

# CITY OF CLAYTON, OHIO

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## RESOLUTIONS AND ORDINANCES

April 19, 2018

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### NEW BUSINESS

### ORDINANCES (FIRST OF TWO READINGS)

#### ORDINANCE NO. O – 04 – 18 – 07

#### AN ORDINANCE AMENDING CLAYTON CODIFIED ORDINANCE SECTION 930.04(a) OF CHAPTER 930 (“UTILITY STRUCTURE STANDARDS”) AND ADOPTING CLAYTON CODIFIED ORDINANCE CHAPTER 901 ENTITLED, “USE OF PUBLIC RIGHTS-OF-WAY, PUBLIC LAND AND PUBLIC EASEMENTS”

**WHEREAS**, upon recommendation of City staff, Chapter 901 to Clayton’s Codified Ordinances relative to use of public rights-of-way, public land and public easements, has been prepared and presented to Council for approval and Section 930.04(a) has been recommended for amendment as indicated below.

**NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF CLAYTON, STATE OF OHIO:**

1. That Section 930.04(a) of the Clayton Codified Ordinances is hereby amended to read as follows (additions in **bold** and deletions in ~~strikethrough~~):

#### **930.04 LOCATION GUIDES.**

- (a) Unless otherwise exempted therefrom by state law, Utility Structures may be placed in the public right-of-way only ~~with prior written approval of the City Director of Community Services.~~ **in accordance with and pursuant to the procedures described in Chapter 901.** ~~In deciding whether to issue such written approval, the Director of Community Services shall consider: whether the issuing of the approval will contribute to the health, safety, and welfare of the City and its citizens; whether issuing of the approval will be consistent with this chapter; the impacts of the proposed location of applicant’s elements on aesthetic and architectural compatibility with the surrounding environment; whether aesthetic and good planning principles have been given due consideration; and that adverse impact on the environment had been minimized in addition to minimizing the adverse aesthetic and visual impacts on the land, property, buildings, and other facilities adjacent to, surrounding, and in generally the same area as the requested~~

~~location, which shall mean using the least visually and physically intrusive elements (including associated screening and vegetation) that is not technologically or commercially impracticable under the facts and circumstances; whether the 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; whether the applicant is delinquent on any taxes or other obligations owed to the City, Montgomery County, Ohio or the State of Ohio; whether the applicant has the requisite financial, managerial, and technical ability to fulfill all the obligations under this chapter and the issuance of the written approval hereunder; and any other applicable law.~~

~~To protect the public health, safety and welfare in recognition of the limitation of space in the Public Right of Way, the Director of Community Service shall have the power to prohibit or limit the placement of new facilities or additional elements of an existing Utility System within a Public Right of Way if there is insufficient space to accommodate all of the requests of persons to occupy and use the Public Right of Way. In making such decisions the Director of Community Services shall strive to the extent possible to accommodate all existing and potential users of the Public Right of Way, but shall be guided primarily by considerations of the public interest, the public's need for the particular utility service, the condition of the Public Right of Way, the time of year with respect to essential utilities, the protection of existing elements of Utility Systems in the Public Right of Way, and the future City plans for public improvements and development projects which have been determined to be in the public interest.~~

2. That the following Chapter 901 of the Clayton Codified Ordinances is hereby approved and adopted:

**CHAPTER 901  
USE OF PUBLIC RIGHTS-OF-WAY, PUBLIC LAND AND PUBLIC EASEMENTS**

**CROSS REFERENCES**

Excavation liability - see Ohio R.C. 723.49 et seq.  
Digging, excavating and piling earth on streets - see Ohio R.C. 5589.10  
Placing injurious material or obstruction in street - see TRAF. 311.01  
Abandoned excavations - see GEN. OFF. 521.03  
Sidewalk obstructions - see GEN. OFF. 521.04  
Sidewalk snow and ice removal - see GEN. OFF. 521.06  
Street closings - see City of Clayton Application for Right-Of-Way Construction Permit

### **901.1 PURPOSE.**

It is the purpose and intent of this Chapter to:

- (a) Manage the occupancy and use of public ways and Rights-of-Way;
- (b) Assure that actual costs incurred by the City in managing the Right-of-Way, including circumstances when a person or persons constructs or installs facilities, or otherwise performs work activity in the City Rights-of-Way are paid by said persons;
- (c) Permit and manage reasonable access to the public Right-of-Way of the City for utility and telecommunications service purposes on a competitively neutral basis;
- (d) Conserve the limited physical capacity of the public Right-of-Way held in trust by the City for the benefit of the public;
- (e) Assure that persons with facilities in the public Right-of-Way comply with the ordinances, rules and regulations of the City; and
- (f) Assure that the City fairly and responsibly protects the public health, safety and welfare.

### **901.02 SCOPE.**

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

### **901.03 DEFINITIONS.**

For purposes of this Chapter, and the interpretation and enforcement thereof, the following words and phrases shall have the following meanings:

- (a) "Applicant" means any Person who seeks to obtain or renew a Certificate of Registration or Permit.
- (b) "Application" means the process by which an Applicant submits a request to obtain a Certificate of Registration or Permit.
- (c) "Certificate of Registration" means the document that may be issued to a Provider and its unique System that allows Permitting of the Provider and its unique System.
- (d) "City" means the City of Clayton, Ohio
- (e) "City Manager" means the City Manager of the City of Clayton, Ohio or his/her designee.
- (f) "City Property" means and includes all real property owned by the City, other than Public Streets and Utility Easements as those terms are defined herein, and all property held in a proprietary capacity by the City, which are not subject to public way construction permits as provided in this Chapter.
- (g) "Construct" means, but shall not be limited to, to dig, bore, tunnel, trench, excavate, obstruct, install wires, install conduit, install pipes, install transmission lines, install poles, install signs or install Facilities, other than landscaping or 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 Rights of Way.

