CODIFIED ORDINANCES OF OAKWOOD

PART NINE - STREETS AND PUBLIC SERVICES CODE

TITLE ONE - Streets and Sidewalks

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

TITLE THREE - Public Utilities.

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

TITLE FIVE - Other Public Services.

Chapter 931. Refuse Program.
Chapter 933. Inspections.
Chapter 935. Parks.

TITLE NINE – Rights of Way Administration.

Chapter 951. Rights-of-Way Administration.
Chapter 965. Revocable Street Privileges for Non Utility System Providers.

CODIFIED ORDINANCES OF OAKWOOD

PART NINE - STREETS AND PUBLIC SERVICES CODE

TITLE ONE - Streets and Sidewalks.

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

CHAPTER 901
Street Openings

901.01 Permit required.
901.02 Exceptions.
901.03 Application for permit.
901.04 Conditions of permit, indemnification, insurance.
901.05 Revocation of permit.
901.06 Emergency repairs.
901.07 Permit fees.
901.08 Certain driveway construction prohibited.
901.09 Cash or surety bond or letter of credit.
901.99 Penalty.

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.

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.

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

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.

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.

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.

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.

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

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

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.

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

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.

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.

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

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

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.

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

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.

Legislative history:

Ord. 4358, passed 11/5/2012

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.

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.

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

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 that 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.

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

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.

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.

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.

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

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.

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

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.

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.

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.

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.

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.

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

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

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.

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

L. States or Ohio Environmental Protection Agency (EPA) through it's 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.

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.

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.

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.

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:

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

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.

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:

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.

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

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.

TITLE FIVE - Other Public Services

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

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.

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.

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

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

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

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.

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.

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

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

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.

CHAPTER 935
Parks

935.01 Rules and regulations.
935.02 Designation of park lands, public park nature areas and wooded parks.
935.99 Penalty.

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.

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. Rights-of-Way Administration.
Chap. 965. Revocable Street Privileges for Non Utility System Providers.

CHAPTER 951
Rights-of-Way Administration

951.101 Declarations of findings and purpose, scope, definitions
951.102 Rights-of-Way administration
951.103 Discontinuance of operations; abandoned and unused facilities
951.104 Nature of issuance
951.105 Other approvals, permits and agreements
951.106 Certificate of Registration applications
951.107 Reporting requirements
951.108 Compensation for Certificate of Registration
951.109 Oversight and regulation
951.110 Registration term
951.111 Indemnity
951.112 Liquidated damages
951.113 Termination of Certificate of Registration
951.114 Unauthorized use of public Rights-of-Way
951.115 PEG requirements for open video systems
951.116 Transfer of ownership and renewal
951.117 Construction Permits
951.118 Construction, relocation and restoration
951.119 Minor maintenance permits
951.120 Enforcement of permit obligation
951.121 Construction and removal bonds
951.122 Indemnification and liability
951.123 General provisions

951.101- DECLARATION OF FINDINGS AND PURPOSE, SCOPE, DEFINITIONS

951.101.1 FINDINGS AND PURPOSE.

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

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

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

best interest of the public health, safety, and welfare and the aesthetics of the City, the City shall take steps to encourage locating Facilities underground.

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

951.101.2 SCOPE. The provisions of this Chapter shall apply to all users of the Rights-of-Way as provided herein except as provided in Chapter 901. To the extent that any provision in this Chapter 951 conflicts with Chapter 901, the provisions of this Chapter 951 shall control.

951.101.3 DEFINITIONS. For the purposes of Chapter 951, 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 meaning. References hereafter to "Sections" are, unless otherwise specified, references to Sections in this Chapter. Defined terms remain defined terms whether or not capitalized.

1. *Applicant* means any Person who seeks to obtain or renew a Certificate of Registration or Permit.

2. *Application* means the process and format by which an Applicant submits a request to obtain a Certificate of Registration or Permit.

3. *Certificate of Registration* means the document that may be issued to a Provider and its unique System that allows Permitting of the Provider and its unique System.

4. *City* means the City of Oakwood, Ohio.

5. *City Council* means the governing body of the City.

6. *City Manager* means the administrative head of the municipal government known as the City of Oakwood, Ohio.

7. *Codified Ordinances* means the Codified Ordinances of the City of Oakwood, Ohio.

8. *Construct* means, but shall not be limited to, to dig, bore, tunnel, trench, excavate, obstruct, install wires, install conduit, install pipes, install transmission lines, install poles, install signs, or install Facilities, other than landscaping or ornamental plantings, in, on, above, within, over, below, under, or through any part of the Rights-of-Way. Construct shall also include the act of opening and/or cutting into the surface of any paved or improved surface that is any part of the Rights-of-Way.

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

10. *Construction Bond* means a bond posted with the City to ensure proper and complete Construction, replacement and/or repair of a Facility and/or the effected Rights-of-Way pursuant to a Permit.

11. *Construction Cost* means the cost of installation, materials, engineering costs, and other incidental expenses and fees required for the Construction, repair, or replacement of real and/or personal property or Facilities effected by Construction in the Rights-of-Way.

12. *Construction Permit* means the Permit as specified in § 951.117 et seq. of the Codified Ordinances which must be obtained before a Person may Construct in, locate in, occupy, maintain, move, or remove Facilities from, in, or on a Rights-of-Way excluding work performed pursuant to a Minor Maintenance Permit.

13. *Construction and Major Maintenance Plan* means a written plan including maps of the expected location, design, other related equipment and Facilities of a Provider which describes in full the Construction intended to be accomplished by the Provider in the Rights-of-Way over the next calendar year.

14. *County* means any County providing sewer and water service within the City but excludes contractors, agents, or other Persons acting on behalf of said County.

15. *Credible* means worthy of being believed.

16. *Department of Public Works* means the Department of Public Works of the City.

17. *Director of Public Works* means the Director of the Department of Public Works, or his or her designee.

18. *Emergency* means a condition that poses a clear and immediate danger to life, health or safety of a Person, or of a significant loss of real or personal property.

19. *Facilities* means any tangible thing located in any Rights-of-Way within the City; but shall not include boulevard plantings, ornamental plantings, or gardens planted or maintained in the Rights-of-Way between a Person's property and the street edge of pavement.

20. *FCC* means the Federal Communications Commission, or any successor thereto.

21. *Full* means unable to accommodate any additional Facilities: (i.) in light of applicable standards and using current engineering practices as determined by the Director of Public Works; or (ii.) without negatively impacting the public health, safety, and welfare; or (iii.) without violating any applicable Laws, Rules, or Regulations.

22. *In*, when used in conjunction with Rights-of-Way, means in, on, above, within, over below, under or through a Right-of-Way.

23. *Inspector* means any Person authorized by the Director of Public Works to carry out inspections related to the provisions of this Chapter.

24. *Law(s)* means any local, state, or federal legislative, judicial or administrative order, certificate, decision, statute, constitution, ordinance, resolution, regulation, rule, tariff, or other requirement in effect either at the time of execution of this Chapter or at any time during the location of, and/or while a Provider's Facilities are located in the public Rights-of-Way.

25. *Minor Maintenance Permit* means a permit as specified in Section 951.119 et seq. which must be obtained before a Person can perform minor maintenance, as set forth in Section 951.119 et seq., in or on the Rights-of-Way.

26. *Ohio Manual of Uniform Traffic Control Devices* means the uniform system of traffic control devices promulgated by the Ohio Department of Transportation pursuant to O.R.C. § 4511.09.

27. *O.R.C.* means the Revised Code of the State of Ohio.

28. *Ohio Utility Protection Service* means the utility protection service as defined in O.R.C. §§ 153.64 and 3781.26 or their statutory successor.

29. *Open Video Service* means any video programming services provided by a Person through use of Rights-of-Way, which Provider is certified by the FCC to operate an Open Video System pursuant to Sections 651 et seq. of the Telecommunications Act of 1996 (codified at 47 U.S.C. Title VI, Part V), regardless of the Facilities used.

