

ORDINANCE NO. 8-17

AN ORDINANCE ENACTING CHAPTER 915 OF THE
PAINESVILLE CODE OF 1998 RELATING TO PUBLIC
RIGHTS-OF-WAY and DECLARING AN EMERGENCY.

BE IT ORDAINED BY THE COUNCIL of the City of Painesville, Lake County, Ohio:

SECTION I. That Chapter 915 relating to Public Rights-of-Way of the Painesville Code of 1998 is hereby enacted to read as follows:

915.01 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, including wireless communications 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; and
- (8) Enable the City to discharge its public trust obligations 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, and may be used interchangeably with Video Service Provider.
- (3) Cable Service means "cable service" as defined in the Cable Communications Policy Act of 1984, codified at 47 U.S.C. §532, et seq., as amended by the Cable Television Consumer Protection and Competition Act of 1992 and the Telecommunications Act of 1996, as each might be further amended.
- (4) Cable System means "cable system" as defined in the Cable Communications Policy Act of 1984, codified at 47 U.S.C. §532, et seq., as amended by the Cable Television Consumer Protection and Competition Act of 1992 and the Telecommunications Act of 1996, as each might be further amended.
- (5) Capital Improvement means an addition made to enhance the value or extend the useful life of an existing System or Facilities, including Construction, Reconstruction, installation, rehabilitation, renovation, improvement, enlargement and extension of Facilities, but not including ordinary or Routine Maintenance.
- (6) Construct, Constructing, Construction, etc. means installing, repairing, replacing or removing any Facility, regardless of the methods employed, including Excavation (including hydro-excavating).

- (7) Construction Permit or Permit means a permit issued pursuant to Section 915.07 of this Chapter.
- (8) Emergency means an unforeseen occurrence or condition calling for immediate action due to health, safety, or the protection of property.
- (9) Excavate, Excavating or Excavation means cutting, sawing, breaking, drilling into, boring under, or otherwise altering any Public Street or sidewalk pavement, and/or digging, drilling into or boring under any unpaved portion of the Public Right-of-Way, including any other work or activity which disturbs the existing surface or subsurface structure, composition, or soil compaction.
- (10) Excess Capacity means the volume or capacity in any existing or future duct, conduit, manhole, or other Facility in the Public Right-of-Way that is or will be available for use for additional Facilities.
- (11) 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 Systems.
- (12) Lane Obstruction means the blocking or diverting of vehicular and/or pedestrian traffic from a street or sidewalk for the purpose of Constructing, Excavating, installing, repairing, maintaining, operating, replacing or removing any Facility, including (i) the lifting or removing of manhole or manhole covers, and (ii) the opening or accessing of at-grade or pole-mounted cabinets, pedestals, transformers, power supplies, amplifiers, splice enclosures, traps or other Facilities.
- (13) 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.
- (14) Occupancy, Occupy or Use means, with respect to the Public Right-of-Way, to place a tangible thing in the Public Right-of-Way for any purpose, including, but not limited to, Constructing, repairing, positioning, maintaining or operating lines, poles, pipes, conduits, ducts, equipment or other structures, appurtenances or Facilities necessary to operate a System for the delivery of public utility-like Services, including Service provided by a Cable Operator, or other services over Private Facilities in the Public Right-of-Way.
- (15) ODOT means the Ohio Department of Transportation.
- (16) Other Ways means the highways, streets, alleys, Utility Easements or other rights-of-way within the City, but under the jurisdiction and control of a governmental entity other than the City.
- (17) 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.
- (18) Person means and includes corporations, companies, associations, joint stock companies or associations, firms, partnerships, limited liability companies, trusts and individuals and includes their lessors, trustees and receivers.
- (19) 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.
- (20) Private Service Provider means any Person who, pursuant to the consent to Occupy or Use the Public Right-of-Way pursuant to Section 915.02 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.

- (21) 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.
- (22) Public Right-of-Way or 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.
- (23) Public Service Provider means any Person that, pursuant to the consent to Occupy or Use the Public Right-of-Way pursuant to Section 915.02 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.
- (24) Public Street means the paved and unpaved portion of any street, road, boulevard, drives, highway, freeway, parkway, lane court, alley or other Public Right-of-Way in which the City has an interest in law or equity and which has been acquired, established, dedicated or devoted to street purposes.
- (25) Public Way Fee means a fee levied to recover the costs incurred by the City and associated with the occupancy or use of a Public Right-of-Way.
- (26) PUCO or Public Utilities Commission of Ohio means the State Administrative agency, or lawful successor, authorized to regulate and oversee certain Public or Private Service Providers and Services in the State of Ohio.
- (27) Reconstruct, Reconstruction, etc. means substantial physical change to or Capital Improvement of all or a portion of an existing System or Facilities including a change in location, or additional locations, of Facilities along the same Right-of-Way involving Construction in Public Streets, Utility Easements, or Public Right-of-Way.
- (28) Routine Maintenance means repair, upkeep, replacement or restoration of existing Facilities located in the Public Right-of-Way that requires no more than three (3) working days to complete, is not an Emergency and does not include Excavation of the Public Right-of-Way.
- (29) Service means the offering of water, sewer, electric, gas, telephone, telecommunications, cable television, information or other utility-like service directly to the public, or to such classes of users as to be effectively available to the public, regardless of the Facilities used.
- (30) Service Provider means any Public Service Provider and/or Private Service Provider.
- (31) State means the State of Ohio.
- (32) Surplus Space means that portion of the Usable Space on a utility pole which has the necessary clearance from other Public or Private Service Providers using the pole, as required by the orders and regulations of PUCO and other applicable State and local orders and regulations, to allow its use by an additional Public or Private Service Provider for a pole attachment.
- (33) System means a network of Facilities for the transmission and/or distribution of a Service.
- (34) Trenchless Technology means the use of directional boring, horizontal drilling and micro-tunneling and other techniques in the Construction of underground portions of Facilities that result in the least amount of disruption and damage to the Public Right-of-Way as possible.
- (35) Underground Facilities means that portion of a System located under the surface of the ground, excluding the underground foundations or supports for Overhead Facilities.
- (36) Usable Space means the total distance between the top of a utility pole and the lowest possible attachment point that provides the minimum allowable vertical clearance as specified in the orders and regulations of the PUCO.

- (37) Utility Easement means any easement owned by a Service Provider and acquired, established, dedicated or devoted for the purpose of providing Service to the public
- (38) City means the City of Painesville, Ohio.
- (39) City Manager means the City Manager of the City, or his or her designee.
- (40) City Property means and includes all real property owned by the City, other than Public Streets and Public Easements as those terms are defined herein, and all property held in a proprietary capacity by the City, which are not subject to Public Right-of-Way consent and Permit requirements of this Chapter.

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

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

(b) Initial Consent Presumed.

