

IN THE COUNCIL OF THE VILLAGE OF NEW CONCORD, OHIO

**ORDINANCE NO. 2020-12**

AN ORDINANCE UPDATING THE ORDINANCE REGULATING THE USE OR OCUPATION OF ALL PUBLIC RIGHT-OF-WAYS IN THE VILLAGE OF NEW CONCORD, THE ISSUANCE OF RIGHT-OF-WAY PERMITS TO PERSONS FOR SUCH USE OR OCCUPANCY AND TO SET FORTH THE POLICIES OF THE VILLAGE RELATED TO ITS PUBLIC RIGHTS-OF-WAYS (ROW), REPEALING ORDINANCE I-7-19-1 AND DECLARING AN EMERGENCY.

Whereas, Council desires to update the existing ordinance that regulates the use and occupation of the public right-of-way within the Village; and,

Whereas, this ordinance creates such rules and regulations necessary for the regulating of the public right-of-ways; and,

Whereas, prior notice was given to the Public Utilities Commission of Ohio (PUCO) of its intention to adopt a right of way ordinance when the original Right of Way ordinance was passed; and,

Whereas, this updated ordinance revises some regulations and adds regulations for small-cell providers; and,

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF NEW CONCORD, MUSKINGUM COUNTY, STATE OF OHIO;

- Section 1.** The Village of New Concord hereby adopts such rules and regulations necessary for the orderly and effective occupancy and use of the public right-of-ways, Attachment A incorporated herein by reference and further known as Section 97 of the municipal code.
- Section 2.** This Ordinance hereby repeals Ordinance I-7-19-1 in its entirety.
- Section 3.** This Ordinance shall become effective and be in force at the soonest date provided by law.
- Section 4.** This ordinance is hereby declared an emergency measure necessary for the immediate preservation of the public health, safety, and welfare in that the Village budget is based on the anticipated receipt of this revenue and shall be in full force and effect at the earliest date provided by law.

PASSED: March 9, 2020

  
Robert Dickson, President of Council

APPROVED: March 9, 2020

  
Jennifer Lyle, Mayor

ATTEST:   
Lynn Marlatt, Fiscal Officer

I hereby certify that the above resolution was posted per Ordinance No. L-1-84-1.

  
Lynn Marlatt, Fiscal Officer

# Attachment A

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**CHAPTER 97**  
**COMPREHENSIVE RIGHTS OF WAY ORDINANCE**

SECTION 97.01 DECLARATION OF FINDINGS AND PURPOSE, SCOPE, DEFINITIONS:

**97.01 (A) FINDINGS AND PURPOSE.**

1. The Municipality is vitally concerned with the use of all Rights of Way within the corporation limits as such Rights of Way are a valuable and limited resource which must be utilized to promote the public health, safety, and welfare including the economic development of the Municipality.

2. Changes in the public utilities and communication industries have increased the demand and need for access to Rights of Way and placement of facilities and structures therein.

3. It is necessary to comprehensively plan and manage access to, and structures and facilities in, the Rights of Way to promote efficiency, discourage uneconomic duplication of facilities, lessen the public inconvenience of uncoordinated work in the Rights of Way, and promote the public health, safety, and welfare.

4. The Municipality has authority under the Laws and Constitution of the State of Ohio, including but not limited to Article 18, Sections 3, 4 and 7, to regulate public and private entities which use the Rights of Way.

5. In the interest of equity and uniformity specific utilities and their uses are not singled out in this ordinance. The Municipality recognizes the inherent differences between aerial and underground utilities and that some rules and regulations may pertain to one and not the other. Where there is a question of applicability, the ordinance shall be applied in the least restrictive way for the occupant, providing the municipalities primary goal of maintaining and managing the right of way is not negatively impacted.

**97.01 (B) SCOPE.**

The provisions of this Chapter shall apply to all users of the Rights of Way as provided herein. To the extent that anything in this ordinance conflicts with any other ordinance, rule, or regulation, then the provisions of this ordinance shall control. Where this ordinance is silent on an issue Ohio Revised Code Section 4939 shall control.

**97.01 (C) DEFINITIONS.**

For the purposes of Chapter 97 the following terms, phrases, words, and their derivations have the meanings set forth herein. When not inconsistent with the context, words in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The words “shall” and “will” are mandatory and “may” is permissive. Words not defined shall be defined by Ohio Revised Code Section 4939.01 and where different ORC 4939 shall be used, other words not defined in this ordinance or ORC 4939.01 shall be given their common and ordinary meaning. References hereafter to

“Sections” are, unless otherwise specified, references to Sections in this Chapter. Defined terms remain defined terms whether or not capitalized.

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

2. “APPLICANT” means any Person who seeks to obtain a Certificate of Registration and/or a Permit.

3. “APPLICATION” means the process by which an Applicant submits a request to obtain Certificate of Registration and/or a Permit.

4. “APPLICATION FEE” means the fee paid to the Municipality for application for a Certificate of Registration pursuant to C.O. § 97.03(A).

5. “BANKRUPTCY CODE” means the United States Bankruptcy Code of 1978, as amended including regulations promulgated by Title 11 of the United States Code.

6. “BEST EFFORT(S)” means the best reasonable efforts under the circumstances, taking into consideration, among other appropriate matters, all applicable Laws, regulations, safety, engineering and operational codes, available technology, human resources, and cost.

7. “CABLE FRANCHISE” means the same as “franchise” in the Cable Communications Policy Act of 1984, 98 Stat. 2779, 47 U.S.C. 522.

8. “CABLE OPERATOR” means the same as in the Cable Communications Policy Act of 1984, 98 Stat. 2779, 47 U.S.C. 522.

9. “CABLE SERVICE” means the same as in the Cable Communications Policy Act of 1984, 98 Stat. 2779, 47 U.S.C. 522.

10. “CERTIFICATE OF REGISTRATION” means the document issued to each Provider and its unique System to occupy the Rights of Way within the Municipality that outlines the terms of that occupancy of the Rights of Way.

11. “CODE (or C.O.)” means the codified ordinances of the municipality.

12. “CONFIDENTIAL/PROPRIETARY INFORMATION” means 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 Municipality 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 Municipality uses to protect its own information of such a nature from disclosure to third parties. In the event that the Municipality receives a request from a third party for disclosure of information a Provider has clearly marked as Confidential/Proprietary Information, then the Municipality shall respond as required by ORC Chapter 149, but will attempt to use all reasonable means to notify the Provider as soon as possible.

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

14. "CONSTRUCTION" means, but not limited to, the act or process of digging, boring, tunneling, trenching, excavating, obstructing, installing wires, installing conduit, installing pipes, completing work on, above, within, over, below, under or through any part of the Rights of Way transmission lines, service lines, curb stops, corp stops, valves, pedestals, boxes, vaults, poles, signs or installing any other Facilities, other than landscaping, ornamental plantings. 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.

15. "CONSTRUCTION BOND" means a bond posted to ensure proper and complete Construction and/or repair of a Facility and the affected Rights of Way pursuant to a Permit.

16. "CONSTRUCTION AND MAJOR MAINTENANCE PLAN" means a written plan including maps of the expected location, design, other related equipment and Facilities of a Provider which describes in full the Construction intended to be accomplished by the Provider in the Rights of Way over the next calendar year.

17. "CONSTRUCTION PERMIT" means the Permit specified in C.O. § 97.13 et seq. which must be obtained before a Person may construct in, locate in, occupy, maintain, move or remove Facilities from, in or on the Rights of Way.

18. "COUNTY" means the county(s) the municipality resides in. County specifically excludes any and all contractors, agents or other Person acting on behalf of said County.

19. "CREDIBLE" means worthy of being believed.

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

21. “FACILITY(IES)” means any tangible thing located in any Rights of Way within the Municipality; but shall not include boulevard plantings, ornamental plantings or gardens planted or maintained in the Rights of Way between a Person's property and the street edge of pavement.

22. “FCC” means the Federal Communications Commission, or any successor thereto.

23. “FERC” means the Federal Energy Regulatory Commission as created and amended in accordance with the Federal Power Act, 16 U.S.C. 792, or its statutory successor.

24. “FULL” means unable to accommodate any additional Facilities as determined by the Municipality Engineer in accordance with the principles of public health, safety and welfare, following a reasonable analysis taking into consideration all applicable Law; commonly accepted industry standards; and routine engineering practices.

25. “IN” when used in conjunction with Rights of Way, means in, on, above, within, over, below, under or through a Rights of Way.

26. “INSPECTOR” means any Person authorized by the Mayor to carry out inspections related to the provisions of Chapter 97.

27. “LAW” means any local, state and/or federal legislative, judicial or administrative order, certificate, decision, statute, constitution, ordinance, resolution, regulation, rule, tariff or other requirement in effect either at the time of execution of Chapter 97 or at any time during the location of, and/or while a Provider's Facilities are located in the public Rights of Way.

28. “MAYOR” means the duly elected Mayor of the Municipality or his/her deginee.

29. “MINOR MAINTENANCE” means a work performed that does not constitute construction, as defined in this ordinance as set forth in C.O. § 97.15, in or on the Rights of Way.

30. “OHIO MANUAL OF UNIFORM TRAFFIC CONTROL DEVICES OR OMUTCD” means the uniform system of traffic control devices promulgated by the Ohio Department of Transportation pursuant to O.R.C. § 4511.09.

31. “O.R.C” means the Revised Code of the State of Ohio.

32. “OHIO UTILITY PROTECTION SERVICE” means the utility protection service as defined in O.R.C. § 153.64 and/or § 3781.26 or a statutory successor thereto.

33. “PERMIT” means a Construction Permit as the context requires.

34. “PERMIT COST” means all direct, incidental and indirect costs actually incurred or realized by the Municipality for Permit issuance, permit oversight and pavement degradation resulting from Construction activity.

35. “PERMIT FEE” means money paid to the Municipality for a Permit to Construct in the Rights of Way as required by Chapter 97.

36. “PERMITTEE” means any Person to whom a Construction Permit and/or, Minor Maintenance Permit has been granted by the Municipality and not revoked.

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

38. “PROVIDER” means a Person who owns or operates a System and has a valid Certificate of Registration. The Municipality, County and Cable Operators operating pursuant to a valid Cable Franchise, or Video Service Provider operating pursuant to a valid video service authorization shall also be considered Providers.

39. “PUCO” means the Public Utilities Commission of Ohio as defined in O.R.C. § 4901.02.

40. “REGISTRATION MAINTENANCE FEE” means the money paid to the Municipality to maintain a Certificate of Registration and compensate the Municipality for all actual costs incurred by the Municipality in the management, administration and control of the Rights of Way of the Municipality, and which are not reasonably recoverable by the Municipality through Construction Permit Fees or other approved recovery mechanisms.

41. “REMOVAL BOND” means a bond posted to ensure the availability of sufficient funds to remove a Provider’s Facilities upon abandonment or disuse, or discontinuance of a Provider’s use or occupation of the Rights of Way.

42. “RESTORATION” means the process and the resultant effects by which a Rights of Way is returned to a condition as good as or better than its condition immediately prior to the Construction. Restoration shall occur in accordance with the Rules and Regulations as may be enacted or amended from time to time.

43. “RIGHT(S) OF WAY” means the surface and space in, above, within, over below, under or through any real property in which the Municipality has an interest in Law or equity, whether held in fee, or other estate or interest, or as a trustee for the public, including, but not limited to any public street, boulevard, road, highway, freeway, lane, alley, court, sidewalk, parkway, river, tunnel, viaduct, bridge, conduit, or any other place, area, or real property owned by or under the legal or equitable control of the Municipality that, consistent with the purposes for which it was dedicated, may be used for the purposes of constructing, operating, repairing, or replacing a System. Rights of Way shall not include buildings, parks, or other public property or easements that have not been dedicated to compatible uses, except to the extent the use or occupation of such property is specifically granted in a Permit or by Law.

44. “RIGHT(S) OF WAY COST” means all direct, incidental and indirect costs borne by the Municipality for the management and administration of the Rights of Way and this Chapter.

45. “RULE(S) AND REGULATION(S)” means any rules or regulations adopted by the Municipality Engineer pursuant to C.O. § 97.06(E).



46. “SERVICE(S)” means the offering of any service or Utility for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, or alternatively, the provision (for a fee or otherwise) of any service or Utility between two or more points for a proprietary purpose to a class of users other than the general public that in the opinion of the Mayor constitutes a service.

47. “SUPPLEMENTARY APPLICATION” means any application made to Construct on or in more of the Rights of Way than previously allowed, or to extend a Permit that had already been issued.