- (h) "Construction" means, but shall not be limited to, the act or process of digging, boring, tunneling, trenching, excavating, obstructing, installing wires, installing conduit, installing pipes, installing transmission lines, installing poles, installing signs, or installing Facilities, other than landscaping or ornamental plantings in, on, above, within, over, below, under or through any part of the Rights of Way. "Construction" shall also include the act of opening and/or cutting into the surface of any paved or improved surface that is part of the Rights of Way.
- (i) "Construction Bond" means a bond posted with the City to ensure proper and complete Construction, replacement and/or repair of a Facility and/or the effected Rights of Way pursuant to a Permit.
- (j) "Construction Cost" means the cost of installation, materials, engineering costs, and other incidental expenses and fees required for the Construction, repair, or replacement of real and/or personal property or Facilities effected by Construction in the Rights of Way.
- (k) "Construction 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.
- (l) "County" means any County providing sewer and water service within the City but excludes contractors, agents or other Persons acting on behalf of said County.
- (m) "Credible" means worthy of being believed.
- (n) "City Engineer" means the City Engineer of the City of Clayton, Ohio or his/her designee.
- (o) "Emergency" means a condition that poses a clear and immediate danger to life, health or safety of a Person, or of a significant loss of real or personal property.
- (p) "Excavate" means to dig into or in any way remove or physically disturb or penetrate any part of the Right-of-Way, except horticultural practices to a depth of less than twelve (12) inches.
- (q) "Facility" or "Facilities" means the plant, equipment and property, including but not limited to, cables, fibers, wires, pipes, conduits, ducts, pedestals, antennae, electronics, poles, mains, plants and other appurtenances located under, on or above the surface of the ground within the Right-of-Way of the City, but does not include boulevard plantings, ornamental plantings, or gardens planted or maintained in the Right of Way between a Person's property and the street edge of pavement.
- (r) "FCC" means the Federal Communications Commission, or any successor thereto.
- (s) "Full" means unable to accommodate any additional Facilities:( 1) In light of applicable standards and using current engineering practices as determined by the City Manager or his/her Designee; or (2) Without negatively impacting the public health, safety and welfare; or (3) Without violating any applicable Laws, Rules or Regulations.
- (t) "In" when used in conjunction with Rights of Way, means in, on, above, within, over, below, under or through a Right of Way.
- (u) "Inspector" means any Person authorized by the City Manager and/or his or her designee to carry out inspections related to the provisions of this Chapter.
- (v) "Law(s)" means any local, state, 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 this Chapter or at any time during the location of, and/or while a Provider's Facilities

are located in the public Rights of Way.

- (w) "O.R.C." means the Revised Code of the State of Ohio.
- (x) "Ohio Utility Protection Service" means the utility protection service as defined in O.R.C. §153.64 and 3781.26 or their statutory successor.
- (y) "Open Video Service" means any video programming services provided by a Person through the use of Rights of Way, which Provider is certified by the FCC to operate an Open Video System pursuant to Sections 651 et. seq. of the Telecommunications Act of 1996 (codified at 47 U.S.C. Title VI, Part V), regardless of the Facilities used.
- (z) "Other Ways" means the highways, streets, alleys, utility easements or other Rights-of-Way with in the City, but under the jurisdiction and control of a government entity other than the City.
  - (aa) "Permit" means a Right-of-Way Permit unless otherwise specified.
  - (bb) "Permit Cost" means all direct, incidental, and indirect costs borne by the City for Permit issuance and Permit oversight.
  - (cc) "Permit Fee" means money paid to the City for a Permit to Construct in the Rights of Way.
  - (dd) "Permittee" or "Permit Holder" means any Person to whom a Right of Way Permit has been granted by the City and not revoked.
  - (ee) "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.
  - (ff) "Provider" means a Person who owns or operates a System and has a valid Certificate of Registration. The City, County and cable television operators operating pursuant to a valid cable franchise shall also be considered Providers.
  - (gg) "PUCO" means the Public Utilities Commission of Ohio as defined in O.R.C. §4901.02.
  - (hh) "Public Street" means any highway, street, alley or other public Right-of-Way for motor vehicle travel under the jurisdiction and control of the City which has been acquired, established, dedicated or devoted to highway purposes.
  - (ii) "Restoration" means the process and the resultant effects by which a Right of Way is returned to a condition as good or better than its condition immediately prior to Construction. Restoration shall occur in accordance with the Rules and Regulations established by the City Manager and/or his or her designee and as amended from time to time.
  - (jj) "Right(s) of Way", Public Way includes all Public Streets and Utility Easements, as those terms are defined, now or hereafter owned by the City and further means the surface and space in, on, above, within, over, below, under or through any real property in which the City has an interest in Law or equity, whether held in fee, or other estate or interest, or as a trustee for the public, including, but not limited to any public street, boulevard, road, highway, freeway, lane, alley, court, sidewalk, parkway, river, tunnel, viaduct, bridge, conduit or any other place, area, or real property used by

or under the legal or equitable control of the City that, consistent with the purposes for which it was dedicated, may be used for the purposes of constructing, operating, repairing or replacing a System. Rights of Way shall not include buildings, parks, or other public property or easements that have not been dedicated to compatible uses, except to the extent the use or occupation of such property is specifically granted in a Permit or approved by Law.

- (kk) "Right(s) of Way Cost" means all direct, incidental and indirect costs borne by the City for management, administration and regulation of the Rights of Way and this Chapter.
- (ll) "Right of Way Permit" means the Permit as specified in § 901.19 et. seq. of the Codified Ordinances which must be obtained before a Person may Construct in, locate in, occupy, maintain, move, or remove Facilities from, in, or on a Rights of Way.
- (mm) "Rule(s) and Regulation(s)" means any rule and/or regulation adopted by the Director of Engineering and Environmental Services.
- (nn) "Service(s)" means the offering of any Service for a fee directly to the public, or to such classes of users as to be effectively available directly to the public.
- (oo) "State" means the State of Ohio.
- (pp) "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.
- (qq) "Surety Fund" means a formal pledge made to secure against loss, damage or default.
- (rr) "System" means any System of conduit, ducts, cables, pipes, wires, lines, towers, antennae wave guides, optic fiber, microwave, or laser beams, and any associated converters, equipment, or Facilities or Utilities designed and constructed for the purpose of producing, receiving, amplifying, delivering or distributing Service within the City.
- (ss) "Systematic Replacement" means the replacement of a series of utility poles or above ground utility equipment which spans a distance of one city block or greater.
- (tt) "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.
- (uu) "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 cumulatively fifty-one percent (51%) or more, 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.
- (vv) "Trenchless Technology" means, but shall 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.

- (ww) "Underground Facilities" means all lines, cables, conduits, pipes, posts, tanks, vaults, wires and any other Facilities which are located wholly or partially underneath Rights of Way.
- (xx) "Unused Facilities" means Facilities located in the Rights of Way which have remained unused for a period of twelve (12) months and for which the Provider is unable to:
  - (1) Provide the City with a Credible plan detailing the procedure by which the Provider intends to begin actively using such Facilities within the next twelve (12) months; or
  - (2) 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
  - (3) That the availability of such Facilities is required by the Provider to adequately and efficiently operate its System.
- (yy) "Utility(ies)" means any water, sewer, gas, drainage, sprinkler, or culvert pipe and any electric power, telecommunication, signal, communication, or cable television conduit, fiber, wire, trackless trolley wires, cable, or operator thereof.
- (zz) "Utility Easement" means any easement owned by the City and acquired, established, dedicated or devoted for public utility purposes.
- (zzz) "Working Day" means any Monday, Tuesday, Wednesday, Thursday, or Friday excluding legal holidays observed by the City. Business Day shall have the same meaning as Working Day.

#### **901.04 RIGHTS OF WAY ADMINISTRATION.**

- (a) Administration. The City Manager shall be the principal City official responsible for the administration of this Chapter except as otherwise provided herein. The City Manager may delegate any or all of the duties hereunder to his or her 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 this Chapter. Any Person owning, operating, or maintaining a System without a Certificate of Registration, including Persons operating under a Permit, license, or franchise issued by the City prior to the effective date of this Chapter, shall apply for and obtain a Certificate of Registration from the City within ninety (90) days of the effective date of this Chapter, unless exempted by Section 901.04 (d). Applications will consist of providing the application information set forth in Section 901.08 et. seq. and as reasonably required by the City Manager and/or his or her designee.
- (c) No Construction Without Certificate of Registration. Following the effective date of this Chapter, 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. For the purposes of this Section only, a person with a System in place at the time of the effective date of this Chapter shall not be considered immediately in violation of this Section, but shall have up to six (6) months from the effective date of this Chapter to obtain a Certificate of Registration.

