

RECORD OF ORDINANCES
CITY OF UPPER ARLINGTON
STATE OF OHIO

ORDINANCE NO. 48-2018

TO AMEND SECTIONS 933.01, 933.02, 933.03, 933.04, 933.05, 933.06, 933.08, 933.13, 933.15, 933.16, 933.18, 933.20, AND 933.23, AND TO ENACT SECTION 933.24, OF CODIFIED ORDINANCE CHAPTER 933-REQUIREMENTS FOR THE USE OR OCCUPATION OF RIGHTS-OF-WAY AND PUBLIC PROPERTY, RELATIVE TO THE STREETS AND SERVICES CODE, AND TO AMEND SECTION 401.06 OF CODIFIED ORDINANCE CHAPTER 401-SCHEDULE OF FEES.

WHEREAS, The 132nd General Assembly passed Substitute House Bill 478, subsequently signed by the Governor, to amend and enact various provisions of the Ohio Revised Code related to the placement of small cell facilities in the public rights-of-way, which provisions become effective August 1, 2018; and

WHEREAS, The new provisions of the Ohio Revised Code generally allow certain telecommunications services providers to locate small cell facilities and wireless support structures in the rights-of-way while granting municipalities a limited ability to regulate certain aspects of the facilities and their location; and

WHEREAS, The City has legitimate interests in protecting the health, safety, and welfare of the City, ensuring the structural integrity of the rights-of-way, minimizing danger, disruption, and inconvenience of the traveling public, and protecting the character of existing neighborhoods and districts, which interests may be threatened by the placement of small cell facilities and support structures in City rights-of-way; and

WHEREAS, In order to protect its legitimate interests, the City must amend and enact certain sections of Codified Ordinance Chapter 933-Requirements for the Use and Occupation of Rights-of-Way and Public property, and Codified Ordinance Section 401.06-Rights-of-Way-Master List of Fees, to adopt new regulations and requirements related to the placement of small cell facilities and wireless support structures in the rights-of-way as permitted by and consistent with the provisions of Substitute House Bill 478; and

WHEREAS, the City filed the statutorily required notice with the Public Utilities Commission of Ohio on May 9, 2018;

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Upper Arlington, Ohio:

SECTION 1. That Council hereby waives the requirement of Section 731.19 of the Ohio Revised Code that this Ordinance contain the entire section of the Code that is being amended.

SECTION 2. That Codified Ordinance § 933.01(B) shall hereby be amended to read as follows:

- (B) *Scope.* The provisions of this chapter shall apply to all users of the rights-of-way as provided herein.
- 1(Chapter 611 of the Codified Ordinances provides the requirements for wireless communication facilities in the city.
- 2(The procedures and fees outlined in this Chapter 933 of the Codified Ordinances shall be applicable to all applications for facilities in the city rights-of-way.
- 3(To the extent that anything in this C.O. ch. 933 conflicts with C.O. ch. 611, 901, 903 or 1304, then the provisions of this C.O. ch. 933 shall control.

SECTION 3. That Codified Ordinance § 933.01(C) shall hereby be amended to read as follows:

- (C) *Definitions.* The terms, phrases, words, and their derivations as set forth in Article 2 shall apply to C.O. ch. 933, unless otherwise provided herein. For the purposes of C.O. ch. 933 the following terms, phrases, words, and their derivations have the meanings set forth herein and in Article 2. When not inconsistent with the context, words in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The words "shall" and "will" are mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning. References hereafter to "Sections" are, unless otherwise specified, references to sections in this chapter. Defined terms remain defined terms whether or not capitalized.

Affiliate: means each person who falls into one or more of the following categories: (i) each person having, directly or indirectly, a controlling interest in a provider, (ii) each person in which a provider has, directly or indirectly a controlling interest, (iii) each officer, director, general partner, limited partner or shareholder holding an interest of fifteen percent (15%) or more, joint venturer or joint venture partner, of a provider, and (iv) each person, directly or indirectly, controlling, controlled by, or under common control with the provider; provided that affiliate shall in no event mean any limited partner or shareholder holding an interest of less than fifteen percent (15%) of such provider, or any creditor of such provider solely by virtue of its status as a creditor and which is not otherwise an affiliate by reason of owning a controlling interest in, being owned by, or being under common ownership, common management, or common control with, such provider.

Applicant: means any person who seeks to obtain a certificate of registration and/or a permit.

Application: means the process by which an applicant submits a request to obtain certificate of registration and/or a permit.

Application fee: means the fee paid to the city for application for a certificate of registration pursuant to C.O. § 933.03(A).

Bankruptcy code: means the United States Bankruptcy Code of 1978, as amended including regulations promulgated by Title 11 of the United States Code.

Best effort(s): means the best reasonable efforts under the circumstances, taking into consideration, among other appropriate matters, all applicable Laws, regulations, safety, engineering and operational codes, available technology, human resources, and cost.

Cable franchise: means the same as "franchise" in the Cable Communications Policy Act of 1984, 98 Stat. 2779, 47 U.S.C.A. 522.

Cable operator: ~~means the same as in the Cable Communications Policy Act of 1984, 98 Stat. 2779, 47 U.S.C.A. 522.~~ any person or group of persons (A) who provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in such cable system, or (B) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system.

Cable service: ~~means the same as in the Cable Communications Policy Act of 1984, 98 Stat. 2779, 47 U.S.C.A. 522.~~ (A) the one-way transmission to subscribers of (i) video programming, or (ii) other programming service, and (B) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

Certificate of registration: means the document issued to each provider and its unique system to occupy the rights-of-way within the city that outlines the terms of that occupancy of the rights-of-way.

City: means the City of Upper Arlington, Ohio.

City attorney: means the duly appointed City Attorney of Upper Arlington, Ohio.

City of Columbus: means the City of Columbus, Ohio.

City council: means the governing body of the City of Upper Arlington, Ohio.

City engineer: means the duly appointed City Engineer of the City of Upper Arlington, Ohio.

City finance director: means the duly appointed Finance Director of the City of Upper Arlington, Ohio.

City manager: means the administrative head of the municipal government known as the City of Upper Arlington, Ohio.

Code (or C.O.): means the codified ordinances of Upper Arlington, Ohio.

Co-location or co-locate: means to install, mount, maintain, modify, operate, or replace wireless facilities on a wireless support structure.

Confidential/Proprietary information: means all information that has been either identified or clearly marked as confidential/proprietary by the provider prior to any submission. Upon receipt of such clearly marked confidential/proprietary information from

a provider, the city shall endeavor, in accordance with the requirements of ORC ch. 149 (the Ohio Public Records Act), to use all the same reasonable measures and exercise the same degree of care that the city uses to protect its own information of such a nature from disclosure to third parties. In the event that the city receives a request from a third party for disclosure of information a provider has clearly marked as confidential/proprietary information, then the city shall respond as required by ORC ch. 149, but will attempt to use all reasonable means to notify the provider as soon as possible.

Construct: means, but not be limited to, digging, boring, tunneling, trenching, excavating, obstructing, installing wires, installing conduit, installing pipes, installing transmission lines, installing poles, installing signs or installing Facilities, other than landscaping, ornamental plantings in, on, above, within, over, below, under or through any part of the rights-of-way. Construct shall also include the act of opening and/or cutting into the surface of any paved or improved surface that is any part of the right-of-way.

