

NEW LEGISLATION

March 25, 2019

Temp. No.	Introduced	Committee	Description
B-22	3/25/19	PZ	An ordinance accepting the Planning Commission approval, findings and conditions of the site plan for The Summit County salt storage facility at 38 Steels Corners Road (Parcel 35-00219), and declaring an emergency.
B-23	3/25/19	Fin	An ordinance authorizing the Director of Public Service to enter into a contract or contracts, according to law, for the demolition of buildings and removal of demolition debris at various locations in the City, and certifying the cost thereof to the County Fiscal Officer for collection in the manner provided by law, and declaring an emergency.
B-24	3/25/19	Fin	An ordinance authorizing the Mayor to enter into a development agreement with CF Development Group, LLC for the construction of multifamily development projects at 2221 2nd Street and 2035 Old Town Loop Road, Cuyahoga Falls, Ohio, and declaring an emergency.
B-25	3/25/19	Fin	Adoption of Economic Development Plan; creating a Tax Increment Financing Incentive District; declaring improvements to the parcels within the incentive district to be a public purpose and exempt from real property taxation; requiring the owners of those parcels to make service payments in lieu of taxes; establishing a Municipal Public Improvement Tax Increment Equivalent Fund for the deposit of those service payments; and specifying the public infrastructure improvements that benefit or serve parcels in the Incentive District, and declaring an emergency.
B-26	3/25/19	PA	An ordinance authorizing the Mayor to enter into a NOPEC Energized

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Community Grant Agreement with NOPEC, Inc. for energy efficiency or energy infrastructure projects, and declaring an emergency.

B-27 3/25/19 PA

An ordinance enacting new Title Nine, Chapter 951 “Management, Administration and Control of the Use of the City’s Public Rights-of-Way” into the Codified Ordinances of the City of Cuyahoga Falls, Ohio, and declaring an emergency.

CALENDAR

March 25, 2019

The following legislation will be up for passage at the Council Meeting on March 25, 2019.

Temp. No.	Introduced	Committee	Description
B-19	3/11/19	Fin	An ordinance authorizing the Director of Public Safety to enter into a contract or contracts, according to law, for the purchase of turnout gear for use by the Fire Department, and declaring an emergency.
B-20	3/11/19	Fin	An ordinance authorizing the amendment of Ordinance No. 11-2019, and declaring an emergency.
B-21	3/11/19	PA	An ordinance amending and/or supplementing Section 537.16 of Title One, Part Five of the Codified Ordinances, to prohibit the sale of cigarettes, tobacco products, or tobacco product paraphernalia to individuals under the age of twenty-one; authorizing a contract with the Summit County Combined General Health District to implement these provisions through regulations, and declaring an emergency.

PENDING LEGISLATION

March 25, 2019

Temp. No.	Introduced	Committee	Description
B-1*	1/14/19	PZ	An ordinance approving a zoning map amendment for the former Sycamore Valley Golf Course located at 1651 Akron Peninsula Road (Parcels 35-02255, 35-00674, 35-00672, and 35-00673 and 02-05625), from E-1 Employment District to R-3 Sub-Urban Density Residential, as more fully described and depicted herein, and declaring an emergency.
B-7**	2/11/19	PZ	An ordinance approving regulatory text amendments for Section 1111.08 Administration and Enforcement and Section 1124.03 Flood Plain and Stormwater in The Cuyahoga Falls General Development Code, and declaring an emergency.
B-19	3/11/19	Fin	An ordinance authorizing the Director of Public Safety to enter into a contract or contracts, according to law, for the purchase of turnout gear for use by the Fire Department, and declaring an emergency.
B-20	3/11/19	Fin	An ordinance authorizing the amendment of Ordinance No. 11-2019, and declaring an emergency.
B-21	3/11/19	PA	An ordinance amending and/or supplementing Section 537.16 of Title One, Part Five of the Codified Ordinances, to prohibit the sale of cigarettes, tobacco products, or tobacco product paraphernalia to individuals under the age of twenty-one; authorizing a contract with the Summit County Combined General Health District to implement these provisions through regulations, and declaring an emergency.

* Public Hearing 2-19-19

** Public Hearing 4-1-19

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5 CITY OF CUYAHOGA FALLS, OHIO

6
7 ORDINANCE NO. - 2019

8
9 AN ORDINANCE ACCEPTING THE PLANNING COMMISSION
10 APPROVAL, FINDINGS AND CONDITIONS OF THE SITE PLAN FOR
11 THE SUMMIT COUNTY SALT STORAGE FACILITY AT 38 STEELS
12 CORNERS ROAD (PARCEL 35-00219), AND DECLARING AN
13 EMERGENCY.

14
15 WHEREAS, the Charter of the City of Cuyahoga Falls requires that all decisions made by the
16 Planning Commission be submitted to Council; and

17
18 WHEREAS, on March 19, 2019, the Planning Commission recommended approval of the site
19 plan for a salt storage facility at 38 Steels Corners Road (Parcel 35-00219); and

20
21 WHEREAS, the facility will house a 12,920 square foot salt storage structure; and

22
23 WHEREAS, such approval is given subject to conditions subsequent to be satisfied; and

24
25 WHEREAS, such approval is necessary to determine that the site plan is satisfactory, serves the
26 public interest, and is acceptable for recording.

27
28 NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Cuyahoga Falls, County of
29 Summit, and State of Ohio, that:

30
31 Section 1. The City Council approves the site plan for The County of Summit salt storage
32 facility, with a 12,920 square foot salt storage structure, at 38 Steels Corners Road (Parcel 35-00219)
33 as approved by the Planning Commission on March 19, 2019 per the plans and findings contained in
34 Project File MSP-19-00007.

35
36 Section 2. Any other ordinances or resolutions or portions of ordinances and resolutions
37 inconsistent herewith are hereby repealed, but any ordinances and resolutions not inconsistent
38 herewith and which have not previously been repealed are hereby ratified and confirmed.

39
40 Section 3. It is found and determined that all formal actions of this Council concerning and
41 relating to the adoption of this ordinance were adopted in an open meeting of this Council, and that
42 all deliberations of this Council and of any of its committees that resulted in such formal action, were
43 in meetings open to the public, in compliance with all legal requirements, to the extent applicable,
44 including Chapter 107 of the Codified Ordinances.

45
46 Section 4. This ordinance is hereby declared to be an emergency measure necessary for the
47 preservation of the public peace, health, safety, convenience and welfare of the City of Cuyahoga Falls
48 and the inhabitants thereof, for the reason that it is immediately necessary to permit timely and
49 appropriate development of this property, and provided it receives the affirmative vote of two thirds
50 of the members elected or appointed to Council, it shall take effect and be in force immediately upon its
51 passage and approval by the Mayor; otherwise it shall take effect and be in force at the earliest period
52 allowed by law.

53
54
55 Passed: _____

President of Council

56
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58 _____
59 Clerk of Council

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61 Approved: _____

Mayor

62
63 3/25/19

3
4 CITY OF CUYAHOGA FALLS, OHIO

5
6 ORDINANCE NO. - 2019

7
8 AN ORDINANCE AUTHORIZING THE DIRECTOR OF PUBLIC
9 SERVICE TO ENTER INTO A CONTRACT OR CONTRACTS,
10 ACCORDING TO LAW, FOR THE DEMOLITION OF BUILDINGS AND
11 REMOVAL OF DEMOLITION DEBRIS AT VARIOUS LOCATIONS IN
12 THE CITY, AND CERTIFYING THE COST THEREOF TO THE
13 COUNTY FISCAL OFFICER FOR COLLECTION IN THE MANNER
14 PROVIDED BY LAW, AND DECLARING AN EMERGENCY.
15

16 WHEREAS, the Building Official has declared the buildings identified in Section 1 below to be
17 dangerous buildings within the meaning of Chapter 1343 of the Summit County Codified
18 Ordinances; and
19

20 WHEREAS, the Building Official has provided notice to all owners and interested parties
21 concerned with the buildings identified in Section 1 below, instructing such owners and interested
22 parties as to the repairs required to make the building safe, ordering the owners to repair or
23 demolish the buildings accordingly, and informing the owners and interested parties of their right
24 of appeal under Section 1343.07 of said Chapter; and
25

26 WHEREAS, no appeals of the Building Official’s orders have been received; and
27

28 WHEREAS, no remediation of the conditions found by the Building Official have been
29 attempted or accomplished by any of the owners or interested parties.
30

31 NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Cuyahoga Falls, County of
32 Summit and State of Ohio, that:
33

34 Section 1. Council hereby finds and determines that the following described structures are
35 insecure, unsafe, and structurally defective within the meaning of Ohio Revised Code §715.26, and
36 dangerous buildings within the meaning of Section 1343.01 of the Summit County Codified
37 Ordinances:
38

- 39 1) 3310 Wilson Street (all structures)
- 40 2) 1521 Main Street (all structures)

41
42 Section 2. The Director of Public Service is authorized to enter into a contract or contracts,
43 according to law, for the demolition of the dangerous buildings listed in Section 1 above, and
44 removal of debris therefrom.
45

46 Section 3. The Finance Director is authorized to make payment for same from the Capital
47 Projects Fund, Line Item Capital Outlay.
48

49 Section 4. In accordance with the Ohio Revised Code §715.26, the Finance Director is hereby
50 directed to certify the costs of demolition and debris removal to the Clerk of Council who shall then
51 certify the same to the Summit County Fiscal Officer for placement thereof on the tax duplicate
52 together with interest and penalties provided by law.
53

54 Section 5. Any other ordinances and resolutions or portions of ordinances and resolutions
55 inconsistent herewith are hereby repealed, but any ordinances and resolutions or portions of

56 ordinances and resolutions not inconsistent herewith and which have not previously been repealed
57 are hereby ratified and confirmed.

58
59 Section 6. It is found and determined that all formal actions of this Council concerning and
60 relating to the adoption of this ordinance were adopted in an open meeting of this Council and that
61 all deliberations of this Council and of any of its committees that resulted in such formal action
62 were in meetings open to the public, in compliance with all legal requirements including, to the
63 extent applicable, including Chapter 107 of the Codified Ordinances.

64
65 Section 7. This ordinance is hereby declared to be an emergency measure necessary for the
66 preservation of the public peace, health, safety, convenience and welfare of the City of Cuyahoga
67 Falls and the inhabitants thereof, and provided it receives the affirmative vote of two thirds of the
68 members elected or appointed to Council, it shall take effect and be in force immediately upon its
69 passage and approval by the Mayor; otherwise it shall take effect and be in force at the earliest
70 period allowed by law.

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73 Passed: _____
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75 President of Council

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79 Clerk of Council

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81 Approved: _____
82 _____
83 Mayor

83 3/25/19

84 O:\2019ords\Demos 3310 Wilson St 1521 Main St.doc

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4 CITY OF CUYAHOGA FALLS, OHIO

5
6 ORDINANCE NO. - 2019

7
8 AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO A
9 DEVELOPMENT AGREEMENT WITH CF DEVELOPMENT GROUP,
10 LLC FOR THE CONSTRUCTION OF MULTIFAMILY DEVELOPMENT
11 PROJECTS AT 2221 2ND STREET AND 2035 OLD TOWN LOOP
12 ROAD, CUYAHOGA FALLS, OHIO, AND DECLARING AN
13 EMERGENCY.
14

15
16 WHEREAS, Opportunity Zones were added to the tax code by the Tax Cuts and Jobs Act on
17 December 22, 2017; and
18

19 WHEREAS, an Opportunity Zone is an economically-distressed community where new
20 investments, under certain conditions, may be eligible for preferential tax treatment and such
21 zones have now been designated covering parts of all 50 states, the District of Columbia and five
22 U.S. territories; and
23

24 WHEREAS, the purpose of Opportunity Zones is an economic development tool which is
25 designed to spur economic development and job creation in distressed communities by providing
26 tax benefits to investors; and
27

28 WHEREAS, an Opportunity Zone has been created in the City of Cuyahoga Falls (“City”) and the
29 city-owned public parking decks located at 2221 2nd Street (Green Deck) and 2035 Old Town Loop
30 Road (Blue Deck), are included in this zone; and
31

32 WHEREAS, the City previously retained Gibbs Planning Group to conduct a residential
33 feasibility analysis for downtown, which study determined that there was a need for new residential
34 housing opportunities within the City’s newly revitalized downtown area; and
35

36 WHEREAS, CF Development Group, LLC (“Developer”) desires to invest approximately
37 \$45,000,000.00 in multifamily development projects in the downtown area; and
38

39 WHEREAS, this investment would generate approximately 370 new housing units in downtown
40 Cuyahoga Falls; and
41

42 WHEREAS, this Agreement requires a Community Reinvestment Act ordinance that would
43 provide a 100%-15 year tax abatement and a concurrent 100%-30 year TIF, which would require
44 Council and Cuyahoga Falls City School District Board of Education approval (collectively, the
45 “Abatement and TIF Ordinance”); and
46

47 WHEREAS, this Agreement is in the best interest of the City as the project will create housing
48 opportunities and spur economic development and job creation within the City.
49

50 NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Cuyahoga Falls, County of
51 Summit and State of Ohio, that:
52

53 Section 1. The Council hereby approves the form of the Development Agreement with CF
54 Development Group, LLC for the construction of multifamily development projects at 2221 2nd
55 Street (Green Deck) and 2035 Old Town Loop Road (Blue Deck), a copy of which is on file with the
56 Clerk of Council, and the Mayor is hereby authorized to execute the Development Agreement on

57 behalf of the City in substantially the form on file with the Clerk, together with such revisions, or
58 additions as are necessary and to enter into such amendments as are approved by the Director of
59 Law as not being materially adverse to the objectives and requirements of this ordinance and the
60 Agreement. The Mayor, Director of Community Development, Director of Finance, Director of Law
61 and other necessary City officials (a) are authorized to provide such other information and to
62 execute such other documents and do all other actions as are necessary for and incidental to
63 carrying out the requirements of this ordinance and the terms of the Development Agreement, and
64 (b) shall use their best efforts to submit the Abatement and TIF Ordinance to Council for its
65 approval not later than thirty (30) days after Council approval of this ordinance authorizing the
66 execution of the Development Agreement by the Mayor.

67
68 Section 2. Any other ordinances or resolutions or portions of ordinances and resolutions
69 inconsistent herewith are hereby repealed, but any ordinances and resolutions or portions of
70 ordinances and resolutions not inconsistent herewith and which have not previously been repealed
71 are hereby ratified and confirmed.

72
73 Section 3. It is found and determined that all formal actions of this Council concerning and
74 relating to the adoption of this ordinance were adopted in an open meeting of this Council and that
75 all deliberations of this Council and of any of its committees that resulted in such formal action
76 were in meetings open to the public, in compliance with all legal requirements, to the extent
77 applicable, Chapter 107 of the Codified Ordinances.

78
79 Section 4. This ordinance is hereby declared to be an emergency measure necessary for the
80 preservation of the public peace, health, safety, convenience and welfare of the City of Cuyahoga
81 Falls and the inhabitants thereof, and provided it receives the affirmative vote of two thirds of the
82 members elected or appointed to Council, it shall take effect and be in force immediately upon its
83 passage and approval by the Mayor; otherwise it shall take effect and be in force at the earliest
84 period allowed by law.

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87 Passed: _____

President of Council

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Clerk of Council

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95 Approved: _____

Mayor

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98 3/25/19

99 O:\2019ords\Multifamily Development Projects Ordinance.doc

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3
4 CITY OF CUYAHOGA FALLS

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6 ORDINANCE NO. -2018

7
8 ADOPTION OF ECONOMIC DEVELOPMENT PLAN; CREATING A
9 TAX INCREMENT FINANCING INCENTIVE DISTRICT;
10 DECLARING IMPROVEMENTS TO THE PARCELS WITHIN THE
11 INCENTIVE DISTRICT TO BE A PUBLIC PURPOSE AND EXEMPT
12 FROM REAL PROPERTY TAXATION; REQUIRING THE OWNERS
13 OF THOSE PARCELS TO MAKE SERVICE PAYMENTS IN LIEU OF
14 TAXES; ESTABLISHING A MUNICIPAL PUBLIC IMPROVEMENT
15 TAX INCREMENT EQUIVALENT FUND FOR THE DEPOSIT OF
16 THOSE SERVICE PAYMENTS; AND SPECIFYING THE PUBLIC
17 INFRASTRUCTURE IMPROVEMENTS THAT BENEFIT OR SERVE
18 PARCELS IN THE INCENTIVE DISTRICT, AND DECLARING AN
19 EMERGENCY.
20

21
22 WHEREAS, the City desires to facilitate the development of certain property within the City as identified
23 on Exhibit A attached hereto, on which the City expects to be developed approximately [88] single-family
24 homes that will comprise the development generally known as [Sourek Trail] (the “Project”); and
25

26 WHEREAS, in order to develop the Project, it is necessary to construct certain public infrastructure
27 improvements; and
28

29 WHEREAS, this Council, pursuant to ORC Sections 5709.40, 5709.42 and 5709.43 (collectively, the
30 “TIF Act”), is authorized to declare improvements to real property to be a public purpose, exempt those
31 improvements from real property taxation, and require owners of the real property to make service payments
32 in lieu of taxes in an amount equal to such exempted taxes; and
33

34 WHEREAS, to facilitate the development of the Project and pay the associated costs of the necessary
35 public infrastructure improvements from service payments in lieu of taxes, this Council has determined to
36 create the Sourek Trail Incentive District (the “Incentive District”) pursuant to the TIF Act, the boundaries
37 of which shall be coextensive with the boundaries of, and will include, the parcels of real property within
38 each Incentive District specifically identified and depicted in Exhibit A attached hereto (as currently or
39 subsequently configured, the “Parcels”, with each of those parcels referred to herein individually as a
40 “Parcel”); and
41

42 NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Cuyahoga Falls, Summit County,
43 Ohio, that:
44

45 Section 1. Incentive District Findings and Determinations; Creation of Incentive District. This Council
46 hereby: (i) adopts the Economic Development Plan for the Incentive District now on file with the City’s
47 Department of Community Development, (ii) accepts and adopts the City Engineer’s certification to this
48 Council and the City Engineer’s finding set forth therein (a) that the public infrastructure serving the
49 Incentive District is inadequate to meet the development needs of the Incentive District as evidenced by the
50 Economic Development Plan, and (b) that the Incentive District is less than 300 acres in size and enclosed
51 by a contiguous boundary, (iii) finds and determines that the Project will place additional demand on the
52 Public Infrastructure Improvements, (iv) finds and determines that the City sent written notice of the public
53 hearing regarding this ordinance by first class mail to each owner of real property within the proposed
54 Incentive District at least 30 days before the date of the public hearing, which notice included a map of the
55 proposed Incentive District as well as the overlay area required by ORC Section 5709.40(C)(2), (v) [finds and
56 determines that this Council has not received a request from the owner of any real property within any
57 proposed Incentive District to exclude that owner’s property from the Incentive District], and (vi) finds and
58 determines that notice of this ordinance has been delivered to the Board of Education of the [Cuyahoga City
59 School District] in accordance with and within the time periods prescribed in ORC Sections 5709.40 and
60 5709.83. This Council further finds that the sum of the taxable value of real property in the Incentive
61 District for tax year 2018 and the taxable value of all real property in the City that would have been taxable

62 in tax year 2018 were it not for the fact that the property was in an existing incentive district and therefore
63 exempt from taxation, does not exceed twenty-five percent of the taxable value of real property within the
64 City for tax year 2018. Pursuant to the TIF Act, this Council creates the Incentive District, the boundaries
65 of which are coextensive with the boundaries of, and include, the Parcels specifically identified and depicted
66 in Exhibit A attached hereto.

67
68 Section 2. Public Infrastructure Improvements. This Council hereby designates the public
69 infrastructure improvements described in Exhibit B (the “Public Infrastructure Improvements”) and any other
70 public infrastructure improvements hereafter designated by ordinance as public infrastructure improvements
71 made, to be made or in the process of being made by the City that benefit or serve, or that once made will
72 benefit or serve, the Parcels.

73
74 Section 3. Authorization of Tax Exemption; Life of Incentive District. Pursuant to and in accordance
75 with the provisions of ORC Section 5709.40(C), this Council declares that 75% of the increase in assessed
76 value of each Parcel subsequent to the effective date of this ordinance (which increase in assessed value is
77 hereinafter referred to as the “Improvement” as defined in ORC Section 5709.40(A)) is a public purpose and
78 exempt from taxation for a period coextensive with the life of the Incentive District. The life of the Incentive
79 District commences with the first tax year that begins after the effective date of this ordinance and in which
80 an Improvement attributable to a new structure would first appear on the tax list and duplicate of real and
81 public utility property for any Parcel within the Incentive District were it not for the exemption granted in
82 this ordinance and ends on the earlier of (a) 10 years after such commencement or (b) the date on which
83 the City can no longer require service payments in lieu of taxes, all in accordance with the requirements of
84 the TIF Statutes.

85
86 Section 4. Service Payments and Property Tax Rollback Payments. Pursuant to ORC Section 5709.42,
87 the owner of each Parcel is hereby required to make annual service payments in lieu of taxes with respect
88 to the Improvement to that Parcel to the Summit County Fiscal Officer (the “County Fiscal Officer”) on or
89 before the final dates for payment of real property taxes. Each service payment in lieu of taxes, including
90 any penalties and interest at the then current rate established for real property taxes (collectively, the
91 “Service Payments”), will be charged and collected in the same manner and in the same amount as the real
92 property taxes that would have been charged and payable against the Improvement if it were not exempt
93 from taxation pursuant to Section 3 of this Ordinance. The Service Payments, and any other payments
94 with respect to each Improvement that are received by each County Fiscal Officer in connection with the
95 reduction required by ORC Sections 319.302, 321.24, 323.152 and 323.156, as the same may be amended
96 from time to time, or any successor provisions thereto as the same may be amended from time to time (the
97 “Property Tax Rollback Payments”), will be deposited and distributed in accordance with Section 6 of this
98 Ordinance.

99
100 Section 5. TIF Fund. This Council hereby establishes the Sourek Trail Incentive District Municipal
101 Public Improvement Tax Increment Equivalent Fund (the “TIF Fund”). The TIF Fund shall be maintained
102 in the custody of the City and shall receive all distributions to be made to the City pursuant to Section 6 of
103 this Ordinance. Those Service Payments and Property Tax Rollback Payments received by the City with
104 respect to the Improvement of each Parcel and so deposited pursuant to the TIF Act shall be used solely for
105 the purposes authorized in the TIF Act or this ordinance (as it may be amended or supplemented). The TIF
106 Fund shall remain in existence so long as such Service Payments and Property Tax Rollback Payments are
107 collected and used for the aforesaid purposes, after which time the TIF Fund shall be dissolved and any
108 incidental surplus funds remaining therein transferred to the City's General Fund, all in accordance with
109 the TIF Act.

110
111 Section 6. Distribution of Funds. Pursuant to the TIF Act, the County Fiscal Officer is requested to
112 distribute the Service Payments and Property Tax Rollback Payments to the City for further deposit into the
113 TIF Fund for payment of costs of the Public Infrastructure Improvements, including, without limitation, debt
114 charges on any notes or bonds of the City issued to pay or reimburse costs of those Public Infrastructure
115 Improvements or finance costs for those improvements or to reimburse the City for costs of those Public
116 Infrastructure Improvements paid prior to the City's receipt of Service Payments and Property Tax Rollback
117 Payments. All distributions required under this Section are requested to be made at the same time and in
118 the same manner as real property tax distributions.

