

RECORD OF RESOLUTIONS

1st Reading: 8-20-18
2nd Reading: 9-4-18
3rd Reading: 9-17-18

BEAR GRAPHICS 800-325-6084 FORM NO. 30045

Resolution No. 3707

Passed September 17, 2018

RESOLUTION ACCEPTING THE AMOUNTS AND RATES AS DETERMINED BY THE BUDGET COMMISSION AND AUTHORIZING THE NECESSARY TAX LEVIES AND CERTIFYING THEM TO THE COUNTY AUDITOR

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF BOWLING GREEN, COUNTY OF WOOD, AND STATE OF OHIO:

SECTION 1: That the Council of the City of Bowling Green, Ohio, does hereby accept the amounts and rates as determined by the Budget Commission and authorize the necessary tax levies and certify them to the Wood County Auditor in accordance with the document attached hereto and made a part hereof.

SECTION 2: This resolution shall take effect at the earliest time permitted by law.

Passed: September 17, 2018 Date
M. A. L. President of Council

Attest: Kay D. Scherreik Clerk of Council
MICHAEL A. ASPACHER

Approved: September 18, 2018 Date
Richard A. Edwards Mayor

RICHARD A. EDWARDS

MICHAEL J. MARSH
CITY ATTORNEY
kds

CERTIFICATION

This is to certify that the foregoing is a true copy of Res. No. 3707 passed by the Council of the City of Bowling Green, Ohio, Sept. 17, 2018
Kay D. Scherreik
Clerk of Council

**RESOLUTION ACCEPTING THE AMOUNTS AND RATES AS DETERMINED BY THE
BUDGET COMMISSION AND AUTHORIZING THE NECESSARY TAX LEVIES
AND CERTIFYING THEM TO THE COUNTY AUDITOR**

(~~Village or~~ City Council)
Revised Code, Secs. 5705.34, .35

The Council of the ~~Village/City~~ of Bowling Green Wood County, Ohio, met in
(regular or special) session on the 17th day of September, 2018 at the office of
City of Bowling Green with the
following members present:

Michael Aspacher

Daniel Gordon

William Herald

Bruce Jeffers

Greg Robinette

Sandy Rowland

John Zanfardino

Council Member Jeffers moved the adoption of the following Resolution:

WHEREAS, This Council in accordance with the provisions of law has previously adopted a Revenue Estimate for the next succeeding fiscal year commencing **January 1st, 2019** and

WHEREAS, The Budget Commission of Wood County, Ohio, has certified its action thereon to this Council together with an estimate by the County Auditor of the rate of each tax necessary to be levied by this Council, and what part thereof is without, and what part within, the ten mill tax limitation; therefore, be it

RESOLVED, By the Council of the Village/City of Bowling Green, Wood County, Ohio, that the amounts and rates, as determined by the Budget Commission in its certification, be and the same are hereby accepted; and be it further

RESOLVED, That there be and is hereby levied on the tax duplicate of said ~~Village/City~~ the rate of each tax necessary to be levied within and without the ten mill limitation as follows:

SCHEDULE A

**SUMMARY OF AMOUNTS REQUIRED FROM GENERAL PROPERTY TAX APPROVED BY BUDGET
COMMISSION, AND COUNTY AUDITOR'S ESTIMATED TAX RATES**

BOWLING GREEN CITY	AMOUNT APPROVED BY BUDGET COMM. INSIDE 10 MILL LIMITATION	AMT TO BE DERIVED FROM LEVIES OUTSIDE 10 MILL LIMITATION	COUNTY AUDITOR EST. OF TAX RATE LEVIED	
			INSIDE 10 MILL LIMIT	OUTSIDE 10 MILL LIMIT
	Column 2	Column 3		
AQUATIC FACILITY		278,275.36		0.60
GENERAL FUND	1,501,772.01		3.00	
PARK, PLAYGRND & REC		930,303.59		2.00
FIRE PENSION	150,177.20		0.30	
POLICE PENSION	150,177.20		0.30	
STATE				
TOTAL	1,802,126.41	1,208,578.95	3.60	2.60

SCHEDULE B

Levies outside 10 mill limitation, Exclusive of Debt Levies

GENERAL FUND	MAXIMUM RATE AUTHORIZED TO BE LEVIED	AUDITOR'S ESTIMATE OF YIELD OF LEVY
Current Expense Levy Authorized by voters on for not to exceed _____ years.		
Current Expense Levy Authorized by voters on for not to exceed _____ years.		
Current Expense Levy Authorized by voters on for not to exceed _____ years.		
Current Expense Levy Authorized by voters on for not to exceed _____ years.		
Current Expense Levy Authorized by voters on for not to exceed _____ years.		
AQUATIC FACILITY Levy Fund: Authorized by voters on 3/6/16 for not to exceed 20 years. 2012-2031	0.60	278,275.36
Park, Playgrd & Rec. Fund: Levy Authorized by voters on 11/8/16 for not to exceed 5 years. 2016-2020 Fund: Levy Authorized by voters on _____ for not to exceed _____ years.	2.00	930,303.59

and be it further

RESOLVED, That the Clerk of this Board be and he is hereby directed to certify a copy of this Resolution to the County Auditor of said County.

Council Member Zanfardino seconded the Resolution and the roll being called upon its adoption the vote resulted as follows:

Mr. Aspacher	Yes	Mrs. Rowland	Yes
Mr. Gordon	Yes	Mr. Jeffers	Yes
Mr. Herald	Yes	Mr. Robinette	Yes
		Mr. Zanfardino	Yes

Adopted the 17th day of September, 2018

Kay D. Scherreik Clerk, City of Bowling Green
Wood County, Ohio

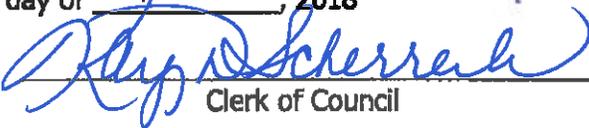
CERTIFICATE OF COPY
Original on File

The State of Ohio, Wood County, ss.

I, Kay D. Scherreik, Clerk of the Council of the Village/City of
Bowling Green, within and for said County, and in whose custody
the Files and Records of said Council are required by the Laws of the State of Ohio to be kept, do
hereby certify that the foregoing is taken and copied from the original _____
Resolution #3707

now on file, that the foregoing has been compared by me with said original document,
and that the same is a true and correct copy thereof.

WITNESS my signature, this 17th day of September, 2018


Clerk of Council

Bowling Green Village/City
Wood County, Ohio

1st Reading: 8-20-18
2nd Reading: 9-4-18
3rd Reading: 9-17-18

RECORD OF RESOLUTIONS

BEAR GRAPHICS 800-825-8094 FORM NO. 30045

Resolution No. 3709 Passed September 17, 2018

RESOLUTION AMENDING THE PREAMBLE OF THE CHARTER OF THE CITY OF BOWLING GREEN, OHIO

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF BOWLING GREEN, COUNTY OF WOOD, AND STATE OF OHIO:

SECTION 1: That the preamble to the Charter of the City of Bowling Green, Ohio, is hereby amended by substitution to read as follows:

"We, the people of Bowling Green, in the county of Wood, and in the State of Ohio, desirous of securing for our City and for ourselves and our children the advantages of self-government conferred by the home-rule provisions of the Ohio constitution; and determined to be a welcoming, inclusive community with adherence to practices of non-discrimination as established by law; do hereby ordain and establish the following Charter."

SECTION 2: This resolution shall take effect at the earliest time permitted by law.

Passed September 17, 2018 ML AL
Date President of Council
MICHAEL A. ASPACHER

Attest: Kay D. Scherreik
Clerk of Council
KAY D. SCHERREIK

Approved September 18, 2018 Richard A. Edwards
Date Mayor
RICHARD A. EDWARDS

MICHAEL J. MARSH
CITY ATTORNEY
kds

CERTIFICATION
This is to certify that the foregoing is a true copy of Res. No. 3709 passed by the Council of the City of Bowling Green, Ohio, Sept. 17, 2018
Kay D. Scherreik
Clerk of Council

RECORD OF ORDINANCES

Tabled until 9/17/18

BEAR GRAPHICS 800-325-8084 FORM NO. 90043

Ordinance No. 8705

Passed September 17, 2018

**ORDINANCE AMENDING AND ADOPTING
SECTION 150.102(B), SECTION 150.104(A), AND
SECTION 151.17(A) OF THE CODIFIED ORDINANCES
OF THE CITY OF BOWLING GREEN, OHIO,
REGARDING ZONING CODE FEES**

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF BOWLING GREEN,
OHIO:

SECTION 1: That Section 150.102(B) of the Codified Ordinances of the City
of Bowling Green, Ohio, is hereby amended and adopted to read as follows:

**SECTION 150.102 CONDITIONS UNDER WHICH CERTIFICATES ARE
REQUIRED.**

(B) In all other situations where a minimum dollar amount of \$2,500 is being
expended on any building, structure, or land, a certificate of zoning compliance is to
be obtained. There is a **fee charged** for a certificate of zoning compliance under
150.104 and application shall be made on form(s) available in the Planning
Department.

SECTION 2: All remaining portions of Section 150.102 remain unchanged.

SECTION 3: That Section 150.104(A) of the Codified Ordinances of the City
of Bowling Green, Ohio, is hereby amended and adopted to read as follows:

SECTION 150.104 FEE FOR ZONING CERTIFICATES.

<i>Use (each main structure)</i>	<i>Fee</i>
Single- or two-family dwellings	\$100
Multiple-family dwelling	\$100 plus \$10 per dwelling unit
Commercial, industrial, institutional structure	\$100*
Commercial, industrial, institutional addition:	
Additions for each 500 square feet or portion thereof	\$25.00
Use of land not including a structure (such as driveways, patios and zoning compliance)	\$25.00
Alteration of existing residential use	\$25
Signs, permanent	\$50
Signs, temporary	\$25.00
Fence, swimming pool, or other condition under § 150.102 not otherwise specified	\$25
*Less than 5,000 square feet ground area. Add \$25.00 for each 1,000 square feet or portion thereof thereafter.	

SECTION 4: All remaining portions of Section 150.104 remain unchanged.

SECTION 5: That Section 151.17(A) of the Codified Ordinances of the City of Bowling Green, Ohio, is hereby amended and adopted to read as follows:

SECTION 151.17 FEES.

Parcel consolidation and reconfiguration	\$50
Subdivision not requiring a plat (for each lot)	\$50
Preliminary drawing	\$300 plus \$3 per acre
Construction plan review	\$150
Final plat	\$300 plus \$3 per acre
Field inspections of required improvements shall be billed at the city's cost and according to ordinance.	

SECTION 6: All remaining portions of Section 151.17 remain unchanged.

SECTION 7: This ordinance shall take effect at the earliest time permitted by law.

Passed: September 17, 2018 MLAZ
 Date President of Council
MICHAEL A. ASPACHER

Attest: Kay D. Scherrek
 Clerk of Council
KAY D. SCHERREIK

Approved: September 18, 2018 Richard A. Edwards
 Date Mayor
RICHARD A. EDWARDS

MICHAEL J. MARSH
 CITY ATTORNEY
 kds

CERTIFICATION
 This is to certify that the foregoing is a true copy of Ord No. 8705, passed by the Council of the City of Bowling Green, Ohio, Sept. 17, 2018
Kay D. Scherrek
 Clerk of Council

1st Reading: 8-20-18
2nd Reading: 9-4-18
3rd Reading: 9-17-18

RECORD OF ORDINANCES

BEAR GRAPHICS 800-325-8094 FORM NO. 30049

Ordinance No. 8708

Passed September 17, 2018

ORDINANCE AUTHORIZING THE UTILITIES DIRECTOR TO ADVERTISE FOR BIDS AND ENTER INTO A CONTRACT OR CONTRACTS FOR REPAIRS TO THE SOLIDS HANDLING & MAINTENANCE BUILDING AT THE WATER POLLUTION CONTROL FACILITY

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF BOWLING GREEN, COUNTY OF WOOD, STATE OF OHIO:

SECTION 1: That the Utilities Director is hereby authorized to advertise for bids and enter into a contract or contracts for repairs to the SHAM building at the Water Pollution Control facility.

SECTION 2: This ordinance shall take effect at the earliest time permitted by law.