Construction: means, but not limited to, the act or process of digging, boring, tunneling, trenching, excavating, obstructing, installing wires, installing conduit, installing pipes, installing transmission lines, installing poles, installing signs or installing facilities, other than landscaping, ornamental plantings in, on, above, within, over, below, under or through any part of the rights-of-way. Construction shall also include the act of opening and/or cutting into the surface of any paved or improved surface that is part of the right-of-way.

Construction bond: means a bond posted to ensure proper and complete construction and/or repair of a facility and the affected rights-of-way pursuant to a permit.

Construction and major maintenance plan: means a written plan including maps of the expected location, design, other related equipment and facilities of a provider which describes in full the construction intended to be accomplished by the provider in the rights-of-way over the next calendar year.

County: means Franklin County, Ohio (except for the purpose of the provision of sewer and water service within or through the city). County specifically excludes any and all contractors, agents or other Persons acting on behalf of said County.

Credible: means worthy of being believed.

Department of public service: means the department of public service of the city.

Design guidelines: means detailed guidelines and specifications promulgated by the City in accordance with Ohio Revised Code section 4939, as adopted by the City Manager, for the design and installation of Small Cell Facilities and Wireless Support Structures in the Right-of-Way, with objective, technologically feasible criteria that reasonably match the aesthetics and character of the immediate area regarding:

-)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;
-)4(The design and appearance of a wireless support structure including any height requirements adopted by the city in accordance with law.

Director of public service: means the director of the department of public service, or his or her designee.

Emergency: means a condition that poses a clear and immediate danger to life or health, or of a significant loss of property.

Facility(ies): means any tangible thing located in any rights-of-way within the city, and includes wireless facilities and wireless support structures; but shall not include boulevard plantings, ornamental plantings or gardens planted or maintained in the rights-of-way between a person's property and the street edge of pavement.

FCC: means the Federal Communications Commission, or any successor thereto.

Full: means unable to accommodate any additional facilities as determined by the director of public service in accordance with the principles of public health, safety and welfare, following a reasonable analysis taking into consideration all applicable Law; commonly accepted industry standards; and routine engineering practices.

Height: means the distance measured from the pre-existing grade level to the highest point on the structure, including the Small Cell Facility, even if said highest point is an Antenna or lightening protection device.

Historic district: means a building, property, or site, or group of buildings, properties, or sites that are either of the following:

- 1) Listed in the national register of historic places or formally determined eligible for listing by the keeper of the national register, the individual who has been delegated the authority by the federal agency to list properties and determine their eligibility for the national register, in accordance with section VI.D.1.a.i-v of the nationwide programmatic agreement codified at 47 C.F.R. part 1, Appendix C;
- 2) A historic district listed in the national register of historic places under 16 U.S.C. 470a, an historic district designated by a local government certified under 16 U.S.C. 470a (c), or a local historic district certified under 36 C.F.R. 67.8 and 67.9

In: when used in conjunction with rights-of-way, means in, on, above, within, over, below, under or through a rights-of-way.

Inspector: means any person authorized by the director of public service to carry out inspections related to the provisions of C.O. ch. 933.

Law: means any local, state and/or federal legislative, judicial or administrative order, certificate, decision, statute, constitution, ordinance, resolution, regulation, rule, tariff or other requirement in effect either at the time of execution of C.O. ch. 933 or at any time during the location of, and/or while a provider's facilities are located in the public rights-of-way.

Micro Wireless Permit: means a permit, which must be obtained before a person can construct, modify, collocate, or replace a small cell facility or wireless support structure, as set forth in § 933.24, in or on the rights-of-way.

Minor maintenance permit: means a permit, which must be obtained before a Person can perform minor maintenance, as set forth in C.O. § 933.17, in or on the rights-of-way.

Ohio Manual of Uniform Traffic Control Devices: means the uniform system of traffic control devices promulgated by the Ohio Department of Transportation pursuant to ORC § 4511.09.

~~ORC:~~ means ~~the Revised Code of the State of Ohio.~~

Ohio Utility Protection Service: means the utility protection service as defined in ORC § 153.64 and/or § 3781.26 or a statutory successor thereto.

Open video service: means any video programming services provided to any person through the use of rights-of-way, which person is certified by the FCC to operate an open video system pursuant to § 651 et seq. of the Telecommunications Act of 1996 (codified at 47 U.S.C. Title VI, Part V), regardless of the facilities used.

Operator: means a wireless service provider, cable operator, or a video service provider that operates a small cell facility and provides wireless service. For purposes of this chapter, "operator" includes a wireless service provider, cable operator, or a video service provider that provides information services as defined in the "Telecommunications Act of 1996," 110 Stat. 59, 47 U.S.C. 153(20), as services that are fixed in nature or use unlicensed spectrum.

ORC: means the Revised Code of the State of Ohio.

Permit: means a right-of-way permit, micro wireless permit, or a minor maintenance permit, as the context requires.

Permit cost: means all direct, incidental and indirect costs actually incurred or realized by the city for permit issuance, Permit oversight and pavement degradation resulting from Construction activity.

Permit fee: means money paid to the city for a permit ~~to construct in the rights-of-way~~ as required by C.O. ch. 933.

Permittee: means any person to whom a right-of-way permit and/or, minor maintenance permit has been granted by the city and not revoked.

Person: means any natural or corporate person, business association or other business entity including, but not limited to, a partnership, a sole proprietorship, a political subdivision, a public or private agency of any kind, a utility, a successor or assign of any of the foregoing, or any other legal entity.

Property interest: means the city's fee simple estate or any lessor estate or interest in all of any part of a right-of-way.

Provider: means a person who owns or operates a system and has a valid certificate of registration. The city, county, City of Columbus, small cell facility operators, and cable television operators operating pursuant to a valid cable franchise, shall also be considered providers.

Public utility: means a wireless service provider or any company described in section 4905.03 of the Ohio Revised Code except in divisions (B) and (I) of that section, which company also is a public utility as defined in section 4905.02 of the Ohio Revised Code; and includes any electric supplier.

PUCO: means the Public Utilities Commission of Ohio as defined in ORC § 4901.02.

Registration maintenance fee: means the money paid to the city to maintain a certificate of registration and compensate the city for all actual costs incurred by the city in the management, administration and control of the rights-of-way of the city, and which are not reasonably recoverable by the city through permit fees or other approved recovery mechanisms.

Removal bond: means a bond posted to ensure the availability of sufficient funds to remove a provider's facilities upon abandonment or disuse, or discontinuance of a provider's use or occupation of the rights-of-way, or damage to city property caused by an operator or its agent.

Residential purposes: means residential use of right-of-way for such uses as lawn sprinklers, sidewalks, or any curb cuts and driveways, and as may be further defined in the rules and regulations.

Restoration: means the process and the resultant effects by which a rights-of-way is returned to a condition as good as or better than its condition immediately prior to the construction. Restoration shall occur in accordance with the rules and regulations for making openings in a public way as amended from time to time.