119
120 Section 7. Further Authorizations. This Council hereby authorizes and directs the Mayor, the Director
121 of Law, the Director of Finance, or other appropriate officers of the City to make such arrangements as are
122 necessary and proper for collection of the Service Payments. This Council further authorizes the Mayor, the

123 Director of Law, the Director of Finance or, or other appropriate officers of the City to prepare and sign all
124 agreements and instruments and to take any other actions as may be appropriate to implement this
125 ordinance.
126

127 Section 8. Filings with Ohio Development Services Agency. Pursuant to Ohio Revised Code Section
128 5709.40(I), the Mayor, the Director of Law, the Director of Finance, or any other appropriate officer of the City
129 is hereby directed to deliver a copy of this ordinance to the Director of the Ohio Development Services Agency
130 within fifteen days after its effective date. Further, and on or before March 31 of each year that the tax
131 exemption authorized by Section 3 remains in effect, the Mayor, the Director of Law, the Director of Finance,
132 or any other authorized officer of the City is directed to prepare and submit to the Director of the Ohio
133 Development Services Agency the status report required under Ohio Revised Code Section 5709.40(I).
134

135 Section 9. Open Meetings. This Council finds and determines that all formal actions of this Council
136 and any of its committees concerning and relating to the passage of this ordinance were taken in an open
137 meeting of this Council or any of its committees, and that all deliberations of this Council and any of its
138 committees that resulted in those formal actions were in meetings open to the public, all in compliance with
139 the law including ORC Section 121.22.
140

141 Section 10. Effective Date. This ordinance is declared to be an emergency measure necessary for the
142 immediate preservation of the public peace, health and safety, and for the further reason that this ordinance
143 is required to be immediately effective in order to enable the City to timely enter into contracts related to
144 the timely development of the Incentive District and related public infrastructure improvements; wherefore,
145 this ordinance shall be in full force and effect immediately upon its passage and approval by the Mayor;
146 otherwise it shall take effect and be in force at the earliest period allowed by law..
147

148 Passed: _____
149 _____
150 President of Council

151 _____
152 _____
153 Clerk of Council

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155 _____
156 Approved: _____
157 _____
158 Mayor

159 _____
160 3/25/19
161 O:\2019ords\Economic Development Plan Approval (SourekTrail).docx
162

EXHIBIT A
IDENTIFICATION AND MAP OF THE PARCELS

The enclosed area on the following map specifically identifies and depicts the Parcels and the boundaries of the Incentive District, and constitutes part of this Exhibit A. The following Parcel numbers are as of March 1, 2019, and are included for ease of reference only.

Parcel Numbers:

3500189	3502082	3506684
3500192	3502429	3506685
3500193	3502443	3506686
3500323	3502444	3506687
3500365	3502496	3506688
3500366	3502962	3506689
3500455	3502963	3506690
3500476	3503150	3506691
3500584	3503173	3506692
3500602	3503176	3506693
3500647	3503232	3506694
3500818	3503378	3506695
3500886	3505360	3506696
3500957	3505606	3506697
3500958	3505895	3506698
3500963	3505896	3506699
3501482	3505897	3506700
3501535	3506339	3506701
3501556	3506351	3506702
3501763	3506352	3506703
3501764	3506353	3506704
3501765	3506354	3506705
3501773	3506453	3506706
3501915	3506575	3506707
3501946	3506674	3506708
3501952	3506675	3506709
3501953	3506676	3506710
3501955	3506677	3506711
3501956	3506678	3506712
3501957	3506679	3506713
3501958	3506680	3506714
3501959	3506681	3506715
3501960	3506682	3506716
3502038	3506683	3506717

TAX INCENTIVE DISTRICT 275 ACRE OVERLAY

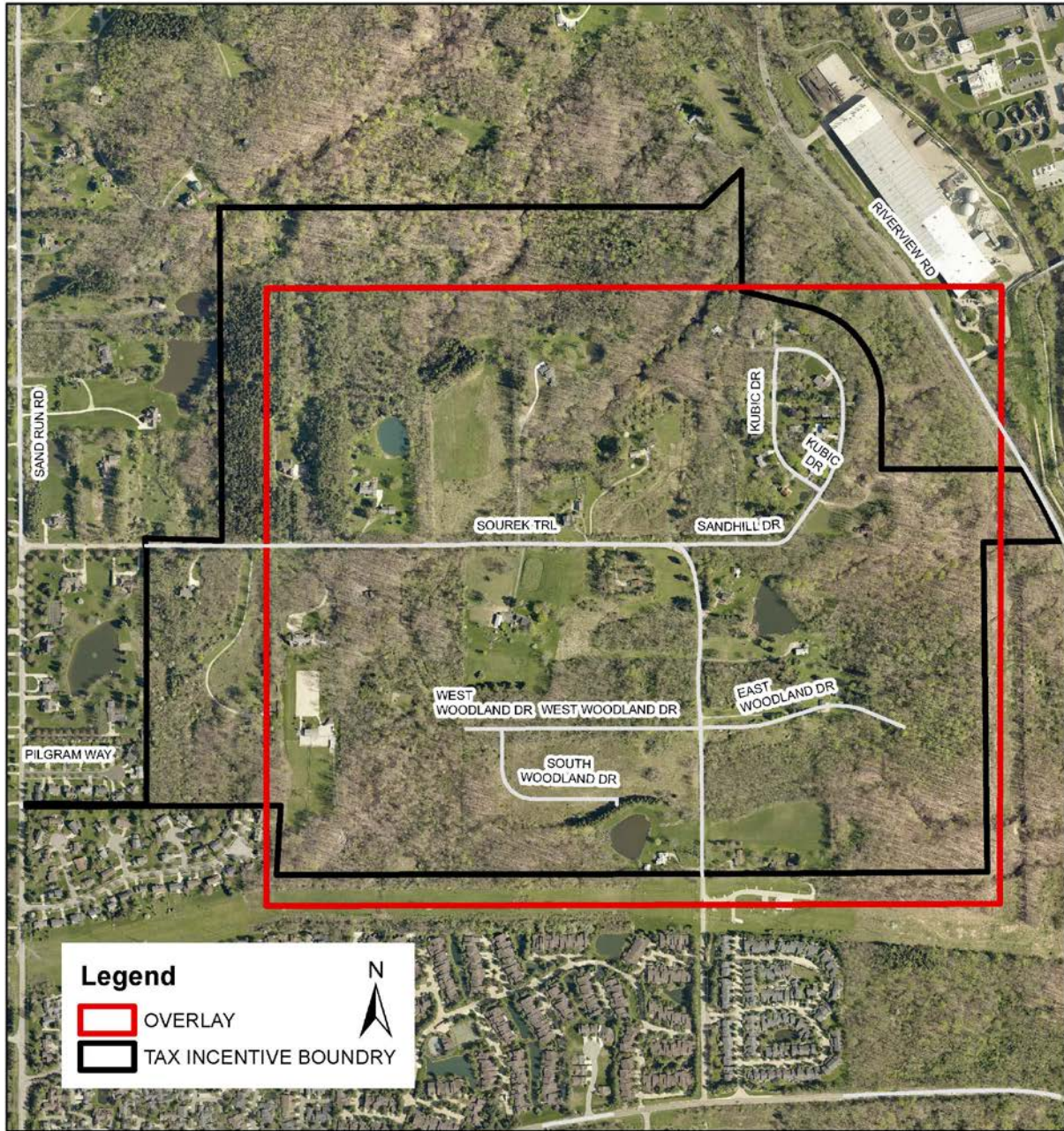


EXHIBIT B
PUBLIC INFRASTRUCTURE IMPROVEMENTS

The Public Infrastructure Improvements consist of any “public infrastructure improvement” defined under Section 5709.40(A)(7) of the Ohio Revised Code and that directly benefits or serves parcels in the Incentive Districts and specifically include, but are not limited to, any of the following improvements that will benefit or serve parcels in the Incentive Districts and all related costs of those permanent improvements (including, but not limited to, those costs listed in Section 133.15(B) of the Ohio Revised Code):

- **Stormwater.** Construction, reconstruction and installation of stormwater and flood remediation projects and facilities, including such projects and facilities on private property when determined to be necessary for public health, safety and welfare, including but not limited to the construction and installation of storm water sewers throughout the proposed development including along Sourek Trail, Sand Hill Drive and Kubic Drive; West Woodland Drive; East Woodland Drive and South Woodland Drive.
- **Parks.** Construction or reconstruction of one or more public parks, including grading, trees and other park plantings, park accessories and related improvements, multi-use trails and bridges, together with all appurtenances thereto, including, without limitation, improvements to parkland and multi-use trails within or proximate to the Incentive District;
- **Roadways.** Construction, reconstruction, extension, opening, improving, widening, grading, draining, curbing or changing of the lines and traffic patterns of roads, highways, streets, intersections, bridges (both roadway and pedestrian), sidewalks, bikeways, medians and viaducts accessible to and serving the public, and providing signage (including traffic signage and informational/promotional signage), lighting systems, signalization, and traffic controls, and all other appurtenances thereto, including but not limited to the construction, reconstruction, improving, grading, draining and resurfacing of, and installation of sidewalks along, Sourek Trail, Kubic Drive, Sandhill Drive and the other new streets currently known as West Woodland Drive, East Woodland Drive and South Woodland Drive to be constructed throughout the proposed development;
- **Water/Sewer.** Construction, reconstruction or installation of public utility improvements (including any underground municipally owned utilities), storm and sanitary sewers (including necessary site grading therefore), water and fire protection systems, and all appurtenances thereto, including but not limited to construction and installation of sanitary sewers along Sourek Trail and construction of water lines along Sourek Trail, Kubic Drive, Sand Hill Drive, West Woodland Drive, East Woodland Drive and South Woodland Drive;
- **Environmental/Health.** Implementation of environmental remediation measures necessary to enable the Project and the construction of public health, including but not limited to preservation of wetlands and flood plain management in the areas around the proposed development and along Sourek Trail, dam modifications and improvements, any

dredging of waterways in the Incentive District, streambank erosion protection and renovation and related environmental studies and remediation;

- **Utilities.** Construction, reconstruction or installation of gas, electric and communication service facilities and all appurtenances thereto;
- **Demolition.** Demolition, including demolition on private property when determined to be necessary for public health, safety and welfare;
- **Streetscape/Landscape.** Construction or installation of streetscape and landscape improvements including trees, tree grates, signage, curbs, sidewalks, scenic fencing, street and sidewalk lighting, trash receptacles, benches, newspaper racks, burial of overhead utility lines and related improvements, together with all appurtenances thereto, including, but not limited to streetscape improvements in conjunction with and along the roadway improvements described in “Roadways” above, and including but not limited to lighting along Sourek Trail and the other new streets currently known as West Woodland Drive, East Woodland Drive and South Woodland Drive to be constructed throughout the proposed development;
- **Real Estate.** Acquisition of real estate or interests in real estate (including easements) (a) necessary to accomplish any of the foregoing improvements, or (b) in aid of industry, commerce, distribution or research; including, but not limited to, the purchase of parkland; and
- **Professional Services.** Engineering, consulting, legal, administrative, and other professional services associated with the planning, design, acquisition, construction and installation of the foregoing improvements and real estate.

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3
4 CITY OF CUYAHOGA FALLS, OHIO

5
6 ORDINANCE NO. - 2019

7
8 AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO A NOPEC
9 ENERGIZED COMMUNITY GRANT AGREEMENT WITH NOPEC, INC. FOR
10 ENERGY EFFICIENCY OR ENERGY INFRASTRUCTURE PROJECTS, AND
11 DECLARING AN EMERGENCY.
12

13 WHEREAS, the City of Cuyahoga Falls, Ohio is a member of the Northeast Ohio Public Energy Council
14 (“NOPEC”) and is eligible for the NOPEC Energized Community Grant for 2019 as provided for in the NOPEC
15 grant program guidelines; and
16

17 WHEREAS, this grant will facilitate energy efficiency or energy infrastructure projects within the City of
18 Cuyahoga Falls.
19

20 NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Cuyahoga Falls, County of Summit,
21 and State of Ohio, that:
22

23 Section 1. The Mayor is hereby authorized to enter into a NOPEC Energized Community Grant
24 Agreement with NOPEC, Inc. for energy efficiency or energy infrastructure projects. The Mayor, Director of
25 Public Service, Director of Law and other necessary City officials are authorized to provide such other
26 information and to execute such other documents and do all other actions as are necessary for and incidental
27 to carrying out the requirements of this ordinance and the terms of the Grant Agreement.
28

29 Section 2. Any other ordinances or resolutions or portions of ordinances and resolutions inconsistent
30 herewith are hereby repealed, but any ordinances and resolutions not inconsistent herewith and which have
31 not previously been repealed are hereby ratified and confirmed.
32

33 Section 3. It is found and determined that all formal actions of this Council concerning and relating to
34 the adoption of this ordinance were adopted in an open meeting of this Council, and that all deliberations of
35 this Council and of any of its committees that resulted in such formal action, were in meetings open to the
36 public, in compliance with all legal requirements, to the extent applicable, including Chapter 107 of the
37 Codified Ordinances.
38

39 Section 4. This ordinance is hereby declared to be an emergency measure necessary for the
40 preservation of the public peace, health, safety, convenience and welfare of the City of Cuyahoga Falls and the
41 inhabitants thereof, and provided it receives the affirmative vote of two thirds of the members elected or
42 appointed to Council, it shall take effect and be in force immediately upon its passage and approval by the
43 Mayor; otherwise it shall take effect and be in force at the earliest period allowed by law.
44

45
46 Passed: _____
47 _____
48 President of Council

49
50 _____
51 Clerk of Council

52
53
54 Approved: _____
55 _____
56 Mayor

2
3 CITY OF CUYAHOGA FALLS, OHIO

4
5 ORDINANCE NO. - 2019

6
7 AN ORDINANCE ENACTING NEW TITLE NINE, CHAPTER
8 951 "MANAGEMENT, ADMINISTRATION AND CONTROL OF
9 THE USE OF THE CITY'S PUBLIC RIGHTS-OF-WAY" INTO
10 THE CODIFIED ORDINANCES OF THE CITY OF CUYAHOGA
11 FALLS, OHIO, AND DECLARING AN EMERGENCY.

12
13
14 WHEREAS, the City of Cuyahoga Falls, Ohio ("City"), owns and controls the
15 public rights-of-way within its corporate limits for the benefit of its citizens, taxpayers
16 and municipal utility customers and in accordance with state and local laws;

17
18 WHEREAS, it is the policy of the City to:

- 19
- 20 (1) Promote the public health, safety, and welfare regarding access to and the
- 21 occupancy or use of public rights-of-way, to protect public and private
- 22 property, and to promote economic development in the City;
- 23 (2) Promote the availability of a wide range of utility, communication, and
- 24 other services to residents of the City at reasonable costs, including the
- 25 rapid implementation of new technologies and innovative services;
- 26 (3) Promote coordination and standardization of municipal management of
- 27 the occupancy or use of public rights-of-way, to enable efficient placement
- 28 and operation of structures, appurtenances, or facilities necessary for the
- 29 delivery of public utility or cable services;
- 30 (4) Expedite the installation and operation of micro, and smaller, wireless
- 31 facilities in order to facilitate the deployment of advanced wireless service;
- 32 and,
- 33 (5) Establish fair terms and conditions for the use of public rights-of-way that
- 34 do not unduly burden persons occupying or using public rights-of-way;
- 35

36 WHEREAS, to serve those purposes, the City must manage access to and the
37 occupancy or use of public rights-of-way with regard to matters of local concern, and to
38 receive cost recovery for the occupancy or use of public rights-of-way in accordance with
39 law and prohibit persons from occupying or using public rights-of-way that would
40 unreasonably compromise the public health, safety, and welfare or otherwise be
41 unlawful.

42
43 NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Cuyahoga Falls,
44 County of Summit, State of Ohio, that:

45
46
47 Section 1. New Title Nine- Use of the City's Public Rights-of-Way, Chapter 951,
48 Management, Administration and Control of the Use of the City's Public Rights-of-Way
49 of the Codified Ordinances of the City of Cuyahoga Falls, Ohio be enacted to read as
50 follows:

51
52 **TITLE NINE -Use of the City's Public Rights-of-Way**

53
54 Chapter 951. Management, Administration and Control of the Use of the City's
55 Public Rights-of-Way.

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Section:

- 951.01 FINDINGS AND PURPOSE
- 951.02 SCOPE
- 951.03 DEFINITIONS
- 951.04 RIGHTS-OF-WAY ADMINISTRATION
- 951.05 CERTIFICATE OF REGISTRATION APPLICATIONS
- 951.06 REPORTING REQUIREMENTS
- 951.07 COMPENSATION FOR CERTIFICATE OF REGISTRATION
- 951.08 OVERSIGHT AND REGULATION
- 951.09 REGISTRATION TERM
- 951.10 SMALL CELL FACILITIES AND WIRELESS SUPPORT STRUCTURES
- 951.11 INDEMNITY
- 951.12 CIVIL FORFEITURES
- 951.13 TERMINATION OF CERTIFICATE OF REGISTRATION
- 951.14 UNAUTHORIZED USE OF PUBLIC RIGHTS-OF-WAY
- 951.15 RIGHTS OF INDIVIDUALS
- 951.16 ASSIGNMENT OR TRANSFER OF OWNERSHIP AND RENEWAL
- 951.17 CONSTRUCTION PERMITS
- 951.18 CONSTRUCTION, RELOCATION AND RESTORATION
- 951.19 MINOR MAINTENANCE PERMIT
- 951.20 ENFORCEMENT OF PERMIT OBLIGATION
- 951.21 CONSTRUCTION AND REMOVAL BONDS
- 951.22 INDEMNIFICATION AND LIABILITY
- 951.23 GENERAL PROVISIONS
- 951.99 PENALTIES

951.01 FINDINGS AND PURPOSE.

(a) The City of Cuyahoga Falls, Ohio (“City”) is concerned with the use of all Rights-of-Way in the City as such Rights-of-Way are valuable and limited resources.

(b) Changes in the public utilities and communications industries have increased the demand and need for access to Rights-of-Way and placement of facilities and structures therein.

(c) It is necessary to comprehensively plan and manage access to, and structures and facilities in, the Rights-of-Way and provide innovative and economic solutions to efficiently and economically utilize limited Rights-of-Way capacity.

(d) The City has authority under the laws and Constitution of the State of Ohio, including, but not limited to Article 18, Sections 3, 4, and 7, to regulate the public and private entities which use the Right-of-Way.

951.02 SCOPE.

The provisions of this chapter shall apply to all users of the Rights-of-Way as provided herein.

951.03 DEFINITIONS.

For the purposes of this chapter, the following words and phrases and their derivations shall have the meanings set forth herein, regardless of whether

111 or not the words and phrases are capitalized. When not inconsistent with the
112 context, words in the present tense include the future tense, words in the plural
113 number include the singular number, and words in the singular number include
114 the plural number. The words “shall” and “will” are mandatory and “may” is
115 permissive.
116

117 (a) “ABANDONED.” The designation given to a Facility, except for a
118 Small Cell Facility or Wireless Support Structure in the Right-of-Way, when its
119 operations or use are discontinued for a period exceeding ninety (90) consecutive
120 days or a total of one hundred eighty (180) days in any 365-day period, without
121 notice of the discontinued operations or use given to the City by the Provider and
122 without the City’s approval, and except for a period of discontinued operations or
123 use that has been caused by acts of God. Small Cell Facilities or Wireless Support
124 Structures shall be deemed Abandoned if the facilities or support structures are
125 unused for a period of three hundred sixty-five (365) days without the Operator
126 otherwise notifying the City and receiving the City’s approval.
127

128 (b) “AFFILIATE.” Each Person who falls into one or more of the
129 following categories: (i) each Person having a controlling interest in a Provider, (ii)
130 each Person in which a Provider has a controlling interest, (iii) each officer,
131 director, general partner, limited partner or shareholder holding an interest of
132 fifteen percent (15%) or more, joint venturer or joint venture partner, of a
133 Provider, and (iv) each Person controlling, controlled by, or under common control
134 with the Provider; provided that Affiliate shall in no event mean any limited
135 partner or shareholder holding an interest of less than fifteen percent (15%) of
136 such Provider, or any creditor of such Provider solely by virtue of its status as a
137 creditor and which is not otherwise an Affiliate by reason of owning a controlling
138 interest in, being owned by, or being under common ownership, common
139 management, or common control with, such Provider.
140

141 (c) “ANTENNA.” Communications equipment that transmits or
142 receives radio frequency signals in the provision of wireless service.
143

144 (d) “APPLICANT.” Any Person who seeks to obtain a Certificate of
145 Registration and/or a Permit.
146

147 (e) “APPLICATION.” The process by which an Applicant submits a
148 request to obtain Certificate of Registration and/or a Permit.
149

150 (f) “APPLICATION FEE.” The fee paid to the City for application for a
151 Certificate of Registration pursuant to § 951.05(a).
152

153 (g) “BANKRUPTCY CODE.” The United States Bankruptcy Code of
154 1978, as amended including regulations promulgated by Title 11 of the United
155 States Code.
156

157 (h) “BEST EFFORT(S).” The best reasonable efforts under the
158 circumstances, taking into consideration, among other appropriate matters, all
159 applicable laws, regulations, safety, engineering and operational codes, available
160 technology, human resources, and cost.
161

162 (i) “CABLE FRANCHISE.” Has the same meaning as "franchise" in the
163 Cable Communications Policy Act of 1984, 98 Stat. 2779, 47 U.S.C. 522.
164

165 (j) “CABLE OPERATOR.” Has the same meaning as in the Cable
166 Communications Policy Act of 1984, 98 Stat. 2779, 47 U.S.C. 522.
167

168 (k) “CABLE SERVICE.” Has the same meaning as in the Cable
169 Communications Policy Act of 1984, 98 Stat. 2779, 47 U.S.C. 522.
170

171 (l) “CERTIFICATE OF REGISTRATION.” The document issued to each
172 Provider and its unique System to occupy the Rights-of-Way within the City that
173 outlines the terms of that occupancy of the Rights-of-Way.
174

175 (m) “CITY.” The City of Cuyahoga Falls, Ohio.
176

177 (n) “CITY COUNCIL.” The governing body of the City of Cuyahoga
178 Falls, Ohio.
179

180 (o) “CODE (or C.O).” The codified ordinances of the City of Cuyahoga
181 Falls, Ohio.
182

183 (p) “CO-LOCATION.” Shall mean to install, mount, maintain, modify,
184 operate, or replace wireless facilities on a wireless support structure.
185

186 (q) “CONSTRUCT.” Shall mean, but not be limited to, digging, boring,
187 tunneling, trenching, excavating, obstructing, installing wires, installing conduit,
188 installing pipes, installing transmission lines, installing poles, installing signs or
189 installing Facilities, other than landscaping, ornamental plantings in, on, above,
190 within, over, below, under or through any part of the Rights-of-Way. “Construct”
191 shall also include the act of opening and/or cutting into the surface of any paved,
192 unimproved or improved surface that is any part of the Right-of-Way.
193

