

**Chapter 902
Right-of-Way Use Management**

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902.01 PURPOSE AND SCOPE OF CHAPTER.

(a) The purpose of this Chapter is to provide requirements for the use or occupation of any and all right of way and public property in the City, the issuance of permits to persons for such use or occupancy and to set forth the policies of the City related thereto.

(b) This Chapter does not take the place of any franchise, license, or permit which may be additionally required by law. Each Permittee shall obtain any and all such additional franchises, licenses or permits necessary to the operations and conduct of its business.

(c) No person shall use occupy, own or operate facilities in, under or over any right-of-way within the City or on property owned by the City, unless such person first obtains a Permit conforming to the requirements set forth in this Chapter; provided, however, that permits shall not be required for *de minimis* uses.

(d) The policy of the City with regard to right-of-way is hereby declared to be:

- (1) To promote public safety and protect public property;
- (2) To promote the utilization of right-of-way for the public health, safety and welfare and to promote economic development in the City;
- (3) To promote the availability of a wide range of public utility,

- telecommunication and other services, including the rapid deployment of new technologies and innovative services to the City's citizens and taxpayers at reasonable rates;
- (4) To promote cooperation among the City, Franchisees, and Permittees in the occupation of right-of-way and work therein in order to minimize public inconvenience during work in the right-of-way, to facilitate the delivery of quality services and products by Franchisees and Permittees to the public, to avoid uneconomic, unneeded and unsightly duplication of facilities and to manage the use of space within the right-of-way to provide for the addition of municipal and public utility infrastructure to meet the future needs of the public;
 - (5) To ensure adequate public compensation for the private use of the right-of-way and the regulation thereof; and
 - (6) To promote and require reasonable accommodation of all uses of right-of-way and to establish the following priority of use of right-of-way, when all requested usage of right-of-way by Permittees cannot be accommodated:
 - A. Use by the City shall have first priority;
 - B. Use by another governmental entity, with City concurrence, or other uses required by law shall have second priority;
 - C. Use by public utilities Permittees shall have third priority;
 - D. Use by telecommunications provider Permittees which are not public utilities, but which provide services to the public shall have fourth priority; and,
 - E. Special Permittees shall have fifth priority;

provided, however, that the City Engineer may reasonably require Permittees to cooperate to accommodate use by other Permittees and Franchisees and provided further that the City Manager may alter this priority when the City Manager determines that such alteration is necessary to protect the public health, safety and/or welfare.

(e) It is neither the intent nor the policy of the City to engage in any discriminatory acts violative of the federal Telecommunications Act of 1996.

(f) Nothing in this Chapter should be construed to apply the provisions of this Chapter to facilities owned or operated by the City or any of its operations or to sewer laterals and waterlines located in the rights-of-way which are connected to the City's water or sewer facilities with the City's permission.

(g) Unless otherwise specifically stated in a Permit, all Permits granted hereunder shall be nonexclusive.

902.02 DEFINITIONS.

For purposes of this Chapter, the following terms, phrases, words, and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number and words in the singular number include the plural number. All capitalized terms used in the definition of any other term shall have their meaning as defined in this Section 902.02. The words "shall" and "will" are mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

- (a) "Applicant" means any Person applying for a Permit hereunder.
- (b) "Approved" means approval by the City pursuant to this Chapter or any Regulations adopted hereunder.

- (c) "Best Efforts" means the best reasonable efforts under the circumstances, taking into consideration, among other appropriate matters, safety, expedition, available technology and human resources and cost.
- (d) "Chapter" or "this Chapter" means this Chapter 902 of the Codified Ordinances of the City, as amended from time to time and any Regulations adopted hereunder.
- (e) "City" means The City of Springfield, Ohio, or, as appropriate in the case of specific provisions of this Chapter, any board, bureau, authority, agency, commission, department of, or any other entity of or acting on behalf of The City of Springfield, Ohio or any officer, official, employee, representative or agent thereof the designee of any of the foregoing, or any successor thereto.
- (f) "City Engineer" means the City Engineer of the City.
- (g) "Commission" means the City Commission of the City.
- (h) "*De Minimis* Uses" shall mean use of right-of-way for mailboxes, decorative purposes, curb cuts, driveways, irrigation systems and pipes, laterals or lines connecting a property with the distribution/accumulation mains, pipes or lines of a Public Utility.
- (i) "Distribution/accumulation" mains, pipes or lines means Public Utility mains, pipes or lines used to distribute services or product to or to collect sewerage or communications from multiple properties served by the Public Utility.
- (j) "Force Majeure" means strikes, acts of God, acts of public enemies, riots, epidemics, landslides, lightning, earthquakes, fires, tornadoes, storms, floods, civil disturbances, explosions, orders of any kind of a government of the United States of America or of the State of Ohio or any of their departments, of their agencies or of their political subdivisions, partial or entire failure of utilities or any other cause or event not reasonably within the control of the disabled party, but only to the extent the disabled party notifies the other party as soon as practicable regarding such Force Majeure and then for only so long as and to the extent that the Force Majeure prevents compliance or causes non-compliance with the provisions hereof.
- (k) "Franchise" means the nonexclusive right granted by the City Commission pursuant to the Constitution and laws of Ohio, of the United States and pursuant to Article XI of the City's Charter to construct and operate a public utility in the right-of-way and public grounds of the City.
- (l) "Permit" means the nonexclusive grant of a license and privilege to use or occupy all or a portion of City's right-of-way granted pursuant to this Chapter.
- (m) "Permittee" means any person issued a Permit pursuant to this Chapter to use or occupy all or a portion of the right-of-way in accordance with the provisions of this Chapter and said Permit.
- (n) "Person" means any natural person or any association, firm, partnership, limited liability company, trust, joint venture, corporation or other legally recognized entity, whether for-profit or not-for-profit.
- (o) "Public Property" means any real property owned by the City, other than a right-of-way as defined in the first sentence of Subsection 902.02(r).
- (p) "Public Utility" means any entity which provides essential products or services to the public with the characteristic of service to, or readiness to serve, an indefinite public which has a legal right to demand and receive the entity's products or services and which conducts its operations in such a manner as to be a matter of public concern [See, *A & B Refuse Disposers, Inc. v. Board of Ravenna Township Trustees* (1992), 64 Ohio State 3d 385].
- (q) "Regulation" means any rule adopted by and pursuant to the authority of this

