

CODIFIED ORDINANCES OF GARFIELD HEIGHTS

PART NINE - STREETS, UTILITIES AND PUBLIC SERVICES CODE

TITLE ONE - Street and Sidewalk Areas

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- Chap. 902. Telecommunications Company Rights-of-Way.
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CHAPTER 901
Excavations

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| 901.01 | Permit required. | 901.03 | Barricades, lights and signs. |
| 901.02 | Application; insurance; deposit; fee. | 901.99 | Penalty. |

CROSS REFERENCES

- Excavation liability - see Ohio R.C. 723.49 et seq.
Compulsory service connections - see Ohio R.C. 729.06
(sewer & water) 743.37 (gas)
Changing established grade - see Ohio R.C. 727.07
Digging, excavating and piling earth on streets - see Ohio R.C. 5589.10
Barricades; warning lights - see GEN. OFF. 521.03
Piling material on streets and sidewalks - see GEN. OFF. 521.13 et seq.

901.01 PERMIT REQUIRED.

- (a) No person shall dig, trench, excavate, grade, tunnel or do any work in, over or under any street, sidewalk or other public ground within the City without first obtaining a permit therefor from the Division of Building, Engineering and Inspection.

(b) No person shall break the pavement of a newly paved street within five years of the date of installation of the paving for any purpose, except emergency repairs.

901.02 APPLICATION; INSURANCE; DEPOSIT; FEE.

No permit shall be issued unless the applicant therefor shall have complied with the following requirements:

- (a) Application. File an application with the Division of Building, Engineering and Inspection, which in addition to any information which may be requested, shall contain (1) the location where the work is to be performed, (2) the name and address of the owner, and (3) the name of the person doing the work.
- (b) Insurance policy. Deposit or show evidence of a public liability insurance policy, insuring the City against any loss or damage to persons or property resulting from the work being done, the policy to have minimum limits of twenty-five thousand dollars (\$25,000) and fifty thousand dollars (\$50,000) per accident for bodily injury or wrongful death, in form acceptable to the Director of Law and in maximum limits acceptable to the Division on the basis of work to be done and the risk involved.
- (c) Deposit. Deposit with the Division such sum as may be deemed necessary on the basis of the work to be done and the risk involved.
- (d) Inspection fee. Pay to the Division an inspection fee of twenty dollars (\$20.00) per inspection.

The deposit may be held and used by the City to cover costs of maintaining, reconditioning and repaving. A portion of the deposit which is not used shall be returned to the permittee when the work is completed to the satisfaction of the Division of Building, Engineering and Inspection.

901.03 BARRICADES, LIGHTS AND SIGNS.

The permittee shall maintain sufficient barricades, warning signs and lights during the entire period that the work is being done.

901.99 PENALTY.

Whoever violates any provision of this chapter is guilty of a misdemeanor of the third degree.

CHAPTER 902
Telecommunications Company Rights of Way

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| 902.01 | Permit required. | 902.99 | Penalty. |
| 902.02 | Form of permit. | | |
| 902.03 | Amendment of permit after grant. | | |

CROSS REFERENCES

Authority to regulate - see Ohio R.C. 715.19, 717.01, 723.01
Street obstructions - see TRAF. 311.01

902.01 PERMIT REQUIRED.

All persons, firms, partnerships, corporations, limited liability companies, trusts, joint stock companies, unincorporated associations, governmental entities, banking institutions, and any other organization wishing to construct, operate, maintain, reconstruct, and/or rebuild any telecommunications network in, on or under the City or its right-of-way, in order to provide telecommunications services to residents, businesses or other premises within the City, or built through the City to service other municipalities, shall be required to obtain a telecommunications right-of-way permit from the Building Commissioner in the form and under the requirements provided for in Section 902.02.
(Ord. 50-1998. Passed 6-2-98.)

902.02 FORM OF PERMIT.

The form of the telecommunications right-of-way permit required under this chapter shall be in the form as set forth as Exhibit "A", attached to original Ordinance 02-1998, and expressly made a part hereof by reference.
(Ord. 02-1998. Passed 1-12-98.)

902.03 AMENDMENT OF PERMIT AFTER GRANT.

Any telecommunications right-of-way permit granted under this chapter may be amended only in accordance with the provisions contained in the permit as provided for in Section 902.02.
(Ord. 02-1998. Passed 1-12-98.)