Right(s)-of-way: means the surface of, and the space in, above, within, over below, under or through any real property in which the city has an interest in law or equity, whether held in fee, or other estate or interest, or as a trustee for the public, including, but not limited to any public street, boulevard, road, highway, freeway, lane, alley, court, sidewalk, parkway, river, tunnel, viaduct, bridge, conduit, or any other place, area, or real property owned by or under the legal or equitable control of the city that, consistent with the purposes for which it was dedicated, may be used for the purposes of constructing, operating, repairing, or replacing a system. Rights-of-way shall not include buildings, parks, or other public property or easements that have not been dedicated to compatible uses, except to the extent the use or occupation of such property is specifically granted in a permit or by law within, through, on, across, above, or below, any public street, public road, public highway, public freeway, public lane, public path, public alley, public court, public sidewalk, public boulevard, public parkway, public drive, public easement, and any other land dedicated or otherwise designated for a compatible public use, which, on or after July 2, 2002, is owned or controlled by a municipal corporation. "Rights-of-way" excludes a private easement.

Right(s)-of-way cost: means all direct, incidental and indirect costs borne by the city for the management and administration of the rights-of-way and this chapter.

Rule(s) and regulation(s): means any rules or regulations adopted by the director of public service pursuant to C.O. § 933.06(E).

Service(s): means the offering of any service for a fee directly to the public, or to such classes of users as to be effectively available directly to the public.

Small cell facility: means a wireless facility that meets both of the following requirements:

- 1) Each antenna is located inside of an enclosure of not more than six cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an enclosure of not more than six cubic feet in volume.
- 2) All other wireless equipment associated with the facility is cumulatively not more than twenty-eight cubic feet in volume. The calculation of equipment volume shall not include electric meters, concealment elements, telecommunications demarcation boxes, grounding equipment, power transfer switches, cut-off switches, and vertical cable runs for the connection of power and other services.

Supplementary application: means any application made to construct on or in more of the rights-of-way than previously allowed, or to extend a permit that had already been issued, or in response to the city's notice of an incomplete application for a small cell facility or wireless support structure.

Surety fund: means a formal pledge made to secure against loss, damage or default.

System: means any system of conduit, cables, ducts, small cell facilities, pipes, wires, lines, towers, antennae wave guides, optic fiber, microwave, laser beams and any associated converters, equipment or facilities or utilities designed and constructed for the purpose of producing, receiving, amplifying, delivering or distributing services within the city. A system shall specifically include, but not necessarily be limited to: electric distribution and/or transmission systems, natural or artificial gas distribution and/or transmission systems, water distribution systems, storm sewer systems, sanitary sewer systems, cable television systems, telecommunications systems (whether voice, video, data, or other), fiber optic systems, wireless communications systems, and transit electrification systems.

System representative: means the specifically identified agent/employee of a provider who is authorized to direct field activities of that provider and serve as official notice agent for system related information. Any such system representative shall be required to be available at all times to receive notice of and immediately direct response to system related emergencies or situations.

Transfer: means the disposal by the provider, directly or indirectly, by gift, assignment, voluntary sale, merger, consolidation or otherwise, of fifty-one percent (51%) or more at one time of the ownership or controlling interest in the system, or fifty-one percent (51%) cumulatively over the term of a certificate of registration of such interests to a corporation, partnership, limited partnership, trust, or association or person or group of persons acting in concert.

Trenchless technology: means, 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.

Underground facility(ies): means all lines, cables, conduits, pipes, posts, tanks, vaults and any other facilities which are located wholly or partially underneath rights-of-way.

Unused facility(ies) or Abandoned facility(ies): means 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 it 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.

Utility(ies): means any water, sewer, gas, drainage, sprinkler or culvert pipe and any electric power, telecommunication, signal, communication, or cable television conduit, fiber, wire, trackless trolley wires, cable, or operator thereof.

Utility corridor(s): means those specific areas of the rights-of-way designated as such by the director of public service pursuant to C.O. § 933.03(F)(1).

Video service authorization: means 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).

Video service network: means the same as “video service network” in O.R.C. § 1332.21(L).

Video service provider: means the same as “video service provider” in O.R.C. § 1332.21(M).

Wireless facility: means an antenna, accessory equipment, distributed antenna system, small cell facility, micro wireless facility, or other device or equipment used to provide wireless service, including such devices and equipment as provided for in section 4939 of the Ohio Revised Code

Wireless service: means any services using licensed or unlicensed wireless spectrum, whether at a fixed location or mobile, provided to the public using wireless facilities.

Wireless service provider: means a person who provides wireless service as defined in division (A)(19) of section 4927.01 of the Ohio Revised Code.

Wireless support structure: means a pole, such as a monopole, either guyed or self-supporting, street light pole, traffic signal pole, a fifteen-foot or taller sign pole, or utility pole capable of supporting small cell facilities. As used in this chapter, “wireless support structure” excludes all of the following:

- (a) A utility pole or other facility owned or operated by a municipal electric utility;
- (b) A utility pole or other facility used to supply traction power to public transit systems including railways, trams, streetcars, and trolleybuses.

Work permit: means a permit issued by the city that must be obtained in order to perform any work in, on, above, within, over, below, under, or through any part of the public way, including, but not limited to, the act or process of digging, boring, tunneling, trenching, excavating, obstructing, or installing, as well as the act of opening and cutting into the surface of any paved or improved surface that is part of the public way.

Working day: means any Monday, Tuesday, Wednesday, Thursday, Friday, or Saturday but excluding legal holidays observed by the city.

SECTION 4. That Codified Ordinance § 933.02(D) shall hereby be amended to read as follows:

- (D) *Exceptions:*
 -)1(The following entities are not obligated to obtain a certificate of registration: The city and resellers of services or persons that do not own any system or facilities in the rights-of-way.
 -)2(The following entities are required to participate in the certificate of registration process, but shall be exempt from the financial obligations of the application fee required by C.O. § 933.03(A) and the registration maintenance fee required by C.O. § 933.05(A): Cable Operators for the purpose of providing only cable service and operating pursuant to a valid cable franchise issued in accordance with C.O. ch. 777 of the

Code, a video service provider for the purpose of providing only video service and operating pursuant to a valid video service authorization issued in accordance with O.R.C. § 1332.24, the City of Columbus, and the county, and a small cell facility operator for the purpose of providing wireless service. In addition, cable operators shall be exempt from any requirement of the certificate of registration process that is in direct conflict with the requirements of, and/or specifically exempted by, a valid cable franchise with the city.

SECTION 5. That Codified Ordinance § 933.02(E) shall hereby be amended to read as follows:

- (E) *Systems in place without a certificate of registration.* Any system or part of a system found in a right-of-way for which a certificate of registration has not been obtained or is not otherwise exempted under § 933.02(D) shall be deemed to be a nuisance and an unauthorized use of the right-of-way. The city may exercise any remedies or rights it has at law or in equity, including, but not limited to abating the nuisance; taking possession of the facilities and/or non-complying portion of such system; and/or prosecuting the violator.

SECTION 6. That Codified Ordinance § 933.02(H) shall hereby be amended to read as follows:

- (H) *Nature of issuance.* A certificate of registration shall not convey equitable or legal title in the rights-of-way. A certificate of registration is only the nonexclusive, limited right to occupy rights-of-way in the city, for the limited purposes and for the limited period stated in the certificate of registration and in accordance with C.O. ch. 933 of the Code. The rights to occupy the right-of-way may not be subdivided or subleased; provided, however, that two or more providers may collocate locate facilities in the same area of the rights-of-way so long as each such provider complies with the provisions of C.O. ch. 933. Collocating providers may file a joint application for a right-of-way permit. A certificate of registration does not excuse a provider from obtaining appropriate access or pole attachment agreements before collocating its facilities on facilities of others, including the city's facilities. A certificate of registration does not prevent a provider from leasing space in or on the provider's system, so long as the sharing of facilities does not cause a violation of law, including the provisions of C.O. ch. 933. A certificate of registration does not excuse a provider from complying with any provisions of the code or other applicable law.