Passed: September 17, 2018 MLAZ
Date President of Council
MICHAEL A. ASPACHER

Attest: Kay D. Scherreik
Clerk of Council
KAY D. SCHERREIK

Approved: September 18, 2018 Richard A. Edwards
Date Mayor
RICHARD A. EDWARDS

MICHAEL J. MARSH
CITY ATTORNEY
kds

CERTIFICATION
This is to certify that the foregoing is a true copy of Ord. No. 8708 passed by the Council of the City of Bowling Green, Ohio, Sept. 17, 2018.
Kay D. Scherreik
Clerk of Council

1st Reading: 8-20-18
2nd Reading: 9-4-18
3rd Reading: 9-17-18

RECORD OF ORDINANCES

BEAR GRAPHICS 800-325-8084 FORM NO. 30049

Ordinance No. 8709

Passed September 17, 2018

ORDINANCE AUTHORIZING THE UTILITIES DIRECTOR TO EXECUTE A REAL ESTATE PURCHASE AGREEMENT FOR APPROXIMATELY 1.57 ACRES OF LAND NEAR 315 AND 325 N. GROVE STREET

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE
CITY OF BOWLING GREEN, COUNTY OF WOOD, STATE OF OHIO:

SECTION 1: That the Utilities Director is hereby authorized to
execute a real estate purchase agreement in accordance with the exhibit
attached hereto and made a part hereof for the purchase of approximately
1.57 acres of land near 315 and 325 N. Grove Street.

SECTION 2: This ordinance shall take effect at the earliest time permitted
by law.

Passed: September 17, 2018 ML AZ
Date President of Council
MICHAEL A. ASPACHER

Attest: Kay D. Scherreik
Clerk of Council
KAY D. SCHERREIK

Approved: September 18, 2018 Richard A. Edwards
Date Mayor
RICHARD A. EDWARDS

MICHAEL J. MARSH
CITY ATTORNEY
kds

CERTIFICATION

This is to certify that the
foregoing is a true copy of
Ord No. 8709 passed
by the Council of the City
of Bowling Green, Ohio,
Sept. 17, 2018
Kay D. Scherreik
Clerk of Council

1st Reading: 8-20-18
2nd Reading: 9-4-18
3rd Reading: 9-17-18

RECORD OF ORDINANCES

BEAR GRAPHICS 800-325-9084 FORM NO. 30043

Ordinance No. 8710

Passed September 17, 2018

ORDINANCE AMENDING AND ADOPTING CHAPTER 98 OF THE CODIFIED ORDINANCES OF THE CITY OF BOWLING GREEN, OHIO, REGARDING STREETS, SIDEWALKS, AND RIGHTS-OF-WAY MANAGEMENT

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF BOWLING GREEN, COUNTY OF WOOD, STATE OF OHIO:

SECTION 1: That Chapter 98 of the Codified Ordinances of the City of Bowling Green, Ohio, is hereby amended and adopted in accordance with the exhibit attached hereto and made a part hereof, all relating to streets, sidewalks, and rights-of-way management within the City.

SECTION 2: This ordinance shall take effect at the earliest time permitted by law.

Passed: September 17, 2018 MZ AL
Date President of Council
MICHAEL A. ASPACHER

Attest: Kay D. Scherreik
Clerk of Council
KAY D. SCHERREIK

Approved: September 18, 2018 Richard A. Edwards
Date Mayor
RICHARD A. EDWARDS

MICHAEL J. MARSH
CITY ATTORNEY
kds

CERTIFICATION
This is to certify that the foregoing is a true copy of Ord. No. 8710 passed by the Council of the City of Bowling Green, Ohio, Sept. 17, 2018.
Kay D. Scherreik
Clerk of Council

Chapter 98: Streets, Sidewalks, and Rights-of-Way Management

ADD: 98.40 (A) – This section shall address extensions of municipal owned utilities, driveways, sidewalks, and other minor rights-of-way disturbances resulting from residential uses. All other rights-of-way management shall be addressed later in this chapter.

Section:

- 98.01 Purpose And Scope of Chapter
- 98.02 Definitions
- 98.45 Prohibition; Types of Permits
- 98.46 Right-of-Way Occupancy Application Procedure; Appeal
- 98.47 Criteria for Granting Permits
- 98.48 Obligations of Permittees; Conditions of Permits
- 98.49 Right-of-Way Occupancy Permit Fees and Auditing
- 98.50 Micro Wireless Facility
- 98.51 Joint Planning and Construction
- 98.52 Right-of-Way Construction Permits
- 98.53 Construction, Relocation And Restoration
- 98.54 Minor Maintenance
- 98.55 Enforcement of Permit Obligation
- 98.56 Construction and Removal Bonds
- 98.57 Reporting Requirements
- 98.58 Compensation
- 98.59 City Use of Facilities
- 98.60 Indemnity; Insurance
- 98.61 Discontinuance of Operations, Abandoned and Unused Facilities
- 98.62 Revocation
- 98.63 Reservation of Rights
- 98.64 Temporary Movement of Facilities
- 98.65 Assignment or Transfer of Ownership; Renewal
- 98.66 Foreclosure and Receivership
- 98.67 Unauthorized Use of Right-of-Way
- 98.68 General Provisions
- 98.99 Penalty

§98.01 PURPOSE AND SCOPE OF CHAPTER

(A) The purpose of this chapter is to provide for the regulation of the use or occupation of all Rights-Of-Way in the City, the issuance of applicable permits, and to set forth the policies of the City related thereto.

(B) A Right-of-Way Occupancy Permit issued pursuant to this chapter does not take the place of any franchise, license, or permit which may be additionally required by law, including any required by City ordinance. A Right-of-Way Occupancy

Permit issued pursuant to this chapter also does not grant pole attachment rights or preclude the need to enter into a public and/or private pole attachment agreements. Each Permittee shall obtain any and all such additional state, federal or City franchises, licenses or permits necessary to the operation and conduct of its business or the occupation or use of any Right-of-Way; provided, however, that no Permittee holding a valid Right-of-Way Permit shall be required to obtain a franchise for any type of services rendered by said Permittee for which the City did not require a franchise at the time said Permittee's permit was last issued or renewed. Should there be a direct conflict between the provisions of this chapter and a valid franchise, the provisions of the franchise shall prevail; provided, however, that additional obligations shall not be construed as a conflict.

(C) The Municipal Administrator, or designee, is hereby directed and empowered to enforce the provisions of this chapter.

(D) The City's policy regarding Rights-of-Way is:

(1) To promote the utilization of Rights-of-Way for the public health, safety and welfare and to promote economic development in the City;

(2) To prioritize the City's use of the public right-of-way and promote cooperation among the permittees, and eliminate wasteful, unnecessary or unsightly duplication of Facilities;

(3) To promote public safety and protect public property;

(4) To ensure adequate public reimbursement of costs the City has incurred for private use of the Rights-of-Way, including the regulation thereof;

(5) To promote and require reasonable accommodation of all uses of Rights-of-Way, and when all requests for Right-of-Way use cannot be accomplished, to give priority for use of Rights-of-Way, in the order indicated, from highest to lowest, to the following users:

(a) The City for governmental and municipal utility purposes;

(b) Another governmental entity for governmental purposes with the City's concurrence, or other governmental use required by law;

(c) General Right-of-Way Occupancy Permittees and proprietary uses by the City;

(7) To assure that Applicants have the financial, technical and managerial resources to comply with this chapter and the provisions of any Right-of-Way Occupancy Permit issued hereunder; for purposes of this chapter, an Applicant possessing valid certification from the Public Utilities Commission of Ohio, including certification pursuant to R.C. 4933.81 *et seq.*, and is recognized on the rolls of the Public Utilities Commission of Ohio as a regulated utility or of a Cable Operator possessing a valid franchise awarded pursuant to the Cable Communications Policy Act of 1984, for the services to be provided by the Facilities subject to this chapter shall be presumed to possess the requisite financial, technical and managerial resources.

(8) To ensure that access to and occupancy or use of the public Right-of-Way advances the state of Ohio policies specified in sections 4927.02, 4928.02, and 4929.02 of the Ohio Revised Code.

(E) All Right-of-Way Occupancy Permits granted hereunder shall be non-exclusive and no property right of any nature shall be created by the granting of a permit under this chapter.

(F) This chapter does not apply, and nothing herein should be construed to apply the provisions of this Chapter, to structures or Facilities owned or operated by the City or any City operations that occupy or use the Rights-of-Way.

§ 98.02 DEFINITIONS.

ACCESSORY EQUIPMENT. Any equipment used in conjunction with a Wireless Facility or Wireless Support Structure. Accessory Equipment includes utility or transmission equipment, power storage, generation or control equipment, cables, wiring and equipment cabinets.

ADA. Federal Americans with Disabilities Act, most current adoption of law.

ANTENNA. Communications equipment that transmits or receives radio frequency signals in the provision of Wireless Service.

APPLICANT. Any person applying for a Right- Of-Way Occupancy Permit hereunder.

AWNING. Any structure made of cloth, wood, or metal having a metal or wood frame cantilevered from a building.

BEST EFFORTS. The best reasonable efforts under the circumstances, taking into consideration, among other appropriate matters, all applicable laws, regulations, safety, engineering and operational codes, expedition, available technology and human resources and cost.

CABLE OPERATOR, CABLE SERVICE and FRANCHISE have the same meaning as set forth in the "Cable Communications and policy Act of 1984, 98 stat. 2779, 47 U.S.C.A. 522.

CANOPY. Any structure made of cloth, wood, or metal having a metal or wood frame attached to a building, and carried by a frame supported by the ground or sidewalk.

COLLOCATION. To install, mount, maintain, modify, operate, or replace wireless facilities on a wireless support structure.

CONFIDENTIAL/PROPRIETARY INFORMATION. All information that has been either identified or clearly marked as Confidential/Proprietary Information by the provider prior

to any submission. Information that is considered by a Provider to be either trade secret, confidential and/or proprietary, or information that upon public disclosure would be highly likely to place critical portions of a Provider's System in material danger of vandalism, sabotage, or an act of terrorism, all may be marked as Confidential/Proprietary Information by a Provider when submitted. Upon receipt of such clearly marked Confidential/Proprietary Information from a Provider, the City shall endeavor, in accordance with the requirements of ORC Chapter 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 Chapter 149, but will attempt to use all reasonable means to notify the Provider as soon as possible.

CONSTRUCTION. Includes, 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, above, within, over, below, under or through any part of the a Right-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. A bond posted to ensure proper and complete Construction and/or repair of a Facility and the affected Right-of-Way pursuant to a Permit.

CONTRACTOR. Any person or company licensed or permitted by the city to construct or reconstruct walks, driveways, and other work permitted under this chapter, acting directly or through a duly authorized representative.

COUNCIL. The Council of the City of Bowling Green.

CURB OPENING. That part of the curb which has been or is cut, dropped, or replaced.

DECORATIVE POLE. A pole, arch, or structure including a street light pole placed in the public way which is designed for aesthetic purposes or with a specific aesthetic appearance.

DIRECTOR. The Director of Public Works.

DRIVEWAY. Any driveway approach or runway between the curb line and private property line.

ELIGIBLE FACILITIES REQUEST. As defined in federal law, in 47 U.S.C. 1455(a)(2), any request for modification of an existing wireless tower or base station that involves; (1) Collocation of new transmission equipment, (2) removal of transmission equipment, or (3) replacement transmission equipment.

EMERGENCY. A condition that poses a clear and immediate danger to life or health, or a significant loss of property.

ENGINEER. The City Engineer.

FACILITY(IES). Any tangible thing located in any Right-of-Way within the City; but shall not include boulevard plantings, ornamental plantings or gardens planted or maintained in the Right-of-Way between a Person's property and the street edge of pavement.

FORCE MAJEURE. A strike, act of God, act of public enemy, riot, epidemic, landslides, lightning, earthquake, fire, tornado, storm, flood, civil disturbance, explosion, partial or entire failure of a utility or any other cause or event not reasonably within the control of the party disabled by such FORCE MAJEURE, but only to the extent such 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 noncompliance with the provisions hereof.

GOVERNMENTAL PURPOSES. Those purposes classified as governmental under Ohio law, as well as water utility service, sanitary sewer service, electric service, storm sewers, automatic meter reading service, and any other City utility service to the extent such other City utility service is provided to City Facilities.

HISTORIC DISTRICT. A building, property, or site, or group of buildings, properties, or sites that are either listed in the national register of historic places or formally determined eligible for listing by the keeper of the national register, designated a historic district as defined in section 149.311 of the Ohio Revised Code, or reasonably constitute a historic district by the number or importance of registered buildings, properties, or sites located within a relatively small geographic area.

INSPECTOR. Public Works Inspector.

MICRO WIRELESS FACILITY. A Small Cell Facility that is not more than twenty-four inches in length, fifteen inches in width, and twelve inches in height and that does not have an exterior antenna more than eleven inches in length suspended on cable strung between wireless support structures.