Chapter.

- (r) "Right-of-way" means the surface of and the space above and below any public street, public road, public highway, public freeway, public lane, public path, public way, public alley, public court, public sidewalk, public boulevard, public parkway, public drive or any public easement or right-of-way now or hereafter held by the City. Right-of-way shall also include Public Property.
- (s) "Telecommunications" means the technology of communication by electronic transmission of impulses, transmission of impulses by light energy or transmission by electromagnetic wave.

902.03 TYPES OF PERMITS, GRANT OF LICENSE AND PRIVILEGE.

- (a) The following types of Permits are available:
 - (1) Public Utility Permit. A Permit granted to public utilities who desire and are granted authority to utilize right-of-way to provide public utility products and/or services.
 - (2) Telecommunication Permit. A Permit granted to persons who are granted authority to utilize right-of-way to provide telecommunications services to the public which are not public utility services.
 - (3) Special Permit. A Permit granted to persons for a specific, limited use of the right-of-way or a specific portion thereof; other than a public utility use or other than to provide telecommunications services to the public.

The applicant for a Permit shall bear the burden of proving its qualification as a Public Utility, Telecommunications Service Provider or a Special Permittee.

(b) All Permits shall specify the use or uses for which such Permits are granted and contain such other non-discriminatory terms and conditions as the City Engineer determines are necessary to accomplish the City policy objectives set forth in Subsection 902.01(d), such terms and conditions as are set forth in this Chapter and such terms and conditions as are negotiated and agreed to by the City and the Permittee to provide for the public health, safety or welfare. Permittees are granted the license and privilege to occupy the right-of-way as specified by and limited in their Permit granted pursuant to this Chapter.

(c) Permits and the license and privileges of Permittees granted thereunder are neither assignable nor otherwise transferable without the express, written approval of the City.

902.04 APPLICATION PROCEDURE, TERMS, AND CONDITIONS.

(a) Applicants for Public Utility Permits, or renewals thereof, shall file an application therefor in such form as the City Manager may require along with an application fee of One Thousand Dollars (\$1,000.00). The applicant shall provide along with its application such documentary evidence as is necessary to show that the applicant meets the definition of a public utility. The applicant shall provide such additional information as the City Manager may require to explain, clarify, supplement or verify information and representations contained in the application. The City Manager shall determine if the application is in order and, if so, shall determine whether or not, in accordance with the criteria set forth in Section 902.05, the applicant should be granted a Permit hereunder. The City Manager shall make a final determination as to whether or not such Permit should be granted and, if so, upon what terms and conditions are necessary to accomplish the purposes of this Chapter.

(b) Applicants for Telecommunications Permits, or renewals thereof, shall file an application therefor in such form as the City Manager may require along with an application

fee of One Thousand Dollars (\$1,000.00). The applicant shall provide such additional information as the City Manager may require to explain, clarify, supplement or verify information and representations contained in the application. The City Manager shall determine if the application is in order and, if so, shall determine whether or not, in accordance with the criteria set forth in Section 902.05, the applicant should be granted a Permit hereunder. The City Manager shall make a final determination as to whether or not such Permit should be granted and, if so, upon what terms and conditions are necessary to accomplish the purposes of this Chapter.

(c) Applicants for Special Permits, or renewals thereof, shall file an application therefor in such form as the City Manager requires along with an application fee of One Hundred Dollars (\$100.00). The applicant shall provide such additional information as the City Engineer may require to explain, clarify, supplement or verify information and representations contained in the application. The City Engineer shall determine if the application is in order and, if so, and if the City Engineer also finds in accordance with the criteria set forth in Section 902.05, that the application should be granted, the City Engineer shall grant or renew such a Permit. The terms and conditions of such Permit shall be determined by the City Engineer but, in no event, shall the duration of such Permit exceed 10 years.