Whoever violates this section is guilty of a misdemeanor of the third degree.

- (d) Exceptions. The following entities are not obligated to obtain a Certificate of Registration: the City; other Municipalities, the County; resellers of Services that do not own any System or Facilities in the Rights of Way.
- (e) Systems in Place Without a Certificate of Registration. Beginning one year after the effective date of this Chapter, any System or part of a System found in a Right 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 City may exercise any remedies or rights it has, 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 Facilities to be placed in the Rights of Way, the City is not liable for any damages caused thereby to any Provider's Facilities that are already in place. No Provider is entitled to rely on the provisions of this Chapter as creating a special duty to any Provider.

#### **90105 DISCONTINUANCE OF OPERATIONS, ABANDONED AND UNUSED FACILITIES.**

- (a) A Provider who has discontinued or is discontinuing operation of any System in the City shall:
  - (1) Provide information satisfactory to the City that the Provider's obligations for its System in the Rights of Way under this chapter and any other chapters in the Codified Ordinances or other Laws that have been lawfully assumed by another Applicant and/or Provider; or
  - (2) Submit a written proposal to re-use its Facilities in a manner that promotes the City's goals of providing innovative and economic solutions to efficiently and economically utilize a potentially limited Rights of Way capacity. Said proposal must be approved by the City Manager and/or his or her designee; or
  - (3) Submit a written proposal for abandonment of Facilities in place indicating why good engineering practice would support this type of solution. Said proposal must be approved by the City Manager and/or his or her designee; or
  - (4) Completely remove its entire System within a reasonable amount of time and in a manner acceptable to the City; or
  - (5) Submit to the City, in good faith and within a reasonable amount of time, and in accordance with O.R.C. Sections 4905.20 and 4905.21, a proposal for transferring ownership of its Facilities to the City. If a Provider proceeds under this clause, the City may, at its option:
    - i. Purchase the Facilities; or
    - ii. Require the Provider to post a bond in an amount sufficient to reimburse the City for its reasonably anticipated costs to be incurred in removing the Facilities.
- (b) Facilities of a Provider who fails to comply with this Section and which remain Unused Facilities shall be deemed to be abandoned. Abandoned Facilities are deemed



to be a public nuisance. The City may exercise any remedies or rights it has at Law or in equity, including, but not limited to: abating the nuisance; or taking possession of the Facilities and restoring them to a useable condition subject to the finding of the PUCO pursuant to the requirements of O.R.C. Sections 4905.20 and 4905.21; or requiring removal of the Facilities by the Provider or by the Provider's surety. If the City determines to require a Provider to remove Unused Facilities in any Rights of Way, the City shall use reasonable efforts to direct that this removal occur in conjunction with other scheduled excavation of the Rights of Way. If the City abates the nuisance it may take all action necessary to recover its costs to abate said nuisance, including but not limited to, those methods set forth in O.R.C. Section 715.261.

#### **901.06 NATURE OF ISSUANCE.**

A Certificate of Registration shall not convey equitable or legal title in the Rights of Way. A Certificate of Registration is only the nonexclusive, limited right to occupy Rights of Way in the City for the limited purposes and for the limited period stated in the Certificate of Registration and in accordance with Codified Ordinances Chapter 901 and any associated Permit. For those Providers with a valid gas or electric franchise, the provisions of a Certificate of Registration shall be deemed as regulatory in nature and shall not be interpreted to limit the right to occupy the Rights of Way which may have been granted by such franchise.

The right to occupy the Right of Way itself 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 this Chapter. Collocating Providers may file a joint application for a Right of Way Permit. A Certificate of Registration does not excuse a Provider from obtaining appropriate access or pole attachment agreements before collocating its Facilities on Facilities of others, including the City's Facilities. A Certificate of Registration does not prevent a Provider from leasing space in or on the Provider's System, so long as the sharing of Facilities does not cause a violation of Law, including the provisions of this Chapter. A Certificate of Registration does not excuse a Provider from complying with any provisions of this Chapter and other applicable Laws.

#### **901.07 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 City's reasonable request, shall provide copies of such documents to the City. Further, a Certificate of Registration issued pursuant to this Chapter 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 City.

## **901.08 CERTIFICATE OF REGISTRATION APPLICATIONS.**

- (a) Certificate of Registration Applications. To obtain a Certificate of Registration or to obtain a renewal of a Certificate of Registration issued pursuant to this Chapter, an Application must be filed with the City on the form provided by the Zoning/Code Enforcement Department. Each Applicant shall pay a fee, to be determined by the City Manager, to reimburse the City for the actual costs of receiving, processing and granting/denying the Certificate of Registration. Such fee shall be paid within fifteen (15) days of invoice by the City. The Certificate of Registration, if granted, shall not be issued until such fee is paid.
- (b) Application Information. The Applicant shall keep all of the information required in this Section current at all times, provided that Applicant or Provider shall notify the City of any changes to the information required by this section within fifteen (15) days following the date on which the Applicant or Provider has knowledge of any such change and shall notify the City of any changes to other information required by Section 901.08(b) within thirty (30) days following the date on which the Applicant or Provider has knowledge of such change. The information provided to the City at the time of Application shall include, but not be limited to:
- (1) Each Applicant's name, legal status (i.e. partnership, corporation, etc.), street address, and telephone and facsimile numbers.
  - (2) The name, street address, 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 City at all times.
  - (3) A certificate of insurance provided to meet the requirements of this section shall:
    - A. Verify that an insurance policy has been issued to the Applicant by an insurance company licensed to do business in the State of Ohio;
    - B. Verify that the Applicant is insured on an occurrence basis against claims for personal injury, including death, as well as claims for property damage arising out of the: use and occupancy of the Rights of Way by the Applicant, its officers, agents, employees and contractors; and 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, explosion, environmental release, and collapse of property;
    - C. Name the City, its elected officials, officers, employees, agents and volunteers as additional insureds as to whom the comprehensive general liability and completed operation and products liability insurance required herein are in force and applicable and for whom defense will be provided as to all such coverages;