194 (r) “CONSTRUCTION.” Shall mean, but not be limited to, the act or
195 process of digging, boring, tunneling, trenching, excavating, obstructing,
196 installing wires, installing conduit, installing pipes, installing transmission lines,
197 installing poles, installing signs or installing Facilities, other than landscaping,
198 ornamental plantings in, on, above, within, over, below, under or through any
199 part of the Rights-of-Way. “Construction” shall also include the act of opening
200 and/or cutting into the surface of any paved, unimproved or improved surface
201 that is part of the Right-of-Way.
202

203 (s) “CONSTRUCTION BOND.” A bond posted to ensure proper and
204 complete Construction and/or repair of a Facility and the affected Rights-of-Way
205 pursuant to a Permit.
206

207 (t) “CONSTRUCTION AND MAJOR MAINTENANCE PLAN.” A written
208 plan including maps of the expected location, design, other related equipment
209 and Facilities of a Provider that describes in full the Construction intended to be
210 accomplished by the Provider in the Rights-of-Way over the next calendar year.
211

212 (u) “CONSTRUCTION PERMIT.” The Permit specified in § 951.17 et
213 seq. which must be obtained before a Person may Construct in, locate in, occupy,
214 maintain, move or remove Facilities from, in or on a Rights-of-Way.
215

216 (v) “COUNTY.” Summit County, Ohio. County specifically excludes all
217 contractors, agents or other Persons acting on behalf of said County.
218

219 (w) “DECORATIVE POLE.” A pole, arch, or structure other than a
220 street light pole placed in the Right-of-Way specifically designed and placed for
221 aesthetic purposes and on which no appurtenances or attachments have been
222 placed except for the following:
223 (i) electric lighting; (ii) specifically designed informational or directional signage;
224 or (iii) temporary holiday or special event attachments.
225

226 (x) “DEPARTMENT OF PUBLIC SERVICE.” The Department of Public
227 Service of the City.
228

229 (y) “DESIGN GUIDELINES.” Detailed guidelines and specifications
230 promulgated by the City in accordance with Ohio Revised Code section 4939 for
231 the design and installation of Small Cell Facilities and Wireless Support
232 Structures in the Right-of-Way.
233

234 (z) “DIRECTOR OF PUBLIC SERVICE.” The duly appointed Director
235 of the Department of Public Service, or his/ her designee.
236

237 (aa) “EMERGENCY.” A condition that poses a clear and immediate
238 danger to life or health, safety, or of a significant loss of property.
239

240 (bb) “FACILITY(IES).” Any tangible thing located in any Rights-of-Way
241 within the City, and includes Wireless Facilities and Wireless Support Structures;
242 but shall not include boulevard plantings, ornamental plantings or gardens
243 planted or maintained in the Rights-of-Way between a Person's property and the
244 street edge of pavement.
245

246 (cc) “FCC.” The Federal Communications Commission, or any
247 successor thereto.
248

249 (dd) “FERC.” The Federal Energy Regulatory Commission as created
250 and amended in accordance with the Federal Power Act, 16 U.S.C. 792, or its
251 statutory successor.
252

253 (ee) “FINANCE DIRECTOR.” The duly appointed Director of Finance for
254 the City, or his/ her designee.
255

256 (ff) “FULL.” Right-of-Way that is unable to accommodate any additional
257 Facilities as determined by the Director of Public Service in accordance with the
258 principles of public health, safety, and welfare, and following a reasonable
259 analysis taking into consideration all applicable Law, commonly accepted
260 industry standards, and routine engineering practices.
261

262 (gg) “HEIGHT.” The distance measured from the pre-existing grade
263 level to the highest point on the structure, including the Small Cell Facility, even
264 if said highest point is an Antenna or lightening protection device.
265

266 (hh) “HISTORIC DISTRICT.” A building, property, or site, or group of
267 buildings, properties, or sites that are either of the following:
268

- 269 (1) Listed in the national register for historic places or formally
270 determined eligible for listing by the keeper of the national register, the
271 individual who has been delegated the authority by the federal agency to
272 list properties and determine their eligibility for the national register, in

273 accordance with section VI.D.1.a.i-v of the nationwide programmatic
274 agreement codified at 47 C.F.R. part 1, Appendix C.
275

276 (2) A registered historic district as defined in section 149.311 of
277 the O.R.C.
278

279 (ii) “INSPECTOR.” Any Person authorized by the Director of Public
280 Service to carry out inspections related to the provisions of this chapter.
281

282 (jj) “LAW.” Any local, state and/or federal legislative, judicial or
283 administrative order, certificate, decision, statute, constitution, ordinance,
284 resolution, regulation, rule, tariff or other requirement in effect either at the time
285 of execution of this Chapter or at any time during the location of, and/or while a
286 Provider's Facilities are located in the public Rights-of-Way.
287

288 (kk) “MAYOR.” The duly elected mayor of the City of Cuyahoga Falls,
289 Ohio or his/ her designee.
290

291 (ll) “MICRO WIRELESS PERMIT.” A Permit, which must be obtained
292 before a Person can Construct, modify, collocate, or replace a Small Cell Facility
293 or Wireless Support Structure, as set forth in § 951.10, in or on the Rights-of-
294 Way.
295

296 (mm) “MINOR MAINTENANCE PERMIT.” A Permit, which must be
297 obtained before a Person can perform minor maintenance, as set forth in §
298 951.19, in or on the Rights-of-Way.
299

300 (nn) “OHIO MANUAL OF UNIFORM TRAFFIC CONTROL DEVICES
301 (OMUTCD).” The uniform system of traffic control devices promulgated by the
302 Ohio Department of Transportation pursuant to O.R.C. § 4511.09.
303

304 (oo) “O.R.C.” The Revised Code of the State of Ohio.
305

306 (pp) “OHIO UTILITY PROTECTION SERVICE.” The utility protection
307 service as defined in O.R.C. § 153.64 and/or § 3781.26 or a statutory successor
308 thereto.
309

310 (qq) “OPEN VIDEO SERVICE.” Any video programming Services
311 provided to any Person through the use of Rights-of-Way, which Person is
312 certified by the FCC to operate an Open Video System pursuant to § 651 et seq.
313 of the Telecommunications Act of 1996 (codified at 47 U.S.C. Title VI, Part V),
314 regardless of the facilities used.
315

316 (rr) “OPERATOR.” A Wireless Service Provider, Cable Operator, or a
317 Video Service Provider that operates a Small Cell Facility and provides Wireless
318 Service. For purposes of this chapter, "Operator" includes a Wireless Service
319 provider, Cable Operator, or a Video Service Provider that provides information
320 services as defined in the "Telecommunications Act of 1996," 110 Stat. 59, 47
321 U.S.C. 153(20), as services that are fixed in nature or use unlicensed spectrum.
322

323 (ss) “PERMIT.” A Construction Permit, Micro Wireless Permit, or a
324 Minor Maintenance Permit as the context requires.
325

326 (tt) “PERMIT COST.” All direct, incidental and indirect costs actually
327 incurred or realized by the City for Permit issuance, Permit oversight and pavement
328 degradation resulting from Construction activity.
329

330 (uu) “PERMIT FEE.” Money paid to the City for a Permit.
331

332 (vv) “PERMITTEE.” Any Person to whom a Construction Permit, Micro
333 Wireless Permit, and/ or Minor Maintenance Permit has been granted by the City
334 and not revoked.
335

336 (ww) “PERSON.” Any natural person or corporate entity, business
337 association or other business entity including, but not limited to, a firm, a
338 partnership, a joint venture, a sole proprietorship, a political subdivision, a
339 public or private agency of any kind, a utility, a successor or assign of any of the
340 foregoing, or any other legal entity.
341

342 (xx) “PROVIDER.” A Person who owns or operates a System and has a
343 valid Certificate of Registration. The City, County, Schools, Information
344 Technology Centers, Small Cell Facility Operators, and Cable Operators operating
345 pursuant to a valid Cable Franchise, or Video Service Provider operating
346 pursuant to a valid Video Service Authorization shall also be considered
347 Providers.
348

349 (yy) “PUBLIC UTILITY.” A wireless service provider as defined in division
350 (A)(20) of section 4927.01 of the O.R.C. or any company described in section
351 4905.03 of the O.R.C., except in divisions (B) and (I) of that section, which
352 company is also a “Public Utility” as defined in O.R.C. section 4905.02; and
353 includes any electric supplier as defined in O.R.C. section 4933.81.
354

355 (zz) “PUCO.” The Public Utilities Commission of Ohio as defined in
356 O.R.C. § 4901.02.
357

358 (aaa) “REGISTRATION MAINTENANCE FEE.” The money paid to the City
359 to maintain a Certificate of Registration and compensate the City for actual costs
360 incurred by the City in the management, administration and control of the
361 Rights-of-Way of the City, and which are not reasonably recoverable by the city
362 through construction permit fees or other approved recovery mechanisms.
363

364 (bbb) “REMOVAL BOND.” A bond posted to ensure the availability of
365 sufficient funds to remove a Provider’s Facilities upon abandonment or disuse,
366 or discontinuance of a Provider's use or occupation of the Rights-of-Way.
367

368 (ccc) “RESTORATION.” The process and the resultant effects by which
369 a Rights-of-Way is returned to a condition as good as or better than its condition
370 immediately prior to the Construction. “Restoration” shall occur in accordance
371 with the rules or regulations as may be further enacted and amended by the City.
372

373 (ddd) “RIGHT(S) OF WAY.” The surface of, and the space within, through
374 on, across, above or below, the paved or unpaved portion of any public street,
375 public road, public highway, public freeway, public lane, public path, public
376 alley, public court, public sidewalk, public boulevard, public parkway, public
377 drive, public easement, and any other land dedicated or otherwise designated for
378 a compatible public use, which, on or after July 2, 2002, is owned or controlled
379 by the City. "Right-of-Way" excludes a private easement.
380

381 (eee) "RIGHT(S) OF WAY COST." All direct, incidental and indirect costs
382 borne by the City for the management and administration of the Rights-of-Way
383 and this chapter.
384

385 (fff) "RULES AND REGULATIONS." Any rules or regulations adopted
386 by the Director of Public Service pursuant to §951.08 of this Chapter.
387

388 (ggg) "SERVICE(S)." The offering of any Service or utility for a fee directly
389 to the public, or to such classes of users as to be effectively available directly to
390 the public, or alternatively, the provision (for a fee or otherwise) of any service or
391 utility between two or more points for a proprietary purpose to a class of users
392 other than the general public that in the opinion of the Mayor constitutes a
393 service.
394

395 (hhh) "SMALL CELL FACILITY." A Wireless Facility that meets both of the
396 following requirements:
397

398 (1) Each Antenna is located inside an enclosure of not more than
399 six cubic feet in volume or, in the case of an Antenna that has exposed elements,
400 the Antenna and all of its exposed elements could fit within an enclosure of not
401 more than six cubic feet in volume.
402

403 (2) All other wireless equipment associated with the facility is
404 cumulatively not more than twenty-eight cubic feet in volume. The calculation of
405 equipment volume shall not include electric meters, concealment elements,
406 telecommunications demarcation boxes, grounding equipment, power transfer
407 switches, cut-off switches, and vertical cable runs for the connection of power and
408 other services.
409

410 (iii) "STATE." The State of Ohio.
411

412
413 (jjj) "SUPPLEMENTARY APPLICATION." Any application made to
414 Construct on or in more of the Rights-of-Way than previously allowed, to extend
415 a Permit that had already been issued, or to otherwise modify or amend the
416 specifics of a Permit application.
417

418 (kkk) "SYSTEM." Any System of conduit, cables, ducts, pipes, wires,
419 lines, towers, antennae wave guides, fiber optics, microwave, laser beams and
420 any associated converters, equipment or Facilities or Utilities designed and
421 constructed for the purpose of producing, receiving, amplifying, delivering or
422 distributing Services within the City. A System shall specifically include, but not
423 necessarily be limited to: electric distribution and/or transmission systems,
424 natural or artificial gas distribution and/or transmission systems, water
425 distribution systems, storm sewer systems, sanitary sewer systems, cable
426 television systems, video service networks, telecommunications systems (whether
427 voice, video, data, or other), fiber optic systems, and wireless communications
428 systems.
429

430 (lll) "SYSTEM REPRESENTATIVE." The specifically identified
431 agent/employee of a Provider who is authorized to direct field activities of that
432 Provider and serve as official notice agent for System-related information. Any
433 such System Representative shall be required to be available at all times to
434 receive notice of and immediately direct response to System related emergencies
435 or situations.

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(mmm) “TRENCHLESS TECHNOLOGY.” Shall mean, but not be limited to, the use of directional boring, horizontal drilling, microtunneling and other techniques in the Construction of underground portions of Facilities which result in the least amount of disruption and damage to Rights-of-Way as possible.

(nnn) “UNDERGROUND FACILITIES.” All lines, cables, conduits, pipes, posts, tanks, vaults and any other Facilities which are located wholly or partially underneath Rights-of-Way.

(ooo) “UNUSED FACILITY(IES).” Facilities located in the Rights-of-Way which have remained unused for twelve (12) months and for which the Provider is unable to provide the City with a credible plan detailing the procedure by which the Provider intends to begin actively using such Facilities within the next twelve (12) months, or that the Provider has a potential purchaser or user of the Facilities who will be actively using the Facilities within the next twelve (12) months, or that the availability of such Facilities is required by the Provider to adequately and efficiently operate its System.

(ppp) “UTILITY(IES).” Any water, sewer, gas, drainage, sprinkler or culvert pipe and any electric power, telecommunications, signal, communications, or cable television or video service Provider conduit, fiber, wire, cable, or operator thereof.

(qqq) “UTILITY CORRIDOR(S).” Those specific areas of the Rights-of-Way designated as such by the Director of Public Service pursuant to this chapter.

(rrr) “VIDEO SERVICE.” Means the same as “video service” as defined in O.R.C. § 1332.21(J).

(sss) “VIDEO SERVICE AUTHORIZATION (VSA).” A “video service authorization” as issued to a Video Service Provider by the Director of the Ohio Department of Commerce in accordance with O.R.C. § 1332.24(A)(1).

(ttt) “VIDEO SERVICE NETWORK.” Means the same as “video service network” in O.R.C. § 1332.21(L).

(uuu) “VIDEO SERVICE PROVIDER (VSP).” Means the same as “video service provider” in O.R.C. § 1332.21(M).

(vvv) “WIRELESS FACILITY.”

(1) Equipment at a fixed location that enables wireless communications between user equipment and a communications network, including all of the following:

(a) Equipment associated with wireless communications;

(b) Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration.

(2) The term includes small cell facilities.

(3) The term does not include any of the following:

- 491 (a) The structure or improvements on, under, or within which the
492 equipment is collocated;
493
- 494 (b) Coaxial or fiber-optic cable that is between wireless support
495 structures or utility poles or that is otherwise not immediately
496 adjacent to or directly associated with a particular antenna. An
497 antenna, accessory equipment, distributed antenna system,
498 small cell facility, micro wireless facility, or other device or
499 equipment used to provide wireless service, including such
500 devices and equipment as provided for in O.R.C. § 4939.

501
502 (www) “WIRELESS SERVICE.” Any services using licensed or unlicensed
503 wireless spectrum, whether at a fixed location or mobile, provided to the public
504 using Wireless Facilities.
505

506 (xxx) “WIRELESS SUPPORT STRUCTURE.” A pole, such as a monopole,
507 either guyed or self-supporting, street light pole, traffic signal pole, a fifteen-foot
508 or taller sign pole, or utility pole capable of supporting Small Cell Facilities. As
509 used in this chapter, “Wireless Support Structure” excludes all of the following:
510

511 (1) A utility pole or other facility owned or operated by a
512 municipal electric utility;
513

514 (2) A utility pole or other facility used to supply traction power to
515 public transit systems including railways, trams, streetcars, and
516 trolleybuses.
517

518 **951.04 RIGHTS-OF-WAY ADMINISTRATION.**

519
520 (a) Administration

521 The Mayor shall be the principal City official responsible for the
522 administration of this chapter, except as otherwise provided herein. The
523 Mayor may delegate any or all of the duties hereunder to the Director of
524 Public Service or other designee.
525

526 (b) Rights-of-Way Occupancy.

527 Each Person who occupies, uses or seeks to occupy or use the
528 Rights-of-Way to operate a System located in the Rights-of-Way, or who
529 has, or seeks to have, a System located in any Rights-of-Way, shall apply
530 for and obtain a Certificate of Registration pursuant to this chapter. Any
531 Person owning, operating or maintaining a System in the Rights-of-Way
532 without a Certificate of Registration, including Persons operating under a
533 permit, license or franchise issued by the City prior to the effective date of
534 this chapter shall apply for and obtain a Certificate of Registration from
535 the City within ninety (90) days of the effective date of this chapter, unless
536 exempted by § 951.04(d). The ninety (90) day requirement will be extended
537 if, due to an inability on the City’s behalf, all Persons obtaining or wishing
538 to obtain a Certificate of Registration are not accommodated within the
539 ninety (90) day period. The application for a Certificate of Registration will
540 consist of providing the information set forth in § 951.05(b) and as
541 reasonably required by the Mayor or his/her designee.
542

543 (c) No Construction Without a Certificate of Registration.

544 Except for Minor Maintenance as provided in § 951.19, following
545 the effective date of this chapter, no Person shall Construct or perform any
546 work on or in any Rights-of-Way, nor shall a Provider use any System or
547 any part thereof located on or in any Rights-of-Way without first obtaining
548 a Certificate of Registration. Whoever violates this section is guilty of a
549 misdemeanor of the fourth (4th) degree as provided for in § 951.99
550

551 (d) Exceptions.
552

553 (1) The following entities are not obligated to obtain a Certificate
554 of Registration: the City and resellers of Services that do not own any
555 System or Facilities in the Rights-of-Way.
556

557 (2) The following entities are required to participate in the
558 Certificate of Registration process, but shall be exempt from the financial
559 obligations of the Application Fee required by § 951.05(a) and the
560 Registration Maintenance Fee required by § 951.07((a): a county; Cable
561 Operators for the purpose of providing only Cable Service and operating
562 pursuant to a valid Cable Franchise; a Video Service Provider for the
563 purpose of providing only Video Service and operating pursuant to a valid
564 Video Service Authorization issued in accordance with O.R.C. § 1332.24;
565 a Small Cell Facility Operator for the purpose of providing Wireless Service;
566 and any entity which possesses an existing and valid non-terminable, non-
567 amendable or non-revocable written privilege or authority previously
568 granted by the City for the use or occupancy of the Right-of-Way, whereby
569 such exemption shall be limited to a specific term and limited conditions
570 or obligations as previously granted. In addition, cable operators shall be
571 exempt from any requirement of the certificate of registration process that
572 is in direct conflict with the requirements of, and/or specifically exempted
573 by, a valid current and valid cable franchise with the city.
574

575 (e) Systems in Place Without a Certificate of Registration.
576

577 Any system or part of a system found in Rights-of-Way for which a
578 Certificate of Registration has not been obtained or is not otherwise
579 exempted under § 951.04 (d)(1) shall be deemed to be a nuisance and an
580 unauthorized use of the Rights-of-Way. The City may exercise any
581 remedies or rights it has at law or in equity, including, but not limited to
582 abating the nuisance; taking possession of the facilities and/or
583 noncomplying portion of such system; and/or prosecuting the violator.
584

585 (f) Future Uses.
586

587 Subject to applicable Law, in allowing Providers and Permittees to
588 place Facilities in the Rights-of-Way, the City shall not be liable for any
589 damages caused thereby to any Provider's Facilities that are already in
590 place or that shall be placed in the Rights-of-Way unless those damages
591 arise out of the sole negligence, gross negligence, willful misconduct, or
592 fraud of the City. No Provider is entitled to rely on the provisions of this
593 chapter as creating a special duty to any Provider.
594

595 (g) Discontinuance of Operations, Abandoned and Unused Facilities.
596

597 (1) A Provider who has discontinued or is discontinuing its
598 operations of any System in the City shall:

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(i) provide information satisfactory to the City that the Provider's obligations for its System in the Rights-of-Way under this section and any other sections in the Code have been lawfully assumed by another Applicant and/or Provider; or

(ii) submit a written proposal to re-use its Facilities in a manner that promotes the City's goals of providing innovative and economic solutions to efficiently and economically utilize limited Rights-of-Way capacity. Such proposal must be approved or denied by the Director of Public Service. A denial by the Director of Public Service shall be done in writing and describe the reasons for such a denial. The denial may be appealed by the Provider to the Mayor. The decision of the Mayor shall be final; or

(iii) submit a written proposal for abandonment of Facilities indicating why good engineering practice would support this type of solution. The Director of Public Service must approve or deny said proposal. A denial by the Director of Public Service shall be done in writing and describe the reasons for such a denial. The denial may be appealed by the Provider to the Mayor. The decision of the Mayor shall be final; or

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

(v) submit to the City within a reasonable amount of time and in accordance with O.R.C. § 4905.20 and § 4905.21, a proposal for transferring ownership of its Facilities to the City. If a Provider proceeds under this clause, the City may, at its option where lawful:

- A. purchase the Facilities; or
- B. unless a valid Removal Bond has already been posted pursuant to § 951.21, require the Provider to post a bond in an amount sufficient to reimburse the City for reasonably anticipated costs to be incurred in removing the Facilities.

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

- (i) abating the nuisance;
- (ii) taking possession of the Facilities and restoring them to a useable condition subject to a finding of the PUCO pursuant to the requirements of O.R.C. § 4905.20 and 4905.21; or
- (iii) requiring removal of the Facilities by the Provider or by the Provider's surety.

654
655 (3) If the City requires a Provider to remove Unused Facilities in
656 any Rights-of-Way, the City shall use reasonable efforts to insure that this
657 removal occur in conjunction with other scheduled excavations of the
658 Rights-of-Way. If the City abates the nuisance it may take all action
659 necessary to recover its costs and to abate said nuisance, including but
660 not limited to, those methods set forth in O.R.C. § 715.261.

661
662 (h) Nature of Issuance.
663

664 A Certificate of Registration shall not convey equitable or legal title
665 in the Rights-of-Way. A Certificate of Registration is only the nonexclusive,
666 limited right to occupy Rights-of-Way in the City, for the limited purposes
667 and for the limited period stated in the Certificate of Registration and in
668 accordance with this chapter. The rights to occupy the Right-of-Way may
669 not be subdivided or subleased; provided, however, that two (2) or more
670 Providers may locate Facilities in the same area of the Rights-of-Way so
671 long as each such Provider complies with the provisions of this chapter.
672 Such Providers may file a joint application for a Construction Permit. A
673 Certificate of Registration does not excuse a Provider from obtaining
674 appropriate access or pole attachment agreements before co-locating its
675 Facilities on Facilities of others, including the City's Facilities. A
676 Certificate of Registration does not prevent a Provider from leasing space
677 in or on the Provider's System, so long as the sharing of Facilities does not
678 cause a violation of law, including the provisions of this chapter. A
679 Certificate of Registration does not excuse a Provider from complying with
680 any provisions of the Code or other applicable law.