SECTION 7. That Codified Ordinance § 933.03(B)(8) shall hereby be amended to read as follows:

-)8(Upon request of the city, a narrative (or if applicable PUCO/FCC application information) describing applicant's proposed activities in the city including, but not limited to, credible information detailing applicant's financial, managerial, and technical ability to fulfill

applicant's obligations under C.O. ch. 933 and carry on applicant's proposed activities, and other information as described or required in this chapter and/or any rules or regulations.

SECTION 8. That Codified Ordinance § 933.03(C) shall hereby be amended to read as follows:

(C) *Criteria for issuance of a certificate of registration.*

- 1(In deciding whether to issue a certificate of registration, the city shall consider:
 - (a) Whether the issuing of the certificate of registration will protect or contribute to the health, safety, and welfare of the city and its citizens.
 - (b) Whether issuing of the certificate of registration will be consistent with C.O. ch. 933.
 - (c) Whether applicant has submitted a complete application and has secured all certificates and other authorizations required by law in order to construct and operate a system in the manner proposed by the applicant.
 - (d) Whether the applicant is delinquent on any taxes or other obligations owed to the city, county or State of Ohio.
 - (e) Whether the applicant has the requisite financial, managerial, and technical ability to fulfill all its obligations under this chapter, the city's rules and regulations, and the issuance of a certificate of registration.
 - (f) Any other applicable law.

SECTION 9. That Codified Ordinance § 933.03(E)(9) shall hereby be amended to read as follows:

- 9(Provider shall, weather permitting, remove all graffiti within twenty-one (21) calendar days of notice. Provider shall use all reasonable efforts to remove any and all graffiti on any of the provider's facilities located within the city rights-of-way. Should the Provider fail to do so, the city may take whatever action is necessary to remove the graffiti and bill invoice the Provider for the cost thereof;

SECTION 10. That Codified Ordinance § 933.03(F)(6) shall hereby be amended to read as follows:

- 6(Unless otherwise stated in a certificate of registration or permit, all facilities within the rights-of-way shall be Constructed and located in

accordance with the Code and with the following provision:

- (a) ~~Whenever~~ Unless otherwise technologically infeasible, whenever all existing facilities that have been traditionally located overhead are located underground in a certain area within the city, a provider who desires to place its facilities in the same area must also locate its facilities underground.

SECTION 11. That Codified Ordinance § 933.03 shall hereby be amended to add 933.03(G), to read as follows:

(G) Historic Districts.

- 1) The city shall have the authority to prohibit the use or occupation of the right-of-way by a provider if the right-of-way for which the provider seeks use and occupancy lies within a historic district.
- 2) As a condition for approval for the co-location or installation of small cell facilities or wireless support structures in an area of the city designated as a historic district, the city may do any of the following:
 - (a) Require reasonable, technically feasible, and nondiscriminatory design or concealment measures for the small cell facilities and wireless support structures in any historic district.
 - (b) Request that a provider comply with the design and aesthetic standards of the historic district, as provided for in the city's design guidelines.
 - (c) Request that a provider explore the feasibility of using certain camouflage measures to improve the aesthetics of the small cell facilities and wireless support structures to minimize the impact to the aesthetics in a historic district.
- 3) This section may not be construed to limit the city's authority to enforce local codes, administrative rules, rules and regulations, design guidelines, or regulations adopted by ordinance, which are applicable to a historic area designated by the state or city and historic preservation zoning regulations consistent with the preservation of local zoning authority under 47 U.S.C. Section 332(c)(7), the requirements for facility modifications under 47 U.S.C. Section 1455(a), or the National Historic Preservation Act of 1966 (54 U.S.C. Section 300101 et seq.), and the regulations adopted to implement those laws.

SECTION 12. That Codified Ordinance § 933.04(B) shall hereby be amended to read as follows:

- (B) *Mapping data.* With the filing of its application for a certificate of registration, a provider shall be required to accurately inform the city of the number of miles (rounded up to the nearest mile) of right-of-way the provider's system then currently occupies and begin submitting to the city all information that currently exists and which can be provided regarding the location of its

facilities in the right-of-way in hard copy or in the most advanced format (including, but not 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. Unless otherwise required by C.O. § 933.15(B), a provider shall have up to one (1) year from the date of the Provider's initial filing of an application for a certificate of registration to completely submit all the mapping data for a provider's system in the entire geographical area of the city which it owns or over which it has control that are located in any rights-of-way of the city 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 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 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. ~~Anytime~~ Any time after the issuance of a certificate of registration, and upon the reasonable request of the director of public service, a provider shall be required to provide to the city any additional location information for any facilities which it owns or over which it has control that are located in any rights-of-way of the city required by the city. ~~Any~~ Unless otherwise required by law, any and all actual direct, incidental and indirect costs incurred by the city during the process of reviewing, inputting and/or converting a provider's mapping information to comport with the city's then current standard format (whether electronic or otherwise) shall be directly billed to, and must be timely remitted by, the Provider. Failure to pay such mapping costs within sixty (60) days of receipt of an invoice shall subject an applicant or provider to revocation of its certificate of registration and the penalties of C.O. § 933.99. Further, each provider that has been issued a certificate of registration shall accurately inform the city on or before each subsequent January 1st of the number of miles (rounded up to the nearest mile) of right-of-way the provider's system then occupied as of the immediately previous December 1st. The director of public service may, in the future, adopt additional specifications and further define or modify the mapping data requirements under this section for reasons including, but not limited to, changes in technology or the Law regarding public disclosure of a provider's mapping information. When the city modifies and/or amends the mapping data requirements, the city shall use best efforts to avoid unreasonably increasing the burden to the providers that may be associated with satisfying the amended mapping requirements. When the mapping requirements of C.O. § 933.04(B) are amended, each provider shall be served with a copy of the new specifications or modifications by regular U.S. Mail to the system representative identified in each certificate of registration and in accordance with C.O. § 933.23(D); provided, however, that any failure of any Provider to actually receive such notice shall not in any way affect the validity or enforceability of said specifications or modifications.

SECTION 13. That Codified Ordinance § 933.05 shall hereby be amended to read as follows:

§ 933.05 - COMPENSATION FOR CERTIFICATE OF REGISTRATION.

