

**CODIFIED ORDINANCES OF OAKWOOD**

**PART NINE - STREETS AND PUBLIC SERVICES CODE**

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**CODIFIED ORDINANCES OF OAKWOOD**

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**TITLE ONE - Streets and Sidewalks.**

- Chapter 901. Street Openings.
  - Chapter 903. Barriers and Warning Lights.
  - Chapter 905. Private Streets.
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**CHAPTER 901  
Street Openings**

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| 901.01 Permit required.                                     | 901.07 Permit fees.                                 |
| 901.02 Exceptions.  | 901.08 Certain driveway<br>construction prohibited. |
| 901.03 Application for permit.                              | 901.09 Cash or surety bond or<br>letter of credit.  |
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**CROSS REFERENCES**

- Power to establish and care for streets - see ORC 715.19, 717.01, 723.01.
  - Openings by the City - see ORC 723.02.
  - Surface treatment - see ORC 723.23, 723.31.
  - Excavation liability - see ORC 723.49 et. seq.
  - Digging, excavating and piling earth on streets - see ORC 5589.10.
  - Street obstructions - see TRAF. 311.01.
  - Sidewalk, curb and gutter contractors - see BUS. REG. Ch. 741.
  - Barricades and warning lights - see GEN. OFF. 517.03; also required by BUS. REG. 741.07.
  - Openings for sanitary sewer connections - see S. & P.S. Ch. 913.
  - Openings for storm sewer connections - see S. & P.S. Ch. 917.
  - Duty of abutting owner/occupant to keep sidewalks, etc. repaired and free from nuisance - see GEN OFF 521.06.
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**901.01 PERMIT REQUIRED.**

- A. No person, whether an abutting owner, lessee, contractor or otherwise, shall do or permit to be done by his agents, servants or employees any of the following acts without a permit first having obtained from the City Manager to do so:
1. Make any excavations or dig in any street, sidewalk space, alley, lane or other public way or place.
  2. Remove, break or make holes in any pavement of the streets, sidewalks, sidewalk spaces or other public ways or places, or cut any curb.

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3. Construct, build, erect or place any article or structure in or upon, over or under a street, sidewalk, alley, lane, sidewalk space, public way or place. Any article or structure so placed, erected, built or constructed without such a permit may be removed by the City with the expense of such removal to be an obligation of the person or entity responsible for the article or structure being there and with such removal to be a remedy of the City in addition to the penalty provided in Section 901.99.
4. Make any improvement or change in the surface of any street, alley, lane, sidewalk or sidewalk space, or any other public way or place by grading, graveling, paving or laying sidewalks or curbing, or place or paint any sign or advertising matter on the surface of any such place.
5. Construct, build or maintain any driveway over or through any gutter, curb or sidewalk. The permit for this work in the street right-of-way area to be separate from any permit necessary under the Building Code for any driveway located upon private property.
6. Conduct the business of selling retail goods on any street right-of-way in a business zoning district, to the extent such outdoor sales constitute a permitted use under Section 1133.02 of the zoning code of this city. The specific portions of the street right-of-way on which such sales will be conducted must be approved by the city as part of any permit issuance.

B. For the purpose of this chapter the word "street" includes the entire width of the right-of-way area held by the City, through an easement or fee simple title, for every alley, roadway, street and highway within the City.

### **901.02 EXCEPTIONS.**

The provisions of Section 901.01 shall not require a permit for planting of shade trees or for grading or sodding of the lawn space located between a property line or sidewalk line and the curb, or for the improvement of streets, sidewalks or other public places under or by virtue of a contract with the City.

### **901.03 APPLICATION FOR PERMIT, BY WHOM.**

Any person desiring to exercise any privilege for which a permit is required by this chapter shall submit to the City Manager an application, in such form as the Manager prescribes, setting forth the privilege desired. Such application shall be accompanied by the required fee, a plat or drawing showing the location in the street or other public place where the privilege is desired with reference to street and lot lines, and the dimensions of the portion of the public place or way to be used. An application for a permit shall be made by the owner or lessee of the abutting property concerned, if the owner or lessee himself is to perform the work requiring a permit. No person intending to perform any work on behalf of an owner or lessee of property, or under contract or agreement with an owner or lessee to do so, shall perform any such work unless that person has submitted an application for any required permit and until the permit has been issued solely in the name of such person as the permit

## Street Openings

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holder. Accordingly, if an owner or lessee of property intends to use a third person contract to perform work requiring a permit, that permit must be issued to the third person contractor and not to the owner or lessee. The full names and addresses of the owner, any lessee, and any applicant if other than the owner or lessee, and of the responsible officers of owner and lessee, if a corporate body or unincorporated association is the applicant, shall be stated in the application. All applicants for permits shall be duly qualified under applicable law.

### **901.04 CONDITIONS OF PERMIT, INDEMNIFICATION, INSURANCE.**

Any person granted such a permit shall be subject to the following obligations to the City in the exercise of the privilege hereby granted:

A. To make any excavation in such manner as to inconvenience the public as little as possible.

B. To immediately replace the surface of any street, sidewalk or other public way that has been disturbed or broken in a good and workmanlike manner and to restore such street, sidewalk or other public way to its former condition with any excavated area being resurfaced with like material as existed prior to the excavation. All costs of any such replacement, restoration or resurfacing shall be borne by the person receiving the permit.

C. To guard, provide warning signals and barriers and to otherwise do any and all things necessary to prevent injury to persons and property by reason of any excavation or other activity undertaken pursuant to such permit. (See BUS. REG. 741.07 and GEN. OFF. 517.03 as to barricades.)

D. To indemnify and hold harmless the City from and against any claim, demand, lawsuit or judgment made by any person whomsoever, arising out of any exercise of privilege granted by such permit and based upon either property damage, personal injury, or both, and to reimburse the City for any expense incurred by it by reason of any such claim, demand, lawsuit or judgment, and to assume responsibility for and defend any lawsuit which may arise therefrom. Any person accepting any such permit shall be bound by the terms of this paragraph without further contract or agreement.

E. To procure and furnish satisfactory evidence that the applicant has procured and maintains in full force and effect a policy of liability insurance, with limits of not less than \$1,000,000.00 for personal injury and/or death to any one person and \$2,000,000.00 for such injury and/or death to more than one person but occurring from any one accident, and not less than \$75,000.00 for property damage from such accident, protecting the permittee, any property owner with whom the permittee may contract and the City, as insured parties, against any claim, demand, lawsuit or judgment arising out of the exercise of any permit granted hereunder. The deductible amount must be satisfactorily small in the judgment of the City Manager, and the policy may not be canceled without ten days' written notice to the permittee and the City. If the permit holder proves to the satisfaction of the City his inability to obtain such insurance, the City shall have the option (but shall not be required) to obtain such insurance for the work involved, charging its additional insurance cost to the permit holder.

## Street Openings

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### **901.05 REVOCATION OF PERMIT.**

Any permit granted by the City Manager pursuant to this chapter may be revoked by him and terminated at any time when, in his opinion, the terms of this chapter are being violated, or when the continued exercise of the privilege constitutes a menace to the public safety or is an unreasonable use of the public streets or places.

### **901.06 EMERGENCY REPAIRS.**

In cases of emergency involving immediate danger to persons or property and requiring immediate action to make repairs to gas, water or other lines or pipes, where time does not permit the making of an application and the securing of a permit from the City Manager as required, the person required to perform such repairs may proceed to do so without obtaining a permit required by this chapter after having first notified the City Manager or the duty officer of the Safety Department of such fact. However, in such case, that person shall make application and secure a permit for such undertaking at the earliest possible time and shall pay an additional administrative fee set by the City Manager toward the direct and indirect expenses of the City caused by such last minute notice of excavations in the public streets and places, and shall in all other respects comply with the provisions of this chapter.

### **901.07 PERMIT FEES.**

A permit fee shall be charged by the City Manager for the issuance of any permit hereunder as follows:

A. For the excavation of any portion of any street that has been resurfaced within four years, an amount based upon the current cost of resurfacing the area involved with like material.

1. Multiplied by five in the case of any street resurfaced within one year, or
2. Multiplied by four in the case of any street resurfaced more than one year but less than two years previously, or
3. Multiplied by three in the case of any street resurfaced more than two years but less than three years previously, or
4. Multiplied by two in the case of any street resurfaced more than three years but less than four years previously.

B. If a Portland Cement concrete street is excavated as to an entire area bordered by expansion joints, however the provisions of subsection A hereof shall not apply.

C. Other permit fees shall be set by the City Manager under Chapter 153 of the Administrative Code.

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D. Any licensed and bonded contractor doing work in the City who expects to apply for more than ten permits in a calendar year may, at the start of each year, take out a blanket permit. Such blanket permit would cover any excavation and cutting by such contractor in any street right-of-way area in the City for that calendar year. However, any such contractor taking out such a blanket permit must give written notice to the Public Service or Engineering Department of the City of any work to be done under such blanket permit at least 48 hours in advance of the commencement of such work. Any work performed without such written notice having been given shall be deemed to have been performed without any permit whatsoever, and will subject such contractor to all of the penalties applicable to persons who perform such work without permits. Where any one application, permit or inspection involves trench length of 100 feet or over, an additional fee shall be charged, as set in the fee schedule established under Chapter 153. The 100 feet shall be measured from the beginning of the project to the end of the project, and if there are several smaller trenches the sum total of which equals at least 100 feet, the same additional fee shall apply. Additional fees shall be charged under the fee schedule whenever costs are incurred by the City through reinspections.

### **901.08 CERTAIN DRIVEWAY CONSTRUCTION PROHIBITED.**

No permit shall be issued hereunder for any of the following purposes because such construction shall be prohibited:

A. For any portion of a driveway to be constructed in a street area for a business use that exceeds 36 feet in width at the curb or 30 feet in width at the property line. The City Manager shall be authorized, however, upon application by the property owner and upon adequate proof of special hardship or other good cause shown, waive this prohibition and to grant permits for driveways which exceed by not more than 20% the limitations of this paragraph and of paragraphs C and D of this section.

B. For any portion of a driveway to be constructed in a street area for a residential purpose exceeding 12 feet in width at the curb or at the property line, except as additional width is necessary to provide an adequate turning radius or unless authorized as a special use under the Zoning Code.

C. For any portion of a driveway to be constructed in a street area within 25 feet of any other existing driveway serving the same premises for a business use, or within a distance equal to the width of any other such existing driveway, whichever is greater.

D. For the construction of any portion of a driveway in a street area within 25 feet of any street intersection. See paragraph A above for possible waiver by the City Manager.

E. For any purpose which in the opinion of the City Manager will constitute a menace to safety or an unreasonable interference with the public use of any street, sidewalk or other public place (for requirements as to permits for driveways to be constructed on private property, see 339.01 and 1339.02 of the Codified Ordinances of this City).

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### **901.09 CASH OR SURETY BOND OR LETTER OF CREDIT.**

Before any street permit shall be issued for any street excavation hereunder, the applicant shall comply with the following conditions.

A. Deposit with the City Manager a payment and performance bond, signed by a surety company authorized to transact business in the State of Ohio, to secure the faithful performance of the obligations contained in this Chapter. In lieu of such a surety company bond, the applicant may deposit with the City Manager cash, a cash bond or letter of credit as a substitute for the required surety bond. In all cases, the sufficiency of the bond or its substitute shall be at the sole determination of the City Manager and in a form acceptable to the City Attorney.

B. The amount of the bond or its substitute shall be equal to, as determined by the City Manager, the current cost of the work to be performed and as authorized by the permit. In all cases, the amount of the bond or its substitute shall not be less than \$1,000.00.

C. The bond or its substitute shall secure and hold harmless the City and any property owner(s) with whom the applicant may contract against any and all costs arising from all work performed by the applicant or authorized by the permit. The bond or its substitute shall also be conditioned that the applicant will conduct and perform all work in a good and workmanlike manner; fill up, restore and place the excavated area in the condition required by the permit authorizing the work; and, to the satisfaction of the City Manager, maintain the excavated area and any new or restored surface in a good condition, excluding usual wear and tear, for a period of twelve months after the work has been completed.

D. In the case of a failure by the applicant to faithfully perform and comply with the conditions of this Chapter, the surety shall become liable or the surety bond substitute shall be forfeited by the applicant.

### **901.99 PENALTY.**

Whoever violates any provision of this chapter shall be guilty of a minor misdemeanor for the first offense and of a fourth degree misdemeanor for every subsequent offense. If any work or excavation in violation of this chapter is continued in existence for five days, it shall constitute a separate offense. (Ord. 2376, passed 6/7/65.)

### **Legislative History:**

Ord. 2376, passed 6/7/65; Ord. 2438, passed 7/18/66; Ord. 2609, passed 2/3/69; Ord. 2732, passed 5/3/71; Ord. 3017, passed 12/19/77; Ord. 3378, passed 10/3/83; Ord. 3401, passed 3/5/84; Ord. 3441, passed 8/6/84; Ord. 3442, passed 8/6/84; Ord. 3458, passed 10/15/84; Ord. 3533, passed 2/3/86; Ord. 3936, passed 3/19/90; Ord. 4141, passed 6/15/92.

## Barriers and Warning Lights

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### CHAPTER 903 Barriers and Warning Lights

903.01 Excavation sites; responsibility of contractors, etc.      903.99 Penalty.

#### CROSS REFERENCES

Barricades and warning lights - see GEN. OFF. 517.03; BUS. REG. 741.07.  
Barriers and lights as conditions for permit - see S. & P.S. 901.04

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#### **903.01 EXCAVATION SITES; RESPONSIBILITY OF CONTRACTORS, ETC.**

A. No person making any improvement upon or near any sidewalk, street, alley or other public place, whether under a contract with the City or with any other person or entity which involves an excavation, accumulation of material, or other condition which is hazardous to pedestrians or to vehicular traffic shall fail to place around the hazardous area a substantial rail or guard to prevent accidents, and to place and maintain there in a conspicuous manner one or more red or amber lights, sufficient in number and size to be visible to all pedestrians and vehicular traffic approaching the area. Such light or lights shall be maintained and illuminated at all times between sunset and sunrise.

B. The provisions of this section shall apply not only to any person making or causing such an excavation, accumulation of material, or the hazardous conditions but also to any subcontractor, construction foreman, superintendent or employee of any person in charge of or assigned the duty of making or superintending the improvement which involves that condition.

#### **903.99 PENALTY.**

Whoever violates any provision of this chapter shall be guilty of a minor misdemeanor for the first offense and of a fourth degree misdemeanor for every subsequent offense. If any work or excavation in violation of this chapter is continued in existence for five days, it shall constitute a separate offense.

#### **Legislative history:**

Ord. 2394, passed 11/15/65

**CHAPTER 905  
Private Streets**

905.01 Surface of Private streets.

**CROSS REFERENCES**

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**905.01 SURFACE OF PRIVATE STREETS.**

To provide for use by refuse disposal vehicles and/or fire and other emergency vehicles, private streets must be surfaced in the same manner as private driveways, i.e., they must be surfaced and maintained with concrete, asphalt or with solid bricks or pavers that are bonded together or set so as to be touching one another. The surface of such private streets must be capable of supporting a minimum uniformly distributed live load of 1,000 pounds per square foot.

**Legislative history:**

Ord. 4335, passed 6/17/96

## TITLE THREE - Public Utilities

- Chapter 913. Stormwater Management Utility.
- Chapter 915. Sanitary Sewer Utility.
- Chapter 917. Storm Sewers.
- Chapter 919. Water Utility.

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### CHAPTER 913 Stormwater Management Utility

- 913.01 Establishment and Purpose
- 913.02 Definitions
- 913.03 Stormwater Charges
- 913.04 Billing
- 913.05 Penalty Charges, Interest and Remedies for Non-Compliance
- 913.06 Schedule of Rates
- 913.07 City Manager May Make Rules and Regulations
- 913.08 Appeal

### CROSS REFERENCES

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#### **913.01 ESTABLISHMENT AND PURPOSE.**

The City Stormwater Management Utility is hereby established and this chapter is adopted to protect public surface and groundwaters from degradation by accelerated soil erosion and pollutants; and to maintain compliance with the National Pollutant Discharge Elimination System (NPDES) Phase II Stormwater Program promulgated by the U.S. Environmental Protection Agency (USEPA) under the provisions of the Federal Clean Water Act, as well as the requirements of the Ohio Environmental Protection Agency General Permit No. OHQ000002 and its successor permits. Protection from such degradation shall promote and maintain the health, safety, and general well-being of all inhabitants of the city.

#### **913.02 DEFINITIONS.**

For the purposes of this chapter, the following definitions shall apply. Words used in the singular shall include the plural, and the plural, the singular; words used in the present tense shall include the future tense. The word SHALL is mandatory and not discretionary. The word MAY is permissive. Words not defined herein shall be construed to have the meaning given by common and ordinary use as defined in the latest edition of Webster's Dictionary.

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**BILLING PERIOD.** The service period identified on the utility bill. Each account shall be billed monthly or semi-annually in arrears of the service period. A developed property that receives a city water or other utility service shall be billed monthly in arrears of the service. A developed property that does not receive city water or other utility service may be billed semi-annually in arrears of the service.

**BONDS.** Revenue bonds, notes, loans or any other debt obligations issued or incurred to finance the costs of construction.

**CALENDAR YEAR.** The 12-month period commencing on January 1 of any year.

**COSTS OF CONSTRUCTION.** Costs reasonably incurred in connection with providing capital improvements to the system or any portion thereof, including, but not limited to, the costs of:

- (1) Acquisition of all property, real or personal, and all interests in connection therewith including all rights-of-way and easements therefor;
- (2) Physical construction, installation and testing, including the costs of labor, services materials, supplies and construction services used in connection therewith;
- (3) Architectural, engineering, inspection, legal and other professional services;
- (4) Insurance premiums taken out and maintained during construction, to the extent not paid for by a contractor for construction and installation;
- (5) Any taxes or other charges which become due during construction;
- (6) Expenses incurred by the city or on its behalf with its approval in seeking to enforce any remedy against any contractor;
- (7) Principal of and interest of any bonds; and
- (8) Miscellaneous expenses incidental thereto.

**DEBT SERVICE.** With respect to any particular calendar year and any particular series of bonds, an amount equal to the sum of:

- (1) All interest payable on the bonds during the calendar year; plus
- (2) Any principal installments of the bonds during the calendar year.

**DEVELOPED PROPERTY.** Real property other than undisturbed property.

**DWELLING UNIT.** A singular unit or apartment providing complete, independent living facilities for one or more persons including permanent provisions for living, sleeping, eating, cooking and sanitation.

**EQUIVALENT RESIDENTIAL UNIT or ERU.** The statistical average horizontal impervious area of all residential developed property per dwelling unit located within the city, as determined by the Director of Public Works and established by City Council.

## Stormwater Management Utility

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**ERU RATE.** A stormwater user fee charged on each ERU as established by City Council.

**EXEMPT PROPERTY.** Public rights-of-way, public streets, public alleys and public sidewalks.

**EXTENSION AND REPLACEMENT.** Costs of extensions, additions and capital improvements to, or the removal and replacement of capital assets of, or purchasing and installing new equipment for, the system or land acquisitions for the system and any related costs thereto, or paying extraordinary maintenance and repair, including the costs of construction, or any other expenses which are not costs of operation and maintenance or debt service.

