

CHAPTER 913
Rights of Way Administration

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913.01 SCOPE OF CHAPTER; DEFINITIONS.

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

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

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

- (1) Affiliate means a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with another person.
- (2) Cable Operator means a person providing or offering to provide Cable Service within the City.
- (3) Cable Service means "cable service, as defined in the Cable Communications Policy Act of 1984, codified at 47 U.S.C. §532, et seq., as amended by the Cable Television Consumer Protection and

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- Competition Act of 1992 and the Telecommunications Act of 1996, as each might be further amended.
- (4) Capital Improvement means an addition made to enhance the value or extend the useful life of an existing System or Facilities, including construction, installation, rehabilitation, renovation, improvement, enlargement and extension of Facilities, but not including ordinary or routine maintenance.
- (5) City means the City of Rocky River Safety-Service Director or his designee.
- (6) Emergency means an unforeseen occurrence or condition calling for immediate action.
- (7) Facilities or Facility means the plant, equipment and property, including but not limited to, cables, fibers, wires, pipes, conduits, ducts, pedestals, antennae, electronics, poles, pipes, mains, plant equipment and other appurtenances located under, on or above the surface of the ground in the Public Right-of-Way of the City and used or to be used to operate a System to transmit, receive, distribute, provide or offer a Service but also including private system.
- (8) New Service Orders means the connection from the Public Service Provider's existing Facilities on private property for the purpose of providing a new Service to a customer in the City.
- (9) Overhead Facilities means utility poles and wires, cables and other such equipment running between and on such poles, including the underground supports and foundations for such Facilities.
- (10) Private Facility means the plant, equipment and property, including but not limited to, cables, fiber optics, wires, pipes, conduits, ducts, pedestals, antennae, electronics and other appurtenances or Facilities used or to be used to operate a system to transmit, receive, distribute or provide telecommunications or other services between or among private buildings or facilities where there is no offer of service to the public.
- (11) Private Service Provider means any entity who, pursuant to the approval to Occupy or Use the Public Right-of-Way pursuant to Section 913.02 of this Chapter, directly or indirectly owns, controls, operates or manages Private Facilities within the City's Public Right-of-Way used or to be used for the purpose of operating a System to transmit, receive, distribute or provide telecommunications or other services between or among private buildings or facilities where there is no offer of Service to the public.
- (12) Public Easement means any easement under the jurisdiction and control of the City and acquired, established, dedicated or devoted for public purposes, including utility purposes.
- (13) Public Right-of-Way means the surface of, and the space within, through, on, across, above or below, any public street, public road, public highway, public freeway, public lane, public path, public alley, public court, public sidewalk, public boulevard, public parkway, public drive, Public Easement and any other land dedicated or otherwise designated for a compatible public use, which is owned or controlled by the City but excludes a private easement.

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- (14) Public Service Provider means any entity that, pursuant to the approval to Occupy or Use the Public Right-of-Way pursuant to Section 913.02 of this Chapter, directly or indirectly owns, controls, operates or manages Facilities within the City's Public Right-of-Way, used or to be used for the purpose of operating a System offering Service to the public within the City or outside of the City's boundaries.
 - (15) Service means the offering of water, sewer, electric, gas, telephone, telecommunications, cable television, information or other utility-like service for a fee directly to the public, or to such classes of users as to be effectively available to the public, regardless of the Facilities used.
 - (16) Service Provider means any Public Service Provider and/or Private Service Provider.
 - (17) System means a network of Facilities for the transmission and/or distribution of a Service.

