

CHAPTER 712
Right of Way

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712.01 SCOPE OF CHAPTER

- (A) The purpose and intent of this Chapter is to:
- (1) Manage occupancy or use of the Public Right-of-Way.
 - (2) Encourage the provision of advanced, competitive utility and telecommunications services on the widest possible basis to the businesses, institutions and residents of the City;
 - (3) 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.
 - (4) Conserve the limited physical capacity of the Public Right-of-Way held in trust by the City for the benefit of the public.
 - (5) Assure that the City receives cost recovery for the occupancy and use of the Public Right-of-Way in accordance with law.
 - (6) Assure that all service providers with facilities in the Public Right-of-Way comply with the ordinances, rules and regulations of the City.

- (7) Assure that the City fairly and responsibly protects the public health, safety and welfare.
- (8) Enable the City to discharge its public trust consistent with rapidly evolving federal and state regulatory policies, industry competition and technological development.
- (9) Compile, update and supplement the City's database so that the City has accurate and current information concerning the service providers that own or operate facilities, and/or provide services, in the City's Public Right-of-Way;
- (10) Assist the City in monitoring compliance with local, state and federal laws.

712.02 DEFINITIONS

For the purpose of this Chapter, and the interpretation and enforcement thereof, the following words and phrases shall have the following meanings, unless the context of the sentence in which they are used shall indicate otherwise:

- (1) ***Affiliate*** means a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with another person.
- (2) ***Antenna*** means any apparatus designed for the purpose of the transmission and/or reception of radio frequency ("RF") radiation, to be operated or operating from a fixed location to facilitate wireless communications services including but not limited to the transmission of writings, signs, signals, data, images, pictures, and sounds of all kinds.
- (3) ***Cable Operator*** means a person providing or offering to provide cable service within the City.
- (4) ***Cable Service*** means "cable service" as defined in the Cable Communications Policy Act of 1984, codified at 47 U.S.C. §532, et seq., as amended by the Cable Television Consumer Protection and Competition Act of 1992 and the Telecommunications Act of 1996, as each might be further amended.
- (5) ***Cable System*** means "cable system" as defined in the Cable Communications Policy Act of 1984, codified at 47 U.S.C. §532, et seq., as amended by the Cable Television Consumer Protection and Competition Act of 1992 and the Telecommunications Act of 1996, as each might be further amended.
- (6) ***Capital Improvement*** means an addition made to enhance the value or extend the useful life of an existing system or facilities, including

construction, reconstruction, installation, rehabilitation, renovation, improvement, enlargement and extension of facilities, but not including ordinary or routine maintenance.

- (7) **City** means the City of Oregon, Ohio.
- (8) **City Administrator** means the City Administrator, or his or her designee.
- (9) **City Property** means and includes all real property owned by the City, other than Public Streets and Public Easements as those terms are defined herein, and all property held in a proprietary capacity by the City, which are not subject to Public Right-of-Way consent and permit requirements of this Chapter.
- (10) **Co-location** means the use of an existing tower or structure to support antennae for the same provision of wireless services.
- (11) **Construct, Constructing, Construction**, etc. means installing, repairing, replacing or removing any public or private facility, regardless of the methods employed.
- (12) **Construction Permit or Permit** means a permit issued pursuant to Section 712.03 of this Chapter.
- (13) **Director of Public Service** means the Director of Public Service or his designee.
- (14) **Emergency** means an unforeseen occurrence or a condition calling for immediate action.
- (15) **Excavate, Excavating or Excavation** means cutting, sawing, breaking, drilling into, boring under, or otherwise altering any Public Street, driveway approach, or sidewalk pavement, and/or digging, drilling into or boring under any unpaved portion of the Public Right-of-Way, including any other work or activity which disturbs the existing surface or subsurface structure, composition, or soil compaction, for the purpose of carrying on any construction activity.
- (16) **Excess Capacity** means the volume or capacity in any existing or future duct, conduit, manhole, or other facility in the Public Right-of-Way that is or will be available for use for additional facilities.
- (17) **FCC** means Federal Communications Commission.
- (18) **Facilities or Facility** means the plant, equipment and property, including but not limited to, cables, fibers, wires, pipes, conduits, ducts, pedestals, antennae, electronics, poles, pipes, mains, plant, equipment and other appurtenances located under, on or above the surface of the ground in the Public Right-of-Way of the City and used or to be used to operate a system to transmit, receive, distribute, provide or offer a service but also including private system.