**IMPERVIOUS AREA.** The number of square feet of hard surfaced areas which either prevent or retard the entry of water into soil mantle, as it entered under natural conditions as undisturbed property, and/or causes water to run off the surface in greater quantities or at an increased rate of flow from that present under natural conditions as undisturbed property, including, but not limited to, roofs, roof extensions, patios, porches, driveway, sidewalks, pavement and athletic courts.

**NONRESIDENTIAL DEVELOPED PROPERTY.** Developed property that is not utilized for dwelling units within the city. For purposes of this chapter, mixed-use developed property that includes dwelling units as well as nonresidential uses shall be considered nonresidential developed property.

**OPERATING BUDGET.** The annual operating budget adopted by the city for the succeeding calendar year.

**OPERATIONS AND MAINTENANCE.** The current expenses, paid or accrued, of operation, maintenance and current repair of the system as calculated in accordance with sound accounting practice, and includes, without limiting the generality of the foregoing, insurance premiums, administrative expenses, labor, executive compensation and cost of materials and supplies used for current operations, and charges for the accumulation of appropriate reserves for current expenses not annually incurred, but which are such as may reasonably be expected to be incurred in accordance with the sound accounting practice.

**REVENUES.** All rates, fees, assessments, rentals or other charges or other

## Stormwater Management Utility

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income received by the Stormwater Management Fund, in connection with the management and operation of the system, including amounts received from the investment or deposit of moneys in any fund or account and any amounts contributed by the city, whether outright or as an advancement, all as calculated in accordance with sound accounting practice.

**STORMWATER MANAGEMENT SYSTEM or SYSTEM.** The existing stormwater management of the city and all improvements thereto which by this chapter are constituted as the property and responsibility of the city, to be operated as an enterprise to, among other things, conserve water, control discharges necessitated by rainfall events, incorporate methods to collect, convey, store, absorb, inhibit, treat, use or reuse water to prevent or reduce flooding, over-drainage, environmental degradation and water pollution or otherwise affect the quality and quantity of discharge from the system.

**STORMWATER USER FEE.** A fee authorized by ordinances established to pay costs of construction, operations and maintenance, extension and replacement and debt service.

**STORMWATER MANAGEMENT FUND.** The enterprise fund created by this chapter to operate, maintain and improve the system and for other purposes as stated in this chapter.

**UNDISTURBED PROPERTY.** Real property that has not been altered from its natural state by dredging, filling, removal of trees and vegetation, or other activities which have disturbed or altered the topography or soils on the property.

**VACANT IMPROVED PROPERTY.** Unoccupied developed property that contains impervious area.

### **913.03            STORMWATER CHARGES.**

(a) Subject to the provisions of this chapter, each and every residential developed property, nonresidential developed property and vacant improved property, other than exempt property, within the corporate limits of the city, and the owners and non-owner users thereof, shall have imposed upon them a stormwater user fee. Because all owners and non-owner users of such property are served by the City's stormwater management system, they shall be deemed to have accepted the same in the form of a contractual agreement as a condition of receiving or continuing to receive such service. In the event the owner and non-owner users of a particular property are not the same, the liability for each owner and non-owner user for the user fee attributable to that property shall be joint and several. The stormwater user fee shall be

## **Stormwater Management Utility**

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a monthly interval service charge and shall be determined by the provisions of this chapter and the ERU and ERU rate which shall be established and changed from time to time by City Council.

(b) The Stormwater Management Fund is hereby established as an enterprise fund to receive all revenues collected pursuant to this chapter. All revenues received by the Stormwater Management Fund shall be used solely for the construction, operation and maintenance, debt service, and pollution prevention and elimination activities of the stormwater management system. Funds shall not be used for private purposes or to extend stormwater sewer services to unsewered areas. If Council elects to establish a separate fund for the purpose of funding capital improvements to the stormwater management system, nothing in this section shall preclude the transfer of monies from the Stormwater Management Fund to such separate fund, which is hereby authorized.

### **913.04 BILLING.**

The stormwater user fee shall be billed and collected monthly with the monthly city's services utility bill. These fees shall be itemized and collected separately as stormwater user fees, and shall be credited to the Stormwater Management Fund. All bills for stormwater user fees shall be rendered monthly by utility billing personnel within the Finance Department. The stormwater user fee for those properties utilizing city utilities is part of a consolidated statement for utility customers, which is generally paid by a single payment. In the event that a partial payment is received, the payment shall be applied in accordance with the city rules and regulations developed by the Finance Department.

### **913.05 PENALTY CHARGES, INTEREST AND REMEDIES FOR NON-COMPLIANCE.**

(a) Because the stormwater user fee is billed and collected with the monthly city services utility bill, the water bill due dates, penalties, interest, and fees for invalid payments set forth in Chapter 919.07(A), (B), (C) and (D) shall likewise apply to stormwater utility bills as if fully set forth herein.

(b) When any bill for charges under this chapter is not paid when due, the City may take any one or more of the following actions:

1. File a civil action at law to collect the amount due from any property owner or non-owner user who is liable to pay the bill under the provisions of this chapter.

## Stormwater Management Utility

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2. Certify the unpaid bill to the County auditor, including any penalties, interest, fees and/or other charges, as a lien against the property served, but only after compliance with subsections a and b below. The amount so certified shall be a lien on the property served from the date placed on the tax list and duplicate and shall be collected, along with any applicable fees and/or other charges, in the same manner as other taxes, except that the County Treasurer shall accept a payment in such amount when separately tendered as payment for the full amount of such unpaid stormwater utility bill and associated penalties, interest, fees and/or other charges. The lien shall be released immediately upon payment in full of the certified amount. Any amounts collected by the County Treasurer through this procedure shall be placed immediately in the type of separate and distinct fund described in Section 743.06 of the Revised Code.
  - a. The unpaid bill must have arisen pursuant to a service contract made directly with the owner of the property served. Under Section 913.03(a), all stormwater management service provided by the City is deemed to have been contracted for by the property owner.
  - b. The bill must have been due and unpaid for at least forty-five (45) days. In addition, at least thirty (30) days advance written notice of the impending certification to the County Auditor must be given by the City to the property owner. The requirements of this subsection shall not apply, however, if the City determines that a transfer of any ownership interest in the real estate is about to occur, in which case the City may proceed immediately with such certification.

### **913.06 SCHEDULE OF RATES.**

There is hereby established the following uniform schedule of rates for the services and use of facilities of the stormwater management system by the owner, tenant or occupant of the premises using the services and facilities of the system.

- (a) The City Council, upon recommendation of the City Manager, shall, by resolution, establish reasonable rates for stormwater management systems for each one-family, two-family, and three-family residential property; each such property shall be billed a flat fee established by the City Council.
- (c) For all residential properties containing four (4) or more dwelling units, and all nonresidential properties, the rate shall be computed based on the total impervious area of the property divided by the average impervious area of an

## Stormwater Management Utility

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equivalent residential unit, times the rate established under section (a), above, for an equivalent residential unit (ERU). The billing amount shall be updated by the Engineering Department based on any additions to or deletions from the impervious areas as approved through the building permit process.

### **913.07 CITY MANAGER MAY MAKE RULES AND REGULATIONS.**

The City Manager may make and enforce the rules and regulations as may be deemed necessary for the safe, economical and efficient management and protection of the municipal stormwater system, for the construction and use of the stormwater system and facilities, for connections to the stormwater system and for the regulation, collection, rebating and refunding of charges or rentals provided the rules and regulations are not in conflict with any municipal ordinance. No person shall violate or fail to comply with any rule or regulation.

### **913.08 APPEAL.**

Any person disagreeing with the calculation of the stormwater user fee, as provided in this chapter, may appeal the determination to the City Manager, or his or her designee. Any appeal must be filed in writing and shall include a survey, showing dwelling units, total property area, impervious area or nonresidential developed area, drainage structures, drainage patterns and any features that contain/retain/detain storm runoff on their own property, and diminish the quantity of stormwater handled by the city, as appropriate. The Manager may request additional information from the appealing party. Based upon the information provided by the utility and appealing party, the Manager shall notify the parties, in writing, of the Manager's decision. If still dissatisfied, a party may request, in writing and within 30 days, a review by the Stormwater Appeals Board. The request must cite specific error by the Manager and the calculation, which the party feels, is correct. The Board shall review the record presented and enter a written decision as soon as practical. The Board may request additional information from either party.

For purposes of this section, the members of the Sewer and Water Appeals Board established under Chapter 167 shall constitute the Stormwater Appeals Board, which is hereby vested with jurisdiction and authority to decide written appeals submitted pursuant to this section.

## Stormwater Management Utility

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### Legislative history:

Ord. 4358, passed 11/5/2012

## Sanitary Sewer Utility

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### CHAPTER 915 Sanitary Sewer Utility

- 915.01 Authority of City Manager to adopt rules.
- 915.02 Collection of charges; rules and regulations.
- 915.03 Declaration of necessity.
- 915.04 Definitions.
- 915.05 Sewage service charges; payment.
- 915.06 Prorating sanitary sewer charges.
- 915.07 Penalty charges, interest and remedies for non-compliance.
- 915.08 Deposit of charges; use of funds.
- 915.09 Adjusting charges for loss of water.
- 915.10 Method of adjusting charges.
- 915.11 Responsibility of City and property owners.
- 915.12 Sanitary Sewer Connections.
- 915.13 Penalty.

#### CROSS REFERENCES

- Sewer rates - see ORC 729.49.
- Weekly deposit of sewer rentals collected - see ORC 729.52.
- Power to construct sewerage system - see ORC 715.40, 717.01.
- Compulsory sewer connections - see ORC 729.06.
- Regulations to control house sewers and connections - see ORC 729.51.
- Street openings – see Bus. Reg. Ch. 741 and S. & P.S. Ch 901.
- Storm water discharge to sanitary sewer prohibited – see S. & P.S. 913.02.
- Power to license sewer tappers and vault cleaners – see ORC 715.27.
- Compulsory sewer connections – see ORC 729.06.
- Regulations to control house sewers and connections – see ORC 729.51.
- Cesspool covers – see Gen. Off. Ch. 901.

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#### 915.01 AUTHORITY OF CITY MANAGER TO ADOPT RULES.

The City Manager is hereby authorized and empowered to adopt reasonable rules and regulations as may be necessary or appropriate with regard to the operation and usage of sanitary sewer facilities of and within this City. No person, organization or agent, employee or contractor of such shall violate, disobey or omit, neglect or refuse to comply with, or resist enforcement of, any rule or regulation promulgated by the City Manager concerning the operation or usage of sanitary sewer facilities of the City.

## Sanitary Sewer Utility

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### 915.02 COLLECTION OF CHARGES; RULES AND REGULATIONS.

The charges levied through this chapter shall be collected by the Water Department. The Public Works Department and/or the City Manager shall make and enforce such rules and regulations as may be deemed necessary for the safe, economical and efficient management and protection of the sanitary sewer system and the sewage pumping, treatment and disposal works, for the construction and use of house sewers and connections to the sewer system, and for the regulation, collection, rebating and refunding of such charges.

### 915.03 DECLARATION OF NECESSITY.

It is hereby determined and declared to be necessary and conducive to the protection of the public health, safety, welfare and convenience of the City to levy and collect the charges described in this chapter upon all lots, lands and premises served by having connections with the sanitary sewer system and the pumping, treatment and disposal works used by the City. The proceeds of such charges shall be used for the sanitary sewerage system and the pumping, treatment and disposal works of the City.

### 915.04 DEFINITIONS.

For the purposes of this chapter, the terms "sanitary sewage" and "industrial wastes" are defined as follows:

- A. "Sanitary sewage" means the waste from water closets, urinals, lavatories, sinks, bathtubs, showers, household laundries, cellar floor drains, garage floor drains, bars, soda fountains, cuspidors, refrigerator drips, drinking fountains and stable floor drains.
- B. "Industrial wastes" means the liquid waste resulting from any commercial, manufacturing or liquid operations or processes

### 915.05 SEWAGE SERVICE CHARGES; PAYMENT.

For the purposes provided in Sections 915.03 and 915.08, there is hereby levied and assessed upon each lot, parcel of land, building or premises having any sewer connection with the sanitary sewage system of the City or in any manner discharging sewage, industrial wastes, water or other liquids, either directly or indirectly, into the City sanitary sewage system, a sanitary sewage service charge to be determined and paid as follows and these charges are to be effective for the sanitary sewer bills to be issued for service furnished on and after October 1, 1992, such service being billed to customers by statements mailed in December, 1992.

- A. For any such lot, parcel of land, building or premises situated within (or beyond

## Sanitary Sewer Utility

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the boundaries of) the corporation limits of this City, the amount of such charge shall be based on the quantity of water used thereon or therein, as measured by the City water meter there in use or measured as described in paragraph B below. Such charge shall be calculated at rates established by City Council and summarized by Addendum A.

- B. If any such lot, parcel of land, building or premises is not a user of water supplied by the Water Department of the City, and/or if the water used on that property is not measured by a City water meter, or by a meter approved by the City Manager, then in each such case the amount of water so used shall be measured or determined by rules prescribed by the City Manager. In such a situation the owner or other interested party at his expense may install and maintain a meter acceptable to the City Manager as an alternative to having his water usage determined under such rules.
- C. In case a lot, parcel of land, building or premises discharges industrial wastes either directly or indirectly into the City sanitary sewage system and the City Manager finds that it is not practical to attempt to measure such wastes by meter, he shall measure them in such manner as he may find practicable in light of the circumstances of the case in order to determine the sanitary sewer service charge.
- D. Sewer service charges imposed by this chapter shall be paid monthly at the office of the Water Department, and at the option of the City Manager may be made due and payable at the same time as water bills and refuse bills.

### **915.06 PRORATING SANITARY SEWER CHARGES.**

For customers moving in or out and obtaining service for only a partial billing period and when sewer consumption is less than the minimum, the minimum charges imposed by this chapter shall be prorated based on the number of days in the billing period that they have incurred service. For the purpose of this section 28 days shall be considered a full billing period. If the measured service exceeds the minimum charge, however, the measured rate shall be charged instead of a prorated minimum rate.

### **915.07 PENALTY CHARGES, INTEREST AND REMEDIES FOR NON-COMPLIANCE.**

Any monetary penalties, interest, fees or charges, as described below, shall be charged to said customer, and made part of and handled in the same manner as the regular monthly utility charges.

- A. If a utility bill is not paid within thirty (30) days after said bill was originally issued, the customer shall be considered delinquent and a ten percent (10%) penalty shall be charged said customer.

## Sanitary Sewer Utility

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- B. Any utility bill not paid by the due date shall be payable on demand and shall bear interest at the rate of one and one-half percent (1.5%) per month, for each whole or partial month after the due date.
- C. Any payment subsequently made invalid for reasons including, but not necessarily limited to, insufficient funds (e.g. returned checks) shall incur a transaction cost of \$20 per occurrence. Each charge levied through this chapter is hereby made a lien upon the corresponding lot, land or premises served by a connection to the City sanitary sewer system. If such charge is not paid within forty-five days after it becomes due and payable, it shall be certified to the Auditor of Montgomery County who shall place it on the tax duplicate of the county with the interest and penalties allowed by law; and it shall be collected as other taxes are collected.

### **915.08 DEPOSIT OF CHARGES; USE OF FUNDS.**

The funds received from the collection of the charges authorized by this chapter shall be deposited as required by law in the City Treasury. They shall be accounted for and be known as the Sanitary Sewer Disposal and Maintenance Fund (sometimes referred to in these Codified Ordinances simply as the Sanitary Sewer Fund) and, when appropriated by Council, shall be available for payment of the costs and expenses of the levy and collection of sanitary sewer charges, to discharge the obligation of the City for the use of the sanitary sewer system of the City of Dayton and any other jurisdiction used as an outlet for the sanitary sewer system of this City, and for operating, maintaining and repairing the City sanitary sewer system.

### **915.09 ADJUSTING CHARGES FOR LOSS OF WATER.**

The Finance Director is authorized to adjust the sanitary sewer charges downward if all the following conditions are met:

- A. If the sanitary sewer user receives water from the City with the consumption of such water being measured by a meter located outside the structure of the user and at a point on the water service line before that line enters the structure; and
- B. If a loss of water is discovered to occur from a point in the service line between the meter and the point at which the service line first enters the structure or at a point on the service line before any outlet thereon or extension therefrom to an outlet for the use of the water; and
- C. If the loss is demonstrated to the City Manager by actual observation and investigation; and

## Sanitary Sewer Utility

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- D. If the break resulting in such loss is promptly repaired by the person responsible for the maintenance of such service line or by a person acting on his behalf.

### **915.10 METHOD OF ADJUSTING CHARGES.**

If all the conditions set forth in Section 915.09 are found to exist, the Finance Director shall adjust the sanitary sewer charges to an amount determined by averaging the measurements of service on the past bills for the applicable month for such premises for such period of time as sanitary sewer service has been used or for the preceding four years, whichever is shorter.

### **915.11 RESPONSIBILITY OF CITY AND PROPERTY OWNERS.**

Nothing in Section 915.09 or 915.10 shall be construed to alter or affect the responsibilities of either the City or of the property owners for the maintenance of water lines on either side of the water meter, or of any user of water for charges for water as metered.

### **915.12 SANITARY SEWER CONNECTIONS**

- A. No person shall make any tap to or connection with the City sanitary sewers for any premises, for any person or for any purpose without having first obtained a permit therefor as hereinafter provided. All such taps or connections shall be made in strict accordance with this chapter.
- B. PERMISSIBLE SEWAGE; NO RAIN OR SUBSURFACE WATER.
1. Only house drainage, commonly known as sanitary sewage, generated from a structure permanently affixed to the land shall enter the City sanitary sewers unless a permit for discharge or drainage from other sources is obtained under paragraph B hereof. No downspouts or other conductors or drains designed to carry rain surface or subsurface water shall be connected with or discharged into such sanitary sewers.
  2. Without first having obtained a permit therefor from the City Manager, no person shall discharge or drain sanitary sewage into the City sanitary sewers from any source other than as described in paragraph A hereof. Any discharge or drainage of sanitary sewage into the City sanitary sewers must be made in compliance with applicable standards promulgated by the City Health Director and/or Public Works Director, as recommended to the City Manager.

## Sanitary Sewer Utility

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- C. The use of such sewers, taps and connections with such sewers, plumbing drains, the discharge into the system and all materials, devices and contrivances appurtenant to or to be used with such taps, connections or plumbing shall be in strict accordance with and be governed by this chapter and applicable provisions of the Ohio Revised Code.
- D. There shall be a separate tap or connection with the sewer system for each premises connected therewith.
- E. The work of making taps or connections to such sewers or of installing plumbing to be connected therewith shall be done only by persons licensed by such other political jurisdictions in Montgomery County, Ohio as may be reasonably designated by the City Manager to engage in the business of plumbing in such jurisdiction, and such persons shall use only such materials, devices and contrivances in doing such work as are in strict accordance with this chapter. Where plumbing has heretofore been installed in a building in the City by a plumber not licensed as above provided, however, that building may be connected to the sanitary sewers upon compliance with the other provisions hereof, if the previous work conforms to the requirements of this chapter.
- F. Permits to make taps and connections with the sewers shall be issued by the City Manager or his authorized representative. The person issuing such permits shall keep full and complete records showing the date of issuance, the party to whom issued, for which premises, the type of connection, the name of the owner(s) of the premises, the person performing the work and the time within which the tap or connection and all work in connection therewith shall be completed. Such records shall always be open for the inspection of all persons.
- G. APPLICATION FOR PERMIT; PRELIMINARY INSPECTION.
  - 1. Permits shall be issued upon the written application of the owner or one of the owners of the premises for which they are intended or of the plumber or plumbers who are to perform the work. In making an application, the applicant shall be the agent of the owner of the premises named in the permit and shall be bound by the terms of the application and permit.
  - 2. Before any such permit is issued there shall be filed with the City Manager or his authorized representative a certificate of the authorized plumbing inspector that he has inspected the plumbing in the premises for which the tap or connection with the sewer is desired and that the same conforms to this chapter and the Ohio Revised Code.
- H. INSPECTION; ORDERS TO CORRECT; REMEDY OF CITY.