- D. Require that the City be notified thirty (30) days in advance of cancellation of, or coverage changes in, the policy. The liability insurance policies required by this Section shall contain the following endorsement: "It is hereby understood and agreed that this policy may not be diminished in value, be canceled, nor the intention not to renew be stated, until thirty (30) days after receipt by the City, by registered mail, return receipt requested, of a written notice addressed to the City Manager or her/his designee of such intent to cancel, diminish, or not to renew." Within thirty (30) days after receipt by the City of said notice, and in no event later than five (5) days prior to said cancellation, the Provider (or Applicant) shall obtain and provide to the City Manager a certificate of insurance evidencing appropriate replacement insurance policies.
- (4) 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 (\$1,000,000); Annual aggregate: Two million dollars (\$2,000,000)
      - 2. Property damage each occurrence: One million dollars (\$1,000,000); Annual aggregate: Two million dollars (\$2,000,000)
      - 3. Personal Injury Annual aggregate: Two million dollars (\$2,000,000)
    - B. Completed operations and products liability coverages shall be maintained for six (6) months after the termination of or expiration of a Certificate of Registration.
    - C. Property damage liability insurance shall include coverage for the following hazards: E-explosion, C-collapse, U-underground.
  - (5) 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 City Manager or her/his designee. Coverage must be written on an occurrence basis, with the following limits of liability and provisions, or their equivalent:
    - A. Bodily injury each occurrence: One million dollars (\$1,000,000)  
Annual aggregate: Two million dollars (\$2,000,000)
    - B. Property damage Each occurrence: One million dollars (\$1,000,000) Annual aggregate: Two million dollars (\$2,000,000)
  - (6) Additional insurance: The City reserves the right in unusual or unique circumstances to require any other insurance coverage it deems reasonably necessary after review of any proposal submitted by Applicant.
  - (7) Self insurance: Those applicants maintaining at all times a book value in

excess of twenty million dollars (\$20,000,000) may submit a statement requesting to self-insure. If approval to self-insure is granted, Applicant shall assure the City that such self-insurance shall provide the City with no less than would have been afforded to the City by a third party insurer providing Applicant with the types and amounts of coverage detailed in this Section. This statement shall include:

- A. Audited financial statements for the previous year; and
  - B. A description of the Applicant's self-insurance program.
  - C. Listing of any and all actions against or claims made against Applicant for amounts over one million dollars (\$1,000,000) or proof of available excess umbrella liability coverage to satisfy all total current claim amounts above twenty million dollars (\$20,000,000).
- (8) City's examination of, or failure to request or demand, any evidence of insurance in accordance with this Chapter, shall not constitute a waiver of any requirement of this Section and the existence of any insurance shall not limit Applicant's obligations under this Chapter.
  - (9) Documentation that Applicant or Provider maintains standard worker's compensation insurance as required by Law. Similarly, Provider shall require any subcontractor to provide worker's compensation insurance in amounts required by Law for all of the subcontractor's employees.
  - (10) If the Person is a corporation, 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.
  - (11) A copy of the Person's certificate of authority (or other acceptable evidence of authority to operate) from the PUCO and/or the FCC and any other approvals, permits, or agreements as set out in Section 901.07.
  - (12) Upon request of the City, a narrative (or if applicable PUCO/FCC application information) describing applicant's proposed activities in the City including Credible information detailing Applicant's financial, managerial, and technical ability to fulfill Applicant's obligations under this chapter and any on Applicant's proposed activities.
- (c) Criteria for Issuance of a Certificate of Registration. In deciding whether to issue a Certificate of Registration, the City shall consider:
- (1) Whether the issuing of the Certificate of Registration will contribute to the health, safety, and welfare of the City and its citizens;
  - (2) Whether issuing of the Certificate of Registration will be consistent with this Chapter;
  - (3) 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;
  - (4) Whether the Applicant is delinquent on any taxes or other obligations owed to the City or Montgomery County or State of Ohio;
  - (5) Whether the Applicant has the requisite financial, managerial, and technical ability to fulfill all its obligations under this Ordinance and the issuance of a Certificate of Registration; and

- (6) Any other applicable Law.
- (d) Upon the approval of the Certificate of Registration, the Applicant, in order to ensure the full and complete compliance with, and performance under, this Chapter, including any costs, expenses, damages or loss the City pays or incurs because of any failure attributable to the Provider to comply with the codes, ordinances, rules, regulations or permits of the City, shall, in the amount of twenty thousand dollars (\$20,000.00) establish a permanent security fund with the City by depositing the required amount in cash, provide an unconditional letter of credit, or other instrument acceptable to the City, or furnish and file with the City a performance bond in the required amount from a company licensed to do business in the State of Ohio, which such performance bond, security fund, letter of credit or other instrument shall be maintained at the sole expense of the Provider so long as the Provider has Facilities located in the Right-of-Way.
  - (1) Before claims are made against the security fund, performance bond, letter of credit or other instrument, the City shall give written notice to the Service Provider, unless such notice is inconsistent with the terms of the performance bond, letter of credit or other instrument:
    - A. Describing the act, default or failure to be remedied, or the damages, costs or expenses the City has incurred by reason of the Service Providers act or default;
    - B. Providing a reasonable opportunity for the Service Provider to first remedy the existing or ongoing default or failure, if applicable;
    - C. Providing a reasonable opportunity for the Service Provider to pay any monies due the City before the City makes a claim against the performance bond, letter of credit or other instrument; and
    - D. That the Service Provider will be given an opportunity to review the act, default or failure, described in the notice, with the City Manager.
  - (2) Service Providers shall maintain the full value of the performance bond, letter of credit or other instrument regardless of claims against the performance bond, letter of credit or other instrument made by, or paid to, the City.

#### **901.09 REPORTING REQUIREMENTS.**

- (a) Reporting Obligations of Providers. At the time of initial Application and by January 1st of each following year, each Provider shall file a Construction Plan with the City Manager and/or his or her designee. Such Construction Plan shall be provided for all geographical areas requested by the City Manager and/or his or her designee up to and including the entire geographical area of the City. It shall be submitted using a format(s) mutually agreeable to the Provider and the City and shall contain the information determined by the City Manager and/or his or her designee to be necessary to facilitate the coordination and reduction in the frequency of Construction in the Rights of Way. The Construction or maintenance Plan shall include, using the Provider's best efforts, but not be limited to, all currently scheduled and/or anticipated Construction or maintenance for the next calendar

year; if none are scheduled or anticipated then the Plan should so state.

(b) Mapping Data.

- (1) Upon Application for a Certificate of Registration or within ninety (90) days after initial application, a Provider shall provide the City with information regarding the location of its Facilities in the Rights of Way. Following that initial provision of information and upon the reasonable request of the City Manager and/or his or her designee, which request shall not occur more than once annually, every Provider shall provide to the City all location information for all Facilities which it owns or over which it has control and which are located in any Rights of Way. All such information as described above shall be provided for the geographical area (up to and including the entire geographical area of the City) as requested by the City Manager and/or his or her designee with the specificity then currently available to the Provider, and in a format(s) mutually acceptable to the Provider and the City.
- (2) The City Manager and/or his or her designee may in the future adopt specifications and further define the mapping data requirement(s) under this Section. In each instance a Provider shall be served with a copy of the specifications by regular U.S. Mail to the company representative identified in Section 901.08 and in accordance with subsection (b)(2) provided, however, that failure to actually receive such notice shall not in any way effect the validity or enforceability of said specifications.