902.99 PENALTY.

Any person, firm, partnership, corporation, limited liability company, trust, joint stock company, unincorporated association, governmental entity, banking institution, or any person or organization who violates any provision of this chapter or any other provision of a telecommunications right-of-way permit granted under this chapter shall be deemed guilty of a misdemeanor of the first degree.
(Ord. 02-1998. Passed 1-12-98.)

CHAPTER 903
Sidewalks

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| <p>903.01 Sidewalks to be kept in repair; liability for injury or damage.</p> <p>903.02 Service Director to enforce.</p> <p>903.03 Survey of streets; notice; repair.</p> <p>903.04 Permit and fee; grades.</p> <p>903.05 Repairs by City; collection of costs.</p> <p>903.06 Construction by City; bids.</p> <p>903.07 Construction requirements.</p> | <p>903.08 Care, maintenance and repair of tree lawns.</p> <p>903.09 Repair, replacement of tree lawns after construction or excavation.</p> <p>903.99 Penalty.</p> |
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CROSS REFERENCES

Construction or repair at owner's expense - see Ohio R.C. 729.01 et seq.

Notice to construct or repair sidewalks - see Ohio R.C. 729.03 et seq.

Violations generally - see GEN. OFF. Ch. 521

Building Code provisions - see BLDG. Ch. 1347

903.01 SIDEWALKS TO BE KEPT IN REPAIR; LIABILITY FOR INJURY OR DAMAGE.

(a) In addition to the requirements of other applicable ordinances, every property owner and/or occupant of real estate in the City abutting a roadway shall be required to maintain a sidewalk in good repair.

The Service Director shall determine what is good repair, and shall compile a list of defective sidewalks as provided in Section 903.03.

(b) On any claim presented for bodily injury or property damage on the sidewalk, the adjoining or abutting property owner shall be held liable in tort for such damages to another. Alternatively, should the City of Garfield Heights be called upon to make such payments to a third party, the City will look to the adjoining/abutting landowner for contribution and indemnity. (Ord. 6-2003. Passed 1-27-03.)

903.02 SERVICE DIRECTOR TO ENFORCE.

The Service Director is authorized to provide a program for carrying out the provisions of Section 903.01.

The Service Director shall further promulgate rules and regulations consistent with the requirements of this chapter to carry out the provisions hereof. (Ord. 101-1957. Passed 5-20-57.)

903.03 SURVEY OF STREETS; NOTICE; REPAIR.

The Service Director or his duly authorized representative shall conduct a survey of the streets of the City from time to time and within the limitations of available funds require repair or installation of sidewalks in those areas of the City where the most need for sidewalks exists, and upon such determination notify the owner of the property to make the necessary improvement.

Such notice shall be either personally served or forwarded by registered mail, return receipt requested, to owners residing within the County. In the event the owner of such property resides outside the County, the notice shall be published in a newspaper of general circulation within the City for two consecutive weeks.

The owner of the affected property shall have thirty days during which to make the necessary improvement by construction or repair of a public sidewalk.

The thirty-day period shall commence running from the date of giving of notice or following the period of advertisement. (Ord. 101-1957. Passed 5-20-57.)

903.04 PERMIT AND FEE; GRADES.

The installation of sidewalks required by this chapter shall not be made by the owner until a permit has been obtained from the Service Director. The cost of such permit shall be five cents (5¢) per lineal foot but not less than two dollars (\$2.00) for repair of an existing sidewalk, and ten cents (10¢) per lineal foot but not less than five dollars (\$5.00) for the installation of a new sidewalk where none has existed before. The Director shall cause the grade of the sidewalk to be established prior to the issuance of such permit, if the grade can be established in relation to a permanent paved roadway, or existing sidewalks on adjoining property. In the event there is no permanent paved roadway or existing sidewalks on adjoining property, the grade shall be established by the Engineer and he shall receive three-fifths of the permit fee but not less than three dollars (\$3.00) of the permit fee as and for services in establishing the grade. (Ord. 101-1957. Passed 5-20-57.)

903.05 REPAIRS BY CITY; COLLECTION OF COSTS.

If, after the expiration of thirty days following the giving of the notice required in Section 903.03, the repair or installation of sidewalks is not made by the owner, the Service Director or the Engineer shall establish the grade as required in Section 903.04, and the Director shall order the installation or repair of the sidewalk under the overall sidewalk contract of the City as hereinafter provided. The installation and/or repair of such sidewalk shall be supervised by the Department of Public Service.

