

**CITY
COMPREHENSIVE RIGHT-OF-WAY
ORDINANCE**

FILE NO:

Date Passed:

Date Effective:

Title

City of Gahanna Comprehensive Right-of Way Ordinance establishing Rights-of-Way policy for the City and enacting Chapter 931 of the Codified Ordinances of the City of Gahanna.

Body

WHEREAS, the City of Gahanna, Ohio (the "City") is vitally concerned with the use of the various Rights-of-Way in the City and the city realizes that such Rights-of-Way are a valuable and limited resource to be utilized to promote the public health, safety and welfare including the economic development of the City; and

WHEREAS, 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; and

WHEREAS, it is necessary to comprehensively regulate access to, and structures and facilities in, the Rights-of-Way to promote efficiency, discourage uneconomic duplication of facilities, lessen the public inconvenience of uncoordinated work in the Rights-of-Way, and promote public safety; and

WHEREAS, the City has rights under the laws and Constitution of the State of Ohio, including Article 18, Sections 3 and 4, to regulate public and private entities which use the Rights-of-Way.

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

That the City Codes are hereby supplemented by the enactment of Chapter 931 of the Codified Ordinances of the City as follows:

EXHIBIT A

931.01- DEFINITIONS

For purposes of this Chapter, the following terms, phrases, words, and their derivations have the meanings set forth herein. When not inconsistent with the context, words in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The words "shall" and "will" are mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

- A. "Applicant" means any Person applying for a Right-of-Way Permit hereunder.
- B. "Best Efforts" means the best reasonable efforts under the circumstances, taking into consideration, among other appropriate matters, all applicable laws, regulations, safety, engineering and operational codes, expedition, available technology and human resources and cost.
- C. "Chapter" means Chapter 931 of the Codified Ordinances of the City, as amended from time to time, and any Regulations adopted hereunder.
- D. "City" means the City of Gahanna, Ohio.
- E. "Council" means the legislative body of the City.
- F. "Director" means the Public Service Director.
- G. "Force Majeure" means a strike, act of God, act of public enemy, order of any kind of a government of the United States of America or of the State of Ohio or any of their departments, agencies or political subdivisions; riot, epidemic, landslides, lightning, earthquake, fire, tornado, storm, flood, civil disturbance, explosion, partial or entire failure of a utility or any other cause or event not reasonably within the control of the party disabled by such Force Majeure, but only to the extent such disabled party notifies the other party as soon as practicable regarding such Force Majeure and then for only so long as and to the extent that, the Force Majeure prevents compliance or causes non-compliance with the provisions hereof.
- H. "General Right-of-Way Permit" shall have the meaning set forth in Section 931.03 (B)(1).
- I. "Governmental Purposes" means those purposes classified as governmental under Ohio law, as well as any other City utility service to the extent such other City utility service is provided to City facilities.
- J. "Permit or Franchise" means the nonexclusive grant of authority to use or occupy all or a portion of the City's Rights-of-Way as granted pursuant to this Chapter.

K. "Permittee" means any Person issued a Right-of-Way Permit pursuant to this Chapter to use or occupy all or a portion of the Rights-of-Way in accordance with the provisions of this Chapter and said Right-of-Way Permit.

L. "Person" means any natural person or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not-for-profit.

M. "Public Property" means any real property owned by the City or easements held or used by the City, other than a Right-of-Way.

N. "Regulation" means any rule adopted by the Director pursuant to the authority of this Chapter, and the procedure set forth in Section 931.10, to carry out its purpose and intent.

O. "Residential Purposes" means residential use of Right-of-Way for such uses as mailboxes, trees, landscaping, lawn sprinklers, decorative purposes or any curb cuts and driveways, and as may be further defined in any Regulations the City adopts.

P. "Right-of-Way" means the surface of and the space above and below the paved or unpaved portions of any public street, public road, public highway, public freeway, public lane, public path, public way, public alley, public court, public sidewalk, public boulevard, public parkway, public drive and any other land dedicated or otherwise designated for the same now or hereafter held by the City which shall, within its proper use and meaning in the sole opinion of the Director, entitle a Permittee, in accordance with the terms hereof and of any Right-of-Way Permit, to the use thereof for the purpose of installing or operating any poles, wires, cables, transformers, conductors, ducts, lines, mains, conduits, vaults, manholes, amplifiers, appliances, attachments or other property or facilities as may be ordinarily necessary and pertinent to the provision of natural gas, electric power, cable television, communications or other utility services as set forth in any Service Permit or any Right-of-Way Permit. Right-of-Way shall not include private easements or Public Property, except to the extent the use or occupation of Public Property is specifically granted in a Right-of-Way Permit or by Regulation.

Q. "Right-of-Way Permit" means the non-exclusive grant of authority to use or occupy all or a portion of City's Rights-of-Way granted pursuant to this Chapter.

R. "Right-of-Way Related Fees" means the annual compensation required of a Right-of-Way user based on assessment of Right-of-Way Related Costs as defined in Section 931.01 (S) of this Chapter.

S. "Right-of-Way Related Costs" means the dollar amount assessed a Right-of-Way user to cover the reasonable allocation of the total costs to the City of: planning, regulating, purchasing, maintaining and governing the Rights-of-Way, including any costs of joint planning, enforcement of this Chapter, costs to research and formulate Right-of-Way ordinances and policies, administrate the processes related to Rights-of-Way, enforce compliance with provisions of this Chapter and other Ordinances related to management

of Rights-of-Way within the City, and recover all other Right-of-Way related costs and overhead expenses including, but not limited to, an appropriate allocation of the costs of any geographic information systems (GIS) utilized by the City.

T. "Service Permit" means a valid service permit, agreement, franchise agreement or operating agreement issued by the City in accordance with the codified Ordinances of the City, the Constitution of the State of Ohio or the United States, and accepted by any Person, pursuant to which such Person may operate or provide natural gas, electric power, cable television services, communications or other utility services within the City.

U. ""Special Right-of-Way Permit" shall have the meaning set forth in Section 931.03(B)

V. "Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information sent and received. It includes offering of telecommunications for a fee directly to the public, or to such classes or users as to be effectively available directly to the public, regardless of the facilities used.

931.02-PURPOSE AND SCOPE OF CHAPTER

A. The purpose of this Chapter is to provide for the regulation, planning, management and administration of the use or occupation of all Rights-of-Way in the City, the issuance of Right-of-Way Permits to Persons for such use or occupancy and to set forth the policies of the City related thereto.

B. A Right-of-Way Permit issued pursuant to this Chapter does not take the place of any Service Permit, franchise, license, or permit which may be additionally required by law, including any required by Chapter 751 of the Codified Ordinances of the City of Gahanna. Each Permittee shall obtain any and all such additional state, federal or city franchises, licenses or permits necessary to the operation and conduct of its business or the occupation or use of any Right-of-Way; provided, however, that no Permittee holding a valid Right-of-Way Permit shall be required to obtain a Service Permit for any type of services rendered by said Permittee for which the City did not require Service Permits at the time said Permittee's Permit was last issued or renewed. Should there be a direct conflict between the provisions of this Chapter and a valid Service Permit, the provisions of the Service Permit shall prevail; provided, however, that additional obligations shall not be construed as a conflict.

C. The Director is hereby directed and empowered to enforce the provisions of this Chapter.

D. The City's policy regarding Rights-of-Way is: To promote the utilization of Rights-of-Way for the public health, safety and welfare and to promote economic development in the City including, but not limited to, the following:

1. To promote the availability of a wide range of utility, communication and other services, including the rapid deployment of new technology and innovative services, to the City's residents and taxpayers at reasonable costs;
2. To promote cooperation among the Permittees and the City in the occupation of Rights-of-Way, or work therein, in order to minimize public inconvenience during Right-of-Way work, and ensure safe and efficient use of the City's streets, Rights-of-Way, and easements, and eliminate wasteful, unnecessary or unsightly duplication of facilities;
3. To promote public safety and protect public property;
4. To ensure adequate public compensation for private use of the Rights-of-Way and the costs related thereto, including the regulation thereof;
5. To promote and require reasonable accommodation of all uses of Rights-of-Way; and when all requests for Right-of-Way use cannot be accomplished, to give priority for use of Rights-of-Way, in the order indicated, from highest to lowest, to the following users:

- (a) The City for Governmental Purposes;
- (b) Another governmental entity for Governmental Purposes with the City's concurrence, or other governmental use required by law;
- (c) General Right-of-Way Permittees and proprietary uses by the City;
- (d) Special Right-of-Way Permittees; provided, however, that the Director may reasonably require cooperation and accommodation among Permittees in the public interest.