#### **901.10 TAXES AND ASSESSMENTS.**

To the extent taxes or other assessments are imposed by taxing authorities on the use of City property as a result of a Provider's use or occupation of the Rights of Way, the Provider shall be responsible for payment of such taxes. Such payments shall be in addition to any other fees payable pursuant to this Chapter and shall not be considered an offset to, or in lieu of, the fees and charges listed in this Chapter. By way of example, and not limitation, Permit Fees and fees to obtain space on City-owned poles are not waived and remain applicable.

#### **901.11 OVERSIGHT AND REGULATION.**

- (a) Reports. Upon reasonable request of the City Manager and/or his or her designee, a Provider shall provide the City with a list of any and all material communications, public reports, petitions, or other filings, either received from or submitted to any municipal, county, state or federal agency or official (and any response thereto submitted by or received by a Provider), and any other information or report reasonably related to a Provider's obligations under this Chapter which in any way materially effects the operation of the System or a Provider's representations and warranties set forth herein, but not including tax returns or other filings which are confidential. Upon request, a Provider shall promptly, but in no case later than fifteen (15) business days following the request, deliver to the City a complete copy of any item on said list. Upon the request of the City, a Provider shall promptly submit to the City any information or report reasonably related to a Provider's obligations under this Chapter, its business and operations with respect to the System or its operation, in such form and containing such information as the City shall

specify. Such information or report shall be accurate and complete and supplied within fifteen (15) days.

- (b) Confidentiality. All information submitted to the City that is considered trade secret and/or proprietary information must be clearly marked as such when submitted. The City shall exercise all reasonable protection so as not to publicly disclose to any third party proprietary information unless required by Law.
- (c) Provider's Expense. All reports and records required under this Chapter shall be furnished at the sole expense of a Provider, except as otherwise provided in this Chapter.
- (d) Right of Inspection and Audit. The City's designated representatives shall have the right to inspect, examine, or audit during normal business hours and upon reasonable notice to a Provider under the circumstances, all documents, records, or other information which pertain to a Provider and its operation of a System or its obligation under this ordinance. All such documents shall be made available within the City or in such other place that the City may agree upon in writing in order to facilitate said inspection, examination, or audit provided, however, that if such documents are located outside of the City, then a Provider shall pay the reasonable expenses incurred by the City's designated representatives in traveling to such location. Provider shall also reimburse the City for at least fifty percent (50%) of the total cost incurred by the City for utilizing a third party to assist with or conduct an investigation or audit.

#### **901.12. RESITRATION TERM**

The term of each Certificate of Registration granted or any renewal thereof under this Chapter shall be for five (5) years.

#### **901.13. INDEMNITY.**

Each Certificate of Registration issued under this Chapter shall be under the conditions and contain provisions whereby Providers agree to defend, indemnify and hold City and its agents, officers, elected officials, employees, volunteers, and contractors harmless from and against all damages, costs, losses, or expenses; for the repair, replacement, or restoration of City's property, equipment, materials, structures and Facilities which are damaged, destroyed, or found to be defective as a result of such Provider's acts or omissions; and from and against any and all claims, demands, suits, causes of action, and judgments for: damage to or loss of the property of any Person (including, but not limited to such Provider, its agents, officers, employees and subcontractors, City's agents, officers, elected officials, employees, volunteers, contractors and third parties), arising out of, incident to, concerning or resulting from the act or omissions of such Provider, its agents, employees, and/or subcontractors, in the performance of activities pursuant to such Certificate of Registration, no matter how, or to whom, such loss may occur. In any event, all persons using or occupying the Rights of Way agree to defend, indemnify, and hold the City harmless as set forth above as a condition of their use or occupancy of the Rights of Way. Excepting negligent acts or omissions that are willful and wanton or intentional torts and for which immunity is not provided by the O.R.C. for such acts, omissions or intentional torts. This exception shall not

extend to acts, omissions, or intentional torts occurring as a result of or in response to an Emergency.

#### **901.14 LIQUIDATED DAMAGES.**

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 City Manager and/or his or her designee may assess an additional penalty of civil forfeiture for failure to comply with any provision of this Chapter. Said penalty shall be a monetary sum, payable to the City, in the amount of five hundred dollars (\$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 City Manager and/or his or her designee shall provide written notice to the Provider detailing the failure to comply with a specific provision of this Chapter. Said notice shall indicate that said penalty shall be assessed in fifteen (15) calendar days after service of the notice if compliance is not achieved. If a Provider desires to challenge said penalty, Provider shall request a hearing before the City Manager within ten (10) days of service of the notice. Said hearing shall be held within thirty days of the Provider's request. If Provider requests such hearing before the City Manager, said penalty shall be temporarily suspended. However, if, after the hearing, the City Manager determines that Provider failed to comply with the specific provision of this Chapter referenced in the notice, said penalty shall be assessed starting fifteen (15) calendar days after service of the notice referenced in this Section and continuing for each day thereafter until compliance is achieved. The determination of the City Manager shall be final.

#### **901.15 TERMINATION OF CERTIFICATE OF REGISTRATION.**

- (a) The Director of Public Services and/or his or her designee shall give written notice of default to a Provider if it is determined that a Provider has:
  - (1) Violated any material provision or requirement of the issuance or acceptance of a Certificate of Registration or any Law of the City, state, or federal government; or
  - (2) Attempted to evade any provision or requirement of the issuance of a Certificate of Registration or the acceptance of it; or
  - (3) Practiced any fraud or deceit upon the City; or
  - (4) Made a material misrepresentation of fact in its Application for a Certificate of Registration.
  
- (b) If a Provider fails to cure a default within thirty (30) calendar days after such notice is served by the City then such default shall be a material breach and City may exercise any remedies or rights it has at Law or in equity to terminate the Certificate of Registration. If the Director of Public Services and/or his or her designee decides there is cause or reason to terminate, the following procedure shall be followed:
  - (1) City shall serve a Provider with a written notice of the reason or cause for proposed termination and shall allow a Provider a minimum of ten (10) calendar days to cure its breach.



- (2) If the Provider fails to cure within ten (10) calendar days, the Director of Public Services and/or his or her designee may declare the Certificate of Registration terminated.
- (3) The Provider shall have ten (10) calendar days to appeal the termination to the City Manager. All such appeals shall be in writing. If the City Manager determines there was not a breach, then the City Manager shall overturn the decision of the Director of Public Services. Otherwise, the City Manager shall affirm the decision of the Director of Public Services to terminate. The determination of the City Manager shall be final.

#### **901.16 UNAUTHORIZED USE OF PUBLIC RIGHTS OF WAY.**

- (a) No Person Shall use the Rights of Way to operate a System that has not been authorized by the City in accordance with the terms of this Chapter and been issued a Certificate of Registration.
- (b) No Provider shall place or have placed any Facilities in, on, above, within, over, below, under, or through the Rights of Way, unless allowed under this Chapter or having been issued a Certificate of Registration.
- (c) Each and every unauthorized use shall be deemed to be a violation and a distinct and separate offense. Each and every day any violation of this Chapter continues shall constitute a distinct and separate offense.
- (d) No Person shall fail to comply with the provisions of this Chapter. Each and every failure to comply shall be deemed a distinct and separate offense. Each and every day any violation of this Chapter continues shall constitute a distinct and separate offense.

