) Evidence that the Service Provider is in compliance with the Insurance, Indemnity and Performance Bond requirements of this Chapter.
- (5) Any other information the Chief Building Official may reasonably require relevant to the policies and procedures of this Chapter.

(c) Registration Information to be Kept Current. Each Service Provider shall keep the required annual registration information current at all times and shall provide the Village with notice of changes to that information within fifteen (15) days following the date on which the Service Provider has notice of such change.

(d) Service Provider Insurance. To obtain or renew a Certificate of Registration, a Service Provider must secure and maintain, at a minimum, the following liability insurance policies insuring the Service Provider, and naming the Village, its elected and appointed officers, officials, agents, employees and representatives as additional insureds:

- (1) Comprehensive general liability insurance with limits not less than
 - A. Five million dollars (\$5,000,000) for bodily injury or death to each Person;

- B. Five million dollars (\$5,000,000) for property damage resulting from any one accident; and
- C. Five million dollars (\$5,000,000) for all other types of liability.

- (2) Automobile liability for owned, non-owned and hired vehicles with a limit of three million dollars (\$3,000,000) for each Person and three million dollars (\$3,000,000) for each accident.
- (3) Worker's compensation within statutory limits and employer's liability insurance with limits of not less than one million dollars (\$1,000,000).
- (4) Comprehensive form premises-operations, explosions and collapse hazard, underground hazard and products completed hazard with limits of not less than three million dollars (\$3,000,000).
- (5) The liability insurance policies required by this Section shall be maintained by the Service Provider throughout the period of time during which the Service Provider has Facilities in the Right-of-Way, or is engaged in the removal of its Facilities. Each such insurance policy shall contain the following endorsement:

"It is hereby understood and agreed that this policy may not be canceled nor the intention not to renew be stated until sixty (60) days after receipt by the Village, by registered mail, of a written notice addressed to the _____ of such intent to cancel or not to renew."

- (6) Within sixty (60) days after receipt by the Village of said notice, and in no event later than thirty (30) days prior to said cancellation, the Service Provider shall obtain and furnish to the Village replacement insurance policies meeting the requirements of this Section.
- (7) Upon written application to, and written approval by, the Director of Law, a Service Provider may be self-insured to provide all of the same coverages as listed in this Section; except that all coverages for Workers' Compensation shall be in compliance with State law. No approval for self- insurance shall be given until the Director of Law has made a complete review of the Service Provider's financial ability to provide such self-insurance. As part of the review process, the Director of Law may require, and the self-insurance applicant shall provide, any and all financial documents necessary to make a valid determination of the applicant's ability to meet the needs of this Chapter.

(e) General Indemnification. Each annual registration, shall include, to the extent permitted by law, the Service Provider's express undertaking to defend, indemnify and hold the Village and its elected and appointed officers, officials, employees, agents, representatives and subcontractors harmless from and against any and all damages, losses and expenses, including reasonable attorney's fees and costs of suit or defense, arising out of, resulting from or alleged to arise out of or result from the negligent, careless or wrongful acts, omissions, failures to act or misconduct of the Service Provider or its affiliates, officers, employees, agents, contractors or subcontractors relating to the Service Provider's use of the Right-of-Way, whether such acts or omissions are authorized, allowed or prohibited by this Chapter.

(f) Performance Bond. As a condition of receiving the initial or annual Certificate of Registration, and to ensure the full and complete compliance with, and performance under this Chapter, including any costs, expenses, damages or loss the Village pays or incurs because of any failure attributable to the Service

Provider to comply with the codes, ordinances, rules, regulations or permits of the Village, each Service Provider shall, in the amount of fifty thousand dollars (\$50,000) or such lesser amount as the Chief Building Official may determine to be necessary (i) provide an unconditional letter of credit, or other instrument acceptable to the Village, or (ii) furnish and file with the Village a Performance Bond for the benefit of the Village in the required amount from a company licensed to do business in the State of Ohio; which performance bond or letter of credit or other instrument shall be maintained at the sole expense of the Service Provider so long as any of the Service Provider's Facilities are located within the Village's Right-of-Way.

- (1) Before claims are made against the Performance Bond or letter of credit or other instrument, the Village shall give written notice to the Service Provider:
 - A. Describing the act, default or failure to be remedied, or the damages, cost or expenses which the Village has incurred by reason of the Service Provider's act or default;
 - B. Providing a reasonable opportunity for the Service Provider to remedy the existing or ongoing default or failure, if applicable;
 - C. Providing a reasonable opportunity for the Service Provider to pay any monies due before the Village makes a claim against the Performance Bond or letter of credit or other instrument;
 - D. That the Service Provider will be given an opportunity to review the act, default or failure described in the notice with the Village.
- (2) A Service Provider shall maintain the full value of the Performance Bond or letter of credit or other instrument regardless of claims against the Performance Bond or letter of credit or other instrument made by, or paid to, the Village.
- (3) Any draw upon the Performance Bond or letter of credit to recover the Village's costs related to a Service Provider's use of the Right-of-Way shall be considered Public Way Fees as that term is defined in Chapter 4939 of the Ohio Revised Code and shall be assessed by the Village in accordance with Chapter 4939 and any other applicable law.