- (A) *Compensation.* ~~As~~ Unless otherwise required by law, as compensation for the city's costs to administer C.O. ch. 933, manage, administer and control the rights-of-way and maintain each certificate of registration issued, every provider or any person operating a system shall pay to the city the annual registration maintenance fee set forth in C.O. ch. 401.
- (B) The fees specified in § 933.05(A) may be modified or adjusted or waived by regulation; provided, however, that such fees shall be calculated in accordance with Chapter 4939 of the Ohio Revised Code to only recover the city's actual and incurred costs of planning, regulating, purchasing, maintaining and governing the rights-of-way, including any costs of joint planning, joint utility and telecommunications facilities placed in the right-of-way by the city for the future use of permittees, enforcement of this chapter, and related costs and overheads, including but not limited to an appropriate allocation of the costs of any geographic information systems utilized by the city, unless otherwise required by law.
- (C) The city manager may enter into agreements with permittees under which permittees may provide facilities or services, or both, to the city in lieu of all or a portion of such fees. All such agreements shall be approved by council.
- (D) *Timing.* Registration maintenance fees shall be paid in advance by January 1st of each calendar year. Registration maintenance fees shall be paid in full for the first year of the registration as a condition of the certificate of registration becoming effective. Fees may be prorated from the effective date of the certificate of registration to the end of the calendar year if less than one (1) full year.
- (E) *Taxes and assessments.* To the extent taxes or other assessments are imposed by taxing authorities on the use of city property as a result of a provider's use or occupation of the rights-of-way, the provider shall be responsible for payment of such taxes. Such payments shall be in addition to any other fees payable pursuant to C.O. ch. 933 and shall not be considered an offset to, or in lieu of, the fees and charges listed in C.O. ch. 933. The registration maintenance fee is not in lieu of any tax, fee, or other assessment except as specifically provided in C.O. ch. 933, or as required by applicable law.
- (F) *Interest on late payments.* In the event that any registration maintenance fee is not paid to the city by January 31, the provider shall pay a monthly late charge of one percent (1%) of the unpaid balance for each month or any portion thereof for which payment is not made.
- (G) *No accord and satisfaction.* No acceptance by the city of any registration maintenance fee shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of such registration maintenance fee payment be construed as a release of any claim the city may have for additional sums payable.

SECTION 14. That Codified Ordinance § 933.06(E) shall hereby be amended to read as follows:

- (E) *Rules and regulations.* The director of public service may propose and adopt (and from time to time amend) the rules and regulations regarding C.O. ch. 933, design guidelines, construction standards and occupancy requirements of the right-of-way. Prior to the adoption or amendment of the rules and regulations or design guidelines, the director of public service shall provide written notice and a copy of the proposed language of such adoption or amendment, via United States Regular Mail, to each provider who holds a then current certificate of registration. Each provider shall then have thirty (30) days following the date of the city's mailing to provide written comment regarding the proposed language to the director of public service. At least forty-five (45) days, but not more than sixty (60) days following the date of the city's mailing, the director of public service shall schedule and hold a meeting, to make available a forum at which all then current providers may address any questions, concerns and make reasonable suggestions regarding the proposed new rules and regulations to the director of public service. The director of public service shall, following said meeting and the review of the providers' comments and suggestions, adopt or amend the rules and regulations in a manner that best serves the city.

SECTION 15. That Codified Ordinance § 933.08 shall hereby be amended to read as follows:

§ 933.08 - INDEMNITY.

- (A) *Indemnity required.* Each certificate of registration issued pursuant to C.O. ch. 933 shall contain provisions whereby providers agree to defend, indemnify and hold the city and its agents, officers, elected officials, employees, volunteers, and subcontractors harmless from and against all damages, costs, losses or expenses:
-)1(For the repair, replacement, or restoration of city property, equipment, materials, structures and facilities which are damaged, destroyed or found to be defective as a result of such provider's acts or omissions; and
 -)2(From and against any and all claims, demands, suits, causes of action, and judgments:
 - (a) For damage to or loss of the property of any person, and/or the death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any Person;
 - (b) Arising out of, incident to, concerning or resulting from the act or omissions of such provider, its agents, employees, and/or subcontractors, in the performance of activities pursuant to such certificate of registration, no matter how, or to whom, such loss may occur.

)3(In any event, all persons using or occupying the rights-of-way agree to defend, indemnify and hold harmless the city as set forth above as a condition of their use and occupancy of the rights-of-way.

(B) For small cell facilities and wireless support structures, in addition to section 933.08(A), any operator who owns or operates small cell facilities or wireless support structures in the public way shall indemnify, protect, defend, and hold the municipal corporation and its elected officials, officers, employees, agents, and volunteers harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees to include reasonable attorney fees and costs of defense, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including personal or bodily injury or death, property damage or other harm for which recovery of damages is sought, to the extent that it is caused by the negligence of the operator who owns or operates small cell facilities and wireless service in the public way, any agent, officer, director, representative, employee, affiliate or subcontractor of the operator, or their respective officers, agents, employees, directors, or representatives while installing, repairing, or maintaining facilities in a public way.

SECTION 16. That Codified Ordinance § 933.13 shall hereby be deleted as follows:

~~§ 933.13 – PEG REQUIREMENTS FOR OPEN VIDEO SYSTEMS.~~

~~Any provider that receives a certificate from the FCC to provide open video services in the city shall notify the city of such certification. Any provider that operates an open video system shall comply with all applicable FCC Rules, including those regarding channel capacity support for public educational and governmental access ("PEG"), and any additional requirements imposed by the city which are not inconsistent with such FCC rules.~~

SECTION 17. That Codified Ordinance § 933.15(b)(1) shall hereby be amended to read as follows:

(B) *[Types of right-of-way permits.]* The following types of right-of-way permits are available:

)1(Pavement disturbance right-of-way permit. Right-of-way permit granted to persons who are required to obtain a certificate of registration pursuant to section 933.02 or are otherwise granted authority to utilize rights-of-way generally for business purposes including the provision of utility, cable television, communications or other services to the city, its residents and taxpayers who intend to disturb the improved surface of the right-of-way including but not limited to cutting the pavement of the roadway ~~and/or curb and~~ gutter, curb, sidewalk, or boring under the roadway;

SECTION 18. That Codified Ordinance § 933.15(E) shall hereby be amended to read as follows:

(E) *Permit applications.*

-)1(Application for a permit shall be made to the director of the department of public service.
-)2(All permit applications shall contain, and will be considered complete only upon compliance with the requirements of the following provisions:
 - (a) 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 permit on behalf of a party that has been issued a certificate of registration;
 - (b) Submission of a completed 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 cuts, 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, and design guidelines 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;
 - (c) 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;
 - (d) If the applicant wants to install new facilities that are not small cell facilities or wireless support structures, evidence that there is no surplus space and evidence that the applicant has received an appropriate permit and is adhering to the city's rules and regulations;
 - (e) 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:
 - (i) The size and height of the existing poles, which are not to exceed forty feet in height above ground level for a new wireless support structure, including any collocated antennas; and

- (ii) Based on the facilities currently on the existing poles, the excess capacity currently available on such poles before installation of applicant's facilities; and
 - (iii) 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.
- (f) If the applicant proposes to install new poles within the rights-of-way that are not small cell facilities or wireless support structures, the applicant shall provide:
 - (i) Credible evidence satisfactory to the city that there is no excess capacity on existing poles or in existing underground systems;
 - (ii) Credible evidence to the city that it is not financially and/or technically practicable for the applicant to make an underground installation or locate its facilities on existing poles;
 - (iii) The location, size, height, color, and material of the proposed poles; and
 - (iv) Credible evidence satisfactory to the city that the applicant will adhere to all the applicable laws concerning the installation of new poles.
- (g) If applicant is proposing an underground installation in existing ducts or conduits within the rights-of-way, the applicant shall provide credible information satisfactory to the city to sufficiently detail and identify:
 - (i) Based on the existing facilities, the excess capacity for like or similar facilities currently available in such ducts or conduits before installation of applicant's facilities; and
 - (ii) Based on existing facilities, the excess capacity for like or similar facilities that will exist in such ducts or conduits after installation of applicant's facilities.
- (h) If applicant is proposing an underground installation within new ducts or conduits to be constructed within the rights-of-way, the applicant must provide credible information satisfactory to the city to sufficiently detail and identify:
 - (i) The location, depth, size, and quantity of proposed new ducts or conduits;
 - (ii) The excess capacity for like or similar equipment that will exist in such ducts or conduits after installation of applicant's facilities.
- (i) A preliminary construction schedule and completion date.
- (j) Payment of all money due to the city for:
 - (i) Permit fees;
 - (ii) Any loss, damage, or expense suffered by the city as a result of applicant's prior construction in the rights-of-way or any emergency actions taken by the city;
 - (iii) Any certificate of registration issued to the applicant/person whose facilities are being constructed; and/or

