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§ 510.01 Scope of Chapter; Definitions

(a) The purpose and intent of this chapter is to:

- (1) Manage Occupancy or Use of the Public Right-of-Way by Service Providers on a competitively neutral basis;
- (2) Conserve the limited physical capacity of the Public Right-of-Way held in trust by the City for the benefit of the public;
- (3) Administer the impact of access to the Public Right-of-Way by Service Providers to promote efficiency, discourage uneconomic duplication of Facilities, and lessen the public inconvenience arising out of uncoordinated work in the Public Right-of-Way;
- (4) Promote cooperation among Service Providers and the City in the use and occupation of the Public Right-of-Way, to minimize public inconvenience during work in the Public Right-of-Way, and to eliminate wasteful, unnecessary or unsightly duplication of facilities;
- (5) Assure that the City fairly and responsibly protects the public health, safety and welfare;
- (6) Abate the public nuisance specifically determined to exist by the Council and created by the unregulated placement of Above Ground Facilities and Above Ground Facilities Clusters in the Public Right-of-Way that interfere with the safe and unobstructed use of the Public Right-of-Way by traffic, pedestrians and adjoining and abutting property owners;
- (7) Enable the City to discharge its public trust consistent with rapidly evolving federal and State regulatory policies, industry competition and technological development; and
- (8) Manage, regulate and administer the Public Right-of-Way in the City with regard to matters of local concern in the exercise of the City's powers of local self-government granted by Section 3 of Article XVIII of the Ohio Constitution.

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

(1) “Above Ground Facilities” or “AGF” means that portion of a System located on and up to eight (8) feet above the surface of the Public Right-of- Way outside of the Public Street but excluding Overhead Facilities.

(2) “Above Ground Facilities Cluster” or “AGF Cluster” means a grouping of more than one (1) structure constituting Above Ground Facilities of a Service Provider on a shared concrete pad.

(3) “Above Ground Facilities Installation Permit” or “AGF Installation Permit” means a permit issued under Section [510.06](#) of this chapter.

(4) “Affiliate” means a Person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with another Person.

(5) “Cable Service” means “cable service” as defined in the Cable Communications Policy Act of 1984, codified at 47 U.S.C. 532 et seq., as amended by the Cable Television Consumer Protection and Competition Act of 1992 and the Telecommunications Act of 1996, as each might be further amended.

(6) “Capital Improvement” means an addition made to enhance the value or extend the useful life of an existing System or Facilities, including Construction, Reconstruction, installation, rehabilitation, renovation, improvement, enlargement and extension of Facilities, but not including Ordinary Maintenance and New Service Connections.

(7) “City” means the City of Cleveland, Ohio.

(8) “City Block” means the portion of the Public Right-of- Way between two (2) adjacent intersections of two (2) sets of intersecting streets.

(9) “City Property” means and includes all real property owned by the City, other than Public Streets and Public Easements as those terms are defined in this section, and all property held in a proprietary capacity by the City.

(10) “Construct,” “Constructing” or “Construction” means installing, repairing, replacing or removing any Facility, regardless of the methods employed, but not including Ordinary Maintenance.

(11) “Director” means the Director of Public Service or the Director’s designee.

(12) “Excavate,” “Excavating” or “Excavation” means cutting, sawing, breaking, drilling into, boring under, or otherwise altering any Public Street or sidewalk pavement, and/or digging, drilling into or boring under any unpaved portion of the Public Right-of- Way, including any other work or activity which disturbs the existing surface or subsurface structure, composition, or soil compaction, for the purpose of carrying on any Construction activity.

(13) “Excess Capacity” means the volume or capacity in any existing or future duct, conduit, manhole, or other Facility in the Public Right-of- Way that is or will be available for use for additional Facilities as determined by the owner of the Facility.

(14) “Facilities” or “Facility” means the plant, equipment and property, including but not limited to, cables, fibers, wires, pipes, conduits, ducts, pedestals, antennae, electronics, poles, pipes, mains, plant, equipment and other appurtenances located under, on or above the surface of the ground in the Public Right-of- Way of the City and used or to be used to operate a System to transmit, receive, distribute, provide or offer a Service.

(15) “Franchise Ordinance or Agreement” means an ordinance or agreement granted by the Council under Sections [181](#) through 188 of the City’s Charter.

(16) “Location and Design Manual” or “L&D Manual” means the Location and Design Manual promulgated by the State Department of Transportation, as it may be updated or revised from time to time.

(17) “New Service Connections” means the physical connection made between a Service Provider’s Facilities in the Public Right-of- Way and private property for the purpose of providing new Service to a customer.

(18) “Occupancy,” “Occupy” or “Use” means, with respect to the Public Right-of-Way, to place a tangible thing in the Public Right-of-Way for any purpose, including, but not limited to, Constructing, repairing, positioning, maintaining or operating lines, poles, pipes, conduits, ducts, equipment or other structures, appurtenances or Facilities necessary to operate a System for the delivery of Services.

(19) “Ordinary Maintenance” means (a) Construction commonly accomplished in or on an existing Facility for the purpose of preventing deterioration or performance deficiencies, maintaining appearance, or securing original level of performance or (b) repair, upkeep, replacement or restoration of existing Facilities located in the Public Right-of-Way that does not include excavation of the Public Right-of-Way and does not alter the size of the cabinet surrounding the existing Facilities.

(20) “Other Ways” means the highways, streets, alleys, Utility Easements or other rights-of-way within the City, but under the jurisdiction and control of a governmental entity other than the City.

(21) “Overhead Facilities” means utility poles that extend more than eight (8) feet above the surface of the Public Right-of-Way and wires, cables and other equipment running between and on the poles more than eight (8) feet above the surface of the Public Right-of-Way including the underground supports and foundations for the Facilities.

(22) “Person” means and includes corporations, companies, associations, joint stock companies or associations, firms, partnerships, limited liability companies, trusts and individuals and includes their lessors, trustees and receivers.