(d) Permits for *de minimis* uses are not required, with the stipulations that such uses:

- (1) exist and continue at the sufferance of the City;
- (2) may not jeopardize or adversely affect the public health, safety or welfare;
- (3) may not interfere with the municipality's own uses of the rights of way;
- (4) must be modified, moved or removed, upon notice, when the City determines in its sole judgment that such action is necessary; provided further, that in an emergency, or upon failure of the responsible party to respond in a timely fashion, the City may do or contract to do whatever it requires and recover the costs of same as such costs are recoverable by law.

(e) Any Applicant may appeal the failure of the City Engineer to grant a Permit. In order to perfect such appeal, the Applicant shall file an appeal to the City Manager within ten (10) days of the City Engineer's determination or after thirty (30) days but within one sixty (60) days of the filing of the application if the City Engineer has taken no action. The City Manager shall then review the matter and render a final determination, in writing and with appropriate findings of fact, after serving upon the applicant at least twenty (20) days advance written notice of the Permittee's opportunity for a hearing before the City Manager and granting the applicant an opportunity to be heard in person or in writing, as the applicant may chose. Except to the extent otherwise appealable by law, the City Manager's decision shall be final.

902.041 PUBLIC UTILITY AND TELECOMMUNICATIONS PERMIT AMENDMENT APPLICATION PROCEDURE.

A holder of a Public Utility Permit or a Telecommunications Permit may make application to amend such permit to add new infrastructure. Applicants for amendments of Public Utility or Telecommunications Permits shall file an application therefor in such form as the City Manager may require along with an application fee of Three Hundred Dollars (\$300.00); provided, that if the applicant is submitting its application for a permit amendment simultaneously with its annual application to renew its permit, the Three Hundred Dollar fee is waived. The applicant shall provide such information as the City Manager may require to explain, clarify, supplement or verify information and representations contained in the permit

amendment application. The City Manager shall determine if the permit amendment application is in order and, if so, shall determine whether or not, in accordance with the criteria set forth in Section 902.05, the applicant should be granted a permit amendment hereunder. The City Manager shall make a final determination as to whether or not such permit amendment should be granted and, if so, upon what terms and conditions are necessary to accomplish the purposes of this Chapter.
(Ord. 05-142. Passed 05-24-05.)

902.05 CRITERIA FOR GRANTING PERMITS.

Public Utility Permits, Telecommunications Permits and Special Permits shall be granted to Persons based upon a determination that the following criteria are met:

- (a) That the granting of the Permit will contribute to the public health, safety or welfare in the City;
- (b) That the granting of the Permit will be consistent with the policy of the City as set forth in this Chapter;
- (c) That the applicant has and will continue to have meet the liability insurance requirements of this Chapter;
- (d) That the applicant is in full compliance with the provisions of this Chapter and with Chapter 195 of the Codified Ordinances; and
- (e) That the applicant is a proper person to hold the Permit and will fulfill all its obligations hereunder.

902.06 OBLIGATIONS OF PERMITTEES, CONDITIONS OF PERMITS.

(a) In addition to the other requirements set forth in this Chapter and set forth specifically in the Permit granted, each Public Utility Permittee, each Telecommunications Permittee and each Special Permittee shall:

- (1) Use its Best Efforts to cooperate with other Franchisees, Permittees and with the City for the best, most efficient, least offensive (with respect to aesthetics) and least obtrusive use of right-of-way, consistent with safety, and to minimize traffic disruptions and hazards, street cuts and other disruptions to use of the right-of-way;
- (2) Participate in joint planning and advance notification of right-of-way work, excepting such work performed in emergencies;
- (3) Cooperate with other non-Residential Permittees and Franchisees in utilization of, construction in and occupancy of private rights of way only to the extent the same is not inconsistent with the grant thereof or with applicable law;
- (4) In the event the City Engineer determines that a Permittee must remove or rearrange the Permittee's facilities as necessary so as not to interfere with higher priority uses, as established in Subsection 902.01(d)(6) [by way of example and not by way of limitation, the operation, construction, repair or modification of any street, sidewalk, City water or sewer utility infrastructure or other governmental uses], or if additional or subsequent City or other public uses of right-of-way are inconsistent or incompatible with then current uses of Permittees or for any other reasonable cause, the City Engineer shall so advise the Permittee in writing and invite the Permittee to comment on the City Engineer's determination within five (5) days of such notification. Upon the written direction of the City Engineer served on the Permittee, and at no cost to the City, promptly remove or rearrange the Permittee's facilities as necessary so as not to interfere with higher priority uses, as established in Subsection 902.01(d)(6), or if