- (19) **Lane Obstruction** means the blocking or diverting of vehicular and/or pedestrian traffic from a street or sidewalk for any purpose including but not limited to: constructing, excavating, installing, repairing, maintaining, operating, replacing or removing any facility, including but not limited to: (A) the lifting or removing of manhole or handhole covers, and (B) the opening or accessing of at-grade or pole-mounted cabinets, pedestals, transformers, power supplies, amplifiers, splice enclosures, traps or other Facilities.
- (20) **Micro Wireless Facility** means both a distributed antenna system and a small cell facility, and the related wireless facilities as more specifically defined by the O.R.C. §4939.01(F) as may be amended or superseded.
- (21) **New Service Orders** means the connection from the public service provider's existing facilities on private property for the purpose of providing a new Service to a customer in the City.
- (22) **Occupancy, Occupy or Use** means, with respect to the Public Right-of-Way, to place a tangible thing in the Public Right-of-Way for any purpose, including, but not limited to, constructing, repairing, positioning, maintaining or operating lines, poles, pipes, conduits, ducts, equipment or other structures, appurtenances or facilities necessary to operate a system for the delivery of public utility-like services, including service provided by a cable operator, or other services over private facilities in the Public Right-of-Way.
- (23) **ODOT** means the Ohio Department of Transportation.
- (24) **Other Ways** means the highways, streets, alleys, utility easements or other rights-of-way within the City, but under the jurisdiction and control of a governmental entity other than the City.
- (25) **Overhead Facilities** means utility poles and wires, cables and other such equipment running between and on such poles, including the underground supports and foundations for such Facilities.
- (26) **Person** means and includes corporations, companies, associations, joint stock companies or associations, firms, partnerships, limited liability companies, trusts and individuals and includes their lessors, trustees and receivers.
- (27) **Private Facility** means the plant, equipment and property, including but not limited to, cables, fiber optics, wires, pipes, conduits, ducts, pedestals, antennae, electronics and other appurtenances or facilities used or to be used to operate a system to transmit, receive, distribute or provide telecommunications or other services between or among private buildings or facilities where there is no offer of service to the public.

- (28) **Private Service Provider** means any person who, pursuant to the permit to occupy or use, or construct in the Public Right-of-Way pursuant to Section 712.03 of this Chapter, directly or indirectly owns, controls, operates or manages private facilities within the City's Public Right-of-Way used or to be used for the purpose of operating a system to transmit, receive, distribute or provide telecommunications or other services between or among private buildings or facilities where there is no offer of service to the public.
- (29) **Public Easement** means any easement under the jurisdiction and control of the City and acquired, established, dedicated or devoted for public purposes, including utility purposes.
- (30) **Public Right-of-Way** means the surface of, and the space within, through, on, across, above or below, any public street, public road, public highway, public freeway, public lane, public path, public alley, public court, public sidewalk, public boulevard, public parkway, public drive, public easement and any other land dedicated or otherwise designated for a compatible public use, which is owned or controlled by the City but excludes a private easement.
- (31) **Public Service Provider** means any person that, pursuant to the permit to occupy or use, or construct in the Public Right-of-Way pursuant to Section 712.03 of this Chapter, directly or indirectly owns, controls, operates or manages facilities within the City's Public Right-of-Way, used or to be used for the purpose of operating a system offering service to the public within the City or outside of the City's boundaries.
- (32) **Public Street** means the paved and unpaved portion of any street, road, boulevard, drive, highway, freeway, parkway, lane, court, alley or other Public Right-of-Way in which the City has an interest in law or equity and which has been acquired, established, dedicated or devoted to street purposes.
- (33) **Public Way Fee** means a fee levied to recover the costs incurred by the City and associated with the occupancy or use of a Public Right-of-Way.
- (34) **PUCO or Public Utilities Commission of Ohio** means the state administrative agency, or lawful successor, authorized to regulate and oversee certain public or private service providers and services in the State of Ohio.
- (35) **Reconstruct, Reconstruction**, etc. means substantial physical change to or capital improvement of all or a portion of an existing system or facilities including a change in location, or additional locations, of facilities along the same Right-of-Way involving construction in Public Streets, Utility Easements, or Public Right-of-Way.

- (36) ***Routine Maintenance*** means repair, upkeep, replacement or restoration of existing facilities located in the Public Right-of-Way that requires no more than three (3) working days to complete, is not an emergency and does not include excavation of the Public Right-of-Way.
- (37) ***Service*** means the offering of water, sewer, electric, gas, telephone, telecommunications, cable television, information or other utility-like service for a fee directly to the public, or to such classes of users as to be effectively available to the public, regardless of the facilities used.
- (38) ***Service Provider*** means any public service provider and/or private service provider.
- (39) ***State*** means the State of Ohio.
- (40) ***Surplus Space*** means that portion of the usable space on a utility pole which has the necessary clearance from other public or private service providers using the pole, as required by the orders and regulations of the National Electrical Service Code, pole owners and other applicable state and local orders and regulations, to allow its use by an additional public or private service provider for a pole attachment.
- (41) ***System*** means a network of facilities for the transmission and/or distribution of a service.
- (42) ***Tower*** means any structure built for the sole or primary purpose of supporting any FCC-licensed or authorized antennas and their associated facilities, that are constructed for wireless communications services including, but not limited to private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site, as more specifically defined by the FCC in 47 C.F.R. §1.40001(b)(9), as may be amended or superseded.
- (43) ***Telecommunications*** means the technology of communication by electric transmission of impulses, transmission of impulses by light energy or transmission by electromagnetic wave.
- (44) ***Transmission Equipment*** means any equipment that facilitates transmission of any FCC licensed or authorized wireless communications service, including but not limited to radio transceivers, and other relevant equipment associated with and necessary to their operation, including coaxial or fiber-optic cable, and regular and backup power supply, as more specifically defined by the FCC in 47 C.F.R. §1.40001(b)(8). This definition includes equipment in any technological configuration associated with any FCC authorized wireless transmission, licensed or unlicensed, commercial mobile, private mobile, fixed wireless microwave backhaul, and fixed broadband.