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1. After any tap or connection to the sewers is made and before the trench containing the pipe is backfilled, the plumber doing the work shall notify the City Manager or his authorized representative and the work from the building line to the sewer shall be inspected as soon as practicable by the authorized plumbing inspector. If he finds that the work conforms to this chapter, the backfilling may be done, but the backfilling may not be done until the work does conform.
2. If upon any such inspection, changes are ordered to make the connection or tap conform to this chapter and the same are not made within 72 hours from the issuance of such order, the permit shall stand revoked. If that occurs the City may remove as much of the work and material as is in the trench within the limits of the street or highway and fill that part of the trench at the expense of the owner of the premises.

### I. TRENCH CONSTRUCTION AND REFILLING.

1. All trenches for the purpose of making connections with the sewers shall be open cut from the surface and no tunneling shall be allowed. Within the limits of any street or highway of the City, all excavations for any such connection shall be governed and shall comply with the following rules:
  - a. The sides of the trench are to be kept vertical by bracing, sheeting or otherwise.
  - b. All gutters, sidewalks, railway tracks, etc., are to be kept clean and free from obstruction.
  - c. Excavated gravel is to be piled on one side of the trench, dirt on the other.
  - d. No material suitable for refilling is to be taken from the work.
  - e. Sewer, gas and water pipes, lamp posts, etc., are to be protected from injury.
  - f. Suitable barricades and red lights are to be properly placed so as to warn and protect the public from injury.
  - g. Generally, backfilling is to be rammed under paved streets and flushed under unpaved streets.
  - h. The trench shall be filled to a depth of not over four feet, and flooded with water and continued until the trench is filled.
  - i. Earth shall be spread in six inch horizontal layers and immediately rammed.
  - j. Rammers are to have faces not less than five inches square and are to weigh not less than twenty pounds each.
  - k. Every trench must have twelve inches of good clean gravel on top.
  - l. Gravel on top of the trench is to be piled not higher than four inches above the grade of the street.

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- m. All surplus dirt is to be removed and the street left perfectly clean.
  - n. All bouldered gutters are to be repaved.
  - o. All curbing or sidewalks damaged are to be reset or replaced.
  - p. New paving must match neatly with the adjoining work.
2. The surface of the street or highway over any such trench shall be restored to its former condition as nearly as possible, both as to grade surface and paving, to the satisfaction of the City Manager or his authorized representative.
- J. To pay the cost of issuing permits and making inspections, fees shall be charged in the amounts set by the City Manager under Chapter 153 of the Administrative Code.
- K. PROPERTY OUTSIDE CITY; PERMIT AND FEE.
1. Subject to the provisions and conditions of the chapters dealing with sanitary sewers, any property outside of but contiguous to the City may be connected with the sanitary sewers of the City. Before any such connection is made, however, a permit therefor shall be obtained and the applicable fees paid. The use made of the sanitary sewers in connection with any such outside property shall be governed and controlled by the ordinances of the City.
2. As to property outside the City, there shall be a separate sanitary sewer service connection for each house, and in the case of a double house there shall be two sanitary sewer service connections. No structures except dwelling houses shall be connected with sewers under this chapter.

L. CONNECTION OUTSIDE CITY WITHOUT PERMIT.

If any property outside of the City is connected with the sanitary sewers without a permit having been obtained therefor, or if the use of the sewers in connection with any outside property is not in accordance with the ordinances of the City pertaining thereto, the service connection from such outside property shall be removed by order of the City Manager.

M. UTILIZATION CHARGES.

Those properties located within the City of Oakwood and identified as City Pt. Lot #2854, one property identified by County Auditor as Parcel 10-9-3, City Pt. Lot #2855, one

## Sanitary Sewer Utility

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property identified by County Auditor as Parcel 10-8-5 and three properties on City Lot #2861 identified by the County Auditor as Parcels 10-10-3, 10-10-4 and 10-10-5 shall be subject to a utilization charge provided for herein at the time of connection to the project. The utilization charge for each property identified herein shall be \$15,045.33 if the connection is made in 1993.

The utilization charge in subsequent years shall be as follows:

1994	\$15,496.69
1995	\$15,961.59
1996	\$16,440.44
1997	\$16,933.65
1998	\$17,441.66
1999	\$17,964.91
2000	\$18,503.86
2001	\$19,058.97
2002	\$19,630.74
2003	\$20,219.66
2004	\$20,826.25
2005	\$21,451.04
2006	\$22,094.57
2007	\$22,757.41
2008	\$23,440.13
2009	\$24,143.33
2010	\$24,867.63
2011	\$25,613.66
2012	\$26,382.07
2013	\$27,173.53

The incremental charges provided for herein are intended to offset interest costs or loss of interest earnings as a result of the payment by the City of the cost of construction of the Project. Because of the design of the Project and the necessity for City Pt. Lot #2855 (Parcel #10-8-5) to be served in part by pumping facilities, the utilization charge against this lot is reduced by \$5,000.

This utilization charge is intended as a recovery of a capital investment by the City and is in addition to the fees for permits and inspections provided for in Section 915.12 (J) of the Codified Ordinances.

No property identified herein or any other property shall be connected directly or indirectly to the Project unless the connection is made in conformity with all applicable provisions of this Chapter of the Codified Ordinances and rules and regulations adopted pursuant thereto and the applicable utilization charge is paid to the City in full. In the event the City Manager shall ascertain that any property has been connected directly or indirectly in violation of the provisions of this Ordinance or other rules and regulations of the City, the City Manager is authorized to disconnect or cause to be disconnected such property from the System until such violation shall cease.

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The utilization charge shall be deposited to the credit of the Sanitary Sewer Disposal and Maintenance Fund.

Any utilization charge not paid in full at the time of the connection shall be certified by the City Manager to the County Auditor who shall place the same upon the real property tax list and duplicate against the property serviced by such connection and such charge shall be a lien on such property from the date it is placed on the real property tax list and duplicate by the Auditor shall be collected in full in the tax collection year following the year of certification to the County Auditor.

- N. Whoever violates any of the provisions of Sections 915.12 (A) through 915.12 (J), inclusive, shall be guilty of a minor misdemeanor for the first offense and of a fourth degree misdemeanor for each subsequent offense. If any sanitary sewer connection or other act or situation in violation of any of those sections is continued in existence for five days, it shall constitute a separate offense.

### **915.13 PENALTY.**

Whoever violates any provision of this chapter shall be guilty of a minor misdemeanor for a first offense and of a fourth degree misdemeanor for every subsequent offense. Each day a violation continues to exist shall constitute a separate offense.

#### **Legislative history:**

Ord. 165, passed 8/17/14; Ord. 172, passed 11/10/14; Ord. 703, passed 3/5/28; Ord. 2107, passed 10/19/59; Ord. 2254, passed 3/18/63; Ord. 2510, passed 10/2/67; Ord. 2854, passed 12/17/73; Ord. 2858, passed 2/4/74; Ord. 2963, passed 6/7/76; Ord. 3008, passed 8/22/77; Ord. 3039, passed 3/20/78; Ord. 3062, passed 9/11/78; Ord. 3091, passed 6/18/79; Ord. 3158, passed 9/15/80; Ord. 3386, passed 12/5/83; Ord. 3387, passed 12/5/83; Ord. 3398, passed 1/16/84; Ord. 3399, passed 1/16/84; Ord. 3718, passed 1/18/88; Ord. 3719, passed 1/18/88; Ord. 3934, passed 3/6/90; Ord. 3965, passed 6/4/90; Ord. 4040, passed 2/4/91; Ord. 4130, passed 5/4/92; Ord. 4144, passed 7/13/92; Ord. 4217, passed 10/4/93; Ord. 4218, passed 10/4/93; Ord. 4266, passed 9/12/94; Ord. 4441, passed 8/16/99; Ord. 4567, passed 1/10/05; Ord. 4620, passed 1/22/07; Ord. 4692, passed 2/1/2010; Ord. 4693, passed 2/1/2010

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**Chapter 919**  
**Water Utility**

- 919.01 Authority of department to adopt rules.
  - 919.02 Purpose.
  - 919.03 Definitions.
  - 919.04 Duties and powers of the water utility.
  - 919.05 Rights and responsibilities of water utility customer.
  - 919.06 Water service fees, costs and charges.
  - 919.07 Penalty charges, interest and remedies for non-compliance.
- Addendum A Water Service Rate Chart

**CROSS REFERENCES**

- Power to provide and regulate water system - see ORC 715.08, 717.01, 743.01.
- Water pollution - see ORC 715.08, 743.24 et. seq.
- Compulsory water connections - see ORC 729.06, 743.23
- Tampering with water hydrants, pipes or meters; unauthorized connections,- see ORC 4933.22.
- Department of Water - see ADM. 135.01.
- Sewer and water utilities generally - see S. & P.S. Ch. 911.
- Water supply requirements - see Prop. Main. Code.
- Certification of water bills to County Treasurer as tax liens - see ORC 743.04.

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**919.01 AUTHORITY OF DEPARTMENT TO ADOPT RULES.**

The Water Department and/or the City Manager is hereby authorized and empowered to adopt reasonable rules and regulations as may be necessary and appropriate to the operations of that department. Such rules may include, but need not be limited to, provisions for protection of the well fields of the City.

**919.02 PURPOSE.**

To provide for delivery of water service to customers both within and outside the corporate limits of the City of Oakwood, there shall be and is hereby enacted legislation setting forth the methods, procedures, costs, requirements and responsibilities associated with delivery of such service.

**919.03 DEFINITIONS.**

**CITY** – The City of Oakwood, a political subdivision of the State of Ohio, located in Montgomery County.

**CUSTOMER** – A person who derives benefit from the delivery of water service provided by the City of Oakwood, whether such person may be classified as an owner, landlord, occupant, resident, tenant or consumer.

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- DEDUCT METER** – A meter which may be installed for purposes of avoiding sanitary sewer charges for water consumed but not returned to the water facility for treatment through the normal sanitary sewer drain system. If deduct meter is hooked up as a direct service line, sanitary sewer charges do not apply on consumption reading. If deduct meter is connected after a main meter, the deduct meter consumption will be deducted from the master meter consumption to arrive at the consumption amount on which sewer charges will be billed. Water charges will be billed on the entire master meter connection.
- DIRECTOR** - The Director of Engineering and Public Works, or the Director of Finance, employed by the City of Oakwood, responsible for the administration, application and/or enforcement of these water ordinances.
- DROP BOX** - A drop box has been placed in the alley across the street from the municipal building located at 30 Park Ave. for the convenience of water customers. Payments delivered to this drop box while the administrative offices are open shall be considered as having been paid or delivered that same day; however, payments or correspondence delivered to this drop box after office hours will be considered as having been received the next business day. (Also see PAYMENT, below)
- MASTER METER** – The primary meter which measures all city water being distributed to a specific service address.
- METER** – A water flow measuring device which shall include the physical meter and any remote reading device, including battery and electrical wire, necessary to provide the City with remote reading capability.
- PAYMENT** – Payment(s) shall be considered as having been received when delivered in the form of cash, valid check, or charge to the administrative offices located at 30 Park Avenue within the City limits of Oakwood. (Also see definition of DROP BOX above)
- PRINCIPAL BUILDING** – A non-accessory building in which the principal use (of the lot on which the building is situated) is conducted.
- WATER UTILITY** – Includes employees, contractors or sub-contractors working on behalf of the water utility.

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### 919.04 DUTIES AND POWERS OF THE WATER UTILITY.

In addition to the services described in Chapter 135:

- A. All water sold by the Water Department shall be measured by meters maintained at the premises served. This includes water delivered to premises under construction and measured through use of a temporary metering device.
- B. The City shall furnish one water meter, of 5/8" or 3/4" size, free of charge, for each new principal building erected within the City of Oakwood or served by the City, but the City shall not be responsible for paying for the cost of installation of any such water meter. The City shall be responsible for performing or contracting for the performance of all such work and the City thereafter to charge the customer for such work. Alternatively, the City may permit the owner of the new principal building to contract directly for such installation work. Such meters furnished by the City shall remain the property of the City, and shall be replaced by the City, as necessary, at no cost to property owners beyond the minimum charge for normal wear, tear and routine maintenance that is included on all monthly invoices.
  - 1. The fact that a principal building may contain more than one dwelling unit or more than one business unit shall not affect application of this section and the City shall furnish no more than one water meter for any such multi-unit principal building. Further, this section shall be applied consistently to all multi-unit principal buildings, whether the units are owned separately as condominium units or are owned together as one rental property.
  - 2. If a water meter of some size other than 5/8" or 3/4" is desired by the owner of the building, such other size water meter must be paid for by the building owner; the City of Oakwood will not provide, free of charge, any other such size meter, nor will the City allow a credit for the cost of a 5/8" or 3/4" meter. This policy on installing other than 5/8" or 3/4" meters shall be the same as the policy for installing 5/8" or 3/4" meters as described in 919.04 B above.
- C. Where deemed necessary, the City Manager may at any time require any customer to install a water meter at the customer's own expense, whereupon rates for metered water services shall be applicable.

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- D. The City of Oakwood assumes maintenance responsibility for water mains and service lines from the water main to and including the curb box water shut-off valve. The property owner and any tenant together referred to as the "customer" are responsible for water service lines and fittings from the curb box to the principal structure and for all plumbing lines and appurtenances in structure.
- E. Water bills shall be rendered by the City at least once each month. They shall be based upon an actual reading of the customer's meter during that period, except in the case of a meter or remote-reading malfunction or other problem, in which case an estimated bill may be rendered. The City shall promptly repair malfunctions or other problems to limit the reliance on estimated billing.
- F. Whenever any notice is required or permitted under this chapter, it shall be mailed by regular United States mail to the last known address of the owner, occupant or other customer, and said notice shall be deemed given two (2) days after mailing a copy of said notice, to the last known address of the customer and delivering a copy thereof at the property for which such water service was contracted.
- G. To ensure that users of the public water system are protected against connections of supplemental water systems, the City shall make an annual inspection of each supplemental water system to make certain that no supplemental source of water is connected to or used with the public water system of this city. The annual inspection by the City shall be expanded to include a determination of whether or not supplemental water systems used for internal consumption of residents comply with all applicable regulations of the State Department of Health and Oakwood Board of Health.
- H. It shall be the duty of the Director to cause surveys and investigations to be made of industrial and other properties served by the public water supply where actual or potential hazards to the public water supply may exist. Such surveys and investigations shall be made a matter of public record and shall be repeated as often as the Director shall deem necessary.
- I. The Director shall require recertification of any installed backflow prevention device at least once every twelve months at the expense of the water customer.

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- J. Upon request of property owners for the installation of water sprinkling meters upon their premises, for purposes of avoiding sewer charges on such outdoor water usage, the Water Department is hereby authorized to provide and install such water sprinkling meters. The policy for installing water sprinkling meters shall be the same as described in 919.04 B above, and the property owner shall be responsible for the cost of both the water sprinkling meter and installation. Installation shall be in frostproof meter boxes or in an indoor location approved by the Water Department.
- K. The City may, upon obtaining authorization from customer, automatically and directly deduct the amount of utility bill from customer's respective bank account on a regular and continuing basis. This direct pay program shall be conducted in accordance with policies and procedures outlined in Water Rules and Regulations as established and approved by the City Manager.
- L. If any payment, direct pay or otherwise, is found or determined to be invalid, such payment plus any accrued penalties, interest, fees and/or other charges may be added back to the property account (service location) and certified to the County auditor for collection, as detailed in section 919.07 F of the codified ordinances.
- M. The City may use any security deposit under this Chapter as payment for any water bill not paid when due. If the amount of the deposit is reduced at any time, it must be replenished by the customer within seven days after written notice from the city to do so. Failure to replenish the account will be considered the same as not paying a water bill and will subject the customer to one or more of the actions listed under 919.07 F herein.
- N. The Director is hereby authorized and directed to discontinue, after reasonable notice to the occupant thereof, the water service to any property wherein any connection in violation of the provisions of this ordinance is known to exist, and to take such other precautionary measures as he may deem necessary to eliminate any danger of contamination of the public water supply system. Water service to such property shall not be restored until such conditions have been eliminated or corrected in compliance with the provisions of this ordinance.
- O. When requested by a customer, the Director may authorize partial payments of unpaid amounts and establishment of a payment plan. Authorization of partial payments and payment plan is at the sole discretion of the Director and shall be considered if in the Director's judgment the customer is unable, due to hardship conditions, to pay the full amount due. When such payment plan is

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- P. authorized, it shall be for a period of twelve (12) months duration or less, and shall be used when such deferred payments are the best means of accomplishing the collection activities of this Chapter. Any such request for deferred payments extending beyond a twelve-month period from the date of the request shall require written approval of the City Manager, at the recommendation of the Finance Director and Law Director.
- Q. All water services within the City rights-of-way must be copper unless the City Manager accepts an approved equivalent.