- additional or subsequent City or other public uses of right-of-way are inconsistent or incompatible with then current uses of Permittees or for any other reasonable cause as determined by the City Engineer.
- (5) Provide maps and other information in such form and at such times as the City Engineer may require. It shall not be unreasonable for the City Engineer to require a Permittee to provide maps and other information which has been previously prepared by or for the Permittee, or the Permittee's predecessor, and which is in the possession of or subject to the control of the Permittee. Said maps and information shall locate, describe and identify all structures and facilities of such Permittee in, over and/or under the right-of-way;
 - (6) Perform all work, construction, maintenance or removal of structures and facilities within the right-of-way in accordance with recognized good engineering and construction practices, with accepted industry standards, with all applicable laws, regulations and safety codes [including, but not limited to the National Electrical Safety Code published by the National Bureau of Standards and the National Electrical Code published by the National Fire Protection Association] and in accordance with Best Efforts to repair and replace any street, curb or other portion of the right-of-way, or of facilities or structures located therein to a condition materially equivalent to its condition prior to such work, and to do so in a manner which minimizes inconvenience to the public, the City and other Permittees; all in accordance with this Chapter and with all applicable Regulations;
 - (7) Register with all appropriate underground reporting services and, upon being informed by an authorized representative of the City that there is an emergency need to have a qualified representative of the Permittee at a site to locate underground facilities, have a qualified representative at the identified emergency need site within two hours after the City's representative informs the Permittee of the emergency need; and
 - (8) Unless otherwise set forth in its Permit, no Permittee shall enter into any leases or other arrangements for use of physical space in or on Permittee's facilities located within the right-of-way without prior notification to the City, such notice to include an accurate description of the use(s) to be made of the facilities. Upon the City's request, the Permittee shall make the document(s) used to memorialize such leases and other arrangements available for inspection by the City's personnel at the office of the Permittee nearest Springfield, Ohio.
- (b) Construction and Technical Standards.
- (1) Upon grant of the Permit and in order to construct, operate and maintain a public utility or a telecommunications system to serve the public in the City, the Permittee may enter into contracts with any public utility companies or any other owner or lessee of any poles or underground areas located within or without the City; obtain right-of-way permits from appropriate City, State, County and Federal officials necessary to cross or otherwise use highways or roads under their respective jurisdictions; obtain permission from the Federal Aviation Administration to erect and maintain antennas; and obtain whatever other permits a municipal, County, State or Federal agency may require.
 - (2) In those areas of the City where telephone and electric services are

provided by underground facilities, all new facilities shall be placed underground. In all other areas the Permittee, upon written request of the City served upon the Permittee, shall use its Best Efforts to place its facilities underground. However, the term facilities as used in the preceding sentence shall not include equipment which is customarily placed on or above the ground in conjunction with underground transmission facilities (e.g. splice and terminal pedestals, equipment cabinets and transformers). Where not otherwise required to be placed underground by this Chapter, the Permittee's system shall be located underground at the request of the adjacent property owner; provided, the placement of such system shall be consistent with the Permittee's construction and operating standards and provided that the excess cost over the above grade location shall be borne by the property owner making the request. All cable to be installed under the roadway shall be installed in conduit. In no circumstance shall a new pole or poles be located in any right-of-way of the City where such pole or poles are not replacing an existing pole or poles; without first obtaining the written approval of the City Engineer.

- (3) The Permittee shall construct, install, operate and maintain its system in a manner consistent with all applicable laws as well as with such published standards as are recommended by the Federal Communications Commission, whether or not those published standards have the force of law; unless the Permittee demonstrates to the satisfaction of the City Engineer that such published, recommended standard is impractical and will not contribute to the public health, safety or welfare.
- (4) The Permittee shall comply with the City's permitting process prior to commencing any work in the right-of-way, except for emergencies and otherwise as provided in this Chapter. No work in the right-of-way shall be commenced until such time as any and all required permits have been issued by the City.
- (5) Each contractor employed by a Permittee for the construction, installation, operation, maintenance, and repair of system equipment shall be properly licensed. The Permittee's facilities shall be so located as to cause minimum interference with the proper use of right-of-way by the traveling public and shall be so located so as not to cause a public nuisance.
- (6) The City does not guarantee the accuracy of the City's maps showing the horizontal or vertical location of existing substructures in the right-of-way. When a Permittee discovers a substructure not properly located on the City's map of the relevant area, the Permittee shall immediately notify the City Engineer and cooperate with the City Engineer's efforts to correct and revise the City's map.
- (7) Construction, installation, operation, and maintenance of the Permittee's facilities located in the right-of-way shall be performed in a safe, orderly and workmanlike manner, in accordance with recognized good engineering and construction practices, with accepted industry standards, with all applicable laws, regulations and safety codes (including, but not limited to the National Electrical Safety Code published by the National Bureau of Standards and the National Electrical Code published by the National Fire Protection Association) and in accordance with the Permittee's then current maintenance practices. When consistent with the standards specified in Subsections 902.06(a)(6) and (b)(3), all new or

replacement linear or strand-like facilities (by way of example and not by way of limitation, cables, optic fibers and wires) shall be installed, where possible, parallel with existing electric and telephone lines and new or replacement multiple linear or strand-like facility configurations shall be arranged parallel and bundled.