(23) “Private Service Provider” means any Person who directly or indirectly owns, controls, operates or manages Facilities within the Public Right-of-Way used or to be used for the purpose of operating a System to transmit, receive, distribute or provide Services between or among private buildings or facilities where there is no offer of Service to the public.

(24) “Public Easement” means any easement under the jurisdiction and control of the City and acquired, established, dedicated or devoted for public purposes, including utility purposes.

(25) “Public Property” means any real and personal property owned or controlled by the City, other than the Public Right-of-Way.

(26) “Public Right-of-Way” means the surface of, and the space within, through, on, across, above or below, the paved or unpaved portion of any Public Street, public road, public highway, public freeway, public lane, public path, public alley, public court, public sidewalk, public boulevard, public parkway, public drive, Public Easement and any other land dedicated or otherwise designated for a compatible public use, which is controlled by the City but excludes Public Property and private easements.

(27) “Public Service Provider” means any Person that directly or indirectly owns, controls, operates or manages Facilities within the City’s Public Right-of-Way, used or to be used for the purpose of operating a System offering Service to the public within the City or outside of the City’s boundaries.

(28) “Public Street” means the paved portion of any street, road, boulevard, drives, highway, freeway, parkway, lane court, alley or other Public Right-of-Way in which the City has an interest in law or equity and which has been acquired, established, dedicated or devoted to street purposes, excluding tree lawns, amenity areas, and sidewalks.

(29) “PUCO” or “Public Utilities Commission of Ohio” means the State Administrative agency, or lawful successor, authorized to regulate and oversee certain Public or Private Service Providers and Services in the State.

(30) “Reconstruct” or “Reconstruction” means substantial physical change to or Capital Improvement of all or a portion of an existing System or Facilities including a change in location, or additional locations, of Facilities along the same right-of-way involving Construction in Public Streets, Utility Easements, or Public Right-of-Way.

(31) “Regulated Service Provider” means a Service Provider operating under a tariff from the PUCO or a Service Provider owned by a political subdivision of the State.

(32) “Service” means the offering of water, sewer, electric, gas, telephone, telecommunications, cable television, Video Service, information or other utility-like service for a fee directly to the public, or to the classes of users as to be effectively available to the public, regardless of the Facilities used.

(33) “Service Provider” means any Public Service Provider and/or Private Service Provider.

(34) “State” means the State of Ohio.

(35) “Surplus Overhead Space” means that portion of the Usable Overhead Space on a utility pole that is or will be available for use by other Service Providers as determined by the owner of the pole, and which has the necessary clearance from the Facilities of existing Service Providers using the pole, as required by the orders and regulations of PUCO and other applicable State and local orders or other applicable codes or regulations, to allow its use by a Service Provider for a pole attachment.

(36) “Surplus Underground Space” means that portion of the Usable Underground Space which has the necessary clearance from the Underground Facilities of existing Service Providers as determined by the Director in accordance with applicable codes and regulations to allow its use for additional Underground Facilities by a Service Provider.

(37) “System” means a network of Facilities for the transmission and/or distribution of a Service.

(38) “Underground Facilities” means that portion of a System located under the surface of the ground, excluding the underground foundations or supports for Overhead Facilities.

(39) “Usable Overhead Space” means the total distance between the top of a utility pole and the lowest possible attachment point that provides the minimum allowable vertical clearance as specified in the orders and regulations of the PUCO or other applicable codes or regulations.

(40) “Usable Underground Space” means the space below the surface of the Public Right-of-Way that is needed for the installation and maintenance of Underground Facilities by a Service Provider without interfering with Occupancy of existing Underground Facilities by Service Providers in the Public Right-of-Way as determined by the Director in accordance with applicable codes and regulations.

(41) “Utility Easement” means any easement owned by a Service Provider and acquired, established, dedicated or devoted for the purpose of providing Service to the public.

(42) “Video Service” means the provision of video programming using equipment located at least in part in the Public Right-of-Way, regardless of the technology used to deliver that programming.

(Ord. No. 1242-A-07. Passed 10-8-07, eff. 10-11-07)

§ 510.02 Registration of Service Providers that Occupy or Use the Public Right-of-Way for Facilities; Fee

(a) *Registration Required to Occupy Public Right-of-Way.* No Service Provider shall Occupy or Use the Public Right-of-Way without registering with the City prior to commencing to do so.

(b) *Initial Registration Presumed.*

(1) A Service Provider with existing Facilities that lawfully Occupy the Public Right-of- Way on the effective date of this chapter shall be presumed to have initial registration with the City for its existing Facilities to Occupy or Use the Public Right-of-Way.

(2) Initial presumed registration for Occupancy or Use of the Public Right-of-Way is limited to the Service Provider's existing Facilities on the effective date of this chapter.

(3) Any Service Provider with presumed initial registration to Occupy or Use the Public Right-of-Way for existing Facilities under this division (b) shall comply with the applicable registration requirements under division (a) of Section [510.03](#) within ninety (90) days of the effective date of this chapter.

(c) *Registration to Occupy or Use Public Right-of-Way.*

(1) The following Service Providers shall register with the City to Occupy or Use the Public Right-of-Way on a form provided by the Director. Any Service Provider who:

A. Does not have an existing System or Facilities that lawfully Occupy the Public Right-of-Way on the effective date of this chapter and desires to Construct a System or Facilities in the Public Right-of-Way; or

B. Has initial presumed registration under division (b) of this section but is planning:

1. A Capital Improvement or Reconstruction of existing Facilities; or
2. To Construct an additional System anywhere in the City.