913.02 APPLICATION FOR APPROVAL TO OCCUPY OR USE THE PUBLIC RIGHT-OF-WAY.

- (a) Application Required for Approval to Occupy or Use Public Right-of-Way.
 - (1) The following Service Providers shall apply to the City and secure the review of the Planning Commission in accordance with City Charter Article VI, Section 3, and Chapter 1175 of these Codified Ordinance, in order to occupy or use the Public Right-of-Way who:
 - (A) Does not currently have an existing System or Facilities in the City's public Right-of-Way and desires to construct a System, Facilities or Private Facilities in the Public Right-of-Way;
 - (B) Has an existing System, Facilities or Private Facilities in the Public Right-of-Way on the effective date of this Chapter but is planning a Capital Improvement to existing Facilities or to construct any additional Facilities anywhere in the City.
 - (2) The application for approval to occupy or use the Public Right-of-Way shall include the following information with respect to the applicant Service Provider's planned or existing System and/or Facilities in the Public Right-of-Way as well as plans or any planned Capital Improvements anticipated to occur within the succeeding twelve (12) month period:
 - (A) The identity and federal tax identification number of the applicant, and the name, address and business and emergency telephone numbers of the responsive officer, agent or employee of the applicant.
 - (B) A general description of the Services to be provided by the applicant Service Provider over its System or Facilities.
 - (C) A description of the type of transmission medium to be used by the applicant Service Provider to operate a System.
 - (D) A description of the proposed Facilities in the City's Public Right-of-Way, all in sufficient detail to identify:
 - (i) the location and route of the applicant Service Provider's proposed Facilities.

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- (ii) the location of all known existing Overhead and/or Underground Facilities in the Public Right-of-Way along proposed route of the applicant Service Provider's proposed Facilities that is sufficient to show the impact of the applicant's Facilities on other existing Facilities.
 - (iii) the location of all known overhead and underground utility easements affected by the services to be provided.
 - (E) A preliminary construction schedule and completion date for all pending or anticipated Capital Improvements to occur within the succeeding twelve (12) month period.
 - (F) If the applicant Service Provider is providing Services in the City:
 - (i) A description of the access and line extension policies or a copy of their PUCO tariff.
 - (ii) The area or areas of the City in which the applicant Service Provider is currently providing Service and a schedule for build-out of the entire area addressed by the permit, if applicable.
 - (G) Evidence that the applicant Service Provider has complied, or will comply, with indemnification, insurance, performance bond and construction bond requirements of this Chapter.
 - (H) Information sufficient to determine that the applicant Service Provider has received any certificate of authority required by the PUCO to operate a System and provide Services in the City.
 - (I) Such other and further information as may reasonably relate to the applicant Service Provider's planned or existing System and/or Facilities in the Public Right-of-Way as well as plans or any planned Capital Improvements anticipated to occur within the succeeding twelve (12) month period.
 - (3) Upon receipt of an application by a Service Provider for approval to occupy or use the Public Right-of-Way, the City shall forthwith (1) refer the application to its Police Department for review and determination of the impact of the proposed Facilities or System on the pedestrian and traffic safety, and (2) schedule a hearing on the Service Provider's application for approval on the agenda of the Planning Commission, so that the matter is heard within forty-five (45) days of the date on which the application was filed with the City.
 - (4) Within fifteen (15) days of said hearing the Planning Commission shall issue its findings and report as follows:
 - (A) to determine compliance of this code section by the Service Provider through its application to occupy or use the Public Right-of-Way based on whether the Service Provider possesses the financial, technical and managerial resources necessary to protect the public health, safety and welfare, or based upon the report of the Police Department concerning pedestrian or safety factors, for other reasons based on the health, safety and welfare of the City and in accordance with Ohio law or applicable regulation.

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- (i) If the Planning Commission determines non-compliance by a Service Provider in its application to occupy or use the Public Right-of-Way, the Planning Commission shall provide its reasons in writing for its determination of non-compliance, and shall identify any additional information necessary in order for the Service Provider to demonstrate compliance with the provisions of this code section and to occupy or use the Public Right-of-Way.
 - (B) if the Planning Commission determines compliance of the provisions of this code section through the application of a Service Provider to occupy or use the Public Right-of-Way, the City shall provide the Service Provider with a Right-of-Way occupancy permit which shall set forth the specific terms and conditions of its occupancy and use.
 - (5) Each Service Provider submitting an application for approval to occupy or use the Public Right-of-Way shall pay a fee to reimburse the City for its actual administrative costs related to the application as provided in Section 913.07. A Service Provider may exercise its right of review of such fee as provided by PUCO regulation.

(b) Application to Existing Franchise Ordinances, Agreements, or Operation Under a PUCO Tariff. For purposes of this Chapter, any Service Provider to who operates under either a franchise ordinance, written agreement, or PUCO tariff, shall be deemed to be in compliance with a Service Provider's occupancy or use of the Public Right-of-Way to the extent described in the agreement, franchise ordinance, or PUCO tariff. The Service Provider's use of the Public Right-of-Way beyond that authorized by the agreement, franchise ordinance, or PUCO tariff shall require compliance under this section for such additional occupancy or use. Service Providers shall comply with the registration provisions and construction standards to the extent that the provisions of this Chapter do not directly conflict with the agreement, franchise ordinance, or PUCO tariff. If there is a direct conflict between an agreement, franchise ordinance, or PUCO tariff in effect prior to the adoption of the provisions of this Chapter, the agreement, franchise ordinance, or PUCO tariff shall control.