(g) Denial or Revocation of Registration; Appeal.

- (1) The Chief Building Official may refuse to issue, or may revoke, a Certificate of Registration if he or she determines that the Service Provider has performed work in a careless or irregular manner resulting in repeated or continuing violations of this Chapter, the policies and procedures developed pursuant to this Chapter or other Village Ordinances, or when the Chief Building Official has evidence that the performance bond or insurance required are no longer in effect. The Chief Building Official shall give the Service Provider notice of such denial or revocation by certified or return receipt mail at the address provided on the application for registration or Certificate of Registration. The notice of denial or revocation shall state in detail the facts and conclusions upon which the denial or revocation is based.
- (2) Any Service Provider whose application for registration has been denied or who's Certificate of Registration has been revoked, may appeal the denial or revocation to the Planning Commission. An appeal shall be submitted and heard according to the rules and

procedures of the Commission. An appeal must be filed within ten (10) days of receipt of the written verification of such denial or revocation.

**911.03 RIGHT-OF-WAY CONSTRUCTION PERMIT REQUIRED FOR WORK
IN RIGHT-OF-WAY.**

(a) Right-of-Way Construction Permit Required. No Person, including a Service Provider, shall perform any work, cut any drainage ditch, place any culvert, cut any curb, or make any Excavation or place or install any item above ground level, in the right of way of any street or highway in the Village without first obtaining a Right-of-Way Construction Permit from the Chief Building Official.

(b) Application for Permit; Fee. Applications for Right-of-Way Construction Permits shall be made to the office of the Chief Building Official together with such data as may be required to ensure compliance with the purpose and intent of this Chapter as determined by the Chief Building Official. The Chief Building Official shall establish policies, procedures, and standards for the submission, review, and issuance of Right-of-Way Construction Permits in a manner compatible with the purposes of this Chapter. Application for a Right-of-Way Construction Permit shall be accompanied by a fee of twenty-five dollars (\$25.00), which fee may be waived by the Chief Building Official in the case of minor work.

(c) Approval Required for Above Ground Facilities. Except for the replacement or location of Facilities on existing poles where surplus space is available, the Chief Building Official will forward any request for a permit to permanently locate any structure or item above the surface of the ground in the Right-of-Way to the Planning Commission and/or any applicable Board, for approval of location, aesthetics and screening.

(d) Underground Facilities. Whenever existing electric, cable, telecommunications and other similar Facilities are located underground in a Right-of-Way, a Person must also locate its Facilities underground.

(e) Review and Approval. Upon receipt of an application for a Right-of-Way Construction Permit, the Chief Building Official shall review the application together with all additional data submitted, for compliance with this Chapter and with the policies, procedures, and standards the Chief Building Inspector shall establish. The Building Official shall issue or deny the requested Right-of-Way Construction Permit within thirty (30) days of receiving a completed Right-of-Way Construction Permit application, including any additionally required information.

(f) Denial or Revocation of Right-of-Way Construction Permit; Appeal.

(1) If the Chief Building Official finds that the application for Right-of-Way Construction Permit or data submitted with the application is incomplete or otherwise unsatisfactory, he or she shall issue a written notice of denial to the applicant setting forth the reasons for the denial.

(2) The Chief Building Official may revoke a Right-of-Way Construction Permit issued pursuant to this Chapter at any time for good cause. Within three (3) working days of the revocation of a Right-of-Way Construction Permit, the Chief Building Official shall send notice to the Person whose permit has been revoked, setting forth in detail the grounds of the revocation. Such notice shall be mailed to the Person to whom the permit was issued at the address shown on the permit application.

- (3) Any Person whose application has been denied or whose Right-of-Way Construction Permit has been revoked by the Chief Building Official shall have the right to appeal to the Planning and Zoning Commission. An appeal shall be submitted and heard according to the rules and procedures of the Commission. An appeal must be filed within ten (10) days of receipt of the written verification of such denial or revocation.

(g) Permit Time Limitations. A Right-of-Way Construction Permit issued pursuant to this Chapter shall become invalid unless the work authorized by the permit was commenced within sixty (60) days after its issuance or if the work authorized by such permit is suspended or abandoned for a period of six (6) weeks after the time the work was commenced; provided that, for cause, the Chief Building Official may authorize in writing one or more extensions of time for periods not exceeding sixty (60) days each.

(h) Inspections Required. The Chief Building Official or his or her duly authorized representatives shall inspect work performed under a Right-of-Way Construction Permit at such times and in such manner as may be designated on the Right-of-Way Construction Permit or as established in the written policies or procedures of the Building Department. Notice shall be given to the Building Department at least twenty-four (24) hours prior to the start of any work for the purpose of scheduling inspections.