(2) The form for Service Providers to register to Occupy or Use the Public Right-of-way under this section or under division (a) of Section [510.03](#) shall contain the following information:

A. The identity, legal status and federal tax identification number of the Service Provider, including all Affiliates of the Service Provider that will Use or Occupy the Public Right-of-Way or are in any way responsible for Facilities in the Public Right-of-Way;

B. The name, address, telephone number and e-mail address of the local officer, agent or employee responsible for the accuracy of the registration and available at all reasonable times to be notified in case of emergency;

C. A general description of the Services provided or to be provided by the Service Provider over its System or Facilities in the Public Right-of-Way;

D. A description of the type of transmission medium used, or to be used, by the Service Provider to operate a System in the Public Right-of-Way;

E. To the extent available, a description of the Service Provider's existing Facilities in the Public Right-of-Way that generally identifies the location and route of the Facilities in detail acceptable to the Director after consultation with the Service Provider;

F. A preliminary Construction schedule and proposed completion date for all Capital Improvements planned, as of the date of registration, for the twelve (12) month period following the date of registration;

G. If the Service Provider is not a Regulated Service Provider, a description of the Service Provider's access and line extension policies;

H. Evidence that the Service Provider has complied, or will comply, with the insurance requirement contained in division (e) of this section;

I. Evidence that the Service Provider has received authorization from the State, as required by law, to operate a System and provide Services in the City;

J. Other and further information as may reasonably be requested by the Director related to the City's five (5) year capital plan.

(3) The City shall confirm, in writing, a Service Provider's completed registration to Occupy or Use the Public Right-of-Way within thirty (30) days of the date on which the registration form is filed with the City.

A. Except to the extent prohibited by Federal or state law, the City may withhold or delay confirmation of a Service Provider's completed registration to Occupy or Use the Public Right-of-Way based on the Service Provider's failure to possess the financial, technical and managerial resources necessary to protect the public health, safety and welfare, or for other reasons based on the health, safety and welfare of the City and under Ohio law.

B. If the City withholds or delays a Service Provider's registration to Occupy or Use the Public Right-of-Way, the City shall provide its reasons in writing for withholding or delaying registration, and shall provide any information that the Service Provider may reasonably request necessary for the Service Provider to obtain a completed registration to Occupy or Use the Public Right-of-Way.

(4) The City's registration of a Service Provider to Occupy or Use the Public Right-of-Way shall be in the form of a Right-of-Way Occupancy Certificate which shall specify the specific terms of the City's registration for the Service Provider to Occupy or Use the Public Right-of-Way.

(5) Each Service Provider registering to Occupy or Use the Public Right-of-Way shall pay a fee as determined by the Director, and approved by the Board of Control, to reimburse the City for its administrative costs related to the registration process as provided in Section [510.07](#).

(d) *Registration of Service Providers with an Existing Franchise Ordinance or Agreement.* For purposes of this chapter, a Franchise Ordinance or Agreement shall be deemed registration of the Franchisee's Occupancy or Use of the Public Right-of-Way to the extent described in the Franchise Ordinance or Agreement. The Franchisee's use of the Public Right-of-Way beyond that described in the Franchise Ordinance or Agreement shall require additional registration for the additional Occupancy or Use. Franchisees shall comply with the registration provisions and the Public Right-of-Way Use Regulations to the extent that the provisions of this chapter do not directly conflict with the Franchise Ordinance or Agreement. If there is a direct conflict between the Franchise Ordinance or Agreement and the provisions of this chapter, the Franchise Ordinance or Agreement shall control.

(e) *Service Provider Insurance.* Service Providers must secure and maintain, at a minimum, the following liability insurance policies insuring both the Service Provider and the City, and its elected and appointed officers, officials, agents, employees and representatives as additional insureds:

(1) Comprehensive general liability insurance with limits not less than:

- A. Five Million Dollars (\$5,000,000) for bodily injury or death to each Person;
- B. Five Million Dollars (\$5,000,000) for property damage resulting from any one (1) accident; and
- C. Five Million Dollars (\$5,000,000) for all other types of liability.

(2) Automobile liability for owned, non- owned and hired vehicles with a limit of Three Million Dollars (\$3,000,000) for each Person and Three Million Dollars (\$3,000,000) for each accident;

(3) Workers' compensation within statutory limits and employer's liability insurance with limits of not less than One Million Dollars (\$1,000,000);

(4) Comprehensive form premises- operations, explosions and collapse hazard, underground hazard and products completed hazard with limits of not less than Three Million Dollars (\$3,000,000);

(5) The liability insurance policies required by this section shall be maintained by the Service Provider at all times throughout the period of time during which the Service Provider is Occupying or Using the Public Right-of-Way, or is engaged in the removal of its Facilities;

(6) Not less than thirty (30) days prior to the effective cancellation or termination date of a liability insurance policy required by this section, when the Service Provider has at least thirty (30) days' advance notice of cancellation or termination, or immediately upon receipt of notice if it has less than thirty (30) days' advance notice, the Service Provider shall obtain and furnish to the City replacement insurance policies meeting the requirements of this section, without any lapse in coverage;

(7) Upon written application to, and written approval by, the Director, a Service Provider with net capitalization of Ten Million Dollars (\$10,000,000) or more may be self-insured; except that all coverages for Workers' Compensation shall be in compliance with State law. No approval for self-insurance shall be given until the Director has made a complete review of the Service Provider's financial ability to provide the self-insurance. As part of the review process, the Director may require, and the self-insurance applicant shall provide financial documents necessary to make a valid determination of the applicant's ability to meet the needs of this chapter;

(8) Regulated Service Providers shall be exempt from the provisions of division (e) of this section provided that they notify the Director of the name and contact information of an officer or employee in the organization of the Service Provider who is responsible for receiving claims filed against the Service Provider for personal injury or property damage.