MICRO WIRELESS FACILITY OPERATOR. A Public Utility or Cable Operator that operates a Micro Wireless Facility.

MUNICIPAL ADMINISTRATOR. The Municipal Administrator of Bowling Green, OH.

MUNICIPAL ELECTRIC UTILITY. Has the same meaning as set forth in section 4928.01 of the Ohio Revised Code.

MUNICIPAL ELECTRIC UTILITY POLE. A Utility Pole, as defined herein, that is owned or operated by the Municipal Electric Utility.

OHIO MANUAL OF UNIFORM TRAFFIC CONTROL DEVICES (OMUTCD). The uniform system of traffic control devices promulgated by the Ohio Department of Transportation pursuant to O.R.C. 4511.09.

OWNER. The owner, leaseholder, or agent thereof holding title to any private property adjoining any street in the city.

PERMITTEE. Any person issued a Right-of-Way Occupancy 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 Right-of-Way Permit.

PERSON. Any natural person or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not-for-profit.

PUBLIC PROPERTY. Any real property owned by the City or easements held or used by the City, other than a Right-of-Way.

PUBLIC UTILITY. 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 regulated by the Public Utilities Commission of Ohio; and includes any electric supplier as defined in section 4933.81 of the Ohio Revised Code.

RECONSTRUCTION. The relaying, rebuilding, or repair of old work in part or as a whole.

REGISTRATION MAINTENANCE FEE. The money paid to the City to maintain a Right-of-Way Occupancy Permit and compensate the City for costs incurred by the City in the management, administration and control of the Right-of-Way of the City, and which are not reasonably recoverable by the City through Construction Permit Fees or other approved recovery mechanisms.

REGULATION. Any rule adopted by the Municipal Administrator, or designee pursuant to the authority of this chapter, and the procedure set forth in this chapter, to carry out its purpose and intent.

RESIDENTIAL PURPOSES. Residential use of Right-of-Way for such uses as mailboxes, trees, decorative purposes or any curb cuts and driveways, and as may be further defined in the regulations.

RESTORATION. The process and the resultant effects by which a Right-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 as may be enacted or amended from time to time.

RIGHT-OF-WAY. The surface of and the space above and below the paved or unpaved portions of 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 and any other land dedicated or otherwise designated for the same now or hereafter held by the City or assigned as an easement which shall, within its proper use and meaning in the sole opinion of the Municipal Administrator, or designee, entitle a Permittee, in accordance with the terms hereof and of any Right-of-Way Occupancy Permit, to the use thereof for the purpose of installing or operating any poles, wires, cables, transformers, conductors, ducts, lines, mains, conduits, vaults, manholes, amplifiers, appliances, attachments or other property or Facilities as may be ordinarily necessary and pertinent to the provision of natural gas, electric, cable television, communications or other utility services as set forth in any Right-of-Way Occupancy Permit. RIGHT-OF-WAY shall not include private easements or public property, except to the extent the use or occupation of public property is specifically granted in a Right-of-Way Occupancy Permit or by regulation.

SIDEWALK. Any main or approach sidewalk, within easement or public right-of-way, normally between the curb line and private property. May also be referred as PUBLIC SIDEWALK.

SMALL CELL FACILITY. A Wireless Facility that meets both of the following:

- (1) Each Antenna associated with the Facility is located inside an enclosure of not more than six (6) 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 (6) cubic feet in volume.
- (2) All other Wireless Equipment associated with the Facility is cumulatively not more than twenty-eight (28) 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 power and other services.

SMALL CELL FACILITY OPERATOR. A wireless service provider, or its designated agent, or cable operator or its designated agent, or a video service provider or its designated agent, that operates a small cell facility and provides wireless service as defined in the Section 4939 of the Ohio Revised Code, to the extent it is still in effect. This includes a wireless service provider, cable operator or a video service provider that provides information services as defined in 110 Stat. 59, 47 U.S.C. 153(20) and services that are fixed in nature of use unlicensed spectrum.

STREET. Any public thoroughfare dedicated for public use.

SUPPLEMENTARY APPLICATION. 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.

TRENCHLESS TECHNOLOGY. Includes, but is not 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). 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). 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 POLE. A structure that is designed for, or used for the purpose of, carrying lines, cables, or wires for electric or telecommunications service. This does not include structures owned or operated by a Municipal Electric Utility (“Municipal Electric Utility Poles”), street signs, or decorative poles.

WIRELESS FACILITY. Equipment at a fixed location that enables wireless communications between user equipment and a communications network. This includes equipment associated with wireless communications, radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies and comparable equipment (regardless of technological configuration), and Small Cell Facilities. This does not include the structure or improvements on under, or within which the equipment is located, and coaxial or fiber-optic cable that is between wireless support structures or utility poles or that is otherwise not immediately adjacent to or directly associated with a particular antenna.

WIRELESS SERVICE. 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. A person who provides wireless service as defined in Section 4927.01(A)(20) of the Ohio Revised Code, to the extent it is still in effect.

WIRELESS SUPPORT STRUCTURE. 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. For purposes of requesting consent for Micro Wireless Facility activity “Wireless Support Structure” excludes: (1) a Municipal Electric Utility Pole, or other facility owned or operated by a Municipal Electric

Utility; and (2) a utility pole or other facility used to supply traction power to public transit systems including railways, trams, streetcars, and trolleybuses; .

WORK PERMIT or CONSTRUCTION PERMIT. Permit to perform 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, with the exception of work described in section 98.40.

§ 98.45 PROHIBITION; TYPES OF PERMITS

(A) Unless otherwise permitted pursuant to the City of Bowling Green, Ohio Codified Ordinances, each Person who occupies, uses or seeks to occupy or use the Right-of-Way to use, occupy, construct, own or operate structures or Facilities located in, under or over the Right-of-Way or any public property with the City, shall apply for and obtain a Right-of-Way Occupancy Permit pursuant to this Chapter. Any Person owning, operating or maintaining structures or Facilities in the Right-of-Way without a Right-of-Way Occupancy Permit, including Persons operating under a permit, license or franchise issued by the City prior to the effective date of this Chapter shall apply for and obtain a Right-of-Way Occupancy Permit from the City, unless exempted by this Chapter. Application will consist of providing the information set forth in this Chapter and as reasonably required by the Municipal Administrator, or designee.

(B) Permits shall not be required for the following along with any uses addressed in other sections of the Administrative Code of the City of Bowling Green:

- (1) Residential purposes, so long as, in the opinion of the Municipal Administrator, or designee, the residential use:
 - (a) Has received or will receive all other necessary permits, including any required by these Codified Ordinances;
 - (b) Is not inconsistent with policy of the City;
 - (c) Does not adversely affect the public health, safety or welfare; and
 - (d) Does not materially interfere with the other lawful use of the Right-of-Way. The Municipal Administrator, or designee, shall adopt regulations controlling and further defining residential purposes and to otherwise implement the determinations to be made under this section. Such regulations shall, among other matters, specify that the owner of Facilities that hold title to such Facilities solely as a result of a leaseback, defined as the sale or transfer of property by a Permittee to another person contemporaneously followed by the leasing of the property to the Permittee on a long-term basis, that are not operated or controlled by said lessor, and are operated or controlled by the Permittee, are not considered to be using, occupying,

owning or operating such Facilities, for purposes of this chapter, solely as a result of such leaseback.

(C) The following types of Right-of-Way Occupancy Permits are available:

(1) General Right-of-Way Occupancy Permit: A Right-of-Way Occupancy Permit granted to persons who desire and are granted authority to utilize Rights-of-Way generally for business purposes, including the provision of utility, cable television, telecommunications or other services to the City, its residents and taxpayers;

(2) Nothing in this chapter should be construed to preclude the City from requiring any person offering any natural gas, electric, cable television, telecommunications or other utility services for which the City may lawfully require a franchise, to acquire a franchise upon the expiration of any Right-of-Way Occupancy Permit issued hereunder.

(D) Any such Right-of-Way Occupancy Permit may also allow the use of specified public property for the uses set forth in the Right-of-Way Occupancy Permit and in this chapter.

(E) Each Right-of-Way Occupancy Permit shall specify the use or uses for which it is granted and contain such other non-discriminatory terms and conditions as are appropriate and as are set forth in the regulations.

(F) Unless otherwise set forth herein, Right-of-Way Occupancy Permits or the rights of a Permittee thereunder are not transferable without the prior express written approval of the Municipal Administrator, or designee, upon written request. Such request shall contain evidence that the proposed transferee has the financial, technical and managerial resources to comply with the obligations of this chapter and its Right-of-Way Occupancy Permit and shall be granted if such transferee has such resources. In making said determination, a proposed transferee shall be presumed to possess the requisite financial, technical and managerial resources if said transferee possesses a valid certification from the Public Utilities Commission of Ohio, including certification pursuant to R.C. 4933.81, *et seq.*, and is recognized on the rolls of the Public Utilities Commission of Ohio as a regulated utility or of a Cable Operator possessing a valid franchise awarded pursuant to the Cable Communications Policy Act of 1984, for the services to be provided by the Facilities subject to this chapter. The Municipal Administrator, or designee shall adopt regulations providing procedures for transfer of Right-of-Way Occupancy Permits that shall include provisions providing that (i) all requests for transfer shall be deemed approved if the Municipal Administrator, or designee does not disapprove the same within 30 days of receipt of the completed written transfer request; and (ii) transfer to affiliates under common ownership and control with the Permittee shall not require approval, so long as the Municipal Administrator, or designee is provided 30 days written notice of such transfer.

(G) Any Facilities or part of a Facility found in a Right-of-Way for which a Right-of-Way Occupancy Permit has not been obtained 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 Facility; and/or prosecuting the violator.

(H) The Municipal Administrator, or designee shall adopt regulations controlling and further defining residential purposes and to otherwise implement the determinations to be made under this section. Such regulations shall, among other matters, specify: (i) that the owner of Facilities that hold title to such Facilities solely as a result of a leaseback, defined as the sale or transfer of property by a Permittee to another person contemporaneously followed by the leasing of the property to the Permittee on a long-term basis; and (ii) are operated or controlled by the Permittee, are not considered to be using, occupying, owing or operating such Facilities, for purposes of this chapter, solely as a result of such leaseback.

§ 98.46 RIGHT-OF-WAY OCCUPANCY APPLICATION PROCEDURE; APPEAL

(A) Applications for General Right-of-Way Occupancy Permits or amendments or renewals thereof shall be filed in such form and in such manner as these regulations require, along with an application fee of \$250.00 per application plus a calculated mile fee of the utility infrastructure. The information provided to the City at the time of application shall include but not be limited to:

- (1) Each Applicant's name, legal status (i.e. partnership, corporation, etc.), street address and e-mail address, if applicable, and telephone and facsimile numbers; and
- (2) The name, address and e-mail address and telephone and facsimile numbers of a representative. The representative shall be available at all times. Current information regarding how to contact the representative in an Emergency shall be provided at the time of Application and shall be updated as necessary to assure accurate contact information is available to the City at all times; and
- (3) A certificate of insurance where required to be provided to meet the requirements of Chapter 98 shall:
 - (a) Verify that an insurance company licensed to do business in the State of Ohio has issued an insurance policy to the Applicant;
 - (b) Verify that the Applicant is insured on an occurrence basis against claims for personal injury, including death, as well as claims for property damage arising out of the use and occupancy of the Right-of-Way by the Applicant, its officers, agents, employees and contractors; and placement and use of Facilities in the Right-of-Way by the Applicant, its officers, agents, employees and contractors, including, but not limited to, protection against liability arising from any and all operations, damage of Underground Facilities and collapse of property;
 - (c) Name the City, its elected officials, officers, employees, agents and volunteers as an additional insured as to whom the comprehensive general liability and completed operation and products

liability insurance required herein are in force and applicable and for whom defense will be provided as to all such coverage, as is required within Chapter 98;

(d) Require that the City be notified thirty (30) days in advance of cancellation of, or coverage changes in, the policy. The liability insurance policies required by Chapter 98 shall contain the following endorsement:

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

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

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

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

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

(7) Upon request of the City, a narrative (or if applicable PUCO/FCC/FERC application information) describing Applicant's proposed activities in the City including credible information detailing Applicant's financial, managerial, and technical ability to fulfill Applicant's obligations under Chapter 54 and carry on Applicant's proposed activities.