30. *Permit* means both a Construction Permit and a Minor Maintenance Permit unless otherwise specified.

31. *Permit Cost* means all direct, incidental, and indirect costs borne by the City for Permit issuance, Permit oversight and any pavement degradation resulting from Construction activity.

32. *Permit Fee* means money paid to the City for a Permit to Construct and or do Minor Maintenance in the Rights-of-Way.

33. *Permittee* means any Person to whom a Construction Permit and or a Minor Maintenance Permit has been granted by the City and not revoked.

34. *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.

35. *Provider* means a Person who owns or operates a System and has a valid Certificate of Registration. The City, County, RTA and cable television operators operating pursuant to a valid cable franchise shall also be considered Providers.

36. *PUCO* means the Public Utilities Commission of Ohio as defined in O.R.C. § 4951.02.

37. *Registration Maintenance Fee* means the money paid to the City to maintain a Registration Certificate and compensate the City for costs associated with Rights-of-Way management and administration.

38. *Removal Bond* means a bond posted to ensure the availability of sufficient funds to properly remove a Provider's Facilities upon abandonment, disuse, or discontinuance of a Provider's use or occupation of the Rights-of-Way.

39. *Restoration* means the process and the resultant effects by which a Rights-of-Way is returned to a condition as good as or better than its condition immediately prior to Construction. Restoration shall occur in accordance with the Rules and Regulations established by the Director of Public Works and as amended from time to time.

40. *Revocable Street Privileges 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.

41. *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 System. Rights-of-Way shall not include buildings, parks, or other public property or easements that have not been dedicated to compatible uses, except to the extent the use or occupation of such property is specifically granted in a Permit or approved by Law.

42. *Right(s)-of-Way Cost* means all direct, incidental and indirect costs borne by the City for the management, administration and regulation of the Rights-of-Way and this Chapter.

43. *RTA* means the Miami Valley Regional Transit Authority for purposes of public transportation.

44. *Rule(s) and Regulation(s)* means any rule and or regulation adopted by the Director of Public Works.

45. *Service(s)* means the offering of any Service for a fee directly to the public, or to such classes of users as to be effectively available directly to the public.

46. *Supplementary Application* means any application made to Construct on or in more of the Rights-of-Way than previously allowed, or to extend a Permit that had already been issued.

47. *Surety Fund* means a formal pledge made to secure against loss, damage, or default.

48. *System* means any System of conduit, ducts, cables, pipes, wires, lines, towers, antennae wave guides, optic fiber, microwave, or laser beams, and any associated converters, equipment, or Facilities or Utilities designed and constructed for the purpose of producing, receiving, amplifying, delivering or distributing Service within the City.

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

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

51. *Trenchless Technology* means, but shall not be limited to, the use of directional boring, horizontal drilling, microtunneling and other techniques in the Construction of underground portions of Facilities which result in the least amount of disruption and damage to Rights-of-Way as possible.

52. *Underground Facilities* means all lines, cables, conduits, pipes, posts, tanks, vaults, wires and any other Facilities which are located wholly or partially underneath Rights-of-Way.

53. *Unused Facilities* means Facilities located in the Rights-of-Way which have remained unused for a period of twelve (12) months and for which the Provider is unable to: (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 (12) 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 (12) months; or (iii.) that the availability of such Facilities is required by the Provider to adequately and efficiently operate its System.

54. *Utility(ies)* means any water, sewer, gas, drainage, sprinkler, or culvert pipe and any electric power, telecommunication, signal, communication, or cable television conduit, fiber, wire, trackless trolley wires, cable, or operator thereof.

55. *Working Day* means any Monday, Tuesday, Wednesday, Thursday, or Friday excluding legal holidays observed by the City. *Business Day* shall have the same meaning as Working Day.

951.102 - RIGHTS-OF-WAY ADMINISTRATION

951.102.1 ADMINISTRATION. The City Manager shall be the principal City official responsible for the administration of this Chapter except as otherwise provided herein. The City Manager may delegate any or all of the duties hereunder to the Director of Public Works or other designee.

951.102.2 RIGHTS-OF-WAY OCCUPANCY. Each Person who occupies, uses, or seeks to occupy or use the Rights-of-Way to operate a System located in the Rights-of-Way, or who has or seeks to have, a System located in any Rights-of-Way, shall apply for and obtain a Certificate of Registration pursuant to this Chapter. Any Person owning, operating or maintaining a System without a Certificate of Registration, including Persons operating under a Permit, license or franchise issued by the City prior to the effective date of this Chapter, shall apply for and obtain a Certificate of Registration from the City within ninety (90) days of January 1, 2015 unless exempted by Section 951.102.4. Applications will consist of providing the application information set forth in Section 951.106 et seq. and as reasonably required by the Director of Public Works.

951.102.3 NO CONSTRUCTION WITHOUT CERTIFICATE OF REGISTRATION. Following the effective date of this Chapter, no Person shall Construct or perform any work on or in, or use any System or any part thereof located on or in, any Rights-of-Way without first obtaining a Certificate of Registration. For the purposes of this Section only, a Person with a System in place at the time of the effective date of this Chapter shall not be considered immediately in violation of this Section, but shall have up to six (6) months from the effective date of this Chapter to obtain a Certificate of Registration. Whoever violates this section is guilty of a misdemeanor of the second degree.

951.102.4 EXCEPTIONS. The following entities are not obligated to obtain a Certificate of Registration: the City; the County; cable television operators for the limited purpose of providing only cable television service and operating pursuant to a valid

cable television franchise; resellers of Services that do not own any System or Facilities in the Rights-of-Way; Miami Valley Regional Transit Authority (RTA) for purposes of public transportation.

951.102.5 SYSTEMS IN PLACE WITHOUT A CERTIFICATE OF REGISTRATION. Beginning one year after the effective date of this Chapter, any System or part of a System found in a Rights-of-Way for which a Certificate of Registration has not been obtained shall be deemed to be a nuisance and an unauthorized use of the Rights-of-Way. The City may exercise any remedies or rights it has, including, but not limited to abating the nuisance; taking possession of the Facilities and/or non-complying portion of such System; and/or prosecuting the violator.

951.102.6 FUTURE USES. In allowing Facilities to be placed in the Rights-of-Way, the City is not liable for any damages caused thereby to any Provider's Facilities that are already in place. No Provider is entitled to rely on the provisions of this Chapter as creating a special duty to any Provider.

951.103 - DISCONTINUANCE OF OPERATIONS, ABANDONED AND UNUSED FACILITIES

901.103.1 A Provider who has discontinued or is discontinuing operation of any System in the City shall:

1. provide information satisfactory to the City that the Provider's obligations for its System in the Rights-of-Way under this chapter and any other chapters in the Codified Ordinances or other Laws have been lawfully assumed by another Applicant and/or Provider; or

2. submit a written proposal to re-use its Facilities in a manner that promotes the City's goals of providing innovative and economic solutions to efficiently and economically utilize a potentially limited Rights-of-Way capacity. Said proposal must be approved by the Director of Public Works; or

3. submit a written proposal for abandonment of Facilities in place indicating why good engineering practice would support this type of solution. Said proposal must be approved by the Director of Public Works; or

4. completely remove its entire System within a reasonable amount of time and in a manner acceptable to the City; or

5. submit to the City, in good faith and within a reasonable amount of time, and in accordance with O.R.C. Sections 4905.20 and 4905.21, a proposal for transferring ownership of its Facilities to the City. If a Provider proceeds under this clause, the City may, at its option:

a. purchase the Facilities; or

b. unless a valid Removal Bond has already been provided pursuant to 951.121.2, require the Provider to post a bond in an amount

sufficient to reimburse the City for its reasonably anticipated costs to be incurred in removing the Facilities.