48. “SYSTEM” means any System of conduit, cables, ducts, pipes, wires, lines, towers, antennae wave guides, optic fiber, microwave, laser beams and any associated converters, equipment or Facilities or Utilities designed and constructed for the purpose of producing, receiving, amplifying, delivering or distributing Services within the Municipality. A System shall specifically include, but not necessarily be limited to: electric distribution and/or transmission systems, natural or artificial gas distribution and/or transmission systems, water distribution systems, storm sewer systems, sanitary sewer systems, cable television systems, video service networks, telecommunications systems (whether voice, video, data, or other), fiber optic systems, and wireless communications systems.

49. “SYSTEM REPRESENTATIVE” means the specifically identified agent/employee of a Provider who is authorized to direct field activities of that Provider and serve as official notice agent for System related information. Any such System Representative shall be required to be available at all times to receive notice of and immediately direct response to System related emergencies or situations.

50. “TRANSFER” means the disposal by the Provider, directly or indirectly, by gift, assignment, voluntary sale, merger, consolidation or otherwise, of fifty-one percent (51%) or more at one time of the ownership or controlling interest in the System, or fifty-one percent (51%) cumulatively over the term of a Certificate of Registration of such interests to a corporation, partnership, limited partnership, trust, or association or Person or group of Persons acting in concert.

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

52. “UNDERGROUND FACILITY(IES)” means all lines, cables, conduits, pipes, posts, tanks, vaults and any other Facilities which are located wholly or partially underneath Rights of Way.

53. “UNUSED FACILITY(IES)” means facilities located in the Rights of Way which have remained unused for twelve (12) months and for which the Provider is unable to provide the Municipality 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.

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

55. “UTILITY CORRIDOR(S)” means those specific areas of the Rights of Way designated as such by the municipality pursuant to C.O. § 97.03(F)(1).

56. “VIDEO SERVICE” means the same as “video service” in O.R.C. 1332.21(J).

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

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

59. “VIDEO SERVICE PROVIDER (or VSP)” means the same as “video service provider” in O.R.C. 1332.21(M).

60. “MUNICIPALITY” means the duly elected representative(s) of the political subdivision.

61. “DESIGNEE” means the duly appointed designee for the Mayor.

62. “COUNCIL” means the governing body of the municipality,

63. “ENGINEER” means the duly appointed municipal engineer.

64. “FISCAL OFFICER” means the duly appointed Fiscal or Chief Financial Officer of the municipality.

65. “SOLICITOR” means the duly appointed solicitor or chief legal officer of the municipality.

66. “WORKING DAY” means any Monday, Tuesday, Wednesday, Thursday, or Friday, but excluding legal holidays observed by the Municipality.

## **97.02 RIGHTS OF WAY ADMINISTRATION.**

### **(A) Administration.**

The Mayor shall be the principal municipal official responsible for the administration of Chapter 97, except as otherwise provided herein. The Mayor may delegate any or all of the duties hereunder to a designee.

(B) Rights of Way Occupancy.

Each Person who occupies, uses or seeks to occupy or use the Rights of Way to operate a System located in the Rights of Way, or who has, or seeks to have, a System located in any Rights of Way, shall apply for and obtain a Certificate of Registration pursuant to Chapter 97. Any Person owning, operating or maintaining a System in the Rights of Way without a Certificate of Registration, including Persons operating under a permit, license or franchise issued by the Municipality prior to the effective date of Chapter 97 shall apply for and obtain a Certificate of Registration from the Municipality, unless exempted by C.O. § 97.02(D). Application will consist of providing the information set forth in C.O. § 97.03 and as reasonably required by the Mayor.

(C) No Construction Without a Certificate of Registration.

Following the effective date of Chapter 97, no Person shall Construct or perform any work on or in, or use any System or any part thereof located on or in any Rights of Way without first obtaining a Certificate of Registration. Whoever violates this section is guilty of a misdemeanor of the fourth (4th) degree as provided for in C.O. § 97.99.

(D) Exceptions.

(1) The following entities are not obligated to obtain a Certificate of Registration: the Municipality and resellers of Services or Persons that do not own any System or Facilities in the Rights of Way.

(2) The following entities are required to participate in the Certificate of Registration process, but shall be exempt from the financial obligations of the Application Fee required by C.O. § 97.03(A) and the Registration Maintenance Fee required by C.O. § 97.05(A): Cable Operators for the purpose of providing only Cable Service and operating pursuant to a valid Cable Franchise, and Video Service Provider for the purpose of providing only Video Service and operating pursuant to a valid Video Service authorization issued in accordance with O.R.C. 1332.24. In addition, Cable Operators shall be exempt from any requirement of the Certificate of Registration process that is in direct conflict with the requirements of, and/or specifically exempted by, a valid current and valid Cable Franchise with the Municipality.

(3) Other exceptions permitted by ORC Section 4939.

(E) Systems in Place Without a Certificate of Registration.

Any System or part of a System found in a Rights of Way for which a Certificate of Registration has not been obtained shall be deemed to be a nuisance and an unauthorized use of the Rights of Way. The Municipality may exercise any remedies or rights it has at Law or in equity, including, but not limited to abating the nuisance; taking possession of the Facilities and/or non-complying portion of such System; and/or prosecuting the violator.

(F) Future Uses.

In allowing Providers and Permittees to place Facilities in the Rights of Way, the Municipality shall not be liable for any damages caused thereby to any Provider's Facilities that are already in place or that shall be placed in the Rights of Way unless those damages arise out of the sole negligence, gross negligence, willful misconduct, or fraud of the Municipality. No Provider is entitled to rely on the provisions of this Chapter as creating a special duty to any Provider.

(G) Discontinuance of Operations, Abandoned and Unused Facilities.

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

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

(b) submit a written proposal to re-use its Facilities in a manner that promotes the Municipality's goals of providing innovative and economic solutions to efficiently and economically utilize limited Rights of Way capacity. Such proposal must be approved by the Municipality Engineer; or

(c) submit a written proposal for abandonment of Facilities in place indicating why good engineering practice would support this type of solution. The Municipality Engineer must approve said proposal; or

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

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

(i) purchase the Facilities; or

(ii) unless a valid removal bond has already been posted pursuant to C.O. § 97.17(B), require the Provider to post a bond in an amount sufficient to reimburse the Municipality for reasonably anticipated costs to be incurred in removing the Facilities.

(2) Facilities of a Provider 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 Municipality may exercise any remedies or rights it has at Law or in equity, including, but not limited to:

- (a) abating the nuisance;
- (b) 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
- (c) requiring removal of the Facilities by the Provider or by the Provider's surety.

(3) If the Municipality requires a Provider to remove Unused Facilities in any Rights of Way, the Municipality shall use reasonable efforts to direct that this removal occur in conjunction with other scheduled excavations of the Rights of Way. If the Municipality 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.

(H) Nature of Issuance.

A Certificate of Registration shall not convey equitable or legal title in the Rights of Way. A Certificate of Registration is only the nonexclusive, limited right to occupy Rights of Way in the Municipality, for the limited purposes and for the limited period stated in the Certificate of Registration and in accordance with Chapter 97 of the Code. The rights to occupy the Right of Way may not be subdivided or subleased; provided, however, that two or more Providers may collocate Facilities in the same area of the Rights of Way so long as each such Provider complies with the provisions of Chapter 97. Collocating Providers may file a joint application for a Construction Permit. A Certificate of Registration does not excuse a Provider from obtaining appropriate access or pole attachment agreements before co-locating its Facilities on Facilities of others, including the Municipality's Facilities. A Certificate of Registration does not prevent a Provider from leasing space in or on the Provider's System, so long as the sharing of Facilities does not cause a violation of Law, including the provisions of Chapter 97. A Certificate of Registration does not excuse a Provider from complying with any provisions of the Code or other applicable Law.

(I) Other Approvals, Permits, and Agreements.

In addition to a Certificate of Registration, Providers shall obtain any and all regulatory approvals, permits, authorizations, or licenses necessary for the offering or provision of such Services from the appropriate federal, state and local authorities and upon the Municipality's reasonable request, shall provide copies of such documents to the Municipality. Further, a Certificate of Registration issued pursuant to Chapter 97 shall not entitle a Provider to use, alter, convert to, or interfere with, the Facilities, easements, poles, conduits, lines, pipelines, wires, fiber, cable or any other real or personal property of any kind whatsoever under the management or control of the Municipality.

(J) Rules and Regulations.

The Municipal Engineer may propose, and Council may adopt (and from time to time amend) the Rules and Regulations regarding Chapter 97, Construction standards and occupancy requirements of the Right of Way. Such Rules and Regulations shall not materially increase the obligation of any provider hereunder, provided however that none of the following shall in any way be considered a material increase in obligation; the adoption of Rules and Regulations increasing Fees; the requiring of the placement of Facilities in designated portions of the Rights of Way (underground or otherwise); the overbuilding of Facilities; or the requiring of joint-builds. Prior to the adoption or amendment of the Rules and Regulations, the Municipality shall provide written notice and a copy of the proposed language of such adoption or amendment, via United States Regular Mail, to each Provider who holds a then current Certificate of Registration. Each Provider shall then have thirty (30) days following the date of the Municipality's mailing to provide written comment regarding the proposed language to the Municipality. At least forty-five (45) days, but not more than sixty (60) days following the date of the Municipality's mailing, the Municipality shall schedule and hold a meeting, to make available a forum at which all then current Providers may address any questions, concerns and make reasonable suggestions regarding the proposed new Rules and Regulations to the Municipality. The Municipality Engineer shall, following said meeting and the review of the Providers' comments and suggestions, adopt or amend the Rules and Regulations in a manner that best serves the Municipality, for approval by Municipality Council

**97.03 CERTIFICATE OF REGISTRATION APPLICATIONS.**

(A) Certificate of Registration Applications.

To obtain a Certificate of Registration to construct, own, or maintain any system within the Municipality, or to obtain a renewal of a Certificate of Registration issued pursuant to this Chapter, an Application must be filed with the Municipality on the form adopted by the Municipality which is hereby incorporated by reference. For all Applications the Municipality shall collect an Application Fee. The Application Fee shall be equal to all the actual and direct costs incurred by the Municipality that are associated with receiving, reviewing, processing and granting (or denying) an Application. At the time of its decision to either grant or deny an Application the Municipality shall calculate and assess all actual and direct costs involved in receiving, reviewing, processing and granting (or denying) the Application and provide a written invoice to the Applicant for the appropriate amount. The Municipality shall require that the Applicant remit all Application Fee amounts invoiced within thirty (30) days of its decision to either grant or deny a Certificate of Registration. Any Applicant who fails to timely remit such invoiced Application Fee amounts shall be subject to the penalties of this Chapter, the imposition of any other legal or equitable remedies available to the Municipality and the immediate revocation of any Certificate of Registration having been issued.

(B) Information Required for Application to Obtain a Certificate of Registration.

(1) The Applicant shall keep all of the information required in this section current at all times, provided further that Applicant or Provider shall notify the

Municipality of any changes to the information required by this section within thirty (30) days following the date on which the Applicant or Provider has knowledge of such change. The information provided to the Municipality at the time of Application shall include, but not be limited to:

(a) 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

(b) The name, address and e-mail address, if applicable, and telephone and facsimile numbers of a System Representative. The System Representative shall be available at all times. Current information regarding how to contact the System 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 Municipality at all times; and

(c) A certificate of insurance where required to be provided to meet the requirements of this Section shall:

(i) Verify that an insurance company licensed to do business in the State of Ohio has issued an insurance policy to the Applicant;

(ii) 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:

(A) use and occupancy of the Rights of Way by the Applicant, its officers, agents, employees and contractors; and

(B) placement and use of Facilities in the Rights 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;

(iii) Name the Municipality, 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 97.

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

(A) "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 Municipality, by registered mail, return receipt requested, of a written notice addressed to the Mayor or her/his designee of such intent to cancel, diminish or not to renew."

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

(v) Satisfy the requirements for comprehensive liability coverage, automobile liability coverage and umbrella coverage as follows:

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

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

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

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

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

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

(B) 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 Mayor or her or his designee. Coverage must be written on an occurrence basis, with the following limits of liability and provisions, or their equivalent:



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

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

(3) Self-insurance: Those Applicants maintaining a book value in excess of Fifty Million Dollars (US\$50,000,000.00) may submit a statement requesting to self-insure. If approval to self-insure is granted, Applicant shall assure the Municipality that such self- insurance shall provide the Municipality with no less than would have been afforded to the Municipality 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; and
- (b) a description of the Applicant's self-insurance program; and
- (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).
- (d) The Mayor may modify or waive these requirements if they are not necessary in determining the sufficiency of the self-insurance. The Mayor may request applicable and pertinent additional information if it is necessary in determining the sufficiency of the self-insurance.