Upon completion of such work by the City, a statement by the Finance Director shall be forwarded to the owner at his tax mailing address as shown in the records of Cuyahoga County by registered mail, return receipt requested.

If any notice herein required to be given by registered mail, return receipt requested, is not delivered to such owner or his agent as evidence by the postal return thereon, it shall then be advertised in a newspaper of general circulation in the City for a period of not less than two weeks.

The statement shall include the cost of repair and/or installation, the cost of the notices, ten dollars (\$10.00) for establishing the grade and supervision for each lot as shown by the subdivision plat records and all other necessary expenses. The owners shall thereafter have thirty days during which to pay such expenses, and if not paid at the expiration of the thirty-day period, the cost shall thereupon constitute a lien upon the lots and lands so benefitted and a tax is levied therefor. The Finance Director shall certify such tax lien to the Auditor of Cuyahoga County.

The Finance Director shall receive two dollars and fifty cents (\$2.50) per parcel as shown by the permanent parcel number of Cuyahoga County, for certifying such tax lien to the Auditor of the County of Cuyahoga; the Auditor of Cuyahoga County shall make his usual charge for servicing such tax lien; the charges of the Finance Director and the Auditor of the County shall constitute a lien upon the lots and lands benefitted by such sidewalk.

The Auditor of the County shall place such lien for collection upon the duplicate for the tax collection next following; the amount due as a lien upon the lots and lands benefitted shall be collected during the earliest tax collection period next following.
(Ord. 101-1957. Passed 5-20-57.)

903.06 CONSTRUCTION BY CITY; BIDS.

The Service Director, with the approval of the Finance and Service Committees of Council, shall estimate during the first month of each and every year the number of square feet of sidewalk that will be laid in the City during such year, available funds, circumstances and conditions permitting. He shall thereafter, without further authorization, advertise for bids for the laying of concrete sidewalks, in accordance with City specifications and the estimate, reserving to the City the option to order more or less as circumstances and conditions warrant. The price is to be based on normal grade situations. In the performance of individual jobs involving grades that require filling with or removal of earth or other materials, not including cinders and slag, the Director shall agree with the contractor for the reasonable cost of the earth removal or fill in amounts not to exceed fifty cents (50¢) per front foot of the lot and land to be benefitted; in the event the cost of earth fill or removal exceeds fifty cents (50¢) per front foot, the contractor shall perform the work only after approval of the price by the Board of Control.
(Ord. 101-1957. Passed 5-20-57.)

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903.07 CONSTRUCTION REQUIREMENTS.

All sidewalks shall consist of a slab of concrete five feet wide and four inches thick.
(Ord. 101-1957. Passed 5-20-57.)

903.08 CARE, MAINTENANCE AND REPAIR OF TREE LAWNS.

(a) In addition to the requirements of other applicable ordinances, every property owner and/or occupant of real estate in the City abutting a roadway shall be required to maintain a tree lawn in good repair. For purposes of this section, "tree lawn" means the strip of land between the sidewalk and curb, or if there is no curb, the roadway.

(b) Any property owner and/or occupant not within a Class U-1 or U-2 Use District may, upon proper application and permit being granted as hereinafter set forth, construct a concrete tree lawn with a slab of concrete not less than four inches thick.

(c) The installation of concrete on tree lawns required by this chapter shall not be made by the owner or occupant until a permit has been obtained from the Service Director. The cost of such permit shall be five cents (5¢) per lineal foot, but not less than two dollars (\$2.00). Repair of an existing tree lawn shall be ten cents (10¢) per lineal foot, but not less than five dollars (\$5.00) for the installation of concrete on the tree lawn where none has existed before. The Director shall cause the grade of the tree lawn to be established prior to the issuance of such permit, if the grade can be established in relation to a permanent paved roadway, or existing sidewalks on adjoining property. In the event there is no permanent paved roadway or existing sidewalks on adjoining property, the grade shall be established by the Engineer, and he shall receive three-fifths of the permit fee, but not less than three dollars (\$3.00) of the permit fee, as and for services in establishing the grade.
(Ord. 119-1965. Passed 12-13-65.)

903.09 REPAIR, REPLACEMENT OF TREE LAWNS AFTER CONSTRUCTION OR EXCAVATION.

Any person, firm or corporation which desires or is required to excavate any portion of a tree lawn within the City, or as a result of construction will cause damage to an existing tree lawn within the City, shall first obtain a permit therefor from the Building Commissioner setting forth an application for such permit, the date and extent of such excavation or construction as well as anticipated date of completion.