#### **901.17 PEG REQUIREMENTS FOR OPEN VIDEO SYSTEMS.**

Any Provider that receives a certificate from the FCC to provide Open Video Services in the City shall notify the City of such certification. Any Provider that operates an Open Video System shall comply with all applicable Laws and FCC Rules and Regulations including those regarding support for public, educational, and governmental access CUPEG").

#### **901.18 TRANSFER OF OWNERSHIP AND RENEWAL.**

- (a) Transfer Approval Required. A Certificate of Registration shall not be assigned or transferred, either in whole or in part, without requesting, through the City Manager, the consent of the City. Any request for assignment or transfer shall include a completed copy of any application documents required by the PUCO or FCC for such an assignment or transfer. If the City should object to such assignment or transfer, it shall serve the Provider with notice of the objection within thirty (30) days following receipt of the Provider's request. If no objection is served upon the Provider within thirty (30) days of the City's receipt of the initial assignment or transfer request, the City shall be deemed to have consented to the requested assignment or transfer by operation of Law.
- (b) Certificate of Registration and Assignee/transferee Signature Required. In no event

shall a transfer or assignment of ownership or control be ultimately acceptable to the City without transferee or assignee requesting and being issued a replacement Certificate of Registration within ninety (90) days of transfer or assignment.

- (c) Renewal of Certificate of Registration. A Provider shall request renewal of a Certificate of Registration in writing at least six (6) months prior to the expiration of its term but not more than twelve (12) months prior to expiration. A Provider shall furnish information as required under Section 901.08. Unless otherwise extended by the City, the City shall act on the request before the expiration of the Certificate of Registration.

### **901.19 RIGHT-OF-WAY PERMITS.**

All persons seeking to perform work activity in the right-of-way which involves construction, reconstruction, installation, maintenance or repair of Facilities or other activity which results in excavation in the right-of-way or involves the safety of the traveling public shall obtain a right of way permit from the City Manager and/or his or her designee.

- (a) In the event of unexpected repair or emergency work, a person required to obtain a permit under this section may commence such repair and emergency work as required, provided that person notify the City as promptly as possible before commencing or within twenty-four (24) hours after commencing such repair or emergency work if advance notice is not practicable. Any person performing repair or emergency work under this section shall apply for a right of way permit within five (5) days of commencing such work.
- (b) Applications for permits under this Chapter shall be submitted in a format to be determined by the City and shall be accompanied by drawings, plans and specifications in sufficient detail to demonstrate the following.
  - (1) The facilities will be constructed in accordance with all applicable codes, rules and regulations.
  - (2) The location and route of all facilities to be located under the surface of the ground, including the line and grade proposed for the burial at all points along the route which are within the public ways.
  - (3) Included with the installation shall be tracer wire or another method acceptable to the City for the purpose of locating the facility during future construction activities.
  - (4) The location of all existing underground utilities, conduits, ducts, pipes, mains and installations which are within the public ways along the underground route proposed by the applicant.
  - (5) The construction methods to be employed for protection of existing structures, fixtures and facilities within or adjacent to the public ways.
  - (6) The location and dimension of all trees within or adjacent to the public ways along the route proposed by the applicant.

All plan submissions shall be in accordance with the submission requirements as established and maintained by the City Manager and/or his or her designee. Incases such as major projects involving construction or relocation of multiple utilities or other facilities in the Right-of-

Way, situations where the structural integrity of surrounding facilities is at issue, or other such construction concerns, such plans, upon request of the City Manager and/or his or her designee, shall be certified by a State of Ohio registered professional engineer, or by the Public Utility as defined by Section 4905.03 of the Ohio Revised Code as the right of way occupant, that the drawings, plans and specifications submitted comply with the applicable codes, rules and regulations. The City Manager and/or his or her designee shall specify the basis for requiring certification of the plans.

(c) Issuance of Permit.

- (1) Upon submission of all plans and documents required of the applicant and payment of the permit fees required by this Chapter, the City Manager and/or his or her designee, if satisfied that the applications, plans and documents comply with all requirements of this Chapter, shall issue a right of way permit authorizing work in the Right-of-Way, subject to such further conditions, restrictions or regulations affecting the reasonable time, place and manner of performing the work as he may deem necessary or appropriate. The City Manager and/or his or her designee may withhold the issuance of a permit if the applicant or owner has outstanding work covered under an expired permit.
- (2) The permit shall expire one hundred and twenty (120) days from the date of issuance unless otherwise specified on the permit. An additional permit fee equal to the original permit fee will be assessed for any work not completed within one hundred and twenty (120) days of the date of issuance of the permit or as required under subsections (i) or (k)(3) hereof.

(d) Notice of Construction.

- (1) Any person performing work in the right-of-way and subject to the provisions of this chapter must provide the City forty-eight (48) hours' notice prior to beginning such work, except as otherwise permitted under Section 201.19(a).
- (2) Upon the issuance of a Right of Way permit under this Chapter, the City reserves the right to require a pre-construction meeting, the submission of a construction schedule, and/or the submission of a traffic control plan demonstrating the protective measures and devices that will be employed are consistent with the Ohio Manual on Uniform Traffic Control Devices, latest edition, to prevent injury or damage to persons or property and to minimize disruptions to efficient pedestrian and vehicular traffic.
- (3) All permit holders are required to cooperate with the City and with each other. All construction, locations, activities and schedules shall be coordinated, as ordered by the City Manager and/or his or her designee, to minimize public inconvenience, disruption or damages.

- (e) All construction practices and activities shall be in accordance with the permit and approved final plans and specifications for the facilities. The City Manager and his representatives shall be provided access to the work and such further information as may be required to ensure compliance with such requirements.

- (f) The permit holder shall maintain a copy of the Right of Way permit and approved plans at the construction site, which shall be displayed and made available for inspection by the City Manager or his representatives at all times when construction work is occurring.
- (g) If the Right of Way permit specifies the location of facilities by depth, line, grade, proximity to other facilities or other standard, the permit holder shall cause, upon the request of the City, at the permit holder's cost, the location of such facilities to be verified by a registered Ohio land surveyor, the person obtaining the permit, or an authorized representative of such person if it is a business entity. The permit holder shall relocate any facilities which are not located in compliance with permit requirements.
- (h) Upon order of the City Manager and/or his or her designee, all work which does not comply with the Right of Way permit, the approved plans and specifications for the work, or the requirements of this Chapter, shall be removed.
- (i) The permit holder shall promptly complete all construction activities so as to minimize disruption of the public ways and other public and private property. All construction work authorized by a permit within the public ways, including restoration, must be completed in a time period established by the City Manager and/or his or her designee not to exceed one hundred and twenty (120) days from the date of issuance of the construction permit, unless specified otherwise on the permit.
- (j) Within sixty (60) days after completion of construction, the permit holder shall furnish the City with one (1) complete set of plans certified to the City as accurately depicting the location of all facilities constructed pursuant to the permit.
- (k) Upon completion of any construction work the permit holder shall, at its own expense, promptly repair any and all public ways and restore property improvements, fixtures, structures and facilities, which were damaged during the course of construction, as nearly as practicable to their condition before the start of construction.
- (1) If weather or other conditions do not permit the complete restoration required by this section, the permit holder shall temporarily restore the affected public ways or property in accordance with standards established by the City. Such temporary restoration shall be at the permit holder's sole expense and the permit holder shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration.
  - (2) A permit holder or other person acting on its behalf shall use suitable barricades, flags, flagmen, lights, flares and other measures as necessary and in accordance with applicable state and local requirements for the safety of all members of the general public and to prevent injury or damage to any person, vehicle or property by reason of such work in or affecting such ways or property.