E. All Right-of-Way Permits granted hereunder shall be nonexclusive and no property right of any nature shall be created by the granting of a Permit under this Chapter.

F. This Chapter does not apply, and nothing herein should be construed to apply the provisions of this Chapter, to structures or facilities owned or operated by the City or any City operations that occupy or use the Rights-of-Way. It is specifically contemplated, however, that all City Departments or Divisions that utilize the Rights-of-Way shall carry out their operations in a manner consistent with the policy set forth in this Chapter, including participation and cooperation in all joint planning hereunder and identification of structures and facilities located in the Rights-of-Way.

G. To assure that Applicants have the financial, technical and managerial resources to comply with this Chapter and the provisions of any Right-of-Way Permit issued hereunder; provided that, for purposes of this Chapter, an Applicant possessing valid

authorization from the Public Utilities Commission of Ohio, including certification pursuant to R.C. 4933.81 et seq., for the services to be provided by the facilities subject to this Chapter shall be presumed to possess the requisite financial, technical and managerial resources, unless otherwise shown by clear and convincing evidence.

931.03- PROHIBITION; TYPES OF PERMITS; LENGTH OF PERMIT TERMS

A. Unless permitted by the Codified Ordinances of the City, no Person shall use, occupy, construct, own or operate structures or facilities in, under or over any Rights-of-Way or any Public Property within the City unless such Person first obtains a Right-of-Way Permit and conforms to the requirements set forth therein and in this Chapter; provided, however, that Right-of-Way Permits shall not be required for the following uses:

1. Newspaper Stands;
2. Carts;
3. Sidewalk Cafes;
4. Parking Lots;
5. Awnings; and
6. Residential Purposes, so long as, in the opinion of the Director that such use:
 - (a) Has received or will receive all other necessary permits, including any permits set forth in the Codified Ordinances of the City as may be required under this Chapter, and;
 - (b.) Is not inconsistent with policy of the City, and;
 - (c) Does not adversely affect the public health, safety or welfare; and
 - (d) Does not materially interfere with the other lawful use of the Right-of-Way.

The Director may adopt Regulations controlling and further defining Residential Purposes and to otherwise implement the regulations to be made under this Section.

B. The following types of Right-of-Way Permits are available:

1. General Right-of-Way Permit: Granted to persons who desire and are granted authority to use the Right-of-Way generally for business purposes including the provision of natural gas, electric power, cable television, communications, or other utility services to the City, its residents and taxpayers. The City reserves the

right to require a Service Agreement for said services should the City determine the necessity to do so.

a. Said Permits are issued for a ten (10) year period unless a lesser amount of time is requested within the application.

b. Cable Television or other services that are covered by an existing Service Permit, Franchise Agreement, or Chapter 751 of Codified Ordinances of the City are subject to their own term limits as so stated in the Franchise Agreement, Service Permit or the Codified Ordinances of the City.

c. General Right-of-Way Permits with said existing term limits are issued for the lesser of: (1) a 10 year period, or; (2) the length of time remaining on the existing franchise permit, or; (3) the amount requested within the application for the Permit

2. Special Right-of-Way Permits: Granted to persons for a specific, limited use of the Rights-of-Way or a specific portion thereof as further defined in the Permit. Such Special Right-of-Way Permits shall not be available to any Person for use of more than one (1) mile of Right-of-Way. Special Right-of-Way Permits may be granted for any amount of Right-of-Way to agencies of the government of the United States, the State of Ohio, or its political subdivisions for Governmental Purposes. Said Permits shall be available in the following two categories:

a. Special Right-of-Way Permit for Non-residential Purposes: Permit granted to an individual or business seeking to place facilities, and/or enhancements within the public Rights-of-Way for public or private business purposes. Said use shall be limited to one linear mile of public Right-of-Way. This type of Permit shall be issued for all qualifying Governmental Purposes as defined in this Chapter regardless of the length of Right-of-Way used.

(1).Said Permits are issued for a three (3) year period of time unless a lesser term is requested and approved within the application.

b. Special Right-of-Way Permit for Residential Purposes: Granted to an individual seeking to place enhancements within the public Right-of-Way immediately adjacent to their personal residence and/or residential properties. Said enhancements shall not be for any business purpose.

(1). Said Permits are issued for an indefinite period of time unless a lesser term is requested and approved within the application.

3. All Permits shall specify the use or uses for which such Permits are granted and shall contain such other nondiscriminatory terms and conditions as are appropriate and as are set forth in this Chapter and the Codified Ordinances of the City or conditions negotiated and agreed to by the City and the Permittee.

4. Summary of Permit Types:

Type of Permit	Term	Application Fee
General Right-of-Way (Have a Service Permit)	10 years	N/A
General Right-of-Way (without a Service Permit)	10 years	\$1000.00
Special Right-of-Way (Non-residential)	3 years	\$500.00
Special Right-of-Way (Residential)	Unlimited	\$50.00

5. Nothing in this Chapter should be construed to preclude the City from requiring any Person offering any natural gas, electric power, cable television, communications or other utility services for which the City may lawfully require a Service Permit, to acquire a Service Permit upon the expiration of any Right-of-Way Permit issued hereunder.

C. Any such Right-of-Way Permit may also allow the use of specified Public Property for the uses set forth in the Right-of-Way Permit and in this Chapter.

D. Each Right-of-Way Permit shall specify the use or uses for which it is granted and contain such other non-discriminatory terms and conditions as are appropriately specified by the City or as set forth in this Chapter, any Regulations the City may adopt, or any Codified Ordinances of the City. Any other or additional Right-of-Way use by any Permittee shall require a separate or amended Permit as may be determined by the Director.

E. Unless otherwise set forth herein, Right-of-Way Permits or the rights of a Permittee thereunder are not transferable without the prior express written approval of the Director, upon written request. Such request shall contain evidence that the proposed transferee has the financial, technical and managerial resources to comply with the obligations of this Chapter and its Right-of-Way Permit and shall be granted if such transferee has such resources. In making said determination, a proposed transferee shall be presumed to possess the requisite, financial, technical and managerial resources if said transferee possesses valid authorization from the Public Utilities Commission of Ohio, including certification pursuant to R.C. 4933.81, et seq., for the services to be provided by the facilities subject to this Chapter, unless otherwise shown by clear and convincing evidence. Unless otherwise provided in a Permit, the Permittee shall reimburse the City for all direct and indirect fees, costs, and expenses reasonably incurred by the City in considering a request to transfer or assign a Permit. Any transfer or assignment of a Permit without prior approval of the City or its designee shall be null and void and is cause for revocation of the Permit.

1. All requests for transfer shall be deemed approved if the Director does not disapprove the same within thirty (30) days of receipt of the completed written transfer request, and;

2. Transfer to affiliates under common ownership and control with the Permittee shall not require approval, so long as the Director is provided thirty (30) days written notice of such transfer.

931.04-APPLICATION PROCEDURE, APPEAL

Persons desiring to apply for Right-of-Way Permits shall obtain copies of the Right-of-Way Application Form from the City Public Service Department

A. Applications for a General Right-of-Way Permit by a holder of a Service Permit shall be filed in such form and in such manner as required by this Chapter, any Regulations the City may adopt, the Codified Ordinances of the City or in the Permittee's existing Service Permit. There shall be no application fee. Any Person holding a valid Service Permit shall be granted a General Right-of-Way Permit. Such General Right-of-Way Permit shall be valid so long as the underlying Service Permit is valid and the applicable provisions of that Service Permit, the Right-of-Way Permit and of this Chapter are complied with; provided, however, that such Right-of-Way Permit shall only relate to and entitle the Permittee to utilize the Rights-of-Way, in accordance with this Chapter, for purposes directly related to the provision of the specific services for which it has a Service Permit. Any other Right-of-Way use by such Permittee shall require a separate or amended Right-of-Way Permit issued pursuant to Section 931.04(B).