(i) Construction Bond May be Required. The Chief Building Official may determine, within his or her reasonable discretion, that the circumstances related to an application for a Right-of-Way Construction Permit, require the Person applying for such permit to obtain and file a Construction Bond with the Village that ensures the Person's (and any subcontractor's) full and complete compliance with, and performance under this Chapter, including any costs, expenses, damages or loss the Village pays or incurs due to any failure attributable to the Person (or its subcontractor) to comply with the codes, ordinances, rules, regulations or permits of the Village. The Chief Building Official shall determine the amount of the Construction Bond in accordance with the purpose and intent of this Chapter. The form of the Construction Bond shall be subject to the reasonable approval of the Director of Law. Any Person required to obtain a Construction Bond pursuant to this section shall have the right to appeal to the Planning Commission. An appeal shall be submitted and heard according to the rules and procedures of the Commission, and must be filed within ten (10) days of receipt of the written notice of the Construction Bond requirement.

(j) Work Started Without A Permit. The fees required by Section 911.03(b) shall be doubled for work, for which a permit is required by this code, started prior to obtaining a permit.

(k) No Right-of-Way Construction Permit Required for Routine Maintenance.

- (1) A Service Provider need not obtain a Right-of-Way Construction Permit or notify the Village prior to or after commencing any Routine Maintenance that does not include Excavation or closing of a street.
- (2) For Routine Maintenance that requires the Service Provider to cause a lane obstruction in a public street for more than four (4) hours, the Service Provider shall provide the Village and/or Chief Building Official with forty-eight (48) hours advance notice prior to commencing the Routine Maintenance, and shall submit a drawing showing the planned traffic maintenance and indicating how the Service Provider will meet all requirements of ODOT's Manual of Traffic Control Devices or other applicable ODOT regulations.
- (3) A Service Provider performing Routine Maintenance shall otherwise comply with the requirements of this Chapter.

(l) Emergency Work. In the event of the need for any unexpected repair or emergency work, a Service Provider may commence such emergency response work as required under the circumstances, provided that if any emergency work requires Excavation of a Right-of-Way or closing of a street, the Service Provider shall notify the Chief Building Official as promptly as possible before commencing the emergency work, or as soon as possible thereafter if advance notice is not practicable.

911.04 GENERAL RIGHT-OF-WAY REGULATIONS.

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

(b) Safety Procedures. Each Person 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 the general public and to prevent injury or damage to any Person, vehicle or property by reason of such work in or affecting the Right-of-Way or property.

(c) Interference with the Public Rights-of-Way. No Person may locate or maintain Facilities so as to unreasonably interfere, as determined by the Chief Building Official, with the use of the Right-of-Way by the Village, the general public or other Persons authorized to use or be present in or upon the Right-of-Way. The Person shall temporarily or permanently move all such Facilities, as determined by the Chief Building Official.

(d) Damage to Public or Private Property. No Person (including a Service Provider) shall take any action or permit any action that may impair or damage any Village Property, Right-of-Way, or other public or private property located in, on or adjacent thereto.

(e) Restoration of Right-of-Way, Other Ways and Village Property.

(1) When a Person (including a Service Provider) does any construction, reconstruction, Excavation, Routine Maintenance, Emergency work or any other work in or affecting any Right-of-Way or Village property, it shall, after the work is completed and at its own expense, promptly remove any obstructions from and restore such ways or property, within ten (10) to thirty (30) days, at the Chief Building Official's discretion, to as good a condition as existed before the work was undertaken, as directed by the Chief Building Official.

(2) If weather or other conditions prevent the complete restoration required by this Section, the Person shall temporarily restore the affected ways or property as directed by the Chief Building Official, at the Person's sole expense. The Person shall promptly undertake and complete the required permanent restoration when weather or other conditions no longer prevent permanent restoration.

(f) Restoration of Improvements. After completing any construction work, a Person (including a Service Provider) shall promptly repair any and all Rights-of-Way, property improvements, fixtures, structures and Facilities that were damaged during the course of construction, and restore them as nearly as practicable to their prior condition.

(g) Landscape Restoration.

(1) All trees, landscaping and grounds removed, damaged or disturbed as a result of the construction, reconstruction, installation, maintenance, repair or replacement of Facilities

must be replaced or restored as nearly as may be practicable, to the condition existing prior to performance of work, except to the extent that tree trimming is necessary to prevent the interference of tree branches with overhead Facilities.

- (2) All restoration work within the Right-of-Way shall be done in accordance with landscape plans approved by the Chief Building Official.

911.05 PENALTIES.

- (a) Any Person who performs or authorizes the performance of work regulated by this Chapter without first obtaining the required Certificate of Registration and/or Right-of-Way Construction Permit shall be guilty of a fourth degree misdemeanor and shall be subject to the penalties set forth in Section 501.99 of the General Offenses Code for fourth degree misdemeanors.
- (b) Any Person who performs or authorizes the performance of work regulated by this Chapter after its Certificate of Registration has been denied or revoked be guilty of a third degree misdemeanor and shall be subject to the penalties as set forth in Section 501.99 of the General offenses Code for third degree misdemeanors.