681
682 (i) Other Approvals, Permits, and Agreements.
683

684 In addition to a Certificate of Registration, Providers shall obtain all
685 regulatory approvals, permits, authorizations, or licenses necessary for the
686 offering or provision of such Services from the appropriate federal, state
687 and local authorities and upon the City's reasonable request, shall provide
688 copies of such documents to the City. Further, a Certificate of Registration
689 issued pursuant to this chapter shall not entitle a Provider to use, alter,
690 convert to, or interfere with, the Facilities, Small Cell Facilities, Wireless
691 Facilities, Wireless Support Structures, easements, poles, conduits, lines,
692 pipelines, wires, fiber, cable or any other real or personal property of any
693 kind under the management or control of the City.
694

695 **951.05 CERTIFICATE OF REGISTRATION APPLICATIONS.**
696

697 (a) Certificate of Registration Applications.
698

699 To obtain a Certificate of Registration to Construct, own, or
700 maintain any System within the City, or to obtain a renewal of a Certificate
701 of Registration issued pursuant to this chapter, an Application must be
702 filed with the City on the form adopted by the Department of Public
703 Service. Unless otherwise exempted under § 951.04(d)(2), for all
704 applications the city shall collect an Application Fee. The Application Fee
705 shall be equal to all the actual and direct costs incurred by the City that
706 are associated with receiving, reviewing, processing and granting (or
707 denying) an Application. At the time of its decision to either grant or deny
708 an Application the City shall calculate and assess all actual and direct

709 costs involved in receiving, reviewing, processing and granting (or denying)
710 the Application and provide a written invoice to the Applicant for the
711 appropriate amount. The City shall require that the Applicant remit all
712 Application Fee amounts invoiced within thirty (30) days of its decision to
713 either grant or deny a Certificate of Registration. Any Applicant who fails
714 to timely remit such invoiced Application Fee amounts shall be subject to
715 the penalties of this chapter, the imposition of any other legal or equitable
716 remedies available to the City and the immediate revocation of any
717 Certificate of Registration having been issued.
718

719 (b) Information Required for Application to Obtain a Certificate of
720 Registration.
721

722 (1) The Applicant or Provider shall keep all of the information
723 required in this section current at all times, provided further that
724 Applicant or Provider shall notify the City of any changes to the
725 information required by this section within thirty (30) days following the
726 date on which the Applicant or Provider has knowledge of such change.
727 The information provided to the City at the time of Application shall
728 include, but not be limited to:
729

730 (i) Each Applicant's name, legal status (i.e. partnership,
731 corporation, etc.), street address, e-mail address, telephone number
732 and facsimile number, if applicable; and
733

734 (ii) The name, address, e-mail address, telephone
735 number, and facsimile number, if applicable, of a System
736 Representative. The System Representative shall be available to the
737 City at all times. Current information regarding how to contact the
738 System Representative in an Emergency shall be provided at the
739 time of Application and shall be updated as necessary to assure
740 accurate contact information is available to the City at all times;
741 and
742

743 (iii) A certificate of insurance where required to be
744 provided to meet the requirements of this section shall:
745

746 A. Verify that an insurance company licensed to
747 do business in the State of Ohio has issued an insurance
748 policy to the Applicant;
749

750 B. Verify that the Applicant is insured on an
751 occurrence basis against claims for personal injury,
752 including death, as well as claims for property damage
753 arising out of the:
754

755 (1) use and occupancy of the Rights-of-Way
756 by the Applicant, its officers, agents, employees and
757 contractors; and
758

759 (2) placement and use of Facilities in the
760 Rights-of-Way by the Applicant, its officers, agents,
761 employees and contractors, including, but not limited
762 to, protection against liability arising from any and all

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operations, damage of underground facilities and collapse of property;

C. Name the City, its elected officials, officers, employees, agents and volunteers as an additional insured as to whom the comprehensive general liability and completed operation and products liability insurance required herein are in force and applicable and for whom defense will be provided as to all such coverages, as is required within this chapter;

D. Require that the City be notified thirty (30) days in advance of cancellation of, or coverage changes in, the policy. The liability insurance policies required by this section shall contain the following endorsement:

"It is hereby understood and agreed that this policy may not be diminished in value, canceled nor the intention not to renew be stated, until thirty (30) days after receipt by the City, by registered mail, return receipt requested, of a written notice addressed to the Mayor or his/her designee of such intent to cancel, diminish or not to renew."

E. Within thirty (30) days after receipt by the City of said notice, and in no event later than five (5) days prior to said cancellation, the Provider (or Applicant) shall obtain and furnish to the Director of Public Service a certificate of insurance evidencing replacement insurance policies.

F. Satisfy the requirements for comprehensive liability coverage, automobile liability coverage and umbrella coverage as follows:

(1) Comprehensive general liability insurance: comprehensive general liability insurance to cover liability, bodily injury, and property damage must be maintained. Coverage must be written on an occurrence basis, with the following minimum limits of liability and provisions, or their equivalent:

- (a) Bodily injury:
 - Each occurrence - Two Million Dollars
(US\$2,000,000.00)
 - Annual aggregate - Three Million Dollars
(US\$3,000,000.00)
- (b) Property damage:
 - Each occurrence - One Million Dollars
(US\$1,000,000.00)
 - Annual aggregate - Three Million Dollars
(US\$3,000,000.00)

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- (c) Personal Injury:
Annual aggregate - Three Million Dollars
(US\$3,000,000.00)

- (d) Completed operations and products liability shall be maintained for six (6) months after the termination of a Certificate of Registration.

- (e) Property damage liability insurance shall include coverage for the following hazards: E - Explosion, C - Collapse, U - Underground.

(2) Comprehensive auto liability insurance: Comprehensive auto liability insurance to cover owned, hired, and non-owned vehicles must be maintained. Applicant may maintain comprehensive auto liability insurance as part of Applicant's comprehensive general liability insurance, however, said insurance is subject to approval by the Director of Law or her/his designee. Coverage must be written on an occurrence basis, with the following limits of liability and provisions, or their equivalent:

- (a) Bodily injury:
Each occurrence - Two Million Dollars
(US\$2,000,000.00)
Annual aggregate - Three Million Dollars
(US\$3,000,000.00)

- (b) Property damage:
Each occurrence - One Million Dollars
(US\$1,000,000.00)
Annual aggregate - Three Million Dollars
(US\$3,000,000.00)

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

(3) Self-insurance: Those Applicants maintaining a book value in excess of fifty million dollars (US\$50,000,000.00) may submit a statement requesting to self-insure. If approval to self-insure is granted, Applicant shall assure the City that such self-insurance shall provide the City with no less than would have been afforded to the City by a third party insurer providing Applicant with the types and amounts of coverage detailed in this Section. This statement shall include:

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(i) Audited financial statements for the previous year;
and

(ii) A description of the Applicant's self-insurance program; and

(iii) A listing of all actions against or claims made against Applicant for amounts over one million dollars (US\$1,000,000.00) or proof of available excess umbrella liability coverage to satisfy all total current claim amounts above fifty million dollars (US\$50,000,000.00).

(iv) The Director of Public Service may modify or waive these requirements if they are not necessary to determine the sufficiency of the self-insurance. The Director of Public Service may request applicable and pertinent additional information if it is necessary to determine the sufficiency of the self-insurance.

(4) The City's examination of, or failure to request or demand, any evidence of insurance in accordance with this chapter shall not constitute a waiver of any requirement of this section and the existence of any insurance shall not limit Applicant's obligations under this chapter.

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

(6) If the Person is a corporation, upon specific request of the City, a copy of the certificate of incorporation (or its legal equivalent) as recorded and certified to by the secretary of state (or legal equivalent) in the state or country in which incorporated.

(7) A copy of the Person's certificate of authority from the PUCO and/or the FCC and/or FERC, if the Person is lawfully required to have or actually does possess such certificate(s) from said commission(s) and any other approvals, permits, or agreements.

(8) Upon request of the City, a narrative (or if applicable, PUCO/FCC/FERC application information) describing Applicant's proposed activities in the City including credible information detailing Applicant's financial, managerial, and technical ability to fulfill Applicant's obligations under this chapter and carry on Applicant's proposed activities.

(c) Criteria for Issuance of a Certificate of Registration.

(1) In deciding whether to issue a Certificate of Registration, the City shall consider

(i) Whether the issuing of the Certificate of Registration will contribute to the health, safety, and welfare of the City and its citizens.

928
929 (ii) Whether the issuing of the Certificate of Registration
930 will be consistent with this chapter and the Code.
931

932 (iii) Whether Applicant has submitted a complete
933 Application and has secured all certificates and other
934 authorizations required by law in order to Construct and operate a
935 System in the manner proposed by the Applicant.
936

937 (iv) Whether the Applicant is delinquent on any taxes or
938 other obligations owed to the City, County or State of Ohio.
939

940 (v) Unless Applicant is otherwise exempted from such
941 consideration by O.R.C. § 4939.03(c)(5), whether the Applicant has
942 the requisite financial, managerial, and technical ability to fulfill all
943 of its obligations under this chapter and the issuance of a Certificate
944 of Registration.
945

946 (vi) Any other applicable law, ordinance, rule or
947 regulation.
948

949 (d) Grant or Denial of an Application for a Certificate of Registration.
950

951 (1) The City, not later than sixty (60) days after the date of filing
952 by an Applicant of a completed Application for a Certificate of Registration,
953 shall grant or deny the Application.
954

955 (2) If an Application for a Certificate of Registration is denied,
956 the Applicant may request from the City, within thirty (30) days of the notice
957 of denial, the City's reasons for denying the Application.
958

959 (e) Obligations of a Provider Upon Receipt of a Certificate of
960 Registration.
961

962 In addition to the other requirements set forth herein and in the
963 Rules and Regulations of the City each Provider shall:
964

965 (1) Use its Best Efforts to cooperate with other Providers and
966 users of the Rights-of-Way and the City for the most efficient, and least
967 obtrusive use of Rights-of-Way, consistent with safety, and to minimize
968 traffic and other disruptions including street cuts; and

969 (2) When possible, participate in joint planning, Construction
970 and advance notification of Rights-of-Way work, as may be required by the
971 City; and
972

973 (3) Upon reasonable written notice, and at the direction of the
974 Director of Public Service, promptly remove or rearrange Facilities as
975 necessary for public safety; and
976

977 (4) Perform all work, Construction, maintenance or removal of
978 Facilities within the Rights-of-Way in accordance with good engineering,
979 Construction and arboricultural practice (if applicable), including any
980 appropriate state building codes, safety codes and law, and use Best
981 Efforts to repair and replace any street, curb or other portion of the Rights-

982 of-Way, or Facilities located therein, to a condition to be determined by the
983 Director of Public Service to be adequate under current standards and not
984 less than substantially equivalent to its condition prior to such work and
985 to do so in a manner which minimizes any inconvenience to the public,
986 the City and other Providers, all in accordance with applicable provisions
987 of this chapter, the Code, and any Rules and Regulations that the City
988 may adopt; and
989

990 (5) Construct, install, operate and maintain its Facilities and
991 System in a manner consistent with all applicable laws, ordinances,
992 construction standards and governmental requirements including, but not
993 limited to, the City's General Development Code, the National Electric
994 Safety Code, National Electric Code and applicable FCC, FERC, or other
995 federal, state and/or local Rules and Regulations; and
996

997 (6) Be on notice that removal of trees, or the use of vegetation
998 management programs within the Rights-of-Way of the City requires prior
999 written approval by the Director of Public Service or his/her designee. Any
1000 such activities, unless an Emergency, shall only be performed following
1001 the prior written approval of the Director of Public Service or his/her
1002 designee and must be performed in accordance with the then most current
1003 standard horticultural and arboreal practices as promulgated by entities
1004 such as the National Arbor Day Foundation, the International Society of
1005 Arboriculture, and the Tree Care Industry, all as may be required by the
1006 City. Pruning shall at a minimum meet or exceed the requirements of the
1007 most current version of the American National Standards Institute ANSI
1008 A300 standard. Any additionally required horticultural and arboreal
1009 practices and guidelines shall be described in the Rules and Regulations
1010 adopted by the Director of Public Service pursuant to § 951.08(e).
1011 Emergency removal of trees or the use of vegetation management programs
1012 within the Rights-of-Way of the City may be performed in Rights-of-Way
1013 as described herein and in accordance with the Rules and Regulations,
1014 but the Director of Public Service shall be provided notice of such
1015 Emergency work being performed within two (2) business days of the start
1016 of the work. Any non-emergency tree removal or the use of vegetation
1017 management programs within the Rights-of-Way that is performed without
1018 the Director of Public Service or designee's written permission shall subject
1019 a Person to the penalties of § 951.99 and may further require that the tree
1020 or vegetation be replaced, at the sole expense of the responsible Person,
1021 with a healthy tree or vegetation of like kind and quality; and
1022

1023 (7) Warrant that all worker facilities, conditions and procedures
1024 that are used during Construction, installation, operation and
1025 maintenance of the Provider's Facilities within the Rights-of-Way shall
1026 comply with all applicable standards of the Federal Occupational Safety
1027 and Health Administration; and
1028

1029 (8) Use its Best Efforts to cooperate with the City in any
1030 Emergencies involving the Rights-of-Way; and
1031

1032 (9) Provider shall, weather permitting, remove all graffiti within
1033 thirty (30) calendar days of notice. Provider shall remove all graffiti on any
1034 of the Provider's Facilities located within the City Rights-of-Way. Should
1035 the Provider fail to do so, the City may take whatever action is necessary
1036 to remove the graffiti and bill the Provider for the cost thereof; and

1037
1038 (10) Providers shall field identify their Facilities in the Rights-of-
1039 Way whenever Providers are notified by the City that the City has
1040 determined that such identification is reasonably necessary in order for
1041 the City to begin planning for the Construction, paving, maintenance,
1042 repairing, relocating or in any way altering any street or area in the Rights-
1043 of-Way as defined in this chapter. The City shall notify the Providers of the
1044 City's date to begin the process at least thirty (30) days prior to the
1045 commencement of said activities. In field identifying Facilities:

1046
1047 (i) Providers shall identify all Facilities that are within the
1048 affected Rights-of-Way using customary industry standards and
1049 distinct identification; and

1050
1051 (ii) Facilities will be so marked as to identify the Provider
1052 responsible for said Facilities; and

1053
1054 (iii) Should any such marking interfere with the Facilities'
1055 function, create a safety problem or violate any safety code,
1056 alternative methods of marking the Facilities may be approved by
1057 the Director of Public Service; and

1058
1059 (iv) All markings should be clearly readable from the
1060 ground and include the Provider's name, logo and identification
1061 numbering or tracking information. No advertising will be
1062 permitted.
1063

1064 (11) A Provider that is replacing an existing utility pole shall be
1065 responsible for coordinating with all other Providers to ensure the orderly
1066 transfer of all lines or cables to the replacement utility pole, the removal
1067 of the existing utility pole, and the Restoration of the Rights-of-Way within
1068 thirty (30) days, weather permitting, after the replacement utility pole is
1069 installed. Upon request, the Director of Public Service may grant the
1070 Provider additional time for good cause.
1071

1072 (12) When replacing an existing utility pole, the owner of the pole
1073 shall be responsible for coordinating with all other utilities attached to the
1074 pole to be replaced to ensure the orderly transfer of all lines or cable to the
1075 replacement utility pole for the removal of the existing utility pole and the
1076 Restoration of the Rights-of-Way within ninety (90) calendar days, weather
1077 permitting, after the replacement utility pole is installed. Upon request,
1078 the Director of Public Service or designee may grant the owner and other
1079 utilities attached to the pole to be replaced additional time for good cause.
1080 If the owner of the pole or any other utility attached to the pole to be
1081 replaced fails to perform the requirements of this section 951.05 within
1082 said ninety (90) calendar day period, or time period as otherwise agreed
1083 upon by the Director of Public Service or designee, the City or its contractor
1084 may transfer all remaining lines or cables to the replacement utility pole,
1085 remove the utility pole to be replaced, restore the Rights-of-Way in
1086 accordance with this section, and invoice the costs associated therewith
1087 to the utility that owns the lines or cables that were moved by the City or
1088 its contractor. Such costs shall be paid by the utility that owns the lines
1089 or cables that were moved by the City or its contractor within thirty (30)
1090 calendar days from the date of invoicing.
1091

1092 (f) Establishment of Utility Corridors.
1093

1094 (1) The Director of Public Service may assign specific corridors
1095 within the Rights-of-Way, or any particular segment thereof as may be
1096 necessary, for each type of Facilities that are, or that the Director of Public
1097 Service expects, may someday be, located within the Rights-of-Way.
1098

1099 (2) Any Provider whose Facilities are in the Rights-of-Way and
1100 are in a position at variance with Utility Corridors established by the
1101 Director of Public Service shall at the time of the next Construction of the
1102 area, excluding normal maintenance activities, move such Facilities to
1103 their assigned position within the Rights-of-Way. Existing Underground
1104 Facilities located within a designated Utility Corridor shall not be required
1105 to relocate into adjacent or alternative portions of the Rights-of-Way unless
1106 they are in conflict with an actual or proposed public improvement project.
1107 The above requirements may be waived by the Director of Public Service
1108 for good cause shown including, but not limited to, consideration of such
1109 factors as: the remaining economic life of the Facilities, public safety,
1110 customer service needs, law precluding such Underground Facilities, and
1111 hardship to the Provider. If a Provider is denied a requested waiver from
1112 the above requirements, the Provider may appeal the denial of the Director
1113 of Public Service to the Mayor. The decision of the Mayor shall be final.
1114

1115 (3) The Director of Public Service shall make every good faith
1116 attempt to accommodate all existing and potential users of the Rights-of-
1117 Way as set forth in this chapter.
1118

1119 (4) Providers may enter into written agreements to use existing
1120 poles and conduits with the owners of same and shall use Best Efforts to
1121 install their Facilities within the Rights-of-Way.
1122

1123 (5) No Facility placed in any Rights-of-Way shall be placed in
1124 such a manner that interferes with normal travel on such Rights-of-Way.
1125

1126 (6) Unless otherwise stated in a Certificate of Registration or
1127 Permit, all Facilities within the Rights-of-Way shall be Constructed and
1128 located in accordance with the City Code of Ordinances and with the
1129 following provisions:
1130

1131 (i) Whenever all existing Facilities that have been
1132 traditionally located overhead are located underground in a certain
1133 area within the City, a Provider who desires to place its Facilities in
1134 the same area must also locate its Facilities underground, to the
1135 extent that such placement is technically feasible and will not
1136 prohibit, or have the effect of prohibiting, provision of the Provider's
1137 Service within the area.
1138

1139 (ii) Whenever a Provider is required to locate or re-locate
1140 Facilities underground within a certain area of the City, every
1141 Provider with Facilities within the same area of the City shall
1142 concurrently re-locate their Facilities underground, to the fullest
1143 extent possible.
1144

1145 (iii) The above requirements may be waived by the
1146 Director of Public Service for good cause shown including, but not

1147 limited to, consideration of such factors as: the remaining economic
1148 life of the Facilities, public safety, customer service needs, law
1149 precluding such undergrounding of facilities, and hardship to the
1150 Provider. If a Provider is denied a requested waiver from the above
1151 requirements, the Provider may appeal the denial of the Director of
1152 Public Service to the Mayor.
1153

1154 (g) Historic Districts.
1155

1156 (1) Unless otherwise required by law, the City shall have
1157 the authority to prohibit the use or occupation of the Right of Way
1158 by a Provider if the Right of Way for which the Provider seeks use
1159 and occupancy lies within a Historic District.
1160

1161 (2) As a condition for approval for the Co-location or
1162 installation of Small Cell Facilities and/ or Wireless Support
1163 Structures in an area of the City designated as a Historic District,
1164 the City may:
1165

1166 (i) Require reasonable, technically feasible, and
1167 nondiscriminatory design or concealment measures for the Small
1168 Cell Facilities and Wireless Support Structures.
1169

1170 (ii) Request that a Provider comply with the design and
1171 aesthetic standards of the Historic District or a Residential District,
1172 as provided for in the City's Design Guidelines.
1173

1174 (iii) Request that a Provider explore the feasibility of using
1175 certain camouflage measures to improve the aesthetics of the Small
1176 Cell Facilities and Wireless Support Structures to minimize the
1177 impact to the area aesthetics.
1178

1179 (3) This section may not be construed to limit the City's
1180 authority to enforce local codes, administrative rules, or Rules and
1181 Regulations adopted by ordinance, which are applicable to a
1182 historic area designated by the state or City and historic
1183 preservation zoning regulations consistent with the preservation of
1184 local zoning authority under 47 U.S.C. Section 332(c)(7), the
1185 requirements for facility modifications under 47 U.S.C. Section
1186 1455(a), or the National Historic Preservation Act of 1966 (54 U.S.C.
1187 Section 300101 et seq.), and the regulations adopted to implement
1188 those laws.
1189

1190 **951.06 REPORTING REQUIREMENTS.**
1191

1192 (a) Construction and Major Maintenance Plan.
1193

1194 Each Provider shall, at the time of initial Application and using its
1195 Best Efforts by January 1 of each following year, file a Construction and
1196 Major Maintenance Plan with the Department of Public Service. Such
1197 Construction and Major Maintenance Plan shall be provided for all
1198 geographical areas requested by the Director of Public Service, up to and
1199 including the entire geographical area of the City. It shall be submitted
1200 using a format(s) mutually agreeable to the Provider and the City and shall
1201 contain the information determined by the Director of Public Service to be

1202 necessary to facilitate the coordination and reduction in the frequency of
1203 Construction in the Rights-of-Way. The Construction and Major
1204 Maintenance Plan shall include, but not be limited to, all currently
1205 scheduled and/or anticipated Construction projects for the next calendar
1206 year. If none of such Construction projects are scheduled or anticipated
1207 for the next calendar year then the Construction and Major Maintenance
1208 Plan shall so state. The Provider shall use its Best Efforts in supplying
1209 this information and shall update the Construction and Major
1210 Maintenance Plan on file with the Director of Public Service whenever there
1211 is a material change in scheduled and/or anticipated Construction
1212 projects. In an effort to assist Providers with the completion of their annual
1213 Construction and Major Maintenance Plan, the Director of Public Service,
1214 on or before November 1 of each year, will send each Provider's System
1215 Representative a descriptive narrative (and any mapping information
1216 reasonably available) for all the planned Right-of-Way improvements
1217 and/or scheduled maintenance that the City then currently intends to
1218 undertake during the next calendar year. The City may, in its sole
1219 discretion, update and/or modify the descriptive narrative and mapping
1220 information provided.