(B) The Municipal Administrator, or designee, shall determine if the application is in order and shall, within ninety (90) days of the receipt of a completed application, issue a determination regarding such application. The Municipal Administrator, or designee's determination shall be served upon the Applicant by mail or email. Should the City receive a number of requests for consent for small cell facilities or wireless support structures to the extent it is likely to result in difficulty processing, the City may toll the requests consistent with the Ohio Revised Code. The term of each such General Right-of-Way Permit for Wireless Support Structure attachments shall be for ten (10) years from issuance, or such lesser term as the Applicant requests. There is a presumption of renewal following the initial ten year term for successive five year

terms, subject, however to any terms providing for early termination or nonrenewal for cause or by mutual agreement or to safeguard the public health, safety, and welfare.

(C) Any Applicant may appeal the failure of the Municipal Administrator, or designee to determine an application be granted upon terms and conditions acceptable to the Applicant, to the City Council. In order to perfect such appeal, the Applicant shall file, within ten (10) days of the Municipal Administrator, or designee's determination or recommendation, or within thirty (30) days of the filing of the application if the Municipal Administrator, or designee has taken no action, an appeal to the City Council. Within 15 days or at the next regularly scheduled meeting, whichever is later, the City Council shall then review the matter and after affording the Applicant an opportunity to be heard either in person or in writing, render a final determination . Except to the extent otherwise appealable by law, the City Council's decision shall be final. If a request for consent is denied for an activity described in section 4939.031 of the Ohio Revised Code, the reasons for denial, required under this division, shall be provided to the Applicant in writing, and shall set forth the reasons for denying the request for consent in a manner supported by substantial, competent evidence, and the denial of the request shall not unduly discriminate against the Applicant.

§ 98.47 CRITERIA FOR GRANTING PERMITS

(A) A General Right-of-Way Occupancy Permit shall be granted to an Applicant upon a determination that:

(1) The granting of the Right-of-Way Occupancy Permit will not cause harm to the public health, safety or welfare in the City;

(2) The granting of the Right-of-Way Occupancy Permit will be consistent with the policy of the City as set forth in this Chapter;

(3) The Applicant is not delinquent on any Right-of-Way permit fees, or costs owed the City for Right-of-Way related activity and, except in the case of entities subject to the jurisdiction and recognized on the rolls of the Public Utilities Commission of Ohio as a regulated utility or of 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, has the requisite financial, managerial and technical ability to fulfill all its obligations hereunder;

(4) The Applicant's Right-of-Way Occupancy Permit would not be granted for placement of a Small Cell Facility or Wireless Support Structure above ground, in an area that has been designated solely for undergrounding of utilities other than those owned and operated by the City or Municipal Utilities;

(5) The Applicant of the Right-of-Way Occupancy Permit is in compliance with the City's written or general design guidelines or appearance to match the aesthetics and character of the immediate area including other ground-mounted Small Cell Facilities, the location of Small Cell Facilities on Wireless Support Structures, appearance and concealment measures, meets the design or concealment measures required for a Historic District, and the design

appearance of the Wireless Support Structure including height requirements and decorative poles.

(B) A Right-of-Way Occupancy Permit shall not convey equitable or legal title in the Right-of-Way. A Right-of-Way Occupancy Permit is only the nonexclusive, limited right to occupy Right-of-Way in the City, for the limited purposes and for the limited period stated in the Right-of-Way Occupancy Permit and in accordance with Chapter 98 of the Code. The rights to occupy the Right of Way may not be subdivided or subleased; provided, however, that two or more Permittees may collocate Facilities in the same area of the Right-of-Way so long as each such Person complies with the provisions of Chapter 98. Collocating Permittees may file a joint application for a Construction Permit. A Right-of-Way Occupancy Permit does not excuse a Permittee from obtaining appropriate access or pole attachment agreements before collocating its Facilities on Facilities of others, including the City's Facilities. A Right-of-Way Occupancy Permit does not excuse a Permittee from complying with any provisions of the Code or other applicable Law.

(C) The Municipal Administrator, or designee may impose such lawful conditions on the granting of a permit as reasonably required to be consistent with the criteria set forth in this section and to promote the policy of the City set forth in this Chapter.

§ 98.48 OBLIGATIONS OF PERMITTEES; CONDITIONS OF PERMITS

(A) In addition to the other requirements set forth herein and in the regulations each Permittee, except for residential purposes, shall:

(1) Use its best efforts to cooperate with other Permittees and the City for the best, most efficient, and least obtrusive use of Rights-of-Way, consistent with safety, and to minimize traffic and other disruptions, including street cuts;

(2) Have a copy of the permit and associated plans on the job site at all times;

(3) Participate in such joint planning, construction and advance notification of Right-of-Way work, excepting such work performed in an Emergency, provided the Permittee uses its best efforts to contact the city at the earliest possible time after beginning any such emergency work requiring excavation or other interference with the flow of traffic, as may be required by this Chapter and as may be more specifically set forth in regulations promulgated pursuant to this chapter;

(4) Reasonably cooperate with other Permittees in the utilization of, construction in and occupancy of private Rights-of-Way within the City, but only to the extent the same is consistent with the grant thereof, is not additionally burdensome to any property owner or unreasonably burdensome to the Permittee;

(5) Upon reasonable written notice of not less than sixty (60) days, except in an emergency threatening the public health, safety or welfare, and at

the direction of the Municipal Administrator, or designee, and at the Permittee's sole cost, promptly remove or rearrange Facilities as necessary, as further specified in the regulations: (i) during any construction, repair or modification of any street, sidewalk, city utility or other public improvement; (ii) as part of the Municipal Administrator, or designee's determination, that designated portions of its Rights-of-Way should accommodate only underground Facilities or that Facilities should occupy only one side of a public way; (iii) if an additional or subsequent City or other public use of Rights-of-Way is inconsistent with the then-current uses of such Permittee; or (iv) for any other reasonable cause as determined by the Municipal Administrator, or designee pursuant to §98.56;

(6) Provide information relating to a Permittee's Facilities and operations within the Rights-Of-Way in such form as to allow for the accurate assessment of the quantity, location, and disposition of a utility's infrastructure in the public Rights-of-Way; for a Right-of-Way work permit, Permittee shall provide a detailed plan, as delineated in Chapter 98, of the proposed work;

(7) Perform all work, construction, maintenance or removal of structures and Facilities within the Rights-of-Way, including tree trimming, in accordance with good engineering and construction practice and use its best efforts to repair and replace any street, curb, utility, or any other portion of the Rights-of-Way damaged in the work area, to a condition to be determined by the City Engineer, and not less than materially equivalent to its condition prior to such work and to do so in a manner which minimizes any inconvenience to the public, the City and other Permittees. Each occupant of the Right-of-Way that may excavate in the Rights-of-Way shall file with the City standards for repair of the Rights-of-Way to be approved or denied by the City Engineer within sixty (60) days after filing. If the Rights-of-Way repair standards are denied by the City, the occupant must amend its proposed standards to meet the City's requirements prior to excavating the Rights-of-Way. If a repair fails, the Right-of-Way occupant responsible shall redo the repair at their cost;

(8) Register, or cause to be registered, its Facilities with underground reporting services;

(9) Use its best efforts to cooperate with the city in any emergencies involving the Rights-of-Way, including the maintenance of a 24-hour emergency contact;

(10) Field identify, using distinct identification, all structures and Facilities in areas of the Rights-of-Way designated for construction or related activities; and

(11) Designate a single point of contact for all purposes hereunder, as well as comply with such other contact and notice protocols.

(B) Each Permittee shall assure that any subcontractor or other person performing any work or service in the Rights-of-Way on behalf of said Permittee will comply with all applicable provisions of this chapter and its Right-of-Way Permit and will identify the Permittee for whom such contractor is working. Said Permittee shall be responsible and liable hereunder for all actions of any such subcontractor or others, as if said Permittee had performed or failed to perform any such obligation.

§ 98.49 RIGHT-OF-WAY OCCUPANCY PERMIT FEES AND AUDITING

(A) Any cable television provider that has a valid franchise to operate a cable television system within the City shall not be liable for any additional Right-of-Way Occupancy Permit fees over and above any cable television franchise fees specified in its cable television franchise for uses of Rights-of-Way directly related to the uses for which such cable television provider holds a cable franchise, so long as the amount of such fees due in each quarter is equal to or greater than the amounts otherwise due the City pursuant of this Chapter.

(1) In addition to any fees charged pursuant to 98, all General Right-of-Way Occupancy Permittees shall pay an annual fee, for each calendar year, as compensation for the City's cost to manage, administer and control the Right-of-Way and maintain each general Right-of-Way Occupancy Permit. Every Permittee shall pay to the City General Occupancy Right-of-Way fees beginning January 1, 2019. Fees shall be determined and assessed to Permittees and other persons using and occupying the Rights-of-Way in accordance with the following process and formula:

(a) The City by January 31 of each year shall calculate all actual and incurred costs associated with Rights-of-Way management, administration and control for the previous calendar year that the City incurred and was not able to reasonably recover through permit fees or other recovery mechanisms for each Permittee.

(b) The City shall invoice each permittee based on the actual costs incurred by the City for Right-of-Way management for that Permittee per division (A)(1)(a) of this section. This shall be the Permittee's then-current General Right-of-Way Occupancy Permit fee.

(c) Registration fees shall be invoiced to permittees on or about February 1 of each calendar year and shall be due thirty (30) days following receipt.

(d) To the extent taxes or other assessments are imposed by taxing authorities on the use of City property as a result of a Permittee's use or occupation of the Rights-of-Way, the Permittee shall be responsible for payment of such taxes. Such payments shall be in addition to any other fees payable pursuant to this chapter and shall not be considered an offset to, or in lieu of the Right-of-Way Permit fees.

(B) All fees pursuant to this chapter shall be paid by check, money order or wire transfer to the City of Bowling Green, Ohio.

(C) Each General Right-of-Way Occupancy Permittee shall maintain books, records, maps, documents and other evidence directly pertinent to its calculation of payments to the City. The Municipal Administrator, or designee, the City Finance Director or either's designated agents shall have reasonable access to any books, records, maps, documents and other evidence for inspection, copying and audit relative to the quantity of infrastructure in the public Right-of-Way to the extent necessary to assure that the payments hereunder are accurate and that all Right-of-Way Occupancy

Permittees fully comply with the provisions of this chapter and their respective Right-of-Way Permits.

§98.50 MICRO WIRELESS FACILITY

A. This section establishes terms and conditions for the use of the public Right-of-Way for Wireless Service Providers' Micro Wireless Facilities through the attachment to Wireless Support Structures as established in City's Standards or Section 4939 of the Ohio Revised Code.

B. Under the provisions of this section, a Micro Wireless Facility Operator may establish, under certain specified conditions as set forth in City's Standards, consistent with Revised Code Chapter 4939, Wireless Service through a Small Cell Facility and related Wireless Facilities. The City will review those requests following the criteria and schedule set forth in Revised Code 4939.

C. Additionally, the City will also review any request to attach any Micro Wireless Facilities to a Municipal Electric Utility Pole, and shall grant such requests only if the attachment to a Municipal Electric Utility Pole does not harm the public health, welfare and safety. The City shall deny all requests to attach Micro Wireless Facilities to Municipal Electric Utility Poles if such attachment would not serve to further the public health and welfare, would create a safety problem, or would interfere with the conduct of any municipal operation.

D. Where not in direct conflict with Chapter 4939 of the Ohio Revised Code, the application procedure, permit fees, and auditing procedures outlined in this Chapter 98 shall be applicable to applications to establish Micro Wireless Facilities. Each individual Micro Wireless Facility will require a separate Right-of-Way Occupancy Permit.

E. Any request for a ROW Occupancy Permit for a Micro Wireless Facility will comply with the City's design guidelines, meet the requirements for design or concealment measures in an Historic District, and will be consistent with the general appearance of the surrounding area even if a formal historic district has not been declared or established.

F. No Micro Wireless Facility may be placed above ground in the Right-of-Way in the City's designated undergrounding area; defined as any location in the city that has underground electric service.

§ 98.51 JOINT PLANNING AND CONSTRUCTION

A. In order to promote the purposes of this chapter and the policy set forth herein, joint planning, construction, and co-location for all Right-of-Way Occupancy Permittees shall be required if two or more facilities of like purpose is planned or otherwise located within 50 feet or some other reasonable distance from each other. In

such case, each Permittee shall file and be assessed as established by this Chapter separately.

§ 98.52 RIGHT-OF-WAY CONSTRUCTION PERMITS

(A) Right-of-Way Construction Permit Requirement. Except as otherwise provided in the Code, no Person may construct in any Right-of-Way without first having obtained a Right-of-Way Construction Permit as set forth below. This requirement shall be in addition to any requirement set forth in Chapter 98 of the Code.