- (iv) Any other money due to the city from the applicant/person whose facilities are being constructed.
- (k) When a right-of-way permit is requested for purposes of installing additional systems or any part of a system, the posting of a construction bond and removal bond, acceptable to the city and subject to C.O. ch. 933, for the additional systems or any part of a system is required;
- (l) Upon request, the city manager may modify or waive the information requirements if they are not necessary in evaluating the right-of-way permit application. The As permitted by law, the city manager may request applicable and pertinent additional information if it is necessary in evaluating the right-of-way permit application.

SECTION 19. That Codified Ordinance § 933.15(F) shall hereby be amended to read as follows:

(F) *Issuance of permit; conditions.*

-)1(If the city determines that the applicant has satisfied the requirements of C.O. ch. 933 and the right-of-way permit process, the director of public service shall issue a right-of-way permit subject to the provisions of C.O. § 933.15(F)(2) upon a determination that:
 - (a) The granting of the right-of-way permit will protect or contribute to the public health, safety or welfare in the city;
 - (b) The granting of the right-of-way permit will be consistent with the findings and purposes as set forth in section 933.01; and
 - (c) The applicant is not delinquent on any taxes or other obligations to the city or Franklin County and has the requisite financial, managerial and technical ability to fulfill all its obligations hereunder.
- ~~)2(The city may impose reasonable conditions upon the issuance of the right of way permit and the performance of the permittee thereunder in order to protect the public health, safety and welfare, to ensure the structural integrity of the rights of way, to protect the property and safety of other users of the rights of way, and to minimize the disruption and inconvenience to the traveling public.~~

SECTION 20. That Codified Ordinance § 933.15(G)(2) shall hereby be amended to read as follows:

-)2(The permit fees specified in C.O. ch. 401 may be modified or adjusted or waived by regulation, however, provided that such fees shall be calculated in accordance with Chapter 4939 of the Ohio Revised Code to only recover the city's actual and incurred right-of-way permit issuance, inspection, oversight, enforcement and regulation costs

including the value of the degradation and reduction in the useful life of the rights-of-way that will result from construction that takes place therein, unless otherwise required by law. "Degradation and the reduction in the useful life" for the purpose of this section means the accelerated depreciation of the rights-of-way caused by construction in or disturbance of the rights-of-way, resulting in the need to reconstruct or repair such rights-of-way earlier than would be required if the construction did not occur.

SECTION 21. That Codified Ordinance § 933.15(H) shall hereby be amended to read as follows:

- (H) *Special right-of-way permit maintenance fee.* In addition to the right-of-way permit fee, every holder of a special right-of-way permit shall pay to the city the annual special right-of-way maintenance fee set forth in C.O. ch. 401. The fee may be modified or adjusted or waived by regulation; provided, however, that such fees shall be calculated in accordance with Chapter 4939 of the Ohio Revised Code to only recover the city's actual and incurred costs of planning, regulating, purchasing, maintaining and governing the rights-of-way, including any costs of joint planning, joint utility and telecommunications facilities placed in the right-of-way by the city for the future use of permittees, enforcement of this chapter, and related costs and overheads, including but not limited to an appropriate allocation of the costs of any geographic information systems utilized by the city, unless otherwise required by law.

SECTION 22. That Codified Ordinance § 933.16(F) shall hereby be amended to read as follows:

- (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, the city's design guidelines, 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. In making such decisions, the city shall strive to the extent possible to accommodate all existing and potential users of the rights-of-way, but shall be guided primarily by considerations of the public health, safety and welfare, the condition of the rights-of-way, the time of year with respect to essential Utilities, the protection of existing facilities in the rights-of-way, future city and county plans for public improvements, development projects which have been determined to be in the public interest and nondiscriminatory and competitively neutral treatment among providers.

SECTION 23. That Codified Ordinance § 933.16(H) shall hereby be amended to read as follows:

(H) *Special exceptions.*

1(The city may grant a special exception to the requirements of C.O. § 933.16(F) and 933.16(G) if a permittee, upon application, demonstrates with written evidence that:

- (a) The exception will not create any threat to the public health, safety or welfare.
- (b) Permittee demonstrates that the increased economic burden and the potential adverse impact on the permittee's construction schedule resulting from the strict enforcement of the requirement actually or effectively inhibits the ability of the permittee to provide services in the city.
- (c) The permittee demonstrates that the requirement unreasonably discriminates against the permittee in favor of another person.

~~d~~2(The city shall grant a special exception to the requirements of C.O. § 933.16(F) and 933.16(G) if a permittee, upon application, demonstrates with written evidence that the requirements requested by the city herein create an unreasonable economic burden for the permittee that outweighs any potential benefit to the city.

SECTION 24. That Codified Ordinance § 933.16(I)(1) shall hereby be amended to read as follows:

(I) *Relocation of facilities.*

1(A provider shall as promptly as reasonably possible and at its own expense, permanently remove and relocate its facilities in the rights-of-way whenever necessary to accomplish construction and maintenance activities directly related to improvements for the health, safety, and welfare of the public, as long as the request similarly binds all users in or on the right-of-way and, except for providers of small cell facilities and wireless support structures, whenever the city finds it necessary to request such removal and relocation. In instances where the city requests removal and/or relocation, the city shall waive all applicable right-of-way permit fees. Upon removal and/or relocation, the provider shall restore the rights-of-way to the same or better condition it was in prior to said removal or relocation. If existing poles are required to be removed and/or relocated, then the existing poles ~~will~~ shall be replaced with poles of the same or similar size, or smaller. In accordance with law, the director of public service may request relocation and/or removal in order to prevent unreasonable interference by the provider's facilities with:

- (a) A public improvement undertaken or approved by the city.
- (b) When the public health, safety, and welfare requires it, or when necessary to prevent interference with the safety and convenience of ordinary travel over the rights-of-way.

- (c) The sale, conveyance, vacation, or narrowing of all or any part of a right-of-way.

SECTION 25. That Codified Ordinance § 933.16(N) shall hereby be amended to read as follows:

- (N) *Installation requirements.* The excavation, backfilling, Restoration, and all other work performed in the rights-of-way shall be performed in conformance with all applicable laws, rules and regulations, design guidelines, and other standards as may be promulgated by the ~~public service director~~ city engineer.

