

Council-manager  
government since 1963



**City of Mentor**

8500 Civic Center Boulevard  
Mentor, Ohio 44060-2499  
440-255-1100  
[www.cityofmentor.com](http://www.cityofmentor.com)

February 14<sup>th</sup>, 2017

Donielle Hunter  
Docketing Division  
Public Utilities Commission of Ohio  
180 East Broad Street, 11<sup>th</sup> Floor  
Columbus OH 43215-3793

**Re: City of Mentor Notice of Proposed Amendments to Public Right-of-Way  
Ordinance, PUCO Case No. 17-236-AU-PWN**

Dear Ms. Hunter:

Please be advised that on February 7, 2017 the City enacted ordinance no. 17-O-17, adopting Chapter 931 as an amendment to the Mentor Municipal Code. A certified copy of 17-O-17 is enclosed.

Chapter 931 does not include a public way fee within the meaning of Ohio Revised Code Chapter 4939. Chapter 931 was adopted to address increased demands for access to the right-of-way, and to clarify and confirm the City's authority over the public right-of-way pursuant to Sections 3 and 7 of Article XVIII of the Ohio Constitution.

Please contact me at (440) 210-5005 if you would like any additional information.

Sincerely,

Richard A. Hennig  
Law Director, City of Mentor  
8500 Civic Center Blvd.  
Mentor, OH 44060

RAH/jhf  
Enclosure

# COUNCIL CHAMBER

## City of Mentor

Law Director  
02/07/17

### ORDINANCE NO. 17-O-17

AN ORDINANCE AMENDING PART NINE, BY ADOPTING CHAPTER 931, RIGHTS OF WAY ADMINISTRATION, OF THE CODIFIED ORDINANCES OF THE CITY OF MENTOR, 2006, AS AMENDED, AND DECLARING AN EMERGENCY

WHEREAS, the Law Director recommends changes to the Mentor Code of Ordinances relative to administration of the rights of way within the City because no such comprehensive chapter exists; and

WHEREAS, changes in the public utilities and communication industries have increased the demand for access to rights-of-way and placement of facilities and structures therein,

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MENTOR, COUNTY OF LAKE, STATE OF OHIO:

SECTION 1. That Chapter 931 within Part Nine of the Codified Ordinances of the City of Mentor, 2006 as amended, be and the same is hereby adopted to read as in Exhibit "A", attached hereto and incorporated herein.


SECTION 2. That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council and that, except as otherwise provided by Section 121.22 of the Ohio Revised Code, all deliberations of this Council and of any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements.

SECTION 3. That this ordinance is hereby declared to be an emergency measure necessary for the preservation of the public peace, health, welfare and safety of the inhabitants of this City, and for the further reason to provide needed right of way administration code changes upon the lapse of the moratorium as part of Ordinance No. 16-O-93 passed by Council with a vote of 7/0 on September 6, 2016, WHEREFORE, this ordinance shall take effect and be in force from and immediately upon its passage.

  
President of Council

PASSED: 02/07/17

ATTEST:   
Clerk of Council

I, Julie A. Schiavoni, Clerk of Council of the City of Mentor, do hereby certify that the foregoing is a true and exact copy of Ordinance/Resolution No. 17-017 passed/adopted by the Council of the City of Mentor on the 7th day of February, 2017.  
  
Julie A. Schiavoni  
Clerk of Council

**CHAPTER 931**  
**Rights of Way Administration**

<b>931.01 Purpose and intent.</b>	<b>931.12 Termination of Certificate of Registration and Appeal.</b>
<b>931.02 Rights-of-way administration.</b>	<b>931.13 Unauthorized use of public rights-of-way.</b>
<b>931.03 Discontinuance of operations, abandoned and unused facilities.</b>	<b>931.14 PEG requirements for an open video system.</b>
<b>931.04 Nature of issuance.</b>	<b>931.15 Transfer of ownership and renewal.</b>
<b>931.05 Other approvals, permits, and agreements.</b>	<b>931.16 Construction permits.</b>
<b>931.06 Certificate of Registration applications.</b>	<b>931.17 Construction, relocation, and restoration</b>
<b>931.07 Reporting requirements.</b>	<b>931.18 Enforcement of permit obligation.</b>
<b>931.08 Compensation for Certificate of Registration.</b>	<b>931.19 Bonds.</b>
<b>931.09 Oversight and regulation.</b>	<b>931.20 Indemnification and liability</b>
<b>931.10 Registration term and revocability.</b>	<b>931.21 General provisions.</b>
<b>931.11 Indemnity.</b>	<b>931.99 Penalties.</b>

---

**931.01 PURPOSE AND INTENT.**

**(a) Findings and Purpose.**

- (1)** The City of Mentor, Ohio (the "City") is vitally concerned with the use of all rights-of-way in the City as such rights-of-way are a valuable and limited resource which must be utilized to promote the public health, safety, and welfare including the economic development of the City.
- (2)** Changes in the public utilities and communication industries have increased the demand and need for access to rights-of-way and placement of facilities and structures therein.
- (3)** The right-of-way are acquired, constructed and maintained at a significant expense to the City's taxpayers.
- (4)** It is necessary to comprehensively plan and manage access to, and 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.
- (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.

- (6) This Chapter does not take the place of any franchise, license, or permits which may be additionally required by law. Permittees and providers shall obtain any and all such additional franchises, licenses or permits necessary to the operations and conduct of its business.
- (7) The goals of this chapter are to:
  - (A) Promote the utilization of rights-of-way for the public health, safety and welfare and to promote economic development in the City;
  - (B) Enhance the City's economic development programs;
  - (C) Comply with the Telecommunications Act of 1996 and all applicable laws, rules and regulations;
  - (D) Promote the availability of a wide range of utility, communication and other services, including the rapid deployment of new technologies and innovative services, to the residents at reasonable costs;
  - (E) Promote coordination and standardization of municipal management of the occupancy or use of rights-of-way, and work therein, in order to minimize public inconvenience in the rights-of-way and avoid uneconomic, unneeded and unsightly duplication of facilities; and
  - (H) To promote and require reasonable accommodation of all uses of rights-of-way and to establish the following priority of use of rights-of-way:
    - 1. Use by the City shall have first priority;
    - 2. Use by another governmental entity with City's concurrence, or other uses required by law shall have second priority;
    - 3. Uses which include the collocation of facilities
    - 4. Uses which include the construction of new facilities;
    - 5. Uses occurring in Community Service, General Business, Interchange Service, Light Manufacturing, Heavy Manufacturing, Research and Development, and Industrial Park Districts or Zones and the like; and
    - 6. Uses occurring in Single Family Residential, Multi-Family Residential, Village Green, Mobile Home, Conservation, Commercial Recreation, and Planned Unit Development Districts or Zones and the like.

City Manager may reasonably require rights-of-way Permittees to cooperate and accommodate uses by other Permittees, and the City Manager may alter these priorities when he reasonably determines a deviation to be in the public interest.

(b) Uses. The public rights-of-way are for the primary uses of vehicular and pedestrian traffic, and for the provision of essential public utility services, including potable water, storm and

sanitary sewer, natural gas distribution, electricity distribution, and telecommunications. No public right-of-way may be used for purposes not otherwise explicitly permitted by law.

(c) Scope. The provisions of this Chapter shall apply to all users of the rights-of-way as provided herein except as provided in Chapters 907, 913, 919 and 925. To the extent that anything in this Chapter 931 conflicts with Chapters 907, 913, 919 and 925, the provisions of this Chapter 931 shall control except that provisions pertaining to routine maintenance of the right-of-way shall have priority over other activity permitted in this Chapter 931.