(1) A Right-of-Way Construction Permit allows the Permittee to Construct in that part of the Right-of-Way described in such Right-of-Way Construction Permit.

(2) A Right-of-Way Construction Permit is valid only for the dates and the area of Rights-of-Way specified in the Permit. If an extension is needed Permittee shall submit a request to the Municipal Administrator, or designee, before the expiration of the initial Permit

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

(B) Right-of-Way Construction Permit Applications.

(1) Application for a Right-of-Way Construction Permit shall be made to the Director of Public Works

(2) All Right-of-Way Construction 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 Right-of-Way Occupancy Permit or proof that the Applicant has written authority to apply for a Permit on behalf of a party that has been issued a Right-of-Way Occupancy Permit;

(b) Submission of a completed Right-of-Way Construction Permit Application in the form required by the Director of Public Works, including, but not limited to, all required attachments and dated drawings showing the location and area of the proposed project, number, location of street cuts, the location of all then known existing and proposed Facilities of the Applicant or Permittee within the proposed project area and the Rights-of-Way restoration plan and method(s). All drawings, plans and specifications submitted with the Application shall comply with applicable

technical codes, Rules and Regulations and be certified as to being in such compliance by trained technical personnel acceptable to the Director of Public Works. The mapping data – Engineering accuracy at a scale of 1":20' and shall include a plan and profile sheet depicting existing utilities. The City reserves the right, in circumstances that the Director of Public Works 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 OMUTCD, 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, if specifically requested by the Director of Public Works, 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; and

(e) If Applicant is proposing an above ground installation on existing poles within the Right-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;

(ii) The excess capacity currently available on such poles before installation of Applicant's Facilities; and

(iii) 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 Right-of-Way, the Applicant shall provide information and details including:

(i) 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 along with guys, risers, or other equipment and alterations associated with the work; and

(iv) New poles shall be of similar make, color, style, and height as existing poles in the area or as determined by the City; and

(v) Credible evidence satisfactory to the City that the Applicant will adhere to all the applicable Laws concerning the installation of the work.

(g) If Applicant is proposing or required an underground installation in existing ducts or conduits owned within the Right-of-Way, the Applicant shall provide Credible information satisfactory to the City to

sufficiently detail and identify that said installation is not over or under existing City or Municipal Utility owned utilities as well as the following:

- (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; and
 - (iii) Any crossings or conflicts with existing infrastructure or utilities above or below ground.
 - (h) If Applicant is proposing an underground installation within new ducts or conduits to be constructed within the Right-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; and
 - (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;
- and
- (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 Right-of-Way or any Emergency actions taken by the City;
 - (iii) any Right-of-Way Occupancy Permit issued to the Applicant/Person whose Facilities are being Constructed; and
 - (iv) any other money due to the City from the Applicant/Person whose Facilities are being Constructed
 - (k) In addition to the above requirements, Applicant must comply with all applicable construction guidelines.
 - (l) When a Right-of-Way Construction Permit is requested for purposes of installing additional Facilities or any part of a Facility, the posting of a Construction Bond and Removal Bond, acceptable to the City and subject to Chapter 98, for the additional Facilities or any part of a Facility is required.
 - (m) Upon request, the Director of Public Works may modify or waive the information requirements if they are not necessary in evaluating the Right-of-Way Construction Permit application. The Director of Public Works may request applicable and pertinent additional information if it is necessary in evaluating the Permit application.

(C) Issuance of Permit; Conditions. If the City determines that the Applicant has satisfied the requirements of Chapter 98 and the Right-of-Way Construction Permit process, the Director of Public Works shall issue a Right-of-Way Construction Permit

subject to the provisions of this Chapter. The City may impose reasonable conditions upon the issuance of the Construction Permit and the performance of the Permittee thereunder in order to protect the public health, safety and welfare, to insure the structural integrity of the Right-of-Way, to protect the property and safety of other users of the Right-of-Way, and to minimize the disruption and inconvenience to the traveling public.

(D) Right-of-Way Construction Permit Fees.

(1) The City shall annually calculate Construction Permit Fees and appropriately revise any prior year's Construction Permit Fees based upon the formula and calculations described in this §98.57. Construction Permit Fees shall remain in effect until the City's next annual modification of the Construction Permit Fees.

(2) On or about January 1st of each year, the Director of Public Works shall calculate and set the permit fee which shall be established within section 35.70.

(E) Joint Applications. Applicants are encouraged to submit joint Applications for Construction Permits to work in the Right-of-Way at the same place and time. Joint Applicants shall have the ability to divide amongst themselves, in proportions the parties find appropriate, any applicable Construction Permit Fees.

(F) The City and Municipal Utilities are not required to submit a Right-of-Way Construction Permit nor any fees referenced throughout this Chapter.

§98.53 CONSTRUCTION, RELOCATION AND RESTORATION

(A) Utility Engineering Study Required.

(1) Prior to commencement of any initial Construction, extension, or relocation of Facilities in the Right-of-Way, except for repair, maintenance or replacement with like Facilities or relocations requested or caused by a third party (excluding the City) or another Permittee, a Permittee shall conduct a utility engineering study on the proposed route of Construction expansion or relocation. Where such Construction and/or relocation is requested or caused by a third party, every Permittee located within the Right-of-Way at issue or involved with the work shall use all Best Efforts to cooperate and assist any other Permittee or person who is directed by the City to perform the required utility engineering study. A utility engineering study consists of, at minimum, completion of the following tasks:

(a) Secure all available "as-built" plans, plats and other location data indicating the existence and location of all Facilities along the proposed Construction route.

(b) Visibly survey and record the location and dimensions of any Facilities along the proposed Construction route, including, but not limited

to, trees, poles, manholes, valve boxes, utility boxes, posts and visible street cut repairs.

(c) Determine and record the presence and precise location of all Underground Facilities the Applicant or Person on whose behalf the Permit was applied for owns or controls in the Right-of-Way along the proposed route. A Permittee shall also record and identify the location of all other Facilities in the Right-of-Way along the proposed route. At the discretion of the Director of Public Works and for the purposes of this Section, general location shall mean the alignment of other Facilities in the Right-of-Way, but shall not necessarily mean the depth of other Facilities in the Right-of-Way.

(d) Plot and incorporate the data obtained from completion of the tasks described in herein, on the Right-of-Way Construction Permittee's proposed route maps and Construction plans.

(e) Where the proposed location of Facilities and the location of existing Underground Facilities appear to conflict on the plans drafted in accordance with this Chapter, Permittee has the option of either utilizing non-destructive digging methods, such as vacuum excavation, at the critical points identified to determine as precisely as possible, the horizontal, vertical and spatial position, composition, size and other specifications of the conflicting Underground Facilities, or re-designing the Construction plans to eliminate the apparent conflict. A Permittee shall not excavate more than a three (3) feet by three (3) feet square hole in the Right-of-Way to complete this task.

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

(2) The Director of Public Works may modify the scope of the utility engineering study as necessary depending on the proposed Construction plans.

(B) Copy to City. Upon completion of the tasks described in this Chapter above, the Right-of-Way Construction Permittee shall submit, if necessary labeled in accordance with the requirements of R.C. 1020.06(B), the proposed route maps and Construction Plans, with the results of the utility engineering study, in the most advanced format (including, but not limited to electronic and/or digital format) then currently being used by the Permittee that the City is capable of reading (or readily converting to a readable form). The mapping data shall be at a scale of 1:20 and include a plan and profile sheet depicting existing utilities. The Permittee shall supply the mapping data on paper if the Director of Public Works determines that the format currently being used by the Permittee is not capable of being read by the City.

(C) Qualified Firm. All utility engineering studies conducted pursuant to this section shall be performed by the Permittee if in the discretion of the Director of Public Works the Permittee is qualified to complete the project itself. Alternatively utility engineering studies shall be performed by a firm specializing in utility engineering that is approved by the City.

(D) Cost of Study. The Permittee shall bear the cost of compliance with §98.53.

(E) Construction Schedule. Unless otherwise provided for in Chapter 98 or in the Rules and Regulations, or unless the Director of Public Works waives any of the requirements of this Section due to unique or unusual circumstances, a Permittee shall be required to submit a written Construction schedule to the City five (5) Working Days before commencing any work in or about the Right-of-Way, and shall further notify the City not less than one (1) Working Day in advance of any excavation in the Right-of-Way. This Section shall apply to all situations with the exception of circumstances under §98.55 (Emergency Situations) and §98.54 (Minor Maintenance) herein.

(F) Location of Facilities.

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

(2) The City shall have the power to prohibit or limit the placement of new or additional Facilities within the Right-of-Way if the Right-of-Way is full, or if the area is designated solely for undergrounding of non-municipal utility or City owned facilities. In making such decisions, the City shall strive to the extent possible to accommodate all existing and potential users of the Right-of-Way, but shall be guided primarily by considerations of the public health, safety and welfare, the condition of the Right-of-Way, the time of year with respect to essential Utilities, the protection of existing Facilities in the Right-of-Way, future City and County plans for public improvements, development projects which have been determined to be in the public interest and nondiscriminatory and competitively neutral treatment among Permittees.

(G) Least Disruptive Technology. All Construction or maintenance of Facilities shall be accomplished in the manner resulting in the least amount of damage and disruption of the Right-of-Way. Specifically, every Permittee when performing underground Construction, if technically and/or technologically feasible and not economically unreasonable, shall utilize Trenchless Technology, including, but not limited to, horizontal drilling, directional boring, and microtunneling. In addition, all cable, wire or fiber optic cable installed in the subsurface Right-of-Way pursuant to Chapter 98 is required to be installed in conduit, and as such, no cable, wire or fiber optic cable may be installed pursuant to Chapter 98 using "direct bury" techniques.

(H) Relocation of Facilities.

(1) A Permittee shall as promptly as reasonably possible and at its own expense, permanently remove and relocate its Facilities in the Right-of-Way 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 Construction Permit Fees. Upon removal and/or relocation, the Permittee shall restore the Right-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 be replaced with poles of the same or similar size as is in the area. In accordance with Law, the Director of Public Works may request relocation and/or removal in order to prevent unreasonable interference by the Permittee's Facilities with:

(a) A public improvement undertaken or approved by the City;

(b) The public health, safety, and welfare, or when necessary to prevent interference with the safety and convenience of ordinary travel over the Right-of-Way; or

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

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

(3) If, in the reasonable judgment of the City, a Permittee fails to commence removal and/or relocation of its Facilities as designated by the City, within thirty (30) days after the City's removal order, or if a Permittee fails to substantially complete such removal, including all associated repair of the Right-of-Way of the City, within 180 days thereafter, then, to the extent not inconsistent with applicable Law, the City shall have the right to:

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

(b) Authorize removal of the Facilities installed by the Permittee in, on, over or under the Right-of-Way of the City at Permittee's cost and expense, by another Person; however, the City shall have no liability for any damage caused by such action and the Permittee shall be liable to the City for all reasonable costs incurred by the City in such action; and

(c) To the extent consistent with applicable Law, any portion of the Permittee's Facilities in, on, over or under the Right-of-Way of the City designated by the City for removal and not timely removed by the Permittee shall belong to and become the property of the City without payment to the Permittee, and the Permittee shall execute and deliver such documents, as the City shall request, in form and substance acceptable to the City, to evidence such ownership by the City.

(l) **Pre-Excavation Facilities Location.** Before the start date of any Right-of-Way excavation, each Permittee who has Facilities located in the area to be excavated shall, to the best of its ability, mark the horizontal and approximate vertical placement of all its Facilities. All Permittees shall also notify and work closely with the excavation contractor in an effort to establish the exact location of its Facilities and the best procedure for excavation.

(J) Right-of-Way Restoration.

(1) The work to be done under the Permit, and the Restoration of the Right-of-Way as required herein, weather permitting, must be completed within the dates specified in the Permit. In addition to its own work, the Permittee must restore the general area of the work, and the surrounding areas, including trench backfill, paving and its foundations in accordance with the Code and Rules and Regulations. If a Permittee is unable to timely complete the restoration of Right-of-Way due to unreasonable inclement weather conditions, the Permittee shall complete the restoration of the Right-of-Way as soon as weather conditions make it possible to do so and upon said completion notify the City. In such case, Permittee shall ensure the surface is passable and done so to the satisfaction of the City.

(2) In approving an Application for a Right-of-Way Construction Permit, the City shall require the Permittee to restore the Right-of-Way. If said work is not done to the satisfaction of the City, the Permittee's bond held by the City may be used to pay for such work done on their behalf.