(4) The Municipality's examination of, or failure to request or demand, any evidence of insurance in accordance with Chapter 97 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 97.

(5) Documentation that Applicant or Provider maintains standard workers' compensation coverage as required by Law. Similarly, Provider shall require any

subcontractor to provide workers' compensation coverage in amounts required by Law for all of the subcontractor's employees.

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

(7) A copy of the Person's certificate of authority from the PUCO and/or the FCC and/or FERC, if the Person is lawfully required to have or actually does possess such certificate from said commission(s) and any other approvals, permits, or agreements as set out in C.O. § 97.02(I).

(8) Upon request of the Municipality, a narrative (or if applicable PUCO/FCC/FERC application information) describing Applicant's proposed activities in the Municipality including Credible information detailing Applicant's financial, managerial, and technical ability to fulfill Applicant's obligations under Chapter 97 and carry on Applicant's proposed activities.

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

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

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

(b) Whether issuing of the Certificate of Registration will be consistent with Chapter 97.

(c) Whether Applicant has submitted a complete Application and has secured all certificates and other authorizations required by Law in order to Construct and operate a System in the manner proposed by the Applicant.

(d) Whether the Applicant is delinquent on any taxes or other obligations owed to the Municipality, County or State of Ohio.

(e) Unless Applicant is otherwise exempted from such consideration by O.R.C. 4939.03, whether the Applicant has the requisite financial, managerial, and technical ability to fulfill all its obligations under this Chapter and the issuance of a Certificate of Registration.

(f) Any other applicable Law.

(D) Grant or Denial of an Application for a Certificate of Registration.

(1) The Municipality, not later than sixty (60) days after the date of filing by an Applicant of a completed Application, shall grant or deny the Application.

(2) If an Application for a Certificate of Registration is denied, the Municipality shall provide to the Applicant, in writing, the reasons for denying the Application and such other information as the Applicant may reasonably request to obtain consent.

(E) Obligations of a Provider Upon Receipt of a Certificate of Registration.

In addition to the other requirements set forth herein and in the Rules and Regulations each Provider shall:

(1) Use its Best Efforts to cooperate with other Providers and users of the Rights of Way and the Municipality 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; and

(2) When possible, participate in joint planning, Construction and advance notification of Rights of Way work, as may be required by the Municipality; and

(3) Upon reasonable written notice, and at the direction of the Mayor or his/her designee, promptly remove or rearrange Facilities as necessary for public safety; and

(4) Perform all work, Construction, maintenance or removal of Facilities within the Rights of Way, in accordance with good engineering, construction and arboricultural practice (if applicable), including any appropriate state building codes, safety codes and Law and use Best Efforts to repair and replace any street, curb or other portion of the Rights of Way, or Facilities located therein, to a condition to be determined by the Municipality Engineer to be adequate under current standards 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 Municipality and other Providers, all in accordance with all applicable provisions of this Chapter, any Rules and Regulations the Municipality may adopt and the Code; and

(5) Construct, install, operate and maintain its Facilities and System in a manner consistent with all applicable Laws, ordinances, construction standards and governmental requirements including, but not limited to, The National Electric Safety Code, National Electric Code and applicable FCC, FERC, or other federal, state and/or local regulations; and

(6) Be on notice that removal of trees, or the use of vegetation management programs within the Rights of Way of the Municipality require prior written approval by the Mayor or his/her designee. Any such activities, unless an Emergency, shall only be performed following the prior written approval of the Mayor or his/her designee and must be performed in accordance with standard horticultural and arboreal practices as promulgated by entities such as the National Arbor Day Foundation, the International Society of Arboriculture, and the Tree Care Industry, all as may be required by the Municipality. Pruning shall at a minimum meet or exceed the requirements of the most current version of the American National Standards Institute ANSI A300 standard. Any additionally required horticultural and arboreal practices and guidelines shall be described in the Rules and Regulations adopted by pursuant to C.O. § 97.05(E). Emergency removal of trees or the use of vegetation management programs within the Rights of Way of the Municipality may be performed in Rights of Way as described herein and in accordance with the Rules and Regulations, but the Mayor shall be provided notice of such Emergency work being performed within two (2) Business Days of the start of the work. Any non-Emergency tree removal or the use of vegetation management programs within the Rights of Way that is performed without the Mayor or designee's written permission shall subject a Person to the penalties of C.O. § 97.99 and may further require that the tree or vegetation be replaced, at the sole expense of the responsible Person, with a healthy tree or vegetation of like kind and quality; and

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

(8) Use its Best Efforts to cooperate with the Municipality in any Emergencies involving the Rights of Way; and

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

(10) Providers shall use all reasonable efforts to field identify their Facilities in the Rights of Way whenever Providers are notified by the Municipality that the Municipality has determined that such identification is reasonably necessary in order for the Municipality to begin planning for the Construction, paving, maintenance, repairing, relocating or in any way altering any street or area in the Rights of Way as defined in this Chapter. The Municipality shall notify the Providers of the Municipality's date to begin the process at least thirty (30) days prior to the commencement of said activities. In field identifying Facilities:

(a) Providers shall identify all Facilities that are within the affected Rights of Way using customary industry standards and distinct identification; and

(b) Facilities will be so marked as to identify the Provider responsible for said Facilities; and

(c) Should any such marking interfere with the Facilities function, create a safety problem or violate any safety code, alternative methods of marking the Facilities may be approved by the Engineer; and

(d) All marking should be clearly readable from the ground and include Provider's name, logo and identification numbering or tracking information. No advertising will be permitted.

(11) A Provider that is replacing an existing utility pole shall be responsible to coordinate with all other Providers to ensure the orderly transfer of all lines or cables to the replacement utility pole, the removal of the existing utility pole, and the restoration of the Rights of Way within thirty (30) days weather permitting after the replacement utility pole is installed. Upon request, the Mayor may grant the Provider additional time for good cause.

(F) Establishment of Utility Corridors.

(1) Council may assign specific corridors within the Rights of Way, or any particular segment thereof as may be necessary, for each type of Facilities that are, or , may someday be, located within the Rights of Way.

(2) Any Provider whose Facilities are in the Rights of Way and are in a position at variance with Utility Corridors established by the Municipality Council shall at the time of the next Construction of the area, excluding normal maintenance activities, move such Facilities to their assigned position within the Rights of Way. Existing underground Facilities located within a designated Utility Corridor shall not be required to relocate into adjacent or alternative portions of the Rights of Way unless they are in conflict with an actual or proposed public improvement project. The above requirements may be waived by the Mayor for good cause shown including, but not limited to, consideration of such factors as: the remaining economic life of the Facilities, public safety, customer service needs, Law precluding such undergrounding of Facilities, and hardship to the Provider. If a Provider is denied a requested waiver from the above requirements, the Provider may appeal the denial of the Mayor to Council.

(3) The municipality shall make every good faith attempt to accommodate all existing and potential users of the Rights of Way as set forth in this Chapter.

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

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

(6) Unless otherwise stated in a Certificate of Registration, Permit, or C.O. § 97.03(F)(6)(c) all Facilities within the Rights of Way shall be Constructed and located in accordance with the Code and with the following provision:

(a) Whenever all existing Facilities that have been traditionally located overhead are located underground in a certain area within the Municipality, a Provider who desires to place its Facilities in the same area must also locate its Facilities underground.

(b) Whenever a Provider is required to locate or re-locate Facilities underground within a certain area of the Municipality, every Provider with Facilities within the same area of the Municipality shall concurrently re-locate their Facilities underground.

(c) The above requirements may be waived by the Municipality for good cause shown including, but not limited to, consideration of such factors as: the remaining economic life of the Facilities, public safety, customer service needs, Law precluding such undergrounding of the Facilities, and hardship to the Provider. If a Provider is denied a requested waiver from the above requirements, the Provider may appeal the denial of the Municipality Engineer to the Mayor.

**97.04            REPORTING REQUIREMENTS.**

(A)            Construction and Major Maintenance Plan.

Each Provider shall, when requested by the municipality, file a Construction and Major Maintenance Plan with the Mayor. Such Construction and Major Maintenance Plan shall be provided for specific geographical areas requested by the municipality, up to and including the entire geographical area of the Municipality. It shall be submitted using a format(s) mutually agreeable to the Provider and the Municipality and shall contain the information determined by the Municipality to be necessary to facilitate the coordination and reduction in the frequency of Construction in the Rights 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, if none are scheduled or anticipated then the Plan shall so state. The Provider shall use its Best Efforts in supplying this information and shall update the Construction and Major Maintenance Plan on file with the Municipality whenever there is a material change in scheduled and/or anticipated Construction projects. In an effort to assist Providers with the completion of their annual Construction and Major Maintenance Plan, the Municipality, as soon as possible, will send each Provider's System Representative a descriptive narrative (and any mapping information reasonably available) for all the planned Right of Way improvements and/or scheduled maintenance that the Municipality then currently intends to undertake during the calendar year.

(B) Mapping Data.

With the filing of its Application for a Certificate of Registration, a Provider shall be required to accurately inform the Municipality of the number of miles (rounded up to the nearest mile) of Right of Way the Provider's System then currently occupies. With the filing of its Application for a Certificate of Registration, a Provider may voluntarily provide such mapping data to demonstrate accurately the general location of its system within the public right of way. The municipality reserves the right to create its own public way inventory map and may recover the cost of creation through the Registration process.

(C) Exemption from Disclosure.

A Provider shall notify the Municipality if the Provider believes that any specific document or portion of a document being submitted to the Municipality is exempt from the public records disclosure requirements of O.R.C. 149.43. The notification shall be in writing and indicate the specific document or portion of a document that the Provider believes is exempt from disclosure. The notification shall include the legal basis for the claimed exemption, including the applicable statutory reference and any additional information necessary to make a determination of exemption for each specific document or portion of a document. If a public records request is made for documents submitted by a Provider, the Municipality will consider the written notification in making its own independent determination of whether a specific document or a portion of a document is exempt from the disclosure requirements of O.R.C. 149.43. To the extent permitted by law, the Municipality will endeavor to use reasonable Best Efforts to notify the Provider of the request prior to making the document available for inspection or copying.

**97.05            COMPENSATION FOR CERTIFICATE OF REGISTRATION.**

**(A)            Compensation.**

As compensation for the Municipality's costs to administer Chapter 97, manage, administer and control the Rights of Way and maintain each Certificate of Registration issued, every Provider or any Person operating a System shall pay to the Municipality Registration Maintenance Fees beginning on or about the effective date of Chapter 97. The Registration Maintenance Fee shall be determined and assessed to Providers and other Persons operating a System or otherwise using and occupying the Rights of Way in accordance with the following process and formula:

(1) Each year the municipality shall calculate all actual and incurred costs associated with Rights of Way management, administration and control for the previous calendar year that the Municipality was not able to reasonably recover through Construction Permit Fees or other recovery mechanisms provided for in Chapter 97.

(2) Providers and Applicants, as required in C.O. § 97.04(B), shall accurately inform the municipality upon application for a Certificate of Registration, when requested by the municipality or when changes occur, of the number of miles (rounded up to the nearest mile) of Right of Way the Provider's System then occupied as of the immediately previous December 1<sup>st</sup>.

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

(4) The Municipality shall divide the calculated costs referenced in C.O. § 97.05(A)(1) by the total number of miles of Right of Way reported as being used or occupied by all Providers as referenced in C.O. § 97.05(A)(3) to arrive at a per-mile cost number.

(5) The Municipality shall then multiply each Provider's mileage calculation as referenced in C.O. § 97.05(A)(2) by the per-mile cost calculation referenced in C.O. § 97.05(A)(4). The product shall be a Provider's then current annual Registration Maintenance Fee.

(6) The Municipality shall perform its annual calculation of Registration Maintenance Fees after January 1. Registration Maintenance Fees shall be invoiced to Providers during the first quarter 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 Provider operating under a VSA for the purpose of providing Video Services, and providers of Open Video System services, which compensate the Municipality 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 Municipality, shall have the mileage of the Right of Way they use and/or occupy included in the calculations described in C.O. § 97.05, but shall not be required to contribute to the recovery of Rights of Way Costs as defined by Chapter 97 with the exception of Permit Costs.

(8) The Municipality shall charge an individual Utility for any expense that can be attributed solely to that Utility. This charge shall be specifically identified on the Annual Registration Fee Invoice and not used in the annual Registration Fee calculations.