(d) 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) "Applicant" means any person who seeks to obtain a Certificate of Registration or permit.
- (2) "Application" means the process and format by which an applicant submits a request to obtain a Certificate of Registration or permit.
- (3) "Block" means both sides of a street within a right-of-way, from major intersection to major intersection, at intervals of one hundred and fifty (150) lineal feet measured from the centerline intersection of the streets, but the initial one hundred and fifty (150) lineal feet shall not be part of a block. The short block between intersections shall be located at the midway point between two intersections.
- (4) "Certificate of Registration" means the document issued to each provider and its unique system to occupy the rights-of-way within the City and outlines the terms of that occupancy of the rights-of-way.
- (5) "City" means the City of Mentor, Ohio.
- (6) "City Council" means the governing body of the City.
- (7) "City Engineer" means the City Engineer of the City of Mentor, or his or her designee.
- (8) "City Manager" means the City Manager of the City of Mentor, or his or her designee.
- (9) "Codified Ordinances" means the Codified Ordinances of the City of Mentor, Ohio.
- (10) "Collocation" means the mounting or installation of a facility onto an existing facility or supporting structure.
- (11) "Construct" means, but shall not be limited to, dig, bore, tunnel, trench, excavate, obstruct, and install wires, conduit, pipes, transmission lines,

- poles, signs, or facilities, other than landscaping or ornamental plantings, in, on, above, within, over, below, under, or through any part of the right-of-way.
- (12) "Construction" means, but shall not be limited to, the act or process of digging, boring, tunneling, trenching, excavating, obstructing, as necessary for installing wires, conduit, pipes, transmission lines, poles, signs, or Facilities, other than landscaping or 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.
  - (13) "Construction Permit" means the permit as specified in Section 931.16 of this Chapter which must be obtained before a person may construct in, locate in, occupy, maintain, move, or remove facilities from, in, or on a right-of-way.
  - (14) "County" means Lake County or any county providing services within the City but excludes contractors, agents, or other persons acting on behalf of such county.
  - (15) "Credible" means worthy of being believed.
  - (16) "Department of Engineering/Building" means the Department of Engineering/Building of the City.
  - (17) "Emergency" means a condition that poses a clear and immediate danger to life, health or safety of a person, or of a significant loss of real or personal property.
  - (18) "Facilities" means any tangible thing located in any rights-of-way within the City for the purpose of providing or facilitating utilities or services. This includes, but is not limited to, underground facilities and above ground facilities such as lines, cables, conduits, pipes, poles, posts, tanks, vaults, wires, and accompanying equipment or structures.
  - (19) "FCC" means the Federal Communications Commission, or any successor thereto.
  - (20) "Full" means unable to accommodate any additional facilities without negatively impacting public health and safety; or, without violating any applicable laws or rules and regulations; or as determined by the City Engineer.
  - (21) "In" means when used in conjunction with rights-of-way, means in, on, above, within, over, below, under or through a right-of-way.
  - (22) "Inspector" means any person authorized by the City to carry out inspections related to the provisions of this Chapter.
  - (23) "Law(s)" means any local, state, 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.
- (24) "Liability" means any of the following items, including those being contested in a court of law:
- (A) Any delinquent tax owed the state or a political subdivision of the state;
  - (B) Any moneys owed the state or a state agency for the administration or enforcement of the environmental laws of the state; and
  - (C) Any other moneys owed the state, a state agency, or a political subdivision of the state that are past due.
- (25) "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.
- (26) "Ohio R.C." means the Revised Code of the State of Ohio.
- (27) "Ohio Utility Protection Service" means the utility protection service as defined in Ohio R.C. 153.64 and 3781.26 or its statutory successor.
- (28) "Open Video Service" means any video programming services provided by a person through use of rights-of-way, which provider is certified by the FCC to operate an open video system pursuant to Sections 651 et seq. of the Telecommunications Act of 1996 (codified at 47 USC Title VI, Part V), regardless of the facilities used.
- (29) "Permit" means a construction permit unless otherwise specified.
- (30) "Permit Cost" means all direct, incidental, and indirect costs borne by the City for permit issuance, permit oversight and any pavement degradation resulting from construction activity.
- (31) "Permit Fee" means money paid to the City for a permit to construct in the rights-of-way.
- (32) "Permittee" means any person to whom a construction permit has been granted by the City and not revoked.
- (33) "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.
- (34) "Pole" means any earth mounted above ground tangible supporting structure in excess of ten (10) feet in height used for propagation of a utility service.
- (35) "Political subdivision" means any county, municipal corporation, or township of the state.
- (36) "Potholing" means excavating a small section or sections of a right-of-way to locate existing underground facilities.

- (37) "Provider" means a person who owns or operates a system and has a valid Certificate of Registration. The City or County, and cable television operators operating pursuant to a valid cable franchise shall also be considered providers.
- (38) "PUCO" means the Public Utilities Commission of Ohio, as defined in Ohio R.C. 4901.02.
- (39) "Registration Maintenance Fee" means the money paid to the City to maintain a Registration Certificate and compensate the City for costs associated with rights-of-way management and administration.
- (40) "Restoration" means the process and the resultant effects by which a right-of-way is returned to a condition as good as or better than its condition immediately prior to construction. Restoration shall occur in accordance with the rules and regulations established by the City Engineer and as amended from time to time.
- (41) "Right(s)-of-Way" means the surface and space in, on, 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 or private 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 dedicated and/or established, 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 dedicated to compatible uses, except to the extent the use or occupation of such property is specifically granted in a permit or by law. Zoning for any rights-of-way will apply to the zone adjacent to such rights-of-way.
- (42) "Right(s)-of-Way Cost" means all direct, incidental and indirect costs borne by the City for the management, administration and regulation of the rights-of-way and this Chapter.
- (43) "Rule(s) and Regulation(s)" means any rule and or regulation adopted by the City of Mentor.
- (44) "Service(s)" means the offering of any service or utility for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, or alternatively, the provision of any service or utility between two or more points for a proprietary purpose to a class of users other than the general public.
- (45) "State agency" means every organized body, office, or agency established by the laws of the state for the exercise of any function of state government.



- (46) "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.
- (47) "System" means any system of conduit, ducts, cables, pipes, wires, lines, towers, antennae wave guides, optic fiber, microwave, or laser beams, and any associated converters, equipment, or facilities or utilities designed and constructed for the purpose of producing, receiving, amplifying, delivering or distributing service within the City.
- (48) "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.
- (49) "Transfer" means the disposal by a provider, directly or indirectly, by gift, assignment, voluntary sale, merger, consolidation, or otherwise, of fifty-one percent (51%) or more at one time of the ownership or controlling interest in the system, or fifty-one percent (51%) cumulatively of such interests to a corporation, partnership, limited partnership, trust, or association, or person or group of persons acting in concert.
- (50) "Unused Facilities" means facilities located in the rights-of-way which remain unused for twelve (12) consecutive months.
- (51) "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.
- (52) "Working Day" means any Monday, Tuesday, Wednesday, Thursday, or Friday excluding legal holidays observed by the City.

**931.02 RIGHTS-OF-WAY ADMINISTRATION.**

(a) Administration. The City Engineer shall be the principal City official responsible for the administration of this Chapter except as otherwise provided herein.