(f) *General Indemnification.* Each form for registering to Occupy or Use the Public Right-of-Way, and each annual registration, shall include, to the extent permitted by law, the Service Provider's express undertaking to defend, indemnify and hold the City and its elected and appointed officers, officials, employees, agents, representatives and subcontractors harmless from and against any and all damages, losses and expenses, including reasonable attorney's fees and costs of suit or defense, arising out of, resulting from or alleged to arise out of or result from the negligent, careless or wrongful acts, omissions, failures to act or misconduct of the Service Provider or its Affiliates, officers, employees, agents, contractors or subcontractors in the Construction, Reconstruction, installation, operation, maintenance, repair or removal of its System or Facilities, and in providing or offering Services over the Facilities or System, whether the acts or omissions are authorized, allowed or prohibited by this chapter.

(Ord. No. 599-11. Passed 6-6-11, eff. 6-13-11)

§ 510.03 Initial and Annual Registration of Existing Service Providers; Fee

(a) *Initial Registration.* Any Service Provider with initial presumed registration to Occupy or Use the Public Rights-of-Way as provided in division (b) of Section [510.02](#) shall file an initial registration with the City within ninety (90) days of the effective date of this chapter, on a form provided by the Director, which shall include the information in division (c) (2) of Section [510.02](#).

(b) *Annual Registration Required.* All Service Providers registered to Occupy or Use the Public Right-of-Way shall register with the City each calendar year between January 1 and January 31 on a form provided by the Director. Service Providers who file an Initial Registration before January 1, 2008 need not file an Annual Registration for calendar year 2008.

(c) *Purpose of Annual Registration.* The purpose of the annual registration under division (b) of this section is to:

(1) Compile, update and supplement the City's database so that the City has accurate and current information concerning the Service Providers that own or operate Facilities, and/or provide Services, in the Public Right-of-Way;

(2) Assist the City in monitoring the usage of the Public Right-of-Way in order to ensure that the public receives the maximum possible benefit from that use and the use is consistent with the best management and care of the Public Right-of-Way;

(3) Assist the City in the collection and enforcement of any municipal taxes, franchise fees, compliance fees or charges that may be due the City; and

(4) Assist the City in monitoring compliance with local, State and federal laws.

(d) *Information Required for Annual Registration.* Service Providers shall provide the following information with the annual registration under division (b) of this section:

(1) Any changes to the information the Service Provider provided the City in the Service Provider's previous registration under divisions (c)(2)A. through (c)(2)D., division (c)(2)G., and division (c)(2)I. of Section [510.02](#);

(2) Evidence that the Service Provider is in compliance with the insurance requirement under division (e) of Section [510.02](#);

(3) A preliminary Construction schedule and completion date for all Capital Improvements planned, as of the date of registration, for the twelve (12) months following the date of registration;

(4) If the Service Provider is Constructing a new System or Reconstructing substantially all of its existing System, a general description of the Services to be provided, transmission medium to be used, and the Facilities to be utilized with the new or Reconstructed System in detail acceptable to the Director after consultation with the Service Provider;

(5) Such other information as the Director may reasonably require related to the City's five (5) year capital plan.

(e) *Facilities Maps.* The City shall have the right to access and review all the Service Provider's maps and/or as-built plans showing the location of its Facilities in the Public Right-of-Way, on ten (10) days notice to the Service Provider.

(f) *Registration Fee.* Each Service Provider shall pay an annual registration fee as determined by the Director, and approved by the Board of Control, to reimburse the City for its administrative costs related to maintaining annual registration and as provided in Section [510.07](#).

(Ord. No. 1242-A-07. Passed 10-8-07, eff. 10-11-07)

§ 510.04 General Public Right-of-Way Use Regulations

(a) *Public Right-of-Way Route.* A completed initial and annual registration of a Service Provider to Occupy or Use the Public Right-of-Way under Sections [510.02](#) and [510.03](#) shall apply to only the types of Facilities and locations along the Public Right-of-Way that were identified by the Service Provider in the registration form.

(b) *Nonexclusive Right to Occupy the Public Right-of-Way.* Registration of a Service Provider granted under Sections [510.02](#) and [510.03](#) shall not confer any exclusive right, privilege, license or franchise to Occupy or Use the Public Right-of-Way of the City to operate a System for delivery of Services or any other purposes.

(c) *Rights Permitted.* Registration of a Service Provider under Sections [510.02](#) and [510.03](#) shall not convey any right, title or interest in the Public Right-of-Way.

(d) *Maintenance of Facilities.* Each Service Provider shall maintain its System and Facilities in good and safe condition and in a manner that complies with all applicable federal, State and local requirements.

(e) *Safety Procedures.* A Service Provider or other Person acting on its behalf shall use suitable barricades, flags, flaggers, lights, flares and other measures as necessary and under applicable State and local requirements for the safety of all members of the general public and to prevent injury or damage to any Person, vehicle or property by reason of the work in or affecting such Public Right-of-Way or property.

(f) *Interference with the Public Rights-of-Way.* No Service Provider may locate or maintain its Facilities so as to unreasonably interfere with the use of the Public Right-of-Way by the City, by the general public or by other Persons authorized to use or be present in or on the Public Right-of-Way. To the extent permitted by law, all Facilities shall be moved by the Service Provider, temporarily or permanently, as determined by the Director.

(g) *Damage to Public and Private Property.* No Service Provider nor any Person acting on the Service Provider's behalf shall take any action or permit any action to be done which may impair or damage any City Property, Public Right-of-Way, Other Ways or other public or private property located in, on or adjacent thereto.

(h) *Restoration of Public Right-of-Way, Other Ways and City Property.*

(1) When a Service Provider, or any Person acting on its behalf, does any work in or affecting any Public Right-of-Way, Other Ways or City Property, it shall, after the work is completed and at its own expense, promptly remove any obstructions and restore such ways or property, within ten (10) to sixty (60) days, at the Director's discretion, to as good a condition as existed before the work was undertaken, unless otherwise directed by the City.

(2) If weather or other conditions do not permit the complete restoration required by this section, the Service Provider shall temporarily restore the affected ways or property as directed by the Director, to the extent practical or feasible. Such temporary restoration shall be at the Service Provider's sole expense and the Service Provider shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent permanent restoration.