- (1) A Person with existing Facilities in the Public Right-of-Way on the effective date of this Chapter shall be presumed to have initial consent of the City for its existing Facilities to Occupy or Use the Public Right-of-Way, if such Person:
 - (A) is subject to jurisdiction by the PUCO;
 - (B) has a valid franchise agreement with the City to provide Cable Services or other Services in the City;
 - (C) has obtained a video service authorization from the State pursuant to Section 1332.24 of the Ohio Revised Code; and/or
 - (D) is any other Person whose existing Facilities lawfully Occupy the Public Right-of-Way on the effective date of this Chapter.
- (2) Presumed initial consent for Occupancy or Use of the Public Right-of-Way is limited to the Service or Private Service Provider's existing facilities.
- (3) Any Person with presumed initial consent to Occupy or Use the Public Right-of-Way for existing Facilities shall comply with the Initial Registration requirements pursuant to Sections 915.02(c)(2) and 915.03(a) within ninety (90) days of the effective date of this Chapter.
- (4) A Person with presumed initial consent is not relieved from compliance with this Chapter with respect to the ongoing Occupancy or Use of the Public Right-of-Way including, but not limited to, the Insurance, Indemnity, Performance Bond and Registration requirements pursuant to Sections 915.02(e), (f) and (g) and 915.03(a) and (b) of this Chapter.

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

(1) The following Persons shall apply to the City for consent to Occupy or Use the Public Right-of-Way on a form provided by the City Building Department.

Any Person who:

- (A) Has an existing System, Facilities or Private Facilities in the Public Right-of-Way on the effective date of this Chapter and does not have presumed initial consent under Section 915.02(b)(1) above; or
 - (B) 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; or
- (2) The application for Consent to Occupy or Use the Public Right-of-Way and/or initial registration pursuant to Section 915.03(a) for Service Providers with presumed initial consent to Occupy or Use the Public Right-of-Way shall include the following information with respect to the applicant's or Service Provider's planned or existing System and/or Facilities in the Public Right-of-Way as well as plans for any planned Capital Improvements or Reconstruction for the following twelve (12) months:

- (A) The identity, legal status and federal tax identification number of the applicant, including all Affiliates of the applicant or Service Provider that will Use or Occupy the Public Right-of-Way or are in any way responsible for Services provided over the System in the Public Right-of-Way.
- (B) The name, address and telephone number of the local officer, agent or employee responsible for the accuracy of the application or initial registration and contact information by which the applicant or Service Provider is to be notified in case of emergency.
- (C) A general description of the Services provided or to be provided by the applicant or Service Provider over its System or Facilities. Where Services are or will be provided by a nonaffiliated provider, the applicant or Service Provider shall identify that provider.
- (D) A description of the type of transmission medium used, or to be used, by the applicant or Service Provider to operate a System.
- (E) A description of the existing or proposed Facilities in the City's Public Right-of-Way.
 - (i) The description shall be in sufficient detail to identify:
 - a. the location and route of the applicant's or Service Provider's Facilities or proposed Facilities;
 - b. the location of all known existing Overhead and/or Underground Facilities in the Public Right-of-Way along the route or proposed route of the applicant's or Service Provider's Facilities or proposed Facilities that is sufficient for the City to evaluate the impact of the applicant's Facilities in the context of other existing Facilities; and
 - c. the location of all known overhead and underground Utility Easements.
 - (ii) A Service Provider may designate any portion or portions of the information (including maps, if any) provided under this subsection (b)(2)(e) as proprietary and/or a trade secret so as to remain confidential. In this event, the City shall seek to maintain the confidentiality of such information; provided, however, that such information is subject to applicable public records laws and exceptions thereto. The City shall provide a Service Provider with written notice of any proposed inspection or disclosure prompted by a public records request related to the Service Provider's documents or information the Service Provider has designated as proprietary and/or trade secret. The Service Provider shall have three (3) business days from the written notice to object to any public records disclosure and to agree in writing to defend and indemnify the City with respect to any litigation under the Ohio Public Records Act to compel disclosure and all costs thereof.
- (F) A preliminary Construction schedule and completion date for all Capital Improvements, Reconstruction or New System Construction planned for the twelve (12) month period following the date of application; provided, however, that the Service Provider may elect that such information be treated pursuant to Section 915.02(c)(2)(E)(ii) if it considers the information proprietary and/or trade secret and the information is so designated.
- (G) If the applicant or Service Provider is providing Services in the City:
 - (i) A description of the access and line extension policies or a copy of their PUCO tariff.
 - (ii) The area or areas of the City in which the applicant or Service Provider is currently providing Service and a schedule for build-out, if applicable.

- (H) Evidence that the applicant or Service Provider has complied, or will comply, with indemnification, Insurance, Performance Bond and Construction Bond requirements of this Chapter.
 - (I) Information sufficient to determine that the applicant or Service Provider has received any certificate of authority required by the PUCO to operate a System and provide Services in the City.
 - (J) Such other and further information as may reasonably be requested by the City Engineer.
- (3) The City Engineer shall grant or deny, in writing, a Person's application for consent to Occupy or Use the Public Right-of-Way within sixty (60) days of the date on which the Person filed the application with the City.
 - (A) The City may withhold, deny or delay its consent to a Person's application to Occupy or Use the Public Right-of-Way based on the Person's failure to possess the financial, technical and/or managerial resources necessary to protect the public health, safety and welfare, or for other reasons based on the health, safety and welfare of the City and in accordance with Ohio law.
 - (B) If the City denies a Person's application to Occupy or Use the Public Right-of-Way, the City shall provide in writing its reasons for denying the application, and shall provide any information that the Person may reasonably request as necessary for the Person to obtain the City's consent to Occupy or Use the Public Right-of-Way.
 - (4) The City's grant of consent for a Person to Occupy or Use the Public Right-of-Way shall be in the form of a Right-of-Way Occupancy Certificate which shall set forth the specific terms of the City's consent for such Person to Occupy or Use the Public Right-of-Way.
 - (5) Each Person submitting an application for Consent to Occupy or Use the Public Right-of-Way shall reimburse the City for its administrative costs related to the application, which reimbursement may be in the form of an application fee or as provided in Section 915.08, as may be determined by the City.

(d) Application to Existing Franchise Ordinances and Agreements. For purposes of this Chapter, a franchise ordinance, franchise agreement or Video Service Authorization (VSA) shall be deemed consent authorizing the franchisee's Occupancy or Use of the Public Right-of-Way to the extent described in the franchise agreement, ordinance or VSA. The franchisee's or Cable Operator's use of the Public Right-of-Way beyond that authorized by the franchise agreement or VSA shall require additional consent for such additional Occupancy or Use. Franchisees shall comply with the Registration provisions and Construction Standards to the extent that the provisions of this Chapter do not directly conflict with the franchise agreement or VSA. If there is a direct conflict between the franchise agreement, ordinance, or VSA, and the provisions of this Chapter, the franchise agreement or ordinance or VSA, all control.