(b) Rights-of-Way Occupancy. Each person who occupies, uses, or seeks to occupy or use the rights-of-way to operate a system located in the rights-of-way, or who has or seeks to have, a system located in any rights-of-way, shall apply for and obtain a Certificate of Registration pursuant to this Chapter. Any person owning, operating or maintaining a system without a Certificate of Registration, including persons operating under a permit, license or franchise issued by the City prior to the effective date of this Chapter, shall apply for and obtain a Certificate of Registration from the City within ninety (90) days of February 7, 2017, unless exempted by subsection (d) of this Section. Applications will consist of providing the application information

set forth in Section 931.06 and as reasonably required by the City Engineer.

(c) No Construction Without Certificate of Registration. Following the effective date of this Chapter, no person shall construct or perform any work on or in, or use any system or any part thereof located on or in, any rights-of-way without first obtaining a Certificate of Registration.

(d) Exceptions. The following entities are not obligated to obtain a Certificate of Registration: the City; the County; cable television operators for the limited purpose of providing only cable television service and operating pursuant to a valid cable television franchise; resellers of services that do not own any system or facilities in the rights-of-way.

(e) Systems in Place Without a Certificate of Registration. Beginning one year after the effective date of this Chapter, any system or part of a system found in a 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 facilities to be placed in the rights-of-way, the City is not liable for any damages caused thereby to any provider's facilities that are already in place. No provider is entitled to rely on the provisions of this Chapter as creating a special duty to any provider.

### **931.03 DISCONTINUANCE OF OPERATIONS, ABANDONED AND UNUSED FACILITIES.**

Unused facilities shall be deemed to be abandoned and a nuisance. The City may exercise any remedies or rights it has at law or in equity, including, but not limited to: abating the nuisance or taking possession of the facilities and restoring them to a useable condition subject to the finding of the PUCO pursuant to the requirements of Ohio R.C. 4905.20 and 4905.21 or requiring removal of the facilities by the provider or at the provider's expense. If the City determines to require 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 excavation of the rights-of-way. If the City abates the nuisance it may take all action necessary to recover its costs to abate said nuisance, including but not limited to, those methods set forth in Ohio R.C. 715.261.

### **931.04 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 a 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. The rights to occupy the right-of-way itself 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 construction permit. A Certificate of Registration does not excuse a provider from obtaining appropriate access or pole attachment agreements before collocating 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 this Chapter or other applicable Law.

#### **931.05 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.

#### **931.06 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 adopted by the Department of Engineering/Building which is hereby incorporated by reference. All applications shall be accompanied by a certificate of insurance and by a one hundred dollars (\$100) application fee, which will pay for internal processing and administrative costs associated with the application process. If an application is incomplete, the City will notify the applicant within ten (10) calendar days which notification will include details of all incomplete sections. The timeframe upon which the City will act on an application will toll while the applicant corrects the incomplete application. The City will act on applications for collocation within ninety (90) calendar days, and applications for new facilities within one hundred fifty (150) calendar days from the date an application is received; unless otherwise agreed upon by the City.

(b) Application Information. The applicant shall keep all of the information required in this Section current at all times, and shall notify the City of any changes to the information within thirty (30) days following the date on which the applicant has knowledge of such changes. The information provided to the City at the time of application shall include but not be limited to:

- (1) Applicant's name, legal status (i.e. partnership, corporation, etc.), street address, email address, and telephone and facsimile numbers.
- (2) The name, street address, email address and telephone and facsimile numbers of a representative or representatives designated by the applicant to address emergencies and inquiries regarding facilities owned or operated

by the applicant. At least one representative shall be available at all times. The applicant shall provide specific instruction for contacting said representative in the case of an emergency, and shall update said instruction and contact information as necessary to ensure the information provided to the City is current at all times.

- (3) A certificate of insurance provided to meet the requirements of this Section shall:
- (A) Verify that an insurance policy has been issued to the applicant by an insurance company licensed to do business in the State of Ohio;
  - (B) Verify that the applicant is insured on an occurrence basis against claims for personal injury, including death, as well as claims for property damage arising out of the use and occupancy of the rights-of-way by the applicant, its officers, agents, employees and contractors; and placement and use of facilities in the rights-of-way by the applicant, its officers, agents, employees and contractors, including, but not limited to, protection against liability arising from any and all operations, damage of underground facilities, explosion, environmental release, and collapse of property;
  - (C) Require zero-dollar defense deductibles and name the City, its elected officials, officers, employees, agents and volunteers as additional insureds as to whom the comprehensive general liability and completed operation and products liability insurance required herein are applicable and in force for whom defense will be provided as to all such coverages;
  - (D) Require that the City be notified thirty (30) days in advance of cancellation of, or coverage changes in, the policy. The liability insurance policies required by this Section shall contain the following endorsement: "It is hereby understood and agreed that this policy may not be diminished in value, be canceled, nor the intention not to renew be stated, until thirty (30) days after receipt by the City, by registered mail, return receipt requested, of a written notice addressed to the City Manager of such intent to cancel, diminish, or not to renew." Within thirty (30) days after receipt by the City of such notice, and in no event later than five (5) days prior to cancellation, the applicant (or provider) shall obtain and provide to the City Manager a certificate of insurance evidencing appropriate replacement insurance policies.
- (4) Satisfy the requirements for comprehensive liability coverage, automobile liability coverage and umbrella coverage as follows:
- (A) Comprehensive general liability insurance: comprehensive general liability insurance to cover liability, bodily injury, and property

damage must be maintained. Coverage must be written on an occurrence basis, with the following minimum limits of liability and provisions, or their equivalent:

1. Bodily injury each occurrence: one million dollars (\$1,000,000). Annual aggregate: three million dollars (\$3,000,000).
  2. Property damage each occurrence: one million dollars (\$1,000,000). Annual aggregate: three million dollars (\$3,000,000).
  3. Personal injury annual aggregate: three million dollars (\$3,000,000).
- (B) Completed operations and products liability shall be maintained for six (6) months after the termination of a Certificate of Registration.
- (C) Property damage liability insurance shall include coverage for the following hazards: E - explosion, C - collapse, U - underground.
- (5) Comprehensive auto liability insurance: comprehensive auto liability insurance to cover owned, hired, and non-owned vehicles must be maintained. Applicant may maintain comprehensive auto liability insurance as part of applicant's comprehensive general liability insurance; however, the insurance is subject to approval by the City Manager or her or his designee. Coverage must be written on an occurrence basis, with the following limits of liability and provisions, or their equivalent:
- (A) Bodily injury each occurrence: one million dollars (\$1,000,000). Annual aggregate: three million dollars (\$3,000,000).
- (B) Property damage each occurrence: one million dollars (\$1,000,000). Annual aggregate: three million dollars (\$3,000,000).
- (6) Additional insurance: the City reserves the right in unusual or unique circumstances to require any other insurance coverage it deems reasonably necessary after review of any proposal submitted by applicant.
- (7) Self-insurance: those applicants maintaining a book value in excess of twenty million dollars (\$20,000,000) 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 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; and
- (B) A description of the Applicant's self-insurance program.
- (C) Listing of any and all actions against or claims made against applicant for amounts over one million dollars (\$1,000,000) or proof

- of available excess umbrella liability coverage to satisfy all total current claim amounts above twenty million dollars (\$20,000,000).
- (8) 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.
  - (9) Documentation that the applicant maintains standard workers' compensation insurance as required by law. Similarly, the applicant shall require any subcontractor to provide workers' compensation insurance in amounts required by law for all of the subcontractor's employees.
  - (10) If the applicant is a corporation, a copy of the certificate of incorporation (or its legal equivalent), as recorded and certified to by the secretary of state (or legal equivalent) in the state or country in which incorporated.
  - (11) A copy of the applicant's certificate of authority (or other acceptable evidence of authority to operate) from the PUCO and/or the FCC and any other approvals, permits, or agreements as set out in Section 931.05.
  - (12) Upon request of the City, a narrative (or if applicable PUCO/FCC application information) describing the applicant's proposed activities in the City including credible information detailing the applicant's financial, managerial, and technical ability to fulfill the applicant's obligations under this chapter and carry on the applicant's proposed activities.