(i) *Duty to Provide Information.*

(1) Within ten (10) days of a written request from the Director each Service Provider shall furnish the City with documentation sufficient to show that the Service Provider has complied with all requirements of this chapter.

(2) Within ten (10) days of a written request from the Director, each Service Provider shall make available for inspection by the City at reasonable times all books, records, maps and other documents, maintained by the Service Provider with respect to its Facilities in the Public Right-of-Way.

(3) A Service Provider operating under a tariff issued by the PUCO shall cooperate with the City upon request of the Director for assistance with the "design ticket" process of the Ohio Utility Protection Service.

(j) *Assignments or Transfers.* Registration to Occupy or Use the Public Right-of-Way may be, directly or indirectly, transferred, assigned or disposed of by sale, lease, merger, consolidation or other act of the Service Provider, by operation of law or otherwise, without consent of the City, so long as:

(1) The City is notified of the proposed transfer on or before the date of transfer or upon approval of any jurisdictional agency, including the PUCO; and

(2) The transferee shall fully comply with this chapter within sixty (60) days of the transfer, including, but not limited to, providing:

A. All information required by the Registration to Occupy or Use the Public Right-of-Way under Sections [510.02](#) and Section [510.03](#); and

B. Any other information reasonably required by the Director.

(k) *Transactions Affecting Assignments or Transfers.* Any transactions that singularly or collectively result in a change of twenty-five percent (25%) or more of the ownership or ultimate working control of a Service Provider, of the ownership or working control of the Service Provider's Facility, or of control of the capacity or bandwidth of the Service Provider's System, Facilities or substantial parts of the Facility shall be considered an assignment or transfer under division (j) of this section. Transactions between Affiliated entities are not exempt from division (j) of this section.

(l) *Revocation of Registration.* To the extent permitted by law, a Service Provider's registration to Occupy or Use the Public Right-of-Way of the City may be revoked for any one (1) of the following reasons:

- (1) Construction, Reconstruction, installation, location, operation or Excavation at an unauthorized location;
- (2) Construction, Reconstruction, installation, location, operation or Excavation in violation of City safety and/or Construction requirements;
- (3) Material misrepresentation or lack of candor by or on behalf of a Service Provider in any permit application or registration required by the City;
- (4) Failure to relocate or remove Facilities, or failure to restore the Public Right-of-Way, as required by this chapter;
- (5) Failure to pay fees, costs, taxes or compensation when and as due the City;
- (6) Insolvency or bankruptcy of the Service Provider;
- (7) Violation of material provisions of this chapter.

(m) *Notice and Duty to Cure.* In the event that the Director believes that grounds exist for revocation of a Service Provider's registration to Occupy or Use the Public Right-of-Way, the Director shall give the Service Provider written notice of the apparent violation or noncompliance, providing a short and concise statement of the nature and general facts of the violation or noncompliance, and providing the Service Provider a reasonable period of time not exceeding thirty (30) days to furnish evidence:

- (1) That corrective action has been, or is being actively and expeditiously pursued, to remedy the violation or noncompliance;
- (2) That rebuts the alleged violation or noncompliance; and/or
- (3) That it would be in the public interest to impose some penalty or sanction less than revocation.

(n) It is within the Director's reasonable discretion to waive a portion or portions of this chapter where the requirements, in the Director's judgment, are not necessary or appropriate to protect the City's interests and the purposes and intent of this chapter.

(o) *Record Drawings.* Within sixty (60) days after completion of Construction, registered Service Providers shall furnish the City with the following information for Facilities Constructed for the Service Provider in detail acceptable to the Director based on consultation with the Service Provider:

- (1) The location, size, depth, grade, and route of any Underground Facilities, including proximity to other existing Facilities within the area excavated for the Construction;
- (2) The location, height and route of any Overhead Facilities, including pole attachments;
- (3) The location and position of any Above Ground Facilities and evidence of an AGF Installation Permit issued under Section [510.06](#) for the Facilities.

Information supplied under division (o) of this section shall be submitted in an electronic format which is available to the Service Provider and acceptable to the Director, or, if an acceptable electronic format is not available, on paper.

(p) *Field Identification.* Commencing on January 1, 2008, Service Providers shall field identify in a readily available location by means of a mark or tag in a manner, form and at such time as is acceptable to the Director in accordance with national and state standards and regulations, all new or replacement Facilities constructed or installed at the surface of the Public Right-of-Way and, in conjunction with Public Right-of-Way improvements constructed by the City, all

existing Facilities owned by a Service Provider and located on the surface of the portion of the Public Right-of-Way to be improved by the City.

(q) *Restoration of Improvements.* On completion of any Construction work, registered Service Providers shall promptly repair any and all Public Rights-of-Way and provide property improvements, fixtures, structures and Facilities which were damaged during the course of Construction, restoring the same as nearly as practicable to its condition before the start of Construction.

(r) *Landscape Restoration.*

(1) All trees, landscaping and grounds removed, damaged or disturbed as a result of the Construction, Reconstruction, installation, maintenance, repair, replacement, or removal of Facilities must be replaced or restored as nearly as may be practicable, to the condition existing prior to performance of work as determined by the Commissioner of Urban Forestry, except to the extent that tree trimming is necessary to prevent the interference of tree branches with Overhead Facilities. If, in the opinion of the Commissioner of Urban Forestry, any trees cannot be replaced or restored in the same location, an equal number of trees shall be planted in the Public Right-of-Way at a location or locations determined by the Commissioner of Urban Forestry.

(2) All restoration work within the Public Right-of-Way shall be done under landscape plans approved by the Director.

(s) *Responsibility of Owner.* The owner of the Facilities to be Constructed, Reconstructed, installed, located, operated, maintained or repaired and, if different, the Service Provider, are responsible for performance of and compliance with all provisions of this section.