B. All other applications for General Right-of-Way Permits, or amendments or renewals thereof, shall be filed in such form and in such manner as required by this Chapter or any Regulations the City may adopt, along with an application fee of One Thousand Dollars (\$1,000.00). The Director shall determine if the application is in order and shall, within forty-five (45) days of the receipt of a complete application, issue a written report regarding such application. The report shall recommend that the City deny or grant the Right-of-Way Permit, subject to any appropriate terms and conditions, in accordance with the criteria set forth in this Chapter. The Director's report shall be served upon the Applicant by mail along with a notice of when the City will consider the same. The City shall then consider such recommendation and make a final determination in writing, within forty-five (45) days of the Director's report, as to whether or not such Right-of-Way Permit should be granted and if so, upon what terms and conditions. The term of each such General Right-of-Way Permit shall in no event exceed ten (10) years from the date of issuance or such lesser term as the Applicant requests.

C. An application for a Special Right-of-Way Permit, or amendments or renewals thereof, shall be filed in such form and in such manner as required by this Chapter, any Regulations the City may adopt or the Codified Ordinances of the City, along with an

application fee of (1) Fifty Dollars (\$50.00) for a Special Right-of-Way for Residential Purposes, or (2) Five Hundred Dollars (\$500.00) for a Special Right-of-Way Permit for Non-Residential Purposes. If the Director determines that the application is in order and that the criteria set forth in Section 5 have been met, and that the application should be granted, the Director shall, within forty-five (45) days of a receipt of a completed application, conditionally grant or renew such a Right-of-Way Permit subject to any appropriate terms and conditions or deny the same. The Director's conditional grant, renewal or denial shall be served upon the Applicant by mail. Such conditional denial, grant or renewal shall become final unless modified or rejected by the City within forty-five (45) days of issuance by the Director, or unless appealed pursuant to Section 4(D). The term of such special Right-of-Way Permits shall be three (3) years from issuance, or such lesser term as the Applicant requests.

A Special Right-of-Way Permit for Residential Purposes may be granted for an indefinite term from issuance, but may be canceled by the Director with sixty (60) days written notice. Should the Director find that an emergency exists, the Director may cancel said Permit within a lesser time period.

D. Director Review: Following receipt of a Right-of-Way Permit Application the Director shall review said application for conformance with the provisions of this Chapter as outlined in Section 931.04(F) (1)-(3) and Section 931.04(H). If the Application should be determined to be incomplete, the Director shall promptly notify the Applicant of any and all information required. Further processing will be delayed until all such additional information has been received by the Director. Following the approval of the Director the Applicant shall be notified in writing of the approval by the City by the City forwarding an approved copy of the application to the Applicant's Designated Single Point of Contact. The Applicant must then conform to the provisions of the Permit and the provisions of this Chapter. Any payment amounts must be received by the City in order to validate the Permit.

E. Permit Renewal: The Permittee shall file an application to renew its Permit not more than one hundred-eighty (180) days nor less than ninety (90) days prior to expiration of its current Permit. The application shall be filed in a form required by the City and shall include the information required in the original application.

The Director shall determine if the application for Permit Renewal is in order and shall, within forty-five (45) days of the receipt of a complete application, issue a written report regarding such application. The report shall recommend that the City deny or grant the Right-of-Way Permit, subject to any appropriate terms and conditions, in accordance with the criteria set forth in this Chapter. The Director's report shall be served upon the Applicant by mail along with a notice of when the City will consider the same. The City shall then consider such recommendation and make a final determination in writing, within forty-five (45) days of the Director's report, as to whether or not such Right-of-Way Permit should be granted and if so, upon what terms and conditions.

No Permit shall be renewed until any present or ongoing violations or defaults in the Permittee's performance of the existing Permit, or of the requirements of this Chapter, have been cured, or until a plan detailing corrective action to be taken by the Permittee has been received, reviewed and approved by the Director and the City.

F. Form of Application: Right-of-Way permit applications (initial, renewal or transfer) shall be filed with the City and shall include the following information to be considered complete:

1. Completed Right-of-Way Application Form to include the following thereon:
 - a. The name, address, telephone and fax number of the applicant.
 - b. The name, address, telephone and fax number of the designated single point of business contact.
 - c. The applicable Ohio Utilities Protection Service (OUPS) Registration number.
 - d. A Twenty-four hour emergency contact number(s) as further specified in Section 6 (10) of this Chapter.
 - e. Type of Permit requested;
 - f. Length of Permit requested;
 - g. Required attachments (see list below):
 - h. Certification by an officer of the Permittee that all Permit Application information is complete and correct;
 - i. Witnessed by a Notary Public.
2. Exhibits (Attachments) Required by Permit Type:
 - a. General Right-of-Way Permits: Exhibit B (in place of C, D, E, H), F, G, I, J, K, L, M, N (N only if requested by the City).
 - b. Special Right-of-Way Permit for Non-Residential Purposes: Exhibit B (in place of C, D, E, H), F, I, J, K, L, M, & N (N only if requested by the City).
 - c. Special Right-of-Way Permit for Residential Purposes: Exhibit F, I, J & N (N only if requested by the City).
3. Exhibits Types Explanation:

a. Exhibit B: A copy of any applicable valid certification from the Public Utilities Commission of Ohio (PUCO), labeled as Exhibit B, including certification pursuant to R. C. 4933.81, et seq. Applicants possessing such certification are presumed to possess the required financial, technical, and managerial resources and will provide this Exhibit B in lieu of Exhibit C, D, E and H;

b. Exhibit C: A detailed statement relating to the applicant's organizational structure, labeled Exhibit C, including, but not limited to the following:

1. The names, titles and business addresses of all officers, and or directors of the applicant;

2. The names and addresses of any parent or subsidiary company of the applicant and any other group owning or controlling or owned and controlled by the applicant, and an explanation describing the nature of any such parent or subsidiary business entity;

c. Exhibit D: A detailed description, labeled Exhibit D, of the applicant's previous experience in providing related and/or similar services as those being proposed in the application;

d. Exhibit E: A detailed and complete financial statement of the applicant, prepared by a Certified Public Accountant, labeled Exhibit E, for the fiscal year next preceding the date of said application, or a letter or other acceptable written evidence from a recognized lending institution or funding source, addressed to both the applicant and the City, setting forth the basis for provision for whatever capital shall be required by the applicant to construct and operate the proposed system within the City, or a statement from a Certified Public Accountant, certifying that the applicant has available sufficient free, net and uncommitted cash reserves to construct, operate and maintain the proposed system and/or facility within the City;

e. Exhibit F: A statement, labeled Exhibit F, certifying that the applicant is not delinquent on any taxes or other obligations to the City or County;

f. Exhibit G: A statement, labeled Exhibit G, certifying any Service Permits awarded to the applicant, its parent or subsidiary, from the City. A copy of any such Service Permit will also be attached herewith;

g. Exhibit H: A detailed description, labeled Exhibit H, of the operation plan for the facility being proposed;

h. Exhibit I: A detailed map, labeled Exhibit I, of facilities in or proposed to be in the Right-of-Way as detailed in the mapping requirements of this Chapter; [Refer to Section 931.06 (C)]

i. Exhibit J: A non-refundable application fee (initial, renewal or transfer) in the form of a check, money order or wire transfer made payable to Treasurer City of Zanesville, labeled Exhibit J, in the proper amount for the type of Permit being requested;

j. Exhibit K: A copy, labeled Exhibit K, a copy of any agreement as described in Section 931.06(A)(8) of this Chapter.

k. Exhibit L: All General Right-of-Way Permit and Special Right-of-Way Permit for Non-Residential Purposes Applicants shall provide a copy of an insurance certificate as required by Section 931.11 of this Chapter.

l. Exhibit M: Except for Special Right-of-Way for Residential Permits, all Applicants for Permits shall provide proper bonding, self bonding, irrevocable letters of credit or certified checks as required by Section 931.11(G) of this Chapter.

m. Exhibit N: The City reserves the right to request any additional information necessary to ensure compliance with Section 931.05 of this Chapter.