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

- (1) Comprehensive general liability insurance with limits not less than
 - (A) Five Million Dollars (\$5,000,000) for bodily injury or death to each Person;
 - (B) Five Million Dollars (\$ 5,000,000) for property damage resulting from any one accident; and
 - (C) Five Million Dollars (\$5,000,000) for all other types of liability.
- (2) The liability insurance policies required by this Section shall be maintained by the Service Provider throughout the period of time during which the Service Provider is occupying or using the Public Right-of-Way, or is engaged in the removal of its Facilities, with proof thereof

furnished to the City. Each such insurance policy shall contain the following endorsement:

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

- (3) Within sixty (60) days after receipt by the City of said notice, and in no event later than thirty (30) days prior to said cancellation, the Service Provider shall obtain and furnish to the City replacement insurance policies meeting the requirements of this Section.
- (4) Upon written application to, and written approval by, the City, a Service Provider may be self-insured to provide all of the same coverages as listed in this Section; however, a public utility subject to jurisdiction of the PUCO and operating under its tariff that has established a self-insurance fund that complies with the laws and regulations of the State of Ohio shall satisfy this requirement by simply providing information to the City relating to such self-insurance fund and the appropriate contact point for matters relating to that fund.

(d) General Indemnification. Each application for approval to occupy or use the Public Right-of-Way, and each annual registration, shall include, to the extent permitted by law, the Service Provider's express undertaking to defend, indemnify and hold the City and its elected and appointed officers, officials, employees, agents, representatives and subcontractors harmless from and against third party claims (including all damages, losses and expenses, including reasonable attorney's fees and costs of suit or defense), arising out of, resulting from or alleged to arise out of or result from the negligent, careless or wrongful acts, omissions, failures to act or misconduct of the Service Provider or its Affiliates, officers, employees, agents, contractors or subcontractors (for the construction, installation, operation, maintenance, repair or removal of its System or Facilities, and in providing or offering Services over the Facilities or System), whether such acts or omissions are authorized, allowed or prohibited by this Chapter or in accordance with federal and/or state regulation.

913.03 GENERAL PUBLIC RIGHT-OF-WAY USE REGULATIONS.

(a) Public Right-of-Way Route. Approval granted to a Service Provider to occupy or use the Public Right-of-Way under Section 913.02 shall be limited to a grant to occupy or use the specific Public Right-of-Way as defined within the Service Provider's application, including the specific Facilities and location along the Public Right-of-Way.

(b) Nonexclusive Approval to Occupy the Public Right-of-Way. No approval granted under Section 913.02 shall confer any exclusive right, privilege, license or franchise to occupy or use the Public Right-of-Way of the City to operate a System for delivery of Services or any other purposes.

(c) Rights Permitted. No approval granted under Section 913.02 shall convey any right, title or interest in the Public Right-of-Way, but shall be deemed an approval only to occupy or use the Public Right-of-Way for the limited purposes granted by the approval.

(d) Nondiscrimination. In accordance with federal and/or state regulation, a Public Service Provider providing Service to the public in the City shall make its Services available to any customer within the designated service area who shall request such Service, without discrimination as to the terms, conditions, rates or charges for the Public Service Provider's Services.

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

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

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

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

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

- (1) When a Service Provider, or any person acting on its behalf, does any work in or affecting any Public Right-of-Way, other ways or City property, it shall, after the work is completed and at its own expense, promptly remove any obstructions there from and restore such ways or property, within ten (10) days, or upon a reasonable time thereafter as agreed upon with the City, to as good a condition as existed before the work was undertaken.
- (2) If weather or other conditions do not permit the complete restoration required by this section, the Service Provider shall temporarily restore the affected ways or property, as directed by the City. Such temporary restoration shall be at the Service Provider's sole expense and the Service Provider shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration.

(j) Duty to Provide Information.