### **919.05 RIGHTS AND RESPONSIBILITIES OF WATER UTILITY CUSTOMER.**

- A. Each property within the City and any other property receiving water services from the City of Oakwood shall be outfitted with a water flow measuring device and remote transmitter, which shall be used to measure consumption. Such consumption shall serve as the basis for billing customers for services rendered by the City. Each customer shall be responsible for providing reasonable access for installation, repair and/or maintenance of such consumption measuring equipment. Failure to comply and/or have meter installed may result in criminal charges, as stipulated in Section 919.07 M of this Chapter.
- B. All owners and all occupants of real estate premises who receive water service from or through the City shall be deemed to have accepted in the form of a contractual agreement and complied with the provisions of this Chapter 919 and all Water Rules and Regulations as a condition of receiving or continuing to receive such water service. Failure to comply shall constitute a violation of this section.
- C. Leased or rented property: If a property owner enters into an agreement to lease or rent property to another person or organization, the property owner shall be required to act as follows:
  - 1. To sign the water service contract with the city, as the customer; or
  - 3. To have the tenant contact the City to provide required billing information, with the property owner being required to sign a written guarantee of payment. This guarantee shall specify that, if the tenant-customer fails or refuses to pay a water bill when due or to comply (within the time reasonably required by the City) with this chapter, the property owner-guarantor shall pay such delinquent bill and cause the provisions of this chapter to be complied with. Such payment or compliance must be made by the property owner-guarantor within ten (10) days after the City has given written notice of the delinquency or

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4. chapter violation, subject to his right to appeal that payment delinquency or chapter violation to the Sewer and Water Appeals Board under Section 919.07 E 1. That board is also referred to in Chapter 167 of the Administrative Code.
- D. Maintenance of lines and meters: Both the property owner and any tenant (together referred to as the "customer") shall be jointly and severally responsible for all charges made through this Chapter 919 and for violations of this chapter, and for the care, maintenance, repair and replacement (collectively referred to as "maintenance") of water service lines, fittings and accessories, including but not limited to meter pits, from the curb box to the house or other building, as well as all plumbing lines and fixtures on the outflow side (i.e., building plumbing side) of the meter, regardless of whether the customer account for such property or any such charge was carried in the name of or furnished to the owner or any occupant who is not the owner, and whether or not the occupant signed a water service contract or the owner signed a guarantee under paragraph C of this section.
1. "Maintenance" shall be performed in a quality-workmanship manner and in accordance with standards established and revised from time to time by the Water Department.
  2. The cost for repair or replacement of water meter equipment resulting from other than normal wear, tear and routine maintenance shall be at the customer's expense, and the City shall be responsible for performing or contracting for the performance of all such work and the City thereafter to charge the customer for such work. The City shall be responsible for the repair or replacement of water meters on the premises, if determined to be the result of normal wear and tear, or for purposes of routine maintenance.
  3. The customer shall be responsible for any and all charges for water consumed by leaking fixtures and/or plumbing on the outflow side of the meter.
- E. Since the furnishing of water to a property benefits that property and is an attribute thereof, the property shall be liable for any such charges in the same manner as is the case for real estate taxes and assessments all of which are and shall be liens against said property. It shall be the responsibility of the buyer and/or agent of the buyer to check for outstanding balances prior to the purchase of a property. Although a property owner, due to the wording in a lease or rental agreement, may hold a tenant or lessee responsible for payment of utility bills, property owner shall have ultimate responsibility for payment of utility bills.

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- F. Nothing in this chapter shall be construed to prevent contractual arrangements between owners, occupants, tenants, sellers, purchasers and previous owners of real estate requiring some certain party to pay such charges as a condition of the arrangements between these parties. Such contractual arrangements, however, shall operate only between the parties and shall not be deemed to interfere with or affect the actions of the City in discontinuing water service, or initiation of any other action under 919.07, in order to collect water charges or to enforce compliance with this chapter.
- G. The owner shall be responsible for the cost and installation of meters other than 5/8" or 3/4" in size. The installation cost shall be based on the then current wage scale and the time of City employees required to make the installation or the direct contractual cost. All water meters connected to the City system must meet City specifications.
- H. The Director, or his duly authorized representative, shall have the right to enter at any reasonable time any property served by a connection to the public water supply or distribution system of the City of Oakwood for the purpose of inspecting the piping system or systems thereof. On demand, the owner, lessees or occupants of any property so served shall furnish to the Director any information which he may request regarding the piping system or systems or water use on such property. Refusing to provide such information, when demanded, shall, at the discretion of the Director, be deemed evidence of the presence of improper connections as provided in this ordinance. Notification of need for access shall be made in writing and delivered to the owner, lessee or occupants in person or by United States mail.
- I. When property to which water service is provided is about to be sold, any party to the sale (or the agent for such party) may request that the City render within ten (10) days from the date of that request the final bill for all outstanding water service and charges. Any such request must be made at least fourteen (14) days prior to transfer of the title of such property.
- J. Within fourteen (14) days after recording with the Recorder of Montgomery County the legal documents of any condominium or any planned unit development to be serviced by the Water Department of this City, the owner of any such project shall file with the Water Department a time-stamped copy of those recorded documents. That copy shall show the microfiche number assigned by the Recorder's office to the documents.
- K. An approved backflow prevention device shall be installed on each water service line to a consumer's premises to the extent required by the United

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- L. States or Ohio Environmental Protection Agency (EPA) through its applicable regulations. The type of device that may be approved and the manner of installation shall be as required by those EPA regulations. Each consumer whose water service line is required to have such a device shall be obligated to purchase that device and to have it installed at his expense. To the extent the EPA regulations allow or require some decisions by the supplier of water, the Director shall make those decisions through water rules and regulations authorized by Section 919.01 or by a written memorandum issued and signed by the Director.
1. If, in the judgment of the Director, an approved backflow prevention device is necessary for the safety of the public water system, the Director will give notice to the water customer to install such an approved device immediately. The water consumer shall, at his or her own expense, install such an approved device at a location and in a manner approved by the Director and shall have initial inspections and tests made of such approved devices as required by the Director.
  2. If a water consumer installs a backflow prevention device without the prior approval of the Director, the water customer shall give written notice of said installation to the Director within seven (7) days following said installation and shall obtain a permit and pay for inspections and tests thereof as required by the Director.
- M. All water meters must be grounded to an appropriate grounding source. If a water system is not grounded and if the customer is not available or not able to address a grounding issue at the time it comes to the attention of a City representative, the City shall have authority to make such repairs as are necessary to ground the system. The cost of the work shall be an additional charge added to the customer's next water bill.
- N. No person, firm or corporation shall establish or permit to be established or maintain or permit to be maintained any connection whereby a private, auxiliary or emergency water supply other than the regular public water supply of the City of Oakwood may enter the supply or distributing system of said municipality, unless such private, auxiliary or emergency water supply and the method of connection and use of such supply shall have been approved by the Director and by the Ohio EPA.

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- O. No source of water which supplements the supply available through the public water system of this City (supplemental water system) may be connected to, or used when connected to, that public water system. Any supplemental water system so connected must be disconnected at once. Supplemental water systems shall include, but are not limited to, private wells, cisterns, surge tanks, etc.
1. The owner of each supplemental water system shall pay to this City an annual inspection fee to be set by the City Manager under Chapter 153 of the Administrative Code.
  2. If a supplemental water system is used for internal consumption of any person, it must comply with all applicable regulations of the State Department of Health, the City Board of Health and of any other government agencies having jurisdiction over such matters; the annual inspection by this City shall be expanded to include a determination of whether or not any and all such governing regulations are being met.
  3. Every property in this City shall be obligated to pay at least the minimum charges under the rates for the public water system, even if all water for such property is supplied from a supplemental water system and not from the public water system, as long as a public water system is available within three hundred feet (300') of the perimeter of the property. Vacant structures cannot escape the minimum billing by turning off the water service or removing the water meter.
  4. Nothing here shall preclude the use of supplemental water as long as the source is not connected to the main supply. Each property within the city limits must have a water meter connection to the main water supply and such property owner shall receive and be responsible for a minimum billing, or a billing based on actual consumption, whichever is greater. This cost is intended to help support the cost of installing and maintaining the City's infrastructure.
  5. All existing or new wells must be reported to the City and subsequently approved by the City of Oakwood.
- P. No person may withdraw or attempt to withdraw water from any fire hydrant, except an employee or agent of the City acting for City purposes, or employees or agents of fire departments from other local governments who are acting within the boundaries of this City under a mutual aid arrangement.

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- Q. If water service is discontinued by the City under this chapter, it shall not be restored until the customer or property owner has deposited with the City (as security for the prompt payment of water bills and for compliance with this chapter) a sum of money computed as follows, the larger of the two establishing the amount:
1. Double the amount of any delinquent water bill that was the basis for discontinuance of service, or
  2. Double the average monthly water bill for the premises during the twelve most recently completed full months in which the property was occupied.
- R. If water service to premises occupied by a tenant or lessee is to be terminated pursuant to a finding of delinquency in payment on the part of the property owner, or terminated pursuant to a finding by the Sewer and Water Appeals Board of delinquency on the part of said property owner, the tenant shall have the right to pay the delinquent amount to the City to avoid such termination of water service or to deposit the security deposit addressed in paragraph P above.
- S. Water meter pits or vaults may not be installed or placed in the street or on a paved surface. All meter pits or vaults are required to meet or exceed provisions established by the City Manager and outlined in the Water Rules and Regulations.
- T. No person shall tamper with any metering device or bypass said device without written permission of the Water Department. Such permission shall be granted in emergency situations only. Any person who tampers with or bypasses any water metering device shall be responsible for, and shall pay all costs incurred in, repairing any damage resulting to the metering device.
- U. Separate meters may be installed for water that is used solely for sprinkling and irrigation purposes. All such meters must be obtained from the City and shall remain the property of the City. Any customer wishing to use such a meter shall have the duty to install it at his expense and at a location approved by the City. Any sprinkling and irrigation meters must be equipped with a remote reader. Customers who use sprinkling and irrigation meters must reimburse the City for the cost of those meters and shall also bear the cost of any maintenance work performed on those meters.

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1. Sprinkling and irrigation meters may be installed on a "direct reading" or a "deduction" basis. A direct reading installation is one in which the sprinkling and irrigation water is kept separate from water used by the home or other building on the location, and the reading on the meter discloses the amount of water used for sprinkling and irrigation. A deduction installation is used where the sprinkling and irrigation water is taken from the water that has already passed through the master meter for the house or other use at that location. The reading of the deduction meter then shows the amount of water used for sprinkling and irrigation, and that amount is deducted for sewer billing purposes from the usage shown on the master meter since sprinkling and irrigation water is not subject to sanitary sewer charges. The total reading for the master meter shall apply for water billing. A "deduction" basis meter shall not be subject to the monthly minimum billing requirement addressed in 919.06 and further detailed in the Water Service Rate Chart, located at the end of this Chapter; however, a "direct reading" meter shall be subject to such minimum billing requirements.
  2. All meters installed in a deduction manner must be read and billed monthly. If an estimated reading for the deduct meter is necessary for any billing period as a result of the City's inability to gain access to attend to a suspected meter malfunction, all water passing through the master meter that month will be charged sanitary sewer rates as well as water rates. Once the actual deduct meter reading is determined, the sprinkling and irrigation usage shall be deducted from the total usage registered on the master meter, subject to the limitation that the water meter amount shall not be reduced to a figure lower than the minimum. If there is an excess or unused deduction for sprinkling and irrigation water, it may not be carried over to a subsequent month.
- V. If a customer questions the accuracy of billings and/or consumption and believes the meter equipment to be faulty, the customer may request testing of such equipment. Upon request, the City will remove the existing meter and install a new meter in its place. The old meter will then be sent to the Montgomery County Sanitary Engineering Department, or other qualified testing facility, for testing. A reading within a 2% variance is considered accurate. If the meter tests faulty, greater than a 2% variance, the city shall bear the cost of testing. However, if the test results indicate the meter is reading accurately, i.e. within a 2% variance, then at the discretion of the Director, the tested meter may be returned to service in it's previous location and /or the customer may be required to bear the cost of testing.

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- W. The property owner has one week after a water leak has been reported to them by the City of Oakwood to repair said leak, or the City may terminate water service to the property.
- X. Any and all rulings or determinations in regards to water service provided by the City are subject to an appeal process as outlined in Section 919.07 E 1 c herein and Chapter 167 of the City Ordinances.

### **919.06 WATER SERVICE FEES, COSTS AND CHARGES.**

- A. The rates charged for water service shall be established by City Council, as summarized on Addendum A, i.e. the Water Service Rate Chart document included at the end of this Chapter 919. A discount of 5% shall be allowed from the rates set forth below for payments made within fifteen (15) days from the statement dates. However, no discount shall be allowed for any water service supplied beyond the boundaries of the City of Oakwood. The rates to be charged by the Water Department shall be as follows:

1. For the furnishing of water service to sprinkling meters or similar special meters, the minimum monthly rate commensurate with meter size shall be charged, even if there is no actual consumption, in the same manner as all meters, except where a so-called "deduct meter" has been placed internally beyond the master meter and within its metered system. Any meter for which no minimum charge is made will be maintained at the property owner's expense.

- B. Customers requesting a water sprinkling meter shall pay to the City a sum equal to the then current cost of such a meter. If the City installs the meter, the City shall charge the customer for the installation based upon the then current wage scale and the time required by City employees to do the work, or a minimum amount of \$25.00, whichever is greater. The City shall make an added charge to the customer for annual removal and resetting of such water sprinkling meters, when required, based upon the current wage scale and time involved, or for a minimum amount of \$25.00, whichever is greater.

The following charges shall be made to customers for stand-by, unmetered, water service to fire sprinkler systems:

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Size of Service Line	Rate per Month	Maximum Floor Area Square Feet
2-inch	\$4.00	5,000 or less
4-inch	\$7.00	10,000 or less
6-inch	\$10.50	20,000 or less

1. For each 1,000 square feet of floor space served by such sprinkler systems in excess of the above specified maximum area, an additional charge of \$.50 per month shall be added to the foregoing respective rates per month.
- C. The fees charged by the City for the right to tap into a water service line shall be as follows:
1. Line of 1" or less, \$75.00 or the City's cost plus 15%, whichever is greater.
  2. Line of 2" or less, but greater than 1", \$150.00 or the City's cost plus 15%, whichever is greater.
  3. Any line larger than 2" shall be charged at the rate of its number of inches times the charge for a line of 1" or less, or the City's cost plus 15%, whichever is greater.
  4. A fee may be charged by the City for each trip to the premises by a City representative in connection with a tap-in. Said fee shall be the cost to the City for each such occasion plus 15%.
- D. The City shall charge the customer its cost for turning water service on or off, except in cases of emergency and/or when such turning on or off is authorized by the City to be done without charge.
1. Charges for service done by the City of Oakwood:
    - a. Non-payment of service - \$20.00 water turn off/on

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- b. Service turn off/on for extended period of time:
    - \$50.00 for service up to 1"
    - \$75.00 for service of 1"
  - c. The charge for an extended period of time shall include the minimum billing. Subsequent months will be charged at the regular minimum billing rate.
- E. For customers moving in or out and obtaining service for only a partial billing period, and when water consumption is less than the minimum, the minimum charges imposed by this chapter shall be prorated based on the number of days in the billing period that they have incurred service. For the purpose of this section 28 days shall be considered a full billing period. If the measured service exceeds the minimum charge, however, the measured rate shall be charged instead of a prorated minimum rate.

### **919.07 PENALTY CHARGES, INTEREST AND REMEDIES FOR NON-COMPLIANCE.**

Any monetary penalties, interest, fees or charges, as described below, shall be charged to said customer, and made a part of and handled in the same manner as the regular monthly utility charges:

- A. If a utility bill is not paid within fifteen (15) days after said bill was issued, any applicable discount shall be removed.
- B. If a utility bill is not paid within thirty (30) days after said bill was originally issued, the customer shall be considered delinquent and a ten percent (10%) penalty shall be charged said customer.
- C. Any utility bill not paid by the due date shall be payable on demand and shall bear interest at the rate of one and one-half percent (1.5%) per month, for each whole or partial month after the due date.
- D. Any payment subsequently made invalid for reasons including, but not necessarily limited to, insufficient funds (e.g. returned checks) shall incur a transaction cost of \$20 per occurrence.

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- E. In the event an occupant or property owner is delinquent in the payment of a water bill or in violation of any provision of this chapter, water service may be discontinued based on such delinquency or violation, but only after the procedure set forth below has been completed:
1. A written notice shall be mailed to the last known billing address of said customer, and shall be posted upon the premises served, and (if the customer is a tenant) shall be mailed to the last known address of the property owner, who has guaranteed payment of water bills and performance of such regulation (such a guarantee being required by Section 919.05 C). Such notice shall state that water service to the premises will be discontinued after the expiration of ten (10) days from the latest date on which the notice was so posted and so mailed unless:
    - a. The delinquent bill is paid in full within that period of time; or
    - b. The violation of this chapter has been eliminated within that period of time; or
    - c. Within that period of time the customer (or property owner) appeals the payment delinquency or chapter violation by delivering to the office of the City Manager a written notice of appeal and of a request for a public hearing on the appeal, such written notice to be signed by the customer or the property owner.
  2. A public hearing on a timely filed appeal shall be held by the Sewer and Water Appeals Board not less than thirty (30) days after the written notice of appeal was delivered to the office of the City Manager. At such hearing the customer (or property owner) may obtain an accounting of all charges with respect to which the City has found a delinquency. The City shall have the burden of proof (by a preponderance of the evidence) as to the delinquent payment or chapter violation. The customer (and/or property owner) may be represented by legal counsel at said hearing, shall be given an opportunity to dispute the alleged liability for delinquent water bills and alleged chapter violation, shall have the right to cross examine opposing witnesses and to subpoena supporting witnesses, and shall be afforded due process of law.
- F. When any bill for water service and/or other charges under this chapter is not paid when due, the City may take any one or more of the following actions:

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1. File a civil action at law to collect the amount due from any property owner, occupant or other person who is liable to pay the bill under the provisions of this chapter.
2. Terminate the water service as provided in paragraph E above.
3. Certify the unpaid bill to the County auditor, including any penalties, interest, fees and/or other charges, as a real estate tax lien against the property served, but only after compliance with a and b below. The amount so certified shall be a lien on the property served from the date placed on the tax list and duplicate and shall be collected, along with any applicable fees and/or other charges, in the same manner as other taxes, except that the County Treasurer shall accept a payment in such amount when separately tendered as payment for the full amount of such unpaid water bill and associated penalties, interest, fees and/or other charges. The lien shall be released immediately upon payment in full of the certified amount. Any amounts collected by the County treasurer through this procedure shall be placed immediately in the type of separate and distinct fund described in Section 743.06 of the Revised Code.
  - a. The unpaid bill must have arisen pursuant to a service contract made directly with the owner of the property served. Under Section 919.05 B, all water service supplied by the City is deemed to have been contracted for by the owner.
  - b. The bill must have been due and unpaid for at least forty-five (45) days. In addition, at least thirty (30) days advance written notice of the impending certification to the County auditor must be given by the City to the property owner. The requirements of this subsection shall not apply, however, if the City determines that a transfer of any ownership interest in the real estate is about to occur, in which case the City may proceed immediately with such a certification.
4. If two or more consecutive water bills are not paid when due, the city may require the customer or property owner to post a deposit with the city as security for the prompt payment of water bills. The deposit shall be paid in cash to the city within seven (7) days after written notice of the deposit requirement is given by the city. The amount of the deposit and the manner of giving any deposit notices shall be as set forth in sections 919.05 P and 919.05 Q of this chapter.

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- G. If within one week after a water leak has been reported to the customer and to the property owner, no binding contract has been made by that customer or owner with a licensed plumbing contractor to repair the leak within a reasonable time, water service to the property will be terminated until proof of such a contract is delivered to the City. Such termination may be appealed in the same manner described in Section 919.07 E 1 c of this chapter. The leak report to the customer and owner shall be in writing, shall give notice of the possible termination under this section, and shall also explain the right of appeal.
- H. If responsibility for water service charges at any particular property is to be transferred from one customer to another, the City may refuse to commence service to and in the name of the new customer until all outstanding bills and/or all charges for that property under this Chapter have been paid in full.
- I. Any person who tampers with or bypasses a metering device shall be responsible for and shall pay all costs incurred in repairing any damage resulting to said device, in addition to a penalty of one hundred dollars (\$100) which shall be applied to the customer's monthly invoice for each violation of this provision. Each day the violation continues to exist shall constitute a separate offense and additional \$100 penalty.
- J. Whoever violates this section by connecting a supplemental water system with the public water system, or by knowingly uses a supplemental water system that has been connected with the public water system, shall be guilty of a minor misdemeanor. Any violation not corrected within thirty (30) days shall be deemed to be a separate and new violation as another minor misdemeanor.
- K. No person shall utilize water from any unmetered water service to a fire sprinkler system for any purpose other than the fire sprinkler system. Upon violation of this prohibition, the City Manager shall impose a civil forfeiture of up to \$100 and shall act under Section 919.04 C to require the service to be metered, as he deems appropriate.
- L. No person may withdraw or attempt to withdraw water from any fire hydrant, except an employee or agent of the City acting for City purposes, or employees or agents of fire departments from other local governments who are acting within the boundaries of this City under a mutual aid agreement. Whoever violates this section shall be guilty of a misdemeanor of the third

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degree for the first offense, the penalty for which shall be a fine of no less than \$500, no part of which may be suspended, but no term of imprisonment shall apply. The second and each subsequent violation by such person occurring in the same calendar year shall constitute a misdemeanor of the first degree, the penalty for which shall be a fine of no less than \$1,000, no portion of which may be suspended, but no term of imprisonment shall apply.