G. Any Applicant may appeal to the Building & Zoning Appeal Board, the failure of the Director to grant a Right-of-Way Permit, or to recommend it to be granted upon terms and conditions acceptable to the Applicant. The Applicant shall file an appeal with the Building & Zoning Appeal Board, within ten (10) days of the Director's determination or recommendation, or within sixty (60) days of the filing of the application if the Director has taken no action. Failure of the Director to take action on request within the sixty (60) days time limit shall constitute a denial. Such Appeals should be filed to attention of: "Building and Zoning Appeal Board-City of Gahanna". The Building & Zoning Appeal Board shall then review the matter and after affording the Applicant an opportunity to be heard either in person or in writing render a final determination within thirty (30) days of the filing of the appeal, unless such period is waived by the Applicant. Except to the extent otherwise appealable by law, the Building & Zoning Appeal Board's decision shall be final.

H. Any Right-of-Way Permittee shall, within thirty (30) days of the granting or renewal of any Right-of-Way Permit hereunder, if and as applicable, pay a pro-rata portion of the fees required by Section 931.07(B) or 931.07(C) and Section 931.07(J) of this Chapter; provided, however, that should the Permittee appeal, and during the pendency thereof the Permittee does not use or occupy any Right-of-Way, the Permittee shall not be required to pay such pro-rata portion of said fees until such appeal has been finally determined.

931.05-CRITERIA FOR GRANTING PERMITS

A. A General Right-of-Way Permit shall be granted to any Applicant holding a valid Service Permit.

B. Except as provided in Section 931.05 (A) and 931.05(C), a General or a Special Right-of-Way Permit shall be granted to an Applicant upon a determination that:

1. The granting of the Right-of-Way Permit will contribute to the public health, safety or welfare in the City;
2. The granting of the Right-of-Way Permit will be consistent with the policy of the City as set forth in Section 931.02(E); and
3. The Applicant is not delinquent on any taxes or other obligations to the City or the County and has the requisite financial, managerial and technical ability to fulfill all its obligations hereunder.

C. A Special Right-of-Way Permit for Residential Purposes not exempted pursuant to Section 931.03(A) shall be granted at the Director's discretion if the Director finds that granting such Permit will not be inconsistent with the policy of the City set forth in Section 931.02(D).

D. The Director or the City may impose such lawful conditions on the granting of a Permit as reasonably required to be consistent with the criteria set forth in this Section 931.05 and to promote the policy of the City set forth in Section 931.02(D).

E. Cable Television Franchises shall be granted pursuant to the specific Cable Franchise Agreement and Chapter 751 of The Codified Ordinances of the City of Gahanna.

931.06-OBLIGATIONS OF PERMITTEES; CONDITIONS OF PERMITS

A. In addition to the other requirements set forth herein and in the Regulations each Permittee, except a Special Right-of-Way Permittee for Residential Purposes, shall:

1. Use its Best Efforts to cooperate with other Permittees and the City for the best, most efficient, most aesthetic and least obtrusive use of Rights-of-Way, consistent with safety, and to minimize traffic and other disruptions including street cuts;
2. Participate in such joint planning, construction and advance notification of Right-of-Way work, excepting such work performed in an emergency provided the Permittee uses its Best Efforts to contact the City at the earliest possible time after beginning any such emergency work requiring excavation or other

interference with the flow of traffic, as may be required by the City Ordinances and this Chapter and as may be more specifically set forth in Regulations promulgated pursuant to this Chapter, and provided further, that mandatory joint planning shall not (a) commence prior to April 30, 2000, or (b) require the exchange or provision of trade secrets or competitively sensitive materials or information;

3. Reasonably cooperate with other Permittees in utilization of, construction in and occupancy of private rights-of-way within the City, but only to the extent the same is consistent with the grant thereof, is not additionally burdensome to any property owner or unreasonably burdensome to the Permittee; provided, however, that nothing in this paragraph shall be construed to require expenditure of funds or rearrangement of facilities by a Permittee without fair compensation.

4. Upon reasonable written notice of not less than sixty (60) days, except in an emergency threatening the public health, safety or welfare, and at the direction of the Director, and at the Permittee's sole cost, promptly remove or rearrange facilities as necessary as further specified in the Regulations (a) during any construction, repair or modification of any street, sidewalk, City utility or other public improvement, (b) as part of the Director's determination, to the extent permitted by Ohio law, that designated portions of its Rights-of-Way should accommodate only underground facilities or that facilities should occupy only one side of a street or other public way project, (c) if an additional or subsequent City or other public use of Rights-of-Way is inconsistent with the then current uses of such Permittee, (d) or for any other reasonable cause as determined by the Director pursuant to Section 931.14(B);

5. Perform all work, construction, maintenance or removal of structures and facilities within the Right-of-Way, including tree trimming, in accordance with good engineering, construction and arboricultural practice including any appropriate state building codes, safety codes and in accordance with The Codified Ordinances of the City and use its Best Efforts to repair and replace any street, curb or other portion of the Right- of-Way, or facilities or structures located therein, to a condition to be determined by the Director to be adequate under current standards and not less than materially equivalent to its condition prior to such work and to do so in a manner which minimizes any inconvenience to the public, the City and other Permittees, all in accordance with all applicable provisions of this Chapter, any Regulations the City may adopt and The Codified Ordinances of the City.

a. Permittees shall construct, install, operate and maintain their facilities in a manner consistent with all laws, ordinances, construction standards and governmental requirements including, but not limited to, The National Electric Safety Code, National Electric Code and applicable FCC or other Federal, State and local regulations.

b. Removal of trees within the Rights-of-Way of the City requires prior written approval by the Director. Any such tree that is removed without the Director's written permission shall be replaced, at the sole expense of the responsible person, with a tree of like kind and quality.

c. All worker facilities, conditions and procedures that are used during construction, installation, operation and maintenance of the Permittee's facilities within the Right-of-Way shall comply with all applicable standards of the Federal Occupational Safety and Health Administration.

6. Register, or cause to be registered, its facilities with underground reporting services as follows:

a. At the time of application for a General Right-of-Way Permit, Special Right-of-Way Permit for Nonresidential Purposes, any underground facilities registered as a voting member or limited basis participant, of the Ohio Utilities Protection Service (OUPS) shall provide a registration number.

b. If the applicant is not a voting member or is not a limited basis participant the applicant for the Permit must supply a letter certifying how the applicant's facilities are registered and by whom along with a registration number. Said information shall be furnished to the City within thirty (30) days after the Permit is issued.

7. Use its Best Efforts to cooperate with the City in any emergencies involving the Rights-of-Way as may be required in Subsection 931.06(G) or any other manner as this Chapter may require or any Regulations the City may adopt shall require including the maintenance of a twenty-four (24) hour emergency contact.

8. Field Identification of Facilities: Permittees shall identify their facilities in the Rights-of-Way whenever Permittees are notified by the City that the City has determined that such identification is reasonably necessary in order for the City to begin planning for the construction, paving, maintenance, repairing, relocating or in any way altering any street or area in the Rights-of-Way as defined in this Chapter. The City shall notify the Permittees of the City's date to begin the process at least sixty (60) days prior to the commencement of said activities.

a. Permittees shall identify all structures, poles and visible conduits that are within the affected Rights-of-Way using customary industry standards and distinct identification.

b. Facilities will be so marked as to identify the Permittee responsible for said facilities.

c. Should any such marking interfere with the facilities function, create a safety problem or violate any safety code, alternative methods of marking the facilities may be approved by the Director.

d. All marking should be clearly readable from the ground and include the Permittee's name or logo only. No advertising will be permitted.

9. Single Point of Contact: Each Right-of-Way Permit application shall include a single point of contact to coordinate all business issues related Permittee's proposed and existing facilities located within the City's Rights-of-Way. Included will be the name, title, business address, telephone and fax numbers for the party so designated. Each Permittee shall keep the City advised of any changes in this information. Position responsibilities shall include, but not be limited to the following:

a. Participation in joint planning, construction, and/or advanced notification of Right-of-Way work;

b. Internal distribution of any plans or specifications required by the City, its contractors, and consultants;

c. Attendance at any City meetings to discuss projects and project coordination;

d. Notification by the City to remove or relocate any facilities;

e. Any temporary movement of facilities located within the Rights-of-Way

The single point of contact may choose a designee to attend any of the meetings as needed.