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

- (1) Comprehensive general liability insurance with limits not less than
 - (A) Five Million Dollars (\$5,000,000) for bodily injury or death to each Person;
 - (B) Five Million Dollars (\$5,000,000) for property damage resulting from any one accident; and
 - (C) Five Million Dollars (\$5,000,000) for all other types of liability.
- (2) Automobile liability for owned, non-owned and hired vehicles with a limit of Three Million Dollars (\$3,000,000) for each Person and Three Million Dollars (\$3,000,000) for each accident.
- (3) Worker's compensation within statutory limits and employer's liability insurance with limits of not less than One Million Dollars (\$1,000,000).

- (4) Comprehensive form premises-operations, explosions and collapse hazard, underground hazard and products completed hazard with limits of not less than Three Million Dollars (\$3,000,000).
- (5) The liability insurance policies required by this Section shall be maintained by the Service Provider throughout the period of time during which the Service Provider is Occupying or Using the Public Right-of-Way, or is engaged in the removal of its Facilities. Each such insurance policy shall contain the following endorsement, or a substantially similar endorsement approved by the City:

“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 Manager of such intent to cancel or not to renew.”

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

(f) General Indemnification. Each application for consent to Occupy or Use the Public Right-of-Way, and each annual registration, shall include, to the extent permitted by law, the Service Provider's express undertaking to defend, indemnify and hold the City and its elected and appointed officers, officials, employees, agents, representatives and subcontractors harmless from and against any third party claims (including all damages, losses and expenses, 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, representatives, contractors or subcontractors in the Construction, Reconstruction, installation, operation, maintenance, repair or removal of its System or Facilities, and in providing or offering Services over the Facilities or System, whether such acts or omissions are authorized, allowed or prohibited by this Chapter. A Service Provider, however, will have no obligation to defend, indemnify or hold the City and its elected and appointed officials, officers, employees, agents and representatives harmless from damages or claims arising solely from the City's/their own negligence.

(g) Performance Bond. As a condition of consent to Occupy or Use the Public Right-of-Way and to ensure full and complete compliance with, and performance under, this Chapter, including any costs, expenses, damages or loss the City pays or incurs because of any failure attributable to the Service Provider to comply with the codes, ordinances, rules, regulations or permits of the City, each Service Provider shall, in the amount of Fifty Thousand Dollars (\$50,000) or such lesser amount as the City Engineer may determine to be necessary (i) provide an unconditional letter of credit, or other instrument acceptable to the City, or (ii) furnish and file with the City a Performance Bond running to the City in the required amount from a company licensed to do business in the State of Ohio; which performance bond or letter of credit or other instrument shall be maintained at the sole expense of the Service Provider so long as any of the Service Provider's Facilities are located within the Public Right-of-Way of the City. The requirements of this Section 915.02(g) shall not apply to a Service Provider that: (1) has presumed initial consent to Occupy or Use the Public Right-of-Way under Section 915.02(b); and (2) has not been the subject of litigation or other enforcement action by the City arising from the Service Provider's activities in the Public Right-of-Way within the five (5) years prior to initial or annual registration hereunder.

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

- (A) describing the act, default or failure to be remedied, or the damages, cost or expenses which the City has incurred by reason of the Service Provider's act or default;
 - (B) providing a reasonable opportunity for the Service Provider to first remedy the existing or ongoing default or failure, if applicable;
 - (C) providing a reasonable opportunity for the Service Provider to pay any monies due the City before the City makes a claim against the Performance Bond or letter of credit or other instrument;
 - (D) that the Service Provider will be given an opportunity to review the act, default or failure described in the notice with the City Engineer.
- (2) Service Providers shall maintain the full value of the Performance Bond or letter of credit or other instrument regardless of claims against the Performance Bond or letter of credit or other instrument made by, or paid to, the City.

915.03 INITIAL AND ANNUAL REGISTRATION OF SERVICE PROVIDERS.

(a) Initial Registration. Any Service Provider with presumed initial consent to Occupy or Use the Public Rights-of-Way as provided in Section 915.02(b) shall file an initial registration with the City within ninety (90) days of the effective date of this Chapter, on a form provided by the City, which shall include the information in Section 915.02(c)(2) of this Chapter.

(b) Annual Registration Required. All Service Providers with consent to Occupy or Use the Public Right-of-Way as provided in Section 915.02(a) shall register with the City each calendar year between January 1 and January 31 on a form provided by the City. The form will allow the Service Provider to indicate when there is no change in the information required, and when such indication is submitted, previously provided information will be considered current and will be relied upon. Service Providers who file an Initial Registration after September 30 of any year need not file an Annual Registration for next calendar year.

(c) Purpose of Registration. The purpose of registration under this Section 915.03 is to:

- (1) Compile, update and supplement the City's database so that the City has accurate and current information concerning the Service Providers that own or operate Facilities, and/or provide Services, in the City's Public Right-of-Way;
- (2) Assist the City in monitoring the usage of the Public Right-of-Way in order to ensure that the public receives the maximum possible benefit from that use and the use is consistent with the best management and care of the Public Right-of-Way;
- (3) Assist the City in the collection and enforcement of any municipal taxes, franchise fees, compliance fees or charges that may be due the City; and
- (4) Assist the City in monitoring compliance with local, State and federal laws.

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

- (1) Any material changes to the information the Service Provider provided to the City in the application for consent to Occupy or Use the Public Right-of-Way including, but not limited to:
 - (A) The identity, legal status, and federal tax identification number of the Service Provider, including any Affiliates.
 - (B) The name, address and telephone number of the local officer, agent or employee responsible for the accuracy of the Service Provider's registration statement and available at all reasonable times to be notified in case of emergency.
- (2) Evidence that the Service Provider is in compliance with the Insurance, Indemnity and Performance Bond requirements pursuant to Sections 915.02(e), (f) and (g) of this Chapter.
- (3) Information regarding, and a preliminary Construction schedule and completion date for any Capital Improvements and Reconstruction the Service Provider plans in the City's Public Right-of-Way for the twelve

(12) months following the date of registration, including all of the following:

- (A) A description clearly showing the location of all the proposed Capital Improvements, including horizontal and vertical information; Facility type, size, depth, and capacity; or such other information the City Engineer determines is necessary. In no event shall the description of the proposed Capital Improvement be less than by City quadrant and/or street name and Facility type. The Service Provider shall update all required information as soon as it becomes available.
 - (B) If the Service Provider is Constructing a new System or Reconstructing all or a portion of its existing System, general description of the proposed System and the Facilities utilized to provide the Service that the Service Provider intends to offer or provide over the System within the City. Where a Service will be provided by a nonaffiliated provider, the Service Provider shall identify that provider.
 - (C) Information sufficient to determine that the Service Provider has applied for and received any certificate of authority required by PUCO to provide Services or operate a System in the City.
 - (D) Information sufficient to determine that the Service Provider has applied for and received any construction permit, operating license, certification, or other approvals required by the Federal Communications Commission to provide telecommunications or Cable Services over a System in the City.
- (4) Such other information as the City Engineer may reasonably require.