SECTION 26. That Codified Ordinance § 933.16(P) shall hereby be amended to read as follows:

- (P) *Other obligations.*
-)1(Obtaining a right-of-way permit does not relieve permittee of its duty to obtain all other necessary permits, licenses, and authority and to pay all fees required by any other city, county, state or federal laws.
 -)2(Permittee shall comply with all requirements of all Laws, including the Ohio Utility Protection Service.
 -)3(Permittee shall perform all work in conformance with all applicable laws and standards, including design guidelines, and is responsible for all work done in the rights-of-way pursuant to its permit, regardless of who performs the work.
 -)4(No rights-of-way obstruction or excavation may be performed when seasonally prohibited or when conditions are unreasonable for such work, except in the case of an emergency as outlined in C.O. § 933.18(D)(1).
 -)5(Permittee shall not obstruct a rights-of-way so that the natural free and clear passage of water through the gutters or other waterways shall be interfered with. The director of public service may waive this requirement if it is technically or economically unreasonable in the circumstances.
 -)6(Private vehicles other than necessary construction vehicles may not be parked within or adjacent to a permit area. The loading or unloading of trucks adjacent to a permit area is prohibited unless specifically authorized by the permit.

SECTION 27. That Codified Ordinance § 933.16(Q) shall hereby be amended to read as follows:

- (Q) *Undergrounding required.* Any owner of property abutting upon a street or

alley where service facilities are now located underground and where the service connection is at the property line, shall install or cause others to install underground any service delivery infrastructure from the property line to the buildings or other structures on such property to which such service is supplied. Where not otherwise required to be placed underground by C.O. ch. 933, and where legally and technologically feasible, a provider shall locate facilities underground at the request of an adjacent property owner, provided that such placement of facilities underground is consistent with the provider's normal construction and operating standards and that the additional costs of such undergrounding over the normal aerial or above ground placement costs of identical facilities are borne directly by the property owner making the request. A provider, under any circumstance shall, upon the reasonable request of the city, always use best efforts to place facilities underground. Where technically possible and not economically unreasonable or unsafe (based upon the technology employed and Facilities installed), all facilities to be installed by a provider under the right-of-way, shall be installed in conduit.

SECTION 28. That Codified Ordinance § 933.18(B) shall hereby be amended to read as follows:

(B) *Permissive denial of permit.* The director of public service may deny a permit in order to protect the public health, safety and welfare, to prevent interference with the safety and convenience of ordinary travel over the rights-of-way, or when necessary to protect the rights-of-way and its users.

)1(The director of public service, in his/her discretion and in accordance with law, may consider one or more of the following factors:

- (a) The extent to which rights-of-way space where the permit is sought is available; and/or
- (b) The competing demands for the particular space in the rights-of-way; and/or
- (c) The availability of other locations in the rights-of-way or in other rights-of-way for the proposed facilities; and/or
- (d) The applicability of C.O. ch. 933 or other regulations of the rights-of-way that affect location of facilities in the rights-of-way; and/or
- (e) The degree of compliance of the provider with the terms and conditions of its certificate of registration, C.O. ch. 933, and other applicable ordinances and regulations; and/or
- (f) The degree of disruption to surrounding communities and businesses that will result from the use of that part of the rights-of-way; and/or
- (g) The condition and age of the rights-of-way, and whether and when it is scheduled for total or partial re-construction; and/or
- (h) 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/or
- (i) 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 C.O. ch. 933 or, if applicable, any other law.
-)2(Under no circumstances will open cutting take place on a newly constructed or newly reconstructed street except where:
- (a) An absolute emergency situation constitutes that an open cut is necessary; and/or
 - (b) 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
 - (c) The director of public service determines it is in the best interests of the city that such an open cut take place.

SECTION 29. That Codified Ordinance § 933.20(B)(2) shall hereby be amended to read as follows:

-)2(The foregoing indemnification is conditioned upon the city:
- (a) Giving provider or permittee prompt notice of any claim or ~~the~~ the commencement of any action, suit or proceeding for which indemnification is sought; and
 - (b) Affording the provider or permittee the opportunity to participate in any compromise, settlement, or other resolution or disposition of any claim or proceeding subject to indemnification; and
 - (c) Cooperate in the defense of such claim and making available to the provider or permittee all pertinent information under the city's control.

SECTION 30. That Codified Ordinance § 933.23(F) shall hereby be amended to read as follows:

- (F) *Police powers.* All persons' rights are subject to the police powers of the city to adopt and enforce ordinances necessary to the health, safety and welfare of the public. All persons shall comply with all applicable laws enacted by the city pursuant to its police powers. In particular, all persons shall comply with city zoning and other land use requirements pertaining to the placement and specifications of facilities, unless such facilities are small cell facilities or wireless support structures as defined herein.

SECTION 31. That Codified Ordinance § 933.24 shall hereby be enacted to read as follows:

§ 933.24 – SMALL CELL FACILITIES AND WIRELESS SUPPORT STRUCTURES.

- (A) In accordance with ORC section 4939, this section establishes terms and conditions for the use of the right-of-way by an operator to collocate small cell facilities and construct, maintain, modify, operate, or replace wireless support structures to distribute wireless service in the city.
- (B) The application procedures, permit fees, and auditing procedures outlined in this chapter shall be applicable to applications to establish wireless facilities. However, wireless facilities that are not small cell facilities or wireless support structures as defined in this chapter are not subject to this section.
- (C) In accordance with this chapter, and unless otherwise prohibited by law, each person who occupies, uses, or seeks to occupy or use the rights-of-way to operate a small cell facility or wireless support structure in the right-of-way, or who has, or seeks to have, a small cell facility or wireless support structure located in any right-of-way, shall apply for and obtain a certificate of registration for the system pursuant to this chapter.
- (D) All applications for the construction or modification of a small cell facility or wireless support structure shall comply with the right-of-way permit and minor maintenance permit requirements set forth in this chapter and any other applicable law.
- (E) In addition to the requirements in (C) and (D) of this section, a micro wireless permit shall be submitted by any person that seeks to construct, modify, collocate, or replace a small cell facility or wireless support structure in any right-of-way. The city's consent shall not be required for the replacement of a small cell facility and/ or wireless support structure with a small cell facility and/ or wireless support structure, respectively, that is consistent with the city's design guidelines and is substantially similar to the existing small cell facility and/ or wireless support structure, or the same size or smaller than the existing small cell facility and/ or wireless support structure and complies with the requirements for right-of-way permits as provided in this chapter.
 -)1(For processing a micro wireless permit, the city may charge a fee for each small cell facility and/or wireless support structure in accordance with law and as listed on the micro wireless permit forms.
 -)2(The city shall grant or deny a micro wireless permit in accordance with any required timelines under law.
 - (a) For applications for small cell facilities, the city, not later than ninety days after filing of an application for a micro wireless permit shall grant or deny its consent, or deem the application to be incomplete.
 - (b) For applications for wireless support structures, the city, not later than one hundred and twenty days after the filing of an application for a micro wireless permit shall grant or deny its consent, or deem the application to be incomplete.
 - (c) If the city fails to approve or deny a micro wireless permit within the required time period, provided that the time period is not otherwise tolled in accordance with the provisions of this

section, the micro wireless permit shall be deemed granted upon the requesting entity notifying the city that the time period for granting or denying the request of consent has lapsed.

(d) Requests for consent that do not meet the requirements listed on the application or stated herein or in the city's design guidelines shall be deemed incomplete or shall otherwise denied by the city.

(i) If a micro wireless permit is deemed incomplete, the city shall provide written notice to the applicant that clearly and specifically delineates all missing documents or required information.