10. Twenty-four (24) hour Emergency Contact: As required within the application, each Applicant shall provide the City with an emergency telephone number(s) which is manned by a live operator and maintained twenty-four (24) hours, three hundred sixty-five (365) days per year. Should no such number exist, the Applicant shall provide the names, titles, business telephone number, resident phone numbers, pager numbers and/or mobile phone numbers of a minimum of three (3) individuals responsible for the required hours per day and days of the year emergency contact. Such list should be prioritized as to first, second and third recommended contact. Any changes to said lists shall be brought to the attention of the Director immediately.

B. Each Permittee shall assure that any subcontractor or other Person performing any work or service in the Right-of-Way on behalf of said Permittee will comply with all applicable provisions of this Chapter and its Right-of-Way Permit and will identify the

Permittee for whom such contractor is working. Said Permittee shall be responsible and liable hereunder for all actions of any such subcontractor or others as if said Permittee had performed or failed to perform any such obligation.

C. Mapping/Inventory Requirements: Mapping requirements for the City may be changed due to the requirements of any government information system (GIS) under consideration now or in the future. The City reserves the right to require digital mapping requirements in line with any proposed GIS System that may be considered now or in the future. The City shall work with the Permittees to determine a suitable date for the Permittees to provide such maps and information in a digital format. At this time the following mapping requirements shall apply:

1. No later than April 30, 2000, existing General Right-of-Way Permittees and Permit Applicants shall provide with their application a schematic drawing, in a form acceptable to the City, of their proposed facilities and an inventory of existing facilities relating to the Permittee's or Applicant's facilities and operations within the Rights-of-Way. Said drawing may be general in nature and shall at a minimum, locate, describe and identify all uses of, and "as built" structures and facilities of such Permittee in the Rights-of-Way as proposed and/or in existence including the miles of Right-of-Way involved. Detailed drawings shall be required of all General Right-of-Way Permit Applicants proposing to occupy public lands outside public Rights-of-Way
2. Special Right-of-Way Permit Applicants for both Residential Purposes and Nonresidential Purposes shall provide a semi-detailed schematic drawing of their existing or proposed facilities in a form that is acceptable to the City. This drawing shall include: the location of said facilities relative to the existing City Rights-of-Way and or public lands, the size, type and construction of the facility involved.
3. Permittee's shall furnish "as built" drawings not later than one hundred twenty (120) days after construction in the Right-of-Way has been completed. Such drawings shall show the ownership of conduits, ducts, poles and cables used. Drawings shall be on a scale of one inch (1") equals one hundred feet (100') and shall show horizontal dimensions for the curb line and elevations.

D. Establishment of Utility Corridors: The Director may assign specific corridors within the Rights-of-Way, or any particular segment thereof as may be necessary, for each type of facilities that are or that the Director expects may someday be located within the Rights-of-Way. All excavation, construction or other Permits issued by the City involving the installation or replacement of equipment may designated the proper corridor for location of the equipment in question.

1. Any Permittee whose facilities are in the Right-of-Way and are in a position at variance with the established utility corridors established by the Director shall at the time of the next reconstruction or excavation of the area, excluding normal

maintenance activities, move such equipment to its assigned position within the Rights-of-Way. This requirement may be waived by the Director for good cause shown including consideration of such factors as: the remaining economic life of the facilities, public safety, customer service needs and hardship to the Permittee.

2. If there is insufficient space within the Right-of-Way to accommodate all of the requests of the Permittees, the Director shall have the power to prohibit or limit the placement of new or additional facilities within the Rights-of-Way. The Director shall make every good faith attempt to accommodate all existing and potential users of the Right-of-Way as set forth in Section 931.02 of this Chapter.

3. Permittees shall cooperate to use existing poles and conduits for installing their systems within the Rights-of-Way.

4. No pole or other fixture placed in any Right-of-Way shall be placed in such a manner that interferes with normal travel on such Right-of-Way.

5. Unless otherwise stated in the Permit, all facilities within the Rights-of-Way shall be constructed, installed and located in accordance with the provisions of this Chapter and in accordance with the following provisions:

a.. Whenever all existing utilities are located underground in a certain area within the City, a Permittee who desires to place its facility in the same area must also locate its facilities, such as drops that cross private property, underground;

b. Whenever the owner of poles are required to locate or re-locate facilities underground within a certain area of the City, every Permittee with facilities within the same area of the City shall concurrently re-locate their facilities underground.

E. Cooperation with Adjacent Property Owners: Unless otherwise determined by the Director pursuant to this Chapter, Permittees shall cooperate with owners and developers of private property adjacent to the Rights-of-Way in the construction of private turn lanes, driveway approaches, roadway widening or other improvements which may require the Permittee to remove or re-locate its facilities, provided, however, that the Permittee's expenses have been reasonably secured by the owner or developer who initiated said removal or re-location.

F. Facility Ownership Responsibility: Owners of facilities, poles, conduits, vaults and other structures that are located within the Rights-of-Way of the City shall have the responsibility for removal or relocation of such facilities whenever required and shall coordinate the removal or relocation with any other Permittee who has facilities attached to or enclosed within the owner's facilities. Permittees neglecting or refusing to cooperate

with the facility owner in a timely fashion concerning said removal or relocation of facilities shall be deemed to be in violation of Section 931.06(A) (4) of this Chapter.

G. Emergency Repairs: Each Permittee shall immediately notify the City of any emergency situation that involves its facilities and that will require excavation and/or occupancy of the Right-of-Way. The Permittee may proceed with whatever actions it deems necessary to respond to the emergency. Upon securing the site in question from imminent danger, all other provisions of this Chapter and any rules and regulations related thereto shall apply.

1. To the reasonable extent that the City becomes aware of an emergency regarding Permittee's facilities within the Right-of-Way, the City shall attempt to contact the local representative of each Permittee known by the city to be affected by the situation. In doing so the City will use the twenty-four (24) hour emergency number(s) provided by each Permittee. However, the City can not and does not insure that every such contact will be made every such instance.
2. Should the Permittee's facilities create or contribute to an imminent danger to health, safety or property, the City may take such necessary, temporary steps as are required to protect the public safety.

H. Removal of Graffiti: Within fourteen (14) calendar days notice, a Permittee shall remove any and all graffiti on any of the Permittee's facilities located within the City Rights-of-Way. Should the Permittee fail to do so, the City may take whatever action is necessary to remove the graffiti and bill the Permittee for the cost thereof.

931.07-PERMIT FEES AND AUDITING

A. Except for any fees charged pursuant to the Codified Ordinances of the City, General Right-of-Way Permittees who have a Service Permit shall not be liable for any additional Right-of-Way Permit fees over and above any Service Permit fees specified in its Service Permit for uses of Rights-of-Way directly related to the uses for which such Permittee holds its Service Permit, so long as the amount of such fees due in each quarter is equal to or greater than the amounts otherwise due the City pursuant to Section 931.07(C). If the amount due under Section 931.07(C) is more than said Service Permit fees, then the Permittee shall receive a credit in each quarter against such amount for all such fees paid in such quarter, and shall pay the balance to the City as set forth Section 931.07(C)(1).

B. Application Fees:

1. There is no application fee for a General Right-of-Way Permit for an Applicant with an existing Service Permit pursuant to any Codified City Ordinance and/or Franchise Agreement so long as the Applicant is not requesting to provide services above and beyond those covered by any said Service Permit.

2. The application fee for a General Right-of-Way Permit for and Applicant that does not have an existing Service Permit pursuant to any Codified City Ordinance and/or Franchise Agreement or for any Applicant seeking to provide services above and beyond those covered by any such Service Permit is one thousand dollars (\$1000).

3. The application fee for a Special Right-of-Way Permit for Non-residential Purposes as defined in this Chapter is five hundred dollars (\$500).

4. The application fee for a Special Right-of-Way Permit for Residential Purposes as defined in this Chapter or not exempted as part of this Chapter is fifty dollars (\$50).