(9) The Municipality may by separate legislation enacted by Municipal Council on or about April 1st of each year, in accordance with the results of C.O. § 97.05(A)(4), enact an initial and thereafter a new annual Registration Maintenance Fee (per mile) by appropriately increasing or decreasing the previous year's Registration Maintenance Fee (per mile). Revised Registration Maintenance Fees shall be effective upon passage.

(B) Timing.

Registration Maintenance Fees shall be paid in full for the first year of the registration as a condition of the Certificate of Registration becoming effective. Fees may be prorated from the effective date of the Certificate of Registration to the end of the calendar year if less than one (1) full year.



(C) Taxes and Assessments.

To the extent taxes or other assessments are imposed by taxing authorities on the use of Municipality property as a result of a Provider's use or occupation of the Rights of Way, the Provider shall be responsible for payment of such taxes. Such payments shall be in addition to any other fees payable pursuant to Chapter 97 and shall not be considered an offset to, or in lieu of, the fees and charges listed in Chapter 97. The Registration Maintenance Fee is not in lieu of any tax, fee, or other assessment except as specifically provided in Chapter 97, or as required by applicable Law.

(D) Interest on Late Payments.

In the event that any Registration Maintenance Fee is not paid to the Municipality by January 31, the Provider shall pay a monthly late charge of one percent (1%) of the unpaid balance for each month or any portion thereof for which payment is not made.

(E) No Accord and Satisfaction.

No acceptance by the Municipality 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 Municipality may have for additional sums payable.

**97.06 SMALL CELL FACILITIES AND WIRELESS SUPPORT STRUCTURES WITHIN THE RIGHT-OF-WAY**

**97.06.01 PURPOSE AND INTENT**

(A) The purpose of this section is to establish general procedures and standards, consistent with all applicable federal, state, and local laws, for the siting, construction, installation, collocation, modification, operation, and removal of small cell facilities and wireless support structures in the right-of-way.

(B) The intent of this section is to:

(1) Establish basic criteria for applications to locate small cell facilities and wireless support structures in the right-of-way and authorize the Mayor or his or her designee to develop, publish, and from time to time amend applications and other associated materials to provide clear guidance to applicants;

(2) Ensure that small cell facilities and wireless support structures are carefully designed, constructed, modified, maintained, and removed when no longer in use in conformance with all applicable health and safety regulations;

(3) Preserve the character of the municipality by minimizing the potentially adverse visual impact of small cell facilities and wireless support structures through careful design, siting, landscaping and camouflaging techniques to blend these facilities into their environment to the maximum extent practicable;

(4) Enhance the ability of wireless service providers to deploy small cell facilities and wireless support structures in the municipality quickly, effectively, and efficiently so that residents, businesses, and visitors benefit from ubiquitous and robust wireless service availability;

(5) Establish an application process and structure for payment of fees and charges to be uniformly applied to all applicants, operators and owners of small cell facilities and wireless support structures for such facilities;

(6) Comply with, and not conflict with or preempt, all applicable state and federal laws, including without limitation Section 101(a) and Section 704 of the Telecommunications Act, Pub. L. 104104, 101 Stats. 56, 70 (Feb. 8, 1996) (codified as 47 U.S.C. §§ 253(a), 332(c)(7)), as may be amended or superseded, and Section 6409(a) of the Middle Class Tax Relief and Job Creation Act, Pub. L. 112-96, 126 Stat. 156 (Feb. 22, 2012) (codified as 47 U.S.C. § 1455(a)), as may be amended or superseded, and all FCC rules and regulations to interpret and implement applicable federal statutes.

#### **97.06.02 APPLICABILITY**

(A) Subject to the Ohio Revised Code and approval of an application under this section, an operator may collocate a small cell facility and construct, maintain, modify, operate, or replace wireless support structures in, along, across, upon, and under the municipality right-of-way.

(1) An operator shall comply with generally applicable standards that are consistent with this section and any rules, regulations, and design guidelines adopted by the municipality for the collocation of a small cell facility and construction, maintenance, modification, operation, or replacement of wireless support structures in, along, across, upon, and under the municipality right-of-way, unless otherwise prohibited by state or federal law.

(2) All wireless support structures and small cell facilities shall be constructed and maintained so as not to impede or impair public safety or the legal use of the right-of-way by the municipality, the traveling public, or other public utilities.

(B) The permitting procedures and authorizations set forth herein shall apply only to small cell facilities and wireless support structures in the right-of-way, and do not authorize the construction and operation of a wireline backhaul facility.

(C) Relationship to other sections. This section shall supersede all conflicting requirements of other titles and sections of this Code regarding the locating and permitting of small cell facilities and wireless support structures in the right-of-way.

(D) Nothing in this section precludes the municipality from applying its generally applicable health, safety, and welfare regulations when granting consent for a small cell facility or wireless support structure in the municipality right-of-way.

**97.06.03 APPLICATION REQUIRED**

(A) General Requirements. The following requirements shall apply to all small cell facilities and wireless support structures proposed within the right-of-way.

(1) No person shall occupy or use the right-of-way except in accordance with law.

(2) In occupying or using the right-of-way, no person shall unreasonably compromise the public health, safety, and welfare.

(3) No person shall occupy or use the right-of-way without first obtaining, under this section, or section 1332.24 or 4939.031 of the Ohio Revised Code, any requisite consent of the municipality. Before placing small cell facilities or wireless support structures in the right-of-way, an operator must apply for and receive a general right-of-way certificate of registration under section 97.03. If the operator's sole activities in the right-of-way will consist solely of collocating small cell facilities, constructing, modifying, or replacing new wireless support structures and associated small cell facilities, removing such facilities, or eligible facilities requests, then the operator shall not be required to pay the annual fee for general right-of-way certificate of registration provided in section 97.05. This provision shall not be construed to waive application fees or any other construction or work permit necessary for work in the municipality.

(B) Pre-Application Conference.

(1) Purpose. Applicants are strongly encouraged to contact the municipality and request a pre-application conference. This meeting will provide an opportunity for early coordination regarding proposed small cell facilities and wireless support structure locations and design, and the application submittal and review process, in order to avoid any potential delays in the processing of an application and deployment of small cell facilities and wireless support structures in the municipality. (2) Appointment Required. An appointment is required for all pre-application conferences. Applicants must contact the designated municipality staff member as noted on the application form, who will provide applicants an appointment with all applicable municipality representatives in a timely manner.

(C) Application Required. In accordance with federal and state law and the municipality code, an operator may apply to the municipality to collocate a small cell facility on an existing wireless support structure and to construct, maintain, modify, operate, or replace wireless support structures in, along, across, upon, and under the municipality rights-of-way. Anyone seeking to collocate a small cell facility on an existing wireless support structure and/ or to construct, maintain, modify, operate, or replace wireless support structures in, along, across, upon, and under the municipality rights-of-way shall first duly file a written application with the

municipality, in accordance with the requirements in this section and additional requirements set forth in the Design Guidelines as modified from time to time by the Mayor.

(D) Required Application Materials. Unless otherwise required by state or federal law, all applicants shall submit to the municipality materials and information associated with each application as outlined in the Design Guidelines in order for the application to be considered complete.

#### **97.06.04 APPLICATION REVIEW TIMEFRAMES AND PROCESS**

##### (A) Permit Application Review Timeframes.

(1) Collocation of Small Cell Facilities on Existing Wireless Support Structures. The municipality shall grant or deny its consent for requests to collocate, or to replace or modify a small cell facility on, or associated with, an existing wireless support structure not later than ninety days after the date of filing by an entity of a completed application.

(2) New Wireless Support Structures and Associated Small Cell Facilities. The municipality shall grant or deny its consent for requests to construct, modify, or replace a wireless support structure associated with a small cell facility within the right-of-way not later than one hundred twenty days after the date of filing by an entity of a completed application.

(3) Wireless Support Structure and/or Small Cell Facilities Removal. The municipality shall grant or deny its consent for requests to remove wireless support structures associated with small cell facilities from the right-of-way typical to the review timeframes for the General Right-of-Way Permit required for this activity.

(4) Eligible Facilities Request. The municipality shall approve Eligible Facilities Requests in accordance with Ohio Revised Code Section 4939, 47 C.F.R. §1.40001, and not later than sixty days after the date of filing by an entity of a submitted application.

(B) Failure to grant or deny within prescribed timeframes. If the municipality fails to approve or deny a request for consent under this section or a request for a relevant work permit within the timeframes required, provided the time period is not tolled or extended with the written consent of the applicant and the Mayor, the request shall be deemed granted upon the requesting entity providing notice to the municipality that the time period for acting on the request has lapsed.

##### (C) Application denials.

(1) The municipality shall not unreasonably withhold or deny consent for small cell facilities and wireless support structures within the right-of-way.

(2) If a request for consent is denied, the municipality shall provide in writing its reasons for denying the request, supported by substantial, competent evidence, and

such information as the applicant may reasonably request to obtain consent. The denial of consent shall not unreasonably discriminate against the entity requesting the consent.

(3) Except in the case of a public utility subject to the jurisdiction and recognized on the rolls of the public utilities commission 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, the municipality, for good cause shown, may withhold, deny, or delay its consent to any person based upon the person's failure to possess the financial, technical, and managerial resources necessary to protect the public health, safety, and welfare.

(D) Tolling of required timeframes.

(1) The time periods required in this section may be tolled only:

(a) By mutual agreement between the entity requesting consent and the municipality;

(b) In cases where the municipality determines that the application is incomplete; or

(c) If the number of requests for consent for small cell facilities or wireless support structures received is likely to result in difficulty processing applications within the time limits set forth this section due to the lack of resources of the municipality, then the municipality may toll the time limits as follows:

1. The time period may be tolled for up to twenty-one days for each group of fifteen small cell facility or wireless support structure requests received by the municipality based on date of receipt by the municipality.

2. In no instance shall the municipality toll the time period for any small cell facility or wireless support structure request by more than ninety consecutive days. Upon request, the municipality shall provide an operator written notice of the time limit for a small cell facility or wireless support structure request.

(2) To toll the time period for incompleteness, the municipality shall provide written notice to the person requesting consent not later than thirty days after receiving the request, clearly and specifically delineating all missing documents or information. The missing documents or information shall be reasonably related to determining whether the request meets the requirements of applicable federal and state law. Any notice of incompleteness requiring other information or documentation, including information of the type described in

section 4939.0313 of the Ohio Revised Code or documentation intended to illustrate the need for the request or to justify the business decision for the request, in accordance with state and federal law, does not toll the time period for incompleteness.

(3) The time period for granting or denying consent resumes when the entity makes a supplemental submission in response to the municipality's notice of incompleteness.

(4) If a supplemental submission is inadequate, the municipality shall notify the entity not later than ten days after receiving the supplemental submission that the supplemental submission did not provide the information identified in the original notice that delineated missing documents or information. The time period may be tolled in the case of second or subsequent notices under the procedures identified in divisions (1) to (3) of this section. Second or subsequent notices of incompleteness may not specify missing documents or information that was not delineated in the original notice of incompleteness.

(E) Consolidated application for multiple small cell facilities and/or wireless support structures.

(1) Applicants seeking to construct, modify, collocate, or replace more than one small cell facility or more than one wireless support structure may file, at the applicant's discretion, a consolidated application for up to 30 small cell facility requests or up to 30 wireless support structure requests in a single application and receive a single permit for the construction, modification, collocation, or replacement of the small cell facilities or wireless support structures subject to the following:

(a) This single application may be filed for multiple small cell facilities or multiple wireless support structures only if they are of substantially the same type.

(b) The municipality may separately address small cell facility collocations or wireless support structures for which incomplete information has been received or which are denied.

(2) In the case of a consolidated application, the fees provided for in section 4939.0316 of the Ohio Revised Code and in separate fee ordinances may be cumulative. However, the municipality, at its discretion may opt to reduce such fees in order to encourage consolidated application submittals.

(3) In the case of a consolidated application, each small cell facility or wireless support structure proposed to be constructed, modified, collocated on, or replaced shall constitute a separate request for consent for purposes of tolling the response deadline as authorized under section 4939.036 of the Ohio Revised Code and this ordinance. A request by a single operator for a new or replacement wireless support structure and associated small cell facility constitutes one request.

(F) Timeframe for completion of permit.