(e) Service Provider's Facilities Maps.

- (1) The City shall have the right to access and review all the Service Provider's maps and/or as-built plans showing the location of its Facilities in the City's Rights-of-Way, upon ten (10) days notice to the Service Provider.
- (2) Upon written request by the City Engineer, each Service Provider shall work in good faith with the City to provide, in a reasonable time and manner, maps and/or as built plans in a format compatible with the City's current and/or future mapping system or a format mutually agreed upon by the City and the Service Provider.
- (3) The Service Provider may designate any portion or portions of the maps and/or as-built plans provided under this subsection (e) as proprietary and/or a trade secret so as to remain confidential. In this event, the City shall seek to maintain the confidentiality of such maps and/or as-built plans; provided, however, that such information is subject to applicable public records laws and exceptions thereto. The City shall provide a Service Provider with written notice of any proposed inspection or disclosure prompted by a public records request related to the Service Provider's maps and/or as-built plans the Service Provider has designated as proprietary and/or a trade secret. The Service Provider shall have three (3) business days from the written notice to object to any public records disclosure and to agree in writing to defend and indemnify the City with respect to any litigation under the Ohio Public Records Act to compel disclosure and all costs thereof.

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

(g) Registration Fee. Each Service Provider shall reimburse the City for its administrative costs related to maintaining annual registration and such reimbursement may be in the form of a registration fee or as provided in Section 915.08, as may be determined by the City.

915.04 GENERAL PUBLIC RIGHT-OF-WAY USE REGULATIONS.

(a) Rights Conveyed. Consent granted to or initially presumed of a Service Provider to Occupy or Use the Right-of-Way under Section 915.02:

- (1) shall be limited to a grant to Occupy or Use the specific Right-of-Way and defined portions thereof including the specific System or Facilities and location along the Right-of-Way;
- (2) shall not confer any exclusive right, privilege, license or franchise to Occupy or Use the Right-of-Way of the City to operate a System for delivery of Services or any other purposes; and
- (3) shall not convey any right, title or interest in the Right-of-Way, but shall be deemed consent only to Occupy or Use the Right-of-Way for the limited purposes granted by the consent. Further, no consent shall be construed as any warranty of title.

(b) Nondiscrimination. A Public Service Provider providing Service to the public in the City shall make its Services available to any customer within the designated service area who shall request such Service, without discrimination as to the terms, conditions, rates or charges for the Public Service Provider's Services; provided, however, that nothing in this Section 915.04(b) shall prohibit a Public Service Provider from making any reasonable classifications among differently-situated customers.

(c) Maintenance of Facilities, Landscaping and Other Aesthetic Requirements. 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. A Service Provider with a Construction Permit that includes a landscaping, screening and/or other aesthetic requirement in connection with the placement of any structure or item above the ground in the Right-of-Way, shall maintain the landscaping, screening and/or other aesthetic requirement, on a continuing basis, in the manner specified in the Construction Permit or other manner as approved in writing by the City Engineer.

(d) 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.

(e) 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 Engineer.

(f) 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.

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

- (1) When a Service Provider, or any Person acting on its behalf, does any work in or affecting any Public Right-of-Way, Other Ways or City Property, it shall, after the work is completed and at its own expense, promptly remove any obstructions therefrom and restore such ways or property, within ten (10) to thirty (30) days at the City Engineer's discretion, to as good a condition as existed before the work was undertaken, unless otherwise directed by the City.
- (2) If weather or other conditions do not permit the complete restoration required by this Section, the Service Provider shall temporarily restore the affected ways or property as directed by the City Engineer. 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.

(h) Duty to Provide Information.

- (1) Within ten (10) days of a written request from the City Engineer 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 Engineer, 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.

(i) Leased Capacity. A Service Provider shall have the right, without prior City approval, to lease capacity or bandwidth to an unaffiliated Service Provider, provided that when a lessee has physical access to the leased Facilities:

- (1) The Service Provider shall notify the City of the lease agreement within thirty (30) days of such lease agreement; and
- (2) The lessee has complied, to the extent applicable, with the requirements of this Chapter.

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

- (1) The City is notified of the proposed transfer on or before the date of transfer; and
- (2) The transferee fully complies with this Chapter within sixty (60) days of the transfer, including, but not limited to:
 - (A) All information required by the application for consent to Occupy or Use the Public Right-of-Way pursuant to Section 915.02, and/or Registration required by Section 915.03 of this Chapter; and
 - (B) Any other information reasonably required by the City.

(k) Transactions Affecting Control of Consent. Any transactions that singularly or collectively result in a change of twenty-five percent (25%) or more of the ownership or ultimate working control of a Service Provider, of the ownership or working control of the Service Provider's Facility, or of control of the capacity or bandwidth of the Service Provider's System, Facilities or substantial parts thereof, shall be considered an assignment or transfer pursuant to Section 915.04(k) hereof. Transactions between Affiliated entities are not exempt from Section 915.04(k).

(l) Revocation of Consent. Consent granted by the City to Occupy or Use the Public Right-of-Way of the City may be revoked for any one of the following reasons unless revocation is clearly prohibited by state or federal law:

- (1) Construction, Reconstruction, installation, location, operation or Excavation at an unauthorized location.
- (2) Construction, Reconstruction, installation, location, operation or Excavation in violation of City safety and/or Construction requirements.
- (3) Material misrepresentation or lack of candor by or on behalf of a Service Provider in any Permit application or registration required by the City.
- (4) Failure to relocate or remove Facilities, or failure to restore the Public Right-of-Way, as required by this Chapter.
- (5) Failure to pay fees, costs, taxes or compensation when and as due the City.
- (6) Insolvency or bankruptcy of the Service Provider.
- (7) Violation of material provisions of this Chapter.

(m) Notice and Duty to Cure. In the event that the City Engineer believes that grounds exist for revocation of consent to Occupy or Use the Public Right-of-Way, 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.

(n) Identification of Facilities. When the City determines that identification of Facilities is necessary to begin planning for Right-of-Way improvement projects, Service Providers, upon receipt of notice by the City, are required to use reasonable efforts to field identify their Facilities. In identifying Facilities, customary industry standards must be adhered to and markings must identify the Service Provider responsible for the Facilities. All markings must also be clearly readable from the ground and include the Service Provider's name, logo and identification numbering or tracking. Advertising is not permitted and all marking colors shall be those approved by the City.