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

SECTION 951.104 - NATURE OF ISSUANCE

A Certificate of Registration shall not convey equitable or legal title in the Rights-of-Way. A Certificate of Registration is only the nonexclusive, limited right to occupy Rights-of-Way in the City for the limited purposes and for the limited period stated in the Certificate of Registration and in accordance with Codified Ordinances Chapter 951 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 Chapter. Collocating Providers may file a joint application for a Construction Permit. A Certificate of Registration does not excuse a Provider from obtaining appropriate access or pole attachment agreements before collocating its Facilities on Facilities of others, including the City's Facilities. A Certificate of Registration does not prevent a Provider from leasing space in or on the Provider's System, so long as the sharing of Facilities does not cause a violation of Law, including the provisions of this Chapter. A Certificate of Registration does not excuse a Provider from complying with any provisions of this Chapter and other applicable Law.

951.105 - OTHER APPROVALS, PERMITS AND AGREEMENTS

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

951.106 - CERTIFICATE OF REGISTRATION APPLICATIONS

951.106.1 CERTIFICATE OF REGISTRATION APPLICATIONS. To obtain a Certificate of Registration or to obtain a renewal of a Certificate of Registration issued pursuant to this Chapter, an Application must be filed with the City on the form adopted by the Department of Public Works which is hereby incorporated by reference. All Applications shall be accompanied by a Five Hundred Dollar ($500.00) Application fee which will pay for internal processing and administrative costs associated with the Application process.

951.106.2 APPLICATION INFORMATION. The Applicant shall keep all of the information required in this Section current at all times, provided that Applicant or Provider shall notify the City of any changes to the information required by § 951.106.2.2 within fifteen (15) days following the date on which the Applicant or Provider has knowledge of any such change and shall notify the City of any changes to other information required by § 951.106.2 within thirty (30) days following the date on which the Applicant or Provider has knowledge of such change. The information provided to the City at the time of Application shall include, but not be limited to:

1. Each Applicant's name, legal status (i.e. partnership, corporation, etc.), street address, and telephone and facsimile numbers.

2. The name, street address, and telephone and facsimile numbers of a System Representative. The System Representative shall be available at all times. Current information regarding how to contact the System Representative in an Emergency shall be provided at the time of Application and shall be updated as necessary to assure accurate contact information is available to the City at all times.

3. A certificate of insurance provided to meet the requirements of this Section shall:

a. Verify that an insurance policy has been issued to the Applicant by an insurance company licensed to do business in the State of Ohio;

b. Verify that the Applicant is insured on an occurrence basis against claims for personal injury, including death, as well as claims for property damage arising out of the: use and occupancy of the Rights-of-Way by the Applicant, its officers, agents, employees and contractors; and placement and use of Facilities in the Rights-of-Way by the Applicant, its officers, agents, employees and contractors, including, but not limited to, protection against liability arising from any and all operations, damage of Underground Facilities, explosion, environmental release, and collapse of property;

c. Name the City, its elected officials, officers, employees, agents and volunteers as additional insureds as to whom the comprehensive general liability and completed operation and products

liability insurance required herein are in force and applicable and for whom defense will be provided as to all such coverages;

d. Require that the City be notified thirty (30) days in advance of cancellation of, or coverage changes in, the policy. The liability insurance policies required by this Section shall contain the following endorsement: "It is hereby understood and agreed that this policy may not be diminished in value, be canceled, nor the intention not to renew be stated, until thirty (30) days after receipt by the City, by registered mail, return receipt requested, of a written notice addressed to the City Manager or her/his designee of such intent to cancel, diminish, or not to renew." Within thirty (30) days after receipt by the City of said notice, and in no event later than five (5) days prior to said cancellation, the Provider (or Applicant) shall obtain and provide to the City Manager a certificate of insurance evidencing appropriate replacement insurance policies.

4. Satisfy the requirements for comprehensive liability coverage, automobile liability coverage and umbrella coverage as follows:

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

i. Bodily injury
Each occurrence: One Million Dollars ($ 1,000,000)
Annual aggregate: Three Million Dollars ($3,000,000)

ii. Property damage
Each occurrence: One Million Dollars ($1,000,000)
Annual aggregate: Three Million Dollars ($3,000,000)

iii. Personal Injury
Annual aggregate: Three Million Dollars ($3,000,000)

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

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

5. Comprehensive auto liability insurance: Comprehensive auto liability insurance to cover owned, hired, and non-owned vehicles must be maintained. Applicant may maintain comprehensive auto liability insurance as part of Applicant's comprehensive general liability insurance, however, said insurance is subject to approval by the City Manager or her or his designee. Coverage must

be written on an occurrence basis, with the following limits of liability and provisions, or their equivalent:

a. Bodily injury

Each occurrence: One Million Dollars ($1,000,000)

Annual aggregate: Three Million Dollars ($3,000,000)

b. Property damage

Each occurrence: One Million Dollars ($ 1,000,000)

Annual aggregate: Three Million Dollars ($3,000,000)

6. Additional insurance: The City reserves the right in unusual or unique circumstances to require any other insurance coverage it deems reasonably necessary after review of any proposal submitted by Applicant.

7. Self-insurance: Those Applicants maintaining at all times a book value in excess of Twenty Million Dollars ($20,000,000) may submit a statement requesting to self-insure. If approval to self-insure is granted, Applicant shall assure the City that such self-insurance shall provide the City with no less than would have been afforded to the City by a third party insurer providing Applicant with the types and amounts of coverage detailed in this Section. This statement shall include:

a. Audited financial statements for the previous year, if requested by the City;

b. A description of the Applicant's self-insurance program; and

c. A Listing of any and all actions against or claims made against Applicant for amounts over One Million Dollars ($1,000,000) or proof of available excess umbrella liability coverage to satisfy all total current claim amounts above Twenty Million Dollars ($20,000,000).

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

9. Documentation that Applicant or Provider maintains standard workers' compensation insurance as required by Law. Similarly, Provider shall require any subcontractor to provide workers' compensation insurance in amounts required by Law for all of the subcontractor's employees.

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

11. A copy of the Person's certificate of authority (or other acceptable evidence of authority to operate) from the PUCO and/or the FCC and any other approvals, permits, or agreements as set out in Section 951.105.

12. Upon request of the City, a narrative (or if applicable PUCO/FCC application information) describing applicant's proposed activities in the City including Credible information detailing Applicant's financial, managerial, and technical ability to fulfill Applicant's obligations under this chapter and carry on Applicant's proposed activities.

951.106.3 CRITERIA FOR ISSUANCE OF A CERTIFICATE OF REGISTRATION. In deciding whether to issue a Certificate of Registration, the City shall consider:

1. Whether the issuing of the Certificate of Registration will contribute to the health, safety, and welfare of the City and its citizens.

2. Whether issuing of the Certificate of Registration will be consistent with this Chapter.

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

4. Whether the Applicant is delinquent on any taxes or other obligations owed to the City or Montgomery County or State of Ohio;

5. Whether the Applicant has the requisite financial, managerial, and technical ability to fulfill all its obligations under this Ordinance and the issuance of a Certificate of Registration; and

6. Any other applicable Law.

951.107 - REPORTING REQUIREMENTS

951.107.1 REPORTING OBLIGATIONS OF PROVIDERS. At the time of initial Application and by January 1st of each following year, each Provider shall file a Construction and Major Maintenance Plan with the Department of Public Works. Such Construction and Major Maintenance Plan shall be provided for all geographical areas requested by the Director of Public Works, up to and including the entire geographical area of City. It shall be submitted using a format(s) mutually agreeable to the Provider and the City and shall contain the information determined by the Director of Public Works to be necessary to facilitate the coordination and reduction in the frequency of Construction in the Rights-of-Way. The Construction and Major Maintenance Plan shall include, using the Provider's best efforts, but not be limited to, all currently scheduled and/or anticipated Construction or Major Maintenance projects for the next calendar year; if none are scheduled or anticipated then the Plan should so state.

951.108 - COMPENSATION FOR CERTIFICATE OF REGISTRATION

951.108.1 COMPENSATION. As compensation for the City's costs to administer this Chapter and the Rights-of-Way and for each Certificate of Registration issued pursuant to this Chapter, every Provider or any Person operating a System shall pay to the City Registration Maintenance Fees determined as follows:

1. Providers utilizing equal to or greater than twenty (20) miles of Right-of-Way within the City shall pay a fee of Two Thousand Dollars per year.