(3) The Permittee shall, at the time of Application for a Right-of-Way Construction Permit, be required to post a Construction Bond in an amount determined by the City to be sufficient to cover the cost of restoring the Right-of-Way to its approximate pre-excavation condition. If, twelve (12) months after completion of the Restoration of the Right-of-Way, the City determines that the Right-of-Way have been properly restored, the surety on the Construction Bond shall be released.

(4) The Permittee shall perform the work according to the standards and with the materials specified by the City. The City shall have the authority to prescribe the manner and extent of the Restoration, and may do so in written procedures of general application or on a case-by-case basis. The City in exercising this authority shall be guided by the following standards and considerations: the number, size, depth and duration of the excavations, disruptions or damage to the Right-of-Way; the traffic volume carried by the Right-of-Way; the character of the neighborhood surrounding the Right-of-Way; the pre-excavation condition of the Right-of-Way; the remaining life-expectancy of the Right-of-Way affected by the excavation; whether the relative cost of the method of Restoration to the Permittee is in reasonable balance with the prevention of an accelerated depreciation of the Right-of-Way that would otherwise result from the excavation, disturbance or damage to the Right-of-Way; and the likelihood that the particular method of Restoration would be effective in slowing the depreciation of the Right-of-Way that would otherwise take place. Methods of Restoration may include, but are not limited to, patching the affected area, replacement of the Right-of-Way base at the affected area, and in the most severe cases; milling, overlay and/or street reconstruction of the entire area of the Right-of-Way affected by the work.

(5) By restoring the Right-of-Way itself, the Permittee guarantees its work and shall maintain it for twelve (12) months following its completion. During

this twelve (12) month period, it shall, upon notification from the Director of Public Works, correct all Restoration work to the extent necessary using the method required by the Director of Public Works. Weather permitting, said work shall be completed within five (5) calendar days of the receipt of the notice from the Director of Public Works, unless otherwise extended by the Director of Public Works.

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

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

(K) Damage to Other Facilities.

(1) Each Permittee shall be responsible for the cost of repairing any City-owned Facilities in the Right-of-Way which the Permittee or its Facilities damage.

(2) In the case of an Emergency, and if possible after reasonable efforts to contact the Permittee seeking a timely response, when the City performs work in the Right-of-Way and finds it necessary, as may be allowed by Law, to maintain, support, or move a Permittee's Facilities to protect those Facilities, the costs associated therewith will be billed to that Permittee and shall be paid within thirty (30) days from the date of billing. Upon failure to pay, the City may pursue all legal and equitable remedies in the event a Permittee does not pay or the City may call upon any bond or letter of credit posted by the Permittee and pursue any and all legal or equitable remedies. Each Permittee shall be responsible for the cost of repairing any damage to the Facilities of another Permittee caused during the City's response to an Emergency occasioned by that Permittee's Facilities.

(L) Right-of-Way Vacation. If the City sells or otherwise transfers a Right-of-Way which contains the Facilities of a Permittee, such sale or transfer shall be subject to any existing easements of record and any easements required pursuant to O.R.C. 723.041.

(M) Installation Requirements. The excavation, backfilling, Restoration, and all other work performed in the Right-of-Way shall be performed in conformance with all applicable Laws, Rules and Regulations, other standards as may be promulgated by the City.

(N) Inspection. When the Construction under any Permit hereunder is completed, the Permittee shall notify the Director of Public Works.

(1) The Permittee shall make the Construction site available to the Inspector and to all others as authorized by Law for inspection at all times during the execution and upon completion of the Construction.

(2) At the time of inspection, the Inspector may order the immediate cessation of any work which poses a serious threat to the life, health, safety or well-being of the public, violates any law or which violates the terms and conditions of the Permit and/or Chapter 98.

(3) The Inspector may issue an order to the Permittee for any work which does not conform to the Permit and/or applicable standards, conditions or codes. The order shall state that failure to correct the violation will be cause for revocation of the Permit. An order may be appealed to the Director of Public Works. The decision of the Director of Public Works may be appealed to the Municipal Administrator, or designee whose decision shall be final. If not appealed, within ten (10) days after issuance of the order, the Permittee shall present proof to the Director of Public Works that the violation has been corrected. If such proof has not been presented within the required time, the Director of Public Works may revoke the Permit.

(O) Other Obligations.

(1) Obtaining a Right-of-Way Construction 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 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, and is responsible for all work done in the Right-of-Way pursuant to its Permit, regardless of who performs the work.

(4) No Right-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.

(5) Permittee shall not obstruct a Right-of-Way so that the natural free and clear passage of water through the gutters or other waterways shall be interfered with.

(6) An as-built location of constructed utility shall be submitted to the City at a scale of 1:20 and include a plan and profile sheet depicting installed utility.

(7) At the discretion of the Director of Public Works, an Ohio registered surveyor may be required to field stake proposed work and rights-of-way or easements at the sole cost of the applicant.

(P) Undergrounding Required. Where not otherwise required to be placed underground by Chapter 98 and in accordance with O.R.C. 4939.0314(G) to the extent it is in effect a Permittee 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 Permittee under the Right-of-Way shall be installed in conduit.

§98.54 MINOR MAINTENANCE

(A) Right-of-Way Minor Maintenance Requirement. At the discretion of the Director of Public Works, minor maintenance of infrastructure will be allowed so long as Permittee notifies the City at least 48 hours in advance of planned work. When necessary, and at the discretion of the Director of Public Works, a Permittee may be required to:

(1) Submit a completed Right-of-Way Minor Maintenance Permit Application in the form required by the Director of Public Works.

(2) Provide a statement that the Applicant will employ protective measures and devices that, consistent with the OMUTCD, will prevent injury or damage to Persons or property and to minimize disruptions to the efficient movement of pedestrian and vehicular traffic.

(3) The City may impose reasonable conditions, in addition to the Rules and Regulations enacted by the Director of Public Works, upon the issuance of the Right-of-Way Minor Maintenance Permit and the performance of the Right of Way Minor Maintenance Permittee thereunder in order to protect the public health, safety, and welfare, to insure the structural integrity of the Right-of-Way, to protect the property and safety of other users of the Right-of-Way, and to minimize the disruption and inconvenience to the traveling public.

§98.55 ENFORCEMENT OF PERMIT OBLIGATION

(A) Mandatory Denial of Permit. Except in the case of an Emergency, no Permit will be granted:

(1) To any Person who has outstanding debt owed to the City unless payment in full has been placed in an escrow account approved by the City Finance Director and the Law Director;

(2) To any Person as to whom there exists grounds for the revocation of a Permit; or

(3) If, in the discretion of the City, the issuance of a Permit for the particular date and/or time would cause a conflict or interfere with an exhibition, celebration, festival, or any other event or reason. The City, in exercising this discretion, shall be guided by the safety and convenience of ordinary travel of the public over the Right-of-Way, and by considerations relating to the public health, safety and welfare.

(B) Permissive Denial of Permit. The Director of Public Works 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 Right-of-Way, or when necessary to protect the Right-of-Way and its users.

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

(a) the extent to which Right-of-Way space where the Permit is sought is available;

(b) the competing demands for the particular space in the Right-of-Way;

(c) the availability of other locations in the Right-of-Way or in another Right-of-Way for the proposed Facilities;

(d) the degree of compliance of the Permittee with the terms and conditions of its Right-of-Way Occupancy Permit, Chapter 98, and other applicable ordinances and regulations;

(e) the degree of disruption to surrounding communities and businesses that will result from the use of that part of the Right-of-Way;

(f) the condition and age of the Right-of-Way, and whether and when it is scheduled for total or partial re-construction;

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

(h) 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 Chapter 98 or, if applicable, any other Law.

(2) Under no circumstances will open cutting take place on a newly constructed street within twenty-four (24) months after construction completion or a newly reconstructed street within twenty-four (24) months of reconstruction completion, except where:

(a) an Emergency situation requires that an open cut is necessary;

(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; or

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

(C) Work Done Without a Permit in Emergency Situations.

(1) Each Permittee shall, as soon as is practicable, immediately notify the Director of Public Works of any event regarding its Facilities which it considers to be an Emergency. The Permittee may proceed to take whatever actions are necessary in order to respond to the Emergency. Within five (5) business days, unless otherwise extended by the Director of Public Works, after the occurrence or discovery of the Emergency (whichever is later), the Permittee shall apply for the necessary Permits, pay the fees associated therewith and fulfill the rest of the requirements necessary to bring itself into compliance with Chapter 98 for any and all actions taken in response to the Emergency. In the event

that the City becomes aware of an Emergency regarding a Permittee's Facilities, the City shall use Best Efforts to contact the Permittee or the Representative of each Permittee affected, or potentially affected, by the Emergency. In any event, the City may take whatever action it deems necessary in order to respond to the Emergency, the cost of which shall be borne by the Permittee whose Facilities caused the Emergency.

(2) Except in the case of an Emergency, any Permittee who Constructs in, on, above, within, over, below or through a Right-of-Way without a valid Permit must subsequently obtain a Permit, pay double the normal fee for said Permit, pay double all the other fees required by the Code, deposit with the City the fees necessary to correct any damage to the Right-of-Way and comply with all of the requirements of Chapter 98.

(E) Revocation of Permits.

(1) Permittees hold Permits issued pursuant to the Code as a privilege and not as a right. The City reserves its right, as provided herein, to revoke any Permit, without refunding any fees, in the event of a substantial breach of the terms and conditions of any Law, or any provision or condition of the Permit. A substantial breach by Permittee shall include, but shall not be limited to, any of the following:

- (a) The violation of any provision or condition of the Permit;
 - (b) An evasion or attempt to evade any provision or condition of the Permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the City or its citizens;
 - (c) Any material misrepresentation of fact in the Application for a Permit;
 - (d) The failure to maintain the required Construction or Removal Bonds and /or insurance;
 - (e) The failure to obtain and/or maintain, when required, a Right-of-Way Occupancy Permit;
 - (f) The failure to complete the Construction in a timely manner;
- or

(g) The failure to correct a condition of an order issued pursuant to §98.53.

(2) If the Director of Public Works determines that the Permittee has committed a substantial breach of a term or condition of any Law or any condition of the Permit, the Director of Public Works shall serve a written demand upon the Permittee to remedy such violation. The demand shall state that continued violations may be cause for revocation of the Permit. Upon a substantial breach, as stated above, the Director of Public Works may place additional or revised conditions on the Permit.

(3) By the close of the second business day following receipt of notification of the breach, Permittee shall contact the Director of Public Works with a plan, acceptable to the Director of Public Works, for its correction. Permittee's failure to so contact the Director of Public Works, or the Permittee's

failure to submit an acceptable plan, or Permittee's failure to reasonably implement the approved plan, shall be cause for immediate revocation of the Permit.

(4) If a Permittee commits a second substantial default as outlined above, Permittee's Permit will automatically be revoked and the Permittee will not be allowed further Permits for up to and including one (1) full year, except for Emergency repairs.

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

§ 98.56 CONSTRUCTION AND REMOVAL BONDS

(A) **Construction Bond.** Prior to the commencement of any Construction, a Right-of-Way Construction Permittee, excluding the County, shall deposit with the Director of Public Works an irrevocable, unconditional letter of credit and/or surety bond in an amount determined by the Director of Public Works to be appropriate based upon fair and reasonable criteria. Unless a Construction default, problem or deficiency involves an Emergency or endangers the safety of the general public, the Director of Public Works shall serve written notice to the Construction Permittee detailing the Construction default, problem or deficiency. If the Director of Public Works determines that correction or repair of the Construction default, problem or deficiency has not occurred or has not been substantially initiated within ten (10) calendar days after the date following service and notification and detailing the Construction default, problem or deficiency, then the City may attach the letter of credit or surety bond. Upon attachment, written notice shall be served on the Construction Permittee by the Director of Public Works.

(B) **Removal Bond.** Upon issuance of a Right-of-Way Occupancy Permit and continuously thereafter, and until one hundred twenty (120) days after a Permittee's Facilities have been removed from the Right-of-Way, (unless the Director of Public Works notifies the Permittee that a reasonably longer period shall apply), a Permittee shall deposit with the Director of Public Works and maintain an irrevocable, unconditional letter of credit or surety bond in an amount equal to or greater than One Hundred Thousand Dollars (US\$100,000.00), the Director of Public Works shall make all reasonable efforts to allow Permittee a period of five (5) calendar days after serving notification in writing to correct or repair any default, problem or deficiency prior to the Director of Public Works attachment of the letter of credit or surety bond regarding the removal of Facilities. Upon attachment, written notice shall be provided to the Permittee by the Director of Public Works.