1221
1222 (b) Mapping Data.
1223

1224 With the filing of its Application for a Certificate of Registration, a
1225 Provider shall be required to accurately inform the City of the number of
1226 miles of physical infrastructure (rounded up to the nearest mile) of Right-
1227 of-Way the Provider's System then currently occupies and begin
1228 submitting to the City all information that currently exists and which can
1229 be provided regarding the location of its Facilities in the Right-of-Way in
1230 hard copy or in the most advanced format (including, but not limited to,
1231 electronic and/or digital format) then currently being used by the Provider
1232 that is then currently capable of technologically being read (or readily
1233 converted to a readable form) by the City. A Provider shall have up to one
1234 (1) year from the date of the Provider's initial filing of an Application for a
1235 Certificate of Registration to completely submit all the mapping data for
1236 the System owned by the Provider or over which it has control that is
1237 located in any Rights-of-Way of the City in the most advanced format
1238 (including, but not be limited to electronic and/or digital format) then
1239 currently being used by the Provider that is then currently capable of
1240 technologically being read (or readily converted to a readable form) by the
1241 City. The mapping data is only required to be at the "Atlas" level of detail
1242 necessary for the City to reasonably determine the location of the
1243 Provider's facilities in the Rights-of-Way. The Provider shall supply the
1244 mapping data on paper if the Director of Public Service determines that
1245 the format currently being used by the Provider is not capable of being
1246 read by the City. Any time after the issuance of a Certificate of Registration,
1247 and upon the reasonable request of the Director of Public Service, a
1248 Provider shall be required to provide to the City any additional location
1249 information for any Facilities which it owns or over which it has control
1250 that are located in any Rights-of-Way of the City required by the City.
1251 Unless otherwise required by Law, any and all actual direct, incidental and
1252 indirect costs incurred by the City during the process of reviewing,
1253 inputting and/or converting a Provider's mapping information to comport
1254 with the City's then current standard format (whether electronic or
1255 otherwise) shall be directly billed to, and must be timely remitted by, the
1256 Provider. Failure to pay such mapping costs within sixty (60) days of

1257 receipt of an invoice shall subject an Applicant or Provider to revocation of
1258 its Certificate of Registration and the penalties of § 951.99. Further, each
1259 Provider that has been issued a Certificate of Registration shall accurately
1260 inform the City on or before each subsequent January 1 of the number of
1261 miles (rounded up to the nearest mile) of Right-of-Way the Provider's
1262 System then occupied as of the immediately previous December 1. The
1263 Director of Public Service may, in the future, adopt additional
1264 specifications and further define or modify the mapping data requirements
1265 under this section for reasons including, but not limited to, changes in
1266 technology or the law regarding public disclosure of a Provider's mapping
1267 information. When the City modifies and/or amends the mapping data
1268 requirements, the City shall use Best Efforts to avoid unreasonably
1269 increasing the burden to the Providers that may be associated with
1270 satisfying the amended mapping requirements. If the mapping
1271 requirements of this § 951.06(b) are amended, each Provider shall be
1272 served with a copy of the new specifications or modifications by regular
1273 U.S. Mail to the System Representative identified in each Certificate of
1274 Registration; provided, however, that any failure of any Provider to actually
1275 receive such notice shall not in any way affect the validity or enforceability
1276 of said specifications or modifications.
1277
1278

1279 **951.07 COMPENSATION FOR CERTIFICATE OF REGISTRATION.**
1280

1281 (a) Compensation.
1282

1283 As compensation for the City's costs to administer this chapter,
1284 manage, administer and control the Rights-of-Way and maintain each
1285 Certificate of Registration issued, every Provider or any Person operating a
1286 System or otherwise using and occupying the Rights-of-Way shall pay to
1287 the City a Registration Maintenance Fee, unless otherwise exempted under
1288 § 951.04(d)(2). The Registration Maintenance Fee shall be determined and
1289 assessed to Providers and other Persons operating a System or otherwise
1290 using and occupying the Rights-of-Way in accordance with the following
1291 process and formula:
1292

1293 (1) The City by February 28 of each year shall calculate
1294 all actual and incurred costs associated with Rights-of-Way
1295 management, administration and control for the previous calendar
1296 year that the City was not able to reasonably recover through
1297 Construction Permit Fees or other recovery mechanisms provided
1298 for in this chapter.
1299

1300 (2) Providers and Applicants, as required in § 951.06(b),
1301 shall accurately inform the City upon application for a Certificate of
1302 Registration and on or before each subsequent January 1 of the
1303 number of miles (rounded up to the nearest mile) of Right-of-Way
1304 the Provider's System then occupied as of the immediately previous
1305 December 1.
1306

1307 (3) The City shall total the entire number of miles of
1308 Right-of-Way reported as being used or occupied by all Providers.
1309

1310 (4) The City shall divide the calculated costs referenced
1311 in § 951.07(a)(1) by the total number of miles of Right-of-Way

1312 reported as being used or occupied by all Providers as referenced in
1313 §951.07(a)(3) to arrive at a per-mile cost number.

1314
1315 (5) The City shall then multiply each Provider's mileage
1316 calculation as referenced in § 951.07(a)(2) by the per-mile cost
1317 calculation referenced in §951.07(a)(4). The product shall be a
1318 Provider's then current annual Registration Maintenance Fee.

1319
1320 (6) The City shall perform its annual calculation of
1321 Registration Maintenance Fees following receipt of the Provider's
1322 required January 1 mileage report. Registration Maintenance Fees
1323 shall be invoiced to Providers within sixty (60) days of receipt of the
1324 Provider's required January 1 mileage report and shall be due
1325 within thirty (30) days of the date of the invoice. All fees shall be
1326 invoiced to Providers by March 1 of each calendar year.

1327
1328 (7) Cable companies operating under non-exclusive Cable
1329 Franchises for the purposes of providing Cable Service, Video
1330 Services Provider operating under a VSA for the purpose of
1331 providing Video Services, and providers of Open Video System
1332 services, which compensate the City under other mechanisms in an
1333 amount equal to or greater than the Annual Registration
1334 Maintenance Fee that would normally be required for their Right-
1335 of-Way use in the City, shall have the mileage of the Right-of-Way
1336 they use and/or occupy included in the calculations described in §
1337 951.07, but shall not be required to contribute to the recovery of
1338 Rights-of-Way Costs as defined by this chapter with the exception
1339 of Permit Costs.

1340
1341 (8) The City may by separate legislation enacted by City
1342 Council on or about February 28 of each year, in accordance with
1343 the results of § 951.07((a)(4), enact an initial and thereafter a new
1344 annual Registration Maintenance Fee (per mile) by appropriately
1345 increasing or decreasing the previous year(s) Registration
1346 Maintenance Fee (per mile). Revised Registration Maintenance Fees
1347 shall be effective upon passage.

1348
1349 (b) Timing.

1350
1351 Registration Maintenance Fees shall be paid each calendar year in
1352 accordance with § 951.07(a)(6). Registration Maintenance Fees shall be
1353 paid in full for the first year of the registration as a condition of the
1354 Certificate of Registration becoming effective. Fees may be prorated from
1355 the effective date of the Certificate of Registration to the end of the calendar
1356 year if less than one (1) full year.

1357
1358 (c) Taxes and Assessments.

1359
1360 To the extent taxes or other assessments are imposed by any taxing
1361 authority or community authority on the use of City property as a result
1362 of a Provider's use or occupation of the Rights-of-Way, the Provider shall
1363 be responsible for payment of such taxes or assessments. Such payments
1364 shall be in addition to any other fees payable pursuant to this chapter and
1365 shall not be considered an offset to, or in lieu of, the fees and charges listed
1366 in this chapter. The Registration Maintenance Fee is not in lieu of any tax,

1367 fee, or other assessment except as specifically provided in this chapter, or
1368 as required by applicable law.

1369
1370 (d) Interest on Late Payments.
1371

1372 If any Registration Maintenance Fee is not paid to the City by April
1373 1, the Provider shall pay a monthly late charge of one percent (1%) of the
1374 unpaid balance for each month or any portion thereof for which payment
1375 is not made. Late payments on Registration Maintenance Fees may result
1376 in the denial of future Right-of-Way permits.
1377

1378 (e) No Accord and Satisfaction.
1379

1380 No acceptance by the City of any Registration Maintenance Fee shall
1381 be construed as an accord that the amount paid is in fact the correct
1382 amount, nor shall such acceptance of such Registration Maintenance Fee
1383 payment be construed as a release of any claim the City may have for
1384 additional sums payable.
1385

1386 **951.08 OVERSIGHT AND REGULATION.**
1387

1388 (a) Reports.

1389 Upon the request of the City, a Provider shall promptly submit to
1390 the City any information or report, but not including confidential/
1391 proprietary information as described in § 951.08(b), that is reasonably
1392 related to a Provider's obligations under this chapter, or its business and
1393 operations with respect to the System or its operation, in such form and
1394 containing such information as the City shall specify. Such information
1395 or report shall be accurate and complete and supplied within thirty (30)
1396 days of the City's request.
1397

1398 (b) Confidential/ Proprietary Information.
1399

1400 All information submitted to the City that is considered confidential
1401 information, trade secret and/or proprietary information or information
1402 that upon public its disclosure would be highly likely to place critical
1403 portions of the Provider's System in real danger of vandalism, sabotage or
1404 an act of terrorism, must be clearly marked as such when submitted. The
1405 City shall endeavor to exercise all reasonable legal protections so as not to
1406 publicly disclose to any third party such information unless required by
1407 Law. The City shall, following receipt of a request for public disclosure of
1408 clearly marked trade secret and/or proprietary information submitted by
1409 a Provider, use reasonable Best Efforts and endeavor to provide five (5)
1410 days' notice to the Provider's System Representative that such a request
1411 for public disclosure has been made, at which point it will be the Provider's
1412 sole and exclusive responsibility to take whatever steps it deems necessary
1413 to protect such documents from disclosure.
1414

1415 (c) Provider's Expense.
1416

1417 Unless otherwise required by Law, all reports and records required
1418 under this chapter shall be furnished at the sole expense of a Provider.
1419

1420 (d) Right of Inspection and Audit.
1421

1422 The City's designated representatives shall have the right to inspect,
1423 examine, or audit during normal business hours and upon reasonable
1424 notice to a Provider under the circumstances, documents, records, or other
1425 information which pertain to a Provider's operation of a System within the
1426 City that are related to its obligations under this chapter. All such
1427 documents shall be made available within the City or in such other place
1428 that the City may agree upon in writing in order to facilitate said
1429 inspection, examination, or audit.
1430

1431 (e) Rules and Regulations.
1432

1433 The Director of Public Service may propose and adopt (and from
1434 time to time amend) the Rules and Regulations regarding this chapter,
1435 Design Guidelines, construction standards and occupancy requirements
1436 of the Right-of-Way. Prior to the initial adoption of the Rules and
1437 Regulations, the Director of Public Service shall provide written notice and
1438 a copy of the proposed language of such adoption, via regular U.S. Mail,
1439 to each Provider who holds a then current Certificate of Registration. Each
1440 Provider shall then have thirty (30) days following the date of the City's
1441 mailing to provide written comment regarding the proposed language to
1442 the Director of Public Service. At least forty-five (45) days, but not more
1443 than sixty (60) days following the date of the City's mailing, the Director of
1444 Public Service shall schedule and hold a meeting, to make available a
1445 forum at which all then current Providers may address any questions,
1446 concerns and make reasonable suggestions regarding the proposed new
1447 Rules and Regulations to the Director of Public Service. The Director of
1448 Public Service shall, following said meeting and the review of the Providers'
1449 comments and suggestions, adopt the Rules and Regulations in a manner
1450 that best serves the City.
1451

1452 **951.09 REGISTRATION TERM.**
1453

1454 The term of each Certificate of Registration granted under this chapter
1455 shall be valid from the date of issuance until such time as it is revoked,
1456 terminated, has lapsed or is properly amended.
1457

1458 **951.10 SMALL CELL FACILITIES AND WIRELESS SUPPORT STRUCTURES.**
1459

1460 (a) In accordance with Ohio Revised Code section 4939, this section
1461 establishes terms and conditions for the use of the Right-of-Way by an Operator
1462 to Collocate Small Cell Facilities and Construct, maintain, modify, operate, or
1463 replace Wireless Support Structures to provide Wireless Service in the City.
1464

1465 (b) The Application procedures, Permit Fees, and auditing procedures
1466 outlined in this chapter shall be applicable to applications to establish Wireless
1467 Facilities. However, Wireless Facilities that are not Small Cell Facilities or
1468 Wireless Support Structures as defined in this chapter are not subject to this §
1469 951.10.
1470

1471 (c) In accordance with this chapter, and unless otherwise prohibited
1472 by Law, each Person who occupies, uses, or seeks to occupy or use the Rights-
1473 of-Way to operate a Small Cell Facility or Wireless Support Structure in the Right-
1474 of-Way, or who has, or seeks to have, a Small Cell Facility or Wireless Support
1475 Structure located in any Right-of-Way, shall apply for and obtain a Certificate of
1476 Registration for the System pursuant to this chapter.

1477
1478 (d) All Applications for the Construction or modification of a Small Cell
1479 Facility or Wireless Support Structure shall comply with the Construction Permit
1480 and Minor Maintenance Permit requirements set forth in this chapter and any
1481 other applicable Law.
1482

1483 (e) In addition to the requirements in (c) and (d) of this section, an
1484 application for a Micro Wireless Permit shall be submitted by any Person that
1485 seeks to Construct, modify, collocate, or replace a Small Cell Facility or Wireless
1486 Support Structure in any Right-of-Way. The City's consent shall not be required
1487 for the replacement of a Small Cell Facility and/ or Wireless Support Structure
1488 with a Small Cell Facility and/ or Wireless Support Structure, respectively, that
1489 is consistent with the City's Design Guidelines and is substantially similar to the
1490 existing Small Cell Facility and/ or Wireless Support Structure, or the same size
1491 or smaller than the existing Small Cell Facility and/ or Wireless Support
1492 Structure and complies with the requirements for Construction Permits as
1493 provided in this chapter.
1494

1495 (1) For processing a Micro Wireless Permit, the City may charge a
1496 fee of two hundred and fifty dollars (\$250.00) for each Small Cell Facility and/or
1497 Wireless Support Structure. The City may adjust this charge ten percent every
1498 five years, rounded to the nearest five dollars.
1499

1500 (2) The City shall grant or deny a Micro Wireless Permit in
1501 accordance with any required timelines under Law.
1502

1503 (i) If the City fails to approve or deny a Micro Wireless
1504 Permit within the required time period, provided that the time
1505 period is not otherwise tolled in accordance with the provisions of
1506 this § 951.10, the Micro Wireless Permit shall be deemed granted
1507 upon the requesting entity notifying the City that the time period
1508 for granting or denying the Request of Consent has lapsed.
1509

1510 (3) Requests that do not meet the requirements listed on the Micro
1511 Wireless Permit Application or stated herein or in the City's Design Guidelines
1512 shall be deemed incomplete or shall otherwise be denied by the City.
1513

1514 (i) If a Micro Wireless Permit is deemed incomplete, the
1515 City shall provide written notice to the Applicant not later than
1516 thirty (30) days after receiving the Application that clearly and
1517 specifically delineates all missing documents or required
1518 information.
1519

1520 (A) Once the Applicant submits the documents or
1521 information in response to the City's notice of
1522 incompleteness, the time period for review shall resume and
1523 the City shall grant, deny, or deem the Micro Wireless Permit
1524 to be incomplete due to not providing the information
1525 identified in the original notice of incompleteness.
1526

1527 (B) For a Micro Wireless Permit that is deemed
1528 incomplete for a second or subsequent time, the City shall
1529 notify the Applicant not later than ten (10) days after
1530 receiving the Supplementary Application that the

1531 Supplementary Application did not provide the information
1532 identified in the original notice of incompleteness.
1533

1534 (C) The City shall continue to follow the process in
1535 §951.10(e)(3)(i)(A)-(B), until such time that a complete
1536 Application is received from the Applicant.
1537

1538 (ii) If a Micro Wireless Permit is denied, the City shall
1539 provide in writing its reasons for denying the request, supported by
1540 substantial, competent evidence, and such information at the
1541 Applicant may reasonably request to obtain consent.
1542

1543 (iii) Except in the case of a Public Utility subject to the
1544 jurisdiction and recognized on the rolls of the PUCO or a Cable
1545 Operator possessing a valid Cable Franchise awarded pursuant to
1546 the "Cable Communications Policy Act of 1984," 98 Stat. 2779, 47
1547 U.S.C.A. 541, the City, for good cause shown, may withhold, deny,
1548 or delay its consent to any Person based upon the Person's failure
1549 to possess the financial, technical, and managerial resources
1550 necessary to protect the public health, safety, and welfare.
1551

1552 (4) The City shall permit a Person seeking to Construct, modify,
1553 collocate, or replace more than one Small Cell Facility or more than one Wireless
1554 Support Structure within the Right-of-Way to file a consolidated Application for
1555 consent.
1556

1557 (i) No more than thirty (30) Small Cell Facilities or thirty
1558 (30) Wireless Support Structures shall be proposed within a single
1559 Application to receive a single Permit for the Construction,
1560 modification, Collocation, or replacement of Small Cell Facilities or
1561 Wireless Support Structures in the Right-of-Way.
1562

1563 (ii) A single Application may only address multiple Small
1564 Cell Facilities or Wireless Support Structures if they each involve
1565 substantially the same type of Small Cell Facility and/or
1566 substantially the same type of Wireless Support Structure.
1567

1568 (iii) The Director of Public Service may separately address
1569 Applications for which incomplete information has been received or
1570 which are denied.
1571

1572 (5) If the number of requests for consent is likely to result in
1573 difficulty processing Applications within the time limits set forth in Law due to
1574 the lack of resources of the City, then the City may toll the time limits as follows:
1575

1576 (i) The time period for the City to grant or deny a Micro
1577 Wireless Permit may be tolled for up to twenty-one (21) days for the
1578 first fifteen (15) requests for consent for Small Cell Facilities or
1579 Wireless Support Structures received by the City above the
1580 thresholds provided in the Table below within any consecutive
1581 thirty-day period:
1582

Population of City at the time that the	Number of
Small Cell Facility or Wireless Support	Applications:

Structure request for consent is received:

30,000 persons or less	15 applications or more
30,001 to 40,000 persons	20 applications or more
40,001 to 50,000 persons	25 applications or more
50,001 to 60,000 persons	30 applications or more
60,001 to 100,000 persons	60 applications or more

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(ii) For every additional fifteen requests that the City receives above the thresholds provided in the Table, the City may toll the time period for those requests for up to fifteen (15) days in addition to the time period provided in § 951.10(e)(5)(i).

(iii) In no instance shall the City toll the time period for any Small Cell Facility or Wireless Support Structure Micro Wireless Permit by more than ninety (90) consecutive days.

(iv) Upon request by the Applicant, the City shall provide written notice of the time limit for a Small Cell Facility or Wireless Support Structure Micro Wireless Permit.

(f) The total annual charge to reimburse the City for the Collocation of a Small Cell Facility by an Operator to a Wireless Support Structure owned by the City and located in the Right-of-Way shall be two hundred dollars (\$200.00) per Small Cell Facility. The City may adjust this charge ten percent every five years, rounded to the nearest five dollars.

(g) The City's approval term of a Collocation to a Wireless Support Structure shall be for a period of not less than ten (10) years, with a presumption of renewal for successive five-year terms, unless otherwise terminated or not renewed for cause or by mutual agreement between the Operator and the City.

(1) An Operator may remove its Small Cell Facilities at any time subject to applicable Permit requirements and may stop paying annual charges or fees established by Law.

(2) If use of a Small Cell Facility or Wireless Support Structure is discontinued, the owner shall submit written notice to the City to discontinue use and the date when the use shall be discontinued. The owner shall promptly remove the Small Cell Facility or Wireless Support Structure once its use has been discontinued.

(3) If a Small Cell Facility or Wireless Support Structure is Abandoned, the City may remove the Small Cell Facility or Wireless Support Structure at the owner's expense.

(h) The Director of Public Service is authorized to establish, implement, and amend, from time to time, Design Guidelines regarding, among other things: (1) the location of any ground-mounted Small Cell Facilities; (2) the location of a Small Cell Facility on a Wireless Support Structure; (3) the appearance and concealment of Small Cell Facilities, including those relating to materials used for arranging, screening, or landscaping; and (4) the design and appearance of a Wireless Support Structure, including any height requirements adopted by the City.

1630
1631 (1) The City, as opposed to the Construction of a new
1632 Wireless Support Structure in the Right-of-Way, shall prefer co-
1633 locating Small Cell Facilities on existing Wireless Support
1634 Structures without increasing the Height of the Wireless Support
1635 Structure by more than five (5) feet, including the Antenna and any
1636 associated shroud or concealment material.

1637
1638 (2) The City shall allow, consistent with Law and for the
1639 purpose of providing Wireless Service, Collocation of a Small Cell
1640 Facility by an Operator to a Wireless Support Structure owned by
1641 the City and located in the Right-of-Way, provided that the Operator
1642 comply with the City's Design Guidelines and any reasonable terms
1643 and conditions for such Collocation that are adopted by the City
1644 and consistent with the Design Guidelines and this chapter.

1645
1646 (i) The City may condition approval of the Collocation
1647 on replacement or modification of the Wireless Support
1648 Structure at the Operator's cost if the City determines that
1649 replacement or modification is necessary for compliance with
1650 its construction or safety standards.

1651
1652 (ii) A replacement or modification of the Wireless
1653 Support Structure shall conform to the applicable Design
1654 Guidelines and the City's applicable specifications for the
1655 type of structure being replaced.

1656
1657 (iii) The City may retain ownership of a replacement
1658 Wireless Support Structure.

1659
1660 (iv) The City may require removal and relocation of a
1661 Small Cell Facility or Wireless Support Structure, at the
1662 Permittee's sole expense, in order to accommodate
1663 Construction of a public improvement project by the City.

1664
1665 (3) The City may propose an alternate location to the proposed
1666 location of a new Wireless Support Structure that is within one hundred
1667 (100) feet of the proposed location or within a distance that is equivalent
1668 to the width of the Right-of-Way in or on which the new Wireless Support
1669 Structure is proposed, whichever is greater, which the Operator shall use
1670 if it has the right to use the alternate location on reasonable terms and
1671 conditions and the alternate location does not impose technical limits or
1672 additional costs.

1673
1674 **951.11 INDEMNITY.**

1675
1676 (a) Indemnity Required.