2. Providers utilizing less than twenty (20) miles of Right-of-Way within the City shall pay a fee of One Thousand Dollars per year.

3. Cable companies to the extent they are providing only cable television services and are operating under non-exclusive franchises for the provision of cable television services and compensating the City under other mechanisms shall not be required to contribute to the recovery of Rights-of-Way Costs as defined by this Chapter with the exception of Permit costs.

951.108.2 TIMING. Registration Maintenance Fees shall be paid in advance by January 1st of each calendar year. Registration Maintenance Fees shall be paid in full for the first year of the Registration as a condition of the Certificate of Registration becoming effective. Fees may be prorated from the effective date of the Certificate of Registration to the end of the calendar year if less than one (1) full year. Payment of any and all Registration Maintenance Fees shall be waived until January 1, 2015.

951.108.3 TAXES AND ASSESSMENTS. To the extent taxes or other assessments are imposed by taxing authorities on the use of City property as a result of a Provider's use or occupation of the Rights-of-Way, the Provider shall be responsible for payment of such taxes. Such payments shall be in addition to any other fees payable pursuant to this Chapter and shall not be considered an offset to, or in lieu of, the fees and charges listed in this Chapter. The Registration Maintenance Fee is not in lieu of any tax, fee, or other assessment except as specifically provided in this Chapter, or as required by applicable Law. By way of example, and not limitation, Permit Fees and fees to obtain space on City-owned poles are not waived and remain applicable.

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

951.108.5 NO ACCORD AND SATISFACTION. No acceptance by the City of any Registration Maintenance Fee shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of such Registration Maintenance Fee payment be construed as a release of any claim the City may have for additional sums payable.

951.108.6 COSTS OF PUBLICATION. A Provider shall assume publication costs of up to One Hundred Dollars ($100.00) associated with its Certificate of Registration that may be required by Law.

951.109 - OVERSIGHT AND REGULATION

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

951.109.2 CONFIDENTIALITY. All information submitted to the City that is considered trade secret and/or proprietary information must be clearly marked as such when submitted. The City shall exercise all reasonable protection so as not to publicly disclose to any third party proprietary information unless required by Law.

951.109.3 PROVIDER'S EXPENSE. All reports and records required under this Chapter shall be furnished at the sole expense of a Provider, except as otherwise provided in this Chapter.

951.109.4 RIGHT OF INSPECTION AND AUDIT. The City's designated representatives shall have the right to inspect, examine, or audit during normal business hours and upon reasonable notice to a Provider under the circumstances, all documents, records, or other information which pertain to a Provider and its operation of a System or its obligation under this ordinance. All such documents shall be made available within the City or in such other place that the City may agree upon in writing in order to facilitate said inspection, examination, or audit provided, however, that if such documents are located outside of the City, then a Provider shall pay the reasonable expenses incurred by the City's designated representatives in traveling to such location. Provider shall also reimburse the City for at least fifty percent (50%) of the total cost incurred by the City for utilizing a third party to assist with or conduct an investigation or audit.

951.110 – REGISTRATION TERM

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

951.111 - INDEMNITY

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

951.112 - LIQUIDATED DAMAGES

In addition to any other penalties set forth in this Chapter, and the remedy of specific performance which may be enforced in a court of competent jurisdiction, the Director of Public Works may assess an additional penalty of civil forfeiture for failure to comply with any provision of this Chapter. Said penalty shall be a monetary sum, payable to the City, in the amount of Five Hundred Dollars ($500.00) per twenty-four (24) hour day of violation and any subsequent portion of a day less than twenty four (24) hours in length. Prior to assessing said penalty, the Director of Public Works shall provide written notice to the Provider detailing the failure to comply with a specific provision of this Chapter. Said notice shall indicate that said penalty shall be assessed in fifteen (15) calendar days after service of the notice if compliance is not achieved. If a Provider desires to challenge said penalty, Provider shall request a hearing before the City Manager within ten (10) days of service of the notice. Said hearing shall be held within thirty (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 Chapter referenced in the notice, said penalty shall be assessed starting fifteen (15) calendar days after service of the notice referenced in this Section and continuing for each day thereafter until compliance is achieved. The determination of the City Manager shall be final.

951.113 - TERMINATION OF CERTIFICATE OF REGISTRATION

901.113.1 The Director of Public Works shall give written notice of default to a Provider if it is determined that a Provider has:

1. Violated any material provision or requirement of the issuance or acceptance of a Certificate of Registration or any Law of the City, state, or federal government; or

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

3. Practiced any fraud or deceit upon the City; or

4. Made a material misrepresentation of fact in its Application for a Certificate of Registration.

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

1. City shall serve a Provider with a written notice of the reason or cause for proposed termination and shall allow a Provider a minimum of ten (10) calendar days to cure its breach.

2. If the Provider fails to cure within ten (10) calendar days, the Director of Public Works may declare the Certificate of Registration terminated.

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

951.114 - UNAUTHORIZED USE OF PUBLIC RIGHTS-OF-WAY

951.114.1 No Person Shall use the Rights-of-Way to operate a System that has not been authorized by the City in accordance with the terms of this Chapter and been issued a Certificate of Registration.

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

951.114.3 Each and every unauthorized use shall be deemed to be a violation and a distinct and separate offense. Each and every day any violation of this Chapter continues shall constitute a distinct and separate offense.

951.114.4 No Person shall fail to comply with the provisions of this Chapter. Each and every failure to comply shall be deemed a distinct and separate offense. Each and

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

951.114.5 Whoever violates any of the provisions of this Chapter shall be guilty of a second degree misdemeanor. Lack of intent shall not be a defense.

951.115 - PEG REQUIREMENTS FOR OPEN VIDEO SYSTEMS

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

951.116 - TRANSFER OF OWNERSHIP AND RENEWAL

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

951.116.2 CERTIFICATE OF REGISTRATION AND ASSIGNEE/ TRANSFEREE SIGNATURE REQUIRED. In no event shall a transfer or assignment of ownership or control be ultimately acceptable to the City without transferee or assignee requesting and being issued a replacement Certificate of Registration with ninety (90) days of transfer or assignment.

951.116.3 RENEWAL OF CERTIFICATE OF REGISTRATION. A Provider shall request renewal of a Certificate of Registration in writing at least six (6) months prior to the expiration of its term but not more than twelve (12) months prior to expiration. A Provider shall furnish information as required under Section 951.06. Unless otherwise extended by the City, the City shall act on the request before the expiration of the Certificate of Registration.

951.117 – CONSTRUCTION PERMITS

951.117.1 CONSTRUCTION PERMIT REQUIREMENT. Except as otherwise provided in the Codified Ordinances, no Person may Construct in any Rights-of-Way without first having obtained a Construction Permit as set forth in this Chapter. This requirement shall be in addition to any requirement set forth in Codified Ordinances Chapter 901 et seq.

1. A Construction Permit allows the Permittee to Construct in the specified portion of the Rights-of-Way as described in the Construction Permit

while placing Facilities described therein, to the extent and for the duration specified therein. The Construction Permit allows the Permittee, if necessary, to obstruct travel in the Rights-of-Way, pursuant to City approved traffic control measures and as may be specified in the Permit.

2. Unless otherwise approved in writing by the Director of Public Works, a Construction Permit is valid for six (6) months from date of issuance for the area of Rights-of-Way specified in the Permit.

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

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

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

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

951.117.2 CONSTRUCTION PERMIT APPLICATIONS. Application for a Construction Permit shall be made to the Director of the Department of Public Works. In addition to any information required by the Director of Public Works, all Construction Permit Applications shall contain, and will only be considered complete upon compliance with the following provisions:

1. Credible evidence that the Applicant has been issued a Certificate of Registration or proof that the Applicant has written authority to apply for a Construction Permit on behalf of a party that has a then valid Certificate of Registration;

2. Submission of a completed Construction Permit Application in the form required by the Director of Public Works, including, but not limited to, all required attachments, and scaled, dated drawings showing the location and area of the proposed project, number and location of street cuts, and the location of all existing and proposed Facilities, accompanied by the certification of a registered professional engineer, or other trained technical personnel acceptable to the Director of Public Works, that the drawings, plans and specifications submitted with the Application comply with applicable technical codes, rules and regulations.