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

- (1) Whether issuing the Certificate of Registration promotes the goals of this Chapter, as outlined in 931.01(a)(7), and acceptable use of the Right-of-way as outlined in 931.01(b).
- (2) Whether issuing of the Certificate of Registration will be consistent with this Chapter.
- (3) Whether the applicant has submitted a complete application and has secured all certificates and other authorizations required by law in order to construct and operate a system in the manner proposed by the applicant;
- (4) Whether the applicant is delinquent on any outstanding liabilities owed to the city, state, a state agency, or a political subdivision;
- (5) Whether the applicant has the requisite financial, managerial, and technical ability to fulfill all its obligations under this ordinance and the issuance of a Certificate of Registration; and
- (6) Any other applicable law.

**931.07 REPORTING REQUIREMENTS.**

Providers shall provide the City with information regarding the location of its facilities in the right-of-way in the most advanced mapping format and in as much detail as currently available to the provider. Upon the reasonable request of the City Engineer, providers shall provide to the City, in the most advanced mapping format and in as much detail as currently available to the provider, 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 geographic area of the City), with the specificity as requested by the City Engineer.

**931.08 COMPENSATION FOR CERTIFICATE OF REGISTRATION.**

(a) Compensation. As compensation for the City's costs to administer this Chapter and the rights-of-way and for each Certificate of Registration issued pursuant to this Chapter, every provider shall pay to the City registration maintenance fees, as provided in 925.20 of the City of Mentor Code of Ordinances.

(b) Timing. Registration maintenance fees shall be paid in advance by January 1st of each calendar year. Registration maintenance fees shall be paid in full for the first year of the registration as a condition of the Certificate of Registration remaining 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 (1) full year. Payment of any and all registration maintenance fees shall be waived until February 7, 2017.

(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. By way of example, and not limitation, permit fees and fees to obtain space on City owned poles are not waived and remain applicable.

(d) Interest on Late Payments. In the event that any registration maintenance fee is not paid to the City by January 31, a monthly late charge of one percent (1%) of the unpaid balance shall be paid by the provider for each month or any portion thereof for which payment is not made.

(e) No Accord and Satisfaction. No acceptance by the City of any registration maintenance fee shall 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 payable.

### **931.09 OVERSIGHT AND REGULATION.**

(a) Reports. If the City Engineer is notified or otherwise has reason to believe that any of the provider's representations or warranties are false or inaccurate, the City Engineer may reasonably request the provider supply 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 fifteen (15) 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 fifteen (15) days.

(b) Provider's Expense. All reports and records required under this Chapter shall be furnished at the sole expense of a provider, except as otherwise provided in this Chapter.

(c) 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, all documents, records, or other information which pertain to a provider and its operation of a system or its obligation under this ordinance. 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 a provider shall pay the reasonable expenses incurred by the City's designated representatives in traveling to such location. Provider shall also reimburse the City for at least seventy-five percent (75%) of the total cost incurred by the City for utilizing a third party to assist with or conduct an investigation or audit.

### **931.10 REGISTRATION TERM AND REVOCABILITY.**

A Certificate of Registration shall have an indefinite term, but shall be revocable; provided, the revocation is made in writing and for cause. A Certificate of Registration is revocable in at least the following events:

- (a) Changes in FCC regulations;
- (b) Changes in local, state, or federal law;
- (c) Guidance from courts interpreting existing law and regulations;
- (d) Technological advances allowing for fewer facilities in a given geographical area, or more compact or effective facilities;
- (e) Advanced understanding of the facilities, gained from implementing standards and



regulations within the City or within other municipalities.

**931.11 INDEMNITY.**

Each Certificate of Registration issued under this Chapter shall be under the conditions and contain provisions whereby providers agree to defend, indemnify and hold City and its agents, officers, elected officials, employees, volunteers, and contractors harmless from and against all damages, costs, losses, or expenses: (i) for the repair, replacement, or restoration of City's 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; and (ii) from and against any and all claims, demands, suits, causes of action, and judgments for: (a) damage to or loss of the property of any person (including, but not limited to such provider, its agents, officers, employees and subcontractors, City's agents, officers, elected officials, employees, volunteers, contractors and third parties); and/or (b) death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of such provider, provider's subcontractors, the City, and third parties), 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. In any event, all persons using or occupying the rights-of-way agree to defend, indemnify, and hold the City harmless as set forth above as a condition of their use or occupancy of the rights-of-way.

**931.12 TERMINATION OF CERTIFICATE OF REGISTRATION AND APPEAL.**

(a) The City Engineer shall give written notice of default to a provider if it is determined that a provider has:

- (1) Violated any material provision or requirement of the issuance or acceptance of a Certificate of Registration or any law of the City, state, or federal government; or
- (2) Attempted to evade any provision or requirement of the issuance of a Certificate of Registration or the acceptance of it; or
- (3) Practiced any fraud or deceit upon City; or
- (4) Made a material misrepresentation of fact in its application for a Certificate of Registration.

(b) If a provider fails to cure a default within thirty (30) calendar days after such notice is served by the City, then such default shall be a material breach and City may exercise any remedies or rights it has at law or in equity to terminate the Certificate of Registration. If the City Engineer 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 (10) calendar days to cure its breach.

- (2) If the provider fails to cure within ten (10) calendar days, the City Engineer may declare the Certificate of Registration terminated.
- (3) The provider shall have ten (10) 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 City Engineer. Otherwise, the City Manager shall affirm the decision of the City Engineer to terminate. The determination of the City Manager shall be final.

**931.13 UNAUTHORIZED USE OF PUBLIC RIGHTS-OF-WAY.**

(a) No person shall use the rights-of-way to operate a system that has not been authorized by the City and been issued a Certificate of Registration in accordance with the terms of this Chapter.

(b) 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.

**931.14 PEG REQUIREMENTS FOR OPEN VIDEO SYTEM.**

Any provider that receives a certificate from the FCC to provide open video services in the City shall notify the City of such certification. Any provider that operates an open video system shall comply with all applicable laws and FCC rules and regulations including those regarding support for public, educational, and governmental access ("PEG").

**931.15 TRANSFER OF OWNERSHIP AND RENEWAL.**

(a) Transfer Approval Required. A Certificate of Registration shall not be assigned or transferred, either in whole or in part, without requesting, through the City Manager, the consent of the City. Any request for assignment or transfer shall include a completed copy of any application documents required by the PUCO or FCC for such an assignment or transfer. If the City should object to such assignment or transfer, it shall serve the provider with notice of the objection within thirty (30) days following receipt of the provider's request. If no objection is served upon the provider within thirty (30) days of the City's receipt of the initial assignment or transfer request, the City shall be deemed to have provided their consent to the requested assignment or transfer by operation of law.