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

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

(k) Assignments or Transfers of Approval. Approval to occupy or use the Public Right-of-Way may be, directly or indirectly, transferred, assigned or disposed of by sale, lease, merger, consolidation or other act of the Service Provider, by operation of law or otherwise, without approval of the City, so long as:

- (1) The City is notified of the proposed transfer on or before the date of transfer; and
- (2) The transferee shall fully comply with this Chapter within sixty (60) days of the transfer, including, but not limited to:
 - (A) All information required by the application for approval to occupy or use the Public Right-of-Way pursuant to Section 913.02 of this Chapter; and
 - (B) Any other information reasonably required by the City.
- (3) This section shall not apply to public utilities operating under a tariff issued by the State of Ohio and regulated by the PUCO where such activities are regulated by the State of Ohio or federal agencies and such public utility shall only be required to notify the City when such transfer has been approved by a regulatory body.

(l) Revocation of Approval. Approval granted by the City to Occupy or Use the Public Right-of-Way of the City may be revoked for any one of the following reasons not inconsistent with the franchise ordinance, agreement or PUCO tariff under which the Service Provider operates:

- (1) Construction, installation, location, operation or Excavation at an unauthorized location.
- (2) Construction, installation, location, operation or Excavation in violation of Construction requirements or safety standards.
- (3) Failure to restore the Public Right-of-Way, as required by this Chapter.
- (4) Failure to pay fees, costs, taxes or compensation when and as due the City.

(m) Notice and Duty to Cure. In the event that the City believes that grounds exist for revocation of approval to occupy or use the Public Right-of-Way or construction permit, he shall give the Service Provider written notice of the apparent violation or noncompliance, providing a short and concise statement of the nature and general facts of the violation or noncompliance, and providing the Service Provider a reasonable period of time not exceeding thirty (30) days to furnish evidence:

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

913.04 LOCATION, RELOCATION AND REMOVAL OF FACILITIES.

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

- (1) Facilities shall be installed within an existing compatible underground duct or conduit whenever excess capacity exists within such Facility.
- (2) A Service Provider with permission to install Overhead Facilities shall install its Facilities on pole attachments to existing utility poles only, and then only if surplus space is available.
- (3) Whenever the existing electric, cable, telecommunications and other similar Facilities are located underground in a Public Right-of-Way, a Service Provider with permission to occupy the same Public Right-of-Way with the electric, cable, telecommunications or other similar Facilities, must also locate its Facilities underground to the extent technologically feasible.
- (4) Except for Overhead Facilities as provided herein, no Facilities shall be located above ground in a Public Right-of-Way without the express written permission of the City.

(b) Above Ground Facility Location Protocol.

- (1) Any Facility located or to be located above, including any doors, shall maintain an unobstructed sidewalk width of five (5) feet to provide for unimpeded pedestrian and wheelchair passage, except where the existing sidewalk width is less than six (6) feet, and a minimum of two (2) feet unobstructed distance from the perimeter of the above ground Facility to the roadway curb face and to the closest edge of the public sidewalk.
- (2) No above ground Facility shall create a safety hazard by being installed:
 - (A) Within five (5) feet of any fire hydrant;
 - (B) Within five (5) feet of any driveway;
 - (C) Where there is no bus shelter at a bus stop, within forty (40) feet back of a sign identifying a particular bus company or bus route and marking a designated bus stop;
 - (D) Where there is a bus shelter at a bus stop, within five (5) feet forward and forty (40) feet back of the end of the shelter identified as serving a particular bus company or bus route and marking a designated bus stop;
 - (E) Within three (3) feet of any traffic sign;
 - (F) Within three (3) feet of any public utility pole, provided that 1) all or a portion of an above ground Facility may be placed on a public utility pole as part of an approved above ground Facility construction permit and in accordance with other applicable laws and regulations for the placement of Facilities on utility poles; and 2) placement adjacent to a public utility pole shall be limited to one side of the pole;
 - (G) Within an area designated for handicapped parking, a taxi stand or a commercial loading or unloading zone; or

- (H) Immediately in front of buildings, houses, structures, or public stairs such that it causes a violation of ADA guidelines for pedestrian passage between private property and the Public Rights-of-Way.