(Ord. No. 1242-A-07. Passed 10-8-07, eff. 10-11-07)

§ 510.05 Location, Relocation and Removal of Facilities

(a) *Location of Facilities.* All Facilities shall be Constructed, Reconstructed, installed and located under the following guidelines and requirements:

(1) Facilities should be installed within an existing compatible underground duct or conduit whenever Excess Capacity exists within the Facility;

(2) A Service Provider registered to install Overhead Facilities should install its Facilities on pole attachments to existing utility poles if Surplus Overhead Space is available;

(3) A Service Provider registered to install Underground Facilities should install its Facilities in space the Service Provider currently occupies or in Surplus Underground Space if available;

(4) Except for Overhead Facilities as provided in this section, no AGF or AGF Clusters shall be located above ground in a Public Right-of-Way without a AGF Installation Permit issued under Section [510.06](#).

(5) No Facilities shall be located under ground in the Public Right-of-Way without, as applicable, a Street Opening Permit issued under Section [503.01](#) or a Sidewalk Construction Permit issued under Sections [505.04](#) to [505.06](#), as deemed appropriate by the Director.

(b) *Excess Capacity.* To reduce Excavation in the Public Right-of-Way, it is the City's goal to encourage Service Providers to share occupancy of underground conduit as well as to construct, whenever possible, excess conduit capacity for occupancy of future Facilities in the Public Right-of-Way. Therefore, if a Service Provider is constructing underground conduit in the Public Right-of-Way for its own Facilities, and the City reasonably determines the

construction is in an area in which other Service Providers would likely construct Facilities in the future, the City may require, to the extent permitted by law, the Service Provider to construct the conduit in the Public Right-of-Way with Excess Capacity in the Public Right-of-Way, provided the Service Provider shall be reimbursed for the use of the Excess Capacity by another Service Provider. The Service Provider may charge a reasonable market lease rate for occupancy of the additional conduit space as reimbursement. Division (b) of this section shall not apply where no practical operational, engineering or safety standards will support the need for Excess Capacity.

(c) *City Owned Conduit.* If the City owns or leases conduit in the path of a Service Provider's proposed Facilities, the City determines that there is Excess Capacity in the conduit, and provided it is technologically feasible for the Service Provider's Facilities to Occupy the conduit owned or leased by the City, the Service Provider may be required, to the extent permitted by law to Occupy the conduit owned or leased by the City in order to reduce the necessity to Excavate the Public Right-of-Way. If required, the Service Provider shall pay to the City a fee for Occupancy which shall be a reasonable market lease rate for occupancy of the conduit. The City and the Service Provider may agree to amortize the fee through annual payments to the City.

(d) *Relocation or Removal of Facilities.* Within thirty (30) days following written notice from the City and in accordance with law, a Service Provider shall, at its own expense, temporarily or permanently remove, relocate, change or alter the position of any Facilities in the Public Right-of-Way whenever the City shall have determined that such removal, relocation, change or alteration is reasonably necessary for:

(1) The Construction, Reconstruction, repair, maintenance or installation of any City public improvement in or on the Public Right-of-Way; or

(2) The operations of the City or other governmental entity in or on the Public Right-of-Way.

(e) *Removal of Unauthorized Facilities.* Within thirty (30) days following written notice from the City, and to the extent permitted by law any Service Provider or other Person that owns, controls or maintains any unregistered System, Facility or related appurtenances in the Public Right-of-Way shall, at its own expense, remove those Facilities or appurtenances from the Public Right-of-Way of the City or shall arrange to sell the System, Facilities or appurtenances to the City. After the thirty (30) days have expired, the City may remove the Facilities or appurtenances from the Public Right-of-Way at the other party's expense. A System or Facility is unauthorized and subject to removal in any of the following circumstances:

(1) If the System or Facility was Constructed, Reconstructed, installed, operated, located or maintained without registering, except as otherwise provided by this chapter;

(2) On abandonment of a Facility in the Public Right-of-Way of the City, with the exception of underground facilities abandoned in a manner authorized and approved by the City;

(3) If the System or Facility was Constructed, Reconstructed, installed, operated, located or maintained, or any Excavation of a Public Right-of-Way was performed, without prior issuance of a required permit from the City, except as otherwise provided by this chapter;

(4) If the System or Facility was Constructed, Reconstructed, installed, operated, located or maintained, or any Excavation of a Public Right-of-Way was performed, at a location not identified in the City's registration to Occupy or Use the Public Right-of-Way; or

(5) If the Service Provider fails to comply with the Registration requirements of this chapter.

Division (e) of this section does not apply to the extent that abandonment of Facilities is governed by federal or State law.

(f) *Emergency Removal or Relocation of Facilities.* To the extent permitted by law, the City retains the right and privilege to cut or move any Facilities, or stop work on any Construction, Reconstruction, installation, operation or Excavation, located in the Public Right-of-Way of the City, as the City may determine to be necessary, appropriate or useful in response to any need to protect the public health, safety or welfare; except to the extent that the City's actions would cause a dangerous or potentially dangerous situation.

(Ord. No. 1242-A-07. Passed 10-8-07, eff. 10-11-07)

§ 510.06 AGF Installation Permits; Fee

(a) *Permit Required.* No Service Provider shall install, place, replace or alter the size of Above Ground Facilities in the Public Right-of-Way without first obtaining an AGF Installation Permit issued by the Director under this section or in violation of the regulations for AGF and AGF Clusters in this section or Rules and Regulations promulgated by the Director under division (e)(8) of this section.