(b) Certificate of Registration and Assignee/Transferee Signature Required. If the ownership or control of a facility is transferred or assigned, the transferee or assignee must apply for a new Certificate of Registration.

**931.16 CONSTRUCTION PERMITS.**

(a) Construction Permit Requirement. Except as otherwise provided in the Codified

Ordinances, no person may construct in any rights-of-way without first having obtained a construction permit as set forth in this Chapter. This requirement shall be in addition to any requirement set forth in Codified Ordinances Chapters 907, 913, 919 and 925.

- (1) A construction permit allows the permittee to construct and to obstruct travel as directed by the City Engineer, in the specified portion of the rights-of-way as described in the construction permit while placing facilities described therein, to the extent and for the duration specified therein.
- (2) Unless otherwise specified, a construction permit is valid for six (6) months from date of issuance for the area of rights-of-way specified in the permit.
- (3) No permittee may construct in the rights-of-way beyond the date or dates specified in the construction permit unless such permittee:
  - (A) Makes a supplementary application for another construction permit before the expiration of the initial construction permit; and
  - (B) Is granted a new construction permit or construction permit extension.
- (4) Original construction permits issued under this Chapter shall, when possible, be conspicuously displayed at all times at the indicated work site and be available for inspection by inspectors and authorized City personnel. If the original construction permit is not conspicuously displayed at the indicated work site or the project involves work conducted simultaneously at multiple locations, then upon request, the construction permit must be produced within twelve (12) business hours.

(b) Construction Permit Applications. Application for a construction permit shall be made to the City Engineer of the Department of Engineering/Building. In addition to any information required by the of City Engineer, all construction permit applications shall contain and will only be considered complete upon compliance with the following provisions:

- (1) Credible evidence that the applicant has been issued a Certificate of Registration or proof that the applicant has written authority to apply for a construction permit on behalf of a party that has been issued a Certificate of Registration;
- (2) Submission of a completed construction permit application in the form required by the City Engineer, including, but not limited to, all required attachments, and scaled, dated drawings showing the location and area of the proposed project, number and location of street cuts, and the location of all existing and proposed facilities, accompanied by the certification of a registered professional engineer or other trained technical personnel acceptable to the City Engineer that the drawings, plans and specifications submitted with the application comply with applicable technical codes, rules and regulations.

- (3) 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.
- (4) If applicant is proposing above ground installation within the rights-of-way, the applicant shall provide credible information satisfactory to the City to sufficiently detail and identify:
  - (A) The size and height of the existing facilities; and
  - (B) Based on the facilities in existence, the excess capacity currently available on such poles before installation of applicant's facilities; and
  - (C) Based on the facilities in existence, the excess capacity for like or similar facilities that will exist after installation of applicant's facilities; and
- (5) If the Applicant proposes to install new poles within the rights-of-way, the applicant shall provide:
  - (A) Credible evidence satisfactory to the City that no commercially reasonable means of collocation exists; and
  - (B) Credible evidence to the City that it is not financially and/or technically practicable for the applicant to make an underground installation; and
  - (C) The location, size, height, color, and material of the proposed poles; and
  - (D) Credible evidence satisfactory to the City that the applicant will adhere to all the applicable laws concerning the installation of new poles.
- (6) If applicant is proposing an underground installation in existing ducts or conduits within the rights-of-way, the applicant shall provide credible information satisfactory to the City to sufficiently detail and identify:
  - (A) Based on the existing facilities, the excess capacity for like or similar facilities currently available in such ducts or conduits before installation of applicant's facilities; and
  - (B) Based on existing facilities, the excess capacity for like or similar facilities that will exist in such ducts or conduits after installation of applicant's facilities.
- (7) 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.
- (8) A preliminary construction schedule and completion date.
- (9) 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; and
  - (C) Any Certificate of Registration issued to the applicant/person whose facilities are being constructed; and
  - (D) Any other money due to the City from the applicant/person whose facilities are being constructed.

(c) Issuance of Construction Permit; Conditions.

- (1) If the City Engineer determines that the applicant has satisfied the requirements of this Chapter and the construction permit process, the City Engineer shall issue a construction permit subject to the provisions of this Chapter.
- (2) The City may impose reasonable conditions upon the issuance of the construction 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) Construction Permit Fees. The City Engineer shall, after providing notice to and seeking input from all providers with systems in the City right-of-way, develop and maintain a schedule of permit fees in an amount sufficient to recover the degradation and reduction in the useful life of the rights-of-way that will result from the construction to take place thereon. "Degradation and the reduction in the useful life" for the purpose of this Section means the accelerated depreciation of the rights-of-way caused by construction in or disturbance of the rights-of-way, resulting in the need to reconstruct or repair such rights-of-way earlier than would be required if the construction did not occur. No construction permit shall be issued without payment of construction permit fees except to the City or County, which shall be exempt. Construction permit fees that were paid for a permit that the City has revoked due to breach are not refundable.

(e) Joint Applications. Applicants are encouraged to make joint application for construction permits to work in the rights-of-way at the same place and time. Joint applicants shall

have the ability to divide amongst themselves, in proportions the parties find appropriate, any applicable construction permit fees.

**931.17 CONSTRUCTION, RELOCATION AND RESTORATION.**

(a) Technical Information Required. Prior to commencement of any initial construction of facilities in the rights-of-way, except for repair, maintenance or replacement with like facilities only, a permittee shall provide technical information about the proposed route of construction. The technical information required shall consist of, at minimum, completion of the following tasks:

- (1) Secure all available "as-built" plans, plats, and other location data indicating the existence and approximate location of all facilities along the proposed construction route.
- (2) Visibly survey and record the location and dimensions of any facilities along the proposed construction route, including, but not limited to, manholes, valve boxes, utility boxes, posts, and visible street cut repairs.
- (3) Determine and record the presence and precise location of all underground facilities in the rights-of-way along the proposed system route.
- (4) Plot and incorporate the data obtained from completion of the tasks described in this section on the permittee's proposed system route maps, construction plans, plan sheets, and computer aided drafting and design (CADD) files, or other data files in a mutually agreeable format compatible with that used by the City.
- (5) Where the proposed location of facilities and the location of existing underground facilities appear to conflict with the plans as drafted, permittee has the option of either re-designing the construction plans to eliminate the apparent conflict, or utilizing non-destructive digging methods, such as vacuum excavation or potholing, at the critical points identified to determine as precisely as possible: the horizontal, vertical and spatial position, composition, size and other specifications of the conflicting underground facilities. The permittee shall also excavate in compliance with Ohio R.C. 3781.30. If the permittee engages in the aforementioned non-destructive digging methods, the permittee shall not excavate more than a three (3) foot by three (3) foot square hole in the rights-of-way to determine the specifications of conflicting underground facilities.
- (6) Plot, incorporate, and reconcile the data obtained by completion of the tasks described in Section 931.17(a)(5) with the updated system route maps, construction plans and CADD files or other data files in a mutually agreeable format as described in Section 931.17(a)(4).
- (7) Based on all of the data collected upon completion of the tasks described in this Section, adjust the proposed system design to avoid the need to relocate other underground facilities.

(b) Copy to City. Upon completion of the tasks described in Section 931.17(a), the permittee shall plot and incorporate the data on the permittee's proposed system route maps, construction plans, plan sheets, and CADD files, or other data files in a format compatible with that used by the City and deliver a copy to the Department of Engineering/Building.