- (45) ***Trenchless Technology*** means the use of directional boring, horizontal drilling and micro-tunneling and other techniques in the construction of underground portions of facilities that result in the least amount of disruption and damage to the Public Right-of-Way as possible.
- (46) ***Underground Facilities*** means that portion of a system located under the surface of the ground, including above ground appurtenances, such as pedestals, natural gas equipment and other above ground Facilities which are connected with or a part of underground Facilities.
- (47) ***Usable Space*** means the total distance between the top of a utility pole and the lowest possible attachment point that provides the minimum allowable vertical clearance as specified in the orders and regulations of the National Electrical Service Code and as permitted by the pole owners.
- (48) ***Utility Easement*** means any easement owned by a service provider and acquired, established, dedicated or devoted for the purpose of providing service to the public but does not include an exclusive easement to a service provider located on private property.
- (49) ***Wireless Communications Facility*** means any unstaffed installation for the transmission and/or reception of radio frequency signals for wireless communications services, typically consisting of a tower or base station, transmission equipment, equipment cabinets, and all material or techniques used to conceal the installation.
- (50) ***Wireless Communications Service*** means any FCC-licensed or authorized wireless communication service including, without limitation, any personal wireless services, as defined in 47 U.S.C. §332(c)(7)(D).

712.03 APPLICATION OF SERVICE PROVIDERS FOR PERMITS TO OCCUPY AND CONSTRUCT.

(I) Application for Permit of New Service Providers.

- (A) Any Service Provider who does not currently have an existing system or facilities in the City's Public Right-of-Way and desires to construct a system, facilities or private facilities in the Public Right-of-Way or any service provider who is constructing a new system or reconstructing all or a portion of an existing system to provide new services, shall file an application with the City on a form provided by the City Administrator, which shall include the information in Section 712.03(I)(B) of this Chapter. The application fee shall be \$250.00.
- (B) Information Required for Application. Application forms will be provided by the City and shall require the following information:

- (1) The identity, legal status, and federal tax identification number of the Service Provider, including any affiliates.
- (2) The name, address and telephone number of the local officer, agent or employee responsible for the accuracy of the service provider's application statement and available at all reasonable times to be notified in case of emergency.
- (3) Evidence that the service provider is in compliance with the insurance, indemnity and performance bond requirements pursuant to Sections 712.03(IV) of this Chapter.
- (4) Information and a preliminary construction schedule and completion date for, any capital improvements the service provider plans in the City's Public Right-of-Way for the twelve (12) months following the date of application, including:
 - a) A description clearly showing the location of all the proposed capital improvements, including horizontal and vertical information; facility type, size, depth, and capacity; or such other information the Director of Public Service determines is necessary. The service provider shall update all required information as soon as it becomes available. Documents submitted pursuant to this section for which the provider of such documents asserts are either confidential/proprietary information, or documents that fall within the United State's Patriot Act shall be marked as such on the documents when they are provided to the City. The City shall abide by ORC 149.433 as it relates to this section.
 - b) If the service provider is constructing a new system or reconstructing all or a portion of an existing system to provide new services, general description of the proposed system and the facilities utilized to provide the service that the service provider intends to offer or provide over the system within the City. Where a service will be provided by a nonaffiliated provider, the service provider shall identify that provider.
 - c) Information sufficient to determine that the service provider has applied for and received any certificate of authority required by PUCO or Ohio Department of Commerce to provide services or operate a system in the City.
 - d) Information sufficient to determine that the service provider has applied for and received any construction permit, operating license, certification, or other approvals required by the Federal Communications Commission to provide telecommunications or cable services over a system in the City.

(5) Such other information as the City Administrator and Director of Public service may reasonably require.

- (C) Facilities Maps. The City shall have the right to access and review all existing service provider's maps and/or plans showing the location of its facilities in the City's Rights-of- Way, upon ten (10) days written notice to the service provider.
- (D) Application to be Kept Current. Each service provider shall keep all required registration information current at all times and shall provide the City with notice of changes to the required information within fifteen (15) days following the date on which the service provider has notice of such change.

(II) Application of Persons who are Current Service Providers In the City Right of Way

- (A) Permit of a person with existing facilities in the Public Right-of-Way on the effective date of this Chapter, shall register with the City within ninety (90) days of the effective date of this Chapter
- (B) The initial permit for occupancy or use of the Public Right-of-Way is limited to the service or private service provider's existing facilities.
- (C) A Person with these existing facilities is not relieved from compliance with this Chapter with respect to the ongoing occupancy or use of the Public Right-of-Way including, but not limited to, the insurance, indemnity, performance bond and application and annual registration requirements pursuant to Sections 712.03(IV) of this Chapter.
- (D) The service provider shall also provide:
 - (1) That information that is required by Section 712.03(B)(1-4)
 - (2) A description of the access and line extension policies or a copy of their PUCO tariff, if not otherwise available on-line or via other method.
 - (3) The area or areas of the City in which the applicant or service provider is currently providing service and a schedule for build-out of the entire area addressed by the permit, if applicable.
 - (4) Evidence that the applicant or service provider has complied, or will comply, with indemnification and insurance requirements of this Chapter.
 - (5) Information sufficient to determine that the applicant or service provider has received any certificate of authority required by the PUCO and/or FCC or Ohio Department of Commerce to operate a system and provide services in the City.