(1) Collocations of small cell facilities on existing wireless support structures and the construction of new wireless support structures and/or associated small cell facilities for which permits have been granted shall be completed by the operator or its agent within one hundred eighty days after issuance of the permit, unless:

(a) The municipality and the operator agree to extend this period; or

(b) A delay is caused by make-ready work for a municipality-owned wireless support structure or decorative pole or by the lack of commercial power or backhaul availability at the site, provided that:

1. The operator has made a timely request within sixty days after the issuance of the permit for commercial power or backhaul services; and

2. The additional time to complete installation does not exceed three hundred sixty days after issuance of the permit.

(2) If divisions (1)(a) and (b) of this section cannot be met, the permit shall be void unless the municipality grants an extension in writing to the operator.

(G) Small Cell Facility and Wireless Support Structure activities not requiring consent.

(1) Municipality consent shall not be required for either of the following activities conducted in the right-of-way:

(a) Routine maintenance of wireless facilities;

(b) The replacement of wireless facilities with wireless facilities that are consistent with the municipality's current design requirements and guidelines and that are either:

1. Substantially similar to the existing wireless facilities; or

2. The same size or smaller than the existing wireless facilities.

(2) The municipality may require a Right-of-Way Construction Permit for any activity described in division (1) of this section and for any activity for which consent is authorized herein and in accordance with state and federal law if such work involves blocking any access to the right of way or roadways, including the use of traffic control measures required by the municipality or other relevant laws.

### **97.06.05 DESIGN GUIDELINES**

(A) The Mayor shall promulgate detailed Design Guidelines with objective, technically feasible criteria applied in a non-discriminatory manner that reasonably match the aesthetics and character of the immediate area regarding all of the following, which the municipality shall consider in reviewing an application:

(1) The location of any ground-mounted small cell facilities;

(2) The location of a small cell facility on a wireless support structure;

(3) The appearance and concealment of small cell facilities, including those relating to materials used for arranging, screening, and landscaping;

(4) The design and appearance of a wireless support structure.

(B) The Design Guidelines may provide examples of small cell facilities preferences including visual depictions.

(C) The provisions in this section shall not limit or prohibit the Mayor's discretion to promulgate and make publicly available other information, materials or requirements in addition to, and separate from, Design Guidelines so long as the information, materials, or requirements do not conflict with state or federal law.

(D) The Mayor shall have authority to update or supplement the Design Guidelines to address relevant changes in law, technology, or administrative processes.

(E) Where the municipality has designated an underground corridor, placement of any support structure shall be in harmony and of the same general material and appearance as other structures. Overhead service of any type is prohibited in an underground corridor.

(F) The Mayor shall provide 30 calendar-day notice to every utility prior to implementing Design Guidelines and prior to implementing any changes to established Design Guidelines.

### **97.06.06 STANDARD CONDITIONS OF PERMIT APPROVAL**

(A) Standard conditions of approval. Permission to site small cell facilities and wireless support structures in the right-of-way shall be conditioned on compliance with the standard conditions of approval provided in this ordinance. The Mayor may add or modify conditions of approval as necessary or appropriate to protect and promote the public health, safety, and welfare.

(B) Small Cell Facility Permit duration. The municipality's approval term of an attachment to a wireless support structure shall be for a period of not less than ten years, with presumption of renewal for successive five-year terms, subject to terms providing for early termination or nonrenewal for cause or by mutual agreement and unless otherwise agreed to by



both the operator and the municipality, except for generally applied permitting to safeguard the public health, safety, and welfare. An operator may remove its small cell facilities at any time subject to applicable permit requirements and may stop paying annual charges or fees.

(C) Compliance with all applicable laws.

(1) Permittee shall at all times maintain compliance with all applicable federal, state and local laws, regulations, ordinances, or other rules.

(2) If state or federal standards and regulations are amended, the owners of the small cell facilities and/or wireless support structures governed by this section shall bring any facilities and/or structures into compliance with the revised standards and regulations within six months of the effective date of the standards and regulations, unless a different compliance schedule is mandated by the regulating agency. Failure to bring small cell facilities and/or wireless support structures into compliance with any revised standards and regulations shall constitute grounds for removal at the owner's expense.

(D) Inspections; emergencies. The municipality or its designee may inspect small cell facilities and wireless support structures in the right-of-way upon reasonable notice to the permittee. The permittee shall cooperate with all inspections. The municipality reserves the right to support, repair, disable, or remove any elements of the facility in emergencies or when the facility threatens imminent harm to persons or property.

(E) Relocation or adjustment as requested by municipality. If requested by the municipality, in order to accomplish construction and maintenance activities directly related to improvements for the health, safety, and welfare of the public, an operator shall relocate or adjust its facilities within the right-of-way at no cost to the municipality, as long as such request similarly binds all users in or on such public way. Such relocation or adjustment shall be completed in accordance with law.

(F) Contact information for responsible parties. Permittee shall at all times maintain accurate contact information for all parties responsible for the facility, which shall include a phone number, street mailing address, and email address for at least one natural person. All such contact information for responsible parties shall be provided to the municipality.

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

(H) Interference with public safety radio services. In occupying or using the right-of-way, no person shall unreasonably compromise the public health, safety, and welfare. Permittees shall comply with the applicable provisions of 47 CFR §§ 22.970-973 and 47 CFR §§ 90.672-675 respectively, which define unacceptable interference, state the obligations of licensees to abate unacceptable interference, provide interference resolution procedures, and set forth a discretionary information exchange between public safety licensees and other licensees.

(I) Adverse physical impacts on adjacent properties. Permittee shall undertake all reasonable efforts to avoid undue adverse physical impacts to adjacent properties and/or uses that may arise from the construction, operation, maintenance, modification, or removal of the small cell facility and/or wireless support structure.

(J) Good condition required. Small cell facilities and wireless support structures shall at all times be kept and maintained in good condition, order, and repair by qualified maintenance and construction personnel, so that the same shall not menace or endanger the health, safety or welfare of any person or property. Examples of poor condition include, but are not limited to: peeling, flaking, or blistered paint; rust or other visible deterioration of materials; or failure to maintain required landscape screening. All small cell facilities and wireless support structures shall be subject to generally applicable property maintenance requirements and to visual inspection by code enforcement officers. Notices of violation shall be served as provided in the Property Maintenance Code. The notice shall provide that the operator has 20 days from date of service of the notice to appeal the notice or remedy it. If that time expires without appeal or remedy to the satisfaction of the Municipality, the Municipality may remedy the violation and charge the costs of said remedy to the operator.

(K) Graffiti abatement. Permittee shall remove any graffiti on the small cell facility at permittee's sole expense.

(L) RF exposure compliance. All facilities must comply with all standards and regulations of the FCC and any other state or federal government agency with the authority to regulate RF exposure standards.

(M) Relocation for public improvement projects. Permittee shall remove and relocate the permitted small cell facility and/or wireless support structure at permittee's sole expense to accommodate construction of a public improvement project by the Municipality.

(N) Removal of small cell facilities if use discontinued or abandoned.

(1) In the event that the use of a small cell facility and/or wireless support structure is discontinued, the owner or operator of the small cell facility and/or wireless support structure shall submit a request for consent to remove the wireless support structure or small cell facility, to the municipality of its intent to discontinue use and the date when the use shall be discontinued. If the small cell facility and/or wireless support structure is not removed within 365 days of discontinued use, the small cell facility and/or wireless support structure shall be considered abandoned and the municipality may remove it at the owner's expense.

(2) Small cell facilities and wireless support structures determined by the municipality to be abandoned without notice from the owner may be removed by the municipality at the owner's expense to ensure the public health, safety, and welfare.

(3) The Municipality reserves the right to inspect and to request information from the operator, which the operator shall provide following such request, as to the continued use of the operator's small cell facility(ies) or wireless support structure(s) within the right-of-way.

(O) Small cell structures are required to otherwise comply with section 97.14 of this ordinance.

### **97.06.07 SAFETY REQUIREMENTS**

(A) Prevention of failures and accidents. Any person who owns a small cell facility and/or wireless support structure sited in the right-of-way shall at all times employ ordinary and reasonable care and install and maintain in use industry standard technology for preventing failures and accidents which are likely to cause damage, injury, or nuisance to the public.

(B) Compliance with fire safety and FCC regulations. Small cell facilities, wires, cables, fixtures, and other equipment shall be installed and maintained in substantial compliance with the requirements of the National Electric Code, all FCC, state, and local regulations, and in such manner that will not interfere with the use of other property.

(C) Surety bond or equivalent financial tool for cost of removal. All owners must procure and provide to the municipality a bond, or must provide proof of an equivalent financial mechanism, to ensure compliance with this section. The bond or equivalent financial method must specifically cover the cost of removal of unused or abandoned small cell facilities and/ or wireless support structures or damage to municipality property caused by an operator or its agent of each small cell facility and/ or wireless support structure in case the municipality has to remove or pay for its removal. Acceptable alternatives to a bond include self-insurance, a funds set-aside and a letter of credit.

### **97.06.08 RECOVERY OF COSTS**

(A) Application processing fee. For processing an application for consent, the municipality may charge a fee for each small cell facility and wireless support structure requested as prescribed under section 4939.0316 of the Ohio Revised Code and as set in a separate municipal fee ordinance, which shall be made available by the municipality. The municipality may adjust this fee ten per cent every five years, rounded to the nearest five dollars.

(B) Annual collocation fee. For reimbursement for operator's attachment of small cell facilities to wireless support structures owned or operated by the municipality and located in the right-of-way, the municipality may charge an annual fee as prescribed in 4939.022 of the Ohio Revised Code and as set in a separate municipal fee ordinance, which shall be made

available by the municipality. The municipality may adjust this fee ten per cent every five years, rounded to the nearest five dollars.

(C) Construction Permits shall be required in accordance with Section 97.13 of this ordinance and as set in a separate municipal fee ordinance that shall be updated annually.

(D) Tax liabilities and assessments not applicable. Placement of small cell facilities in the right-of-way or attachment of small cell facilities to a wireless support structure and any fees associated therewith shall not subject the municipality to any state or local tax liabilities or assessments.

**97.07            REGISTRATION TERM.**

The term of each Certificate of Registration granted under Chapter 97 shall be valid from the date of issuance until such time as it is revoked, terminated, has lapsed or is properly amended.

**97.08            RESERVED**

**97.09            CIVIL FORFEITURES.**

In addition to any other penalties set forth in this Chapter 97 and the remedy of specific performance, which may be enforced in a court of competent jurisdiction, the Municipality Administrator may assess an additional penalty of civil forfeiture for failure to comply with any provision of Chapter 97. Such penalty shall be a monetary sum, payable to the Municipality, in the amount of Five Hundred Dollars (US \$500.00) per twenty-four (24) hour day of violation and any subsequent portion of a day less than twenty-four (24) hours in length. Prior to assessing said penalty, the Municipality will provide written notice to the Provider detailing the failure to comply with a specific provision of Chapter 97. Such notice shall also indicate that said penalty shall be assessed in fifteen (15) calendar days subsequent to the date of receipt if compliance is not achieved. If a Provider desires to challenge such penalty, Provider must request a public hearing before the Mayor within ten (10) days of service of the notice. Such public hearing shall be held within thirty (30) days of the Provider's request. If Provider requests such hearing before the Mayor, such penalty shall be temporarily suspended. However, if, after the public hearing, the Mayor determines that Provider failed to comply with the specific provision(s) of Chapter 97 referenced in the notice, such penalty shall be assessed starting with the fifteen (15) calendar days after receipt of the notice referenced in this section and continuing each day thereafter until compliance is achieved. The determination of the Mayor shall be final. The Provider may file an administrative appeal pursuant to O.R.C. Chapter 2506. The penalty shall continue to accrue during the appeal unless the Provider obtains a stay and posts a supersedeas bond pursuant to O.R.C. 2505.09 or the Provider comes into full compliance with Chapter 97.

**97.10            TERMINATION OF CERTIFICATE OF REGISTRATION.**

(A) Default Notice Provided.

The Municipality through its Mayor shall give written notice of default to a Provider if the Municipality, in its sole discretion, determines that a Provider has:

(1) Violated any material provision or requirement of the issuance or acceptance of a Certificate of Registration or any Law and failed to cure as may be required; or

(2) Attempted to evade any provision of the issuance of a Certificate of Registration or the acceptance of it; or

(3) Practiced any fraud or deceit upon Municipality; or

(4) Made a material misrepresentation of fact in the Application for a Certificate of Registration.

(B) Cure Required.

If a Provider fails to cure a default within thirty (30) calendar days after such notice is served by the Municipality then such default shall be a material default and Municipality may exercise any remedies or rights it has at Law or in equity to terminate the Certificate of Registration. If the Mayor decides there is cause or reason to terminate, the following procedure shall be followed:

(1) Municipality shall serve a Provider with a written notice of the reason or cause for proposed termination and shall allow a Provider a minimum of fifteen (15) calendar days to cure its breach.