1677
1678 Each Certificate of Registration issued pursuant to this chapter
1679 shall contain provisions whereby Providers agree to protect, defend,
1680 indemnify and hold the City and its agents, officers, elected officials,
1681 employees, volunteers, and subcontractors harmless from and against all
1682 damages, costs, losses or expenses:
1683

1684 (1) for the repair, replacement, or restoration of City property,
1685 equipment, materials, structures and Facilities which are damaged,
1686 destroyed or found to be defective as a result of such Provider's acts or
1687 omissions; and
1688

1689 (2) from and against all claims, demands, suits, causes of action, and
1690 judgments:
1691

1692 (i) for damage to or loss of the property of any Person,
1693 and/or the death, bodily injury, illness, disease, workers'
1694 compensation, loss of services, or loss of income or wages to any
1695 Person;
1696

1697 (ii) arising out of, incident to, concerning or resulting from
1698 the act or omissions of such Provider, its agents, employees, and/or
1699 subcontractors, in the performance of activities pursuant to such
1700 Certificate of Registration, no matter how, or to whom, such loss may
1701 occur.
1702

1703 (3) Any Operator who owns or operates Small Cell Facilities or
1704 Wireless Support Structures in the Rights-of-Way shall indemnify, protect,
1705 defend, and hold the City and its elected officials, officers, employees, agents,
1706 and volunteers harmless against any and all claims, lawsuits, judgments,
1707 costs, liens, losses, expenses, fees to include reasonable attorney fees and
1708 costs of defense, proceedings, actions, demands, causes of action, liability
1709 and suits of any kind and nature, including personal or bodily injury or
1710 death, property damage or other harm for which recovery of damages is
1711 sought, to the extent that it is caused by the negligence of the Operator who
1712 owns or operates Small Cell Facilities and/or Wireless Service in the Right-
1713 of-Way, and any agent, officer, director, representative, employee, affiliate,
1714 or subcontractor of the Operator, or their respective officers, agents,
1715 employees, directors or representatives while installing, repairing, or
1716 maintaining facilities in the Right-of-Way.
1717

1718 (4) In any event, all Persons using or occupying the Rights-of-Way
1719 shall defend, indemnify and hold harmless the City as set forth above as a
1720 condition of their use and occupancy of the Rights-of-Way.
1721

1722 **951.12 CIVIL FORFEITURES.**

1723

1724 In addition to any other penalties set forth in this chapter and the remedy of
1725 specific performance, which may be enforced in a court of competent jurisdiction,
1726 the City may assess an additional penalty of civil forfeiture for failure to comply with
1727 the requirements of this chapter. Such penalty shall be a monetary sum, payable
1728 to the City, in the amount of five hundred dollars (US\$500.00) per twenty-four (24)
1729 hour day of violation and any subsequent portion of a day less than twenty-four
1730 (24) hours in length. Prior to assessing said penalty, the City will provide written
1731 notice to the Provider detailing the failure to comply with a specific provision of this
1732 chapter. Such notice shall also indicate that said penalty shall be assessed in
1733 fifteen (15) calendar days subsequent to the date of receipt, unless a different period
1734 of time is selected by the City, if compliance is not achieved. If a Provider desires
1735 to challenge such penalty, Provider must request a hearing before the Mayor within
1736 ten (10) days of service of the notice. Such hearing shall be held within thirty (30)
1737 days of the Provider's request. If Provider requests such hearing before the Mayor,
1738 such penalty shall be temporarily suspended. However, if, after the hearing, the

1739 Mayor determines that Provider failed to comply with the specific provision(s) of this
1740 chapter referenced in the notice, such penalty shall be assessed starting with the
1741 conclusion of the compliance period specified in the notice referenced in this section
1742 and continuing each day thereafter until compliance is achieved. The
1743 determination of the Mayor shall be final. The Provider may file an administrative
1744 appeal pursuant to O.R.C. Ch. 2506 and shall be solely responsible for all costs
1745 associated with the appeal, including but not limited to the costs associated with
1746 obtaining the record for appeal. The penalty shall continue to accrue during the
1747 appeal unless the Provider obtains a stay and posts a supersedeas bond pursuant
1748 to O.R.C. § 2505.09 or the Provider comes into full compliance with this chapter.
1749

1750 **951.13 TERMINATION OF CERTIFICATE OF REGISTRATION.**

1751
1752 (a) Default Notice Provided.

1753
1754 The City through its Department of Public Service shall give written
1755 notice of default to a Provider if the City, in its sole discretion, determines
1756 that a Provider has:

1757
1758 (1) violated any provision of this chapter or any law, ordinance,
1759 rule or regulation of the City and failed to cure; or

1760
1761 (2) evaded or attempted to evade any provision of the issuance
1762 of a Certificate of Registration or the acceptance of it, including failure to
1763 comply with the indemnification requirements in § 951.11 of this chapter;
1764 or

1765
1766 (c) practiced any fraud or deceit upon the City; or

1767
1768 (d) made a misrepresentation of fact in the Application for a
1769 Certificate of Registration.

1770
1771 (b) Cure Required.

1772
1773 If a Provider fails to cure a default within thirty (30) calendar days
1774 after such notice is served by the City then the City may exercise any
1775 remedies or rights it has at law or in equity to terminate the Certificate of
1776 Registration. If the Director of Public Service decides there is cause or
1777 reason to terminate the Certificate of Registration, the following procedure
1778 shall be followed:

1779
1780 (1) City shall serve a Provider with a written notice of the
1781 reason or cause for proposed termination of the Certificate of
1782 Registration and shall allow a Provider a minimum of ten (10)
1783 calendar days to cure.

1784
1785 (2) If the Provider fails to cure within ten (10) calendar
1786 days, the Director of Public Service may declare the Certificate of
1787 Registration terminated.

1788
1789 (3) The Provider shall have ten (10) calendar days to
1790 appeal the termination to the Mayor. All such appeals shall be in
1791 writing. If the Mayor determines there was not cause or reason to
1792 terminate the Certificate of Registration, then the Mayor shall
1793 overturn the decision of the Director of Public Service. Otherwise,

1794 the Mayor shall affirm the decision of the Director of Public Service
1795 to terminate the Certificate of Registration. The determination of the
1796 Mayor shall be final.

1797
1798 (4) If a Certificate of Registration is terminated and the
1799 termination is affirmed by the Mayor if appealed, the City may, in
1800 its sole discretion, restrict future Certificates of Registration from
1801 being issued to the Provider.

1802
1803 **951.14 UNAUTHORIZED USE OF PUBLIC RIGHTS-OF-WAY.**

1804
1805 (a) No Use Without Authorization.

1806
1807 No Person shall use the Rights-of-Way to operate a System that has
1808 not been authorized by the City in accordance with the terms of this
1809 chapter and been issued a Certificate of Registration.

1810
1811 (b) No Use Without Certificate of Registration.

1812
1813 No Person shall place or have placed any Facilities in, on, above,
1814 within, over, below, under, or through the Rights-of-Way, unless allowed
1815 under this chapter or having been issued a Certificate of Registration.

1816
1817 (c) Unauthorized Use a Violation.

1818
1819 Each unauthorized use shall be deemed to be a violation and a
1820 separate offense. Each day any violation of this chapter continues shall
1821 constitute a separate offense.

1822
1823 (d) Distinct and Separate Offense.

1824
1825 No Person shall fail to comply with the provisions of this chapter.
1826 Each failure to comply shall be deemed a distinct and separate offense.
1827 Each day any violation of this chapter continues shall constitute a distinct
1828 and separate offense.

1829
1830 (e) Penalty Assessed.

1831
1832 The violation of any provision of this chapter shall be unlawful and
1833 a misdemeanor offense. The penalty for any violation of this chapter shall
1834 be as provided in § 951.99.

1835
1836 **951.15 RIGHTS OF INDIVIDUALS.**

1837
1838 (a) No Discrimination.

1839
1840 A Provider shall comply at all times with all applicable laws relating
1841 to nondiscrimination.

1842
1843 (b) Equal Employment.

1844
1845 A Provider shall adhere to the applicable equal employment
1846 opportunity requirements of law, as now written or as amended.

1847
1848 (c) Privacy.

1849 A Provider shall adhere to subscriber privacy laws.
1850

1851 **951.16 ASSIGNMENT OR TRANSFER OF OWNERSHIP AND RENEWAL.**
1852

1853 (a) Assignment or Transfer Approval Required.
1854

1855 A Certificate of Registration shall not be assigned or transferred,
1856 either in whole or in part, other than to an Affiliate, without the prior
1857 written consent of the City. This includes an assignment or transfer by
1858 means of a fundamental corporate change or fundamental partnership
1859 change.
1860

1861 (b) Procedure to Request Assignment or Transfer Approval.
1862

1863 The parties to the assignment or transfer of a Certificate of
1864 Registration shall make a written request to the City for its consent in the
1865 form of the Certificate of Registration Application.
1866

1867 (c) Review by City.
1868

1869 The City will review the qualifications (including, but not limited to
1870 legal, technical and financial where appropriate) of the proposed assignee
1871 or transferee and terms of the existing Certificate of Registration. Within
1872 one hundred and twenty (120) days of actual receipt of the request for
1873 assignment or transfer, the City shall approve or deny such assignment or
1874 transfer request in writing, setting forth any conditions for assignment or
1875 transfer.
1876

1877 (d) Fundamental Corporate Change.
1878

1879 For purposes of this section, fundamental corporate change means
1880 the sale or transfer of a controlling interest in the stock of a corporation or
1881 the sale or transfer of all or a majority of a corporation's assets, merger
1882 (including a parent and its subsidiary corporation), consolidation or
1883 creation of a subsidiary corporation. For the purposes of this section,
1884 fundamental partnership change means the sale or transfer of all or a
1885 majority of a partnership's assets, change of a general partner in a limited
1886 partnership, change from a limited to a general partnership, incorporation
1887 of a partnership, or change in the control of a partnership.
1888

1889 (e) Certificate of Registration and Assignee/Transferee Replacement
1890 Issuance Required.
1891

1892 In no event shall a transfer or assignment of ownership or control
1893 be ultimately acceptable to the City without transferee or assignee
1894 requesting and being issued a replacement Certificate of Registration
1895 within ninety (90) days of transfer or assignment.
1896

1897 (f) Not a Transfer.
1898

1899 Notwithstanding anything to the contrary, no such consent or
1900 approval shall be required for a transfer or assignment to an Affiliate.
1901

1902 **951.17 CONSTRUCTION PERMITS.**
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(a) Construction Permit Requirement.

Except as otherwise provided in the Code, no Person may Construct in any Rights-of-Way without first having obtained a Construction Permit as set forth below. This requirement shall be in addition to any requirement set forth in the Code.

(1) A Construction Permit allows the Permittee to Construct in that part of the Rights-of-Way described in such Construction Permit and to obstruct travel over the specified portion of the Rights-of-Way by placing Facilities described therein, to the extent and for the duration specified therein.

(2) A Construction Permit is valid only for the dates and the area of Rights-of-Way specified in the Construction Permit and shall in no event be valid for more than one hundred eighty (180) days from the construction start date

(3) No Permittee may Construct in the Rights-of-Way beyond the date or dates specified in the Construction Permit unless such Permittee:

(i) submits a Supplementary Application for another Construction Permit before the expiration of the initial Construction Permit; and

(ii) is granted a new Construction Permit or Construction Permit Extension.

(4) Original Construction Permits issued pursuant to § 951.17 shall, when possible, be conspicuously displayed at all times at the indicated work site and shall be available for inspection by inspectors and authorized City personnel. If the original Construction Permit involves work conducted simultaneously at multiple locations, each location shall display a photocopy of the original Construction Permit. If the original Construction Permit is not conspicuously displayed at the indicated work site, then upon request, the original Construction Permit must be produced within twelve (12) hours or the first earliest Business Hour, whichever is later. For purposes of this Section, Business Hour shall mean the hours between 8 a.m. and 5 p.m. during a business day

(b) Construction Permit Applications.

(1) Application for a Construction Permit, unless an Emergency, shall be made to the Director of Public Service no less than fourteen (14) business days prior to the requested start of Construction.

(2) All Construction Permit Applications shall contain, and will be considered complete only upon compliance with the requirements of the following provisions:

(i) Credible evidence that the Applicant (where required) has been issued a Certificate of Registration or proof that the Applicant has written authority to apply for a Construction Permit

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on behalf of a party that has been issued a Certificate of Registration; and

(ii) Submission of a completed Construction Permit Application in the form required by the Director of Public Service, including, but not limited to, all required attachments, and scaled, dated drawings showing the location and area of the proposed project, number and location of street crossings, and the location of all then known existing and proposed Facilities of the Applicant or Provider within the proposed project area. All drawings, plans and specifications submitted with the Application shall comply with applicable technical codes, Rules and Regulations, or Design Guidelines where applicable, and be certified as to being in such compliance by trained technical personnel acceptable to the Director of Public Service. The mapping data is only required to be at the "Atlas" level of detail necessary for the City to reasonably determine the location of the Provider's facilities in the Rights-of-Way. The City reserves the right, in circumstances that the Director of Public Service considers unique, complex or unusual, to request that certain submitted drawings, plans and specifications be accompanied by the certification of a registered licensed professional engineer; and

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

(iv) If the Applicant wants to install new Facilities, evidence that the Right-of-way is not Full and evidence that the Applicant has received an appropriate Permit and is adhering to the City's laws and Rules and Regulations; and

(v) Unless otherwise prohibited by Law, if Applicant is proposing an above ground installation on existing poles within the Rights-of-Way, the applicant shall provide credible information satisfactory to the City to sufficiently detail and identify.

A. the size and height of the existing poles; and

B. based on the Facilities currently on the existing poles, the excess capacity currently available on such poles before installation of Applicant's Facilities; and

C. based on the Facilities currently on the existing poles, the excess capacity for like or similar Facilities that will exist on such poles after installation of Applicant's Facilities; and

(vi) Unless otherwise prohibited by Law, if the Applicant proposes to install new poles within the Rights-of-Way, the Applicant shall provide:

2013 A. Credible evidence satisfactory to the City that
2014 there is no excess capacity on existing poles or in existing
2015 underground systems; and
2016

2017 B. Credible evidence to the City that it is not
2018 financially and/or technically practicable for the Applicant to
2019 make an underground installation or locate its facilities on
2020 existing poles; and
2021

2022 C. The location, size, height, color, and material of
2023 the proposed poles; and
2024

2025 D. Credible evidence satisfactory to the City that
2026 the Applicant will adhere to all the applicable laws
2027 concerning the installation of new poles.
2028

2029 (vii) If Applicant is proposing an underground installation
2030 in existing ducts or conduits within the Rights-of-Way, the
2031 Applicant shall provide credible information satisfactory to the City
2032 to sufficiently detail and identify:
2033

2034 A. based on the existing Facilities, the excess
2035 capacity for like or similar Facilities currently available in
2036 such ducts or conduits before installation of Applicant's
2037 Facilities; and
2038

2039 B. based on existing Facilities, the excess capacity
2040 for like or similar Facilities that will exist in such ducts or
2041 conduits after installation of Applicant's Facilities.
2042

2043 (viii) If Applicant is proposing an underground installation
2044 within new ducts or conduits to be constructed within the Rights-
2045 of-Way, the Applicant must provide credible information
2046 satisfactory to the City to sufficiently detail and identify:
2047

2048 A. the location, depth, size, and quantity of
2049 proposed new ducts or conduits; and
2050

2051 B. the excess capacity for like or similar
2052 equipment that will exist in such ducts or conduits after
2053 installation of Applicant's Facilities.
2054

2055 (ix) A preliminary Construction schedule and completion
2056 date; and
2057

2058 (x) Payment of all money due to the City for:
2059

2060 A. Permit Fees;
2061

2062 B. any loss, damage, or expense suffered by the
2063 City as a result of Applicant's prior Construction in the
2064 Rights-of-Way or any Emergency actions taken by the City;
2065

2066 C. any Certificate of Registration issued to the
2067 Applicant/Person whose Facilities are being Constructed;
2068 and
2069

2070 D. any other money due to the City from the
2071 Applicant/Person whose Facilities are being Constructed.
2072

2073 (xi) When a Construction Permit is requested for purposes
2074 of installing additional Systems or any part of a System, the posting
2075 of a Construction Bond and Removal Bond, acceptable to the City
2076 and subject to § 951.21 of this chapter, for the additional Systems
2077 or any part of a System is required.
2078

2079 (xii) Upon request, the Director of Public Service may
2080 modify or waive the information requirements if they are not
2081 necessary in evaluating the Construction Permit application. The
2082 Director of Public Service may request applicable and pertinent
2083 additional information if it is necessary in evaluating the
2084 Construction Permit Application.
2085

2086 (c) Issuance of Permit; Conditions.
2087

2088 (1) If the City determines that the Applicant has satisfied the
2089 requirements of this chapter and the Construction Permit process, the
2090 Director of Public Service shall issue a Construction Permit subject to the
2091 provisions of § 951.17(c)(2).
2092

2093 (2) The City may impose reasonable conditions upon the
2094 issuance of the Construction Permit and the performance of the Permittee
2095 thereunder in order to protect the City's investment in the Right-of-Way,
2096 protect the public health, safety and welfare, to insure the structural
2097 integrity of the Rights-of-Way, to protect the property and safety of other
2098 users of the Rights-of-Way, or to minimize the disruption and
2099 inconvenience to the traveling public.
2100

2101 (d) Construction Permit Fees.
2102

2103 (1) Except as otherwise provided by Law, the City shall collect a
2104 Construction Permit Fee equal to the actual and direct cost incurred by
2105 the City that is associated with receiving, reviewing, processing and
2106 granting (or denying) the Construction Permit and any oversight of the
2107 Construction Permit or the Construction work associated therewith.
2108 Following completion of the Construction work for which a Construction
2109 Permit has been granted (or at the time of the denial of Construction
2110 Permit) the City shall calculate and assess all actual and direct costs
2111 involved in receiving, reviewing, processing and granting (or denying) the
2112 Construction Permit and any oversight of the Construction Permit or
2113 Construction Work associated therewith. Quarterly, the City will cause the
2114 Director of Finance to issue a written invoice to a Provider that lists and
2115 summarizes the costs for each Construction Permit issued to and/or
2116 completed by the Provider over the previous ninety (90) days. The Provider
2117 shall remit payment to the City for the original quarterly invoice within
2118 thirty (30) days after the Director of Finance issues such invoice. Any
2119 Applicant who fails to timely remit such invoiced Construction Permit Fee
2120 amounts shall be subject to the penalties of this chapter, the imposition

2121 of any other legal or equitable remedies available to the City and the
2122 immediate revocation of any Certificate of Registration or Construction
2123 Permit having been issued.

2124
2125 (2) In addition to these direct and actual costs, the City may
2126 include in the Construction Permit Fee the cost of the value of degradation
2127 and reduction in the useful life of the Rights-of-Way that will result from
2128 Construction that has taken place therein. "Degradation and the reduction
2129 in the useful life" for the purpose of this Section means the accelerated
2130 depreciation of the Rights-of-Way caused by Construction in or
2131 disturbance of the Rights-of-Way, resulting in the need to reconstruct or
2132 repair such Rights-of-Way earlier than would be required if the
2133 Construction did not occur.

2134
2135 (3) Except as otherwise provided herein, no future Construction
2136 Permits shall be issued to an Applicant without payment of all outstanding
2137 Construction Permit Fee invoices. The City shall be exempt from payment
2138 of Construction Permit Fees. Construction Permit Fees that were paid for
2139 a Permit that the City has revoked in accordance with the terms of this
2140 chapter are not refundable.

2141
2142 (e) Coordinated Applications.

2143
2144 Applicants are encouraged to submit Applications for Construction
2145 Permits to work in the Rights-of-Way at the same place and time in
2146 coordination. Coordinated Applicants shall have the ability to divide
2147 amongst themselves, in proportions the parties find appropriate, any
2148 applicable Construction Permit Fees.

2149
2150
2151 (f) Exceptions to Permit Requirements.

2152
2153 (1) The following shall be excluded from the requirements of §
2154 951.17:

2155
2156 (i) The repairing or improvement of streets or other
2157 public places under or by virtue of a contract with the City.

2158
2159 (ii) The maintenance, planting or removal of trees and
2160 shrubs from within the Right-of-Way.

2161
2162 (iii) The addition of an overhead customer service line for
2163 any Utility, which service line does not cross across the edge of
2164 pavement limits or extend over pavement at a height of less than
2165 fifteen (15) feet above the pavement.

2166
2167 **951.18 CONSTRUCTION, RELOCATION AND RESTORATION.**

2168
2169 (a) Utility Engineering Study Required.

2170
2171 (1) Prior to commencement of any initial Construction,
2172 extension, or relocation of Facilities in the Rights-of-Way, except for repair,
2173 maintenance or replacement with like Facilities or relocations requested
2174 or caused by a third party (excluding the City) or another Permittee, a
2175 Permittee shall conduct a utility engineering study on the proposed route

2176 of Construction expansion or relocation if requested by the Director of
2177 Public Service. Where such Construction and/or relocation is requested
2178 or caused by a third party, every Permittee located within the Rights-of-
2179 Way at issue or involved with the work shall use all Best Efforts to
2180 cooperate and assist any other Permittee or person who is directed by the
2181 City to perform the required utility engineering study. A utility engineering
2182 study consists of, but is not limited to, completion of the following tasks:
2183

2184 (i) Secure all available "as-built" plans, plats and other
2185 location data indicating the existence and approximate location of
2186 all Facilities along the proposed Construction route.
2187

2188 (ii) Visibly survey and record the location and dimensions
2189 of any Facilities along the proposed Construction route, including,
2190 but not limited to, manholes, valve boxes, utility boxes, posts and
2191 visible street cut repairs.
2192

2193 (iii) Determine and record the presence and precise
2194 location of all underground facilities the Applicant or Person on
2195 whose behalf the Permit was applied for owns or controls in the
2196 Rights-of-Way along the proposed System route. Upon request of
2197 the Director of Public Service, a Permittee shall also record and
2198 identify the general location of all other Facilities in the Rights-of-
2199 Way along the proposed System route. For the purposes of this
2200 Section, general location shall mean the alignment of other
2201 Facilities in the Rights-of-Way, but shall not necessarily mean the
2202 depth of other Facilities in the Rights-of-Way.
2203

2204 (iv) Plot and incorporate the data obtained from
2205 completion of the tasks described in §§ 951.18(a)(1)(i)-(iii) on the
2206 Construction Permittee's proposed System route maps,
2207 Construction plans, plan sheets or computer aided drafting and
2208 design (CADD) files, or other data files in a format compatible with
2209 that used by the City.
2210

2211 (v) Where the proposed location of Facilities and the
2212 location of existing underground facilities appear to conflict on the
2213 plans drafted in accordance with § 951.18(a)(1)(iv), Permittee has
2214 the option of either utilizing non-destructive digging methods, such
2215 as vacuum excavation, at the critical points identified to determine
2216 as precisely as possible, the horizontal, vertical and spatial position,
2217 composition, size and other specifications of the conflicting
2218 underground facilities, or re-designing the Construction plans to
2219 eliminate the apparent conflict. A Permittee shall not excavate more
2220 than a three (3) feet by three (3) feet square hole in the Rights-of-
2221 Way to complete this task.
2222

2223 (vi) Based on all of the data collected upon completion of
2224 the tasks described in this section, adjust the proposed System
2225 design to avoid the need to relocate other Underground Facilities.
2226

2227 (2) The Director of Public Service may modify the scope of the
2228 utility engineering study as necessary depending on the proposed
2229 Construction plans.
2230

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(b) Copy to City.

Upon completion of the tasks described in § 951.18(a), the Construction Permittee shall submit the proposed System route maps and Construction Plans, with the results of the utility engineering study, in the most advanced format (including, but not be limited to electronic and/or digital format) then currently being used by the Provider that is then currently capable of technologically being read (or readily converted to a readable form) by the City. The mapping data is required to be at the "Atlas" level of detail necessary for the City to reasonably determine the location of the Provider's facilities in the Rights-of-Way. The Provider shall supply the mapping data on paper if the Director of Public Service determines that the format currently being used by the Provider is not capable of being read by the City.

(c) Qualified Firm.

All utility engineering studies conducted pursuant to this section shall be performed by the Permittee if in the discretion of the Director of Public Service the Construction Permittee is qualified to complete the project itself; alternatively, utility engineering studies shall be performed by a firm specializing in utility engineering that is approved by the City.

(d) Cost of Study.

The Permittee shall bear the cost of compliance with § 951.18(a)-(c).

(e) Construction Schedule.