Such person, firm or corporation shall post sufficient and satisfactory bond or letter of indemnity satisfactory to the Commissioner assuring, that upon completion of excavation and/or construction, the disturbed section of the tree lawn shall be put back in the same condition or better than it was when excavation and/or construction was commenced excepting, however, sod shall be used to replace all tree lawn damage occasioned by the excavation and/or construction.
(Ord. 11-1972. Passed 2-14-72.)

903.99 PENALTY.

Whoever violates any provision of this chapter is guilty of a misdemeanor of the third degree.

CHAPTER 905
Public Improvements

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| 905.01 | Payment of inspection fees; definition. | 905.03 | Permits for repair or maintenance of public utilities' equipment. |
| 905.02 | Agreement forms. | | |

CROSS REFERENCE

Underground utility facilities - see Ohio R.C. 153.64
Assessments - see Ohio R.C. Ch. 727
Power to establish and care for streets - see Ohio
R.C. 715.19, 717.01, 723.01

905.01 PAYMENT OF INSPECTION FEES; DEFINITION.

Contractors and owners constructing improvements of a public character in the City shall pay to the City the cost of inspection fees as fixed by ordinance.

"Improvements of a public character" shall be interpreted to mean construction of Municipal buildings, improvements by paving streets, curbing, grading, drainage by the construction of sewer, storm sewer and water lines in the public roadways.
(Ord. 128-1954. Passed 11-22-54.)

905.02 AGREEMENT FORMS.

The Law Director is authorized and directed to prepare proper forms of agreement to cover various contingencies, in all cases where requests for improvements, such as sewer, water and paving, are received by the City.

The legislative enactments which determine to proceed with any such improvement shall contain a clause requiring the execution of a proper agreement, prepared and approved by the Director, before execution or award by the City of any contracts for any such improvement.
(Ord. 69-1961. Passed 5-22-61.)

905.03 PERMITS FOR REPAIR OR MAINTENANCE OF PUBLIC UTILITIES'

(a) The Mayor and/or the Service Director is authorized and empowered to issue the necessary permits to the applicant public utilities to enter into the City for the purpose of maintaining, repairing and replacement of such utility-owned equipment in order to provide and maintain a high standard of service to the community.

(b) The Law Director shall prepare or approve any such permit or permits, and shall require proper safeguards to be included for the protection of the health and property of the citizens and the credit of the City.
(Ord. 5-1962. Passed 1-8-62.)

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CHAPTER 907
Trees and Hedges

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| 907.01 | Definitions. | 907.14 | City to treat or remove diseased trees on private property. |
| 907.02 | Powers of Parks and Recreation Director. | 907.15 | Notice to property owners; contents and service. |
| 907.03 | Permit required to plant, prune or remove on public property. | 907.16 | Billing property owners; determination of costs. |
| 907.04 | Placing deleterious substances near trees. | 907.17 | Failure to pay; assessing ordinance. |
| 907.05 | Stone or concrete on ground adjacent to trees. | 907.18 | Suit to recover costs as alternate remedy. |
| 907.06 | Electric wires near trees. | 907.19 | License required for forestry, tree surgery or tree removal. |
| 907.07 | Animals injuring trees. | 907.20 | License fee, term and revocation. |
| 907.08 | Protecting trees during building operations. | 907.21 | Tree planting required: Fee. |
| 907.09 | Moving of trees. | 907.22 | Tree Planting Fund. |
| 907.10 | Trimming on public or private property. | 907.23 | Height of hedge fences. |
| 907.11 | Certain trees as nuisances; removal on public or private property. | 907.24 | Hedges to be within confines of lot. |
| 907.12 | Director's power to trim or remove trees on private property. | 907.99 | Penalty. |
| 907.13 | Interference with work prohibited. | | |

CROSS REFERENCES

Power to regulate shade tree and shrubbery - see Ohio R.C. 715.20

Assessment for tree planting and maintenance - see Ohio R.C. 727.011

Injury or destruction - see GEN. OFF. 541.06

907.01 DEFINITIONS.

(a) "Arboriculture" or "tree preservation," "forestry" or "tree surgery" means the treating, spraying, pruning, maintaining and any other care or work intended for the strengthening of trees, and the removal and prevention of tree pests, blights and diseases of any and all kinds.

(b) "Public place" means any public street, public highway, public park or any property owned or held by the City within the boundaries of the City.

- (c) "Tree" means any tree, bush, shrub or ornamental plant.
(Ord. 24-1981. Passed 4-27-81.)