(2) If the Provider fails to cure within fifteen (15) calendar days, the Municipality Engineer may declare the Certificate of Registration terminated.

(3) The Provider shall have ten (10) calendar days to appeal the termination to the Municipality Council. All such appeals shall be in writing. If the Municipality Council determines there was not a breach, then the Municipality Council shall overturn the decision of the Mayor. Otherwise, the Municipality Council shall affirm the decision of the Mayor to terminate. The determination of the Municipality Council shall be final.

**97.11 UNAUTHORIZED USE OF PUBLIC RIGHTS OF WAY.**

(A) No Use Without Authorization.

No Person shall use the Rights of Way to operate a System that has not been authorized by the Municipality in accordance with the terms of Chapter 97 and been issued a Certificate of Registration.

(B) No Use Without Certificate of Registration.

No Person shall place or have placed any Facilities in, on, above, within, over, below, under, or through the Rights of Way, unless allowed under Chapter 97 or having been issued a Certificate of Registration.

(C) Unauthorized Use a Violation.

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 97 continues shall constitute a distinct and separate offense.

(D) Distinct and Separate Offense.

No Person shall fail to comply with the provisions of Chapter 97. Each and every failure to comply shall be deemed a distinct and separate offense. Each and every day any violation of Chapter 97 continues shall constitute a distinct and separate offense.

(E) Penalty Assessed.

The violation of any provision of Chapter 97 shall be unlawful and a misdemeanor offense. The penalty for any violation of Chapter 97 shall be as provided in C.O. § 97.99.

**97.12 ASSIGNMENT OR TRANSFER OF OWNERSHIP AND RENEWAL.**

(A) Assignment or Transfer Approval Required.

A Certificate of Registration shall not be assigned or transferred, either in whole or in part, other than to an Affiliate, without the prior written consent of the Municipality, which consent shall not be unreasonably withheld. Any assignment or transfer of Certificate of Registration, including an assignment or transfer by means of a fundamental corporate change, requires the written approval of the Municipality.

(B) Procedure to Request Assignment or Transfer Approval.

The parties to the assignment or transfer of Certificate of Registration shall make a written request to the Municipality for its consent in the form of the Certificate of Registration Application. The Municipality shall reply in writing within sixty (60) days of actual receipt of the request and shall indicate its approval of the request or its determination that a public hearing is necessary. Municipality may conduct a public hearing on the request within thirty (30) days of such determination if it determines that a sale or transfer of the Certificate of Registration adversely affects the Municipality.

(C) Notice and Hearing.

Notice of a hearing shall be given fourteen (14) days prior to the hearing by publishing notice thereof once in a newspaper of general circulation in the Municipality. The notice shall contain the date, time and place of the hearing and shall briefly state the substance of the action to be considered by Municipality.

(D) Review by Municipality.

The Municipality will review the qualifications (including, but not limited to legal, technical and financial where appropriate) of the proposed assignee or transferee and terms of the

existing Certificate of Registration. Municipality will make its decision in writing setting forth any conditions for assignment or transfer. Within one hundred and twenty (120) days of actual receipt of the request for assignment or transfer, the Municipality shall approve or deny such assignment or transfer request in writing.

(E) Fundamental Corporate Change.

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.

(F) Certificate of Registration and Assignee/Transferee Replacement Issuance Required.

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

(G) Not a Transfer.

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 Certificate of Registration.

**97.13**

**CONSTRUCTION PERMITS.**

(A) Construction Permit Requirement.

Except as otherwise provided in the Code, no Person may Construct in any Rights of Way without first having obtained a Construction Permit as set forth below. This requirement shall be in addition to any requirement set forth in other sections of code or law pertaining to zoning, building or construction standards.

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

(2) A Construction Permit is valid only for the dates and the area of Rights of Way specified in the Construction Permit.

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

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

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

(4) Original Construction Permits issued pursuant to C.O. § 97.13 shall, when possible, be conspicuously displayed at all times at the indicated work site and shall be available for inspection by Inspectors and authorized Municipality personnel. If the original Construction Permit involves work conducted simultaneously at multiple locations, each location shall display a photocopy of the original Construction Permit. If the original Construction Permit is not conspicuously displayed at the indicated work site, then upon request, the original Construction Permit must be produced within twelve (12) hours or the first earliest Business Hour, whichever is later. For purposes of this Section, Business Hour shall mean the hours between 8 a.m. and 5 p.m. during a Business Day.

(B) Construction Permit Applications.

(1) Application for a Construction Permit shall be made to the Municipality Administrator.

(2) All 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 Certificate of Registration or proof that the Applicant has written authority to apply for a Construction Permit on behalf of a party that has been issued a Certificate of Registration; and

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

(c) A Municipality 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; and

(d) If the Applicant wants to install new Facilities, if specifically requested by the Municipality Engineer, evidence that there is no surplus space and evidence that the Applicant has received an appropriate Permit and is adhering to the Municipality’s Rules and Regulations; and

(e) If Applicant is proposing an above ground installation on existing poles within the Rights of Way, the applicant shall provide Credible information satisfactory to the Municipality to sufficiently detail and identify:

(i) the size and height of the existing poles; and

(ii) based on the facilities currently on the existing poles and if specifically requested by the Municipality Engineer, the excess capacity currently available on such poles before installation of Applicant’s Facilities; and

(iii) based on the facilities currently on the existing poles and if specifically requested by the Municipality Engineer, the excess capacity for like or similar Facilities that will exist on such poles after installation of Applicant’s Facilities; and

(f) If the Applicant proposes to install new poles within the Rights of Way, the Applicant shall provide:

(i) Credible evidence if specifically requested by the Municipality Engineer, satisfactory to the Municipality that there is no excess capacity on existing poles or in existing underground systems; and

(ii) Credible evidence to the Municipality Engineer that it is not financially and/or technically practicable for the Applicant to make an underground installation or locate its facilities on existing poles; and

(iii) the location, size, height, color, and material of the proposed poles; and

(iv) Credible evidence satisfactory to the Municipality that the Applicant will adhere to all the applicable Laws concerning the installation of new poles.

(v) If requested by the municipality a utility engineering study that satisfies the requirements of C.O. § 97.14 and meets any additional plan submittal requirement of the Engineer.

(g) If Applicant is proposing an underground installation in existing ducts or conduits within the Rights of Way, the Applicant shall provide Credible information satisfactory to the Municipality to sufficiently detail and identify:

(i) based on the existing facilities, the excess capacity for like or similar facilities currently available in such ducts or conduits before installation of Applicant's Facilities; and

(ii) based on existing facilities, the excess capacity for like or similar facilities that will exist in such ducts or conduits after installation of Applicant's Facilities.

(h) If Applicant is proposing an underground installation within new ducts or conduits to be constructed within the Rights of Way, the Applicant must provide a utility engineering study that satisfies the requirements of C.O. § 97.14 and meets any additional plan submittal requirements of the Municipality Engineer and also Credible information satisfactory to the Municipality 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 Municipality for:

(i) Permit Fees;

(ii) any loss, damage, or expense suffered by the Municipality as a result of Applicant's prior Construction in the Rights of Way or any Emergency actions taken by the Municipality.

(iii) any Certificate of Registration issued to the Applicant/Person whose Facilities are being Constructed.

(iv) any other money due to the Municipality from the Applicant/Person whose Facilities are being Constructed.

(k) When a Construction Permit is requested for purposes of installing additional Systems or any part of a System, the posting of a Construction Bond and Removal Bond, acceptable to the Municipality and subject to Chapter 97, for the additional Systems or any part of a System is required.

(l) Upon request, the Municipality Engineer may modify or waive the information requirements if they are not necessary in evaluating the Construction Permit application. The Municipality Engineer may request applicable and pertinent additional information if it is necessary in evaluating the Construction Permit application.

(C) Issuance of Permit; Conditions.

(1) If the Municipality determines that the Applicant has satisfied the requirements of Chapter 97 and the Construction Permit process, the Municipality shall issue a Construction Permit subject to the provisions of C.O. § 97.13(C)(2).

(2) The Municipality 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 Rights of Way, to protect the property and safety of other users of the Rights of Way, and to minimize the disruption and inconvenience to the traveling public.

(D) Construction Permit Fees.

(1) The Municipality shall annually calculate Construction Permit Fees and appropriately revise any prior year's Construction Permit Fees based upon the formula and calculations described in C.O. § 97.13(D). Construction Permit Fees shall remain in effect until the Municipality's next annual modification of the Construction Permit Fees.

(2) The Municipality, during the first quarter of each year, shall calculate all the actual and incurred Construction Permit issuance, inspection, oversight, enforcement and regulation costs for the previous calendar year including the value of the

degradation and reduction in the useful life of the Rights of Way that will result from Construction that takes place therein. "Degradation and the reduction in the useful life" for the purpose of this Section means the accelerated depreciation of the Rights of Way caused by Construction in or disturbance of the Rights of Way, resulting in the need to reconstruct or repair such Rights of Way earlier than would be required if the Construction did not occur.

(3) The Municipality, shall total all the Construction Permit Fee receipts received in accordance with the scheduled fees required by the prior year's Construction Permit Fees for the previous calendar year.

(4) The Municipality shall divide the calculated costs referenced in C.O. § 97.13(D)(2) by the total Construction Permit Fees received as referenced in C.O. § 97.13(D)(3) to arrive at a numerical factor representing the previous years cost versus receipts analysis.

(5) The Municipality shall multiply the then currently codified Construction Permit Fees by the numerical factor as referenced in C.O. § 97.13(D)(4) to calculate revised Permit Fees for the new calendar year .

(6) The Municipality shall act, in accordance with the results of C.O. § 97.13(D)(5), to codify new annual Permit Fees by separate legislation enacted by Council by appropriately increasing or decreasing the previous years Permit Fees. Revised Permit Fees shall be effective upon passage. Any Permit requests pending on the date of any annual Permit Fee modification shall be subject to all new Permit Fees as modified.

(7) Except as provided in subsection C.O. § 97.13(D)(8), no Construction Permit shall be issued without payment of Construction Permit Fees except to the Municipality which shall be exempt. Construction Permit Fees that were paid for a Permit that the Municipality has revoked due to breach and in accordance with the terms of C.O. § 97.10 or C.O. § 97.16(E) are not refundable.

(8) The Mayor may permit a Provider to make quarterly or annual payments of Construction Permit Fees based upon the Provider's financial condition and past payment history. The quarterly or annual payments shall be due and payable within thirty (30) days of invoicing by the municipality. The Mayor may revoke this permission due to a change in financial condition, late payment, or other just cause.

(E) Joint Applications.

Applicants are encouraged to submit joint Applications for Construction Permits to work in the Rights 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.

**CONSTRUCTION, RELOCATION AND RESTORATION.****(A) Utility Engineering Study Required.**

(1) Prior to commencement of any initial Construction, extension, or relocation of Facilities in the Rights of Way, except for repair, maintenance or replacement with like Facilities or relocations requested or caused by a third party (excluding the Municipality) or another Permittee, a Permittee shall conduct a utility engineering study on the proposed route of Construction expansion or relocation if requested by the Municipality Engineer. Where such Construction and/or relocation is requested or caused by a third party, every Permittee located within the Rights 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 Municipality 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 approximate 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, 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 Rights of Way along the proposed System route. Upon request of the Municipality Engineer, a Permittee shall also record and identify the general location of all other Facilities in the Rights of Way along the proposed System route. For the purposes of this Section, general location shall mean the alignment of other Facilities in the Rights of Way, but shall not necessarily mean the depth of other Facilities in the Rights of Way.

(d) Where the proposed location of Facilities and the location of existing Underground Facilities appear to conflict on the plans drafted in accordance with C.O. § 97.14(A)(1)(d), 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. Unless waived by the Municipality Engineer, a Permittee shall not excavate more than a Twelve (12) inch hole in the Rights of Way to complete this task for each apparent conflict. Any surfaces damaged shall be immediately repaired by the Permittee. A minimum of two (2) Working Days notice shall be provided to the Municipality prior to performing these investigations.

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

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

(B) Copy to Municipality.

Upon completion of the tasks described in C.O. § 97.14(A), the Construction Permittee shall submit, if necessary labeled in accordance with the requirements of C.O. § 97.06(B), the proposed System route maps and Construction Plans, with the results of the utility engineering study, in the most advanced format (including, but not be limited to electronic and/or digital format) then currently being used by the Provider that is then currently capable of technologically being read (or readily converted to a readable form) by the Municipality. The mapping data is only required for the Municipality to reasonably determine the location of the Provider's facilities in the Rights of Way. The Provider shall supply the mapping data on paper if the Municipality Engineer determines that the format currently being used by the Provider is not capable of being read by the Municipality.