- M. Unless specifically prohibited by state or federal statute, or otherwise stated within the confines of this Chapter:
1. whoever violates any provision of this chapter shall be guilty of a minor misdemeanor and shall be subject to a fine of not less than \$25 for the first offense and shall be guilty of a fourth degree misdemeanor for each subsequent offense.
  2. Additionally, any act or condition which violates this chapter and which continues to exist for five days shall constitute a separate offense.

### Legislative history:

Ord. 2201, passed 8/8/61; Ord. 2510, passed 10/2/67; Ord. 2517, passed 11/20/67; Ord. 3652, passed 11/17/69; Ord. 2785, passed 6/5/72; Ord. 3021, passed 1/9/78; Ord. 3071, passed 12/18/78; Ord. 3072, passed 12/18/78; Ord. 3162, passed 10/6/80; Ord. 3184, passed 3/2/81; Ord. 3419, passed 5/21/84; Ord. 3427, passed 7/9/84; Ord. 3478, passed 3/4/85; Ord. 3530, passed 1/6/86; Ord. 3615, passed 1/5/87; Ord. 3633, passed 3/9/87; Ord. 3734, passed 3/28/88; Ord. 3756, passed 6/6/88; Ord. 3770, passed 6/20/88; Ord. 3772, passed 7/11/88; Ord. 3857, passed 5/15/89; Ord. 3927, passed 2/5/90; Ord. 3933, passed 3/6/90; Ord. 3938, passed 3/19/90; Ord. 4002, passed 9/17/90; Ord. 4011, passed 10/15/90; Ord. 4061, passed 5/6/91; Ord. 4090, passed 10/21/91; Ord. 4131, passed 5/4/92; Ord. 4210, passed 7/19/93; Ord. 4242, passed 3/21/94; Ord. 4266, passed 9/12/94; Ord. 4441, passed 8/16/99; Ord. 4446, passed 10/18/99; Ord. 4503, passed 4/1/02; Ord. 4615 passed 10/2/06, effective 11-2-06; Ord. 4692, passed 2/1/2010; Ord. 4693, passed 2/1/2010.

## Refuse Program

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### TITLE FIVE - Other Public Services

Chapter 931. Garbage and Refuse.  
Chapter 933. Inspections.  
Chapter 935. Parks.

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### CHAPTER 931 Refuse Program

- 931.01 Establishment and purpose.
- 931.02 Definitions.
- 931.03 Private collectors prohibited.
- 931.04 City Manager may make rules and regulations.
- 931.05 Residential refuse containers.
- 931.06 Commercial refuse containers.
- 931.07 Maintenance of containers.
- 931.08 Placement of containers.
- 931.09 Littering with garbage and refuse; unauthorized dumping.
- 931.10 Private disposal of building materials, tree and shrubbery trimmings.
- 931.11 Transportation of refuse over public streets.
- 931.12 Transfer of refuse from one place in the City to another is prohibited.
- 931.13 Refuse pits and enclosures; composting.
- 931.14 Enforcement by refuse program employees.
- 931.15 Discarded substances (receptacle contents) as City property.
- 931.16 Undesirable accumulations; littering.
- 931.17 Refuse billing.
- 931.18 Penalty Charges, interest and remedies for non-payment.
- 931.99 Penalty.

#### CROSS REFERENCES:

Collection and disposal of garbage - see ORC 715.43, 717.01.  
Employment of scavengers - see ORC 3707.39.  
Disposal & transportation upon public ways - see ORC 3767.20 et. seq.  
Service Department to collect - see ADM. 131.01.  
Duty to keep sidewalks in repair and clean - see GEN. OFF. 517.06.  
Littering; deposit of garbage, rubbish - see GEN. OFF. 517.06.  
Outdoor fires - see FIRE PREV. 1505.01 et. seq.  
Garbage and rubbish disposal - see Prop. Main. Code.

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## Refuse Program

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### **931.01 ESTABLISHMENT AND PURPOSE.**

The city of Oakwood's refuse program is hereby established and this chapter is adopted to provide for the collection, handling, transportation and disposal of garbage, refuse and other forms of solid waste that may be generated by properties within the city of Oakwood. Proper handling and disposal of solid waste shall promote and maintain the health, safety, and general well-being of all inhabitants of the city.

The refuse program includes multiple services, including but not limited to collection and disposal of weekly household garbage and recyclable materials; special pick-ups; dumpster services; leaf and yard debris collection and disposal; refuse collection and disposal from public parks and public events; and operation of public drop-off programs at the Public Works Center, Creager Field parking lot, or other public areas as may be established from time to time. Charges are established under this chapter to provide sufficient revenue to maintain all of the refuse program services.

### **931.02 DEFINITIONS.**

For the purposes of this chapter, the following definitions shall apply. Words used in the singular shall include the plural, and the plural, the singular; words used in the present tense shall include the future tense. The word SHALL is mandatory and not discretionary. The word MAY is permissive. Words not defined herein shall be construed to have the meaning given by common and ordinary use as defined in the latest edition of Webster's Dictionary.

- A. "Ashes" means the residue from the burning of wood, coal, coke or other combustible materials.
- B. "Commercial refuse" means all refuse that is not residential refuse, specifically including but not limited to refuse generated by: commercial structures; churches and institutional structures; mixed-use or other business establishments; and multi-family condominium structures.
- C. "Dwelling unit" shall have the same meaning as is set forth in Section 301 of the Oakwood Zoning Ordinance.
- D. "Private collector" means a person, firm or corporation, other than the refuse program, engaged in the collection, transportation and disposal of residential or commercial refuse.
- E. "Residential refuse" means refuse generated by single family homes and by multi-family residential structures that are not owned and operated as condominiums under Ohio Revised Code Chapter 5311.
- F. "Refuse" means all solid waste. The term encompasses putrescible animal and vegetable wastes of all kinds, including but not limited to wastes resulting from the handling, preparation, cooking and consumption of food, animal carcasses, animal and vegetable offal, as well as non-putrescible wastes, including but not limited to rubbish, ashes, street cleanings, abandoned automobiles, solid market and industrial wastes, building material scraps, tree and shrubbery trimmings, tree limbs, leaves, dead vegetable matter. Refuse does not include sewage and body wastes.

## Refuse Program

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- G. "Refuse program" means the solid waste management program of the city, which shall be operated to, among other things, provide for the collection, handling and disposal of garbage, refuse and other forms of solid waste that may be generated by properties within the city of Oakwood.
- H. "Required side yard" means a yard extending along a side lot line from the front yard to the rear yard and required to be maintained by the Oakwood Zoning Ordinance.

### **931.03 PRIVATE COLLECTORS PROHIBITED.**

All residential and commercial refuse within the City shall be collected, transported and disposed of by the refuse program. No private collectors shall engage in such activities except to the extent required by Section 931.10 and except as provided below in this section.

- A. Refuse shall be collected, transported and disposed of by private collectors to the extent that private refuse collection may be required by the Planning Commission for a particular property or development. Such requirement must be made for good cause shown after a public hearing with notice thereof given to the owner(s) of the property or development to be affected by such order.
- B. Refuse shall be collected, transported and disposed of by private collectors to the extent authorized by the City Manager in emergency situations in which the refuse program is unable to collect, transport and dispose of such refuse through the use of its own equipment and employees.
- C. The City Manager is authorized, but not required, to enter into contracts with one or more private collectors for the collection, transportation and disposal of commercial refuse within the city.
  - 1. Contracts under this section shall be in the nature of a franchise in that they shall authorize the private collector(s) to engage in that business in the city of Oakwood with all fees, charges and costs to be paid directly to the private collector(s) by the customers whose commercial refuse is collected.
  - 2. Contracts under this section may apply to all commercial refuse, or only to certain defined subsets of commercial refuse, in the City Manager's discretion.
  - 3. All commercial refuse to which a contract under this section applies shall only be collected and disposed of by the contracted private collector.

### **931.04 CITY MANAGER MAY MAKE RULES AND REGULATIONS.**

The City Manager may make and enforce the rules and regulations as may be deemed necessary for the safe, economical and efficient management and operation of the refuse program, specifically including but not limited to the establishment of collection routes and schedules; requirements for containers, handling, storage, access and collection of various categories of refuse such as household garbage, refuse, recyclable material and yard debris; ancillary programs such as leaf pick-up, mulching, special pick-ups, and other seasonal or special programs; and for the regulation, collection, rebating and refunding of

## Refuse Program

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charges; provided the rules and regulations are not in conflict with any municipal ordinance. No person shall violate or fail to comply with any such rule or regulation.

### **931.05 RESIDENTIAL REFUSE CONTAINERS.**

All refuse within the City shall be placed for collection and stored in tightly covered containers that comply with the capacity, weight, number, and material specifications set forth in any rules and regulations promulgated by the City Manager pursuant to Section 931.04. In the absence of differing specifications promulgated by the City Manager, the following container specifications shall apply:

- A. Capacity: Standard refuse containers shall be limited to a capacity of 35 gallons or less, and shall be utilized unless the Director of Public Works determines that a larger rolling refuse container should be used in order to provide compatibility with refuse program collection equipment or procedures. Where the Director of Public Works requires the use of larger rolling refuse containers, such containers will be provided by the refuse program and shall be used instead of standard refuse containers, and shall be limited to a capacity of 96 gallons or less.
- B. Weight: No container shall be filled such that its total weight, including the weight of the container, exceeds 60 pounds. Where the Director of Public Works requires the use of larger rolling refuse containers, no such container shall be filled such that its total weight, including the weight of the container, exceeds 200 pounds.
- C. Number: Each dwelling unit at each property served by the refuse program shall utilize not more than three (3) standard refuse containers, each having a capacity of 35 gallons or less. Any number of additional standard containers of similar capacity may be utilized solely for recyclable materials, provided they are properly labeled for such use. Where the Director of Public Works requires the use of larger rolling refuse containers, each dwelling unit shall utilize not more than one (1) rolling container having a capacity of 96 gallons or less.
- D. Materials: All containers shall be of durable metal, plastic or such other material as the Director of Public Works may from time to time authorize as a sanitary, durable equivalent of metal or plastic for refuse storage and collection purposes. If, in the discretion of the Director of Public Works, a particular container is not deemed to be a sanitary, durable equivalent of metal or plastic for refuse storage and collection purposes, it shall not be utilized.

### **931.06 COMMERCIAL REFUSE CONTAINERS.**

Commercial refuse will be collected by the refuse program or by private collector, as determined pursuant to Section 931.03, and the following container requirements shall apply:

- A. If commercial refuse is to be collected by the refuse program, it shall be stored and placed for collection in refuse containers of a type and size as may be reasonably required by the Director of Public Works after consideration of the container location, the

## Refuse Program

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anticipated volume and nature of refuse to be collected, the personnel and equipment capabilities of the refuse program, and any other relevant factors. The Director of Public Works may cause the refuse program employees not to collect commercial refuse from premises having non-compliant containers.

- B. If commercial refuse is to be collected by private collector, it shall be stored and placed for collection in refuse containers of a type and size as may be required by such private collector, subject to approval by the Director of Public Works after consideration of the container location, the anticipated volume and nature of refuse to be collected, the personnel and equipment capabilities of the private collector, and any other relevant factors.

### **931.07 MAINTENANCE OF CONTAINERS.**

- A. All refuse containers shall be maintained in a clean, sanitary condition, and must be lidded. Lids shall be maintained in place so as to close the containers when refuse is stored in them.
- B. Refuse containers shall not be used for refuse storage and collection when they are wet, soggy or deteriorated.
- C. The Director of Public Works shall cause the employees or agents of the City to remove and dispose of any refuse container that is so dilapidated, rusted, or broken that it has become unsuitable for refuse storage and collection purposes, and cannot be reasonably made suitable. Such refuse container shall be deemed to be refuse itself, and the disposal thereof shall not constitute a compensable taking.

### **931.08 PLACEMENT OF CONTAINERS.**

Containers used for refuse storage and collection purposes shall be kept in a location easily accessible to the employees and agents of the City, provided that no such container may be placed or kept in a required side yard without the authorization of the Director of Public Works. In order to facilitate such access, the Director of Public Works may designate the location upon particular premises at which containers shall be placed for collection, and may cause the employees or agents of the refuse program not to collect refuse placed in any other location.

### **931.09 LITTERING WITH GARBAGE AND REFUSE; UNAUTHORIZED DUMPING**

- A. No person shall cause any refuse to be strewn, placed, deposited or maintained upon the ground or in any place open to the outdoors, except in a container complying with the provisions of this chapter. No owner, tenant or person in charge of any premises shall knowingly permit any such action or permit any refuse to remain in any such locations except in such a container.
- B. To facilitate the residential refuse collection and disposal service described in this chapter, the City may place drop-off receptacles for refuse on public property for use

## Refuse Program

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by customers of the City's residential refuse collection and disposal service. When such receptacles are posted with signage containing the words "For Use By Oakwood Residents Only" or words to similar effect, it shall be unlawful for any person, who is not a residential customer of the refuse program, to cause any refuse to be deposited in or around such receptacle. It shall also be unlawful for any person, regardless of that person's status as a residential customer of the refuse program, to cause any refuse to be deposited in or around such receptacle when such refuse was trimmed, cut, collected, removed from, or otherwise originated from property outside the City. For purposes of this section, the term "receptacle" includes cans, dumpsters, bins or any other kind of tangible container, and also includes any permanent or temporary non-containerized area designated for the drop-off of brush, branch, yard waste, recyclable material or other refuse.

### **931.10 PRIVATE DISPOSAL OF BUILDING MATERIALS, TREE AND SHRUBBERY TRIMMINGS.**

Refuse materials resulting from the construction, remodeling or alteration of structures, from other improvements to premises, and from the trimming, cutting or removal of trees, shrubbery and vegetation in connection with such construction, remodeling or alteration or in connection with the general clearing of a substantial portion of any lot shall be removed by the person who produced or created such refuse. The Director of Public Works shall cause the employees or agents of the City not to collect such refuse. Pursuant to Section 931.04, the City Manager may establish rules or regulations whereby vegetative matter such as shrubbery trimmings, discarded Christmas trees and other such matter easily chopped or disposed of may be collected and disposed of by the refuse program.

### **931.11 TRANSPORTATION OF REFUSE OVER PUBLIC STREETS.**

No person, other than refuse program employees or agents or a private hauler acting pursuant to a franchise agreement authorized by this chapter, shall transport refuse over public streets in the City in any vehicle unless the portion of such vehicle containing the refuse is covered and watertight, provided however that if the refuse being transported consists entirely of yard debris or other vegetative refuse, the portion of such vehicle need not be watertight so long as the refuse is either contained within an enclosed area of the vehicle or securely tied, bound or weighted so as to be incapable of being blown or dropped from the vehicle.

### **931.12 TRANSFER OF REFUSE FROM ONE PLACE IN THE CITY TO ANOTHER IS PROHIBITED.**

No person, other than employees or agents of the refuse program or a private hauler acting pursuant to a franchise agreement authorized by this chapter, shall collect refuse from a location in the City, transport it over public streets to any other premises in the City, and unload, deposit or store such refuse at that other premises.

### **931.13 REFUSE PITS AND ENCLOSURES; COMPOSTING.**

- A. No person shall install, construct or maintain any pit, structure or enclosure for the depositing and/or storage of refuse other than containers as authorized by this chapter.

## Refuse Program

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The Director of Public Works may require that the employees of the refuse program not collect refuse from any such pit, structure, or enclosure.

- B. Every such pit, structure and enclosure is hereby declared to constitute a nuisance, and the City Manager may cause same to be abated in accordance with law.
- C. Nothing in this section shall be construed to prohibit composting of vegetative/compostable matter in bins or other structures commonly used for that purpose, provided that the same is maintained in a safe and sanitary manner and is not unsightly, malodorous, noxious, or otherwise injurious to the public welfare.

### **931.14 ENFORCEMENT BY REFUSE PROGRAM EMPLOYEES.**

Unless otherwise authorized by the City Manager, employees of the refuse program shall not collect refuse from any premises where there is a violation of this chapter or of any rules or regulations promulgated by the City Manager pursuant to Section 931.04. It shall be the duty of each refuse program employee having knowledge of any such violation to immediately report it to his or her supervisor or the Director of Public Works.

### **931.15 DISCARDED SUBSTANCES (RECEPTACLE CONTENTS) AS CITY PROPERTY.**

All refuse and any type of discarded materials set out for collection by the refuse program shall become City property as soon as they are so collected by the refuse program. Prior to collection authorized by this chapter, no person may claim or collect any such materials other than the City itself or the owner of any premises from which the materials were set out for collection.

### **931.16 UNDESIRABLE ACCUMULATIONS; LITTERING.**

All parking lots, sidewalks, tree lawns (the area between sidewalks and curbs) and driveway approaches shall be maintained in a neat and clean condition, free from litter, refuse, trash, snow, ice, unnecessary dirt and debris. This duty shall rest upon the owner and persons in control of parking lots and upon the owners and occupants of all real estate contiguous with sidewalks, tree lawns and driveway approaches. No person shall dispose of litter, refuse, trash, snow, ice, unnecessary dirt and debris in such a manner as to cause such materials to litter the public streets and right-of-way areas. The Director of Safety is hereby given authority to adopt reasonable rules and regulations to implement the provisions of this section as may be necessary or appropriate in the interests of the efficiency and service of the community.

### **931.17 REFUSE BILLING.**

All properties in the City will receive refuse collection and disposal service from the refuse program, with the exception of properties serviced by a private hauler pursuant to Section 931.03. Refuse program charges for this service will be collected monthly in the amounts set forth on Addendum A of the Streets and Public Services Code. Because all such properties are served by the refuse program, the owners thereof shall be deemed to have accepted the same in the form of a contractual agreement as a condition of receiving or continuing to receive such service, and will be billed for the same, provided however that the City shall not be considered a billable customer of the refuse program because the refuse program is operated as an extension of the City itself.

## Refuse Program

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The refuse program charge shall be billed and collected monthly with the monthly city services utility bill. These fees shall be itemized and collected separately as refuse program charges, and shall be credited to the Refuse Fund. All bills for refuse program charges shall be rendered monthly by utility billing personnel within the Finance Department. The refuse program charge is part of a consolidated statement for utility customers, which is generally paid by a single payment.

In the event that a partial payment is received, the payment shall be applied in accordance with rules and regulations developed by the Finance Department.