(c) Qualified Firm. All utility engineering studies conducted pursuant to this Section shall be performed by a firm specializing in utility engineering that is approved by the City or may be performed by the permittee, at the discretion of the City Engineer, if the permittee is qualified to complete the project itself.

(d) Cost of Study. Permittees shall bear the cost of compliance with Sections 931.17(a) through 931.17(e) of this Chapter.

(e) Construction Schedule. Unless otherwise provided for in this Chapter, or unless the City Engineer waives any of the requirements of this Section due to unique or unusual circumstances, a permittee shall be required to submit a written construction schedule to the City ten (10) working days before commencing any work in or about the rights-of-way and, shall further notify the City not less than two (2) working days in advance of any excavation in the rights-of-way. This Section shall apply to all situations with the exception of circumstances under Section 931.18(d)(1).

(f) Location of Facilities.

- (1) The placement of new facilities and replacement of old facilities, either above ground or underground, shall be completed in conformity with applicable laws.
- (2) The City shall have the power to prohibit or limit the placement of new or additional facilities within the rights-of-way if the right-of-way block is full. In making such decisions, the City shall strive to the extent possible to accommodate all existing and potential users of the rights-of-way, but shall be guided primarily by considerations of the public health, safety, and welfare, the condition of the rights-of-way, the time of year with respect to essential utilities, the protection of existing facilities in the rights-of-way, development projects which have been determined to be in the public interest, the non-discriminatory and competitively neutral treatment of providers, and future City and County plans for public improvements, including the future installation of utilities so essential that their eventual construction may be presumed. To aid the City in making such decisions, the City may require a provider to submit proof that a need exists for a facility in a given area.

- (3) A block is considered full when it contains two (2) poles, unless both sides of the right-of-way were full upon adoption of this chapter, in which case a block will be considered full if it contains three (3) poles.
- (4) Should it be determined by the City that any existing poles in the rights-of-way are full, then those poles may be replaced with bigger and/or taller poles meeting the limitations of 931.17(g), in order to accommodate additional facilities or systems only after the permittee has made reasonable attempts to reach an acceptable solution without replacement with bigger and/or taller poles. This paragraph shall not apply to replacement of any existing pole(s) with identically sized pole(s) which results from the destruction of or hazardous condition of the existing pole(s) as long as no new facilities or additional facilities are attached.
- (5) No more than three (3) new poles shall be permitted in the rights-of-way within a one hundred and fifty (150) foot radius of intersecting street centerlines.

(g) Facilities Above Ground. New above ground poles shall be designed for collocation of multiple utilities and not be taller or wider than the ordinary size of poles existing in the right of way on that street within five hundred (500) feet of the proposed location, shall be located on the side of the block already occupied by the majority of poles and shall not substantially obstruct the free and clear vision within the sight triangle, as defined in section 1162.02(a)(29) of this Code, and the view or access to traffic control infrastructure, or windows and doors of residential or commercial buildings. Equipment accompanying above ground facilities shall not be greater than twenty-eight (28) cubic feet in size if ground mounted and shall not be greater than eight (8) cubic feet in size if pole mounted.

(h) Least Disruptive Technology. All construction or maintenance of facilities shall be accomplished in the manner resulting in the least amount of damage and disruption of the rights-of-way, and with the goals of visual concealment and camouflage to ensure that facilities are minimally visually and physically obtrusive.

(1) Location Restrictions.

- (A) Infrastructure. New facilities shall not obstruct access to existing infrastructure, equipment, or fire hydrants, and new facilities shall not remove existing traffic control infrastructure; including curb control signs, parking meters, vehicular traffic signals, pedestrian traffic signals, street lighting, barricade reflectors, etc.
- (B) Public Transportation. New facilities shall not obstruct pedestrian access to any public transportation vehicle, shelter, or street furniture, and shall be located a minimum of four (4) feet from all street furniture and bicycle racks.



- (C) Sidewalks. New facilities shall not obstruct pedestrian access to any curb ramp, and shall be located to provide a clear path of pedestrian travel by maintaining a minimum of six (6) feet between the pole and any permanent adjacent item including: vehicular and pedestrian traffic control signal poles, traffic control signs, street light poles, street trees, open tree wells, street furniture, sidewalk enclosures and/or enclosure gates.
    - (D) Buildings. New facilities shall not be located in front of historic landmarks or buildings of architectural importance, in front of building signs or display windows, or in front of the entrance, passage doors, sidewalk doors, or fire escapes of any building.
  - (2) Design.
    - (A) Where practicable, all wiring and cabling shall be located underground and internally within the pole, and shall be concealed from view.
    - (B) All new poles installed within the one hundred and fifty (150) foot radius of intersecting street centerlines shall be designed to function like and resemble city traffic signal poles.
    - (C) All new poles installed near or among decorative lighting fixtures shall be designed to function like and resemble such decorative lighting fixtures.
- (i) Relocation of Facilities.
  - (1) A provider shall promptly 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 construction 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. The City Engineer 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 or County;
    - (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.
  - (2) Notwithstanding the foregoing, a provider who has facilities in the right-of-way subject to a vacation or narrowing that is not required for the purposes

of the City, shall have a permanent easement in such vacated portion or excess portion in conformity with Ohio R.C. Chapter 723.

- (3) If, in the reasonable judgment of the City, a provider fails to commence the removal process and/or relocation of its facilities as designated by the City, within thirty (30) days after the City's removal order is served upon provider, or if a provider fails to substantially complete such removal, including all associated repair of the rights-of-way of the City, within twelve (12) 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; or
  - (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.

(j) Pre-Excavation Facilities Location. Before the start date of any rights-of-way excavation, each provider who has facilities located in the area to be excavated shall be responsible to mark the horizontal and make every reasonable attempt to mark the approximate vertical placement of all its facilities. All providers shall notify and work closely with the excavation contractor in an effort to establish the exact location of its facilities and the best procedure for excavation.

(k) Rights-of-way Restoration.

- (1) The work to be done under the permit, and the restoration of the rights-of-way as required herein, must be completed within the dates specified in the permit. In addition to its own work, the permittee must restore the general area of the work, and the surrounding areas, including trench backfill,

paving and its foundations to the original condition and in accordance with any applicable laws and standards that may be specified by the City Engineer.

- (2) In approving an application for a permit, the City may choose either to have the permittee restore the rights-of-way or the City may restore the rights-of-way itself.
- (3) The permittee shall perform the work according to the standards and with the materials specified and approved by the City. The City shall have the authority to prescribe the manner and extent of the restoration, and may do so in written procedures of general application or on a case-by-case basis. The City in exercising this authority shall be guided by the following standards and considerations: the number, size, depth and duration of the excavations, disruptions or damage to the rights-of-way; the traffic volume carried by the rights-of-way; the character of the neighborhood surrounding the rights-of-way; the existing condition of the rights-of-way; the remaining life expectancy of the rights-of-way affected by the excavation; whether the relative cost of the method of restoration to the permittee is in reasonable balance with the prevention of an accelerated depreciation of the rights-of-way that would otherwise result from the excavation, disturbance or damage to the rights-of-way; and the likelihood that the particular method of restoration would be effective in slowing the depreciation of the rights-of-way that would otherwise take place. Methods of restoration shall be according to the rules, regulations, and standards established by the City Engineer or any other laws.
- (4) By restoring the rights-of-way, the permittee guarantees its work and shall maintain it for twelve (12) months following its completion. During this twelve (12) month period, it shall, upon notification from the City Engineer, correct all restoration work to the extent necessary using the method required by the City Engineer. Weather permitting, the work shall be completed within five (5) calendar days of the receipt of the notice from the City Engineer.
- (5) 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 the City the cost of restoring the rights-of-way and any other costs incurred by the City within thirty (30) calendar days of billing. 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.