- (6) Such other and further information as may reasonably be requested by the City Administrator or the Director of Public Service.
- (7) Information to establish that the applicant has applied for all other governmental approvals and permits to construct and operate the facilities and to offer or provide the services.
- (E) Application to be Kept Current. Each service provider shall keep all required registration information current at all times and shall provide the City with notice of changes to the required information within fifteen (15) days following the date on which the service provider has notice of such change.

(III) CONSTRUCTION PERMIT AND STANDARDS.

- (A) Construction Permit.
 - (1) No Person shall commence or continue with the construction, reconstruction, installation, maintenance or repair which involves excavation of facilities or excavation in the Public Right-of-Way without obtaining a construction permit from the Director of Public Service as provided in this Chapter, including but not limited to the following circumstances:
 - a) The construction of a new system;
 - b) The extension of a service provider's system in the Public Right-of- Way in an area of the City not currently serviced by that service provider. This does not include new service orders unless a Public Street will be excavated;
 - c) Any reconstruction or replacement of facilities in the Public Right-of-Way;
 - d) Any construction, reconstruction, installation, or new service orders in the Public Right-of-Way. This subsection shall not apply to service connections (except for the cutting of any pavement) that do not cross the road or pavement. The service providers shall keep a log for all such service connections that do not require a permit as to the time and date of such installation and be made available to the City Administration when requested; or
 - e) Any maintenance, repair or service orders requiring the excavation of a Public Right of Way.
 - (2) No construction reconstruction, installation, maintenance or repair of facilities, or excavation, in the Public Right-of-Way shall commence without first obtaining a construction permit.

- (3) The Director of Public Service may for good cause waive or modify the construction permit requirements for service providers with underground facilities whose routine maintenance of facilities requires excavation.
- (B) Construction Permit Applications. Applications for permits to construct, reconstruct or install facilities, or excavate, shall be submitted upon forms provided by the City, and shall provide the following information, if applicable drawings, plans and specifications in sufficient detail to demonstrate:
- (1) Drawings, plans and specifications in sufficient detail to demonstrate that the facilities will be constructed, reconstructed, installed, maintained or repaired, or the Public Right-of-Way excavated, in accordance with all applicable codes, rules and regulations. Drawings shall be of an appropriate size and scale to show in sufficient detail existing topography including all existing utilities, Right of Way Lines, easement, pavement, sidewalks, landscaping, etc. as necessary.
 - (2) A preliminary construction schedule if available.
 - (3) If the applicant is proposing to construct, reconstruct, install, or locate facilities above ground:
 - a) The service providers shall comply with the National Electrical Service Code requirements and regulations as it regards the existing utility poles.
 - b) The service provider shall provide location and route of all facilities to be located or installed on existing utility poles.
 - (4) The service provider shall provide detailed design plans confirming proposed construction, repair and replacement of said facilities are in accordance to the City of Oregon Design Guidelines For Utility Facilities In The Right-Of-Way (latest addition) and the City of Oregon Application to Work In The Right-Of-Way Permit (latest addition) requirements.
 - (5) If the applicant is proposing an underground installation of new facilities in new ducts or conduits to be constructed in the Public Right-of-Way, regardless of installation method, the applicant shall provide the location, depth, and route of all facilities to be located under the surface of the ground, including the line alignment and proposed depth proposed for the burial at all points along the route which are in the Public Right-of-Way. Included with the installation shall be an approved method to field identify the location of their facility as approved by the Director of Public Service.

- (6) The location of all known existing underground utilities, conduits, ducts, pipes, mains and installations that are in the Public Right-of-Way along the underground route proposed by the applicant. Documents submitted pursuant to this section for which the provider of such documents asserts are either confidential/proprietary information, or documents that fall within the United State's Patriot Act shall be marked as such on the documents when they are provided to the City. The City shall abide by ORC 149.433 as it relates to this section.
 - (7) The construction methods to be employed for protection of existing structures, fixtures and Facilities in or adjacent to the Public Right-of-Way.
 - (8) The structures, improvements, facilities and obstructions, if any, that the applicant proposes to temporarily or permanently remove or relocate.
 - (9) The impact of construction, reconstruction, installation, maintenance or repair of facilities on trees in or adjacent to the Public Right-of-Way along the route proposed by the applicant, together with a landscape plan for protecting, trimming, removing, replacing and restoring any trees or areas disturbed during construction.
 - (10) The name of contractor, if available, actually responsible for performing the work and contact information for person(s) with utility company responsible for overseeing the contractor. Contractor shall provide proof of liability insurance or performance bond to city.
- (C) Construction Codes. Facilities shall be constructed, reconstructed, installed, repaired, operated, excavated and maintained in accordance with all applicable federal, state and local codes, rules, regulations and technical codes including, but not limited to, the National Electrical Safety Code.
- (D) Traffic Control Plan. All Permit applications which involve a lane obstruction or work on, in, under, across or along any Public Right-of-Way may be required to be accompanied by a traffic control plan at the discretion of the Public Service Director demonstrating the protective measures and devices that will be employed, consistent with the Ohio Manual of Uniform Traffic Control Devices and other applicable ODOT and local regulations, to prevent injury or damage to persons or property and to minimize disruptions to efficient pedestrian and vehicular traffic. The Director of Public Service may require the service provider to use and employ the City Police Force for traffic control at the service provider's cost.