For customers moving in or out and obtaining service for only a partial billing period the monthly charge imposed by this chapter shall be prorated based on the number of days in the billing period that they have incurred service. For the purpose of this section 28 days shall be considered a full billing period.

The City Manager, with notice to City Council, is authorized to establish reasonable charges for additional refuse services such as special pick-ups, dumpsters, mulch programs, and the like. Such additional charges are warranted when services are provided upon request or for the benefit of individual customers, rather than as a routine or general service to all refuse program customers.

### **931.18 PENALTY CHARGES, INTEREST AND REMEDIES FOR NON-PAYMENT.**

- A. Because the refuse program charge is billed and collected with the monthly city services utility bill, the water bill due dates, penalties, interest, and fees for invalid payments set forth in Chapter 919.07(A), (B), (C) and (D) shall likewise apply to refuse program bills as if fully set forth herein.
- B. When any bill for charges under this chapter is not paid when due, the City may take any one or more of the following actions:
  1. File a civil action at law to collect the amount due from any property owner user who is liable to pay the bill under the provisions of this chapter.
  2. Certify the unpaid bill to the County auditor, including any penalties, interest, fees and/or other charges, as a lien against the property served, but only after compliance with subsections a and b below. The amount so certified shall be a lien on the property served from the date placed on the tax list and duplicate and shall be collected, along with any applicable fees and/or other charges, in the same manner as other taxes, except that the County Treasurer shall accept a payment in such amount when separately tendered as payment for the full amount of such unpaid refuse program bill and associated penalties, interest, fees and/or other charges. The lien shall be released immediately upon payment in full of the certified amount. Any amounts collected by the County Treasurer through this procedure shall be placed immediately in the type of separate and distinct fund described in Section 743.06 of the Revised Code.
    - a. The unpaid bill must have arisen pursuant to a service contract made directly with the owner of the property served. Under Section 931.17, all refuse program

## Refuse Program

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service provided by the refuse program is deemed to have been contracted for by the property owner.

- b. The bill must have been due and unpaid for at least forty-five (45) days. In addition, at least thirty (30) days advance written notice of the impending certification to the County Auditor must be given by the City to the property owner. The requirements of this subsection shall not apply, however, if the City determines that a transfer of any ownership interest in the real estate is about to occur, in which case the City may proceed immediately with such certification. Any applicable monetary penalties, interest, fees or other charges shall be charged to said customer, and made part of and handled in the same manner as the regular monthly utility charges.

### **931.99 PENALTY.**

Whoever violates any provision of this chapter shall be guilty of a minor misdemeanor for a first offense and of a fourth degree misdemeanor for every subsequent offense. A condition that constitutes a violation and that continues to exist for five days shall be considered to be another separate violation.

Legislative history: Ord. 1164, passed 11/20/33; Ord. 2415, passed 3/15/66; Ord. 2503, passed 8/28/67; Ord. 2584, passed 10/7/68; Ord. 2644, passed 10/6/69; Ord. 2834, passed 6/18/73; Ord. 3013, passed 11/7/77; Ord. 3206, passed 6/1/81; Ord. 3457, passed 10/15/84; Ord. 3922, passed 1/2/90; Ord. 4296, passed 5/15/95; Ord. 4692, passed 2/1/2010; Ord. 4693, passed 2/1/2010; Ord. 4776, passed 8/5/13; Ord. 4780, passed 11/4/13.

**CHAPTER 933  
Inspections**

933.01 Inspections; fees.

**CROSS REFERENCES**

Inspections by City Engineer - see ADM. 133.01.  
Fee schedule - see ADM. Chapt. 153

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**933.01 INSPECTIONS; FEES.**

The City Manager is hereby authorized and directed to impose an inspection fee for each such inspection made by City employees or agents in connection with any permit issued by or for the City. The amount of such fee shall be set under Chapter 153 of the Administrative Code.

CITY OF OAKWOOD, 30 PARK AVENUE, DAYTON, OHIO 45419  
**ADDENDUM A**

**RATES FOR WATER INSIDE THE CITY**

1. Minimum charge of 300 cu. ft. of water per month according to size of meter:			
5/8" or smaller . . .	8.15	3" . . . . .	88.20
3/4" . . . . .	10.13	4" . . . . .	133.00
1" . . . . .	15.92	6" . . . . .	229.12
1 1/2" . . . . .	26.47	8" . . . . .	388.45
2" . . . . .	44.10	10" . . . . .	643.90
		Over 10" . . . . .	886.75
2. Over 300 cu. ft., per 100 . . . . .			1.720

**RATES FOR WATER OUTSIDE THE CITY**

Including \$0.10 per hundred cu. ft. Well Field Protection Fee and \$1.321 fixed fee

1. Minimum charge of 300 cu. ft. of water per quarter according to size of meter:			
5/8" or smaller . . .	18.20	3" . . . . .	150.28
3/4" . . . . .	21.47	4" . . . . .	224.17
1" . . . . .	31.03	6" . . . . .	382.80
1 1/2" . . . . .	48.42	8" . . . . .	645.67
2" . . . . .	77.53	10" . . . . .	1,067.20
		Over 10" . . . . .	1,467.87
2. Over 300 cu. ft., per 100 . . . . .			2.935

**HYDRANTS**

1. Fire hydrants inside city per month, per hydrant . . . . .	12.50
2. Fire hydrants outside city per month, per hydrant . . . . .	25.00

**FIRE LINES**

For the furnishing of water service to fire lines within the boundaries of the City of Oakwood, the rates shall be \$21.00 per month, and for the furnishing of water service to fire lines beyond the boundaries of the City of Oakwood, the rate shall be \$31.50 per month.

**SANITARY SEWAGE RATES**

1. Minimum charge of 300 cu. ft. of sewer per quarter according to size of meter:			
<u>Meter Size</u>	<u>Inside City Rates</u>	<u>Outside City Rates</u>	
		<u>(25% surcharge)</u>	
5/8" or 3/4" . . . . .	20.19 . . . . .		25.24
1" . . . . .	20.73 . . . . .		25.91
1 1/2" . . . . .	21.27 . . . . .		26.59
2" . . . . .	21.70 . . . . .		27.13
3" . . . . .	22.35 . . . . .		27.93
4" . . . . .	22.89 . . . . .		28.61
6" . . . . .	23.61 . . . . .		29.52
Next 9,700 cu. ft., per 100 . . . . .	3.359 . . . . .		4.199
Over 10,000 cu. ft., per 100 . . . . .	3.162 . . . . .		3.952

**REFUSE COLLECTION & DISPOSAL RATES**

SINGLE FAMILY HOME	25.00
DUPLEX	50.00
TRIPLEX	75.00
FOUR-UNIT	100.00
MORE THAN FOUR UNITS	25.00 per unit

**NOTICE**

Net amount (5% discount) allowed through 15th of month on inside city water rates. Gross amount through last day of month. THEREAFTER a 10% charge on past due amount. 1 1/2 % per month interest begins 30 days after gross due date.



**CHAPTER 935  
Parks**

- |        |   |                 |
|--------|---|-----------------|
| 935.01 | Rules and regulations.  | 935.99 Penalty. |
| 935.02 | Designation of park lands,<br>public park nature areas and<br>wooded parks. |                 |

**CROSS REFERENCES**

- Park and playgrounds - see ORC Ch. 755.  
Power to regulate vehicle speed - see ORC 4511.07 (E).  
Bird sanctuary created - see GEN. OFF. 505.14.
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**935.01 RULES AND REGULATIONS.**

The City Manager is hereby given authority to make rules and regulations to preserve the good order of and to govern the maintenance and operation of parks owned or operated by the City.

**935.02 DESIGNATION OF PARK LANDS, PUBLIC PARK NATURE AREAS AND WOODED PARKS.**

A. The City Manager shall have authority to designate real estate owned or leased by the City, whether inside or outside the City boundaries, as being part of the park lands of the City of Oakwood.

B. Portions of the park lands of the City may be designated by the City Manager as public park nature areas as described in Section 551.02.

C. Portions of the park lands of the City, and portions of public parks which are beyond the boundaries of this City but which are contiguous with land in the City of Oakwood or are contiguous with street rights-of-way which border property in Oakwood, may be designated by the City Manager as wooded parks. (See 901.15 for a reference to additional yard setbacks required for properties abutting or across the street from a wooded park.

**935.99 PENALTY.**

Any conduct which violates park rules and regulations and which constitute criminal damaging or endangering, criminal mischief, criminal trespass, desecration, disorderly conduct, intoxication or possession of City property shall be prosecuted under the appropriate section of state law or the General Offenses Code. Every other violation of these rules and regulations shall be prosecuted under this section and shall constitute a minor misdemeanor for the first offense. Each subsequent violation, whether of the same or of a different section of these rules and regulations shall constitute a fourth degree misdemeanor.

**Legislative history:** Ord. 2485, passed 5/1/67; Ord. 3263, passed 5/3/82; Ord. 3462, passed 11/19/84; Ord. 4297, passed 6/19/95)

**CODIFIED ORDINANCES OF OAKWOOD**

**PART NINE – STREETS AND PUBLIC SERVICES CODE**

**TITLE NINE - Rights of Way Administration**

- Chap. 951. Declaration of Findings and Purpose, Scope, Definitions.
  - Chap. 953. General Requirements.
  - Chap. 955. Certificate of Registration Applications and Responsibilities.
  - Chap. 957. Termination of Certificate of Registration.
  - Chap. 959. Revocable Street Privilege Permit Requirements.
  - Chap. 961. Indemnification and Liability.
  - Chap. 963. Penalties for Violation, Liquidated Damages, and Rights of Appeal.
  - Chap. 965. Revocable Street Privileges for Non Utility System Providers.
  - Chap. 967. Competitive Video Service Authorizations.
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## CHAPTER 951

### Declaration of Findings and Purpose, Scope, Definitions

- 951.01 Findings and Purpose.
- 951.02 Scope.
- 951.03 Definitions.

### CROSS REFERENCES

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#### 951.01 FINDINGS AND PURPOSE.

(a) The City of Oakwood, Ohio is vitally concerned with the use of the various Rights of Way in the City as such Rights of Way are a valuable and limited resource which must be utilized to promote the public health, safety and welfare including the economic development of the City.

(b) Changes in the utilities and communication industries have increased the demand and need for access to Public Rights of Way and placement of Facilities and structures therein.

(c) It is necessary to comprehensively plan and manage access to, and structures and Facilities in, the Public Rights of Way to promote efficiency, lessen the public inconvenience of uncoordinated work in the Rights of Way, and promote public safety.

(d) In recognition of the limited space available in the City Rights of Way, the City shall promote the collocation of utilities to minimize intrusions into the Rights of Way.

(e) While not a principal purpose of this ordinance, an ingredient or component of this ordinance is to protect the public welfare by protecting real estate from impairment and destruction of value by taking into account aesthetic considerations in the requirement by the City, when in the opinion of the City practical, the underground placement of any Element of a public or private Utility System located in the Public Rights of Way.

(f) The City has rights under the Laws and Constitution of the State of Ohio, including but not limited to Article 18, Sections 3, 4, and 7, to regulate public and private entities which use the Public Rights of Way.

951.02 SCOPE.

The provisions of this Title shall apply to all users of the Rights of Way as provided herein except as provided elsewhere in the Codified Ordinances of Oakwood. To the extent that any provision in this Title conflicts with other provisions of the Codified Ordinances of Oakwood, or provisions of the Ohio Revised Code, the provisions of this Title shall control.

951.03 DEFINITIONS.

For the purpose of this Title of the Codified Ordinances of Oakwood, the following terms, phrases, words, and their derivations shall have the meanings as set forth herein. When not inconsistent with the context, words in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The words "shall" and "will" are mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meanings. References hereafter to "Sections" are, unless otherwise specified, references to Sections in this Title. Defined terms remain defined terms whether or not capitalized.

(a) *Certificate of Registration* means a document issued by the City to a Utility Service Provider required before any Element of its Utility System is permitted to be located in the City Public Right of Way.

(b) *City* means the city of Oakwood, Ohio.

(c) *City Council* means the elected legislative decision-making body for the city of Oakwood, Ohio.

(d) *City Manager* means the administrative head of the municipal government known as the city of Oakwood, Ohio, or the official designee appointed by the City Manager to implement all or some of the provisions of this Title.

(e) *Codified Ordinances* means the Codified Ordinances of the city of Oakwood, Ohio.

(f) *Element* means any tangible thing located in the Public Right of Way that is part of a Utility System. Electromagnetic radiation that is not visible to the human eye shall not be considered a tangible thing.

(g) *Equipment* means any Element of a Utility System.

(h) *Facility or Facilities* means any tangible thing located in the Public Right of Way that is part of a Utility System. Electromagnetic radiation that is not visible to the human eye shall not be considered a tangible thing.

(i) *Law(s)* means any local, state, or federal legislation, judicial or administrative order, certificates, statute, constitution, ordinance, resolution, regulation, rule, tariff, or other requirement in effect either at the time of execution of this Title or at any time during the location of, and/or while a Provider's Facilities are located in, the Public Rights of Way.

(j) *Permit* means a Revocable Street Privilege Permit.

(k) *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.

(l) *Provider* means a Utility Service Provider.

(m) *Public Right(s) of Way* or *Right(s) of Way* 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 owned by or under the legal or equitable control of the City that, consistent with the purposes for which it was dedicated, may be used for the purposes of constructing, operating, repairing or replacing a public or private Utility System. Public Rights of Way shall not include a public building, public park, or other public property or easement that has not been dedicated to a compatible use, except to the extent the use or occupation of such property is specifically granted in a Permit or approved by Law.

(n) *Revocable Street Privilege Permit* means the Permit for special licenses and privileges that must be obtained from the City Manager pursuant to Codified Ordinance Chapter 901, *et seq.*, which is entitled "Street Openings" and to this Title of the Codified Ordinances.

(o) *System* means a Utility System.

(p) *Title* means a Title of the Codified Ordinances of the City of Oakwood, Ohio.

(q) *Utility Service Provider* means a Person that owns, operates, or controls a Utility System.

(r) *Utility System* means a functionally related group of Facilities or Elements that deliver a service, such as but not limited to, water, sanitary sewage collection, storm water collection, gas, fuel, heat, steam, electricity, electric powered trolley bus, electric powered light

or heavy rail transit, telephone, integrated service digital network (ISDN), cellular telephone, personal communication services (PCS), competitive access Providers (CAPs) or competitive local exchange carriers (CLECs) that provide telephone service, paging and signaling systems, satellite phone service, radio, television, cable television, digital television (DTV), video, open video services (OVS), wireless television systems, direct broadcast satellite (DBS) video systems, telecommunications, data transmission, fibre optic network information transmission, private fibre optic data transmission lines between buildings, computer interconnection, roadway traffic signal interconnection, Internet computer access including e-mail communications, rail transportation, or water transportation.

## CHAPTER 953

### General Requirements

- 953.01 Administration.
- 953.02 Utility Service Provider Required to Have Certificate of Registration.
- 953.03 Utility System in Place Without a Valid Certificate of Registration.
- 953.04 When Permit Required by a Utility Service Provider.
- 953.05 Utility Service Provider Not Exempt from Permit Requirement or Revocation of the Permit.
- 953.06 Exceptions.
- 953.07 Severability.
- 953.08 Reservation of Regulatory and Police Powers.
- 953.09 Method of Service.
- 953.10 Applies to all Providers.
- 953.11 Police Powers.
- 953.12 Compliance.
- 953.13 Choice of Law and Forum.
- 953.14 Force Majeure.
- 953.15 No Warranty.
- 953.16 Continuing Obligation and Holdover.
- 953.17 Appeals.
- 953.18 City Standards.
- 953.19 Chapter Headings.

### CROSS REFERENCES

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#### 953.01 ADMINISTRATION.

The City Manager shall be the principal City official responsible for the administration of this Title except as otherwise provided herein. The City Manager may delegate any or all of the duties hereunder to an official designee.

#### 953.02 UTILITY SERVICE PROVIDER REQUIRED TO HAVE CERTIFICATE OF REGISTRATION.

No Utility Service Provider shall occupy or use the City Public Rights of Way without having a valid Certificate of Registration issued by City pursuant to this Title. Use shall include construction, maintenance, or the performance of any work on a Utility System.

#### 953.03 UTILITY SYSTEM IN PLACE WITHOUT A VALID CERTIFICATE OF REGISTRATION.

Beginning one year after the effective date of this Title, any Utility System or Element of a Utility System located in a Public Right of Way in the City for which a valid Certificate of Registration for the Utility Service Provider is required and has not been obtained from the City shall be deemed to be a nuisance and an unauthorized use of the Public Right of Way. The City may exercise any remedies or rights it has, including, but not limited to abating the nuisance; taking possession of the Utility System or any Element of the Utility System; and/or prosecuting the violator.

953.04 WHEN PERMIT REQUIRED BY A UTILITY SERVICE PROVIDER.

(a) If the location or proposed location of any Element of a public or private Utility System is in a Public Right of Way; then, the consent of the City, evidenced by the issuance by the City of a Revocable Street Privilege Permit in accordance with Chapter 901 of the Codified Ordinances, must be obtained by that Utility Service Provider before the construction, demolition or removal of any Element of the Utility System is permitted or any excavation by that Utility Service Provider in the Public Right of Way is permitted.

(b) This Title does not require any Utility Service Provider that, as of the effective date of this ordinance, occupies, or has obtained the consent of a City to occupy, a Public Right of Way in the City, to apply for additional or continued consent of the City as to any existing lines, poles, pipes, conduits, ducts, Equipment, and related appurtenances and Facilities that are in place on the effective date of this Title.

953.05 UTILITY SERVICE PROVIDER NOT EXEMPT FROM PERMIT REQUIREMENT OR REVOCATION OF THE PERMIT.

No language or provisions set forth in Codified Ordinances Chapter 901, et seq. shall be interpreted as exempting a Utility Service Provider from the requirement of obtaining a Revocable Street Privilege Permit or providing a Utility Service Provider an exception to the power of the City Manager to revoke any such Permit issued.

953.06 EXEMPTIONS.

(a) The City shall not be required to obtain a Certificate of Registration for any Utility System for which the City is the Utility Service Provider.

## General Requirements

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(b) In the case where a Utility Service Provider has a valid franchise agreement with the City and the City Manager is of the opinion that one or more of the requirements of this Title of the Codified Ordinances are adequately addressed in that franchise agreement; then, the City Manager, at his or her sole discretion, may exempt such a Utility Service Provider from one or more of the requirements of this Title of the Codified Ordinances.

### 953.07 SEVERABILITY.

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

### 953.08 RESERVATION OF REGULATORY AND POLICE POWERS.

The City, by the granting of a Permit, or by issuing a Certificate of Registration under this Title, does not surrender or to any extent lose, waive, impair, or lessen the lawful powers and rights, which it has or may hereafter have, which are vested in the City under the Constitution and Laws of the United States, state of Ohio, and under the Charter of the city of Oakwood to regulate the use of the Rights of Way. The Provider by its acceptance of a Permit, or by applying for and being issued a Certificate of Registration, agrees that all lawful powers and rights, regulatory power, or police power, or otherwise as are or the same may be from time to time vested in or reserved to the City, shall be in full force and effect and subject to the exercise thereof by the City at any time. A Provider is deemed to acknowledge that its rights are subject to the regulatory and police powers of the City to adopt and enforce general ordinances necessary to the safety and welfare of the public and is deemed to agree to comply with all applicable general Laws enacted by the City pursuant to such powers.