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

(p) New or Additional Facilities When the Right-of-Way is Full. The City shall have the power to prohibit or limit the placement of new or additional Facilities within the Public Right-of-Way if the Right-of-Way is full. In making such decisions, the City shall strive to the extent possible to accommodate all existing and potential users of the Right-of-Way, but shall be guided primarily by considerations of the public health, safety and welfare, the condition of the Right-of-Way, the time of year with respect to essential Utilities, the protection of existing Facilities in the Right-of-Way, future City and County plans, if applicable, for public improvements, development projects which have been determined to be in the public interest and nondiscriminatory and competitively neutral treatment among Service Providers.

915.05 LOCATION, RELOCATION AND REMOVAL OF FACILITIES.

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

- (1) Facilities shall be installed within an existing compatible underground duct or conduit whenever Excess Capacity exists within such Facility.
- (2) Unless application of this provision is specifically prohibited by state or federal law, 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; and no pole located within the Public Right-of-Way shall exceed fifty (50) feet in height unless approved by City Council ordinance.
- (3) Whenever the existing electric, cable, telecommunications and other similar Facilities are located underground in a certain area 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 and economically practicable.
- (4) Whenever a Service Provider is required to locate or relocate Facilities underground in a certain area of the Right-of-Way, every Provider with Facilities within the same certain area of the Right-of-Way shall concurrently relocate their Facilities underground. This requirement may be waived by the City for good cause shown including consideration of such factors as: the remaining economic life of the Facilities, public safety, customer service needs, any Law precluding such undergrounding of the Facilities, and hardship to the Provider, as determined by the City Engineer. If a Provider is denied a requested waiver from the above requirements, the Provider may appeal the denial of the City Engineer to the City Manager as set forth in Section 915.99(c). Notwithstanding the above, no Service Provider shall be required to bear the expense of relocation or undergrounding of any Facilities if such requirement would be prohibited by law.

- (5) 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 Engineer.
- (6) The City reserves the right to require a Service Provider to provide Excess Capacity in the Public Right-of-Way at the time of Construction, Reconstruction, installation, location or relocation of Facilities.

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

(c) City Owned Conduit. If the City owns or leases conduit in the path of a Service Provider's proposed Facilities, and provided it is technologically feasible and not economically impracticable for the Service Provider's Facilities to Occupy the conduit owned or leased by the City, the Service Provider shall be required to Occupy the conduit owned or leased by the City in order to reduce the necessity to Excavate the Public Right-of-Way. The Service Provider shall pay to the City a Public Way Fee that is assessed pursuant to Section 915.08 for such Occupancy.

(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, or commence such work if the City determines completion within thirty (30) days is unnecessary or overly burdensome, whenever the City shall have determined that such removal, relocation, change or alteration is reasonably necessary for:

- (1) The Construction, Reconstruction, repair, maintenance or installation of any City or other public improvement, in, upon, or near the Public Right-of-Way;
- (2) The operations of the City or other governmental entity in or upon the Public Right-of-Way;
- (3) 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 Public Rights of Way; or
- (4) The sale, conveyance, vacation, or narrowing of all or any part of the Public Right-of-Way. Notwithstanding the foregoing, a Service Provider who has Facilities in the Public Rights-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 Revised Code Section 723.041.

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

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

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

- (2) If the System or Facility was Constructed, Reconstructed, installed, operated, located or maintained without the consent to do so, except as otherwise provided by this Chapter;
- (3) Upon abandonment of a Facility in the Public Right-of-Way, with the exception of underground facilities abandoned in a manner authorized and approved by the City;
- (4) If the System or Facility was Constructed, Reconstructed, installed, operated, located or maintained, or any Excavation of a Public Right-of-Way was performed, without prior issuance of a required Construction Permit, except as otherwise provided by this Chapter;
- (5) If the System or Facility was Constructed, Reconstructed, installed, operated, located or maintained, or any Excavation of a Public Right-of-Way was performed, at a location not permitted pursuant to the City's consent to Occupy or Use the Public Right-of-Way or Construction Permit; or
- (6) If the Service Provider fails to comply with the Registration requirements of Section 915.03 of this Chapter.

(f) Failure to remove and/or relocate Facilities. If the Service Provider fails to remove and/or relocate any of its Facilities within the thirty (30) days period set forth in subsection (e) of this Section 915.05, or receive an extension of time from the City Engineer for commencement and completion of removal or relocation, then, to the extent not inconsistent with applicable law, the City shall have the right, but not the obligation, to do the following:

- (1) 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
- (2) Authorize removal of the Facilities installed by the Service Provider in, on, over or under the Rights of Way of the City at Service Provider's cost and expense, by another Person; however, the City shall have no liability for any damage caused by such action and the Service Provider shall be liable to the City for all reasonable costs incurred by the City in such action; and
- (3) To the extent not inconsistent with applicable law, any portion of the Service Provider's Facilities in, on, over or under the Public Right-of-Way of the City designated by the City for removal and not timely removed by the Service Provider shall belong to and become the property of the City, without payment to the Service Provider, and the Service 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.

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

915.06 NOTICE OF WORK, ROUTINE MAINTENANCE AND EMERGENCY WORK.

(a) Notice of Work, Generally. Except in case of Emergency, as provided in Section 915.06(c), or for Routine Maintenance as provided in Section 915.06(b), no Service Provider, or any Person acting on the Service Provider's behalf, shall commence any work in the Public Right-of-Way of the City or Other Ways without forty-eight (48) hours advance notice to the City, obtaining a Construction Permit pursuant to Section 915.07, if required, and obtaining consent to Occupy or Use the Public Right-of-Way pursuant to Section 915.02, if required. The Service Provider shall further notify the Ohio Utility Protection Service (OUPS) not less than forty-eight (48) hours in advance of any Excavation or work in the Public Right-of-Way.

(b) Routine Maintenance and New Service Orders.

- (1) A Service Provider need not obtain a Construction Permit or notify the City prior to or after commencing any Routine Maintenance or New

- Service Orders that do not include the Construction in, or Excavation or Lane Obstruction of, a Public Right-of-Way or closing of a Public Street.
- (2) For Routine Maintenance and New Service Orders that require the Service Provider to cause a Lane Obstruction in a Public Street for more than four (4) hours, the Service Provider shall provide the City with forty-eight (48) hours advance notice prior to commencing the Routine Maintenance or New Service Order, and shall submit a drawing showing the planned traffic maintenance and indicating how the Service Provider will meet all requirements of ODOT's Manual of Traffic Control Devices or other applicable ODOT regulations.