- (8) The Permittee shall at all times operate its facilities located within the City so as to comply with recognized good engineering practices, with accepted industry standards and with all applicable laws, regulations and safety codes (including, but not limited to the National Electrical Safety Code published by the National Bureau of Standards and the National Electrical Code published by the National Fire Protection Association).
- (9) In any event, the Permittee's facilities shall not endanger or interfere with the safety of persons or property in the Permit area or other areas where the Permittee may have facilities located.

(c) Right-of-Way Work Permit Required. All Permittees shall obtain a right-of-way Work Permit from the City Engineer prior to the beginning of any work in the right-of-way; however, prior City approval shall not be required for emergency repairs or for routine maintenance which does not require excavation in the public right-of-way or complete blockage of traffic using the right-of-way or entry on to Public Property other than right-of-way. The term "routine maintenance" as used in this subdivision means:

- (1) inspection of facilities,
- (2) groundline treatment of poles,
- (3) switching,
- (4) repairing damaged or failed equipment,
- (5) installing new service extensions
- (6) tree trimming, and
- (7) relamping of street lights,
- (8) cathodic protection maintenance,
- (9) resetting a pole in the general area of its original location.

The Permittee and its contractors shall restore the right-of-way and Public Property, when disturbed by the Permittee or its contractor, as required by the City Engineer. A Permittee shall be liable to the City for any and all damage done by its contractors to the right-of-way or to Public Property or to sewer laterals located within the right-of-way. Such right-of-way Work Permit shall be issued in writing and shall contain such conditions that may be required by the City Engineer for the protection of the public health, safety, welfare and preservation of Public Property and right-of-way and to accomplish the City's policy objectives as set forth in this Chapter. The Permittee, and its contractors shall endeavor to complete, in a timely manner, restoration of the right-of-way and Public Property and all workmanship and materials used by the Permittee and its contractors for such restoration shall be subject to the inspection and approval of the City Engineer and shall be warranted for a period of one (1) year from the date of completion for any failure due to workmanship or quality of materials.

902.07 PERMIT FEES AND AUDITING.

(a) Public Utility Permittees and Telecommunication Permittees shall pay an annual fee determined as follows:

- (1) Permittees utilizing equal to or greater than thirty (30) linear miles of right-of-way shall pay a fee of Three Thousand Dollars (\$3,000.00) per year.
- (2) Permittees utilizing less than thirty (30) linear miles of right-of-way shall pay a fee of One Thousand Dollars (\$1,000.00) per year.

Such fee shall be paid in advance for each year, prior to January 31. The fee for partial year permits shall be prorated at one fifty second (1/52) of the annual fee for each week or portion thereof remaining in the permit year.

(b) Except as otherwise provided in division (d) of this Section 902.07, Special Permittees shall pay an annual fee of Ten Cents (\$.10) per linear foot of right-of-way used or occupied. Such fee shall be paid in advance for each year prior to January 31. The fee for partial year permits shall be prorated at one fifty second (1/52) of the annual fee for each week or portion thereof remaining in the permit year.

(c) In addition to the annual fees set forth in 902.07(a) and (b), Permittees shall pay a right-of-way Work Permit processing fee in the amount of Twenty-Five Dollars (\$25.00); unless the work requires a permit issued pursuant to Section 901.08 of the Codified Ordinances and the permittee pays the fee imposed under Subsection 901.08(a), in which case the fee imposed under this Subsection 902.07(c) is waived. Said fees are payable at the time the notice set forth in Section 902.08 hereof is filed. Fees for work done without a Section 902.08 prior notice shall be made within seven (7) business days of the initiation of such work.

(d) Special Permittees obtaining permits to install monitoring wells in right-of-way shall pay a one time fee of Five Hundred Dollars (\$500) per well at the time the Special Permit is issued and, thereafter, an annual fee of Fifty Dollars (\$50) per well included in the Special Permit. The annual fee for Special Permits to maintain monitoring wells in the right-of-way shall be paid in advance for each year prior to January 31. The said one time fee is in addition to fees imposed in Section 902.04 of this Chapter 902.
(Ord. 05-142. Passed 05-24-05.)

902.08 NOTICE OF RIGHT OF WAY WORK AND JOINT PLANNING.

(a) All applicants for right-of-way Work Permits required under Section 902.06 of this Chapter shall file a written notice with the City Engineer at least seven (7) days before working in or on the right-of-way, except in the case of emergency. In addition to such other information as the City Engineer shall require, the notice shall:

- (1) Identify the right-of-way affected;
- (2) Contain a description of any facilities to be installed, constructed or maintained;
- (3) State whether or not any right-of-way will be excavated;
- (4) State to what extent any right-of-way will need to be restricted, blocked or temporarily closed;
- (5) Provide an estimate of the amount of time needed to complete such work;
- (6) Provide a description and timetable of any restorative measures planned to close any street excavation or to remedy any damage done to the right-of-way in performing such work;
- (7) Contain a certification that other affected or potentially affected Permittees or Franchisees have been notified of the proposed work; and
- (8) Contain a certification that all Springfield consumers of any public utility products or services which will be adversely affected by such work have been or will be notified in advance of any disruption in delivery of the public utility products and services to such consumers.