3. A City approved traffic control plan demonstrating the protective measures and devices that will be employed, consistent with the Ohio Manual of Uniform Traffic Control Devices, to prevent injury or damage to Persons or property and to minimize disruptions to efficient pedestrian and vehicular traffic.

4. If Applicant is proposing an above ground installation on existing poles within the Rights-of-Way, the applicant shall provide Credible information satisfactory to the City to sufficiently detail and identify:

a. the size and height of the existing poles; and

b. based on the facilities currently on the existing poles, the excess capacity currently available on such poles before installation of Applicant's Facilities; and

c. based on the facilities currently on the existing poles, the excess capacity for like or similar Facilities that will exist on such poles after installation of Applicant's Facilities; and

5. If the Applicant proposes to install new poles within the Rights-of-Way, the Applicant shall provide:

a. Credible evidence satisfactory to the City that there is no excess capacity on existing poles or in existing underground systems; and

b. Credible evidence that it is not financially and/or technically practicable for the Applicant to make an underground installation or locate its facilities on existing poles; and

c. the location, size, height, color, and material of the proposed poles; and

d. Credible evidence satisfactory to the City that the Applicant will adhere to all the applicable Laws concerning the installation of new poles.

6. If Applicant is proposing an underground installation in existing ducts or conduits within the Rights-of-Way, the Applicant shall provide Credible information satisfactory to the City to sufficiently detail and identify:

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

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

7. If Applicant is proposing an underground installation within new ducts or conduits to be constructed within the Rights-of-Way, the Applicant must provide Credible information satisfactory to the City to sufficiently detail and identify:

a. the location, depth, size, and quantity of proposed new ducts or conduits; and

b. the excess capacity for like or similar equipment that will exist in such ducts or conduits after installation of Applicant's Facilities.

8. A preliminary Construction schedule and completion date.

9. Payment of all money due to the City for:

a. Permit fees;

b. any loss, damage, or expense suffered by the City as a result of Applicant's prior Construction in the Rights-of-Way or any Emergency actions taken by the City; and

c. any Certificate of Registration issued to the Applicant/Person whose Facilities are being Constructed; and

d. any other money due to the City from the Applicant/Person whose Facilities are being Constructed.

10. When a Construction Permit is requested for purposes of installing additional Systems or any part of a System, the posting of a Construction Bond and Removal Bond, acceptable to the City and subject to Section 951.121 of this Chapter for the additional Systems or any part of a System is required.

951.117.3 ISSUANCE OF CONSTRUCTION PERMIT; CONDITIONS.

1. If the Director of Public Works determines that the Applicant has satisfied the requirements of this Chapter and the Construction Permit process, the Director of Public Works shall issue a Construction Permit subject to the provisions of this Chapter.

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

901.117.4 CONSTRUCTION PERMIT FEES. The Director of Public Works shall develop and maintain a schedule of Permit Fees based on fair and reasonable criteria.

The Director of Public Works shall conduct a study of degradation to and reduction in the useful life of the Rights-of-Way resulting from Construction. After such study is completed and after providing notice to Providers with a valid Certificate of Registration, the Director of Public Works may include in the schedule of Permit Fees an amount sufficient to recover the degradation and reduction in the useful life of the Rights-of-Way that will result from the Construction to take place thereon. "Degradation and the reduction in the useful life" for the purpose of this Section means the accelerated depreciation of the Rights-of-Way caused by Construction in or disturbance of the Rights-of-Way, resulting in the need to reconstruct or repair such Rights-of-Way earlier than would be required if the Construction did not occur. No Construction Permit shall be issued without payment of Construction Permit Fees except to the City, County, or RTA which shall be exempt. Construction Permit Fees that were paid for a Permit that the City has revoked due to breach are not refundable.

951.117.5 JOINT APPLICATIONS. Applicants are encouraged to make joint Application for Construction Permits to work in the Rights-of-Way at the same place and time. Joint Applicants shall have the ability to divide amongst themselves, in proportions the parties find appropriate, any applicable Construction Permit Fees.

951.118 - CONSTRUCTION, RELOCATION AND RESTORATION

951.118.1 TECHNICAL INFORMATION REQUIRED. Prior to commencement of any initial Construction of Facilities in the Rights-of-Way, except for repair, maintenance or replacement with like Facilities only, a Construction Permittee shall provide technical information about the proposed route of Construction. The technical information required shall consist of, at minimum, completion of the following tasks:

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

2. Visibly survey and record the location and dimensions of any Facilities along the proposed Construction route, including, but not limited to, manholes, valve boxes, utility boxes, posts, and visible street cut repairs.

3. Determine and record the presence and precise location of all Underground Facilities the Applicant or Person on whose behalf the Permit was applied for owns or controls in the Rights-of-Way along the proposed System route. Upon request of the Director of Public Works, a Permittee shall also record and identify the general location of all other Facilities in the Rights-of-Way along the proposed System route. For the purposes of this Section, general location shall mean the alignment of other Facilities in the Rights-of-Way, but shall not necessarily mean the depth of other Facilities in the Rights-of-Way.

4. Plot and incorporate the data obtained from completion of the tasks described in this section on the Permittee's proposed System route maps, Construction plans, plan sheets, and computer aided drafting and design (CADD) files, or other data files in a mutually agreeable format compatible with that used by the City.

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

6. Plot, incorporate, and reconcile the data obtained by completion of the tasks described in subsection 951.118.1.5 with the updated System route maps, Construction plans and CADD files or other data files in a mutually agreeable format as described in subsection 951.118.1.4.

7. Based on the data collected upon completion of the tasks described in this Section, adjust the proposed System design.

951.118.2 COPY TO CITY. Upon completion of the tasks described in Section 951.118.1, the Construction Permittee shall plot and incorporate the data on the Construction Permittee's proposed System route maps, Construction plans, plan sheets, and CADD files, or other data files in a mutually agreeable format and deliver a copy to the Department of Public Works.

951.118.3 QUALIFIED FIRM. All technical information gathered pursuant to this Section shall be performed by a firm specializing in utility engineering that is approved by the City or such studies may be performed by the Construction Permittee, at the discretion of the Director of Public Works, and if the Construction Permittee is qualified to complete the project itself.

951.118.4 COST OF SUPPLYING TECHNICAL INFORMATION. The Construction Permittee shall bear the cost of compliance with Sections 951.118.1 through 951.118.3 of this Chapter.

951.118.5 CONSTRUCTION SCHEDULE. Unless otherwise provided for in this Chapter, or unless the Director of Public Works waives any of the requirements of this Section due to unique or unusual circumstances, a Construction Permittee shall be required to: submit a written Construction schedule to the City ten (10) Working Days before commencing any work in or about the Rights-of-Way and, shall further notify the City not less than two (2) Working Days in advance of any excavation in the Rights-of-Way. This Section shall apply to all situations with the exception of circumstances under Section 951.119 (Minor Maintenance Situations) and Section 951.120.4.1 (Emergency Situations).

951.118.6 LOCATION OF FACILITIES.

1. The placement of new Facilities and replacement of old Facilities, either above ground or underground, shall be completed in conformity with applicable Laws.

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

3. Should it be determined by the City that any existing poles in the Rights-of-Way are Full, then those poles may be replaced with bigger and/or taller poles in order to accommodate additional Facilities or Systems but only after written permission has been received from the Director of Public Works and the Construction Permittee has made reasonable attempts to reach an acceptable solution without replacement with bigger and/or taller poles. This paragraph shall not apply to replacement of any existing pole(s) with identically sized pole(s) which results from the destruction of or hazardous condition of the existing pole(s) as long as no new Facilities or additional Facilities are attached.