(c) Excess Capacity. To reduce excavation in the Public Right-of-Way, it is the City's goal to encourage Service Providers to share occupancy of underground conduit as well as to construct, whenever possible, excess conduit capacity for occupancy of future Facilities in the Public Right-of-Way. Therefore, if a Service Provider is constructing underground conduit in the Public Right-of-Way for its own Facilities, and such construction is in an area in which other Service Providers would likely construct Facilities in the future, the City may request the Service Provider to construct the conduit in the Public Right-of-Way with excess capacity in the Public Right-of-Way, subject to existing contracts and/or legal requirements concerning existing third party Service Providers.

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

- (1) The construction, repair, maintenance or installation of any City or other public improvement in or upon the Public Right-of-Way.
- (2) The operations of the City or other governmental entity in or upon the Public Right-of-Way.
- (3) The Service Provider's approval to occupy or was revoked, abandoned, or the System or Facility was constructed without the prior approval of the City.
- (4) With regard to the expense of such removal or relocation, the standard for reimbursement to the service provider for such expense shall be in accordance with state law and regulations of the Public Utilities Commission of Ohio.

913.05 NOTICE OF ROUTINE MAINTENANCE, EMERGENCY WORK, NEW SERVICE ORDERS, OR CAPITAL IMPROVEMENTS.

(a) Notice of Work. Except in case of emergency, as provided in Section 913.05(c), or for routine maintenance as provided in Section 913.05(b), no Service Provider, or any person acting on the Service Provider's behalf, shall commence any work on a new service order or Capital Improvement in the Public Right-of-Way of the City or other ways without obtaining a construction permit pursuant to Section 913.06, if required, and obtaining approval to occupy or use the Public Right-of-Way pursuant to Section 913.02, if required, and providing twenty-four (24) hours advance notice to the City.

(b) Routine Maintenance, New Service Orders, and Capital Improvements.

- (1) A Service Provider need not obtain a construction permit or notify the City prior to or after commencing any routine maintenance, new service orders or Capital Improvements that do not include the construction in, or excavation of, a Public Right-of-Way or closing of a public street.

- (2) For routine maintenance, new service orders and Capital Improvements that require the Service Provider to cause the construction in, or excavation of, a Public Right-of-Way or closing of a public street or any

lane obstruction in a public street, the Service Provider shall notify the City within twenty-four (24) hours in advance of commencing the routine maintenance, new service order or Capital Improvements, and shall meet all requirements of ODOT's Manual of Traffic Control Devices or other applicable ODOT regulations.

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

913.06 CONSTRUCTION PERMIT AND STANDARDS.

(a) Construction Permit.

- (1) Compliance with the provisions of Section 913.02 and Section 913.03, where applicable, is required prior to the issuance of a construction permit
- (2) No construction, installation, maintenance or repair of Facilities or excavation in the Public Right-of-Way which disrupts the flow of traffic by causing a lane obstruction or closing of a public street shall commence or continue without obtaining a construction permit from the Building Commissioner as provided in this section.
- (3) No construction permit is required for routine maintenance and new service orders that do not include excavation in a public street.
- (4) No construction permit is required for any type of emergency work.

(b) Construction Permit Applications. Applications for permits to construct, or install Facilities, or excavate, shall be submitted upon forms provided by the City, and issued within ten (10) business days, upon the presentation of the following information, if applicable, and be accompanied by drawings, plans and specifications in sufficient detail to demonstrate the following:

- (1) A preliminary construction schedule.
- (2) That the Facilities will be constructed, installed, maintained or repaired, or the Public Right-of-Way excavated, in accordance with all applicable codes, rules and regulations.
- (3) If the applicant, is proposing to construct, install, maintain, repair or locate Facilities above ground, the location and route of all Facilities to be located or installed upon existing utility poles.
- (4) If the applicant is proposing an underground installation of new Facilities in new ducts or conduits to be constructed in the Public Right-of-Way, the specific location, including the horizontal and exact vertical depth location, and route of all Facilities to be located under the surface of the

ground, including the line and grade proposed for the burial at all points along the route which are in the Public Right-of-Way. Included with the installation shall be magnetic and florescent tape placed at a minimum of one foot to a maximum of two (2) feet above the entire Facility as installed for the purpose of locating the Facility during future construction activities or other such location device as approved by the City. The tape shall be marked with the type of Facility installed as approved by the City.