907.02 POWERS OF PARKS AND RECREATION DIRECTOR.

The Parks and Recreation Director is hereby given full jurisdiction, authority, control, supervision and direction over all trees which now or may hereafter exist upon any public place in the City and over all trees which exist upon any private property in the City when, in his opinion they constitute a danger to persons or property, safety or welfare, and in the issuing of the permits hereinafter provided for in this chapter. In the exercise of the power herein granted, the Director shall have the authority to delegate, as he determines necessary, all or part of his power and duties to his subordinates in the employ of the City.
(Ord. 24-1981. Passed 4-27-81.)

907.03 PERMIT REQUIRED TO PLANT, PRUNE OR REMOVE ON PUBLIC PROPERTY.

No person shall plant, remove, destroy, cut, prune, fertilize, treat, break, climb, injure, paint or spray any tree existing on any public place, or authorize or procure any person to do so or remove or tamper with any device placed for the protection of any such tree or attach any rope, wire, chain, sign or any other device either to such tree or to any device placed for the protection of such tree, without first obtaining a written permit to do so from the City. The permit shall specify species and size of trees to be used, as specified in the Master Street Tree Plan. (Ord. 24-1981. Passed 4-27-81.)

907.04 PLACING DELETERIOUS SUBSTANCES NEAR TREES.

No person shall permit any natural or artificial gas, salt, brine, water, oil, liquid, dye or any other substances deleterious to trees to come in contact with the soil surrounding the roots of any tree upon any public place in the City in such a manner as to kill, injure, destroy or affect the growth of such trees. (Ord. 24-1981. Passed 4-27-81.)

907.05 STONE OR CONCRETE ON GROUND ADJACENT TO TREES.

No person shall place or maintain upon the ground any stone, concrete, brick or other impervious material or substance in such a manner as may obstruct the free access of air and water to the roots of any tree upon any public place in this City, without first having obtained written permission. Unless otherwise provided for, there shall be maintained about the base of the trunk of each tree at least nine square feet of open ground for a tree three inches in diameter, and for every two inches of increase of such diameter, there shall be an increase of at least one square foot of open ground.
(Ord. 24-1981. Passed 4-27-81.)

907.06 ELECTRIC WIRES NEAR TREES.

No person shall willfully cause or authorize or procure a wire or other conductor charged with electricity to come in contact with any tree upon any public place in such manner that the tree is thereby injured or destroyed. If

the Parks and Recreation Director determines it necessary to cut down or prune any tree on a public place, the owner of wires or conductors in close proximity thereto shall temporarily remove such wires or otherwise safeguard them, within twenty-four hours after service of written notice to do so by the Director. (Ord. 24-1981. Passed 4-27-81.)

907.07 ANIMALS INJURING TREES.

No person shall tie any animal to any tree in any public place or, having charge of any animal, shall allow or cause it to injure any tree or cause or allow such animal to stand unattended in a place where it can injure a tree. (Ord. 24-1981. Passed 4-2-81.)

907.08 PROTECTING TREES DURING BUILDING OPERATIONS.

No person in charge of the erection, alteration or removal of any building or structure shall permit any tree upon any public place in the vicinity of such operation to stand without a good and sufficient guard or protection as to prevent injury to such tree arising out of or by reason of such operation. Quality of guard or protection shall be determined by the Parks and Recreation Director. (Ord. 24-1981. Passed 4-27-81.)

907.09 MOVING OF TREES.

All moving of trees upon any public place in the City made necessary by the moving of a building or structure or any other private enterprise shall be done under the supervision of, and with the written permission of the Parks and Recreation Director, and at the expense of the applicant or person seeking the removal of such tree. The applicant, as one of the conditions to obtaining such permission, shall deposit with the City such sum in cash as the Director may determine and specify to cover all of the cost of moving and replacing such tree, if the conditions of such permission require the replacement thereof, provided, however, that in lieu of such cash deposit the Director may, in his discretion, accept a good and sufficient bond in like amount conditioned upon the payment of all the cost of such moving and replacing any tree. (Ord. 24-1981. Passed 4-27-81.)

907.10 TRIMMING ON PUBLIC OR PRIVATE PROPERTY.

(a) The Parks and Recreation Director shall keep all trees standing on any public place trimmed so that the branches of such trees projecting over any public sidewalk, private driveway or public street shall be not less than nine feet from the ground.