951.118.7 LEAST DISRUPTIVE TECHNOLOGY. All Construction or maintenance of Facilities shall be accomplished in the manner resulting in the least amount of damage and disruption of the Rights-of-Way. In addition, all cable, wire or fiber optic cable installed in the subsurface Rights-of-Way under this Chapter may be required to be installed in conduit, and if so required, no cable, wire or fiber optic cable may be installed under this Chapter using "direct bury" techniques.

951.118.8 RELOCATION OF FACILITIES.

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

a. A public improvement undertaken or approved by the City or County;

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

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

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

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

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

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

951.118.9 PRE-EXCAVATION FACILITIES LOCATION. Before the start date of any Rights-of-Way excavation, each Provider who has Facilities located in the area to be excavated shall be responsible to mark the horizontal and make every reasonable attempt to mark the approximate vertical placement of all its Facilities. All Providers shall notify and work closely with the excavation contractor in an effort to establish the exact location of its Facilities and the best procedure for excavation.

951.118.10 RIGHTS-OF-WAY RESTORATION.

1. The work to be done under the Permit, and the Restoration of the Rights-of-Way as required herein, must be completed within the dates specified in the Permit. In addition to its own work, the Permittee must restore the general area of the work, and the surrounding areas, including trench backfill, paving and its foundations in accordance with any applicable Laws and the standards established by the Director of

Public Works, and must inspect the area of the work and use reasonable care to maintain the same condition for twelve (12) months thereafter.

2. In approving an Application for a Permit, the City may choose either to have the Permittee restore the Rights-of-Way or the City may restore the Rights-of-Way itself.

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

4. The Permittee shall perform the work according to the standards and with the materials specified by the City. The City shall have the authority to prescribe the manner and extent of the Restoration, and may do so in written procedures of general application or on a case-by-case basis. The City in exercising this authority shall be guided by the following standards and considerations: the number, size, depth and duration of the excavations, disruptions or damage to the Rights-of-Way; the traffic volume carried by the Rights-of-Way; the character of the neighborhood surrounding the Rights-of-Way; the pre-excavation condition of the Rights-of-Way; the remaining life-expectancy of the Rights-of-Way effected by the excavation; whether the relative cost of the method of Restoration to the Permittee is in reasonable balance with the prevention of an accelerated depreciation of the Rights-of-Way that would otherwise result from the excavation, disturbance or damage to the Rights-of-Way; and the likelihood that the particular method of Restoration would be effective in slowing the depreciation of the Rights-of-Way that would otherwise take place. Methods of Restoration shall be according to the Rules, Regulations, and standards established by the Director of Public Works or any other Laws.

5. By restoring the Rights-of-Way itself, the Permittee guarantees its work and shall maintain it for twelve (12) months following its completion. During this twelve (12) month period, it shall, upon notification from the Department of Public Works, correct all Restoration work to the extent necessary using the method required by the Department of Public Works. Weather permitting, said work shall be completed within five (5) Business Days of the receipt of the notice from the Department of Public Works.

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

951.118.11 DAMAGE TO OTHER FACILITIES.

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

2. Each Provider shall be responsible for the cost of repairing any Facilities in the Rights-of-Way which it or its Facilities damage. Each Provider shall be responsible for the cost of repairing any damage to the Facilities of another Provider caused during the City's response to an Emergency caused by that Provider's Facilities.

951.118.12 RIGHTS-OF-WAY VACATION. If the City vacates a Right-of-Way which contains the Facilities of a Provider, such vacation shall be subject to the provisions of O.R.C. § 723.04.1. If the vacation requires the relocation of the Provider's Facilities and if the vacation proceedings are initiated by the Provider, the Provider will pay the relocation costs. If the vacation requires the relocation of the Provider's Facilities and if the vacation proceedings are initiated by the City for a public purpose, the Provider or Permittee must pay the relocation costs unless otherwise agreed to by the City, the Provider or Permittee.

951.118.13 INSTALLATION REQUIREMENTS. The excavation, backfilling, Restoration, and all other work performed in the Rights-of-Way shall be performed in conformance with all applicable Laws and the standards as promulgated by the Director of Public Works.

951.118.14 INSPECTION.

1. When the Construction under any Permit hereunder is completed, the Permittee shall notify the Department of Public Works.

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

3. At any time, including the time of inspection, the Inspector may order the immediate cessation of any work which poses a serious threat to the health, safety, or welfare of the public, violates any Law, or which violates the terms and conditions of the Permit and/or this Chapter.

4. The Inspector may issue an order to correct work which does not conform to the Permit and/or applicable standards, conditions or codes. The order shall state that failure to correct the violation will be cause for revocation of the Permit. The order may be served on the Permittee as provided in Section 951.123.4. An order may be appealed to the Director of Public Works. The decision of the Director of Public

Works may be appealed to the City Manager whose decision shall be final. If not appealed, within ten (10) days after issuance of the order, the Provider shall present proof to the Director of Public Works that the violation has been corrected. If such proof has not been presented within the required time, the Director of Public Works may revoke the Permit pursuant to Section 951.120.3.

951.118.15 OTHER OBLIGATIONS. Obtaining a Construction Permit does not relieve Permittee of its duty to obtain all other necessary Permits, licenses, and authority and to pay all fees required by the City, or any other city, county, state, or federal Laws.

1. A Permittee shall comply with all requirements of Laws, including the requirements of the Ohio Utility Protection Service.

2. A Permittee shall perform all work in conformance with all applicable Laws and standards and is responsible for all work done in the Rights-of-Way pursuant to its Permit, regardless of who performs the work.

3. No Rights-of-Way obstruction or excavation may be performed when seasonally prohibited or when conditions are unreasonable for such work, except in the case of an Emergency as outlined in Section 951.120.4.1.

4. A Permittee shall not so obstruct a Rights-of-Way that the natural free and clear passage of water through the gutters or other waterways shall be interfered with.

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

951.118.16 UNDERGROUNDING REQUIRED. Any owner of property abutting upon a street or alley where Service Facilities are located underground and where the Service connection is at the property line, shall install or cause others to install underground any Service delivery infrastructure from the property line to the buildings or other structures on such property to which such Service is supplied.

951.119 MINOR MAINTENANCE PERMITS

951.119.1 MINOR MAINTENANCE PERMIT REQUIREMENT. No Person shall perform Minor Maintenance of Facilities in the Rights-of-Way without first having obtained a Minor Maintenance Permit as set forth in this Chapter. Minor Maintenance means: (i.) the routine repair or replacement of Facilities with like Facilities not involving Construction and not requiring traffic control for more than thirty (30) minutes at any one location; or (ii.) Construction on thoroughfares and arterials between the hours of 9:00AM and 3:00PM that does not impede traffic and does not involve a street, pavement, curb, or sidewalk cut without first contacting the Director of Public Works; or (iii.) Construction other than on thoroughfares and arterials that takes less than eight (8) contiguous hours to complete, does not impede traffic, and does not involve a pavement, street, curb, or sidewalk cut without first contacting the Director of Public Works.

1. A Minor Maintenance Permit allows the Minor Maintenance Permittee to perform all minor maintenance in any part of the Rights-of-Way as required.

2. A Minor Maintenance Permits is valid from the date of issuance until December 31 of the year in which the Minor Maintenance Permit was issued at which time the Minor Maintenance Permit shall expire.

3. A Minor Maintenance Permit must be displayed or upon request, the Minor Maintenance Permit must be produced within twelve (12) hours or the first earliest Business Hour, whichever is later. For purposes of this Chapter, Business Hour shall mean the hours between 8 a.m. and 5 p.m. during a Business Day.

4. A Minor Maintenance Permit by itself shall under no circumstances provide a Permittee with the authority to cut street, pavement, curb, or sidewalk without first seeking and receiving approval from the Director of the Department of Public Works.