- (5) The specific location, including the horizontal and exact vertical depth location, of all known existing underground utilities, conduits, ducts, pipes, mains and installations that are in the Public Right-of-Way along the underground route proposed by the applicant.
- (6) The location(s), if any, for interconnection with the Facilities of other Service Providers.
- (7) The construction methods to be employed for protection of existing structures, fixtures and Facilities in or adjacent to the Public Right-of-Way.
- (8) The structures, improvements, Facilities and obstructions, if any, that the applicant proposes to temporarily or permanently remove or relocate.
- (9) The impact of construction, installation, maintenance or repair of Facilities on trees in or adjacent to the Public Right-of-Way along the route proposed by the applicant, together with a landscape plan for protecting, trimming, removing, replacing and restoring any trees or areas disturbed during construction.
- (10) Information to establish that the applicant has obtained all other governmental approvals and permits to construct and operate the Facilities and to offer or provide the Services.

(c) Construction Codes and Plans. Facilities shall be constructed, installed, repaired, operated, excavated and maintained in accordance with all applicable federal, state and local codes, rules, regulations and technical codes and plans including, but not limited to, the National Electrical Safety Code and ODOT's Uniform Manual of Traffic Control Devices and other applicable ODOT regulations.

(d) Record Drawings. Within sixty (60) days after completion of construction, the Service Provider shall furnish the City with three (3) complete sets of plans, drawn to scale and certified to the City as accurately depicting the location of all Facilities constructed pursuant to the permit. At such time, the Service Provider shall submit the record drawings in a digital format compatible with the City's current computer software.

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

(f) Landscape Buffering. The Service Provider shall provide landscape buffering around any new Facilities which are constructed or installed in the Public Right-of-Way,

according to the directives of the Planning Commission, after consideration of the traffic, pedestrian, and safety measures recommended by the City police department, pursuant to the mandatory referral provisions contained in Article VI, Section 3 of the City Charter.

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

- (1) The construction bond shall remain in force until eighteen (18) months after substantial completion of the work, as determined by the City, including restoration of Public Right-of-Way and other property affected by the construction.
- (2) The construction bond shall guarantee, to the satisfaction of the City:
 - (A) timely completion of construction;
 - (B) construction in compliance with applicable plans, permits, technical codes and standards;
 - (C) proper location of the Facilities as specified by the City;
 - (D) restoration of the Public Right-of-Way and other property affected by the construction;
 - (E) the submission of record drawings, in both written and digital format, after completion of the work as required by this Chapter; and
 - (F) timely payment and satisfaction of all claims, demands or liens for labor, material or services, provided in connection with the work.
- (3) In lieu of filing a construction bond with the City for each construction permit, a Service Provider with the approval of the City may file an annual construction bond (or annual bond) in the form described above in an amount that the City may determine will adequately protect the City's interests as described above.
- (4) Public utilities operating under a tariff issued by the State of Ohio and regulated by the Public Utilities Commission of Ohio shall be exempt from any construction bond requirements and shall be required only to notify the City of the appropriate contact person for claims regarding construction activities in accordance with their self-insurance program as established pursuant to state law and regulations. All public way fees and costs recoveries provided for hereunder shall be consistent with Ohio Revised Code 4939.05, PUCO Regulations and Decisions of the Public Utilities Commission of Ohio which require that such costs be prorated over all users of the right-of-way including users that are governmental entities, including, but not limited to, the City itself.

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

(a) Purpose. It is the purpose of this Section 913.07 to provide for the recovery of all direct and indirect costs and expenses actually incurred by the City and associated with a Public or Private Service Provider's occupancy or use Of the Public Right-of-Way and related to the enforcement and administration of this Chapter. All fees related to the occupancy or use of the Public Right-of-Way shall be assessed in a manner to be determined by the City.

(b) Fee Determination Criteria. The fee shall be based only on costs that the City both has actually incurred and can clearly demonstrate are or can be properly allocated and assigned to the occupancy or use of the Public Right-of-Way. Such costs shall be reasonably and competitively neutrally allocated among all Service Providers occupying or using the Public Right-of-Way owned or controlled by the City. Consistent with R.C. 4939.06, if a Service Provider does not accept a fee levied against it, the Service Provider may appeal the fee to the PUCO within thirty (30) days after the fee is actually assessed.

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

913.08 CITY WAIVER.

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

913.09 RIGHT OF APPEAL.

Any Service Provider aggrieved by a decision of the City may appeal such decision within twenty-one (21) days of receipt thereof to the Board of Zoning Appeals in accordance with Section 1177.07 of these Codified Ordinances.

913.99 REMEDIES.

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