- (E) Issuance of Permit. Within ninety (90) days for all new structures and within sixty (60) days for all existing structures after submission of all plans and documents required of the applicant, the Director of Public Service, if satisfied that the applications, plans and documents comply with all requirements of this Chapter, shall issue a construction permit authorizing the construction, reconstruction, installation, maintenance or repair of the facilities, or excavation in the Public Right-of-Way, subject to such further conditions, restrictions or regulations affecting the time, place and manner of performing the work as the Director of Public Service may deem necessary or appropriate. Such ninety (90) days for new structures and sixty (60) days for existing structures period shall begin after all submissions are deemed by the Director of Public Service to be in accordance with the requirements of, including information submitted in the form required by this Chapter.
- (F) Coordination of Construction Activities. All service providers are required to cooperate with the City, including its service and safety forces, and with each other. All construction, reconstruction, installation, excavation, activities and schedules shall be coordinated, as ordered by the Director of Public Service, to minimize public inconvenience, disruption or damages.
- (G) Modification of Construction Schedule. The service provider may modify the construction schedule at any time provided that advance written notice is given to the Director of Public Service as soon as possible. The service provider shall further notify the Director of Public Service and the Ohio Utility Protection Service (OUPS) as soon as possible in advance of any excavation or work in the Public Right-of-Way.
- (H) Least Disruptive Technology. To the extent reasonably possible, which shall take into consideration cost, all facilities shall be constructed, reconstructed, installed, maintained or repaired in the manner resulting in the least amount of damage and disruption of the Public Right-of-Way. Unless otherwise authorized by the Director of Public Service for good cause, service providers constructing, reconstructing, installing, maintaining or repairing underground facilities shall utilize trenchless technology, including, but not limited to, horizontal drilling, directional boring, and microtunneling, if technically and/or technologically feasible.
- (I) Compliance with Permit. All Construction practices and activities shall be in accordance with the construction permit and approved final plans and specifications for the facilities. The Director of Public Service shall be provided access to the work and such further information as he or she may require ensuring compliance with such requirements. Field changes may be approved by the Director of Public Service if such

changes are determined to be necessary due to site conditions or other changed circumstances.

- (J) **Display of Permit.** The service provider shall maintain a copy of the construction permit and approved plans at the construction site, which shall be displayed and made available for inspection by the Director of Public Service at all times when construction work is occurring.
- (K) **Joint Applications.** Any service provider planning a capital improvement may submit a joint application for (1) permit to occupy or use the Public Right-of-Way pursuant to Section 712.03 and, (2) a construction permit. The City is not required to take action on the construction permit until ten (10) days after granting a permit to occupy or use the Public Right- of-Way.
- (L) **Noncomplying Work.** Upon order of the Director of Public Service, all work that does not comply with the permit, the approved plans and specifications for the work, or the requirements of this Chapter, shall immediately cease and shall be immediately removed and/or corrected by the service provider.
- (M) **Restoration of Improvements.** Upon completion of any construction work, the service provider shall promptly repair any and all Public Rights-of-Way and provide property improvements, fixtures, structures and facilities which were damaged during the course of construction, restoring the same as nearly as practicable to its condition before the start of construction.
- (N) **Landscape Restoration.**
 - (1) All trees, landscaping and grounds removed, damaged or disturbed as a result of the construction, reconstruction, 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, except to the extent that tree trimming is necessary to prevent the interference of tree branches with overhead facilities.
 - (2) All restoration work within the Public Right-of-Way shall be done in accordance with landscape plans approved by the Director of Public Service.
- (O) **Responsibility of Owner.** The owner of the facilities to be constructed, reconstructed, installed, located, operated, maintained or repaired and, if different, the service provider, are responsible for performance of and compliance with all provisions of this Section.
- (P) **Recovery of Costs.** The City shall be entitled to recover all of its costs from the owner or service provider directly relating to any and all

enforcement of construction permits issued under this section per a fee schedule established by the Director of Public.

(IV) Service Provider Insurance.