C. In addition to any fees charged pursuant to the Codified Ordinances of the City. All General Right-of-Way Permittees, shall pay an annual fee, for each calendar year, based upon the miles of Right-of-Way which the Permittee occupies or desires to occupy in said calendar year. The fees are based on allocation of rights-of-Way Costs in accordance with the definitions set forth in this Chapter, Section 931.01, and in the following fee schedule:

Right-of-Way Miles:	Charge:
for the first mile, or any part thereof, (0-1):	\$1000.00;
plus, for the next nine (9) miles, or any part thereof (1-10) an additional:	\$1500.00;
plus, for the next fifteen (15) miles, or any part thereof (11-25) an additional:	\$1800.00;
plus for the next thirty-five (35) miles, or any part thereof (25-60) an additional:	\$2000.00;
plus for all use over sixty (60) miles, an additional	\$2300.00

Quarterly payments shall be made on or before March 31, June 30, September 30 and December 31 of the calendar year.

D. In addition to any fees charged pursuant to the Codified Ordinances of the City, Special Right-of-Way Permittees for Non-Residential Purposes shall pay an annual fee of \$.20 per lineal foot of right-of-way, but not less than \$1000.00. This fee shall be waived for all Special Right-of-Way Permits for Residential Purposes and may be waived by the Director for Special Right-of-Way Permittees that are agencies of the government of the United States, the State of Ohio, or its political subdivisions. Such fee shall be paid in advance for each calendar year prior to January 31 of such year.

E. Further specification regarding the determination and calculation of the fees set forth in Sections 931.07(B) and 931.07(C) may be set forth in any Regulations related thereto that the City may adopt.

F. All Fees pursuant to this Chapter shall be paid by check, money order or wire transfer to the City Treasurer as required. Payments shall be sent to the attention of the Director at the City's given address.

G. Each General Right-of-Way Permittee shall maintain books, records, maps, documents and other evidence directly pertinent to its calculation of payments to the City. The Director, the City Auditor or either's designated agents shall have reasonable access to any books, records, maps, documents and other evidence for inspection, copying and audit to the extent necessary to assure that the payments hereunder are accurate and that all Right-of-Way Permittees fully comply with the provisions of this Chapter and their respective Right-of-Way Permits. The City will treat all such books, records, maps and other documents as confidential except to the extent that such records are public records under Ohio law.

H. The Right-of-Way Related Fees as defined in Sections 931.01(R)& (S) of this Chapter and as specified in Sections 931.04(B) and (C) and Section 931.07(B) and (C) may be modified or adjusted on or after June 1, 2000 by amendment to this Chapter or by any Regulation the City may adopt; provided, however, that (1) such fees remain reasonable and nondiscriminatory and, (2) that the total revenues to the City generated by such fees represent not more than a reasonable allocation of the total Right-of-Way Related Costs to the City as defined in this Chapter and, (3) any increases in said fees and minimums shall be no greater than a cumulative four percent (4%) per year annual increase since 1999, or the year of the last such increase, whichever is later; provided further, however, that any such cumulative increase shall not be greater than twelve percent (12%).

The City reserves the right to review the fee schedule on a yearly basis beginning on or after June 1, 2000 and, based on any changes in the costs related to Rights-of-Way use and occupancy, make any necessary revisions to the fee schedule. Said yearly revisions will be sent to the Permittee's via regular mail thirty (30) days prior to the City considering such changes to such fees. Any Permittee may file specific written comments or objections on the proposed fee changes within a thirty (30) day time period after receiving written notice from the City thereof (hereinafter referred to as "Comment Period"). The revised fees shall become effective thirty (30) days after the end of the Comment Period or such longer period as may be determined by the City.

I. Pro-rating of Fees: Required fees as defined in this Chapter may be pro-rated as follows:

1. General Right-of-Way Permit: Fees are paid quarterly, one quarter in arrears per Section 931.07(C) (1) of this Chapter. Fees for the initial quarter are based on the date

when the Permit is approved by the City in relation to the due date of the next quarterly payment. This pro-rated fee will be due on that quarterly payment date.

2. Special Right-of-Way Permit for Non-residential Purposes: Fees are paid in advance for each calendar year prior to January 31 of each year. The amount of the fee is based on the date the Permit is approved by the City in relation to January of the year the Permit is granted. Said fees are due within thirty (30) days of such Permit approval.

J. Fees are waived for Special Right-of-Way Permits for Residential Purposes.

931.08-JOINT PLANNING AND CONSTRUCTION

Except for Special Right-of-Way Permittees for Residential Purposes, and as required by this Chapter, the Director will conduct Joint Planning and Construction sessions for all Right-of-Way Permittees. Any confidential information furnished by any Permittee to the Director for such meetings and in possession of the City will be treated as such, to the extent determined legally appropriate by the City Attorney.

A. The City will hold an annual meeting early in the fourth quarter of each calendar year. At this meeting the City will distribute the schedule for all City Divisions planning to work in the Right-of-Way for the next year. A representative from each Permittee must attend said meeting.

B. Following this meeting each Permittee, to the extent known, shall submit a one (1) year projection of its intended improvements, upgrades, extensions, or planned maintenance activities in the public Right-of-Way. Such projections shall include the nature, limits, and schedule for the improvements and shall be submitted to the Director within the fourth quarter of the calendar year in which said meeting is scheduled. To the extent permitted by law, the City shall treat any such information so designated as confidential; provided however, that nothing herein should be construed to require the City to withhold such information upon an appropriate request for public records information.

The projection shall include, but not be limited to the following information:

1. The location and limits of the proposed improvements, upgrades, extensions and replacements including miles of Right-of-Way being used or to be used..
2. The nature of the work being proposed.
- 3.. The estimated dates of all projects to be commenced during the one (1) year period.

C. Any Permittees identified as having facilities within the area of the proposed projects shall be responsible for providing a representative to attend the meetings to coordinate all said projects.

D. In order to determine location of Permittee's facilities relative to the City's proposed improvements, and upon written request from the City, its contractors or consultants,

each Permittee shall submit plans, maps or other details of its facilities within thirty (30) calendar days, unless a greater period is specified and agreed to upon request. If the Permittee has no facilities within the area of the proposed City project or improvement, the Permittee shall notify the City within thirty (30) calendar days of the written request from the City.

E. The Permittee shall review all preliminary plans submitted by the City, or its agents, to confirm or identify, to the extent reasonably ascertainable, the vertical and horizontal locations of its facilities within the planned area and shall identify any conflicts between its facilities and the planned City improvements.

F. The Permittee shall return said plans, with the Permittee's facilities accurately located thereon, to the City within thirty (30) calendar days, unless a greater period of time is agreed upon.

G. Conflicts identified during the preliminary review by the Permittee shall be reviewed by the City to consider if an alternative design or re-design of the system is appropriate and/or if additional Right-of-Way should be acquired to avoid any such conflicts.

H. Upon receipt of final plans and project schedules from the City, the Permittee shall initiate the design of any re-locations required to facilitate the construction of the proposed project. The vertical and horizontal locations of proposed, and/or previously re-located facilities shall be accurately shown on the plans and returned to the City within thirty (30) calendar days of original receipt, unless a greater period is specified upon such request. A proposed re-location schedule shall be attached to the plans. Scheduled advertising for construction bids for the City's proposed public improvements shall not be delayed due to the Permittee's re-location work.

I. Upon written request from the City, the Permittee shall remove or rearrange any of the Permittee's facilities within the public Rights-of-Way within sixty (60) calendar days of said notice at Permittee's cost. Failure to comply with such request will result in the Permittee being in violation of this Chapter and shall subject Permittee to all penalties and fines stipulated therein.

931.09-CITY USE OF FACILITIES

The City shall have the right to install and maintain, free of charge, upon any pole upon any poles and within any underground pipes and conduits or like facilities of any General Service Permittee or Special Permittee, City facilities solely for governmental use by the City unless: (1) such installation and maintenance does not unreasonably and materially interfere with existing and future operations of the Permittee, (2) such installation and maintenance is not unduly burdensome to such Permittee.

The City's requested use of said facilities must be non-discriminatory, and the City shall enter into an agreement with the Permittee which specifies other appropriate and

reasonable terms and conditions, for use of the Permittee's facilities by the City. Each Permittee shall cooperate with the City in the development of a facility use agreement for City use of such facilities. Each Permittee shall cooperate with the City in planning and designing its facilities so as to accommodate the City's reasonably disclosed requirements in this regard. Copies of any such agreements hereunder shall be filed with the Director.