- (3) If the permit holder fails to restore public property as required by this provision within thirty (30) days of completion of the construction work or as otherwise specified on the permit, the City may have such work performed at the sole expense of the Permit Holder.
  - (4) If the City Manager and/or his or her designee approves the permit holder's restoration of the project, such restoration shall be deemed reasonable and complete and the City shall not require further restoration work related to the project at a later date. The City shall reserve the right to provide conditional approval on restoration work where, in the opinion of the City Manager and/or his or her designee, the adequacy of such restoration may not be fully known at the time of completion.
- (m) **Landscape Restoration.** All trees, landscaping and grounds removed, damaged or disturbed as a result of the construction, installation, maintenance, repair or replacement of facilities must be replaced or restored as nearly as may be practicable, to the condition existing prior to performance of work.
- (n) **Public Utilities To Be Placed Underground.** New construction, extension of existing public utilities, and systematic replacement of public utilities within the right of way shall be installed underground if one or more of the following conditions as determined by the City Manager or his/her Designee exist:
1. When any public utility within the right of way is currently located in the same vicinity underground;
  2. The extension of the public utility is required for new development; or
  3. As stipulated in the Clayton Land Use Plan.

Exceptions:

If the applicant produces clear and convincing evidence the public utility cannot feasibly be installed underground, the City engineer concurs with that assessment, and the extension of the public utility is necessary for the health, safety and welfare of the community, then the requirement to place underground may be waived by the City Manager or his/ her Designee, but cost alone shall not be the determining factor. In all cases where the placement of the public utility underground is waived, additional screening or camouflaging elements may be required and must be approved by the City Manager or his/ her Designee prior to final approval.

**901.20 CONSTRUCTION BOND REQUIREMENTS.**

- (a) Either the owner of the project or the contractor performing the work on such project shall post sufficient bond to assure that the terms and conditions of this Chapter shall be met, and that the Right-of- Way shall be properly restored in accordance with

Section 901.19(k) and (i), in the form of a surety or maintenance bond, escrow account, irrevocable letter of credit, or a cash deposit.

- (b) Any person may post an annual bond, in a form described in subsection (a) above, in the amount of fifty thousand dollars (\$50,000.00) in lieu of bonds for individual projects. The City reserves the right to require a bond in a greater amount if the restoration of the Right-of-Way could exceed \$50,000.
- (c) Maintenance of work performed in the Rights-of-Way, performed under a Right of Way permit issued in accordance with this Chapter, shall remain the responsibility of the permit holder for a period of one (1) year from the date of final inspection, except that period shall be two (2) years for permits issued for pavement cuts or borings under the pavement. A sufficient maintenance bond, in an amount determined by the City Manager and/or his or her designee shall be kept during this period.

### **901.21 PERMIT FEES.**

In accordance with Ohio Revised Code Section 4939.05, each person submitting an application for a permit shall pay a fee, as determined by the City Manager, for its administrative costs related to the application and inspection and review of the work performed in the Right-of-Way.

- (a) The City Manager shall develop and maintain a schedule of permit fees based on fair and reasonable criteria.
- (b) The calculations used to determine the permit fees shall be made available for review by the permit applicant.
- (c) Concrete Work: The permit process and fees charged for concrete work in the Right-of-Way shall be set by the City Manager.

### **901.22 PAVEMENT CUTS.**

- (a) All pavement cuts made by any person shall be repaired by such person in accordance with applicable City building standards.
- (b) Any person making a pavement cut within the Right of Way exceeding 50 square feet or 25 linear feet measured in the direction of travel within (5) years of the completion of a contract for the resurfacing of such pavement shall provide for the resurfacing of the entire width of the travel lane within which the pavement cut was made. The resurfacing of the lane shall be accomplished within 6 months of the completion of the associated work within the right of way. The resurfacing shall consist of planning and paving of the surface course of asphalt for a minimum length of 25 feet measured in the direction of traffic. The person making the pavement cut shall be responsible for the resurfaced lane for a period of two (2) years from the date of final inspection. A sufficient maintenance bond in an amount determined by the City Manager shall be kept during this period.

### **901.23 REMOVAL AND RELOCATION.**

Within a time designated by the City Manager and/or his or her designee and not less than thirty (30) days following written notice from the City, the permit holder or other person that owns the facility or related appurtenances shall, at its own expense, temporarily or permanently remove,

relocate, change or alter the position of any facilities within the public ways whenever the City shall have determined that such removal, relocation, change or alteration is reasonably necessary for any of the following.

- (a) The construction, repair, maintenance or installation of any City or other public improvement in or upon the public ways.
- (b) The operations of the City or other governmental entity in or upon the public ways. If the permit holder or owner fails to remove, relocate, change or alter the facility within the time designated, the City may, at its option, either have such relocation, removal, change or alterations performed and bill the owner for such costs, or bill the owner for increased costs incurred as a result of such failure.
- (c) If the City vacates a Right of Way which contains the Facilities of a Provider, such vacation shall be subject to the provisions of O.R.C. §723.04. If the vacation requires the relocation of the Provider's Facilities and if the vacation proceedings are initiated by the Provider, the Provider will pay the relocation costs. If the vacation requires the relocation of the Provider's Facilities and if the vacation proceedings are initiated by the City for a public purpose, the Provider or Permittee must pay the relocation costs unless otherwise agreed to by the City, the Provider or Permittee.
- (d) Nothing herein prevents an entity that is a public utility pursuant to 4905.02 of the Revised Code from obtaining cost recovery for any facilities relocation required as part of its occupancy of the Right-of-Way pursuant to 4939.07 or the Revised Code.
- (e) No Service Provider shall be required to bear the expense of removal, relocation, change or alteration of position of any Facilities if such requirement would be prohibited by law.

#### **901.24 WAIVER OF FEES.**

Fees required by Section 901.21 and resurfacing required by Section 901.22(b) shall be waived if the work activity in the Right-of-Way is the result of a request by the City for the owner of a facility located in the Right-of-Way to relocate or remove the facility, unless such facility is no longer in use, is unauthorized or has been abandoned.