As a condition of authorizing a permit to occupy or use the Public Right-of-Way, a service provider must secure and maintain, at a minimum, the following liability insurance policies insuring both the service provider and the City, and its elected and appointed officers, officials, agents, employees and representatives as additional insureds:

- (A) Comprehensive general liability insurance with limits not less than
 - (1) Five Million Dollars (\$5,000,000) for bodily injury or death to each Person;
 - (2) Five Million Dollars (\$5,000,000) for property damage resulting from any one accident; and
 - (3) Five Million Dollars (\$5,000,000) for all other types of liability.
- (B) Automobile liability for owned, non-owned and hired vehicles with a limit of Three Million Dollars (\$3,000,000) for each Person and Three Million Dollars (\$3,000,000) for each accident.
- (C) Worker's Compensation within statutory limits and employer's liability insurance with limits of not less than One Million Dollars (\$1,000,000).
- (D) Comprehensive form premises-operations, explosions and collapse hazard, underground hazard and products completed hazard with limits of not less than Three Million Dollars (\$3,000,000).
- (E) The liability insurance policies required by this Section shall be maintained by the service provider throughout the period of time during which the service provider is occupying or using the Public Right-of-Way, or is engaged in the removal of its facilities. Each such insurance policy shall contain the following endorsement:

"It is hereby understood and agreed that this policy may not be canceled nor the intention not to renew be stated until ninety (90) days after receipt by the City, by registered mail, of a written notice addressed to the City Administrator of such intent to cancel or not to renew."
- (F) Within sixty (60) days after receipt by the City of said notice, and in no event later than thirty (30) days prior to said cancellation, the service provider shall obtain and furnish to the City replacement insurance policies meeting the requirements of this Section.
- (G) Upon written application to, and written approval by, the City Administrator, a service provider may be self-insured to provide all of the same coverages as listed in this Section; except that all coverages for Workers' Compensation shall be in compliance with state law. No

approval for self- insurance shall be given until the City Administrator has made a complete review of the service provider's financial ability to provide such self-insurance. As part of the review process, the City Administrator may require, and the self- insurance applicant shall provide, any and all financial documents necessary to make a valid determination of the applicant's ability to meet the needs of this Chapter.

- (H) General Indemnification. Each application for consent to occupy or use the Public Right-of-Way, and each annual registration, shall include, to the extent permitted by law, the service provider's express undertaking to defend, indemnify and hold the City and its elected and appointed officers, officials, employees, agents, representatives and subcontractors harmless from and against any and all damages, losses and expenses, including reasonable attorney's fees and costs of suit or defense, arising out of, resulting from or alleged to arise out of or result from the negligent, careless or wrongful acts, omissions, failures to act or misconduct of the service provider or its affiliates, officers, employees, agents, contractors or subcontractors in the construction, reconstruction, installation, operation, maintenance, repair or removal of its system or facilities, and in providing or offering services over the facilities or system, whether such acts or omissions are authorized, allowed or prohibited by this Chapter.

712.04 DENIAL AND REVOCATION OF A PERMIT.

- (A) The City shall grant or deny, in writing, based upon the following requirements within ninety (90) days for new structures and within sixty (60) days of an existing structure on which the person filed the complete application with the City.
 - (1) The City may withhold, deny or delay its consent to a person's permit based on the person's failure to possess the financial, technical and managerial resources necessary to protect the public health, safety and welfare, or for other reasons based on the health, safety and welfare of the City and in accordance with Ohio law.
 - (2) If the City denies a person's application for a permit to occupy or use, or construct in the Public Right-of-Way, the City shall provide its reasons in writing for denying the permit application, and shall provide any information that the person may reasonably request necessary for the person to obtain a permit. Any denial or revocation of a permit by the City may be appealed pursuant to State law.
- (B) Revocation of Permit. From the effective date of this Ordinance, permits granted by the City to occupy or use or construct in the Public

Right-of-Way of the City may be revoked for any one of the following reasons:

- (1) Construction, reconstruction, installation, location, operation or excavation at an unauthorized location.
 - (2) Construction, reconstruction, installation, location, operation or excavation in violation of City safety and/or construction requirements.
 - (3) Material misrepresentation or lack of candor by or on behalf of a service provider in any permit application or registration required by the City.
 - (4) Failure to relocate or remove facilities, or failure to restore the public Right-of-Way, as required by this Chapter.
 - (5) Failure to pay fees, costs, taxes or compensation when and as due the City.
 - (6) Insolvency or bankruptcy of the service provider.
 - (7) Violation of material provisions of this Chapter.
- (C) Notice and Duty to Cure. In the event that the City Administrator or Director of Public Service believes that grounds exist for revocation of a permit to occupy or use or construct in the Public Right-of-Way, he shall give the service provider written notice of the apparent violation or noncompliance, providing a short and concise statement of the nature and general facts of the violation or noncompliance, and providing the service provider a reasonable period of time not exceeding thirty (30) days to furnish evidence:
- (1) That corrective action has been, or is being actively and expeditiously pursued, to remedy the violation or noncompliance;
 - (2) That rebuts the alleged violation or noncompliance; and/or
 - (3) That it would be in the public interest to impose some penalty or sanction less than revocation.

712.05 GENERAL PUBLIC RIGHT-OF-WAY USE REGULATIONS.

- (A) Public Right-of-Way Route. A permit granted to a service provider to occupy or construct in, or use the Public Right-of-Way under Section 712.03 shall be limited to a grant to occupy or use the specific Public Right-of-Way and defined portions thereof including the specific facilities and location along the Public Right-of-Way.
- (B) Nonexclusive permit to occupy the Public Right-of-Way. No permit granted under Section 712.03 shall confer any exclusive right, privilege,

license or franchise to occupy or use the Public Right-of-Way of the City to operate a system for delivery of services or any other purposes.