(b) Permittees may, under emergency or other exigent circumstances, work in the right-of-way so long as the Permittees notify the City Engineer in advance of the work to be

performed, via voice mail delivered to a telephone number which shall be published by the City Engineer, and as long as the Permittees use Best Efforts to provide the City with the notice required by Subsection 902.08(a) at the earliest possible time.

902.09 USE OF PERMITTEE FACILITIES BY THE CITY.

The City shall have the right to install and maintain communications facilities solely for the City's municipal activities, free of charge, upon any poles and within any underground pipes and conduits or other facilities of any Public Utility Permittee, Telecommunication Permittee or Special Permittee, unless:

- (a) such installation and maintenance unreasonably and materially interferes with existing and future operations of the Permittee, or
- (b) that such installation and maintenance would be unduly burdensome to such Permittee.

Each Permittee shall cooperate with the City in the planning and design of its facilities so as to accommodate the City's municipal needs. The City's right to use and occupancy of a Permittee's poles or conduit shall be subject to any and all reasonable terms and conditions the Permittee requires of other third party users of its poles and conduit necessary to prevent electromagnetic interference with the Permittee's use of its facilities or necessary to protect human safety. The City shall pay the Permittee the reasonable cost to make the Permittee's poles or conduit ready for the City's use and occupancy. The said reasonable cost shall not exceed the cost which the Permittee charges to similarly situated occupants for similar occupancies. Nothing herein shall be construed to require a Permittee to construct poles or conduit where none exist.

902.10 INDEMNIFICATION.

(a) To the fullest extent permitted by law, each Permittee shall, at its sole cost and expense, fully indemnify, defend and hold harmless the City, its City Commissioners, employees, boards and commissions, agents and contractors from and against any and all lawsuits, claims (including without limitation worker's compensation claims against the City or others), causes of action, liability, awards and judgments for injury or damages (including but not limited to expenses for reasonable legal fees and fees of experts retained by the City in connection therewith):

- (1) To persons or property, in any way arising out of or through the acts or omissions of Permittee, its contractors, agents or employees attributable to the occupation by the Permittee of the right-of-way,
- (2) Arising out of any claim for invasion of the right of privacy, for defamation of any person or legal entity or the violation or infringement of any copyright, trademark, trade name, service mark or patent or any other right of any person or other legal entity by the Permittee,
- (3) Arising out of the Permittee's failure to comply with the provisions of any federal, state, or local law or regulation applicable to the Permittee;

unless, the City's negligence or willful misconduct is the sole and proximate cause of such injury or damage.

(b) The foregoing indemnification is conditioned upon the City:

- (1) Giving Permittee prompt notice of any claim or the commencement of any action, suit or proceeding for which indemnification is sought;
- (2) Affording the Permittee the opportunity to participate in and fully control any compromise, settlement, or other resolution or disposition of any claim or proceeding subject to indemnification; and
- (3) Fully cooperating in the defense of such claim and making available to the

Permittee all pertinent information under the City's control and the release of which is not prohibited by law.

(c) The City shall have the right to employ separate counsel in any such action or proceeding and to participate in the investigation and defense thereof and the Permittee shall pay the reasonable fees and expense of such separate counsel if employed with the approval and consent of the Permittee or if representation of both Permittee and the City by the same attorney would be inconsistent with accepted canons of professional ethics.

(d) Each Permittee shall maintain insurance coverages (or self-insurance coverage by Permittees having capitalization in excess of Fifty Million Dollars, as determined by the City Manager) in accordance with the following:

- (1) Commercial General Liability Insurance. Each Permittee shall maintain, and by its acceptance of any Permit granted under this Chapter specifically agrees that it will maintain throughout the term of any such Permit, commercial general liability insurance insuring the Permittee in the minimum of:
 - A. \$1,000,000 per occurrence;
 - B. \$2,000,000 annual aggregate; and
 - C. \$1,000,000 excess general liability per occurrence and annual aggregate.

Such commercial general liability insurance may be written on an occurrence or claims made bases and must on a comprehensive coverage form, including the following: premises operations, explosion and collapse hazard, underground hazard, products liability, completed operations, contractual coverage, and broad form property damage, bodily injury and personal injury coverage.

- (2) Automobile Liability Insurance. Each Permittee shall maintain, and by its acceptance of any Permit granted under this Chapter specifically agrees that it will maintain throughout the term of such Permit, automobile liability insurance for owned, non-owned, or rented vehicles in the minimum amount of:
 - A. \$1,000,000 per occurrence; and
 - B. \$1,000,000 excess automobile liability per occurrence, for property damage, bodily injury and personal injury coverage.
- (3) Worker's s Compensation. Each Permittee shall maintain, and by its acceptance of any Permit granted under this Chapter specifically agrees that it will maintain throughout the term of any such Permit, Worker's Compensation coverage as required by the State of Ohio.