(b) *Application Process.* Applications for AGF Installation Permits shall be filed with the Commissioner of Engineering and Construction and shall contain the following information:

(1) A detailed description of the AGF or AGF Cluster, including the dimensions of each installation and the potential noise level resulting from the operation of the installation;

(2) A site or landscape plan drawn to scale showing the proposed installation with elevation drawings acceptable to the Director, and photographs of the proposed location for the AGF before installation, including the dimensions of the existing street improvements in the proximate vicinity of the proposed AGF and the distance from the proposed AGF to existing buildings on the adjoining and abutting lots;

(3) Mailing address labels of adjoining lots, abutting lots, and lots across the Public Right-of-Way from the adjoining and abutting lots;

(4) The identity of any existing AGF in the City Block in which the AGF is proposed to be installed;

(5) The identity, legal status, and federal tax identification number of the Service Provider for the AGF;

(6) The name, address, telephone number, and e-mail address of the local officer, agent or employee responsible for the accuracy of the information contained in the application for the AGF application; and

(7) A copy of the Graffiti Mitigation Plan prepared by the Service Provider under division (d) of this section.

(c) *Permit Fee.* Each Service Provider applying for an AGF Installation Permit shall pay a fee as determined by the Director, and approved by the Board of Control, to reimburse the City for its administrative costs related to processing of reviewing the permit application and issuing the permit as provided in Section [510.07](#).

(d) *Graffiti Mitigation Plans.* The exterior of each AGF and AGF Cluster shall resist graffiti and be maintained in good condition and repair. Each Service Provider shall submit a Graffiti Mitigation Plan detailing how each AGF or AGF Cluster operated by the Service Provider shall be maintained free from graffiti and other defacements (i.e. stickers, posters). The Graffiti Mitigation Plan shall identify the resources dedicated to regularly inspecting and maintaining the Facilities in good condition and repair. In addition, each Graffiti Mitigation Plan shall provide the name, mailing address, phone number and email address of a single point of contact responsible to resolve graffiti issues should they occur. The Graffiti Mitigation Plan should clearly state that AGF surfaces shall be maintained in good condition and repair following installation.

(e) *AGF Regulations.*

(1) The placement of AGF and AGF Clusters shall be approved by the City Planning Commission or its Secretary, as determined by the City Planning Commission, in the following areas:

- A. Residential zoning districts;
- B. Open Space and Recreation Districts as described in Chapter [342](#);
- C. Public Land Protective Districts as described in Chapter [341](#); and
- D. Business Revitalization Districts as described in Chapter [303](#).

(2) The placement of AGF and AGF Clusters in Landmark Districts and on Landmark properties, as described in Section [161.04](#), shall be approved by the Landmarks Commission or its Secretary, as determined by the Landmarks Commission.

(3) AGF and AGF Clusters, including any doors, shall maintain an unobstructed sidewalk width of six (6) feet to provide for unimpeded pedestrian and wheelchair passage, except where the existing sidewalk width is less than six (6) feet, and a minimum of two (2) feet unobstructed distance from the perimeter of the AGF or AGF Cluster to the roadway curb face and to the closest edge of the public sidewalk.

(4) AGF and AGF Clusters shall be placed in compliance with the intersection sight distance requirements contained in the Location and Design Manual without the necessity of installing additional safety measures as provided in the L&D Manual. If the existing sight distance at an intersection does not meet the current standards in the L&D Manual, the AGF and AGF Clusters shall be placed at a location that will not reduce the existing sight distance from the intersection. AGF and AGF clusters shall be placed at a distance from drive-ways so as not to impair the sight distances for exiting vehicles as determined by the Director using the intersection sight distance requirements contained in the L&D Manual.

(5) No AGF or AGF Cluster shall be installed:

- A. Within five (5) feet of any fire hydrant;
 - B. Within five (5) feet of any driveway;
 - C. Where there is no bus shelter at a bus stop, within forty (40) feet back of a sign identifying a particular bus company or bus route and marking a designated bus stop;
 - D. Where there is a bus shelter at a bus stop, within five (5) feet forward and forty (40) feet back of the end of the shelter identified as serving a particular bus company or bus route and marking a designated bus stop;
 - E. Within three (3) feet of any traffic sign;
 - F. Within three (3) feet of any public utility pole, provided that 1) all or a portion of an AGF may be placed on a public utility pole as part of an approved AGF Installation Permit and in accordance with other applicable laws and regulations for the placement of Facilities on utility poles; and 2) placement adjacent to a public utility pole shall be limited to one (1) side of the pole;
 - G. Within an area designated for handicapped parking, a taxi stand or a commercial loading or unloading zone;
- or
- H. Immediately in front of buildings, houses, structures, or public stairs such that it causes a violation of ADA guidelines for pedestrian passage between private property and the Public Rights-of- Way.

(6) *Advertising.* Advertising is prohibited on AGF and AGF Clusters.

(7) *Removal.* Service Providers, at their cost and expense, shall remove any AGF and AGF Clusters that are abandoned, become obsolete, are unused for more than ninety (90) days or installed without an AGF Installation Permit issued under this section.

(8) *Additional Regulations.* The Director is charged with the enforcement of the provisions of this section and is hereby authorized to adopt, promulgate and enforce additional Rules and Regulations relating to AGF and AGF Clusters not in conflict with the provisions of this section, including the maximum or minimum dimensions of AGF or AGF Clusters, the color and finishes of any cabinets in which AGF or AGF Clusters are located, Service Provider identification on all AGF and AGF Clusters, landscaping considerations, permissible configuration of AGF Clusters, the maximum number of installations of AGF or AGF Clusters in Public Right-of-Way per City Block and the administration and enforcement of the provisions of this section. Rules and Regulations promulgated by the Director shall become effective upon publication in the *City Record*. Failure or refusal to comply with any Rules and Regulations promulgated by the Director shall be deemed a violation of this section.

(f) *Performance Bond.* To ensure the full and complete compliance with this section, prior to the issuance of an AGF Installation Permit, a Service Provider shall submit a performance bond in the amount of Fifty Thousand Dollars (\$50,000.00). In the alternative, a Service Provider may submit an umbrella bond in the amount of Fifty Thousand Dollars (\$50,000.00) which shall be deemed to have met the performance bond requirement of this section for the duration of the performance bond. Before any claims may be made against a performance bond, the Director shall give written notice to the Service Provider:

- (1) Describing the act, default or failure to be remedied by reason of the Service Provider's act or default;
- (2) Providing a reasonable opportunity for the Service Provider to first remedy the existing or ongoing default or failure;
- (3) Providing a reasonable opportunity for the Service Provider to pay any monies due the City before the City makes a claim against the performance bond; and
- (4) Stating that the Service Provider will be given an opportunity to review the act, default or failure described in the notice with the Director.