(l) 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 (30) calendar 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 permittee and pursue any and all legal or equitable remedies.
- (2) The provider shall be responsible for the cost of repairing any facilities in the rights- of-way, which it or its facilities damage. 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 caused by that provider's facilities.

(m) Rights-of-Way Vacation. If the City vacates a right-of-way which contains the facilities of a provider, such vacation shall be subject to the provisions of Ohio R.C. Chapter 723. If the vacation requires the relocation of the provider's facilities and if the vacation proceedings are initiated by the provider, the provider will pay the relocation costs. If the vacation requires the relocation of the provider's facilities and if the vacation proceedings are initiated by the City for a public purpose, the provider or permittee must pay the relocation costs unless otherwise agreed to by the City and the provider or permittee.

(n) Installation Requirements. The excavation, backfilling, restoration, and all other work performed in the rights-of-way shall be performed in conformance with all applicable laws and the standards as promulgated by the City Engineer.

(o) Inspection.

- (1) The permittee shall make the construction site available to an 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 any time, including the time of inspection, the inspector may order the immediate cessation of any work which poses a serious threat to the health, safety, or welfare of the public, violates any law, or which violates the terms and conditions of the permit and/or this Chapter.
- (3) The inspector may issue an order to correct 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 931.21(d) . An order may be appealed to the City Engineer, whose decision

shall be final. If not appealed, within ten (10) calendar days after issuance of the order, the provider shall present proof to the City Engineer that the violation has been corrected. If such proof has not been presented within the required time, the City Engineer may revoke the Permit pursuant to Section 931.18(e).

(p) Other Obligations. Obtaining a construction permit does not relieve permittee of its duty to obtain all other necessary permits, licenses, and authority and to pay all fees, including on-site inspection fees, required by the City, or any other city, county, state, or federal Laws.

- (1) A permittee shall comply with all requirements of laws, including the requirements of the Ohio Utility Protection Service.
- (2) A permittee shall perform all work in conformance with all applicable laws and standards and is responsible for all work done in the rights-of-way pursuant to its permit, regardless of who performs the work.
- (3) No rights-of-way obstruction or excavation may be performed when seasonally prohibited or when conditions are unreasonable for such work, except in the case of an emergency as outlined in Section 931.18(d)(1).
- (4) A permittee shall not so obstruct a right-of-way that the natural free and clear passage of water through the gutters or other waterways shall be interfered with.
- (5) Private vehicles other than necessary construction vehicles may not be parked within or adjacent to a permit area. The loading or unloading of trucks adjacent to a permit area is prohibited unless specifically authorized by the permit.
- (6) Permittee shall remove all graffiti within thirty (30) calendar days of notice. Permittee shall use all reasonable efforts to remove any and all graffiti on any of the permittee's facilities located within the City rights-of-way. Should the Permittee fail to do so, the City may take whatever action is necessary to remove the graffiti and bill the Permittee for the cost thereof.

(q) Undergrounding Required. Any owner of property abutting upon a street or alley where service facilities are now located underground and where the service connection is at the property line, shall install or cause others to install underground any service delivery infrastructure from the property line to the buildings or other structures on such property to which such service is supplied.

#### **931.18 ENFORCEMENT OF PERMIT OBLIGATION.**

(a) Mandatory Denial of Permit. Except in the case of an emergency, no construction permit will be granted:

- (1) To any person who has not yet made an application; or
- (2) To any person or their agent who has outstanding debt owed to the City; or

- (3) To any person or their agent as to whom there exists grounds for the revocation of a permit; or
- (4) If, in the discretion of the City Engineer, the issuance of a permit for the particular date and/or time would cause a conflict or interfere with an exhibition, celebration, festival, or any other event. The City Engineer, in exercising this discretion, shall be guided by the safety and convenience of ordinary travel of the public over the rights-of-way, and by considerations relating to the public health, safety, and welfare.

(b) Permissive Denial. The City Engineer may deny a permit in order to protect the public health, safety, and welfare, to prevent interference with the safety and convenience of ordinary travel over the rights-of-way, or when necessary to protect the rights-of-way and its users. The City Engineer, in his or her discretion, may consider one or more of the following factors:

- (1) The extent to which rights-of-way space where the permit is sought is available; the competing demands for the particular space in the rights-of-way;
- (2) The availability of other locations in the rights-of-way or in other rights-of-way for the proposed facilities;
- (3) The competing demands for the particular space in the rights-of-way;
- (4) The applicability of this Chapter or other regulations of the rights-of-way that affect location of facilities in the rights-of-way;
- (5) The degree of compliance of the provider with the terms and conditions of this Chapter and its requirements, and other applicable ordinances and regulations;
- (6) The degree of disruption to surrounding communities and businesses that will result from the use of that part of the rights-of-way;
- (7) The condition and age of the rights-of-way, and whether and when it is scheduled for total or partial re-construction;
- (8) The balancing of the costs of disruption to the public and damage to the rights-of-way, against the benefits to that part of the public served by the expansion into additional parts of the rights-of-way; and
- (9) Whether the applicant is authorized to conduct business in the State of Ohio
- (10) Whether the applicant obtained all required licensure from applicable organizations such as the FCC.
- (11) Whether the applicant is in default of its obligation to pay fees imposed by this Chapter.
- (12) Whether such applicant or their agent has failed within the past three (3) years to comply, or is presently not in full compliance, with the requirements of this Chapter or, if applicable, any other Chapters of the Codified Ordinances, or any other applicable law.

(c) Discretionary Issuance.

- (1) Notwithstanding the provisions of Section 931.18(a)(1) and 931.18(a)(2) the City Engineer may issue a permit in any case where the permit is necessary:
  - (A) To prevent substantial economic hardship to a customer of the permit applicant if established by credible evidence satisfactory to the City;
  - (B) To allow such customer to materially improve its service; or
  - (C) To allow a new economic development project.
- (2) To be granted a permit under this Section, the permit applicant must not have had knowledge of the hardship, the plans for improvement of service, or the development project at the time it was required to submit its list of next year projects.

(d) Work Done Without a Permit.

(1) Emergency Situations.

- (A) Each provider shall immediately notify the City Engineer of any event regarding its facilities which it considers to be an emergency. The provider may proceed to take whatever actions are necessary in order to respond to the emergency, provided that said actions are in compliance with Section 925.10. Within two (2) business days, unless otherwise extended by the City Engineer, after the occurrence or discovery of the emergency (whichever is later), the provider shall apply for the necessary permits, pay the fees associated therewith and fulfill all the requirements necessary to bring itself into compliance with this Chapter for any and all actions taken in response to the emergency.
- (B) In the event that the City becomes aware of an emergency regarding a provider's facilities, the City may attempt to contact the provider or system representative of each provider affected, or potentially affected, by the emergency. In any event, the City may take whatever action it deems necessary in order to respond to the emergency, the cost of which shall be borne by the provider whose facilities caused the emergency.

- (2) Non-Emergency Situations. 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 permit shall subsequently obtain a permit, pay double the normal fee for the permit, pay double all the other fees required by the Codified Ordinances, 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.

(e) Revocation of Permits.