902.11 REMOVAL OF FACILITIES.

(a) In the event any Permittee intends to discontinue use of any facilities within the right-of-way, such Permittee shall submit a notice to the City Engineer describing the portion of the facilities use of which will be discontinued and the date of discontinuation of use, which date shall not be less than thirty (30) days from the date such notice is submitted to the City Engineer. The Permittee may not remove, destroy or permanently disable any such facilities after such notice without the advance, written approval of the City Engineer. In the event the Permittee abandons such facilities by failing to remove such facilities within six months after the Permittee has discontinued use of such facilities, the Permittee shall remove, unless prohibited by federal or state law, and/or secure such facilities or shall abandon such facilities in place as directed by the City Engineer in written instructions served on the Permittee.

(b) Upon such abandonment, the City may elect to accept title to the abandoned facility. Such acceptance shall be in writing and upon such acceptance full title and ownership of such abandoned facilities shall pass to the City without the need to pay compensation to the Permittee. The Permittee shall, however, continue to be responsible for all taxes on such facilities or other liability associated therewith until the date the same was accepted by the City. The Permittee shall provide to the City such documents conveying all of the Permittee's right, title and interest in such abandoned facilities to the City as the City may require.

902.12 REMEDIES AND REVOCATION.

(a) In case of any failure of Permittee's physical plant necessary to the functioning of Permittee's facilities, located in the right-of-way or located upon Public Property pursuant to the Permittee's Permit, whether due to damage, age, lack of maintenance or any other cause, the City shall notify Permittee who shall, within a reasonable time as stipulated by the City, respond and repair such failed plant. Should the Permittee fail to act as required, or in cases where protection of public safety requires an immediate response, the City may take any required, corrective action and recover the costs of same from the Permittee.

(b) The City Engineer shall give the Permittee sixty (60) days prior written notice of City's intent to revoke the Permit under the provisions of this Chapter stating the reasons for such action. If the Permittee cures the stated reason within the sixty (60) day notice period, or if the Permittee initiates efforts satisfactory to the City to remedy the stated violation, the City shall not revoke the Permit. If the Permittee does not cure the stated violation or undertake efforts satisfactory to the City to remedy the stated violation; then, after serving upon the Permittee at least twenty (20) days advance written notice of the Permittee's opportunity for a hearing before the City Manager and granting the Permittee an opportunity to be heard in person or in writing as the Permittee may chose, the City Manager may revoke the Permit.

(c) In the event the Permit is revoked, all facilities located in the right-of-way or located upon Public Property pursuant to the Permit shall be removed from the right-of-way and from Public Property at the sole expense of the Permittee.

902.13 RESERVATION OF RIGHTS.

(a) Nothing in this Chapter shall be construed to prevent the City from constructing, maintaining, repairing or relocating any City utility, communications or other municipal facilities, from grading, paving, maintaining, repairing, relocating or altering any transportation infrastructure (by way of example and not by way of limitation streets, bridges, sidewalks, traffic signals and signs) or constructing, maintaining, relocating or repairing any public work or improvement or planting and maintaining any public tree or other plant material.

(b) Nothing in his Chapter should be construed so as to grant any right or interest in any right-of-way or Public Property other than that explicitly set forth herein or in a Permit.

(c) Nothing in this Chapter should be constructed to limit the ability and discretion of the City Commission to pass legislation or of the City's administration to adopt regulations to protect the public peace, health, safety and welfare.

902.14 RIGHT OF WAY VACATION.

In the event any right-of-way used by a Permittee shall be vacated by the City during the term of any Permit granted pursuant to this Chapter and if the Permittee's facilities located in the vacated right-of-way are no longer in use, the Permittee shall, unless prohibited by

federal or state law, at the Permittee's expense forthwith remove its facilities therefrom unless specifically permitted by the City to allow the Permittee's facilities to remain in place and upon the removal thereof restore, repair, or reconstruct the area where such removal has occurred to a condition materially equivalent to that existing before such removal took place. In the event of failure, neglect or refusal of the Permittee, after thirty (30) days written notice by the City to remove the facilities or to repair, restore, reconstruct improve or maintain such vacated area, the City may, if in accordance with applicable law, do such work or cause it to be done, and the cost thereof as found and declared by the City, shall be paid by the Permittee as directed by the City and collection may be made by any available remedy.

902.15 TEMPORARY MOVEMENT OF FACILITIES.

In the event it is necessary temporarily to move or remove any of the Permittee's facilities placed pursuant to this Chapter in order to lawfully move a large object, vehicle, building or other structure over the right-of-way of the City, upon two (2) weeks written notice by the City to the Permittee, the Permittee shall, at the expense of the Person requesting the temporary removal of such facilities, comply with the City's request.

902.16 FORECLOSURE AND RECEIVERSHIP.

(a) Foreclosure. Upon the foreclosure or other judicial sale of the Permittee's facilities located within the right-of-way, the Permittee shall notify the City of such fact and its Permit shall be deemed void and of no further force and effect.

(b) Receivership. The City shall have the right to cancel any Permit granted pursuant to this Chapter subject to any applicable provisions of law, including federal Bankruptcy law, one hundred and twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of the Permittee whether in receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred and twenty (120) days, or unless:

- (1) Within one hundred and twenty (120) days after his election or appointment, such receiver or trustee shall have fully complied with all the provisions of this Chapter and the relevant Permit and remedied all defaults thereunder; and
- (2) Such receiver or trustee, within said one hundred and twenty (120) days, shall have executed an agreement, duly approved by the Court having jurisdiction in the premises whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this Chapter and the relevant Permit.