A. Neither the City Facilities nor the capacity of bandwidth thereon shall be leased, licensed or otherwise made available to third parties.

B. The City's right to use and occupy a Permittee's poles or conduit shall be subject to any and all reasonable terms and conditions the Permittee requires of other third party users of its poles and conduit.

C. The City's use and occupancy of a Permittee's conduit shall be limited to the right to occupy a single inner duct in any given conduit and a single attachment to any given pole.

D. The City shall pay the Permittee the reasonable cost to make the poles or conduit ready for the City's use and occupancy.

E. Any and all such City installations and maintenance must be lawful and consistent with good engineering and construction practices and all appropriate safety codes.

F. Nothing herein shall be construed to require a Permittee to construct poles or conduits where none exist or to rearrange, modify or alter its facilities on a pole or conduit in order to provide space for any such City Facilities where space is not otherwise available.

931.10-ADOPTION OF REGULATIONS

A. In accordance with the provisions of Section 931.10(C), the Director may promulgate Regulations, as the Director deems appropriate from time to time, to carry out the express purposes and intent of this Chapter, including Regulations governing the procedures and the permitting process.

B. Such Regulations shall not materially increase the obligations of any Permittee hereunder. In promulgating such Regulations, including those related to Section 931.06(A), provided, however, that: (1) adoption of Regulations increasing fees in accordance with Section 931.07(G); (2) the requiring of placement of facilities in designated portions of the Rights-of-Way underground pursuant to Section 931.06(A)(4); shall not be construed as materially increasing the obligations of a Permittee.

C. The Director shall promulgate proposed Regulations by filing the same with the Clerk of Council for publication in the City Bulletin. Each Right-of-Way Permittee shall be served with a copy of the proposed Regulations by regular U.S. Mail; provided, however, that any failure of any Permittee to actually receive such notice shall not in any way affect the validity or enforceability of such Regulation. Any Person, including any

Permittee, may file specific written comments or objections on the proposed Regulations within a thirty (30) day period after such publication (hereinafter "Comment Period"). The proposed Regulations shall become effective thirty (30) days after the end of the Comment Period (or such longer period as determined by Council), unless such Regulation is modified or rejected by City Council.

D. The City may adopt emergency Regulations to be immediately effective, when the City determines the same to be appropriate or required by the public health, safety or welfare; provided, however, that any such Regulation shall nonetheless be subject to the comment and review process as set forth in Section 931.10(C).

931.11-INDEMNITY; INSURANCE

A. Each Permittee shall, as a condition of its Right-of-Way Permit, indemnify, protect and hold harmless the City from any and all lawsuits, claims (including without limitation worker's compensation claims against the City or others), causes of action, 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 conjunction therewith):

1. To persons or property, in any way arising out of or through the acts or omissions of the Permittee, its subcontractors, agents, or employees attributable to the occupation by the Permittee of the Right-of-Way, to which the Permittee's negligence shall in any way contribute, and regardless of whether the negligence of any other party shall have contributed to such claim, cause of action, judgment, injury or damage excluding, however, claims arising from the City's sole negligence or willful misconduct.
2. Arising out of any claim for invasion of the right of privacy, for the defamation of any 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 Permittee, excluding however, claims arising out of or related to City programming.
3. Arising out of Permittee's failure to comply with the provisions of any federal, state, or local statute, ordinances or regulations applicable to Permittee in its business hereunder.

B. The foregoing indemnification is conditioned upon the City:

1. Giving the Permittee prompt notice of any claim or the commencement of any action, suit or proceeding for which indemnification is sought;
2. Affording the Permittee the opportunity to participate in and fully control any compromise, settlement, or other resolution disposition of any claim or proceeding subject to indemnification.

3. Fully cooperating in the defense of such claim and making available to the Permittee all pertinent information under the City's control.

C. The City shall have the right to employ separate counsel in any such action or proceeding and to participate in the investigation and defense thereof, and the Permittee shall pay the reasonable fees and expenses of such separate counsel, if employed with the approval and consent of the Permittee, or if the representation of both Permittee and the City by the same attorney would be inconsistent with accepted canons of professional ethics.

D. Insurance: Except as provided in Subsection 931.11(F) hereof, each General Right-of-Way Permittee and Special Right-of-Way Permittees for Nonresidential Purposes shall be required to, at their own cost and expense, obtain, and maintain during the term of any permit, a liability insurance policy or policies naming the City as an additional insured. A Certificate of Insurance regarding such policies shall be furnished to the Director at or before the granting of a Permit. The insurance company issuing said policies shall carry a financial rating of not less than "A" in the latest edition of "Bests Key Rating Guide" published by A. M. Best, and shall be duly licensed to do business in the State of Ohio. Said policies shall be maintained for such other period of time during which the operator operates or is engaged in the removal of the system. Each such policy shall contain the following endorsement:

"It is hereby understood and agreed that this policy may not be canceled nor the intention not to renew be stated until thirty (30) days after the receipt by the City, by registered mail, of a written notice of such intent to cancel or not renew."

1. 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 Permittee shall obtain and furnish to the City a Certificate of Insurance evidencing replacement insurance policies conforming to the insurance requirements of this Chapter.

2. Additional Insurance: The City reserves the right to require any additional insurance coverage it deems necessary after the review of the proposal submitted by the Permittee.

E. Except as provided in Subsection 931.11(F) hereof, each Permittee shall maintain insurance coverage (or self insurance coverage by Permittees having capitalization in excess of ten million dollars (\$10,000,000), as determined by the Director) in accordance with the following:

1. General Liability Insurance: The Permittee shall maintain general liability coverage on a comprehensive coverage form, including the following: premises/operations, explosion and collapse hazard, underground hazard, products/completed operations hazard, contractual insurance, broad form property damage, and personal injury. The following limits of liability are a minimum:

- a. \$1,000,000 per occurrence;
- b. \$2,000,000 annual aggregate;
- c. \$1,000,000 excess general liability per occurrence and annual aggregate.

2. Auto Liability Insurance: The Permittee shall maintain comprehensive auto liability insurance covering owned, hired, and nonowned vehicles in the minimum amounts of:

- a. \$1,000,000 per occurrence;
- b. \$2,000,000 annual aggregate;
- c. \$1,000,000 excess automobile liability per occurrence.

3. Worker's Compensation and Employer's Liability Insurance: The Permittee shall maintain worker's compensation and employer's liability insurance, valid in the State of Ohio, in the minimum amount of:

- a. Statutory limit for Worker's Compensation;
- b. \$1,000,000 for employer's liability per occurrence; and
- c. \$1,000,000 excess employer liability coverage.

F. Self-Insurance: Those Applicants maintaining a net book value in excess of ten million dollars (\$10,000,000) may self insure for any and all coverage's listed above in Subsection E by submitting a statement requesting to do same. Said statement shall include (1) audited financial statements for the previous year and (2) a description of the Applicant's self insurance program.

G. Except for Special Right-of-Way for Residential Purposes Permittees, all Permittees shall provide an Irrevocable Standby Letter of Credit or a Certified Check in an amount agreed to by the City and the Applicant to pay the cost of restoration of the Right-of-Way should the Permittee fail to perform restoration required by this Chapter or Permit and to pay the cost of removal or relocation of any facilities required by this Chapter or Permit should the Permittee fail to perform said removal or re-location.

931.12-REMOVAL OF FACILITIES

A. Except for Special Right-of-Way Permittees for Residential Purposes, any Right-of-Way Permittee that discontinues use of and abandons any facilities within the Rights-of-Way shall submit a written notice to the Director describing the portion of the facilities to

be discontinued and abandoned, any plan for securing the same and the proposed date abandonment, which date shall not be less than thirty (30) days from the date such notice is submitted to the Director. A Permittee shall not remove, destroy or permanently disable any such facilities after such notice without the written approval of the City. The Permittee shall, in accordance with industry and good engineering practices, either abandon such facilities in place or remove or secure such facilities as set forth in the notice unless the City reasonably determines otherwise.