#### **901.25 DAMAGE TO PROPERTY.**

Unless directly and proximately caused by the willful, intentional or malicious acts by the City, the City shall not be liable for any damage to or loss of any facility within the public ways of the City as a result of or in connection with any public works, public improvements, construction, excavation, grading, filling, or work of any kind in the public ways by or on behalf of the City, if the City, or someone on its behalf, has prior to such activity contacted the Ohio Utilities Protection Services (OUPS).

#### **901.26 RESPONSIBILITY.**

The owner of the facilities to be constructed, installed or maintained pursuant to this chapter and, if different, the Permit Holder, are responsible for the performance of and compliance with all provisions of this Chapter. Any person who performs work in the Right-of-Way without obtaining the permits required in this Chapter shall be required to

obtain the appropriate permit at two times the cost provided in this Chapter, and provide a bond as specified in Section 901.04.

### **901.27 FORECLOSURE, INSOLVENCY OR DEFAULT.**

Upon the foreclosure or other judicial sale of the Permittee's facilities located within the right-of-way, the Permittee shall notify the Municipality of such fact and its Permit shall be deemed void and of no further force or effect, except where foreclosure or judicial sale is to protect a security interest of a lender, in which case a lender may take over a Permit upon the completion of an agreement with the Municipality, said agreement being made by the Municipality in its sole discretion, to fulfill the Permit terms and conditions. The Municipality shall have the right to cancel any Permit granted pursuant to this chapter subject to any applicable provisions of law, including the Bankruptcy Act, one hundred twenty (120) days after appointment of a receiver or trustee to take over and conduct the business of the Permittee, whether in receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless:

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

### **901.28 RESERVATION OF RIGHTS.**

Nothing in this chapter shall be construed to:

- (a) Prevent or restrict in any way the Municipality from taking precedence and making full use of its rights-of-way, including constructing, maintaining, repairing, relocating, improving or altering any street, sidewalk, utility or communications facility, or any other public work or improvement.
- (b) Grant any right or interest in any right-of-way or other public property other than as explicitly set forth in a Permit.

### **901.29 LACHES/WAIVER.**

The Permittee shall not be relieved of its obligations to comply with any provisions of this chapter by reason of failure of the Municipality to enforce prompt compliance. Any failure to enforce or decision not to enforce this chapter shall not be considered a waiver by the Municipality of its right to enforce this chapter in the future.

### **901.30 COMPLIANCE WITH LAWS.**

All Permittees are required as a condition of holding said Permit to be and remain in compliance with all applicable local, state and federal laws.



**901.31 ACKNOWLEDGMENT OF OTHER AUTHORITY; SEVERABILITY.**

The Municipality acknowledges the existence, and in some instances the preeminence of state and federal agencies such as the Public Utility Commission of Ohio, the Federal Communications Commission and others. Should any of these entities or a court of competent jurisdiction act to overrule or preempt actions, decisions, policies or ordinances of this Municipality, the remainder of this chapter shall remain in full force and effect until amended or repealed by action of City Council.

**901.32 CAPTIONS AND HEADINGS.**

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

**901.34 PENALTY.**

In addition to any other penalties which may be imposed under the terms of this Chapter 901, anyone found to be in violation of the terms of this Chapter 901 shall be guilty of a misdemeanor of the third (3rd) degree. Each day or part thereof that a violation continues shall be deemed a separate offense. Such violations shall be punishable by a fine of not more than five hundred dollars (\$500.00) for each violation.

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2. That this Ordinance shall be effective as an exception to any ordinance, resolution or other legislation of the City of Clayton, Ohio, inconsistent with this Ordinance or which imposes additional requirements for effectiveness or validity.

3. That in accordance with Clayton Charter Section 4.031 the requirement that this enactment be read on two (2) separate days is complied with by readings on April 19, 2018 and May 3, 2018.

4. That in accordance with Clayton Charter Section 4.031(H) this enactment shall become effective thirty days after its second reading and enactment.

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ADOPTED BY COUNCIL ON MAY 3, 2018

**ORDINANCE NO. O – 04 – 18 – 08**

**AN ORDINANCE APPROVING AND ADOPTING A COMPREHENSIVE LAND USE PLAN UPDATING THE CITY’S 1999 LAND USE PLAN AND ENTITLED “PLAN CLAYTON”**

**WHEREAS**, in 1999, Council approved a Land Use Plan for the City of Clayton; and

**WHEREAS**, via enactment of Resolution No. R-11-16-90 adopted November 3, 2016, Council authorized the City Manager to enter into an agreement with Urban Collaborative, Inc. to prepare and present an updated land use plan to the City; and

**WHEREAS**, on March 26, 2018, the Clayton Planning Commission held a public hearing on the “Plan Clayton” updated land use plan and voted unanimously to recommend approval of said updated land use plan to Council; and

**WHEREAS**, on April 19, 2018, Council held a public hearing on the “Plan Clayton” updated land use plan.

**NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF CLAYTON, STATE OF OHIO:**

1. That the updated land use plan known as “Plan Clayton” is hereby approved and adopted as recommended by the Clayton Planning Commission with the modification approved by Council at its April 19, 2018 regular Council Meeting to effectuate constituency of the two maps found at pages 38 and 17 of the “Plan Clayton” Land Use Plan which has so been modified and appended hereto as **Exhibit A**.
2. That this Ordinance shall be effective as an exception to any ordinance, resolution or other legislation of the City of Clayton, Ohio, inconsistent with this Ordinance or which imposes additional requirements for effectiveness or validity.
3. That in accordance with Clayton Charter Section 4.031 the requirement that this enactment be read on two (2) separate days is complied with by readings on April 19, 2018 and May 3, 2018.
4. That in accordance with Clayton Charter Section 4.031(H) this enactment shall become effective thirty days after its second reading and enactment.

ADOPTED BY COUNCIL ON MAY 3, 2018

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**NEW BUSINESS**

**RESOLUTIONS (SINGLE READING AND IMMEDIATE ENACTMENT)**

**RESOLUTION NO. R – 04 – 18 – 27**

**A RESOLUTION AUTHORIZING AND APPROVING A STAFF INCREASE OF ONE FULL TIME POLICE OFFICER POSITION TO THE CLAYTON POLICE DEPARTMENT**

**WHEREAS**, pursuant to Article 5 of the Collective Bargaining Agreement between the City of Clayton and the Ohio Patrolmen’s Benevolent Association (Patrol Officers), management maintains the right to determine the size and composition of the work force; and

**WHEREAS**, upon recommendation of the Chief of Police, the City finds it in the best interest of the health, safety and welfare of the City, the citizens of Clayton, and the public at large to increase the staffing of the Police Department by one full time police officer in order to, among other things, continue support of the Northmont School Resource Program, stabilize staffing schedules, and continue to effectively respond to calls for service which have increased by 9% over the last three years.

**NOW THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF CLAYTON, STATE OF OHIO:**

1. That the City of Clayton does hereby authorize and approve a staff increase of one full time police officer position to the Clayton Police Department.
2. That City Staff is hereby authorized, empowered and directed to take all action necessary to effect such staffing change and evidence same on the books and records of the City.

ADOPTED BY COUNCIL ON APRIL 19, 2018

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