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

915.07 CONSTRUCTION PERMITS AND STANDARDS.

- (a) Construction Permit.
 - (1) No Construction Permit is required for Routine Maintenance and New Service Orders that do not include the Construction in, or Excavation or Lane Obstruction of, a Public Right-of-Way or closing of a Public Street.
 - (2) No Person shall commence or continue with the Construction, Reconstruction, installation, maintenance or repair of Facilities or Excavation in the Public Right-of-Way without obtaining a Construction Permit from the City Building Department as provided in this Section 915.07, including but not limited to the following circumstances:
 - (A) The Construction of a new System or Reconstruction of Facilities to provide a new Service;
 - (B) The extension of a Service Provider's System in the Public Right-of-Way in an area of the City not currently serviced by that Service Provider. This does not include New Service Orders unless a Public Street will be Excavated;
 - (C) Any Construction, Reconstruction, installation, maintenance, repair, replacement, or New Service Orders in the Public Right-of-Way requiring more than one (1) working day to complete; or
 - (D) Any Construction, Reconstruction, installation, maintenance, repair or New Service Orders requiring the Excavation of a Public Street, including the replacement of a pole.
 - (3) With respect to the proposed installation of small cell or micro wireless facilities or wireless support structures associated with small cell or micro wireless facilities, a Service Provider shall utilize a form supplied by the City Engineer, which will reflect processing or "shot clock" requirements imposed by state or federal law, as applicable.
 - (4) No Construction Permit shall be issued for the Construction, Reconstruction, installation, maintenance or repair of Facilities, or Excavation, in the Public Right-of-Way unless the Service Provider has obtained consent from, and filed a current Registration with, the City pursuant to Section 915.02 and Section 915.03, respectively, of this Chapter.
 - (5) The City Engineer may waive or modify the Construction Permit requirements for Service Providers with Underground Facilities whose routine maintenance of Facilities requires Excavation.

(b) Construction Permit Applications. Unless specifically prohibited by state or federal law, applications for Construction Permits shall be submitted upon forms provided by the City, provide the following information, if applicable, and be accompanied by drawings, plans and specifications written in plain English and/or with a key to explain any acronyms or abbreviations, which drawings, plans and specifications shall provide sufficient detail to demonstrate all of the following:

- (1) A preliminary construction schedule.
- (2) That the Facilities will be Constructed, Reconstructed, installed, maintained or repaired, or the Public Right-of-Way Excavated, in accordance with all applicable codes, rules and regulations.
- (3) If the applicant is proposing to Construct, Reconstruct, install, maintain, repair or locate Overhead Facilities:
 - (A) evidence that Surplus Space is available for locating its Facilities on existing utility poles along the proposed route; and
 - (B) the location and route of all Facilities to be located or installed on existing utility poles.
- (4) If the Applicant is proposing to install above-ground Facilities that are not Overhead Facilities, the location of all known existing underground utilities, conduits, ducts, pipes, mains and installations that are in the Right-of-Way in the proposed location of and/or along the route of the proposed above-ground Facilities.
- (5) If the applicant is proposing an underground installation of new Facilities in existing ducts, pipes or conduits in the Public Right-of-Way, information in sufficient detail to identify:
 - (A) the Excess Capacity currently available in such ducts or conduits before the installation of the applicant's Facilities; and
 - (B) the Excess Capacity, if any, that will exist in such ducts or conduits after installation of the applicant's Facilities.
- (6) If the applicant is proposing an underground installation of new Facilities in new ducts or conduits to be Constructed in the Public Right-of-Way:
 - (A) the location and depth proposed for the new ducts or conduits; and
 - (B) the Excess Capacity that will exist in such ducts or conduits after installation of the applicant's Facilities.
- (7) The location and route of all Facilities to be located under the surface of the ground, including the line and grade proposed for the burial at all points along the route which are in the Public Right-of-Way. Included with the installation shall be magnetic and florescent tape placed at a minimum of one foot to a maximum of two (2) feet above the entire Facility as installed for the purpose of locating the Facility during future Construction activities or other such location device as approved by the City Engineer. The tape shall be marked with the type of Facility installed as approved by the City.
- (8) The method of any underground installation (for example, open trenching or boring).
- (9) The location of all existing underground utilities, conduits, ducts, pipes, mains and installations known by the applicant that are in the Public Right-of-Way along the underground route proposed by the applicant.
- (10) The location(s), if any, for interconnection with the Facilities of other Service Providers.
- (11) The construction methods to be employed for protection of existing structures, fixtures and Facilities in or adjacent to the Public Right-of-Way.
- (12) The structures, improvements, Facilities and obstructions, if any, that the applicant proposes to temporarily or permanently remove or relocate.
- (13) The proposed storage locations for vehicles and materials to be utilized during Construction, to be field-verified with the City.
- (14) The impact of Construction, Reconstruction, installation, maintenance or repair of Facilities on trees in or adjacent to the Public Right-of-Way along the route proposed by the applicant, together with a landscape plan for protecting, trimming, removing, replacing and restoring any trees or areas disturbed during Construction in accordance with applicable provisions of this Chapter.
- (15) 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.
- (16) The identity of, and contact information for, each subcontractor of the Service Provider that will do work in connection with the Construction, Reconstruction, installation, maintenance or repair of Facilities, including

restoration work. If the identity of any subcontractor is not known at the time that the application is filed, the Service Provider shall supplement the application as soon as possible after the information is available which shall in every case be at least forty-eight (48) hours prior to performance of any work by such subcontractor.

(c) Construction Codes. Facilities shall be Constructed, Reconstructed, installed, repaired, operated, Excavated and maintained in accordance with all applicable federal, State and local codes, rules, regulations and technical codes including, but not limited to, the National Electrical Safety Code.

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

(e) Issuance of Permit. Within ten (10) business days after submission of all plans and documents required of the Construction Permit applicant, the City Engineer, if satisfied that the applications, plans and documents comply with all requirements of this Chapter, shall issue a Construction Permit authorizing the Construction, Reconstruction, installation, maintenance or repair of the Facilities, or Excavation in the Public Right-of-Way, subject to such further conditions, restrictions or regulations affecting the time, place and manner of performing the work as the City Engineer may deem necessary or appropriate. Such ten (10) business day period shall begin after all submissions are deemed by the City Engineer to be complete and in accordance with the requirements of this Chapter; provided, however, that if state or federal law specifically prohibits application of the ten (10) business day period, it shall be waived to the extent so prohibited.

(f) Coordination of Construction Activities. All Service Providers are required to cooperate with the City, including its Service and Safety forces, and with each other. All Construction, Reconstruction, installation, Excavation, activities and schedules shall be coordinated, as ordered by the City Engineer, to minimize public inconvenience, disruption or damages. Owners of adjoining properties shall be notified by the Service Provider at least twenty-four (24) hours in advance of work that may affect their property.

(g) Modification of Construction Schedule. The Service Provider may modify the construction schedule at any time provided that forty-eight (48) hours advance notice is given to the City Engineer.