B. Upon such abandonment, the City may elect to accept full title and ownership of the abandoned facility. Such acceptance shall be in writing and upon such acceptance, full title and ownership of such abandoned facilities shall pass to the City without the need to pay compensation to the Permittee. The Permittee shall continue to be responsible for all taxes on said facilities or other liabilities associated with said facilities, until the date the same was accepted by the City.

C. Should any Permittee fail, after notice, to remove or rearrange facilities at the Director's request as specified in Section 931.06(A)(4) or comply with the Director's order pursuant to Section 931.12(A), the City may, at its option and in addition to the imposition of any penalties or other remedies hereunder, undertake or cause to be undertaken, any reasonable action necessary to remove, secure, or rearrange the facilities. The City shall have no liability for any damage caused by such action and the Permittee shall be liable to the City for all reasonable costs incurred by the City in taking any such actions.

931.13-REVOCATION

A. In addition to any other rights set out in this Chapter, the City reserves the right to revoke, in accordance with the procedures set forth in Section 931.13(B), any Right-of-Way Permit in the event such Permittee violates any material provision of this Chapter or its Right-of-Way Permit.

B. The Director shall give a Permittee thirty (30) days prior written notice of an intent to revoke said Permittee's Right-of-Way Permit. Such notice shall state the reasons for such action including the manner in which the Director believes the Permittee has violated its Permit or provisions of this Chapter. If the Permittee cures the violation or other cause within the thirty (30) day notice period, or if the Permittee initiates efforts satisfactory to the Director to remedy the stated violation, the Director may rescind said notice of revocation. If the Permittee does not cure the stated violation or other cause or undertake efforts satisfactory to the Director to remedy the stated violation the Director may recommend said Permit be revoked. After granting the Permittee an opportunity to be heard in person or in writing, the City may revoke the Right-of-Way Permit. Unless otherwise required by law, the decision of the City shall be final.

C. Unless otherwise permitted by the Director or required by law, if a Right-of-Way Permit is revoked, all facilities located in the Rights-of-Way or located upon Public

Property pursuant to such Permit shall be removed at the sole expense of the Permittee. In cases where the public safety requires an immediate response the City may take any required, corrective action and recover the costs of same from the Permittee.

931.14-RESERVATION OF RIGHTS.

A. Nothing in this Chapter should be construed so as to grant any right or interest in any Right-of-Way or Public Property other than that explicitly set forth herein or in a Permit.

B. Nothing in this Chapter shall be construed to prevent the City from constructing, maintaining, repairing or relocating any City utility, including street lighting, communications or like facilities; grading, paving, maintaining, repairing, relocating or altering any street, Public Property or Right-of-Way; or constructing, maintaining, relocating, or repairing any sidewalk or other public work or improvement. To the extent that such work requires temporary or permanent relocation or rearrangement of any facilities or structures of any Permittee, such relocating or rearrangement shall be accomplished at the sole cost of the Permittee in such time and in such manner as set forth in this Chapter, any Regulations the City may adopt or Codified Ordinances of the City.

C. The City reserves the right and privilege to cut or move any facilities located within the Rights-of-Way as the City may deem necessary or appropriate in response to any public health or safety emergency.

D. Unless directly and proximately caused by the willful, intentional or malicious act by the City, the City shall not be liable for any damage to or loss of any telecommunications facility within the Rights-of-Way as a result of or in connection with any public works, public improvements, construction, excavation, grading, filling, or any kind of work in the Rights-of-Way.

E. Unless preempted by State or Federal Law, in the event any Right-of-Way used by a Permittee shall be vacated by the City during the term of any Permit granted pursuant to this Chapter, the Permittee shall, at the Permittee's expense, forthwith remove its facilities therefrom unless specifically permitted by the City to continue use of the same or such continuance of use is permitted by State Law. Upon removal of said facilities the Permittee shall restore, repair or reconstruct the area where said removal occurred to a condition materially equivalent to that existing before such removal. The City shall give the Permittee thirty (30) days written notice to remove the facilities and to repair, restore, reconstruct, improve or maintain said vacated area. Should the Permittee neglect or refuse to do such work or cause it to be done, the City may undertake completion of the work and the cost thereof as found and declared by the City shall be paid by the Permittee as directed by the City.

931.15-TEMPORARY MOVEMENT OF FACILITIES

In the event it is necessary to move or temporarily remove any of Permittees wires, cables, poles, or other facilities placed pursuant to this Chapter, in order to lawfully move a large object, vehicle, building or other structure over the streets of the City, the Permittee shall, upon two (2) weeks written notice from the Director, comply with the Director's request. Any such movement of facilities will be at the expense of the person requesting the movement. Prior to issuing such notice the Director will require persons requesting such movement or temporary removal to furnish evidence of prior payment by the requester to the Permittee of the estimated cost of such movement or temporary removal.

931.16-FORECLOSURE AND RECEIVERSHIP.

A. Upon the filing of any voluntary or involuntary petition under the Bankruptcy Act by or against the Permittee, or any action for foreclosure or other judicial sale of the Permittee's facilities located within the Rights-of-Way, the Permittee shall so notify the Director within fourteen (14) calendar days thereof and the Permittee's permit shall be deemed void and of no further force and effect.

B. The City shall have the right to revoke, pursuant to the provisions of Section 931.13 of this Chapter, any Permit granted pursuant to this Chapter, subject to any applicable provisions of law, including the Bankruptcy Act, one hundred and twenty (120) days after the appointment of a receiver or trustee to take over and conduct the Business of the Permittee, whether in receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred and twenty (120) days or unless:

1. Within one hundred and twenty (120) days after election or appointment, such receiver or trustee shall have fully complied with all the provisions of the relevant Right-of-Way Permit and of this Chapter and remedied all defaults thereunder; and,
2. Said receiver or trustee, within said one hundred and twenty (120) days, shall have executed an agreement, duly approved by the Court having jurisdiction over the premises, whereby such receiver or trustee assumes and agrees to be bound by each and every provisions of the relevant Right-of-Way Permit and this Chapter.

931.17-NONENFORCEMENT AND WAIVERS BY CITY.

The Permittee shall not be relieved of its obligation to comply with any of the provisions of its Right-of-Way Permit or this Chapter by reason of any failure of the City to enforce prompt compliance.

931.18-CAPTIONS

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

931.19-SEVERABILITY

If any section, subsection, clause or provision or any part thereof of this Chapter shall be finally adjudicated by a court of competent jurisdiction to be invalid, the remainder shall be unaffected by such adjudication and all the remaining provisions shall remain in full force and effect.

931.20-PENALTIES

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

1. Any Person or Permittee violating Sections 931.03(A) or 931.12(A), or failing to pay when due any forfeiture imposed, shall be guilty of a misdemeanor of the fourth (4th) degree. Each day such violation continues shall be deemed a separate offense.

2. For failure to comply with any other provision of this Chapter, the penalty shall be a civil forfeiture payable to the City, in the amount of one thousand dollars (\$1000.00) per day for each day of violation. In addition, for failure to timely comply with a notice by the Director to remove or rearrange facilities pursuant to Section 931.06(A)(4), an additional civil forfeiture equal to any costs incurred by the City as a result of such failure, including but not limited to any penalties or liquidated damages charged the City by its contractors occasioned thereby, shall be imposed.

3. Should any Permittee during installation, construction, movement, reconstruction, relocation or rearrangement of said Permittee's facilities, damage any other Permittee's cable, antennas, lines, wires, poles, pipelines or conduits, the Permittee deemed responsible for causing said damage shall be fined an amount of one thousand dollars (\$1000.00) for each incidence.

B. Any Permittee may be excused for violations of this Chapter and its Right-of-Way Permit due to Force Majeure.

931.21-EFFECTIVE DATE

Notice of passage of this Chapter shall be by publication of a notice, one time, in a newspaper of general circulation within the City, setting forth the title and effective date

of this Chapter and a statement that this Chapter is on file in the Office of the Clerk of Council.

This Chapter shall be effective on April 30, 2000 for purposes of determination of fees pursuant to Section 931.07 and on April 30, 2000 for all other purposes, in order that all Persons occupying the Rights-of-Way as of the enactment date of this Ordinance may have a reasonable time to comply herewith and for Regulations, if any, to be promulgated and adopted hereunder.

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