Unless otherwise provided for in this chapter or in the Rules and Regulations, or unless the Director of Public Service waives any of the requirements of this Section due to unique or unusual circumstances, a Permittee shall be required to submit a written Construction schedule to the City fourteen (14) business days before commencing any work in or about the Rights-of-Way, and shall further notify the City not less than two (2) business days in advance of any excavation in the Rights-of-Way. This Section shall apply to all situations with the exception of circumstances under § 951.20(d) (Emergency Situations) and § 951.19 (Minor Maintenance).

(f) Location of Facilities.

(1) The placement of new Facilities and replacement of old Facilities, either above ground or underground, shall be completed in conformity with applicable laws and the City's Rules and Regulations.

(2) The City shall have the power to prohibit or limit the placement of new or additional Facilities within the Rights-of-Way if the Right-of-Way is Full, as determined in the sole discretion of the City. In making such decisions, the City shall strive to the extent possible to accommodate all existing and potential users of the Rights-of-Way, but shall be guided primarily by considerations of the public health, safety and welfare, the condition of the Rights-of-Way, the time of year with respect to essential Utilities, the protection of existing Facilities in the Rights-of-

2286 Way, future City and County plans for public improvements, development
2287 projects which have been determined to be in the public interest and
2288 nondiscriminatory and competitively neutral treatment among Providers.
2289

2290 (g) Least Disruptive Technology.
2291

2292 All Construction or maintenance of Facilities shall be accomplished
2293 in the manner resulting in the least amount of damage and disruption of
2294 the Rights-of-Way. Specifically, every Permittee when performing
2295 underground Construction, if technically and/or technologically feasible
2296 and not economically unreasonable, shall utilize Trenchless Technology,
2297 including, but not limited to, horizontal drilling, directional boring, and
2298 microtunneling. In addition, all cable, wire or fiber optic cable installed in
2299 the subsurface Rights-of-Way pursuant to this chapter may be required to
2300 be installed in conduit, and if so required, no cable, wire or fiber optic
2301 cable may be installed pursuant to this chapter using "direct bury"
2302 techniques.
2303

2304 (h) Special Exceptions.
2305

2306 (1) The City may grant a special exception to the requirements
2307 of § 951.18(f) and § 951.18(g) if a Permittee, upon application,
2308 demonstrates with written evidence that:
2309

2310 (i) The exception will not create any threat to the City's
2311 investment or in the Rights-of-Way, the public health, safety or
2312 welfare.
2313

2314 (ii) Permittee demonstrates that the increased economic
2315 burden and the potential adverse impact on the Permittee's
2316 Construction schedule resulting from the strict enforcement of the
2317 requirement actually or effectively inhibits the ability of the
2318 Permittee to provide Services in the City.
2319

2320 (iii) The Permittee demonstrates that the requirement
2321 unreasonably discriminates against the Permittee in favor of
2322 another Person.
2323

2324 (iv) The requirements requested by the City create an
2325 unreasonable economic burden for the Permittee that outweighs
2326 any potential benefit to the City.
2327

2328 (i) Relocation of Facilities.
2329

2330 (1) A Provider shall as promptly as reasonably possible and at
2331 its own expense, permanently remove and relocate its Facilities in the
2332 Rights-of-Way when necessary for a governmental or public improvement
2333 purpose. In instances where the City requests removal and/or relocation,
2334 the City shall waive all applicable Construction Permit Fees. Upon removal
2335 and/or relocation, the Provider shall restore the Rights-of-Way to the same
2336 or better condition it was in prior to said removal or relocation. If existing
2337 poles are required to be removed and/or relocated, then the existing poles
2338 will be replaced with poles of the same or substantially similar size, or
2339 smaller. In accordance with Law, the Director of Public Service may

2340 request relocation and/or removal in order to prevent unreasonable
2341 interference by the Provider's Facilities with:

2342
2343 (i) A public improvement undertaken or approved by the
2344 City.

2345
2346 (ii) The City's investment in the Right-of-Way.

2347
2348 (iii) When the public health, safety, and welfare requires
2349 it, or when necessary to prevent interference with the safety and
2350 convenience of ordinary travel over the Rights-of-Way.

2351
2352 (iv) The sale, conveyance, vacation, or narrowing of all or
2353 any part of a Right-of-Way.

2354
2355 (2) Notwithstanding the foregoing, a Provider who has Facilities
2356 in the Rights-of-Way subject to a vacation or narrowing that is not required
2357 for the purposes of the City, shall have a permanent easement in such
2358 vacated portion or excess portion in conformity with O.R.C. § 723.041.

2359
2360 (3) If, in the reasonable judgment of the City, a Provider fails to
2361 commence removal and/or relocation of its Facilities, as designated by the
2362 City, within thirty (30) days after the City's removal order, or if a Provider
2363 fails to substantially complete such removal, including all associated
2364 repair of the Rights-of-Way of the City, within twelve (12) months
2365 thereafter, then, to the extent consistent with applicable law, the City shall
2366 have the right to:

2367
2368 (i) Declare that all rights, title and interest to the
2369 Facilities belong to the City with all rights of ownership, including,
2370 but not limited to, the right to connect and use the Facilities or to
2371 effect a transfer of all right, title and interest in the Facilities to
2372 another Person for operation; or

2373
2374 (ii) Authorize removal of the Facilities installed by the
2375 Provider in, on, over or under the Rights-of-Way of the City at
2376 Provider's cost and expense, by another Person; however, the City
2377 shall have no liability for any damage caused by such action and
2378 the Provider shall be liable to the City for all reasonable costs
2379 incurred by the City in such action; and

2380
2381 (iii) To the extent consistent with applicable Law, any
2382 portion of the Provider's Facilities in, on, over or under the Rights-
2383 of-Way of the City designated by the City for removal and not timely
2384 removed by the Provider shall belong to and become the property of
2385 the City without payment to the Provider, and the Provider shall
2386 execute and deliver such documents, as the City shall request, in
2387 form and substance acceptable to the City, to evidence such
2388 ownership by the City.

2389
2390 (j) Pre-Excavation Facilities Location.

2391
2392 (1) Before the start date of any Rights-of-Way excavation, each
2393 Provider who has Facilities located in the area to be excavated shall, to the

2394 best of its ability, be responsible to mark the horizontal and approximate
2395 vertical placement of all its Facilities.
2396

2397 (2) All Providers shall notify and work closely with the excavation
2398 contractor in an effort to establish the exact location of its Facilities and
2399 the best procedure for excavation.
2400

2401 (k) Rights-of-Way Restoration.
2402

2403 (1) The work to be done under the Permit, and the Restoration
2404 of the Rights-of-Way as required herein, weather permitting, must be
2405 completed within the dates specified in the Permit. In addition to its own
2406 work, the Permittee must restore the general area of the work, and the
2407 surrounding areas, including trench backfill, paving and its foundations
2408 in accordance with the Code and City Rules and Regulations. If a Permittee
2409 is unable to timely complete the Restoration of Rights-of-Way due to
2410 unreasonable inclement weather conditions, the Permittee shall complete
2411 the Restoration of the Rights-of-Way as soon as weather conditions make
2412 it possible to do so and upon said completion notify the City.
2413

2414 (2) In approving an Application for a Construction Permit, the
2415 City may have the Permittee restore the Rights-of-Way or the City may
2416 restore the Rights-of-Way itself at the Permittee's cost if the Permittee has
2417 in the past not abided by the requirements of this chapter.
2418

2419 (3) If the City chooses to allow Permittee to restore the Rights-
2420 of-Way, the Permittee shall, at the time of Application for a Construction
2421 Permit, post a Construction Bond in an amount determined by the City to
2422 be sufficient to cover the cost of restoring the Rights-of-Way to its
2423 approximate pre-excavation condition. If, twelve (12) months after
2424 completion of the Restoration of the Rights-of-Way, the City determines
2425 that the Rights-of-Way have been properly restored, the surety on the
2426 Construction Bond shall be released. The City may, in its sole discretion,
2427 waive the requirements of posting a Construction Bond upon
2428 demonstration of good cause shown.
2429

2430 (4) The Permittee shall perform the Right-of-Way Restoration
2431 work according to the standards and with the materials specified by the
2432 City. The City shall have the authority to prescribe the manner and extent
2433 of the Restoration, and may do so in written procedures of general
2434 application or on a case-by-case basis. The City in exercising this
2435 authority shall be guided by the following standards and considerations:
2436 the number, size, depth and duration of the excavations, disruptions or
2437 damage to the Rights-of-Way; the traffic volume carried by the Rights-of-
2438 Way; the character of the neighborhood surrounding the Rights-of-Way;
2439 the pre-excavation condition of the Rights-of-Way; the remaining life-
2440 expectancy of the Rights-of-Way affected by the excavation; whether the
2441 relative cost of the method of Restoration to the Permittee is in reasonable
2442 balance with the prevention of an accelerated depreciation of the Rights-
2443 of-Way that would otherwise result from the excavation, disturbance or
2444 damage to the Rights-of-Way; and the likelihood that the particular
2445 method of Restoration would be effective in slowing the depreciation of the
2446 Rights-of-Way that would otherwise take place. Methods of Restoration
2447 may include, but are not limited to, patching the affected area,
2448 replacement of the Rights-of-Way base at the affected area, and in the most

2449 severe cases, milling, overlay and/or street reconstruction of the entire
2450 area of the Rights-of-Way affected by the work.

2451
2452 (5) By restoring the Rights-of-Way itself, the Permittee
2453 guarantees its work and shall maintain it for twelve (12) months following
2454 its completion. During this twelve (12) month period, it shall, upon
2455 notification from the Department of Public Service, correct all Restoration
2456 work to the extent necessary using the method required by the Department
2457 of Public Service. Weather permitting, said work shall be completed within
2458 five (5) calendar days of the receipt of the notice from the Department of
2459 Public Service, unless otherwise extended by the Department of Public
2460 Service.

2461
2462 (6) If the Permittee fails to restore the Rights-of-Way in the
2463 manner and to the condition required by the City, or fails to satisfactorily
2464 and timely complete all repairs required by the City, the City, at its option,
2465 may do such work. In that event, the Permittee shall pay to the City,
2466 within thirty (30) days of invoicing, the Restoration cost of restoring the
2467 Rights-of-Way and any other costs incurred by the City. Upon failure to
2468 pay, the City may call upon any bond or letter of credit posted by Permittee
2469 and/or pursue any and all legal and equitable remedies.

2470
2471 (7) If the work to be done under the Permit is being done at the
2472 same location and the same period of time as work by the City and/or
2473 another Permittee(s), then the Director of Public Service may reasonably
2474 apportion the Restoration responsibility among the City, Providers and/or
2475 other Persons.

2476
2477 (l) Damage to Other Facilities

2478
2479 (1) In the case of an Emergency, and if possible after reasonable efforts
2480 to contact the Provider seeking a timely response, when the City performs work
2481 in the Rights-of-Way and finds it necessary to maintain, support, or move a
2482 Provider's Facilities to protect those Facilities, the costs associated therewith will
2483 be billed to that Provider and shall be paid within thirty (30) days from the date
2484 of billing. Upon failure to pay, the City may pursue all legal and equitable
2485 remedies or the City may call upon any bond or letter of credit posted by the
2486 Permittee and pursue all legal or equitable remedies. Each Provider shall be
2487 responsible for the cost of repairing any damage caused by its Facilities to the
2488 Facilities of another Provider during the City's response to an Emergency.

2489
2490 (2) Each Provider shall be responsible for the cost of repairing any City-
2491 owned Facilities in the Rights-of-Way that the Provider or its Facilities damage.

2492
2493 (m) Rights-of-Way Vacation.

2494
2495 (1) If the City sells or otherwise transfers a Right-of-Way that contains
2496 the Facilities of a Provider, such sale or transfer shall be subject to any existing
2497 easements of record and any easements required pursuant to
2498 O.R.C. § 723.041.

2499
2500 (n) Installation Requirements.

2501
2502 The excavation, backfilling, Restoration, and all other work
2503 performed in the Rights-of-Way shall be performed in conformance with

2504 all applicable laws, City Rules and Regulations, other standards as may
2505 be promulgated by the Director of Public Service.

2506
2507 (o) Inspection.

2508
2509 When the Construction under any Permit is completed, the
2510 Permittee shall notify the Department of Public Service.

2511
2512 (1) The Permittee shall make the Construction site available to
2513 the Inspector and to all others as authorized by law for inspection at all
2514 reasonable times during the execution and upon completion of the
2515 Construction.

2516
2517 (2) At the time of inspection, the Inspector may order the
2518 immediate cessation of any work that poses a serious threat to the life,
2519 health, safety or well-being of the public, violates any law or that violates
2520 the term and conditions of the Permit and/or this chapter. The City may
2521 inspect the work; however, the failure of the City to inspect the work does
2522 not alleviate the responsibility of the Permittee to complete the work in
2523 accordance with the approved Permit and the requirements of this chapter.

2524
2525 (3) The Inspector may issue an order to the Permittee for any work
2526 that does not conform to the Permit and/or applicable standards or codes.
2527 The order shall state that failure to correct the violation will be cause for
2528 revocation of the Permit. The order may be served on the Permittee as
2529 provided in § 951.23 (e). An order may be appealed to the Director of
2530 Public Service. The decision of the Director of Public Service may be
2531 appealed to the Mayor whose decision shall be final. If not appealed,
2532 within ten (10) days after issuance of the order, the Provider shall present
2533 proof to the Director of Public Service that the violation has been corrected.
2534 If such proof has not been presented within the required time, the Director
2535 of Public Service may revoke the Permit.

2536
2537 (p) Other Obligations.

2538
2539 (1) Obtaining a Construction Permit does not relieve Permittee
2540 of its duty to obtain all other necessary Permits, licenses, and authority
2541 and to pay all fees required by any other local, state or federal laws.

2542
2543 (2) Permittee shall comply with all laws, including the Ohio
2544 Utility Protection Service.

2545
2546 (3) Permittee shall perform all work in conformance with all
2547 applicable laws and standards, and is responsible for all work done in the
2548 Rights-of-Way pursuant to its Permit, regardless of who performs the
2549 work.

2550
2551 (4) No Rights-of-Way obstruction or excavation may be
2552 performed when seasonally prohibited or when conditions are
2553 unreasonable for such work, except in the case of an Emergency as
2554 outlined in § 951.20(d).

2555
2556 (5) Permittee shall not obstruct a Right-of-Way so as to interfere
2557 with the natural free and clear passage of water through the gutters or
2558 other waterways. The Director of Public Service may waive this

2559 requirement if it is technically or economically unreasonable in the
2560 circumstances.

2561
2562 (6) Private vehicles, other than necessary Construction vehicles,
2563 may not be parked within or adjacent to a Permit area. The loading or
2564 unloading of trucks adjacent to a Permit area is prohibited unless
2565 specifically authorized by the Permit.

2566
2567 (q) Undergrounding Required.

2568
2569 Any owner of property abutting a street or alley where Service
2570 Facilities are now located underground and where the Service connection
2571 is at the property line, shall install or cause others to install underground
2572 any Service delivery infrastructure from the property line to the buildings
2573 or other structures on such property to which such Service is supplied.
2574 Where not otherwise required to be placed underground by this chapter, a
2575 Provider shall locate Facilities underground at the request of an adjacent
2576 property owner, provided that such placement of Facilities underground is
2577 consistent with the Provider's normal construction and operating
2578 standards and that the additional costs of such undergrounding over the
2579 normal aerial or above ground placement costs of identical Facilities are
2580 borne directly by the property owner making the request. A Provider, under
2581 any circumstance shall, upon the reasonable request of the City, always
2582 use Best Efforts to place Facilities underground. Where technically
2583 possible and not economically unreasonable or unsafe (based upon the
2584 technology employed and Facilities installed), all Facilities to be installed
2585 by a Provider under the Right-of-Way shall be installed in conduit.

2586
2587 **951.19 MINOR MAINTENANCE PERMIT.**

2588
2589 (a) Right-of-Way Minor Maintenance Permit Requirement.

2590
2591 No Person shall perform minor maintenance of Facilities in the
2592 Rights-of-Way without first having obtained a Right-of-Way Minor
2593 Maintenance Permit as set forth in this chapter. Minor Maintenance
2594 means: (i) the routine repair or replacement of Facilities with like Facilities
2595 not involving Construction and not requiring traffic control for more than
2596 two (2) hours at any one location; or (ii) the routine repair or replacement
2597 of Facilities with like Facilities not involving Construction and taking place
2598 on thoroughfares and arteries between the hours of 9:00 A.M. and 3:00
2599 P.M.; or (iii) the routine repair or replacement of Facilities with like
2600 Facilities not involving construction on all Rights-of-Ways, other than
2601 thoroughfares and arterials, that does not impede traffic and is for a period
2602 of less than eight (8) contiguous hours; or (iv) Construction other than on
2603 thoroughfares and arterials that takes less than eight (8) contiguous hours
2604 to complete, does not impede traffic and does not involve a pavement cut.
2605 The Director of Public Service may adopt Rules and Regulations pursuant
2606 to §951.08(e) that clarify the definition of minor maintenance and/or
2607 provide a process for a Provider to determine whether particular activity
2608 constitutes minor maintenance.

2609
2610 (1) A Right-of-Way Minor Maintenance Permit allows the
2611 Permittee to perform all minor maintenance in any part of the Rights-of-
2612 Way as required.

2613

2614 (2) A Right-of-Way Minor Maintenance Permit is valid from the
2615 date of issuance until revoked by the Director of Public Service.

2616
2617 (3) A Right-of-Way Minor Maintenance Permit must be displayed
2618 or upon request produced within twelve (12) business hours.

2619
2620 (4) A Right-of-Way Minor Maintenance Permit by itself shall
2621 under no circumstances provide a Permittee with the ability to cut
2622 pavement without seeking additional authority from the Director of Public
2623 Service.

2624
2625 (b) Minor Maintenance Permit Applications.

2626
2627 Applications for a Right-of-Way Minor Maintenance Permit shall be
2628 made to the Director of Public Service. In addition to any information
2629 required by the Director of Public Service, all Right-of-Way Minor
2630 Maintenance Permit Applications shall contain, and will only be
2631 considered complete upon compliance with the following provisions:

2632
2633 (1) Credible evidence that the Applicant has obtained a
2634 Certificate of Registration or proof that the Applicant has written authority
2635 to apply for a Right-of-Way Minor Maintenance Permit on behalf of a party
2636 that has been issued a Certificate of Registration.

2637
2638 (2) Submission of a completed Right-of-Way Minor Maintenance
2639 Permit Application in the form required by the Director of Public Service.

2640
2641 (3) A statement that the Applicant will employ protective
2642 measures and devices that, consistent with the Ohio Manual of Uniform
2643 Traffic Control Devices, will prevent injury or damage to Persons or
2644 property and minimize disruptions to the efficient movement of pedestrian
2645 and vehicular traffic.

2646
2647 (c) Issuance of Minor Maintenance Permits; Conditions.

2648
2649 (1) If the Director of Public Service determines that the Applicant
2650 has satisfied the requirements of this chapter and the Right-of-Way Minor
2651 Maintenance Permit process, the Director of Public Service shall issue a
2652 Minor Maintenance Permit subject to the provisions of this chapter.

2653
2654 (2) The City may impose reasonable conditions, in addition to
2655 Rules and Regulations enacted by the Director of Public Service, upon the
2656 issuance of the Right-of-Way Minor Maintenance Permit and the
2657 performance of the Permittee thereunder in order to protect the public
2658 health, safety and welfare, to insure the structural integrity of the Rights-
2659 of-Way, to protect the property and safety of other users of the Rights-of-
2660 Way, and to minimize the disruption and inconvenience to the traveling
2661 public.

2662
2663 (d) Minor Maintenance Permit Fees.

2664
2665 The Director of Public Service shall not charge a fee for the issuance of the
2666 Right-of-Way Minor Maintenance Permit but may revoke the Right-of-Way Minor
2667 Maintenance Permit as any other Permit may be revoked under this chapter.

2668

2669 **951.20 ENFORCEMENT OF PERMIT OBLIGATION.**
2670

2671
2672 (a) Mandatory Denial of Permit.
2673

2674 Except in the case of an Emergency, no Permit will be granted:
2675

2676 (1) To any Person who has not yet made an Application or who
2677 is occupying any Right-of-Way without a valid Certificate of Registration;
2678 or
2679

2680 (2) To any Person who has outstanding debt owed to the City
2681 unless payment in full has been placed in an escrow account approved by
2682 the City Director of Finance and the Director of Law; or
2683

2684 (3) To any Person as to whom there exists grounds for the
2685 revocation of a Permit in accordance with the provisions herein; or
2686

2687 (4) If, in the discretion of the Director of Public Service, the
2688 issuance of a Permit for the particular date and/or time would cause a
2689 conflict or interfere with an exhibition, celebration, festival, or any other
2690 event, the Director of Public Service, in exercising this discretion, shall be
2691 guided by the safety and convenience of ordinary travel of the public over
2692 the Rights-of-Way, and by considerations relating to the public health,
2693 safety and welfare and/or the City's investment in the Right-of-Way.
2694

2695 (b) Permissive Denial of Permit.
2696

2697 The Director of Public Service may deny a Permit in order to protect
2698 the public health, safety and welfare, and/or protect the City's investment
2699 in the Right-of-Way to prevent interference with the safety and
2700 convenience of ordinary travel over the Rights-of-Way, or when necessary
2701 to protect the Rights-of-Way and its users.
2702

2703 (1) The Director of Public Service, in his/her discretion, may
2704 consider one or more of the following factors:
2705

2706 (i) the extent to which Rights-of-Way space where the
2707 Permit is sought is available;
2708

2709 (ii) the competing demands for the particular space in the
2710 Rights-of-Way;
2711

2712 (iii) the availability of other locations in the Rights-of-Way
2713 or in other Rights-of-Way for the proposed Facilities;
2714

2715 (iv) the applicability of this chapter or other regulations of
2716 the Rights-of-Way that affect location of Facilities in the Rights-of-
2717 Way;
2718

2719 (v) the degree of compliance of the Provider with the
2720 terms and conditions of its Certificate of Registration, this chapter,
2721 and other applicable ordinances and regulations;
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(vi) the degree of disruption to surrounding communities and businesses that will result from the use of that part of the Rights-of-Way;

(vii) the condition and age of the Rights-of-Way, and whether and when it is scheduled for total or partial reconstruction;

(viii) the balancing of the costs of disruption to the public and damage to the Rights-of-Way, against the benefits to that part of the public served by the expansion into additional parts of the Rights-of-Way; and

(ix) whether such Applicant or its agent has failed within the past three (3) years to comply, or is presently not in full compliance with, the requirements of this chapter, or, if applicable, any other law.

(2) Under no circumstances will open cutting take place on any street except where:

(i) An Emergency situation constitutes that an open cut is necessary; and/or

(ii) Vital services to resident(s) or business(es) are needed or have been cut off and there is no reasonable alternative (such as jacking or boring) in supplying or restoring such services; and/or

(iii) The Director of Public Service determines it is in the best interests of the City that such an open cut take place.

(c) Discretionary Issuance of Permit.

(1) Notwithstanding the provisions of §§ 951.20(a)(1) and 951.20(a)(2), the Director of Public Service may issue a Permit in any case in which the Permit is necessary;

(i) to prevent substantial economic hardship to a customer of the Permit Applicant, if established by credible evidence satisfactory to the City; or

(ii) to allow a new economic development project to be granted a Permit under this section.