(C) **Blanket Bond.** In lieu of the Construction Bond required by this section, Permittee may deposit with the Director of Public Works an irrevocable, unconditional letter of credit and/or surety bond in the amount of Five Million Dollars

(US\$5,000,000.00). Unless a Construction default, problem or deficiency involves an Emergency or endangers the safety of the general public, the Director of Public Works shall make all reasonable effort to allow Permittee a period of five (5) calendar days after sending notification in writing to correct or repair any default, problem or deficiency prior to Director of Public Works' attachment of the letter of credit or surety bond.

(D) Self Bonding. In lieu of the Construction Bond, the Removal Bond, and the Blanket Bond required, those Permittees maintaining a book value in excess of Fifty Million Dollars (US\$50,000,000.00) may submit a statement to the Director of Public Works requesting to self-bond. If approval to self-bond is granted, a Permittee shall assure the City that such self-bonding shall provide the City with no less protection and security than would have been afforded to the City by a third party surety providing Permittee with the types and amounts of bonds detailed in the above named Sections. This statement shall include:

- (1) Audited financial statements for the previous year;
- (2) A description of the Applicant's self-bonding program; and,
- (3) Other applicable and pertinent information as reasonably requested by the Director of Public Works.

(E) Purposes. The bonds required by this section, and any self-bonding to the extent it has been permitted, shall serve as security for:

- (1) The faithful performance by the Permittee of all terms, conditions and obligations of Chapter 98;
- (2) Any expenditure, damage, or loss incurred by the City occasioned by the Permittee or Permittee's violation of Chapter 98 or its failure to comply with all rules, regulations, orders, Permits and other directives of the City issued pursuant to Chapter 98; and
- (3) The payment of all compensation due to the City, including Permit Fees;
- (4) The payment of premiums (if any) for the liability insurance required pursuant to Chapter 98;
- (5) The removal of Facilities from the Right-of-Way pursuant to Chapter 54;
- (6) The payment to the City of any amounts for which the Permittee is liable that are not paid by its insurance or other surety; and,
- (7) The payment of any other amounts which become due to the City pursuant to Chapter 98 or the Law.

(F) Form. The bond documents required by this Section and any replacement bond documents shall contain the following endorsement: "It is hereby understood and agreed that this bond may not be canceled or not renewed by the surety nor the intention to cancel or not to renew be stated by the surety until ninety (90) days after completion of Construction of the Facilities and, notwithstanding the foregoing, shall in no case be canceled or not renewed by the surety until at least ninety (90) days' written notice to City of surety's intention to cancel or not renew this bond.

§98.57 REPORTING REQUIREMENTS

(A) **Construction and Major Maintenance Plan.** Each Permittee shall, at the time of initial Application and by February 1 of each following year for the subsequent year, file a Construction and Major Maintenance Plan with the Director of Public Works. Such Construction and Major Maintenance Plan shall be provided for all geographical areas, up to and including the entire geographical area of the City. It shall be submitted using a format(s) agreeable to the City and shall contain the information determined by the to be necessary to facilitate the coordination and reduction in the frequency of Construction in the Right-of-Way. The Construction and Major Maintenance Plan shall include, but not be limited to all currently scheduled and/or anticipated Construction projects for the next calendar year, and if none are scheduled or anticipated then the Plan shall so state. The Permittee shall use its Best Efforts in supplying this information and shall update the Construction and Major Maintenance Plan on file with the Director of Public Works whenever there is a material change in scheduled and/or anticipated Construction projects.

(B) **Mapping Data.** With the filing of its Application for a Right-of-Way Occupancy Permit, a Permittee shall be required to accurately inform the City of the number of miles (rounded up to the nearest mile) of Right-of-Way the Permittee 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 Permittee that the City is capable of reading or readily converting to a readable form. Unless otherwise required by § 98.52, a Permittee shall have up to one (1) year from the date of the Permittee's initial filing of an Application for a Right-of-Way Occupancy Permit to completely submit all the mapping data in the entire geographical area of the City which it owns or over which it has control that are located in any Right-of-Way of the City. Mapping data shall be at mapping grade accuracy (Sub-Meter) for all utility infrastructure. Any time after the issuance of a Right-of-Way Occupancy Permit, and upon the reasonable request of the Director of Public Works, a Permittee 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 Right-of-Way of the City required by the City. Any and all actual direct, incidental and indirect costs incurred by the City during the process of reviewing, inputting and/or converting a Permittee'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 Permittee. Failure to pay such mapping costs within sixty (60) days of receipt of an invoice shall subject an Applicant or Permittee to revocation of its Right-of-Way Occupancy Permit and the penalties of §98.99. Further, each Permittee that has been issued a Right-of-Way Occupancy

Permit 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 Permittee's 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 Permittee'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 Permittees that may be associated with satisfying the amended mapping requirements. When the mapping requirements of §54.15(B) are amended, each Permittee shall be served with a copy of the new specifications or modifications by regular U.S. Mail to the representative identified in each Right-of-Way Occupancy Permit; provided, however, that any failure of any Permittee to actually receive such notice shall not in any way affect the validity or enforceability of said specifications or modifications.

§ 98.58 COMPENSATION

(A) As compensation for the City's costs to administer Chapter 98, manage, administer and control the Right-of-Way and maintain each Right-of-Way Occupancy Permit issued, every Permittee shall pay to the City a Registration Maintenance Fee. The Registration Maintenance Fee shall be determined and assessed to Permittees and other Persons operating or otherwise using and occupying the Right-of-Way in accordance with the following process and formula:

(1) The City by February 28th of each year, shall calculate all actual and incurred costs associated with Right-of-Way management, administration and control for the previous calendar year that the City was not able to reasonably recover through Construction Permit Fees or other recovery mechanisms provided for in Chapter 98.

(2) Permittees and Applicants, as required in §98.57, shall accurately inform the City upon application for a Right-of-Way Occupancy Permit and on or before each subsequent January 1st of the number of miles (rounded up to the nearest mile) of Right-of-Way the Permittee's Facilities occupied as of the immediately previous December.

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

(4) The City shall divide the calculated costs referenced in §98.58 by the total number of miles of Right-of-Way reported as being used or occupied by all Permittees as referenced in §98.58 to arrive at a per-mile cost number.

(5) The City shall then multiply each Permittee's mileage calculation as referenced in §98.58 by the per-mile cost calculation referenced in §98.58. The product shall be a Permittee's annual Registration Maintenance Fee.

(6) The City shall perform its annual calculation of Registration Maintenance Fees following receipt of the Permittees required December mileage report. Registration Maintenance Fees shall be invoiced to Permittees on or about March 1 of each calendar year and shall be due thirty (30) days following receipt.

(7) Cable companies operating under non-exclusive Cable Franchises for the purposes of providing Cable Service, Video Services Permittee operating under a VSA for the purpose of providing Video Services, and Permittees of Open Video System services, which compensate the City under other mechanisms in an amount equal to or greater than the Annual Registration Maintenance Fee that would normally be required for their Right of Way use in The City, shall have the mileage of the Right-of-Way they use and/or occupy included in the calculations described in §98.58, but shall not be required to contribute to the recovery of Right-of-Way Costs as defined by Chapter 98 with the exception of Permit Costs.

(B) Timing. Registration Maintenance Fees shall be paid each calendar year no later than December. Registration Maintenance Fees shall be paid in full for the first year of the registration as a condition of the Right-of-Way Occupancy Permit becoming effective. Fees may be prorated from the effective date of the Right-of-Way Occupancy Permit to the end of the calendar year if less than one (1) full year.

(C) Taxes and Assessments. To the extent taxes or other assessments are imposed by any taxing authority or community authority on the use of City property as a result of a Permittee's use or occupation of the Right-of-Way, the Permittee shall be responsible for payment of such taxes or assessments.

(D) Interest on Late Payments. In the event that any Registration Maintenance Fee is not paid to the City by April 1, the Permittee 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.

(E) 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.

§ 98.59 CITY USE OF FACILITIES

(A) Except for traffic control Facilities and Facilities in place as of the effective date of this Chapter, Facilities that are the subject of other agreements between the City and a Permittee, or as otherwise provided by law, the City shall not install or maintain upon any poles and within any underground pipes or conduits or other Facilities of any general Right-of-Way Occupancy Permittee, any Facilities desired by the City for the City's use without the consent of such Permittee unless: (i) such installation and maintenance is lawful and consistent with good engineering and construction practice and all appropriate safety codes; (ii) such installation and maintenance does not unreasonably and materially interfere with existing and future operations of the Permittee; (iii) such installation and maintenance is not unduly burdensome to such Permittee; (iv) the City enters into an agreement with the Permittee which specifies

other appropriate and reasonable terms and conditions, including compensation based upon the City's proportionate cost of the Right-of-Way, and including compensation governing the use of Permittee's Facilities; and (v) the City's use is non-discriminatory. Each Permittee shall cooperate with the City in the development of a facility use agreement for such City Facilities. Each Permittee shall cooperate with the City in planning and designing its Facilities so as to accommodate the City's reasonably disclosed requirements in this regard. Copies of all agreements hereunder shall be filed with the Municipal Administrator, or designee.

§ 98.60 INDEMNITY; INSURANCE

(A) Except for Right-of-Way Permittees for residential purposes, each Permittee shall, as a condition of its Right-of-Way Permit, indemnify, protect and hold harmless the City and its agents, officers, elected officials, employees, volunteers, and subcontractors 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 Permittee'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 Permittee, its agents, employees, and/or subcontractors, in the performance of activities pursuant to such Right-of-Way Occupancy Permit, no matter how, or to whom, such loss may occur.

(3) the requirement to defend, indemnify and hold harmless shall not extend to the negligence of the City or its agents, elected officials officers, employees, volunteers and subcontractors, to the extent that the existence of such negligence shall be proven to exist.

(B) Except for Right-of-Way Occupancy Permittees for residential purposes, each Permittee, as a condition of its permit, shall keep in force a policy or policies of liability insurance, having such terms and in such amounts as follows:

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

(a) Bodily injury:

Each occurrence - One Million Dollars (US\$1,000,000.00)

Annual aggregate - Three Million Dollars (US\$3,000,000.00)

(b) Property damage:

Each occurrence - One Million Dollars (US\$1,000,000.00)

Annual aggregate - Three Million Dollars (US\$3,000,000.00)

(c) Personal Injury:

Annual aggregate - Three Million Dollars (US\$3,000,000.00)

(d) Completed operations and products liability shall be maintained for six (6) months after the termination of a Right-of-Way Occupancy Permit.

(e) Property damage liability insurance shall include coverage for the following hazards: E - explosion, C - collapse, U - underground.

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

(a) Bodily injury:

Each occurrence - One Million Dollars (US\$1,000,000.00)

Annual aggregate - Three Million Dollars (US\$3,000,000.00)

(b) Property damage:

Each occurrence - One Million Dollars (US\$1,000,000.00)

Annual aggregate - Three Million Dollars (US\$3,000,000.00)

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

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

(a) audited financial statements for the previous year;

(b) a description of the Applicant's self-insurance program;

(c) a listing of any and all actions against or claims made against Applicant for amounts over One Million Dollars (US\$1,000,000.00) or proof of available excess umbrella liability coverage to satisfy all total current claim amounts above Fifty Million Dollars (US\$50,000,000.00); and,

(d) the Director of Public Works may modify or waive these requirements if they are not necessary in determining the sufficiency of the self-insurance. The Director of Public Works may request applicable and pertinent additional information if it is necessary in determining the sufficiency of the self-insurance.

(C) The Permittee shall also provide documentation they maintain standard workers' compensation coverage as required by Law. Similarly, Permittee shall require any subcontractor to provide workers' compensation coverage in amounts required by Law for all of the subcontractor's employees.

(D) The City's examination of, or failure to request or demand, any evidence of insurance in accordance with Chapter 98 shall not constitute a waiver of any requirement of this section and the existence of any insurance shall not limit Applicant's obligations under Chapter 98.