951.119.2 MINOR MAINTENANCE PERMIT APPLICATIONS. Application for a Minor Maintenance Permit shall be made to the Director of the Department of Public Works. In addition to any information required by the Director of Public Works, all Minor Maintenance Permit Applications shall contain, and will only be considered complete upon compliance with the following provisions:

1. Credible evidence that the Applicant has obtained a Certificate of Registration or proof that the Applicant has written authority to apply for a Minor Maintenance Permit on behalf of a party that has been issued a Certificate of Registration;

2. Submission of a completed Minor Maintenance Permit Application in the form required by the Director of Public Works.

3. A statement that the Applicant will employ protective measures and devices that, consistent with the Ohio Manual of Uniform Traffic Control Devices, will prevent injury or damage to Persons or property and to minimize disruptions to the efficient movement of pedestrian and vehicular traffic.

951.119.3 ISSUANCE OF MINOR MAINTENANCE PERMITS; CONDITIONS.

1. If the Director of Public Works determines that the Applicant has satisfied the requirements of this Chapter and the Minor Maintenance Permit process, the Director of Public Works shall issue a Minor Maintenance Permit subject to the provisions of this Chapter.

2. The City may impose reasonable conditions upon the issuance of the Minor Maintenance Permit and the performance of the Minor Maintenance Permittee thereunder in order to protect the public health, safety and welfare, to insure the

structural integrity of the Rights-of-Way, to protect the property and safety of other users of the Rights-of-Way, and to minimize the disruption and inconvenience to the traveling public.

951.119.4 MINOR MAINTENANCE PERMIT FEES. The Director of Public Works may charge a fee for the issuance of the Minor Maintenance Permit. No Minor Maintenance Permit shall be issued without payment of Minor Maintenance Permit Fees except to the City, County, or RTA which shall be exempt. Minor Maintenance Permit Fees that were paid for a Minor Maintenance Permit that the City has revoked due to breach are not refundable. The Director of Public Works may revoke the Minor Maintenance Permit as any other Permit may be revoked under this Chapter.

951.120 - ENFORCEMENT OF PERMIT OBLIGATION

951.120.1 MANDATORY DENIAL OF PERMIT. Except in the case of an Emergency, no Construction Permit or Minor Maintenance Permit will be granted:

1. To any Person who has not yet made an Application; or

2. To any Person or their agent who has outstanding debt owed to the City; or

3. To any Person or their agent as to whom there exists grounds for the revocation of a Permit; or

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

951.120.2 PERMISSIVE DENIAL. The Director of Public Works may deny a Permit in order to protect the public health, safety, and welfare, to prevent interference with the safety and convenience of ordinary travel over the Rights-of-Way, or when necessary to protect the Rights-of-Way and its users. The Director of Public Works, in his or her discretion, may consider one or more of the following factors: the extent to which Rights-of-Way space where the Permit is sought is available; the competing demands for the particular space in the Rights-of-Way; the availability of other locations in the Rights-of-Way or in other Rights-of-Way for the proposed Facilities; the applicability of this Chapter or other regulations of the Rights-of-Way that effect location of Facilities in the Rights-of-Way; the degree of compliance of the Provider with the terms and conditions of this Chapter and its requirements, 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 Rights-of-Way; the condition and age of the Rights-of-Way, and whether and when it is scheduled for total or partial re-construction; the balancing of the costs of disruption to the public and damage to the Rights-of-Way, against the benefits to that part of the public served by the expansion into additional parts of the Rights-of-Way; and whether such Applicant or their agent has failed within the past

three (3) years to comply, or is presently not in full compliance, with the requirements of this Chapter or, if applicable, any other Chapters of the Codified Ordinances, or any other applicable Law.

951.120.3 DISCRETIONARY ISSUANCE. Notwithstanding the provisions of Section's 951.120.1.1 and 951.120.1.2, the Director of Public Works may issue a Permit in any case where the Permit is necessary: (a) to prevent substantial economic hardship to a customer of the Permit applicant if established by Credible evidence satisfactory to the City; (b) to allow such customer to materially improve its Service; or (c) to allow a new economic development project. To be granted a Permit under this Section, the Permit Applicant must not have had knowledge of the hardship, the plans for improvement of Service, or the development project at the time it was required to submit its list of next year projects.

951.120.4 WORK DONE WITHOUT A PERMIT.

1. Emergency Situations. Each Provider shall immediately notify the Director of Public Works of any event regarding its Facilities which it considers to be an Emergency. The Provider may proceed to take whatever actions are necessary in order to respond to the Emergency. Within two (2) business days, unless otherwise extended by the Director of Public Works, after the occurrence or discovery of the Emergency (whichever is later), the Provider shall apply for the necessary Permits, pay the fees associated therewith and fulfill all the requirements necessary to bring itself into compliance with this Chapter for any and all actions taken in response to the Emergency.

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

2. Non-Emergency Situations. Except in the case of an Emergency, any Provider who Constructs in, on, above, within, over, below or through a Right-of-Way without a valid Permit shall subsequently obtain a Permit, pay double the normal fee for said Permit, pay double all the other fees required by the Codified Ordinances, deposit with the City the fees necessary to correct any damage to the Rights-of-Way and comply with all of the requirements of this Chapter.

951.120.5 REVOCATION OF PERMITS.

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

a. The violation of any provision or condition of the Permit; or

b. An evasion or attempt to evade any provision or condition of the Permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the City or its citizens; or

c. Any material misrepresentation of fact in the Application for a Permit; or

d. The Failure to obtain and/or maintain required Construction or Removal Bonds and/or insurance; or

e. The failure to obtain and/or maintain, when required, a Certificate of Registration; or

f. The failure to complete Construction in a timely manner; or

g. The failure to correct any nonconformity as ordered pursuant to Section 951.118.15.

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

3. By the close of the next business day following receipt of notification of the breach, Permittee shall contact the Director of Public Works with a plan, acceptable to the Director of Public Works, for its correction. Permittee's failure to so contact the Director of Public Works, or the Permittee's failure to submit an acceptable plan, or Permittee's failure to reasonably implement the approved plan, shall be cause for immediate revocation of the Permit.

4. From time to time, the Director of Public Works may establish a list of standard conditions for the Permit. A substantial breach of any condition shall also constitute an unauthorized use of the public Rights-of-Way as defined in Section 951.114.

5. If a Permittee, commits a second substantial breach as outlined above, Permittee's Permit will automatically be revoked and not be allowed further Permits for one full year, except for Emergency repairs.

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

951.121 - CONSTRUCTION AND REMOVAL BONDS

951.121.1 CONSTRUCTION BOND. Prior to the commencement of any Construction, a Construction Permittee, excluding the County, City, or RTA shall deposit

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

951.121.2 REMOVAL BOND. Upon issuance of a Certificate of Registration, and continuously thereafter until One Hundred Twenty (120) days after a Provider's Facilities have been removed from the Rights-of-Way, (unless the Director of Public Works notifies the Provider that a reasonably longer period shall apply), a Provider shall deposit with the Director of Public Works and maintain an irrevocable, unconditional letter of credit or a surety bond in an amount equal to or greater than Fifty Thousand Dollars ($50,000.00). The Director of Public Works shall make all reasonable effort to allow Provider a period of five (5) Business Days after serving notification to correct or repair any default, problem or deficiency prior to Director of Public Works' attachment of letter of credit or surety bond regarding the removal of Facilities. Upon attachment, written notice shall be provided to the Provider by the Director of Public Works.

951.121.3 BLANKET BOND. In lieu of the Construction Bond required by Section 951.121.1 and the Removal Bond required by Section 951.121.2, Provider may deposit with the Director of Public Works an irrevocable, unconditional letter of credit and/or surety bond in the amount of Five Million Dollars ($5,000,000.00). Unless a Construction default, problem or deficiency involves an Emergency or endangers the safety of the general public, the Director of Public Works shall make all reasonable effort to allow Permittee a period of five (5) Business Days after sending notification in writing to the last known business address to correct or repair any Construction default, problem or deficiency prior to Director of Public Works' attachment of letter of credit or surety bond. Upon attachment, written notice shall be provided to the Provider by the Director of Public Works.