(2) To be granted a Permit under this section, the Permit Applicant must not have had knowledge of the hardship, the plans for improvement of Service, or the development project when it was required to submit its list of next year projects.

(d) Work Done Without A Permit in Emergency Situations.

(1) Each Provider shall, as soon as is practicable, immediately notify the Director of Public Service of any event regarding its Facilities which it considers to be an Emergency. The Provider may proceed to take whatever actions are necessary in order to respond to the Emergency.

2778 Within five (5) business days, unless otherwise extended by the Director of
2779 Public Service, after the occurrence or discovery of the Emergency
2780 (whichever is later), the Provider shall apply for the necessary Permits, pay
2781 the fees associated therewith or have those fees attributed to its quarterly
2782 invoice balance in accordance with § 951.17(d) and fulfill the rest of the
2783 requirements necessary to bring itself into compliance with this chapter
2784 for all actions taken in response to the Emergency. If the City becomes
2785 aware of an Emergency regarding a Provider's Facilities, the City may use
2786 Best Efforts to contact the Provider or the System Representative of each
2787 Provider affected, or potentially affected, by the Emergency. In any event,
2788 the City may take whatever action it deems necessary in order to respond
2789 to the Emergency, the cost of which shall be borne by the Provider whose
2790 Facilities caused the Emergency.

2791
2792 (2) Except in the case of an Emergency, any Provider who
2793 Constructs in, on, above, within, over, below or through a Rights-of-Way
2794 without a valid Permit must subsequently obtain a Permit, pay double the
2795 calculated fee for said Permit, pay double all the other fees required by the
2796 Code, deposit with the City the fees necessary to correct any damage to
2797 the Rights-of-Way and comply with all of the requirements of this chapter.

2798
2799 (e) Revocation of Permits.
2800

2801 (1) Permittees hold Permits issued pursuant to this chapter as
2802 a privilege and not as a right. The City reserves its right to revoke any
2803 Permit, without refunding any fees, in the event of a failure of the Permittee
2804 to comply with the terms and conditions of any law, ordinance, rule or
2805 regulation, or Design Guidelines where applicable, or any provision or
2806 condition of the Permit, including, but not limited to the following:

2807
2808 (i) The violation of any provision or condition of the
2809 Permit; or
2810

2811 (ii) An evasion or attempt to evade any provision or
2812 condition of the Permit, or the perpetration or attempt to perpetrate
2813 any fraud or deceit upon the City or its citizens; or
2814

2815 (iii) Any misrepresentation of fact in the Application for a
2816 Permit; or
2817

2818 (iv) The failure to maintain the required Construction or
2819 Removal Bonds and/or insurance; or
2820

2821 (v) The failure to obtain and/or maintain, when required,
2822 a Certificate of Registration; or
2823

2824 (vi) The failure to complete the Construction in a timely
2825 manner; or
2826

2827 (vii) The failure to correct a condition of an order issued.
2828

2829 (2) If the Director of Public Service determines that the Permittee
2830 has not complied with any law, ordinance, rule or regulation, or any
2831 condition of the Permit, the Director of Public Service shall serve a written
2832 demand upon the Permittee to remedy such violation. The demand shall

2833 state that continued violations may be cause for revocation of the Permit.
2834 The Director of Public Service may also, in his/ her discretion, place
2835 additional or revised conditions on the Permit.
2836

2837 (3) By the close of the next business day following receipt of
2838 notification of the violation, Permittee shall contact the Director of Public
2839 Service with a plan, acceptable to the Director of Public Service, for its
2840 correction. Permittee's failure to submit an acceptable plan, or
2841 Permittee's failure to reasonably implement the approved plan, shall be
2842 cause for immediate revocation of the Permit.
2843

2844 (4) If a Permittee commits a second substantial default as
2845 outlined above, Permittee's Permit will automatically be revoked and the
2846 Permittee will not be allowed further Permits for up to and including one
2847 (1) full year from the date that the Permit was revoked, except for
2848 Emergency repairs.
2849

2850 (5) If a Permit is revoked, the Permittee shall also reimburse the
2851 City for the City's reasonable costs, including Restoration costs and the
2852 costs of collection and reasonable attorneys' fees incurred in connection
2853 with such revocation.
2854

2855 **951.21 CONSTRUCTION AND REMOVAL BONDS**

2856 (a) Construction Bond.

2857 Upon issuance of a Certificate of Registration, and prior to the
2858 commencement of any Construction, and continuously thereafter, a Provider
2859 shall deposit with the Director of Public Service and maintain an irrevocable,
2860 unconditional letter of credit or surety bond in an amount determined by the
2861 Director of Public Service to be appropriate based upon fair and reasonable
2862 criteria. The full amount of the letter of credit or surety bond shall remain in full
2863 force and effect throughout the terms and conditions of this chapter and/or until
2864 any necessary site restoration is completed to restore the site to a condition
2865 comparable or better to that which existed prior to the issuance of Certificate of
2866 Registration. Unless a Construction default, problem or deficiency involves an
2867 Emergency or endangers the safety of the general public, the Director of Public
2868 Service shall serve written notice to the Construction Permittee detailing the
2869 Construction default, problem or deficiency. If the Director of Public Service
2870 determines that correction or repair of the Construction default, problem or
2871 deficiency has not occurred or has not been substantially initiated within ten (10)
2872 calendar days after the date following service and notification and detailing the
2873 Construction default, problem or deficiency, then the City may attach the letter
2874 of credit or surety bond. Upon attachment, written notice shall be served on the
2875 Construction Permittee by the Director of Public Service.
2876
2877

2878 (b) Removal Bond.

2879 Upon issuance of a Certificate of Registration and continuously thereafter,
2880 and until one hundred twenty (120) days after a Provider's Facilities have been
2881 removed from the Rights-of-Way (unless the Director of Public Service notifies the
2882 Provider that a reasonably longer period shall apply), a Provider shall deposit with
2883 the Finance Director and maintain an irrevocable, unconditional letter of credit
2884 or surety bond in an amount equal to or greater than one hundred thousand
2885 dollars (\$100,000). The Director of Public Service shall make all reasonable efforts
2886
2887

2888 to allow Provider a period of five (5) calendar days after serving notification in
2889 writing to correct or repair any default, problem or deficiency prior to the Director
2890 of Public Service attachment of the letter of credit or surety bond regarding the
2891 removal of Facilities. Upon attachment, written notice shall be provided to the
2892 Provider by the Director of Public Service.
2893

2894 (c) Blanket Bond.
2895

2896 In lieu of the Construction Bond and the Removal Bond required by this §
2897 951.21, Provider may deposit with the Finance Director an irrevocable,
2898 unconditional letter of credit and/or surety bond in the amount of five million
2899 dollars (\$5,000,000). Unless a Construction default, problem, or deficiency
2900 involves an Emergency or endangers the safety of the general public, the Director
2901 of Public Service shall make all reasonable efforts to allow a Provider a period of
2902 five (5) calendar days after sending notification in writing to correct or repair any
2903 default, problem or deficiency prior to Director of Public Service' attachment of
2904 the letter of credit or surety bond. Upon attachment, written notice shall be
2905 provided to the Provider by the Director of Public Service.
2906

2907 (d) Self-Bonding.

2908 In lieu of the Construction Bond, Removal Bond, and Blanket Bond
2909 required by this § 951.21, those Providers maintaining a book value in excess of
2910 fifty million dollars (\$50,000,000) may submit a statement to the Finance
2911 Director requesting to self-bond. If approval to self-bond is granted, a Provider
2912 shall assure the City that such self-bonding shall provide the City with no less
2913 protection and security than would have been afforded to the City by a third party
2914 surety providing Provider with the types and amounts of bonds detailed in the
2915 above sections of this § 951.21. This statement shall include:
2916

- 2917 (1) Audited financial statements for the previous year;
- 2918
- 2919 (2) A description of the Applicant's self-bonding program; and
- 2920
- 2921 (3) Other information as reasonably requested by the Director of
- 2922 Public Service.
- 2923

2924 (e) Purposes.
2925

- 2926 (1) The letter of credit or surety bond required by this section shall
- 2927 serve as security for:
 - 2928
 - 2929 (i) The faithful performance by the Permittee or Provider
 - 2930 of all terms, conditions and obligations of this chapter; and
 - 2931
 - 2932 (ii) Any expenditure, damage, or loss incurred by the City
 - 2933 occasioned by the Permittee or Provider's violation of this chapter
 - 2934 or its failure to comply with all rules, regulations, orders, Permits
 - 2935 and other directives of the City issued pursuant to this chapter;
 - 2936 and
 - 2937
 - 2938 (iii) The payment of all compensation due to the City,
 - 2939 including Permit Fees; and
 - 2940
 - 2941 (iv) The removal of Facilities from the Rights-of-Way
 - 2942 pursuant to this chapter; and

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(v) The payment to the City of any amounts for which the Permittee or Provider is liable that are not paid by its insurance or other surety; and

(vi) The payment of any other amounts which become due to the City pursuant to this chapter or Law.

951.22 INDEMNIFICATION AND LIABILITY.

(a) City Does Not Accept Liability.

(1) By reason of the acceptance of an Application, the grant of a Permit or the issuance of a Certificate of Registration, the City does not assume any liability:

(i) For injuries to Persons, damage to property, or loss of Service claims; or

(ii) For claims or penalties of any sort resulting from the installation, presence, maintenance or operation of Facilities.

(b) Indemnification.

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

(i) To the fullest extent permitted by law, all Providers and Permittees shall, at their sole cost and expense, fully indemnify, defend and hold harmless the City, its elected officials, agents, officers, employees, volunteers and subcontractors from and against any and all lawsuits, claims (including without limitation workers' compensation claims against the City or others), causes of actions, actions, liability, and judgments for injury or damages

2998 (including, but not limited to, expenses for reasonable legal fees and
2999 disbursements assumed by the City in connection therewith),
3000 unless the result of the City's negligent or willful acts; and
3001

3002 A. Persons or property, in any way arising out of
3003 or through the acts or omissions of Provider or Permittee, its
3004 subcontractors, agents or employees attributable to the
3005 occupation by the Provider or Permittee of the Rights-of-Way,
3006 to which Provider's or Permittee's negligence shall in any way
3007 contribute, and regardless of whether the negligence of any
3008 other party shall have contributed to such claim, cause of
3009 action, judgment, injury or damage; and
3010

3011 B. Arising out of any claim for invasion of the right
3012 of privacy, for defamation of person, firm or corporation, or
3013 the violation or infringement of any copyright, trademark,
3014 trade name, service mark or patent or any other right of any
3015 person, firm and corporation by the Provider, but excluding
3016 claims arising out of or related to the City's actions; and
3017

3018 C. Arising out of Provider or Permittee's failure to
3019 comply with the provisions of law applicable to Provider or
3020 Permittee in its business hereunder.
3021

3022 (2) The foregoing indemnification is conditioned upon the City:
3023

3024 (i) Giving Provider or Permittee prompt notice of any
3025 claim or the commencement of any action, suit or proceeding for
3026 which indemnification is sought; and
3027

3028 (ii) Affording the Provider or Permittee the opportunity to
3029 participate in any compromise, settlement, or other resolution or
3030 disposition of any claim or proceeding subject to indemnification;
3031 and
3032

3033 (iii) Cooperating in the defense of such claim and making
3034 available to the Provider or Permittee all pertinent information
3035 under the City's control.
3036

3037 (3) The City shall have the right to employ separate counsel in
3038 any such action or proceeding and to participate in the investigation and
3039 defense thereof, and the Provider or Permittee shall pay all reasonable fees
3040 and expenses of such separate counsel if employed.
3041

3042 **951.23 GENERAL PROVISIONS**

3043
3044 (a) Non-exclusive Remedy.
3045

3046 The remedies provided in this chapter are not exclusive or in lieu of
3047 other rights and remedies that the City may have at law or in equity. The
3048 City is hereby authorized at any time to seek legal and equitable relief for
3049 actual or threatened injury to the Rights-of-Way, including damages to the
3050 Rights-of-Way, whether caused by a violation of this Code.
3051

3052 (b) Severability.

3053
3054 If any section, subsection, sentence, clause, phrase, or portion of
3055 this chapter is for any reason held invalid or unconstitutional by any court
3056 or administrative agency of competent jurisdiction, such portion shall be
3057 deemed a separate, distinct, and independent provision and such holding
3058 shall not affect the validity of the remaining portions thereof.
3059

3060 (c) Revocability.
3061

3062 If a regulatory body or a court of competent jurisdiction should
3063 determine by a final, non-appealable order that any Permit, right or any
3064 portions of this section are illegal or unenforceable, then any such Permit
3065 or right granted or deemed to exist hereunder shall be considered as a
3066 revocable Permit with a mutual right in either party to terminate without
3067 cause upon giving sixty (60) days written notice to the other. The
3068 requirements and conditions of such a revocable Permit shall be the same
3069 requirements and conditions as set forth in the Permit, right or
3070 registration, respectively, except for conditions relating to the term of the
3071 Permit and the right of termination. If a Permit or right shall be considered
3072 a revocable Permit as provided herein, the Permittee must acknowledge
3073 the authority of the City to issue such revocable Permit and the power to
3074 revoke it.
3075

3076 (d) Reservation of Regulatory and Police Powers.
3077

3078 The City, by the granting of a Permit or by issuing a Certificate of
3079 Registration pursuant to this chapter, does not surrender or to any extent
3080 lose, waive, impair, or lessen the lawful powers and rights, which it has
3081 now or may be hereafter vested in the City under the Constitution and
3082 laws of the United States, State of Ohio and under the Charter of the City
3083 to regulate the use of the Rights-of-Way. The Permittee by its acceptance
3084 of a Permit, or Provider by applying for and being issued a Certificate of
3085 Registration, is deemed to acknowledge that all lawful powers and rights,
3086 regulatory power, or police power, or otherwise as now are or the same as
3087 may be from time to time vested in or reserved to the City, shall be in full
3088 force and effect and subject to the exercise thereof by the City at any time.
3089 A Permittee or Provider is deemed to acknowledge that its rights are
3090 subject to the regulatory and police powers of the City to adopt and enforce
3091 general ordinances necessary to the safety and welfare of the public and
3092 is deemed to agree to comply with all applicable general laws and
3093 ordinances enacted by the City pursuant to such powers.
3094

3095 (e) Method of Service.
3096

3097 Any notice or order of the Director of Public Service or Mayor shall
3098 be deemed to be properly served if a copy thereof is:
3099

- 3100 (1) Delivered personally; or
 - 3101 (2) Successfully transmitted via facsimile transmission to the
3102 last known fax number of the person to be served; or
 - 3103 (3) Successfully transmitted via electronic mail to the last
3104 known e-mail address of the person to be served; or
- 3105
3106
3107

3108 (4) Left at the usual place of business of the person to whom it
3109 is to be served upon and with someone who is eighteen (18) years of age
3110 or older; or
3111

3112 (5) Sent by certified, pre-posted U.S. Mail to the last known
3113 address; or
3114

3115 (6) If the notice is attempted to be served by certified, pre-posted
3116 U.S. Mail and then returned showing that the letter was not delivered, or
3117 the certified letter is not returned within fourteen (14) days after the date
3118 of mailing, then notice may be sent by regular, pre-posted, first-class U.S.
3119 Mail; or
3120

3121 (7) If the notice is attempted to be served by regular, first class
3122 U.S. Mail, postage prepaid, and the letter is then returned showing that
3123 the letter was not delivered, or is not returned within fourteen (14) days
3124 after the date of mailing, then notice shall be posted in a conspicuous place
3125 in or about the structure, building, premises or property affected by such
3126 notice.
3127

3128 (f) Applies to All Providers.
3129

3130 This chapter shall apply to all Providers and all Permittees unless
3131 expressly exempted.
3132

3133 (g) Police Powers.
3134

3135 All Persons' rights are subject to the police powers of the City to
3136 adopt and enforce ordinances necessary to the health, safety and welfare
3137 of the public. All persons shall comply with all applicable laws enacted by
3138 the City pursuant to its police powers. In particular, all Persons shall
3139 comply with City zoning and other land use requirements pertaining to the
3140 placement and specifications of Facilities, unless otherwise prohibited by
3141 Law.
3142

3143 (h) Compliance.
3144

3145 No Person shall be relieved of its obligation to comply with any of
3146 the provisions of this chapter by reason of any failure of the City to enforce
3147 prompt compliance.
3148

3149 (i) Foreclosure and Receivership.
3150

3151 (1) Upon the filing of any voluntary or involuntary petition under
3152 the Bankruptcy Code by or against any Provider and/or Permittee, or any
3153 action for foreclosure or other judicial sale of the Provider and/or Permittee
3154 Facilities located within the Rights-of-Way, the Provider and/or Permittee
3155 shall so notify the Director of Public Service within fourteen (14) calendar
3156 days thereof and the Provider and/or Permittee's Certificate of Registration
3157 or Permit (as applicable) shall be deemed void and of no further force and
3158 effect.
3159

3160 (2) The City shall have the right to revoke any Certificate of
3161 Registration or Permit granted pursuant to this chapter, subject to any
3162 applicable provisions of law, including the Bankruptcy Code, one hundred

3163 and twenty (120) days after the appointment of a receiver or trustee to take
3164 over and conduct the business of the Provider and/or Permittee, whether
3165 in receivership, reorganization, bankruptcy or other action or proceeding,
3166 unless such receivership or trusteeship shall have been vacated prior to
3167 the expiration of said one hundred and twenty (120) days or unless:
3168

3169 (i) Within one hundred and twenty (120) days after
3170 election or appointment, such receiver or trustee shall have fully
3171 complied with all the provisions of the relevant Certificate of
3172 Registration, any outstanding Permit, this chapter, and remedied
3173 all defaults thereunder; and
3174

3175 (ii) Said receiver or trustee, within said one hundred and
3176 twenty (120) days, shall have executed an agreement, duly approved
3177 by a court having jurisdiction over the Facilities, whereby such
3178 receiver or trustee assumes and agrees to be bound by each and
3179 every provisions of the relevant Certificate of Registration, Permit
3180 and this chapter.
3181

3182 (j) Choice of Law and Forum.
3183

3184 This chapter and the terms and conditions of any Certificate of
3185 Registration or Permit shall be construed and enforced in accordance with the
3186 substantive laws of the City, State of Ohio and United States, in that order. As a
3187 condition of the grant of any Permit or issuance of any Certificate of Registration
3188 all disputes shall be resolved in a court of competent jurisdiction in Summit
3189 County, Ohio.
3190

3191 (k) Force Majeure.
3192

3193 In the event any Person's performance of any of the terms, conditions or
3194 obligations required by this chapter is prevented by a cause or event not within
3195 such Person's control, such inability to perform shall be deemed excused and no
3196 penalties or sanctions shall be imposed as a result thereof. For the purpose of
3197 this section, causes or events not within the control of a Person shall include,
3198 without limitation, acts of God, strikes, sabotage, riots or civil disturbances,
3199 failure or loss of, explosions, acts of public enemies, and natural disasters such
3200 as floods, earthquakes, landslides, and fires.
3201

3202 (l) No Warranty.
3203

3204 The City makes no representation or warranty regarding its right to
3205 authorize the Construction of Facilities on any particular Rights-of-Way. The
3206 burden and responsibility for making such determination shall be upon the
3207 Person installing Facilities in the Rights-of-Way.
3208

3209 (m) Continuing Obligation and Holdover.
3210

3211 In the event a Provider or Permittee continues to operate the Facilities after
3212 the termination, lapse, or revocation of a Certificate of Registration, such Provider
3213 or Permittee shall continue to comply with all applicable provisions of this
3214 chapter and other laws throughout the period of such continued operation,
3215 provided that any such continued operation shall in no way be construed as a
3216 renewal or other extension of the Certificate of Registration, nor as a limitation
3217 on the remedies, if any, available to the City as a result of such continued

3218 operation after the term, including, but not limited to, damages and restitution.
3219 Any conflict between the issuance of a Certificate of Registration or of a Permit
3220 and any other present or future lawful exercise of the City's regulatory or police
3221 powers shall be resolved in favor of the latter.
3222

3223 (n) Appeals.
3224

3225 All appeals provided for by this chapter and any notification to the City
3226 required by this chapter shall be in writing and sent via certified U.S. Mail to the
3227 Mayor or Director of Public Service as specified in this chapter
3228

3229 (o) City Facilities.
3230

3231 As part of City required standards, wherever Rights-of-Way are under
3232 Construction, if deemed advisable and practicable by the Director of Public
3233 Service, the City may install all such Facilities deemed necessary to accommodate
3234 future Provider needs. Any such installed Facilities shall be City property and
3235 may be conveyed to any Person under such terms and conditions as are deemed
3236 advisable by the Mayor.
3237

3238 (p) Section Headings.
3239

3240 Section headings are for convenience only and shall not be used to
3241 interpret any portion of this chapter.
3242

3243 **951.99 PENALTIES.**
3244

3245 (a) In addition to any other penalties set forth in this chapter and the
3246 remedy of specific performance which may be enforced in a court of competent
3247 jurisdiction, the following penalties shall apply:
3248

3249 (1) For failure to comply with any other provision of this chapter,
3250 the penalty shall be a civil forfeiture, payable to the City, in an amount up
3251 to \$500 per day for each violation. In addition, for failure to timely comply
3252 with a notice by the Director of Public Service to remove or rearrange
3253 Facilities, an additional civil forfeiture equal to any costs incurred by the
3254 City as a result of such failure, including but not limited to any penalties
3255 or liquidated damages charged the City by its contractors occasioned
3256 thereby, shall be imposed.
3257

3258 (2) Any Person who fails to pay any forfeiture imposed pursuant to
3259 § 951.99(a)(1) of this chapter shall be guilty of a misdemeanor of the fourth (4th)
3260 degree. Each day such violation continues shall be deemed a separate offense.
3261

3262 Section 2. Any ordinances or resolutions or portions of ordinances and resolutions
3263 inconsistent herewith are hereby repealed, but any ordinances and resolutions not
3264 inconsistent herewith and which have not previously been repealed are hereby ratified
3265 and confirmed.
3266

3267 Section 3. It is found and determined that all formal actions of this Council
3268 concerning and relating to the passage of this ordinance were taken in an open meeting
3269 of this Council and that all deliberations of this Council and of any committees that
3270 resulted in those formal actions were in meetings open to the public, in compliance with
3271 all requirements including Chapter 107 of the Codified Ordinances.
3272

3273 Section 4. This ordinance is hereby declared to be an emergency measure necessary
3274 for the preservation of the public peace, health, safety, convenience and welfare of the
3275 City of Cuyahoga Falls and the inhabitants thereof, and provided it receives the
3276 affirmative vote of two-thirds of the members elected or appointed to Council, it shall
3277 take effect and be in force immediately upon its passage and approval by the Mayor;
3278 otherwise it shall take effect and be in force at the earliest period allowed by law.
3279

3280
3281 Passed: _____
3282 _____
3283 President of Council

3284
3285 _____
3286 Clerk of Council

3287
3288
3289 Approved _____
3290 _____
3291 Mayor

3291 3/25/19
3292 O:\2019ords\ROW_Occupancy_Ordinance.docx