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

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

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

(k) Joint Applications. Any Service Provider planning a Capital Improvement in conjunction with another Service Provider with consent to use or occupy the Public Right-of-Way may submit a joint application for a Construction Permit.

(l) Noncomplying Work. Upon order of the City Engineer, all work that does not comply with the Construction Permit, the approved plans and specifications for the work, or the requirements of this Chapter, shall immediately cease and shall be immediately removed and/or corrected by the Service Provider. The City reserves the right to revoke any Construction Permit in the event of a substantial breach of the terms and conditions of any law or any provision or condition of the Construction Permit. Prior to such revocation, the City Engineer must serve a written demand upon the Service Provider to remedy the violation within a specified reasonable period of time. A Service Provider may appeal a revocation to the City Manager in writing within five (5) business days of receiving said revocation order, as set forth in Section 915.99(c).

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

(n) Restoration of Improvements. Upon completion of any Construction work, the Service Provider shall promptly repair any and all areas of the Right-of-Way and adjacent thereto, which were disturbed from the work and restore property improvements, fixtures, structures and Facilities which were damaged during the course of Construction as nearly as practicable to the condition before the start of Construction.

(o) Public Streets. Asphalt patches in Public Streets shall be constructed and installed so as to be as strong and resistant to heaving as the rest of the Public Street surface. During Construction work, dirt and debris resulting from Construction work shall be removed from Public Streets periodically during the day as well as at the end of each day. Further, the Public Streets shall be kept free of dust, dirt and unevenness of travel surfaces resulting from Construction work and other similar hazards to pedestrians, bicyclists and motorists.

(p) Sidewalk, Driveway Apron and Curb Restoration. In repairing and restoring sidewalks, driveway aprons and curbs located within the Public Right-of-Way that are disturbed or damaged during Construction work, the following shall apply:

- (1) Sidewalks shall be designed to be durable and attractive. Plans and specifications shall be provided to the City's Engineer in advance of installation.
- (2) Concrete work shall conform to current best practices for durability, including American Concrete Institute, National Ready Mixed Concrete Association or other nationally accepted standards governing cold weather and hot weather installations and durability. The standard utilized shall be specified in the plans and specifications provided to the City for sidewalk restoration and subject to City approval.
- (3) Sidewalks shall be protected from marks (such as footprints) and vandalism until the concrete has achieved hardness sufficient to resist such marring. Blemished or vandalized sidewalk blocks, and concrete displaying scaling, crazing or blistering, must be removed and re-poured.
- (4) Curing compound shall be applied as per the manufacturer's instructions.
- (5) Stone sidewalks that are not already cracked shall be preserved for reinstallation if that is the preference of the owner of abutting property.
 - a. A contractor with expertise in setting stone walks shall reset stone on compacted finely crushed stone base.
 - b. Pronounced peaks and valleys within sidewalk must be avoided.
 - c. In the event that a stone sidewalk is damaged as a result of Construction work in the Public Right-of-Way, it shall be replaced with a stone sidewalk block, unless this requirement is waived in writing by the City Engineer.
- (6) New commercial driveway aprons shall provide an 8-inch thick concrete slab, or greater thickness slab if directed by the City Engineer. Repairs may match the depth of the existing apron.

- (7) Truncated dome material on curb ramps shall be of a style and color that matches the original, unless a different style or color is requested by the City.

(q) Trees in Public Right-of-Way

- (1) In performing any Construction work which may impact trees with roots, trunk or branches within the Public Right-of-Way, the Service Provider shall avoid soil compaction and impact by use of methods such as construction fencing.
- (2) When tree roots must be affected by any Construction work within the Public Right-of-Way, the Service Provider shall obtain recommendations regarding protective construction practices from a certified arborist having expertise in tree preservation, which recommendations shall be subject to the approval of the Engineer or his/her Designee. Soil compaction and root cutting shall both be considered to require protective construction practices. The arborist's recommendations shall be provided to the Service Director or his/her Designee prior to commencement of Construction.
- (3) Trees within the Public Right-of-Way shall not be removed without the written consent of the City following a request submitted to the Engineer or his/her Designee, unless such removal is required in an Emergency in which case notice of such removal shall be provided to the City Service Director within twenty-four (24) hours of the commencement of such activity. Compensation for trees removed with the City's permission in connection with Construction work performed by a Service Provider shall be paid to the City prior to completion of Construction work, based upon cost of replacement analysis as provided in the *Guide for Plant Appraisals* or similar publication.
- (4) Tree trimming and vegetation management activities in the Right-of-Way must be performed in accordance with generally acceptable horticultural and arboreal standards adopted by the National Arbor Day Foundation, the International Society of Arboriculture, and/or the Tree Care Industry. To the extent that the City has promulgated rules and regulations regarding tree trimming or vegetation management, such rules and regulations shall supersede any conflict with the foregoing standards.
- (5) The Service Provider shall provide the City Service Department with at least two business days' notice of all tree trimming or vegetation management activities, unless such activities are required because of an Emergency, in which case notice shall be provided to the City Service Director within twenty-four (24) hours of the commencement of such activity.

(r) Landscape Restoration.

- (1) All trees, landscaping and grounds removed, damaged or disturbed as a result of the Construction, Reconstruction, installation, maintenance, repair or replacement of Facilities must be replaced or restored as nearly as may be practicable, to the condition existing prior to performance of work, except to the extent that tree trimming is necessary to prevent the interference of tree branches with Overhead Facilities. Trees that were to have been preserved in accordance with the requirements of this Section that die within one year following completion of Construction shall require compensation to be paid to the City, based upon cost of replacement analysis as provided in the *Guide for Plant Appraisals* or similar publication.
- (2) Grass or lawn areas within the Public Right-of-Way that are disturbed or damaged during Construction work shall be restored to a grassy condition.
 - a. Topsoil shall be stockpiled separately from poorer-quality clay and subsurface soils. In grass or lawn restoration, soils shall be returned to their respective layers.
 - b. When existing soil has been disturbed to such an extent that it will not support the establishment of viable grass, topsoil shall be added in quantities sufficient to support grass. Clay soils shall not

be used for the top twelve inches of a grass or lawn area to be restored.

c. Service Providers shall follow accepted best practices for ensuring grass that is thick and green in connection with such restoration work.

(3) All restoration work within the Public Right-of-Way shall be done in accordance with landscape plans approved by the City Engineer.

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

(1) The Construction Bond shall remain in force until eighteen (18) months after substantial completion of the work, as determined by the City Engineer, 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 Engineer may file an Annual Construction Bond (or Annual Bond) in the form described above in an amount that the City Engineer may determine will adequately protect the City's interests as described above.