902.17 REPAIR OF SEWER LATERALS IN RIGHT OF WAY.

(a) Upon a property owner discovering that a sewer lateral connecting his property, located within the corporate boundaries of the City, to the City's sewer line has broken down in that portion of the sewer lateral located within the City's right-of-way, the owner may request that the City repair that portion of the sewer lateral located within the City's right-of-way at no charge to the property owner. Such request for repair of a broken down sewer lateral located within the City's right-of-way shall be made by written application to the City's Service Director on such application form as may be required by the City's Service Director and shall be accompanied by a certification issued by a person registered under to this Section verifying that the subject lateral is broken down within the City's right-of-way. Upon receipt of a proper application for repair of a broken down sewer lateral located within the City's right-of-way, the City's Service Director shall commence an investigation to determine whether;

- (1) the applicant is a proper person to request the sewer lateral repair described in this Section,
- (2) the sewer lateral is in fact broken down within the City's right-of-way, and
- (3) that the break down in the sewer lateral is not the result of willful damaging by the property owner or a tenant of the property owner.

If the City's Service Director is able to confirm each of the above factors, the City's Service Director shall arrange to have the broken down sewer lateral within the City's right-of-way repaired and shall not charge the property owner for such repair. Blockage of a sewer lateral which can be remedied by cleaning the sewer lateral does not constitute a break down of the sewer lateral. The City makes no warranties, either express or implied, regarding the repair of sewer laterals engaged in by the City pursuant to this section. The City's actions in repairing a sewer lateral in no way constitute an acceptance by the City of a dedication of the subject sewer lateral to the City.

(Ord. 00-456. Passed 12-19-00.)

(b) Persons requesting that the City repair a sewer lateral pursuant to this Section shall fully cooperate with the City and allow the City or a contractor employed by the City to enter onto the property attached to the subject sewer lateral for purposes of cleaning out the sewer lateral or for the purposes of making repairs to the subject sewer lateral. The City shall not be required to commence or complete any work on a sewer lateral when such full cooperation is not forthcoming.

(c) Persons wishing to be registered to certify to the Service Director that sewer laterals are broken down within the City's right-of-way may file an application [on a form to be provided by the Service Director] along with an application fee of Fifty Dollars (\$50) with the Service Director. If the Service Director determines that the applicant has not had a registration granted pursuant to this Section revoked within the previous three (3) years, the Director shall register the applicant. The Service Director may revoke any registration granted under this Section upon determining that the registrant, on at least three occasions during the preceding twelve (12) months, has inaccurately certified that a sewer lateral was broken down within the City's right-of-way.

902.90 NONENFORCEMENT AND WAIVERS BY THE CITY.

The Permittee shall not be relieved of its obligation to comply with any of the provisions of this Chapter by reason of any failure of the City to enforce prompt compliance. However, the City Manager may, upon a request made in writing establishing hardship and for good cause shown, waive, in writing, any requirements of this Chapter.

902.91 CONTROLLING LAW.

This Chapter shall be construed and enforced in accordance with the Constitution and laws of the State of Ohio.

902.92 LATE RESPONSE TO EMERGENCY NEED FOR ON SITE UNDERGROUND FACILITY LOCATION.

Any Permittee which fails to have a qualified representative at the identified emergency need site within two hours after the City's representative informs the Permittee of the emergency need, as described in Subsection 902.06(a)(7), shall pay to the City a sum equal to Sixty Five Dollars (\$65.00) for each one half hour, or portion thereof, by which the Permittee's qualified representative is late in arriving [i.e. arriving after the two-hour period described in Subsection 902.06(a)(7) has expired] at the identified emergency need site. A

Permittee shall pay all late arrival charges within thirty (30) days after receipt of the City's invoice. A Permittee who fails to have a qualified representative on site within four hours after the City's representative informs the Permittee of the emergency need, as described in Subsection 902.06(a)(7), by such inaction authorizes the City to proceed with any excavation the City's personnel deems necessary, at the risk of the Permittee, and by such inaction the Permittee waives any and all right the Permittee may have had to recover from the City any damages which may result from the City's excavation.

902.93 CAPTIONS.

The captions and headings in this Chapter are for convenience and reference purposes only and shall not affect in any way the meaning or interpretation of this Chapter.

902.99 PENALTIES.

(a) In addition to any other penalties set forth in this Chapter and all civil remedies which may be available to the City, including injunction, the following penalties shall apply:

- (1) Any person or Permittee violating Sections 902.01(c) or 902.11(a) or both shall be guilty of a misdemeanor of the fourth degree. Each day such violation continues shall be deemed a separate offense; and
- (2) For failure to comply with any other provision of this Chapter, the penalty shall be a civil forfeiture payable to the City in the amount of \$100 per day for each day of violation.

(b) Any Permittee may be excused for violations of this Chapter or of its Permit for reasons of Force Majeure.