953.09 METHOD OF SERVICE.

Any notice or order of the City or City Manager shall be deemed to be properly served if a copy thereof is delivered personally; or successfully transmitted via facsimile transmission to the last known fax number of the Person to be served; or left at the usual place of business of the Person to whom it is to be served upon and with someone who is 18 years of age or older; or sent by certified, pre-paid U.S. mail to the last known address; or if the notice is attempted to be served by certified, pre-paid U.S. mail and then returned showing that the letter was not delivered, or the certified letter is not returned within fourteen (14) days after the date of mailing, then notice may be sent by regular, pre-paid, first-class U.S. mail; or if the notice is attempted to be served by regular, first class U.S. mail, postage prepaid, the letter is then returned showing that the letter was not delivered, or is not returned within fourteen (14) days after the date of mailing, then notice shall be posted in a conspicuous place in or about the structure, building, premises or property affected by such notice.

953.10 APPLIES TO ALL PROVIDERS.

This Title shall apply to all Providers unless expressly exempted.

953.11 POLICE POWERS.

All Person's rights are subject to the police powers of the City to adopt and enforce ordinances necessary to protect the health, safety, and welfare of the public. All Persons shall comply with all applicable Laws enacted by City pursuant to its police or other powers. In particular, all Persons shall comply with City zoning and other land use requirements pertaining to the placement and specifications of Facilities.

953.12 COMPLIANCE.

No Person shall be relieved of its obligation to comply with any of the provisions of this Title by reason of any failure of City to enforce prompt compliance.

953.13 CHOICE OF LAW AND FORUM.

This Title and the terms and conditions of any Certificate of Registration or Permit shall be construed and enforced in accordance with the substantive Laws of the State of Ohio. All Providers, as a condition for the grant of any Permit or issuance of any Certificate of Registration agree that all disputes shall be resolved in the court of competent jurisdiction in Montgomery County, Ohio or as otherwise agreed to in writing by the City.

953.14 FORCE MAJEURE.

In the event any Person's performance of any of the terms, conditions, or obligations required by this Title is prevented by a cause or event not within such Person's control, such inability to perform shall be deemed excused and no penalties or sanctions shall be imposed as a result thereof. For the purpose of this Chapter, causes or events not within the control of

a Provider shall include, without limitation, acts of God, strikes, sabotage, riots or civil disturbances, explosions, acts of public enemies, and natural disasters such as floods, earthquakes, landslides, and fires.

953.14 FORCE MAJEURE.

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

953.15 NO WARRANTY.

The City makes no representation or warranty regarding its right to authorize the Construction of Facilities on any particular Rights of Way. The burden and responsibility for making such determination shall be upon the Person constructing Facilities in the Rights of Way.

953.16 CONTINUING OBLIGATION AND HOLDOVER.

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

953.17 APPEALS.

All appeals provided for by this Title and any notification to the City required by this Title shall be in writing and sent via certified mail to the City Manager as specified in Chapter 963 of this Title.

953.18 CITY STANDARDS.

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

953.19 CHAPTER AND SECTION HEADINGS.

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

## CHAPTER 955

### Certificate of Registration Applications and Responsibilities

955.01	Certificate of Registration Applications.
955.02	Maximum Decision Time.
955.03	Criteria For Issuance.
955.04	Denial of Application.
955.05	Expiration of Certificate of Registration.
955.06	Responsibilities of a Utility Service Provider with a Valid Certificate of Registration.
955.07	Nature of Issuance
955.08	Relocation of Equipment.
955.09	Pre-Excavation Equipment Location.
955.10	Damage to Other Equipment.
955.11	Right of Way Vacation.
955.12	Discontinued Operations and Abandoned Equipment

### CROSS REFERENCES

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#### 955.01 CERTIFICATE OF REGISTRATION APPLICATIONS.

(a) Unless exempted in this Title, a valid Certificate of Registration shall be required for each Utility Service Provider with any Element of a Utility System located in a Public Right of Way in the City.

(b) The Utility Service Provider shall apply to the City Manager for a Certificate of Registration or the Renewal of a Certificate of Registration. The City Manager shall determine the form of the application. An application shall include the following information and fee:

- (1) Detailed identification information about the Utility Service Provider; a copy of the current incorporation certificate of the applicant, if applicable; both regular and emergency contact information for the Utility Service Provider; a brief description of each utility service provided or proposed to be provided; a copy of each approval required by Law, by any applicable authority, to provide any utility service described in the application; evidence of reasonable insurance coverage by the Utility Service Provider; and, any other relevant information the City Manager deems necessary to determine the fitness of the Utility Service Provider.

## Certificate of Registration Applications and Responsibilities

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(2) If requested by the City Manager or the applicant, the applicant Utility Service Provider and the City must meet to co-ordinate future plans for the Public Right of Way between the Utility Service Provider and the City.

(3) An application fee of five hundred dollars shall be paid to the City at the time an application for a Certificate of Registration is filed with the City. No part of an application fee is returnable to the applicant.

### 955.02 MAXIMUM DECISION TIME.

Unless the applicant agrees to an extension of the maximum decision time, the City shall have a maximum time period of ninety (90) consecutive calendar days from the date a complete application for a Certificate of Registration by a Utility Service Provider is received by the City to make a decision on the application. Unless the applicant agrees to an extension of the maximum decision time, failure of the City to make a decision on an application for a Certificate of Registration shall be considered the same as an approval of the application by the City.

### 955.03 CRITERIA FOR ISSUANCE.

In deciding whether to issue a Certificate of Registration, the City Manager shall consider: whether the issuing of the Certificate of Registration will contribute to the health, safety, and welfare of the City and its citizens; whether issuing of the Certificate of Registration will be consistent with this Title; 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 Ordinance and the issuance of a Certificate of Registration; and, any other applicable Law.

### 955.04 DENIAL OF APPLICATION.

The City Manager shall have right to deny an application for a Certificate of Registration for adequate cause. If requested in writing by the applicant, the City Manager must provide to the applicant in written form specific factual findings in support of the decision by the City Manager to deny the application for a Certificate of Registration. Any decision by the City Manager to deny an application for a Certificate of Registration is appealable by the application to the City Council in the manner set forth in Chapter 963 of this Title.

## Certificate of Registration Applications and Responsibilities

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### 955.05 EXPIRATION OF CERTIFICATE OF REGISTRATION.

Unless terminated by the City at an earlier date, a Certificate of Registration shall expire one year from the date of issuance by the City.

### 955.06 RESPONSIBILITIES OF A UTILITY SERVICE PROVIDER WITH A VALID CERTIFICATE OF REGISTRATION.

(a) When required by the Codified Ordinances, a Utility Service Provider with a valid Certificate of Registration must obtain a Revocable Street Privilege Permit.

(b) The Provider must keep all the information required in the application by the City current.

(c) When requested by the City, a public or private Utility Service Provider, with a Utility System Element located or proposed to be located in a Public Right of Way in the City, must meet with the City to co-ordinate future plans for the Public Right of Way between the Utility Service Provider and the City.

(d) A Utility Service Provider with any Utility System Element located or proposed to be located in a Right of Way in the City must provide the City with up-to-date accurate plans in sufficient detail and in a format acceptable to the City showing the location of all Elements of the Utility System located in the Right of Way in the City.

(e) 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.

(f) A Certificate of Registration issued pursuant to this Title 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 or under the management in control of another Utility Provider that is legally occupying the City Right of Way.

## Certificate of Registration Applications and Responsibilities

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### 955.07 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 purpose and for the limited period stated in the Certificate of Registration and in accordance with this Title 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 rights 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 Title. 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 Title. A Certificate of Registration does not excuse a Provider from complying with any provisions of this Title and other applicable Law.

### 955.08 RELOCATION OF EQUIPMENT.

- (a) A Provider must promptly and at its own expense, with due regard for seasonal working conditions, permanently remove and relocate its Equipment and Facilities in the Right of Way whenever the City Manager requests such removal and relocation, and shall restore the Right of Way to the same condition it was in prior to said removal or relocation. The City Manager may make such request to prevent interference by the Company's Equipment or Facilities with (i) a present or future City use of the Right of Way, (ii) a public improvement undertaken by the City, (iii) an economic development project in which the City has an interest or investment, (iv) when the public health, safety and welfare require it, or (v) when necessary to prevent interference with the safety and convenience of ordinary travel over the Right of Way.
- (b) Notwithstanding the foregoing, a Person shall not be required to remove or relocate its Equipment from any Right of Way which has been vacated in favor of a non-city entity unless and until the reasonable costs thereof are first paid to the Person therefor.

## Certificate of Registration Applications and Responsibilities

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### 955.09 PRE-EXCAVATION EQUIPMENT LOCATION.

Before the start date of any Right of Way excavation, each Provider who has Equipment in the area to be excavated shall contact OUPS and mark the horizontal and approximate vertical placement of all said Equipment. Any Provider whose Equipment is estimated to be less than twenty (20) inches below a concrete or asphalt surface shall notify and work closely with the excavation contractor to establish the exact location of its Equipment and the best procedure for excavation.

### 955.10 DAMAGE TO OTHER EQUIPMENT.

(a) When the City does or causes to be done work in the Right of Way and finds it necessary to maintain, support, or move a Provider's Equipment to protect it, the City Manager shall notify the local representative as early as is reasonably possible. The costs associated therewith will be billed to that Provider and must be paid within thirty (30) days from the date of billing.

(b) Each Provider shall be responsible for the cost of repairing any Equipment in the Right of Way which it or its Equipment damages. Each Provider shall be responsible for the cost of repairing any damage to the Equipment of another Provider caused during the City's response to an emergency occasioned by that Provider's Equipment.

### 955.11 RIGHT OF WAY VACATION.

(a) If the City vacates a Right of Way which contains the Equipment of a Provider, and if the vacation does not require the relocation of the Provider's Equipment, the City shall reserve, to and for itself and all Providers having Equipment in the vacated Right of Way, the right to install, maintain and operate any Equipment in the vacated Right of Way and to enter upon such Right of Way at any time for the purpose of

(b) If the vacation requires the relocation of the Provider's Equipment; and (a) if the vacation proceedings are initiated by the Provider, the Provider must pay the relocation costs; or (b) if the vacation proceedings are initiated by the City, the Provider must pay the relocation costs unless otherwise agreed to by the City and the Provider; or (c) if the vacation proceedings are initiated by a Person or Persons other than the Provider, such other Person or Persons must pay the relocation costs.

Certificate of Registration Applications and Responsibilities

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955.12

DISCONTINUED OPERATIONS AND ABANDONED EQUIPMENT.

(a)

Discontinued Operations. A Provider who has determined to discontinue its operations in the City must either:

- (1) Provide information satisfactory to the City Manager that the Provider's obligations for its Equipment in the Right of Way under this Title have been lawfully assumed by another Provider; or
- (2) Submit to the City Manager a proposal and instruments for transferring ownership of its Equipment to the City. If a Provider proceeds under this clause, the City may, at its option: purchase the Equipment; require the Provider, at its own expense, to remove it; or require the Provider to post a bond in an amount sufficient to reimburse the City for reasonably anticipated costs to be incurred in removing the Equipment.

(b) Abandoned Equipment. Equipment of a Provider who fails to comply with the discontinued operations provisions of this Title and which remains unused shall be deemed to be abandoned. Unused Equipment means Facilities located in the Rights of Way which have remained unused for a period of two years and for which the Provider is unable to: (i) 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 months; or (ii) that it has a potential purchaser or user of the Facilities who will be actively using the Facilities within the next twelve months; or (iii) that the availability of such Facilities is required by the Provider to adequately and efficiently operate its System. Abandoned Equipment is deemed to be a nuisance. The City may exercise any remedies or rights it has at law or in equity, including, but not limited to: (i) abating the nuisance; (ii) taking possession of the Equipment and restoring it to a useable condition; or (iii) requiring removal of the Equipment by the Provider, or the Provider's successor in interest.

(c) Removal. Any Provider who has unused and abandoned Equipment in any Right of Way shall remove it from that Right of Way during the next scheduled excavation, or at such different time as designated by the City Manager, unless this requirement is waived by the City Manager.

(4) In the event of any conflict with the provisions of this Section 955.12 with Federal law known as the Miller Act, the provisions of the Miller Act shall control.

CHAPTER 957  
Termination of Certificate of Registration

- 957.01 Written Notice of Violation.
- 957.02 Failure to Cure Violation.

CROSS REFERENCES

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957.01 WRITTEN NOTICE OF VIOLATION.

The City Manager shall give written notice of violation to a Provider if it is determined that a Provider has: 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 attempted to evade any provision or requirement of the issuance of a Certificate of Registration or the acceptance of it; or practiced any fraud or deceit upon the City; or made a material misrepresentation of fact in its Application for a Certificate of Registration.

957.02 FAILURE TO CURE VIOLATION.

If a Provider fails to cure a violation within thirty (30) calendar days after such notice is served by the City then such violation 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 City Manager decides there is cause or reason to terminate, the following procedure shall be followed:

(a) 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.

(b) If the Provider fails to cure within ten (10) calendar days, the City Manager may declare the Certificate of Registration terminated.

(c) The determination of the City Manager shall be final.

CHAPTER 959  
Revocable Street Privilege Permit Requirements

- 959.01 Application for Permit.
- 959.02 Permit Requirements.
- 959.03 Limitations on Placement of Utility System Elements and/or Denial of Permit.

CROSS REFERENCES

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959.01 APPLICATION FOR PERMIT.

An application for a Revocable Street Privilege Permit shall be in accordance with Chapter 901 of the Codified Ordinances including any additional requirements contained in this Title of the Codified Ordinances.

959.02 PERMIT REQUIREMENTS.

The requirements in this Title shall be in addition to any requirement set forth in Codified Ordinances Chapter 901, et seq.

(a) A Utility Service Provider must have a valid Certificate of Registration on File with the City, or be exempt under Section 953.06 before the City may issue a Revocable Street Privilege Permit.

(b) When practical, in the opinion of the City, the policy of the City is to require the underground location of a new Utility System Element in the Public Right of Way.

(c) The construction, demolition or removal of any Element of a Utility System in a Public Right of Way by a Utility Service Provider must be accomplished in a practical manner which, in the opinion of the City, results in the least potential amount of damage and disruption of the Public Right of Way.

(d) The applicant shall provide a specific timetable for the Permit work to be accomplished within, detailed plans, accurate scale drawings, and specifications in sufficient detail acceptable to the City to describe the area of work covered in the Permit application. In addition, the City may require the applicant to provide up-to-date, accurate, comprehensive master plans of the existing and proposed Utility System. These master plans are intended to allow the City to consider the broader context of the Utility Service Provider's plans upon which the Permit application is based.

## Revocable Street Privilege Permit Requirements

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### 959.03 LIMITATIONS ON PLACEMENT OF UTILITY SYSTEM ELEMENTS AND/OR PERMISSIVE DENIAL OF PERMIT.

(a) To protect the public health, safety, and welfare in recognition of the limitation of space in the Public Right of Way, the City Manager shall have the power to prohibit or limit the placement of a new Utility System 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 City Manager 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 needs 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 future City plans for public improvements and development projects which have been determined to be in the public interest.

(b) The City Manager may deny a Permit to protect the public health, safety and welfare, to prevent interference with the safety and convenience of ordinary travel over the Public Right of Way, or when necessary to protect the Public Right of Way and its users. The City Manager, in his or her discretion, may consider one or more of the following factors: the extent to which Public Right of Way space where the Permit is sought is available; the competing demands for the particular space in the Right of Way; the availability of other locations in the Public Right of Way or in other public rights of way for the Utility System Elements of the Permit applicant; the applicability of ordinance or other regulations of the Right of Way that affect location of Utility System Elements in the Right of Way; the degree of compliance of the applicant with the terms and conditions of its franchise, this Title, and other applicable ordinances and regulations; the degree of disruption to surrounding communities and businesses that will result from the use of that part of the Public Right of Way; the condition and age of the Public Right of Way, and whether and when it is scheduled for total or partial reconstruction; the balancing of the costs of disruption to the public and damage to the Public Right of Way, against the benefits to that part of the public served by the expansion into additional parts of the Public Right of Way; and the feasibility of accomplishing the desired goal outside of the Public Right of Way.

CHAPTER 961  
Indemnification and Liability

961.01 City Does Not Accept Liability.  
961.02 Indemnification.

CROSS REFERENCES

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961.01 CITY DOES NOT ACCEPT LIABILITY.

By reason of the acceptance of an application or the grant of a Permit, the City does not assume any liability: for injuries to Persons, damage to property, or loss of Service claims; or for claims or penalties of any sort resulting from the installation, presence, maintenance, or operation of Facilities.

961.02 INDEMNIFICATION.

By applying for and being issued a Certificate of Registration with the City a Provider agrees, or by accepting a Permit a Provider is required and agrees, to defend, indemnify, and hold harmless the City's agents, elected officials, officers, employees, volunteers and subcontractors from all costs, liabilities, claims, and suits for damages of any kind arising out of the construction, presence, installation, maintenance, repair or operation of its Facilities, or out of any activity undertaken in or near a Rights of Way, whether any act or omission complained of is authorized, allowed, or prohibited by a Permit, excepting only negligent acts or omissions that are willful and wanton or intentional torts and for which immunity is not provided by the Ohio Revised Code 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. A Provider further agrees that it will not bring, nor cause to be brought, any action, suit or other proceeding claiming damages, or seeking any other relief against the City's agents, elected officials, officers, employees, volunteers and subcontractors or any claim nor for any award arising out of the presence, installation, maintenance or operation of its Facilities, or any activity undertaken in or near a Rights of Way, whether the act or omission complained of is authorized, allowed or prohibited by a Permit. This Chapter is not, as to third parties, a waiver of any defense or immunity otherwise available to the Provider or to the City; and the Provider, in defending any action on behalf of the City, if allowable by Law, shall be entitled to assert in any action every defense or immunity that the City could assert in its own behalf. Any and all exercises of the above shall be consistent with, but not limited to, the following:

## Indemnification and Liability

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(a) To the fullest extent permitted by Law, each Provider shall, at its sole cost and expense, fully indemnify, defend and hold harmless the City, its agents, elected officials, officers, employees, volunteers and subcontractors from and against any and all lawsuits, claims (including without limitation worker's compensation claims against the City or others), causes of action, liability, and judgments for injury or damages including but not limited to expenses for reasonable legal fees and disbursements assumed by the City related to the following:

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

(2) Arising out of any claim for invasion of the right of privacy, for defamation of Person, firm or corporation, or the violation or infringement of any copyright, trademark, trade name, service mark or patent or any other right of any Person, firm and corporation by the Provider, by excluding claims arising out of or related to City programming.

(3) Arising out of Provider's failure to comply with the provisions of any Law applicable to the Provider.

(b) The foregoing indemnification is conditioned upon the City:

(1) Giving Provider reasonable notice of any claim or the commencement of any action, suit or proceeding for which indemnification is sought;

(2) Affording the Provider the opportunity to fully participate in any discussions concerning any compromise, settlement, or other resolution or disposition of any claim or proceeding subject to indemnification, as well as the sole right to approve any compromise or settlement or financial commitment, which approval shall not be unreasonably withheld;

Indemnification and Liability

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(3) Cooperating in the defense of such claim and making available to the Provider all pertinent information under the City's control.