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

§ 98.61 DISCONTINUANCE OF OPERATIONS, ABANDONED AND UNUSED FACILITIES

(A) Except for Right-of-Way Occupancy Permittees for residential purposes, when the permit so allows, any Right-of-Way Occupancy Permittee that intends to discontinue or is discontinuing its operations of any Facilities within the Rights-of-Way shall first:

(1) submit a written notice to the Municipal Administrator, or designee, describing the portion of the Facilities to be discontinued and abandoned, any plan for securing the same and the proposed date of abandonment, which date shall not be less than sixty (60) days from the date such notice is submitted to the Municipal Administrator, or designee or provide information satisfactory to the Municipal Administrator, or designee that the Right-of-Way Occupancy Permittees' obligations for its Facilities in the Right-of-Way under this section and any other sections in the Chapter have been lawfully assumed by another Right-of-Way Occupancy Permittee;

(2) submit a written proposal to re-use its Facilities in a manner that promotes the City's goals of providing innovative and economic solutions to efficiently and economically utilize limited Right-of Way capacity. Such proposal must be approved or denied by the Municipal Administrator, or designee. The Municipal Administrator, or designee's denial of a proposal to re-use its Facilities shall be made in writing and describe the reasons for such a denial. The denial may be appealed by the Right-of-Way Occupancy Permittee to the Municipal Administrator, or designee. The decision of the Municipal Administrator, or designee shall be final;

(3) submit a written proposal for abandonment of Facilities in place indicating why good engineering practice would support this type of solution. The Municipal Administrator, or designee must approve or deny said proposal. The Municipal Administrator, or designee's denial of a proposal to abandon Facilities in place shall be done in writing and describe the reasons for such a denial. The denial may be appealed by the Right-of-Way Occupancy Permittee to the Municipal Administrator, or designee. The decision of the Municipal Administrator, or designee shall be final;

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

(5) submit to the City within a reasonable amount of time, a proposal for transferring ownership of its Facilities to the City. If a Right-of-Way Occupancy Permittee proceeds under this clause, the City may, at its option where lawful: (i) purchase the Facilities; or, (ii) unless a valid removal bond has already been posted, require the Right-of-Way Occupancy Permittee to post a bond in an amount sufficient to reimburse the City for reasonably anticipated costs to be incurred in removing the Facilities.

(B) Facilities of a Right-of-Way Occupancy Permittee who fail to comply with this section and which remain unused Facilities shall be deemed to be abandoned. Abandoned Facilities are deemed to be a nuisance. The City may exercise any remedies or rights it has at Law or in equity, including, but not limited to:

(1) abating the nuisance;

(2) taking possession of the Facilities and restoring them to a useable condition subject to a finding of the PUCO pursuant to the requirements of O.R.C. §§ 4905.20 and 4905.21; or

(3) requiring removal of the Facilities by the Right-of-Way Occupancy Permittee or by the Right-of-Way Occupancy Permittee's surety.

(C) If the City requires a Right-of-Way Occupancy Permittee to remove unused Facilities in any Right-of-Way, the City shall use reasonable efforts to direct that this removal occur in conjunction with other scheduled excavations of the Right-of-Way. If the City abates the nuisance it may take all action necessary to recover its costs and to abate said nuisance, including but not limited to, those methods set forth in O.R.C. §715.261. The City shall have no liability for any damage caused by such action and the Permittee shall be liable to the City for all reasonable costs incurred by the City in such action.

§ 98.62 REVOCATION

(A) In addition to any other rights set out in this chapter, the City reserves the right to revoke, in accordance with the procedures set forth in division (B) of this section, any Right-of-Way Occupancy Permit in the event such Permittee violates any material provision of this chapter, its Right-of-Way Occupancy Permit, or this Chapter.

(B) The Municipal Administrator, or designee shall give a Permittee thirty (30) days prior written notice of an intent to revoke said Permittee's Right-of-Way Occupancy Permit. Such notice shall state the reasons for such action. If the Permittee cures the violation or other cause within the thirty (30)-day notice period, or if the Permittee initiates efforts satisfactory to the Municipal Administrator, or designee to remedy the stated violation, the Municipal Administrator, or designee may rescind said notice of revocation. If the Permittee does not cure the stated violation or other cause or

undertake efforts satisfactory to the Municipal Administrator, or designee to remedy the stated violation, the permit may be revoked after granting the Permittee an opportunity to be heard in person or in writing. Unless otherwise required by law, the decision shall be final.

(C) Unless otherwise permitted by the Municipal Administrator, or designee or required by law, if a Right-of-Way Occupancy Permit is revoked, all Facilities located in the Rights-Of-Way or located upon public property pursuant to such permit shall be removed and/or abandoned at the sole expense of the Permittee subject to applicable law, including but not limited to R.C. §§ 4905.20 and 4905.21.

§ 98.63 RESERVATION OF RIGHTS

(A) Nothing in this 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.

(B) Nothing in this chapter shall be construed to prevent the City from constructing, maintaining, repairing or relocating any non-proprietary City utility, including street lighting, telecommunications or like Facilities; grading, paving, maintaining, repairing, relocating or altering any street, public property or Right-of-Way; or constructing, maintaining, relocating, or repairing any sidewalk or other public work or improvement. To the extent that such work requires temporary or permanent relocation or rearrangement of any Facilities or structures of any Permittee, such relocating or rearrangement shall be accomplished at the sole cost of the Permittee in such time and in such manner as set forth in the regulations.

§ 98.64 TEMPORARY MOVEMENT OF FACILITIES

(A) In the event it is necessary to move or remove temporarily any of the Permittee's wires, cables, poles, or other Facilities placed pursuant to this chapter, in order to lawfully move a large object, vehicle, building or other structure over the streets of the City, upon two weeks written notice by the Municipal Administrator, or designee to the Permittee, the Permittee shall, at the expense of the person requesting the temporary removal of such Facilities, comply with the Municipal Administrator, or designee's request; provided that the Permittee's expense has been reasonably secured by the person so requesting.

§ 98.65 ASSIGNMENT OR TRANSFER OF OWNERSHIP; RENEWAL

(A) A Right-of-Way Occupancy Permit shall not be assigned or transferred, either in whole or in part, without the prior written consent of the City, which consent shall not be unreasonably withheld. Any assignment or transfer of Right-of-Way

Occupancy Permit, including an assignment or transfer by means of a fundamental corporate change, requires the written approval of the City. For purposes of this section, fundamental corporate change means the sale or transfer of a controlling interest in the stock of a corporation or the sale or transfer of all or a majority of a corporation's assets, merger (including a parent and its subsidiary corporation), consolidation or creation of a subsidiary corporation. For the purposes of this section, fundamental partnership change means the sale or transfer of all or a majority of a partnership's assets, change of a general partner in a limited partnership, change from a limited to a general partnership, incorporation of a partnership, or change in the control of a partnership.

(B) The parties to the assignment or transfer of Right-of-Way Occupancy Permit shall make a written request to the City for its consent in the form of the Right-of-Way Occupancy Permit Application. The City shall reply in writing within sixty (60) days of actual receipt of the request and shall indicate its decision.

(C) Notwithstanding anything to the contrary, no such consent or approval shall be required for a transfer or assignment to any Person controlling, controlled by or under the same common control of the original holder of the Right-of-Way Occupancy Permit.

§ 98.66 FORECLOSURE AND RECEIVERSHIP

(A) Upon the filing of any voluntary or involuntary petition under the Bankruptcy Act by or against the Permittee, or any action for foreclosure or other judicial sale of the Permittee's Facilities located within the Right-of-Way, the Permittee shall promptly notify the Municipal Administrator, or designee of such fact.

§ 98.67 UNAUTHORIZED USE OF RIGHT-OF-WAY

(A) No Person shall use the Right-of-Way to operate any Facility that has not been authorized by the City in accordance with the terms of Chapter 98 and been issued a Right-of-Way Occupancy Permit.

(B) No Person shall place or have placed any Facilities in, on, above, within, over, below, under, or through the Right-of-Way, unless allowed under Chapter 98 or having been issued a Right-of-Way Occupancy Permit.

(C) Each and every unauthorized use shall be deemed to be a violation and a distinct and separate offense. Each and every day any violation of Chapter 98 continues shall constitute a distinct and separate offense.

(D) No Person shall fail to comply with the provisions of Chapter 98. Each and every failure to comply shall be deemed a distinct and separate offense. Each and

every day any violation of Chapter 98 continues shall constitute a distinct and separate offense.

(E) The violation of any provision of Chapter 98 shall be unlawful and a misdemeanor offense. The penalty for any violation of Chapter 98 shall be as provided in §9899.

(F) The Permittee shall not be relieved of its obligation to comply with any of the provisions of its Right-of-Way Occupancy Permit or this chapter by reason of any failure of the City to enforce prompt compliance.

§ 98.68 GENERAL PROVISIONS

(A) **Non-exclusive Remedy.** The remedies provided in Chapter 98 are not exclusive or in lieu of other rights and remedies that the City may have at Law or in equity. The City is hereby authorized at any time to seek legal and equitable relief for actual or threatened injury to the public Right-of-Way, including damages to the Right-of-Way, whether caused by a violation of any of the provisions of Chapter 98 or other provisions of the Code.

(B) **Severability.** If any section, subsection, sentence, clause, phrase, or portion of Chapter 98 is for any reason held invalid or unconstitutional by any court or administrative agency of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof. If a regulatory body or a court of competent jurisdiction should determine by a final, non-appealable order that any Permit, right or any portions of this section are illegal or unenforceable, then any such Permit or right granted or deemed to exist hereunder shall be considered as a revocable Permit with a mutual right of either party to terminate without cause upon giving sixty (60) days written notice to the other. The requirements and conditions of such a revocable Permit shall be the same requirements and conditions as set forth in the Permit, right or registration, respectively, except for conditions relating to the term of the Permit and the right of termination. If a Permit or right shall be considered a revocable Permit as provided herein, the Permittee must acknowledge the authority of the City to issue such revocable Permit and the power to revoke it.

(C) **Reservation of Regulatory and Police Powers.** The City, by the granting of a Permit or by issuing a Right-of-Way Occupancy Permit pursuant to Chapter 98, does not surrender or to any extent lose, waive, impair, or lessen the lawful powers and rights, which it has now or may be hereafter vested in the City under the Constitution and Laws of the United States, State of Ohio and under the Charter of the City to regulate the use of the Right-of-Way. The Permittee by its acceptance of a Permit, or Permittee by applying for and being issued a Right-of-Way Occupancy Permit, is deemed to acknowledge that all lawful powers and rights, regulatory power, or police power, or otherwise as now are or the same as may be from time to time vested in or

reserved to the City, shall be in full force and effect and subject to the exercise thereof by the City at any time. A Permittee or Permittee is deemed to acknowledge that its rights are subject to the regulatory and police powers of the City to adopt and enforce general ordinances necessary to the safety and welfare of the public and is deemed to agree to comply with all applicable general Laws and ordinances enacted by the City pursuant to such powers.

(D) **Method of Service.** Any notice or order of the Director of Public Works or Municipal Administrator, or designee shall be deemed to be properly served if a copy thereof is:

- (1) Delivered personally;
- (2) Successfully transmitted via facsimile transmission to the last known fax number of the person to be served;
- (3) Left at the usual place of business of the person to whom it is to be served upon;
- (4) Sent by certified, preposted U.S. mail to the last known address;
- (5) If the notice is attempted to be served by certified, preposted U.S. mail and then returned showing that the letter was not delivered, or the certified letter is not returned within fourteen (14) days after the date of mailing, then notice may be sent by regular, preposted, first-class U.S.; or
- (6) If the notice is attempted to be served by regular, first class U.S. mail, postage prepaid, and the letter is then returned showing that the letter was not delivered, or is not returned within fourteen (14) days after the date of mailing, then notice shall be posted in a conspicuous place in or about the structure, building, premises or property affected by such notice.

(E) **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.

(F) **Compliance.** No Person shall be relieved of its obligation to comply with any of the provisions of Chapter 98 by reason of any failure of the City to enforce prompt compliance.

(G) **Force Majeure.** In the event any Person's performance of any of the terms, conditions or obligations required by Chapter 98 is prevented by a cause or event not within such Person's control, such inability to perform shall be deemed excused and no penalties or sanctions shall be imposed as a result thereof. For the purpose of this section, causes or events not within the control of a Permittee shall include, without limitation, acts of God, strikes, sabotage, riots or civil disturbances, failure or loss of, explosions, acts of public enemies, and natural disasters such as floods, earthquakes, landslides, and fires.

(H) No Warranty. The City makes no representation or warranty regarding its right to authorize the Construction of Facilities on any particular Rights-Of-Way. The burden and responsibility for making such determination shall be upon the Person installing Facilities in the Rights-Of-Way.

(I) 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.

§98.99 PENALTY.

(A) Any person or entity in violation of this chapter shall be guilty of a minor misdemeanor.

(B) A five percent (5%) late fee, accrued monthly, shall be assessed to all delinquent Right-of-Way Occupancy Permit fees. Delinquent Permit Fees may result in the denial of future Right-of-Way work permits.