- (C) Rights Permitted. From the effective date of this Ordinance, no permit granted under Section 712.03 shall convey any right, title or interest in the Public Right-of-Way, but shall be deemed a permit only to occupy or use the Public Right-of-Way for the limited purposes granted by the consent. Further, no consent shall be construed as any warranty of title.
- (D) Maintenance of Facilities. Each service provider shall maintain its system or facilities in good and safe condition and in a manner that complies with all applicable federal, state and local requirements.
- (E) Safety Procedures. A service provider 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 as determined by the Director of Public Service for the safety of all members of the general public as well as project workers and to prevent injury or damage to any person, vehicle or property by reason of such work in or affecting such Public Right-of-Way or property.
- (F) Interference with the Public Rights-of-Way. No service provider may locate or maintain its facilities so as to unreasonably interfere with the use of the Public Right-of-Way by the City, by the general public or by other persons authorized to use or be present in or upon the Public Right-of-Way. All such facilities shall be moved by the service provider, temporarily or permanently, as reasonably determined by the Director of Public Service.
- (G) Damage to Public Property. No service provider or any person acting on the service provider's behalf shall take any action or permit any action to be done which may impair or damage any City property, Public Right-of-Way, other ways or other public property located in, on or adjacent thereto.
- (H) Restoration of Public Right-of-Way, Other Ways and City Property.
 - (1) When a service provider, or any person acting on its behalf, does any work in or affecting any Public Right-of-Way, other ways or City property, it shall, after the work is completed and at its own expense, promptly remove any obstructions therefrom and restore such ways or property, within thirty (30) days, at the Public Service Director's discretion, to as good a condition as existed before the work was undertaken, unless otherwise directed by the City.
 - (2) If weather or other conditions do not permit the complete restoration required by this Section, the service provider shall temporarily restore the affected ways or property as directed by the Director of Public Service. Such temporary restoration shall be at the service

provider's sole expense and the service provider shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration.

- (I) Duty to Provide Information.
 - (1) Within ten (10) days of a written request from the Director of Public Service each service provider shall furnish the City with documentation sufficient to show that the service provider has complied with all requirements of this Chapter.
 - (2) In addition, within ten (10) days of a written request from the Director of Public Service, each service provider shall make available for inspection by the City at reasonable times all available documents, maintained by the service provider with respect to its facilities in the Public Right-of-Way.
- (J) Assignments or Transfers of Consent. Permit to occupy or use the Public Right- of-Way may be, directly or indirectly, transferred, assigned or disposed of by sale, lease, merger, consolidation or other act of the service provider, by operation of law or otherwise, without consent of the City, so long the City is notified of the proposed transfer on or before the date of transfer.
- (K) Duties of Transferee. The transferee shall fully comply with this Chapter within sixty (60) days of the transfer, including, but not limited to:
 - (1) All information required by the application for permit to occupy or use or construct in the Public Right-of-Way pursuant to Section 712.03, and/or registration required by Section 712.03 of this Chapter; and
 - (2) Any other information reasonably required by the Director of Public Service.

712.06 LOCATION, RELOCATION AND REMOVAL OF FACILITIES.

- (A) Location of Facilities. All facilities shall be constructed, reconstructed, installed and located in accordance with the following terms and conditions:
 - (1) The City shall strongly encourage facilities be installed within an existing compatible underground duct or conduit whenever excess capacity exists within such facility.
 - (2) The City shall strongly encourage the co-location of wireless telecommunications facilities.

- (3) A service provider with permission to install overhead facilities shall install its facilities on to existing utility poles only, and then only if surplus space is available. Existing utility poles may be replaced in order to add additional equipment.
 - (4) Whenever all existing electric, cable, telecommunications and other similar Facilities are located underground in a Public Right-of-Way, a service provider with permission to occupy the same Public Right-of-Way with the electric, cable, telecommunications or other similar facilities, must also locate its facilities underground.
 - (5) Except for overhead facilities as currently exist or as provided herein, when it is determined to be in the City's best interest, no facilities (except for cable pedestals and above ground pressure line equipment) shall be located above ground in a Public Right-of-Way without the express written permission of the City Administrator.
- (B) Excess Capacity. To reduce excavation in the Public Right-of-Way, it is the City's goal to encourage service providers to share occupancy of underground conduit as well as to construct, whenever possible, excess conduit capacity for occupancy of future facilities in the Public Right-of-Way
- (C) Relocation or Removal of Facilities. Within sixty (60) days following receipt of written notice from the City, a service provider shall, at its own expense, temporarily or permanently remove, relocate, change or alter the position of any facilities in the public Right-of-Way whenever the City shall have determined that such removal, relocation, change or alteration is reasonably necessary for:
- (1) The Construction, reconstruction, repair, maintenance or installation of any City or other public improvement in or upon the Public Right-of-Way.
 - (2) The operations of the City or other governmental entity in or upon the Public Right-of-Way.

Notwithstanding the above, 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.