A. Once the applicant submits the documents or information in response to the city's notice of incompleteness, the city shall, within sixty (60) calendar days, grant, deny, or deem the micro wireless permit to be incomplete due to not providing the information identified in the original notice of incompleteness.

B. For a micro wireless permit that is deemed incomplete for a second or subsequent time, the city shall continue to follow the process in 2(d)(i)(A) of this section until such time that a complete application is received from the applicant. At such time, the city shall, within sixty (60) calendar days, grant or deny the micro wireless permit.

(ii) If a micro wireless permit is denied, the city shall provide in writing its reasons for denying the request, supported by substantial, competent evidence, and such information at the applicant may reasonably request to obtain consent. Denial of consent shall not unreasonably discriminate against the applicant requesting consent.

A. Except in the case of a public utility subject to the jurisdiction and recognized on the rolls of the public utilities commission or a cable operator possessing a valid franchise awarded pursuant to the "Cable Communications Policy Act of 1984," 98 Stat. 2779, 47 U.S.C.A. 541, the city, for good cause shown, may withhold, deny, or delay its consent to any person based upon the person's failure to possess the financial, technical, and managerial resources necessary to protect the public health, safety, and welfare.

(e) The city shall permit a person seeking to construct, modify, collocate, or replace more than one small cell facility or more than one wireless support structure within the right-of-way to file a consolidated application for consent.

- (i) No more than thirty (30) small cell facilities or thirty (30) wireless support structures can be proposed within a single application to receive a single permit for the construction, modification, collocation, or replacement of small cell facilities or wireless support structures in the right-of-way.
 - (ii) A single application may only address multiple small cell facilities or wireless support structures if they each involve substantially the same type of small cell facility and/or substantially the same type of wireless support structure.
 - (iii) The city may separately address applications for which incomplete information has been received or which are denied.
- (f) If the number of requests for consent is likely to result in difficulty processing applications within the time limits set forth in law due to the lack of resources of the city, then the city may toll the time limits as follows:
- (i) The time period may be tolled for up to twenty-one (21) days for the first fifteen (15) small cell facility or wireless support structure requests received by the city above the thresholds provided in the table below within any consecutive thirty-day period:

<u>Population of city at time Small Cell Facility or Wireless Support Structure Applications are received:</u>	<u>Number of Applications:</u>
<u>30,000 persons or less</u>	<u>15 applications or more</u>
<u>30,001 to 40,000 persons</u>	<u>20 applications or more</u>
<u>40,001 to 50,000 persons</u>	<u>25 applications or more</u>
<u>50,001 to 60,000 persons</u>	<u>30 applications or more</u>
<u>60,001 to 100,000 persons</u>	<u>60 applications or more</u>

- (ii) For every additional fifteen (15) requests that the city receives above the thresholds provided in the table above the city may toll the time period for those requests for up to fifteen (15) days in addition to the time period provided in division (E)(2)(f)(i) of this section.
- (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.
 - (g) In response to an application for a new wireless support structure, the city may propose either of the following alternate locations and the applicant shall use the alternate location proposed by city as long as the applicant has the right to use the alternate location on reasonable terms and conditions and the alternate location does not impose technical limits or additional costs:
 - (i) an alternate location within 100 feet of the location requested by the applicant; or
 - (ii) an alternate location within a distance equal to the width of the right-of-way in or on which the new wireless support structure is being proposed.
 - (h) The city may impose reasonable conditions upon the issuance of the right-of-way permit and the performance of the permittee thereunder in order to protect the public health, safety and welfare, to ensure the structural integrity of the rights-of-way, to protect the property and safety of other users of the rights-of-way, and to minimize the disruption and inconvenience to the traveling public.
- 3) The total annual charge to reimburse the city for 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 in accordance with law.
- 4) 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.
 - (a) 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.
 - (b) In the event that 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. If the small cell facility or wireless support structure is not removed within three hundred sixty-five (365) days of discontinued use, the small cell facility or wireless support structure shall be considered abandoned in accordance with ORC section 4939 and the city may remove the small cell facility or wireless support structure at the owner's expense.
- 5) The City Manager 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.

(a) The city, as opposed to the construction of a new wireless support structure in the right-of-way, shall prefer locating small cell facilities on existing wireless support structures without increasing the height of the wireless support structure by more than five (5) feet, including the antenna and any associated shroud or concealment material.

(b) The city shall permit, consistent with law and for the purpose of providing wireless service, 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, provided that the operator comply with the design guidelines under division (E)(5)(b) of this section and any reasonable terms and conditions for such collocation that are adopted by the city and consistent with the design guidelines and this chapter.

(i) The city may condition approval of the collocation on replacement or modification of the wireless support structure at the operator's cost if the city determines that replacement or modification is necessary for compliance with its construction or safety standards.

(ii) A replacement or modification of the wireless support structure shall conform to the applicable design guidelines and the city's applicable specifications for the type of structure being replaced.

(iii) The city may retain ownership of a replacement wireless support structure.

(iv) They city may require removal and relocation of a small cell facility or wireless support structure, at the permittee's sole expense, in order to accommodate construction of a public improvement project by the city.

SECTION 32.

That Codified Ordinance § 401.06 shall hereby be amended to read as follows:

§ 401.06 - RIGHTS-OF-WAY—MASTER LIST OF FEES.

(A) *Registration maintenance fee.* The annual registration maintenance fee (per mile) required by C.O. § 933.05(A) shall be based upon the miles of right-of-way which the permittee occupies or desires to occupy in said calendar year. The fee shall be as follows:

- Less than 1 mile \$10,000.00
- From 1 to 15 miles \$20,000.00

- From 16 to 50 miles \$30,000.00
- Over 50 miles \$40,000.00

(B) *Right-of-way permit fees.*

- (1) The right-of-way permit for residential purposes fees for shall be as follows:
 - (a) Sidewalk installations or replacement \$50.00
 - (b) Repair or replacement of existing curb and gutter sections outside of the driveway entrance \$50.00
 - (c) All other \$50.00
- (2) The right-of-way permit fee required by C.O. § 933.15(I) for all other construction in the rights-of-way shall be as follows:
 - (a) Pavement disturbance right-of-way permit \$500.00
 - (b) Special right-of-way permit \$500.00
 - (c) Right-of-way minor maintenance permit \$50.00

(C) *Special right-of-way permit registration maintenance fee.* The annual registration maintenance fee (per mile) required by C.O. § 933.15 shall be \$2.00 per lineal foot of right-of-way used or occupied, but not less than \$1.00.

(D) *Micro Wireless Permit Fee.* The fee for a Micro Wireless Permit required by C.O. § 933.24 shall be \$250.00 for each small cell facility and/or wireless support structure contained in the permit application.

(E) *Colocation of Small Cell Facility on City Owned Support Structure Annual Fee.* There shall be a fee of \$200.00 annually, for each small cell facility collocated on a City-owned wireless support structure in the right-of-way in accordance with C.O. § 933.24.

SECTION 33. That the City Manager, City Attorney, and Finance Director are hereby authorized to take all actions necessary to implement and administer this Ordinance.

SECTION 34. That this Ordinance is enacted pursuant to the home rule powers of the City of Upper Arlington as set forth at Article XVIII, Section 3, of the Ohio Constitution.

SECTION 35. That this ordinance shall take effect at the earliest date allowed by law.