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

CHAPTER 963

Penalties for Violation, Liquidated Damages, and Rights of Appeal

- 963.01 Penalties for Violation.
- 963.02 Non-exclusive Remedy.
- 963.03 Liquidated Damages.
- 963.04 Rights of Appeal.

CROSS REFERENCES

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963.01 PENALTIES FOR VIOLATION.

It shall be unlawful to violate any provision of this Title. Violation of any provision of this Title or failure to comply with any requirement of this Title (including a violation of a condition or safeguard established in connection with a Certificate of Registration, Permit, or any other City approval) shall constitute a misdemeanor of the second degree. Each and every failure to comply shall be considered a distinct and separate offense. Each day a violation continues shall be considered a distinct and separate offense.

963.02 NON-EXCLUSIVE REMEDY.

The remedies provided in this Title are not exclusive or in lieu of other rights and remedies that the City may have. The City is hereby authorized at any time to seek legal and equitable relief for actual or threatened injury to the Rights of Way, including damages to the Rights of Way, whether caused by a violation or any of the provisions of this Title or other provisions of applicable Law.

963.03 LIQUIDATED DAMAGES.

In addition to any other penalties set forth in this Title, and the remedy of specific performance which may be enforced in a court of competent jurisdiction, the City Manager may assess an additional penalty of civil forfeiture for failure to comply with any provision of this Title. 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 shall provide written notice to the Provider detailing the failure to comply with a specific provision of this Title. Said notice shall indicate that said penalty shall be assessed in fifteen (15) calendar days after receipt of 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 Penalties for Violation, Liquidated Damages, and Rights of Appeal

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service of the notice. Said hearing shall be held within thirty (30) 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 Title referenced in the notice, said penalty shall be assessed starting fifteen (15) calendar days after service of the notice referenced in this Chapter and continuing for each day thereafter until compliance is achieved. The determination of the City Manager shall be final.

#### 963.04 RIGHTS OF APPEAL.

(a) Authorization. The following decisions of the City Manager pursuant to this Title are appealable to the City Council: (i) the decision of the City Manager with respect to the issuance of an exemption to the requirement of a Certificate of Registration under Section 953.06(b); (ii) the denial of an application for a Certificate of Registration under Section 955.04; (iii) denial of a Permit under Section 959.03(b) and (iv) denial of an exception under Section 953.06. An appeal from the decision of the City Manager with respect to any of these decisions may be taken to the City Council by any aggrieved Provider.

(b) Filing Fee. The filing fee for any appeal under this Title shall be One Hundred and 00/100 Dollars (\$100.00).

(c) Time for Appeals. Appeals to the City Council shall be filed within thirty (30) days from the decision of the City Manager by filing a written notice of appeal with the Clerk of the City Council. The notice of appeal shall specify the grounds for such appeal, and shall be on the form prescribed by the Clerk of the City Council. Upon receipt of an appropriately completed notice of appeal and filing fee, the Clerk of the City Council shall transmit to the members of the City Council all papers constituting the record upon which the decisions being appealed were based.

(d) Hearing on Appeal. The City Council shall schedule the hearing for the appeal within a reasonable period of time at a regularly-scheduled City Council Meeting. Written notice of the hearing shall be sent to the aggrieved Provider at least ten (10) days prior to the hearing. The failure of delivery of such notice, however, shall not invalidate any subsequent proceedings. The aggrieved Provider or its representative may appear and be heard at the hearing, and present any evidence the Provider desires in support of its position.

## Penalties for Violation, Liquidated Damages, and Rights of Appeal

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(e) Decision on Appeals. The City Council may affirm, reverse, or modify, in whole or in part, the decision appealed from, and to that end, the City Council shall have all the powers of the City Manager with respect to such decision. The concurring vote of a majority of the members of the City Council shall be necessary to reverse or modify any decision of the City Manager under this Title. The City Council shall render a written decision on the appeal without unreasonable delay after the close of the hearing, and in all cases within thirty (30) days after the close of the hearing.

(d) Records of Appeals. The Clerk of the City Council shall maintain complete records of all actions of the City Council with respect to appeals.

Legislative History: Ord. 4462, adopted 7/17/00.

CHAPTER 965

Revocable Street Privileges for Non Utility System Providers

- 965.01 Revocable Street Privileges for Non Utility System Providers.
- 965.02 Non Utility System Provider Permittee (NUSPP).
- 965.03 Restoration.
- 965.04 Revocation or Modification.
- 965.05 Liability of Permittee.
- 965.06 Unlawful Use.

CROSS REFERENCES

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965.01 REVOCABLE STREET PRIVILEGES FOR NON UTILITY SYSTEM PROVIDERS.

Except as otherwise provided by Ordinance, the City Manager shall have control of the grant, revocation, supervision, and inspection of revocable street privileges granted to non utility system providers. When the public safety or welfare shall require the discontinuance or modification of a revocable street privilege of a non utility system provider, the City Manager shall take such action as is necessary for the public interest. The City Manager is authorized to prepare and enforce rules and regulations to carry out the provisions of this section.

A revocable street privilege granted to a "Non Utility System Provider" means an authorized or permitted private right in the use of a special part of a City street, alley, way or easement, separate and distinct from the use of City streets, alleys, ways or easements by the general public as these are regulated by other sections of the Codified Ordinances of Oakwood, which use is granted to an entity other than one which meets the definition of "Utility System Provider" set forth in § 951.3(q).

965.02 NON UTILITY SYSTEM PROVIDER PERMITTEE (NUSPP).

Any owner of a lot or parcel of real estate, successors, heirs and assigns may make application for a permit to hold a revocable street privilege abutting or on (in the case of an easement) the lot or parcel subject to the regulations of this Chapter.

965.03 RESTORATION.

The cost of all restoration to site improvements, including streets, sidewalks, etc., or other adjustments required because of changes made by utility companies or other lawful users due to the construction, maintenance, operation, relocation, discontinuance or abandonment of a revocable street privilege shall be paid by the Non Utility System Provider Permittee in accordance with City specification.

## Revocable Street Privileges for Non Utility System Providers

### 965.04 REVOCATION OR MODIFICATION.

Every revocable street privilege may be subject to revocation or modification upon 30 days written notice served upon the Non Utility System Provider Permittee personally or mailed to the owner of record.

Whenever a revocable street privilege is terminated, the Non Utility System Provider Permittee shall remove all private construction, and make all required restoration in accordance with City specifications. In the event there is failure to remove and restore within a reasonable time, the City Manager shall be authorized to cause the removal and restoration and to have the expense thereof charged to the Non Utility System Provider Permittee.

If it is determined by the City Manager that existence of the private construction in the street, alley, way or easement presents no difficulties, the City Manager may waive removal and all private equipment left in any street, alley, way or easement shall thereupon become the property of the City.

The City Manager may require a revocable street privilege to be modified to accommodate public improvements or improvements made by authorized utilities at the Non Utility System Provider Permittee's expense.

### 965.05 LIABILITY OF PERMITTEE.

It shall be a condition of the use or enjoyment of any revocable street privilege that the Non Utility System Provider Permittee shall save and hold the City harmless of any and all liability, claims or expenses of any kind caused by, or growing out of, the construction, maintenance, operation, relocation, discontinuance or abandonment of such revocable street privilege. It shall further be a condition of the use or enjoyment of any revocable street privilege that the Non Utility System Provider Permittee shall bear the cost for and reimburse the City for its expenses in accessing for repair, maintenance, testing, observation, replacement or other lawful purpose its utilities in the right-of-way or within the City's easement for which the revocable privilege has been granted.

The City Manager is authorized to require a bond to protect against such damage or loss and to provide for such indemnification.

### 965.06 UNLAWFUL USE.

No person, firm or corporation shall establish or maintain a private use of a public street, alley, way or easement other than in accordance with this Chapter or other applicable provisions of the Oakwood Code of Ordinances.

(Ord. 4571, passed 2/7/05).

CHAPTER 967  
Competitive Video Service Authorizations.

967.01 Definitions.	967.07 Access Programming Requirement.
967.02 VSP Fee, Percentage, and Audit.	967.08 Fee Payment Requirements.
967.03 VSP Fee Notice Provision.	967.09 PEG Origination Point.
967.04 MVCC Management Authorization.	967.10 Notice Requirement.
967.05 MVCC Management.	967.11 Application to incumbent cable providers.
967.06 FSP Access Provision.	967.12 Customer service standards.
	967.99 Penalty.

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967.01 DEFINITIONS.

As used in this chapter:

- A. "Incumbent Cable Provider" means any person who on the effective date of this Section is the holder of a cable franchise agreement with the City as granted pursuant to requirements of 47 U.S.C 541.
- B. "Miami Valley Communications Council or MVCC" means the Miami Valley Communications Council which currently represents its eight member cities of Centerville, Germantown, Kettering, Miamisburg, Moraine, Oakwood, Springboro, and West Carrollton. MVCC is governed by a policy making body consisting of delegates representing the eight member cities. MVCC additionally maintains agreements with eighteen other Miami Valley political subdivisions who participate as affiliate members. MVCC is managed by an appointed Executive Director and his/her staff.
- C. "PEG" means the Activities or actions performed for the benefit of public, educational and government video programming by the City or MVCC.
- D. "Video Service" means the service defined in R.C. Section 1332.21(J).
- E. "Video Service" Authorization or VSA" means the authorization granted to a Video Service provider in accordance with the requirements of R.C. Sections 1332.21 to 1332.34 et seq.
- F. "Video Service Provider Fee or VSP Fee" means the fee paid by a VSP in accordance with the requirements of R.C Section 1332.32.
- G. "Video Service Provider or VSP" means a person, firm, or corporation granted a video service authorization under R.C. Sections 1332.21 to 1332.34 et seq.

967.02 VSP FEE, PERCENTAGE, AND AUDIT.

- A. Not sooner than forty-five nor later than sixty days after the end of each calendar quarter, a video service provider shall pay a video service provider fee to the City. The fee shall be calculated quarterly by determining the provider's gross revenue for the preceding calendar quarter as described in division B of this section and multiplying the result by the percentage specified in division C 1 or 2 of this section.
- B. Gross revenue shall be computed in accordance with generally accepted accounting principles.

1. Gross revenue shall consist of all of the following revenue for the calendar quarter that is collected by the provider for video service from all its subscribers having service addresses within the City:
  - a. Recurring monthly charges for video service;
  - b. Event-based charges for video service, including, but not limited to, pay-per-view and video-on-demand charges;
  - c. Charges for rental of set-top boxes and other video service equipment;
  - d. Service charges related to the provision of video service, including, but not limited to, activation, installation, and repair;
  - e. Administrative charges related to the provision of video service, including, but not limited to, service order and service termination charges;
  - f. Advertising revenue. For these purposes, "advertising revenue" means the net revenue received by the video service provider for advertising on its subscription-based video service within the City. If such revenue is derived under a regional or national compensation contract or arrangement between the video service provider and one or more advertisers or advertising representatives, the amount of revenue derived for the City shall be determined by multiplying the total net revenue received by the video service provider under the contract or arrangement by the percentage resulting from dividing the number of subscribers in the City by the total number of regional or national subscribers that potentially receive the advertising under the contract or arrangement.
2. Gross revenue shall not include any of the following:
  - a. Any taxes, fees, or assessments that are collected by the VSP from video service subscribers for pass-through to any federal, state, or local government agency, including the VSP Fee authorized under this section, the fee authorized under division (F) of section 1332.30 of the Revised Code, and the federal communication commission user fee;
  - b. Uncollectible charges, except that uncollectible charges, all or part of which are written off as bad debt but subsequently collected, less the expenses of their collection shall be included in gross revenue in the quarter collected;
  - c. Late payment charges;
  - d. Maintenance charges;
  - e. Charges for services other than video service, reasonably identifiable on books or records the video service provider keeps in the regular course of business or by other reasonable means, that are aggregated or bundled with amounts billed to video service subscribers, including, but not limited to, any revenue received by a VSP or its affiliates for telecommunications service, information service, or the provision of directory or internet advertising, including yellow pages, white pages, banner advertising, and electronic publishing;
  - f. Reimbursement by programmers of marketing costs actually incurred by the VSP;
  - g. Any revenue not expressly enumerated in division B. 1 of this section.

- C.
1. If in a calendar quarter a franchise fee is payable by a provider under a franchise in effect in the City, the percentage of gross revenue payable in that calendar quarter by the VSP to the City shall be the same percentage of gross revenue payable in that calendar quarter pursuant to that franchise, not to exceed five percent.
  2. Otherwise, the percentage shall be five percent of a VSP's gross revenues, as calculated in accordance with this ordinance.
- D. A VSP that pays a VSP Fee pursuant to this section may identify and collect the amount of that fee as a separate line item on the regular bill of each of its video service subscribers that has a service address within any portion of the City.
- E.
1. At its sole expense and not more often than once per calendar year, the City or its designee may conduct an audit for the purpose of verifying the accuracy of a VSP's calculation of the VSP Fees it paid to City in the audit period. For the purpose of the audit, the VSP shall make available for inspection, at the location where such records are kept in the normal course of business, those records pertaining to its gross revenue as defined in division B of section 967.02 herein.
  2. A VSP shall pay any amounts found to have been underpaid in the audit within 30 days after notice and shall include interest on the underpayments. However, payment need not be made in that 30 day period if the VSP brings an action under division 3 of this section.
  3. An action by the City or by the VSP to dispute the amount of VSP Fee due based on the audit results may be brought in a court of competent jurisdiction not later than two years following the end of the quarter to which the disputed amount relates.

#### 967.03 VSP FEE NOTICE PROVISION.

Upon receipt of notice from a VSP that it will begin providing Video Service in the City pursuant to a state-issued VSA, the City Manager or his/her designee is authorized and directed to provide such VSP with notice of the VSP Fee as determined by this Council in §967.02 which notice shall be delivered in a manner that provides for proof of timely delivery.

#### 967.04 MVCC MANAGEMENT AUTHORIZATION.

The City authorizes the Community Programming Board ("MVCC") to manage and direct the City's cable franchise management, public, educational, and government access programming and franchise fee collection activities and further directs MVCC to manage and direct the City's VSA public, educational, and government access programming and VSP Fee collection activities as may be necessary under R.C. Sections 1332.21 through 1332.34 et seq., all until such time as the City may terminate or revoke such grant of authority.

#### 967.05 MVCC MANAGEMENT.

The MVCC shall coordinate regulatory efforts for the City and provide expertise on other matters regarding cable franchises, cable service providers, VSAs, VSPs, and other electronic media. Additional responsibilities shall include the creation and promotion of the community media center and PEG access channels, the establishment and review of programming policies, resolution of policy disputes and questions of equal treatment for access users, and fiscal controls. If matters of contract interpretation arise concerning community programming, the MVCC shall be consulted.

#### 967.06 VSP ACCESS PROVISION.

Upon receipt of notice from a VSP that it will begin providing Video Service in the City pursuant to a VSA, the City Manager or his/her designee is authorized and directed to provide such VSP with notice that the VSP shall be required to provide the same number of PEG channels in the City under the same service tier conditions and subject to the same channel reclamation conditions as may be proscribed by R.C. Section 1332.30 A 1 a-b for the Incumbent Cable Provider with the most recent obligation in the City, which notice shall be delivered in a manner that provides for proof of timely delivery and shall state the appropriate number of PEG channels and service tiers required to be provided by the VSP within the City within one-hundred and twenty (120) days after delivery of such notice.

#### 967.07 ACCESS PROGRAMMING REQUIREMENT.

In accordance with the requirements of R.C. Section 1332.30 A 1 a when more than three (3) PEG access channels are provided to the City by an Incumbent Cable Provider or VSP, such additional channel shall be programmed by the City with at least forty (40) hours of non-character generated content per week with at least sixty per-cent (60%) of the programming being non-repeat and locally produced. For the purposes of this Section "non-repeat and locally produced" shall mean the first three (3) playbacks of programming produced or provided by any local resident, the MVCC or its affiliates, or any local public or private agency that provides services to residents of the greater Dayton metro area, or any transmission of a meeting or proceeding of any local, state, or federal governmental entity.

#### 967.08 FEE PAYMENT REQUIREMENTS.

Any VSP Fee or Community Service Fee Payments required to be paid to the City by a VSP shall be made quarterly and be remitted directly to the Community Programming Board via a negotiable instrument made payable to the City of Oakwood, Miami Valley Communications Council, 1195 Alex Bell Road, Centerville, Ohio 45459, not later than sixty (60) days after the end of a calendar quarter.

#### 967.09 PEG ORIGINATION POINT.

The PEG programming origination point of the City for the delivery of VSP access services shall be located at the MVCC office location — 1195 Alex Bell Road, Centerville, Ohio 45459.

967.10 NOTICE REQUIREMENT.

Any notice to the City that is required of a VSP in accordance with of R.C. Sections 1332.21 through 1332.34 shall be provided in written form to both the City Manager and the Executive Director of the MVCC either by certified mail, express mail or upon personal delivery, all evidenced by a return receipt.

967.11 APPLICATION TO INCUMBENT CABLE PROVIDERS.

Nothing in this Section shall apply to incumbent cable providers until they are granted a Video Service Authorization in accordance with R.C. 1332.21-1331.34 et seq.

967.12 CUSTOMER SERVICE STANDARDS

- A. When requested to do so, a VSP shall assist the City in addressing video service subscriber complaints, in a manner consistent with the provider's complaint handling process.
- B. A VSP shall meet all of the following customer service standards:
1. The provider shall restore video service within seventy-two (72) hours after a subscriber reports a service interruption or other problem if the cause was not a natural disaster.
  2. Upon a report by a subscriber of a service interruption and if the interruption is caused by the VSP and lasts for more than fours hours in a given day, the provider shall give the subscriber a credit in the amount of the cost of each such day's video service as would be billed to the subscriber.
  3. Upon a report by a subscriber of a service interruption and if the interruption is not caused by the VSP and lasts for more than twenty-four (24) consecutive hours, the provider shall give the subscriber, for each hour of service interruption, a credit in the amount of the cost of per hour video service as would be billed to the subscriber.
  4. The provider shall give a subscriber at least thirty (30) days' advance, written notice before removing a channel from the provider's video service, but no such notice is required if the provider must remove the channel because of circumstances beyond its control.
  5. The provider shall give a subscriber at least ten (10) days' advance, written notice of a disconnection of all or part of the subscriber's video service, except if the disconnection has been requested by the subscriber, is necessary to prevent theft of video service, or is necessary to reduce or prevent signal leakage as described in 47 C.F.R. 76.611.
  6. The provider shall not disconnect all or part of a subscriber's video service for failure of the subscriber to pay its video service bill, until the bill is at least forty-five (45) days past due.
  7. The provider shall give a subscriber at least thirty (30) days' advance, written notice before instituting an increase in video service rates.

967.99 PENALTY.

Whoever violates any of the provisions of this chapter is guilty of a misdemeanor of the third degree and shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than sixty days or both. A separate offense shall be deemed committed each day during or on which a violation occurs or continues.

(Ord. 4644, Passed 12/17/07)