951.121.4 SELF BONDING. In lieu of the Construction Bond required by Section 951.121.1, the Removal Bond required by Section 951.121.2 and the Blanket Bond required by Section 951.121.3, those Providers maintaining at all times a book value in excess of Twenty Million Dollars ($20,000,000) may submit a statement to the Director of Public Works requesting to self-bond. If approval to self-bond is granted, a Provider shall assure the City that such self-bonding shall provide the City with no less protection and security than would have been afforded to the City by a third party surety providing Provider with the types and amounts bonds detailed in the above named Sections. This statement shall include:

a. Audited financial statements for the previous year, if requested by

the City; and,

b. A description of the Applicant's self-bonding program; and,

c. Other applicable and pertinent information as reasonably requested by the Director of Public Works.

951.121.5 PURPOSES. The bonds required by this Section, and any self bonding to the extent it has been permitted, shall serve as security for:

1. The faithful performance by the Permittee or Provider of all terms, conditions and obligations of this Chapter;

2. Any expenditure, damage, or loss incurred by the City occasioned by the Permittee or Provider's violation of this Chapter or its failure to comply with all Rules, Regulations, orders, Permits and other directives of the City issued pursuant to this Chapter;

3. The payment of all compensation due to the City, including Permit Fees;

4. The payment of premiums for the liability insurance required pursuant to this Chapter;

5. The removal of Facilities from the Rights-of-Way pursuant to this Chapter;

6. The payment to the City of any amounts for which the Permittee or Provider is liable that are not paid by it's insurance or other surety; and

7. The payment of any other amounts which become due to the City pursuant to this Chapter or other Law.

951.121.6 FORM. The bond documents required by this Section, and any replacement bond documents shall, contain the following endorsement: "It is hereby understood and agreed that this bond may not be canceled or not renewed by the surety nor the intention to cancel or not to renew be stated by the surety until ninety (90) days after completion of Construction of the Facilities and, notwithstanding the foregoing, shall in no case be canceled or not renewed by the surety without ninety (90) days advance written notice to the City of surety's intention to cancel or not renew this bond."

951.122 - INDEMNIFICATION AND LIABILITY

951.122.1 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:

1. For injuries to Persons, damage to property, or loss of Service claims; or

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

951.122.2 INDEMNIFICATION. By applying for and being issued a Certificate of Registration with the City a Provider agrees, or by accepting a Permit a Permittee 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 negligent acts or omissions that are willful and wanton or intentional torts and for which immunity is not provided by the O.R.C. for such acts, omissions, or intentional torts. This exception shall not extend to acts, omissions, or intentional torts occurring as a result of or in response to an Emergency. A Provider or Permittee 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 for any claim nor for any award arising out of the presence, installation, maintenance or operation of its Facilities, or any activity undertaken in or near a Rights-of-Way, whether the act or omission complained of is authorized, allowed or prohibited by a Permit. This Section is not, as to third parties, a waiver of any defense or immunity otherwise available to the Provider, Permittee, or to the City; and the Provider or Permittee, 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 exercise of the above shall be consistent with, but not limited to, the following:

1. To the fullest extent permitted by Law, all Providers and Permittees shall, at their sole cost and expense, fully indemnify, defend and hold harmless the 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 actions, actions, liability, and judgments for injury or damages including but not limited to expenses for reasonable legal fees and disbursements assumed by the City in connection therewith:

a. 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 or Permittee of the Rights-of-Way, to which Permittee's or 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.

b. 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 or Permittee, but excluding claims arising out of or related to City programming.

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

2. The foregoing indemnification is conditioned upon the City:

a. Giving Provider or Permittee reasonable notice of any claim or the commencement of any action, suit or proceeding for which indemnification is sought;

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

c. Cooperating in the defense of such claim and making available to the Provider or Permittee all pertinent information under the City's control.

3. 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 or Permittee shall pay all reasonable fees and expense of such separate counsel if employed.

951.123 - GENERAL PROVISIONS

951.123.1 NON-EXCLUSIVE REMEDY. The remedies provided in this Chapter 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 of any of the provisions of this chapter or other provisions of applicable Law.

951.123.2 SEVERABILITY. If any section, subsection, sentence, clause, phrase, or portion of this Chapter 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, nonappealable order that any Permit, right or any portions of this Chapter are illegal or unenforceable, then any such Permit or right granted or deemed to exist hereunder shall be considered as a revocable Permit with a mutual right 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 Permit shall be the same requirements and conditions as set forth in the Permit, right or registration, respectively, except for conditions relating to the term of the Permit and the right of termination. If a Permit or right shall be considered a revocable Permit as provided herein, the Permittee must acknowledge the authority of the City to issue such revocable Permit and the power to revoke it.

951.123.3 RESERVATION OF REGULATORY AND POLICE POWERS. The City by the granting of a Permit, or by issuing a Certificate of Registration under this Chapter, does not surrender or to any extent lose, waive, impair, or lessen the lawful powers and rights, which it has now or may be hereafter vested in the City under the Constitution and Laws of the United States, State of Ohio, and under the Charter of the City of Oakwood to regulate the use of the Rights-of-Way. The Permittee by its acceptance of a Permit, or Provider by applying for and being issued a Certificate of Registration, 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 Permittee or 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.

951.123.4 METHOD OF SERVICE. Any notice or order of the Director of Public Works or City Manager shall be deemed to be properly served if a copy thereof is:

1. Delivered personally; or

2. Successfully transmitted via facsimile transmission to the last known fax number of the Person to be served; or

3. Left at the usual place of business of the Person to whom it is to be served upon and with someone who is 18 years of age or older; or

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

5. If the notice is attempted to be served by certified, preposted U.S. mail and then returned showing that the letter was not delivered, or the certified letter is not returned within fourteen (14) days after the date of mailing, then notice may be sent by regular, preposted, first-class U.S.; or

6. If the notice is attempted to be served by regular, first class U.S. mail, postage prepaid, and the letter is then returned showing that the letter was not delivered, or is not returned within fourteen (14) days after the date of mailing, then notice shall be posted in a conspicuous place in or about the structure, building, premises or property effected by such notice.

951.123.5 APPLIES TO ALL PROVIDERS. This Chapter shall apply to all Providers and all Permittees unless expressly exempted.

951.123.6 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.

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

951.123.8 CHOICE OF LAW AND FORUM. This Chapter 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 and Permittees as a condition for the grant of any Permit or issuance of any Certificate of Registration agree that all disputes shall be resolved in a court of competent jurisdiction in Montgomery County, Ohio or as otherwise agreed to in writing by the City.

951.123.9 FORCE MAJEURE. In the event any Person's performance of any of the terms, conditions, or obligations required by this Chapter 951 is prevented by a cause or event not within such Person's control, such inability to perform shall be deemed excused and no penalties or sanctions shall be imposed as a result thereof. For the purpose of this Section, causes or events not within the control of a Provider shall include, without limitation, acts of God, strikes, sabotage, riots or civil disturbances, explosions, acts of public enemies, and natural disasters such as floods, earthquakes, landslides, and fires.

951.123.10 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.

951.123.11 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 Chapter and other Laws throughout the period of such continued operation, provided that any such continued operation shall in no way be construed as a renewal or other extension of the Certificate of Registration, nor as a limitation on the remedies, if any, available to the 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.

951.123.12 APPEALS. All appeals provided for by this chapter and any notification to the City required by this Chapter shall be in writing and sent via certified mail to the City Manager or Director of Public Works as specified in this Chapter.

901.123.13 CITY STANDARDS. As part of City required standards wherever Rights-of-Way are under Construction, if deemed advisable and practicable by the Director of Public Works, 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.

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

Legislative History: Ord. 4793, adopted 11/3/14.

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

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.

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 Permitee 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).

Adopted by Ord. No. 4780 on November 4, 2013

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:

Meter Size	Inside City Rates	Outside City Rates (25% surcharge)
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.