- (1) Permittees hold permits issued pursuant to the Codified Ordinances as a privilege and not as a right. The City reserves the 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; or
  - (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; or
  - (C) Any material misrepresentation of fact in the application for a permit; or,
  - (D) The failure to obtain and/or maintain required insurance; or,
  - (E) The failure to obtain and/or maintain, when required, a Certificate of Registration; or,
  - (F) The failure to complete construction in a timely manner; or,
  - (G) The failure to correct any nonconformity as ordered pursuant to Section 931.17(p).
- (2) If the City Engineer determines that the permittee has committed a substantial breach of a term or condition of any law or any provision or condition of the permit, the City Engineer shall serve a written demand upon the permittee to remedy such violation. The demand shall state that continued violations may be cause for revocation of the permit. Upon, a substantial breach, as stated above, the City Engineer, may place additional or revised conditions on the permit.
- (3) By the close of the next business day following receipt of notification of the breach, permittee shall contact the City Engineer with a plan, acceptable to the City Engineer, for its correction. Permittee's failure to so contact the City Engineer, or the permittee's failure to submit an acceptable plan, or permittee's failure to reasonably implement the approved plan, shall be cause for immediate revocation of the permit.
- (4) From time to time, the City Engineer may establish a list of standard conditions for the permit. A substantial breach of any condition shall also constitute an unauthorized use of the public rights-of-way as defined in Section 931.13.



- (5) If a permittee commits a second substantial breach as outlined above, permittee's permit will automatically be revoked and not be allowed further permits for one full year, except for emergency repairs.
- (6) If a permit is revoked, the permittee shall also reimburse the City for the City's reasonable costs, including restoration costs and the costs of collection and reasonable attorneys' fees incurred in connection with such revocation.

**931.19 BONDS.**

(a) Bond Requirement. The applicant shall provide an irrevocable bond to the City in an amount equal to or greater than fifty thousand dollars (\$50,000.00) as determined by the City Engineer, or provide proof of an equivalent financial mechanism, to cover costs the City may incur for the construction, maintenance, or removal of all facilities owned or operated by the applicant. The bond shall take effect on the date that construction of a new facility begins, and the applicant shall maintain said bond while applicant's facilities are in service and for one hundred (120) calendar days following the removal of applicant's facilities.

(b) Attachment. Unless a default, problem, or deficiency involves an emergency or endangers the safety of the general public, the City Engineer shall make all reasonable efforts to allow an applicant a period of five (5) business days after sending notification in writing to the last known business address to correct or repair any default, problem, or deficiency, prior to City Engineer attachment of a bond. Upon attachment, written notice shall be sent to the provider by the City Engineer.

**931.20 INDEMNIFICATION AND LIABILITY.**

(a) City Does Not Accept Liability. By reason of the acceptance of an application or the grant of a permit, 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. By applying for and being issued a Certificate of Registration with the City, a provider agrees, or by accepting a permit a permittee is required and agrees, to defend, indemnify, and hold harmless the City's agents, elected 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 right-of-way, whether any act or omission complained of is authorized, allowed, or prohibited by a permit. A provider or permittee further agrees that it will 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 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 right-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, if allowable by law, 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:

- (1) 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 agents, elected officials, 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:
  - (A) To persons or property, in any way arising out of or through the acts or omissions of provider, its subcontractors, agents or employees attributable to the occupation by the provider or permittee of the rights-of-way, to which permittee's or provider'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.
  - (B) 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 or permittee, but excluding claims arising out of or related to City programming.
  - (C) Arising out of provider's or permittee's failure to comply with the provisions of any law applicable to provider or permittee in its business hereunder.
- (2) The foregoing indemnification is conditioned upon the City:
  - (A) Giving provider or permittee reasonable 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) Cooperating 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 expense of such separate counsel if employed.

**931.21 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 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 applicable law.

(b) Severability. If any section, subsection, sentence, clause, phrase, or portion of this Chapter is 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 Chapter 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 (60) 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 under 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 Mentor 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, agrees that all lawful powers and rights, regulatory power, or police power, or otherwise as are or the same 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 enacted by the City pursuant to such powers.

(d) Method of Service. Any notice or order of the City Engineer or City Manager shall be deemed to be properly served if a copy thereof is:

- (1) Delivered personally; or
- (2) Successfully transmitted via facsimile transmission and/or email address to the last known fax number and/or email address of the person to be served; or
- (3) Left at the usual place of business of the person to whom it is to be served upon and with someone who is 18 years of age or older; or
- (4) Sent by certified, pre-posted U.S. mail to the last known address; or
- (5) If the notice is attempted to be served by certified, pre-posted U.S. mail and then returned showing that the letter was not delivered, or the certified letter is not returned within fourteen (14) days after the date of mailing, then notice may be sent by regular, pre-posted, 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 (14) 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) Applies to all Providers. This Chapter shall apply to all providers and all permittees unless expressly exempted.

(f) Police Powers. All person's rights are subject to the police powers of the City to adopt and enforce ordinances necessary to protect the health, safety, and welfare of the public. All persons shall comply with all applicable laws enacted by City pursuant to its police or other 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 City to enforce prompt compliance.

(h) 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 State of Ohio. All providers and permittees as a condition for the grant of any permit or issuance of any Certificate of Registration agree that all disputes shall be resolved in a court of competent jurisdiction in Lake County, Ohio.

(i) Force Majeure. In the event any person's performance of any of the terms, conditions, or obligations required by this Chapter 931 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, explosions, acts of public enemies, and natural disasters such as floods, earthquakes, landslides, and fires.

(j) 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 constructing facilities in the rights-of-way.

(k) Appeals. All appeals provided for by this chapter and any notification to the City required by this Chapter shall be in writing. Any applicant or permittee whose application for a Certificate of Registration or a permit has been refused or revoked, may appeal the refusal or revocation to the Board of Building and Zoning Appeals. Such appeal shall be filed with the Department of Community Development on forms provided for such purpose within ten (10) days of the refusal of registration or receipt of the notice of revocation. Upon receipt of the appeal, a hearing shall be scheduled at the next regular meeting of the Board. Notice of the time and place of the hearing shall be given to the applicant or permittee by first class mail to the address appearing on the appeal form. At the hearing, the applicant or permittee shall have the opportunity to present evidence and witnesses in support of his appeal. Within a reasonable time after the hearing, the Board shall either affirm, modify, or reverse the decision of the City Engineer by a majority vote of members present. Notice of said decision shall be sent to the applicant or permittee and a copy filed with the applicant or permittee registration file.

(l) City Standards. As part of City required standards wherever rights-of-way are under construction, if deemed advisable and practicable by the City Engineer, 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.

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

#### **931.99 PENALTIES.**

(a) Any person who constructs or authorizes the construction of facilities regulated by this chapter without first obtaining the required Certificate of Registration and permits shall be in violation of the provisions of this Chapter and guilty of a third degree misdemeanor.

(b) Any person who constructs or authorizes the construction of facilities regulated by this chapter after having his application for registration refused or after having his Certificate of Registration revoked shall be in violation of the provisions of the Chapter and guilty of a second degree misdemeanor.

(c) Each and every violation of this Chapter and will be deemed to be a distinct and separate offense. Each and every day any violation of this Chapter continues will constitute a distinct and separate offense.

0134565.0640303 4831-0687-9802v1

**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**2/14/2017 11:20:01 AM**

**in**

**Case No(s). 17-0236-AU-PWN**

Summary: Notice City of Mentor, Amendments to Public Right-of-Way electronically filed by Ms. Jessica Fross on behalf of City of Mentor and Mr. Richard Hennig