(C) Qualified Firm.

All utility engineering studies conducted pursuant to this section shall be performed by the Permittee if in the discretion of the Municipality Engineer the Construction Permittee is qualified to complete the project itself, alternatively utility engineering studies shall be performed by a firm specializing in utility engineering.

(D) Cost of Study.

The Permittee shall bear the cost of compliance with C.O. § 97.14(A) – (C).

(E) Construction Schedule.

Unless otherwise provided for in Chapter 97 or in the Rules and Regulations, or unless the Municipality Engineer 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 Municipality not less than five (5) Working Days before commencing any work in or about the Rights of Way, and shall further notify the Municipality not less than two (2) Working Days in advance of any excavation in the Rights of Way. This Section shall apply to all situations with the exception of circumstances under C.O. § 97.16(D)(1) (Emergency Situations) and C.O. § 97.15 (Minor Maintenance).

(F) Location of Facilities

(1) The placement of new Facilities and replacement of old Facilities, either above ground or underground, shall be completed in conformity with applicable Laws and the Municipality's Rules and Regulations. Detailed plans and applicable specifications shall be submitted to the Municipality for review and approval prior to

construction of any Facilities except those that are categorized as “Minor Maintenance” issues as per C.O. § 97.15 herein.

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

(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 Rights 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, or microtunneling of pavement, driveways, and other sensitive topographic areas. In addition, all cable, wire or fiber optic cable installed in the subsurface Rights of Way pursuant to Chapter 97 may be required to be installed in conduit, and if so required, no cable, wire or fiber optic cable may be installed pursuant to Chapter 97 using "direct bury" techniques.

(H) Special Exceptions.

The Municipality may grant a special exception to the requirements of C.O. § 97.14(F) and C.O. § 97.14(G) if a Permittee, upon application, demonstrates with written evidence that:

(a) The exception will not create any threat to the public health, safety or welfare.

(b) Permittee demonstrates that the increased economic burden and the potential adverse impact on the Permittee's Construction schedule resulting from the strict enforcement of the requirement actually or effectively inhibits the ability of the Permittee to provide Services in the Municipality.

(c) The Permittee demonstrates that the requirement unreasonably discriminates against the Permittee in favor of another Person.

(d) The requirements requested by the Municipality herein create an unreasonable economic burden for the Permittee that outweighs any potential benefit to the Municipality.

(I) Relocation of Facilities.

(1) A Provider shall as promptly as reasonably possible and at its own expense, permanently remove and relocate its Facilities in the Rights of Way whenever the Municipality finds it necessary to request such removal and relocation. In instances where the Municipality requests removal and/or relocation, the Municipality shall waive all applicable Construction Permit Fees. Upon removal and/or relocation, the Provider shall restore the Rights of Way to the same or better condition it was in prior to said removal or relocation. If existing poles are required to be removed and/or relocated, then the existing poles will be replaced with poles of the same or similar size. In accordance with Law, the Municipality may request relocation and/or removal in order to prevent unreasonable interference by the Provider's Facilities with:

(a) A public improvement undertaken or approved by the Municipality.

(b) When the public health, safety, and welfare requires it, or when necessary to prevent interference with the safety and convenience of ordinary travel over the Rights of Way.

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

(2) Notwithstanding the foregoing, a Provider who has Facilities in the Rights of Way subject to a vacation or narrowing that is not required for the purposes of the Municipality, shall have a permanent easement in such vacated portion or excess portion in conformity with O.R.C. 723.04.01.

(3) If, in the reasonable judgment of the Municipality, a Provider fails to commence removal and/or relocation of its Facilities as designated by the Municipality, within thirty (30) days after the Municipality's removal order, or if a Provider fails to substantially complete such removal, including all associated repair of the Rights of Way of the Municipality, within twelve (12) months thereafter, then, to the extent not inconsistent with applicable Law, the Municipality shall have the right to:

(a) Declare that all rights, title and interest to the Facilities belong to the Municipality 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 Provider in, on, over or under the Rights of Way of the Municipality at Provider's cost and expense, by another Person; however, the Municipality shall have no liability for any damage caused by such action and the Provider shall be liable to the Municipality for all reasonable costs incurred by the Municipality in such action; and



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

(J) Pre-Excavation Facilities Location.

(1) Before the start date of any Rights of Way excavation, each Provider 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.

(2) All Providers shall 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.

(K) Rights of Way Restoration.

(1) The work to be done under the Permit, and the Restoration of the Rights 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 Rights of Way due to unreasonable inclement weather conditions, the Permittee shall provide interim surface restoration as directed by the Engineer, and complete the restoration of the Rights of Way as soon as weather conditions make it possible to do so and upon said completion notify the Municipality.

(2) In approving an Application for a Construction Permit, the Municipality may choose either to have the Permittee restore the Rights of Way or alternatively to restore the Rights of Way itself if the Permittee has in the past not abided by requirements of Chapter 97.

(3) If the Municipality allows a Permittee to restore the Rights of Way, the Permittee may at the time of Application for a Construction Permit be required to post a Construction Bond in an amount submitted by the Permittee with a detailed cost breakdown to the Municipality Engineer for approval that is sufficient to cover the cost of restoring the Rights of Way to its approximate pre-excavation condition. If, twelve (12) months after completion of the Restoration of the Rights of Way, the Municipality determines that the Rights 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 Municipality. The Municipality 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 Municipality 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 Rights of Way; the traffic volume carried by the Rights of Way; the character of the neighborhood surrounding the Rights of Way; the pre-excavation condition of the Rights of Way; the remaining life-expectancy of the Rights 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 Rights of Way that would otherwise result from the excavation, disturbance or damage to the Rights of Way; and the likelihood that the particular method of Restoration would be effective in slowing the depreciation of the Rights of Way that would otherwise take place. Methods of Restoration may include, but are not limited to, patching the affected area, replacement of the Rights 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 Rights of Way affected by the work.

(5) By restoring the Rights 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 Mayor, correct all Restoration work to the extent necessary using the method required by the Municipality Engineer. Weather permitting, said work shall be completed within five (5) calendar days of the receipt of the notice from the Mayor, unless otherwise extended by the Mayor.

(6) If the Permittee fails to restore the Rights of Way in the manner and to the condition required by the Municipality, or fails to satisfactorily and timely complete all repairs required by the Municipality, the Municipality, at its option, may do such work. In that event, the Permittee shall pay to the Municipality, within thirty (30) days of billing, the Restoration cost of restoring the Rights of Way and any other costs incurred by the Municipality. Upon failure to pay, the Municipality 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 Municipality and/ or another Permittee(s), then the Mayor may reasonably apportion the Restoration responsibility among the Municipality, Providers and/or other Persons.

(L) Damage to Other Facilities.

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

another Provider caused during the Municipality's response to an Emergency occasioned by that Provider's Facilities.

(2) Each Provider shall be responsible for the cost of repairing any Municipality-owned Facilities in the Rights of Way which the Provider or its Facilities damage.

(M) Rights of Way Vacation.

(1) If the Municipality sells or otherwise transfers a Rights of Way which contains the Facilities of a Provider, such sale or transfer shall be subject to any existing easements of record and any easements required pursuant to O.R.C. 723.041.

(N) Installation Requirements.

The excavation, backfilling, Restoration, and all other work performed in the Rights of Way shall be performed in conformance with all applicable Laws, Rules and Regulations, other standards as may be promulgated by the Municipality Engineer.

(O) Inspection.

When the Construction under any Permit hereunder is completed, the Permittee shall notify the Municipality.

(1) The Permittee shall make the Construction site available to the Inspector and to all others as authorized by Law for inspection at all reasonable 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 term and conditions of the Permit and/or Chapter 97.

(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. The order may be served on the Permittee as provided in C.O. § 97.19(B). An order may be appealed to the Municipality Administrator. The decision of the Municipality Administrator may be appealed to the Mayor whose decision shall be final. If not appealed, within ten (10) days after issuance of the order, the Provider shall present proof to the Municipality Administrator that the violation has been corrected. If such proof has not been presented within the required time, the Mayor may revoke the Permit pursuant to C.O. § 97.16(E).

(P) Other Obligations.

(1) Obtaining a 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 Rights of Way pursuant to its Permit, regardless of who performs the work.

(4) No Rights of Way obstruction or excavation may be performed when seasonally prohibited or when conditions are unreasonable for such work, except in the case of an Emergency as outlined in C.O. § 97.16(D)(1).

(5) Permittee shall not obstruct a Rights of Way so that the natural free and clear passage of water through the gutters or other waterways shall be interfered with. The Municipality Engineer may waive this requirement if it is technically or economically unreasonable in the circumstances.

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

(Q) Undergrounding Required.

Any owner of property abutting upon a street or alley where Service Facilities are now located underground and where the Service connection is at the property line, shall install or cause others to install underground any Service delivery infrastructure from the property line to the buildings or other structures on such property to which such Service is supplied. Where not otherwise required to be placed underground by Chapter 97, a Provider shall locate Facilities underground at the request of an adjacent property owner, provided that such placement of Facilities underground is consistent with the Provider's normal construction and operating standards and that the additional costs of such undergrounding over the normal aerial or above ground placement costs of identical Facilities are borne directly by the property owner making the request. A Provider, under any circumstance shall, upon the reasonable request of the Municipality, always use Best Efforts to place Facilities underground. Where technically possible and not economically unreasonable or unsafe (based upon the technology employed and Facilities installed), all Facilities to be installed by a Provider under the Right of Way shall be installed in conduit.

**97.15**

**MINOR MAINTENANCE.**

(A) Right of Way Minor Maintenance Permit Requirement.

Minor Maintenance means: (i) the routine repair or replacement of Facilities with like Facilities not involving Construction and not requiring traffic control (ii) or the routine repair or replacement of Facilities with like Facilities not involving Construction and taking place on thoroughfares and arteries between the hours of 9:00 A.M. and 3:00 P.M.; (iii) or the routine repair or replacement of Facilities with like Facilities not involving construction on all Rights of Ways, other than thoroughfares and arterials, that does not impede traffic; (iv) or Construction other than on thoroughfares and arterials that does not impede traffic and does not involve a pavement cut; or v) minor and/or non-material vegetation management/tree pruning. The Municipality may adopt Rules and Regulations pursuant to C.O. § 97.06(E) that clarify the definition of Minor Maintenance and/or provide a process for a Provider to determine whether particular activity constitutes Minor Maintenance.

(1) Minor Maintenance is allowed without a construction permit.

(B) (2) Right of Way Minor Maintenance Permit Fees.

The Municipality shall not charge a fee for the issuance of the Right of Way Minor Maintenance Permit but may revoke the Right of Way Minor Maintenance Permit as any other Permit may be revoked under this Chapter.

**97.16**

**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 not yet made an Application; or

(2) To any Person who has outstanding debt owed to the Municipality unless payment in full has been placed in an escrow account approved by the Municipality Fiscal Officer and the Municipality Solicitor;

or

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

(4) If, in the discretion of the Municipality Administrator, 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. The Municipality Administrator, in exercising this discretion, shall be guided by the safety and convenience of ordinary travel of the public over the Rights of Way, and by considerations relating to the public health, safety and welfare.

(B) Permissive Denial of Permit.

The Municipality Administrator may deny a Permit in order to protect the public health, safety and welfare, to prevent interference with the safety and convenience of ordinary travel over the Rights of Way, or when necessary to protect the Rights of Way and its users.

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

(a) the extent to which Rights of Way space where the Permit is sought is available; and/or

(b) the competing demands for the particular space in the Rights of Way; and/or

(c) the availability of other locations in the Rights of Way or in other Rights of Way for the proposed Facilities; and/or

(d) the applicability of Chapter 97 or other regulations of the Rights of Way that affect location of Facilities in the Rights of Way; and/or

(e) the degree of compliance of the Provider with the terms and conditions of its Certificate of Registration, Chapter 97, and other applicable ordinances and regulations; and/or

(f) the degree of disruption to surrounding communities and businesses that will result from the use of that part of the Rights of Way; and/or

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

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

(i) whether such Applicant or its agent has failed within the past three (3) years to comply, or is presently not in full compliance with, the requirements of Chapter 97 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; and/or

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

(c) the Municipality Engineer determines it is in the best interests of the Municipality that such an open cut take place.

(C) Discretionary Issuance of Permit.