- (D) Emergency Removal or Relocation of Facilities. The City retains the right and privilege to cut or move any facilities only in emergency situations involving public safety if the entity is not immediately available to provide the removal or relocation, or stop work on any construction, reconstruction, installation, operation or excavation, located in the Public Right-of-Way of the City, as the City may determine to be necessary, appropriate or useful in response to any need to protect the public health, safety or welfare; except to the extent that

the City's actions would cause a dangerous or potentially dangerous situation.

712.07 NOTICE OF WORK, ROUTINE MAINTENANCE AND EMERGENCY WORK.

- (A) Notice of Work. Except in case of emergency, as provided in Section 712.07(C), or for routine maintenance as provided in Section 712.07(B), no service provider, or any person acting on the service provider's behalf, shall commence any work in the Public Right-of-Way of the City or other ways without twenty-four (24) hours advance notice to the City, obtaining a construction permit pursuant to Section 712.03, if required, and obtaining permit to occupy or use the Public Right-of-Way pursuant to Section 712.03, if required.
- (B) Routine Maintenance and New Service Orders.
 - (1) A service provider need not obtain a construction permit or notify the City prior to or after commencing any routine maintenance or new service orders that do not include the construction in, or excavation or lane obstruction of, a Public Right-of-Way or closing of a Public Street.
 - (2) For routine maintenance and new service orders that require the service provider to cause a lane obstruction in a Public Street, the service provider shall provide the City with forty-eight (48) hours advance notice prior to commencing the routine maintenance or new service order, and shall submit a drawing showing the planned traffic maintenance and indicating how the service provider will meet all requirements of Ohio Manual of Uniform Traffic Control Devices or other applicable ODOT or local regulations.
- (C) Emergency Work. In the event of the need for any unexpected repair or emergency work, a service provider may commence such emergency response work as required under the circumstances, provided that for emergency work that requires excavation of a Public Right-of-Way or lane obstruction or closing of a Public Street, the service provider shall notify the City as promptly as possible before commencing such emergency work, or as soon as possible thereafter if advance notice is not practicable. When notice is required, the service provider shall notify the Director of Public Service. For notice after normal business hours, the Oregon Police Dispatch shall be provided with the notice information.

712.08 RECOVERY OF CITY COSTS IN MANAGING THE PUBLIC RIGHT-OF- WAY.

- (A) Purpose. It is the purpose of this Section 712.08 to provide for the recovery of all direct and indirect costs and expenses actually incurred by the City and associated with a public or private service provider's occupancy or use of the Public Right-of-Way and related to the enforcement and administration of this Chapter. All fees related to the occupancy or use of the Public Right-of-Way shall be considered to be public way fees as that term is defined in this Chapter 712 and shall be assessed by the City Administrator in a manner which is in accordance with Chapter 4939 of the Ohio Revised Code and any other applicable law.
- (B) Regulatory Fees and Compensation Not a Tax. The regulatory fees and costs provided for in this Chapter are separate from, and additional to, any and all federal, State, local and city taxes as may be levied, imposed or due from a service provider, its customers or subscribers, or on account of the lease, sale, delivery or transmission of Services.
- (C) All fees under current Franchise Agreements that are currently paid by and allowed by Federal Law (such as the Telecommunications Act of 1995) or State Law shall continue to be paid by any user of the Right of Way to the City of Oregon.

712.09 PRIVATE FACILITIES IN THE PUBLIC RIGHT-OF-WAY.

Private Facilities. Persons who wish to use the Public Right-of-Way of the City for private facilities shall obtain a permit from the City pursuant to Section 712.03, register pursuant to Section 712.03, obtain a construction permit (if applicable) pursuant to Section 712.03 and comply with all provisions of this Chapter.

712.10 MISCELLANEOUS PROVISIONS.

- (A) Preemption by State and Federal Law. Except as may be preempted by applicable State or Federal laws, rates, regulations, and orders, this Chapter shall apply and be controlling over each service provider engaged in the business of transmitting, supplying or furnishing of services originating, passing through, or terminating in the City.
- (B) Exemption for City-Owned or Operated Facilities. Nothing in this Chapter shall be construed to apply the provisions of this Chapter to facilities owned or operated by the City or any of its operations.
- (C) Application to Existing Code Provisions. In the event of a direct conflict between any provision of this Chapter and any other section of the City's Codified Ordinances, the provisions of this Chapter shall apply.

- (D) Severability. If any section, subsection, sentence, clause, phrase, or other portion of this Chapter, or its application to any person, is, for any reason, declared invalid, in whole or in part by any court or agency of competent jurisdiction, said decision shall not affect the validity of the remaining portions hereof.

712.11 OTHER REMEDIES

Nothing in this legislation shall be construed as limiting any judicial remedies that the City may have, at law or in equity, for enforcement of this legislation.

712.12 WAIVER OF REQUIREMENTS

It is within the City Administrator's and Director of Public Service's reasonable discretion to waive a portion or portions of this Chapter where such requirements, in their judgment, are not necessary or appropriate to protect the City's interests and the purposes and intent of this Chapter.

712.99 PENALTIES

Whoever violates this Chapter is guilty of a minor misdemeanor. Any person found guilty of violating any of the provisions of this legislation shall be fined not more than One Hundred Dollars (\$100.00) for each offence. A separate and distinct offense shall be deemed committed each day on which a violation occurs or continues.