(t) Responsibility of Owner. The owner of the Facilities to be Constructed, Reconstructed, installed, located, operated, maintained or repaired and, if different, the Service Provider, are responsible for performance of and compliance with all provisions of this Section.

(u) Recovery of Costs. The City may recover the City's costs related to issuance and enforcement of any Construction Permits issued under this Section 915.07 in the manner prescribed in Section 915.08. This provision shall supersede any other provisions in the City's codes or regulations relating to construction fees or construction permit fees for Service Providers' facilities within the City's Right-of-Way.

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

(a) Purpose. It is the purpose of this Section 915.08 to provide for the recovery of all direct and indirect costs and expenses actually incurred by the City and associated with a Public or Private Service Provider's Occupancy or Use of the Public Right-of-Way and related to the enforcement and administration of this Chapter. All fees related to the Occupancy or Use of the Public Right-of-Way shall be considered to be Public Way Fees as that term is defined in this Chapter and shall be assessed by the City in a manner which is in accordance with Chapter 4939 of the Ohio Revised Code and any other applicable law.

(b) Waiver or Offset of Public Way Fees. Public Way Fees assessed against a governmental entity shall be waived. Public Way Fees assessed against Cable Operators shall be offset and/or credited in accordance with Section 915.09.

(c) Assessment of Public Way Fees. The City Manager shall have the authority to assess Public Way Fees for Occupancy or Use of the Public Right-of-Way consistent with the provisions of this Chapter without further action of City Council.

(d) 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.

915.09 CABLE TELEVISION FRANCHISE.

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

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

(c) Credit for Payment of Franchise Fee. Any Cable Operator paying a franchise fee or Video Service Provider fee, or providing free service or other non-monetary compensation to the City pursuant to a franchise agreement, shall be entitled to a credit, offset or deduction against any reimbursement of City costs assessed under this Chapter, and pursuant to Ohio Revised Code Section 1332.32, for all such franchise fees or Video Service Provider fees and the retail value of the free service or other non-monetary compensation.

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

(a) Private Facilities. Persons who wish to use the Public Right-of-Way of the City for Private Facilities shall obtain consent from the City pursuant to Section 915.02, register pursuant to Section 915.03, obtain all Construction Permits applicable pursuant to Section 915.07 and comply with all provisions of this Chapter.

915.11 MISCELLANEOUS PROVISIONS.

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

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

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

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

(e) Notices. Any notice or order referenced in this Chapter is properly served as set forth below.

If to the City:

- (i) Delivered Personally to the proper recipient under this Chapter;
- (ii) Sent by certified, pre-posted U.S. mail to the proper recipient under this Chapter; or
- (iii) Sent by common carrier with receipt tracking to the proper recipient under this Chapter.

If to the Service Provider or other Person:

- (i) Delivered Personally to the Service Provider or other intended recipient;
- (ii) Left at the Service Provider's or other intended recipient's usual place of business with someone representing themselves as an employee of the Service Provider, or intended recipient, who is 18 years of age or older

- who would reasonably be responsible for receiving correspondence addressed to the Service Provider or intended recipient;
- (iii) Sent by certified, pre-posted U.S. mail to the last known address of the Service provider or other intended recipient;
 - (iv) 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. mail; or
 - (v) 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.

915.99 PENALTIES AND OTHER REMEDIES.

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

(b) Civil Violations and Forfeiture.

- (i) In lieu of the criminal penalties set forth above, the City Engineer may make an initial finding of a civil violation by any Person for violating, disobeying, omitting, neglecting or refusing to comply with any of the provisions of this Chapter.
- (ii) The Civil Forfeiture shall be in an amount payable to the City of not less than \$100.00 nor more than \$500.00 for each offense. A separate and distinct offense shall be deemed committed each day on which a violation occurs or continues.
- (iii) An action for civil forfeiture shall be commenced by the City Engineer providing the violating Person with written notice describing in reasonable detail the alleged violation of one or more provisions of this Chapter and the amount of the penalty that will be assessed against it.
- (iv) The violating Person shall have fifteen (15) days, or other period of time as specifically set forth in this Chapter for the violation, subsequent to receipt of the notice of violation in which to correct the violation before the City may assess penalties against the violating Person. The time in which to cure the violation may be extended by the City if additional time is required to correct the violation; provided that the violating Person commences corrective action within seven (7) days of the notice of violation and proceeds with reasonable diligence.
- (vi) The Person may dispute the alleged violation as set forth in Subsection (c) of this Section 915.99.
- (vii) If the City Manager finds after hearing that the alleged violation(s) did occur, the penalty shall be assessed starting from the day upon which the period allowed to cure the violation terminated and shall continue until the violation has been corrected.

(c) Appeals. Any notice of violation or determination of a denial of an application or registration under this Chapter may be appealed by filing a written request for a hearing by the City Manager within fifteen (15) days from the date that such notice of violation or determination is received by the alleged violator, unless the provisions of this Chapter otherwise set forth a different time period for filing an appeal. Upon receipt of such a request, the City Manager shall set a time and place for such hearing and shall cause notice thereof to be given to such person, in accordance with 915.11(e), not less than five (5) days prior to the hearing. The notice shall advise the appellant that evidence and testimony will be heard, that the appellant may call witnesses and cross examine witnesses against the appellant, and that the City Manager may subpoena any person who the appellant reasonably believes can provide competent testimony or evidence on the matter. A copy of such notice, specifying the purpose of the hearing and the time and place thereof at which all interested persons shall be heard, shall also be posted in the City Hall. Such notice may also be published in one or more newspapers of general circulation in the City.

Such hearing shall be conducted by the City Manager, and shall be conducted in the manner described in the notice. Not more than ten (10) days after the conclusion of such hearing, the City Manager shall issue an order confirming, modifying or rescinding the notice of violation or determination on appeal. Any such order shall be a final order, within the meaning of Ohio Revised Code Section. 2506.01, upon the filing of a copy thereof with the Clerk of Council. A copy of such order shall be served as soon as possible, in accordance with 915.11(e), upon the person requesting the hearing.

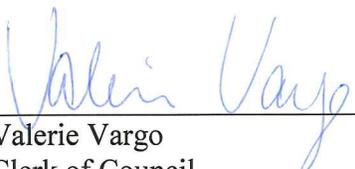
(d) Other Remedies. Nothing in this Chapter shall be construed as limiting any judicial remedies that the City may have, at law or in equity, for enforcement of this Chapter.

SECTION II. That this Ordinance is passed and adopted for the protection and preservation of the peace, health, safety and general welfare of the inhabitants of the City of Painesville, the proposed changes are necessary to ensure that any utility construction within the City's Rights-of-Way are permitted in a timely manner to protect residents and the City's infrastructure and therefore, this Ordinance shall be effective at the earliest date allowed by law.

PASSED: March 20, 2017



Paul Hach, II
President of Council



Valerie Vargo
Clerk of Council