(1) Notwithstanding the provisions of C.O. § 97.16(A)(1) and C.O. § 97.16(A)(2), the Municipality Administrator may issue a Permit in any case where the Permit is necessary;

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

(b) to allow such customer to materially improve its Service; or

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

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

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

(1) Each Provider shall, as soon as is practicable, immediately notify the Municipality Administrator of any event regarding its Facilities which it considers to be an Emergency. The Provider may proceed to take whatever actions are necessary in order to respond to the Emergency. Within five (5) business days, unless otherwise extended by the Municipality Engineer, after the occurrence or discovery of the Emergency (whichever is later), the Provider 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 97 for any and all actions taken in response to the Emergency. In the event that the Municipality becomes aware of an Emergency regarding a Provider's Facilities, the Municipality shall use Best Efforts to contact the Provider or the System Representative of each Provider affected, or potentially affected, by the Emergency. In any event, the Municipality may take whatever action it deems necessary in order to respond to the Emergency, the cost of which shall be borne by the Provider whose Facilities caused the Emergency.

(2) Except in the case of an Emergency, any Provider who Constructs in, on, above, within, over, below or through a Rights 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 Municipality the fees necessary to correct any damage to the Rights of Way and comply with all of the requirements of Chapter 97.

(E) Revocation of Permits.

(1) Permittees hold Permits issued pursuant to the Code as a privilege and not as a right. The Municipality 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, the following:

- (a) The violation of any provision or condition of the Permit; or
- (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 Municipality or its citizens; or
- (c) Any material misrepresentation of fact in the Application for a Permit; or
- (d) The failure to maintain the required Construction or Removal Bonds and/or insurance; or
- (e) The failure to obtain and/or maintain, when required, a Certificate of Registration; or
- (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 C.O. § 97.14(O)(3).

(2) If the Municipality Administrator determines that the Permittee has committed a substantial breach of a term or condition of any Law or any condition of the Permit, the Municipality Administrator 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 Municipality Administrator 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 Municipality Administrator with a plan, acceptable to the Municipality Administrator, for its correction. Permittee's failure to so contact the Municipality Administrator, 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 Municipality for the Municipality's reasonable costs, including Restoration costs and the costs of collection and reasonable attorneys' fees incurred in connection with such revocation.

**97.17 CONSTRUCTION AND REMOVAL BONDS.**

(A) Construction Bond.

Prior to the commencement of any Construction, a Construction Permittee, excluding the Municipality and the County, shall deposit with the Municipality an irrevocable, unconditional letter of credit and/or surety bond in an amount determined by the Municipality Solicitor 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 Municipality shall serve written notice to the Construction Permittee detailing the Construction default, problem or deficiency. If the Municipality 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 Municipality may attach the letter of credit or surety bond. Upon attachment, written notice shall be served on the Construction Permittee by the Municipality.

(B) Removal Bond.

Upon issuance of a Certificate of Registration and continuously thereafter, and until one hundred twenty (120) days after a Provider's Facilities have been removed from the Rights of Way, (unless the Municipality notifies the Provider that a reasonably longer period shall apply), a Provider shall deposit with the Municipality 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 Municipality shall make all reasonable efforts to allow Provider a period of five (5) calendar days after serving notification in writing to correct or repair any default, problem or deficiency prior to the Municipality attachment of the letter of credit or surety bond regarding the removal of Facilities. Upon attachment, written notice shall be provided to the Provider by the Municipality.

(C) Blanket Bond.

(1) In lieu of the Construction Bond required by C.O. § 97.17(A) and the Removal Bond required by C.O. § 97.17(B), Provider may deposit with the Municipality 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

Municipality 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 Municipality's attachment of the letter of credit or surety bond.

(D) Self Bonding.

Any provider regulated by the Public Utilities Commission of Ohio shall be considered self-bonded and the municipality may use enforcement through the PUCO or courts of competent jurisdiction to enforce the bonding purposes of this ordinance.

(E) Purposes.

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

(a) The faithful performance by the Permittee or Provider of all terms, conditions and obligations of Chapter 97; and

(b) Any expenditure, damage, or loss incurred by the Municipality occasioned by the Permittee or Provider's violation of Chapter 97 or its failure to comply with all rules, regulations, orders, Permits and other directives of the Municipality issued pursuant to Chapter 97; and

(c) The payment of all compensation due to the Municipality, including Permit Fees; and

(d) The payment of premiums (if any) for the liability insurance required pursuant to Chapter 97; and

(e) The removal of Facilities from the Rights of Way pursuant to Chapter 97; and

(f) The payment to the Municipality of any amounts for which the Permittee or Provider is liable that are not paid by it's insurance or other surety; and

(g) The payment of any other amounts which become due to the Municipality pursuant to Chapter 97 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 Municipality of surety's intention to cancel or not renew this bond.

**97.18                    INDEMNIFICATION AND LIABILITY.**

(A)    Municipality Does Not Accept Liability.

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

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

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

(B)    Indemnification.

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

(a)    To the fullest extent permitted by Law, all Providers and Permittees shall, at their sole cost and expense, fully indemnify, defend and hold harmless the Municipality, its elected officials, agents, officers, employees, volunteers and subcontractors from and against any and all lawsuits, claims (including without limitation worker's compensation claims against the Municipality or others), causes of actions, actions, liability, and judgments for injury or damages (including, but not limited to, expenses for reasonable legal fees, costs and expenses assumed by the Municipality in connection therewith); and

(i) Persons or property, in any way arising out of or through the acts or omissions of Provider or Permittee, its subcontractors, agents or employees attributable to the occupation by the Provider or Permittee of the Rights of Way, to which Provider's or Permittee's negligence shall in any way contribute, and regardless of whether the Municipality's negligence or the negligence of any other party shall have contributed to such claim, cause of action, judgment, injury or damage; and

(ii) Arising out of any claim for invasion of the right of privacy, for defamation of person, firm or corporation, or the violation or infringement of any copyright, trademark, trade name, service mark or patent or any other right of any person, firm and corporation by the Provider, but excluding claims arising out of or related to the Municipality's actions; and

(iii) Arising out of Provider or Permittee's failure to comply with the provisions of Law applicable to Provider or Permittee in its business hereunder.

(2) The foregoing indemnification is conditioned upon the Municipality:

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

(b) Affording the Provider or Permittee the opportunity to jointly participate in any compromise, settlement, or other resolution or disposition of any claim or proceeding subject to indemnification; and

(c) Cooperate in the defense of such claim and making available to the Provider or Permittee all pertinent information under the Municipality's control.

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

## **97.19            GENERAL PROVISIONS.**

### **(A)            Reservation of Regulatory and Police Powers.**

The Municipality, by the granting of a Permit or by issuing a Certificate of Registration pursuant to Chapter 97, 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 Municipality under the Constitution and Laws of the United States, State of Ohio or the Municipality to regulate the use of the Rights of Way. The Permittee by its acceptance of a Permit, or Provider by applying for and being issued a Certificate of Registration, 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 Municipality, shall be in full force and effect and subject to the exercise thereof by the Municipality at any time. A Permittee or Provider is deemed to acknowledge that its rights are subject to the regulatory and police powers of the Municipality 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 Municipality pursuant to such powers.

(B) Rules and Regulations.

The Municipality may propose, and the legislative authority may adopt (and from time to time amend) the Rules and Regulations regarding Chapter 97, Construction standards and occupancy requirements of the Right of Way. Such Rules and Regulations shall not materially increase the obligation of any provider hereunder, provided however that none of the following shall in any way be considered a material increase in obligation; the adoption of Rules and Regulations increasing Fees; the requiring of the placement of Facilities in designated portions of the Rights of Way (underground or otherwise); the overbuilding of Facilities; or the requiring of joint-builds. Prior to the adoption or amendment of the Rules and Regulations, the Municipality shall provide written notice and a copy of the proposed language of such adoption or amendment, via electronic mail, to each Provider who holds a current Certificate of Registration. Each Provider shall then have thirty (30) days following the date of the Municipality's mailing to provide written comment regarding the proposed language to the Municipality. At least forty-five (45) days, but not more than sixty (60) days following the date of the Municipality's notification, the Municipality shall schedule and hold a meeting, to make available a forum at which all then current Providers may address any questions, concerns and make reasonable suggestions regarding the proposed new Rules and Regulations to the Municipality. The Municipality Engineer shall, following said meeting and the review of the Providers' comments and suggestions, adopt or amend the Rules and Regulations in a manner that best serves the Municipality, for approval by the legislative authority.

(C) Method of Service.

Any notice or order of the Mayor, Municipality Administrator, Municipality Fiscal Officer, Municipality Council, or Municipality Engineer shall be deemed to be properly served if a copy thereof is:

- (1) Delivered personally; or
- (2) Successfully transmitted via facsimile transmission to the last known fax number of the person to be served or via electronic mail; or
- (3) Left at the usual place of business of the person to whom it is to be served upon and with someone who is 18 years of age or older; or

(4) Sent by certified, preposted U.S. mail to the last known address; or

(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.

(D) Applies to All Providers.

Chapter 97 shall apply to all Providers and all Permittees unless expressly exempted.

(E) Foreclosure and Receivership.

(1) Upon the filing of any voluntary or involuntary petition under the Bankruptcy Code by or against any Provider and/or Permittee, or any action for foreclosure or other judicial sale of the Provider and/or Permittee Facilities located within the Rights of Way, the Provider and/or Permittee shall so notify the Municipality Administrator within fourteen (14) calendar days thereof and the Provider and/or Permittee's Certificate of Registration or Permit (as applicable) shall be deemed void and of no further force and effect.

(2) The Municipality shall have the right to revoke, pursuant to the provisions of the Code, any Certificate of Registration or Permit granted pursuant to Chapter 97, subject to any applicable provisions of Law, including the Bankruptcy Code, one hundred and twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of the Provider and/or Permittee, whether in receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred and twenty (120) days or unless:

(a) Within one hundred and twenty (120) days after election or appointment, such receiver or trustee shall have fully complied with all the provisions of the relevant Certificate of Registration, any outstanding Permit, Chapter 97, and remedied all defaults thereunder; and

(b) Said receiver or trustee, within said one hundred and twenty (120) days, shall have executed an agreement, duly approved by a court having jurisdiction over the Facilities, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of the relevant Certificate of Registration, Permit and Chapter 97.

(F) Choice of Law and Forum.

This Chapter 97 and the terms and conditions of any Certificate of Registration or Permit shall be construed and enforced in accordance with the substantive Laws of the Municipality, State of Ohio and United States, in that order. As a condition of the grant of any Permit or issuance of any Certificate of Registration, unless otherwise required by Law, all disputes shall be resolved in a court of competent jurisdiction in Fairfield County, Ohio.

(G) Force Majeure.

In the event any Person's performance of any of the terms, conditions or obligations required by Chapter 97 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 Provider 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 Municipality 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) Continuing Obligation and Holdover.

In the event a Provider or Permittee continues to operate all or any part of the Facilities after the termination, lapse, or revocation of a Certificate of Registration, such Provider or Permittee shall continue to comply with all applicable provisions of this Chapter and other Laws throughout the period of such continued operation, provided that any such continued operation shall in no way be construed as a renewal or other extension of the Certificate of Registration, nor as a limitation on the remedies, if any, available to the Municipality as a result of such continued operation after the term, including, but not limited to, damages and restitution. Any conflict between the issuance of a Certificate of Registration or of a Permit and any other present or future lawful exercise of the Municipality's regulatory or police powers shall be resolved in favor of the latter.

(J) Appeals.

All appeals provided for by this Chapter and any notification to the Municipality required by this Chapter shall be in writing and sent via certified U.S. mail to the Mayor, Municipality Administrator, Municipality Fiscal Officer, Municipality Council, or Municipality Engineer as specified in this Chapter 97.

(K) Municipality Facilities.

As part of Municipality required standards wherever Rights of Way are under Construction, if deemed advisable and practicable by the Municipality, the Municipality may install all such Facilities deemed necessary to accommodate future Provider needs. Any such installed Facilities shall be Municipality property and may be conveyed to any Person under such terms and conditions as are deemed advisable by the Municipality Council.

(L) Section Headings.

Section headings are for convenience only and shall not be used to interpret any portion of this Chapter.

**97.99** **PENALTIES.**

In addition to any other penalties set forth in this Chapter, and the remedy of specific performance which may be enforced in a court of competent jurisdiction the following penalties shall apply:

(A) Any Person violating the provisions of this Chapter shall be guilty of a misdemeanor for the fourth (4<sup>th</sup>) degree. Each day such violation continued shall be deemed a separate offense.

**END**