(g) *Other Permits.* A Service Provider that is issued an AGF Installation Permit issued under this section is not required to obtain a Street Obstruction Permit issued under Section [411.011](#) or a Sidewalk Obstruction Permit issued under Section [507.06](#) for Construction or reconstruction of an AGF. A Service Provider may be required to obtain a Street Obstruction Permit issued under Section [411.011](#) or a Sidewalk Obstruction Permit issued under Section [507.06](#), as applicable, when performing Ordinary Maintenance on an AGF. If the installation of AGF and AGF Clusters requires installation of Underground Facilities, a Service Provider must also obtain a Street Opening Permit issued under Section [503.01](#) or a Sidewalk Construction Permit issued under Sections [505.04](#) to [505.06](#) as deemed appropriate by the Director.

(h) *Additional Penalty.* In addition to any penalty imposed for a violation of this chapter under Section [510.99](#), the Director, following notice in writing to a Service Provider of the Service Provider's failure to comply with this section, shall not issue any new AGF Installation Permits to the Service Provider until such time as the violations of this section as detailed in the notice are corrected.

(Ord. No. 1242-A-07. Passed 10-8-07, eff. 10-11-07)

§ 510.07 Recovery of City Costs

(a) *Purpose.* It is the purpose of this section to provide for the recovery of all direct and indirect costs and expenses actually incurred by the City and associated with the registration of a Service Provider's Occupancy or Use of the Public Right-of-Way, the reviewing of applications for and issuing AGF Installation Permits, and related to the enforcement and administration of this chapter. All registration and permit fees shall be assessed in a manner to be determined by the Director and approved by the Board of Control. To the extent that a fee fixed by this chapter is a public way fee under RC 4939.06, a Service Provider may appeal the public way fee to the PUCO within thirty (30) days after the fee is assessed by the City.

(b) *Regulatory Fees and Compensation Not a Tax.* The fees and costs provided for in this chapter are separate from, and additional to, any and all federal, State, local and City taxes as may be levied, imposed or due from a Service Provider, its customers or subscribers, or on account of the lease, sale, delivery or transmission of Services.

(Ord. No. 1242-A-07. Passed 10-8-07, eff. 10-11-07)

§ 510.08 Miscellaneous Provisions

(a) *Preemption by State and Federal Law.* Except as may be preempted by applicable State or Federal laws, rates, regulations, and orders, this chapter shall apply and be controlling over each Service Provider engaged in the business of transmitting, supplying or furnishing of Services originating, passing through, or terminating in the City.

(b) *Compliance with Other Applicable City Code Provisions.* Except as expressly provided in this chapter, a Service Provider registered to Occupy and Use the Public Right-of-Way under this chapter is not relieved of any obligation to obtain a franchise, license, encroachment permit, street opening permit or other permit which may be additionally required by the City under law, including any required by the following sections and chapters of the Codified Ordinances:

- (1) Section [411.011](#) relating to street obstruction permits;
- (2) Chapter [503](#) relating to street openings and maintenance;
- (3) Sections [505.04](#) to [505.06](#) relating to sidewalk construction Permits;
- (4) Section [507.06](#) relating to sidewalk obstruction permits;
- (5) Chapter [523](#) relating to electrical poles;
- (6) Chapter [670B](#) relating to pay telephones;
- (7) Chapter [3105](#) relating to building permits;
- (8) Chapter [3109](#) relating to encroachments.

(c) *Compliance with Other Laws.* Nothing in this chapter shall relieve a Service Provider from its obligation to comply with all applicable federal, State and City laws, including the obligation to obtain any and all applicable licenses, permits or other authorizations necessary to the operation and conduct of its business or the occupation or use of the Public Right-of-Way. In the event that a Service Provider believes that a conflict exists between the provisions of this chapter and other provisions contained in the Codified Ordinances, the Service Provider should request a clarification of the applicable provision from the City's Director of Law. Should there be a direct conflict between the provisions in this chapter and the provisions contained in a Franchise Ordinance or Agreement, the provisions of the Franchise Ordinance or Agreement shall prevail; provided, however, that additional obligations shall not be construed as a conflict.

(d) *Director's Rules and Regulations.* The Director is charged with the enforcement of the provisions of this chapter and is hereby authorized to adopt, promulgate and enforce Rules and Regulations relating to any matter or thing

pertaining to the registration of Service Providers and the administration and enforcement of the provisions of this chapter. Rules and Regulations promulgated by the Director shall become effective upon publication in the *City Record*. Failure or refusal to comply with any Rules and Regulations promulgated by the Director shall be deemed a violation of this chapter.

(e) *Severability*. If any section, subsection, sentence, clause, phrase, or other portion of this chapter, or its application to any Person or Service Provider, is, for any reason, declared invalid, in whole or in part by any court or agency of competent jurisdiction, said decision shall not affect the validity of the remaining portions of this chapter.

(Ord. No. 1242-A-07. Passed 10-8-07, eff. 10-11-07)

§ 510.99 Penalties and Other Remedies

(a) *Criminal Penalty*. Any Person found guilty of violating, disobeying, omitting, neglecting or refusing to comply with any of the provisions of this chapter shall be guilty of a misdemeanor of the third degree. A separate and distinct offense shall be deemed committed each day on which a violation occurs or continues.

(b) *Other Remedies*. Nothing in this chapter shall be construed as limiting any judicial remedies that the City may have, at law or in equity, for enforcement of this chapter.

(Ord. No. 1242-A-07. Passed 10-8-07, eff. 10-11-07)

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