(b) All trees standing on private property in the City and having branches projecting into public streets or other public places shall, under the supervision of the Director be kept trimmed by the owners or occupants of such private property to such an extent that the lowest branches of such trees shall not come within nine feet of the ground where they overhang any public property or driveway.

(c) If the owner of private property neglects or refuses to trim a tree to conform to subsection (b) hereof within the time specified by written notice

from the Director, the Director shall cause such trimming to be done at the expense of the owner. The entire cost and expense of the work involved shall be a lien on the premises and billed and collected as provided for in this chapter. (Ord. 24-1981. Passed 4-27-81.)

907.11 CERTAIN TREES AS NUISANCES; REMOVAL ON PUBLIC OR PRIVATE PROPERTY.

(a) No silver maple, poplar, box elder, basswood or willow shall be permitted upon any tree lawn. The Parks and Recreation Director is hereby directed to cause all such trees as are now existing to be forthwith removed.

(b) Any silver maple, poplar, box elder, basswood or willow on any private property in the City in such close proximity to any public place as shall permit the roots of the trees to penetrate through or under the surface of any public place is hereby declared to be a public nuisance.

(c) If the owner of private property neglects or refuses to remove a tree located on such property which tree is a public nuisance, within the time specified by written notice from the Director, he shall cause such removal to be done at the expense of the owner. The entire cost and expense of the work involved shall be a lien on the premise and billed and collected as provided for in this chapter. (Ord. 24-1981. Passed 4-27-81.)

907.12 DIRECTOR'S POWER TO TRIM OR REMOVE TREES ON PUBLIC PROPERTY.

The Parks and Recreation Director may trim any tree existing on any public place so as to insure the safety or to preserve the symmetry of the beauty of such public place and may remove any tree or any part thereof which is in an unsafe condition or which by reason of its location and nature is injurious to other public improvements or is infected with any injurious fungus, insect or other pest, which cannot otherwise be controlled. (Ord. 24-1981. Passed 4-27-81.)

907.13 INTERFERENCE WITH WORK PROHIBITED.

No person shall interfere with the Parks and Recreation Director or his subordinates or assistants while engaged in or about the carrying out of the provisions of this chapter or the doing of any work ordered by the Director to be done hereunder. (Ord. 24-1981. Passed 4-27-81.)

907.14 CITY TO TREAT OR REMOVE DISEASED TREES ON PRIVATE

Whenever the Parks and Recreation Director determines that any tree located on private property has become infected with any parasite, insect, pest or fungus so as to threaten spreading to trees standing in any public place, or whenever the Director determines that any tree on private property in the City because of decay or other condition is apt to fall in whole or in part across any public or private property, he shall cause written notice to be served upon the owner or occupant of such private property. The notice shall order the owner or occupant to spray or otherwise treat the tree or remove it

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in the manner and within the time provided in the written notice. If the order is not complied with, the Director is authorized to enter upon such private property and to spray or otherwise treat or remove such tree or infected or dangerous parts thereof at the expense of the owner. The entire cost and expense of the work involved shall be a lien on the premises and billed and collected in the manner provided for in this chapter.
(Ord. 24-1981. Passed 4-27-81.)

907.15 NOTICE TO PROPERTY OWNERS; CONTENTS AND SERVICE.

(a) When the Parks and Recreation Director is required to give notice to the owner or occupant of any private property to perform any work as required by this chapter, the notice shall be in writing, shall state the particular thing which the Director requires the owner to do, the time in which the work shall be performed and shall contain a statement notifying the owner that if the work ordered by such notice is not done within the time specified in the notice, then the work shall be done by the City at the expense of the owner, and that the entire cost thereof shall be a lien upon the private property whereon such tree stands. The notice shall also contain a statement that when the cost has been ascertained the owner shall be billed therefor by the City and the amount of the bill shall be payable in cash to the Director of Finance within thirty days from presentation to such owner. Upon failure to pay the bill, the amount thereof with a penalty of five percent (5%) shall be certified by the Director of Finance to the County Auditor to be collected with other taxes for the ensuing tax year.

(b) Notice shall be served personally or by registered mail to the last known address of the owner, occupant or other person having charge of such property. If the addresses are unknown, it shall be sufficient to publish such notice once in a newspaper of general circulation in the City.
(Ord. 24-1981. Passed 4-27-81.)

907.16 BILLING PROPERTY OWNER; DETERMINATION OF COSTS.

(a) Upon completion of work by the City on any private property, when the owner has failed or neglected to perform as ordered by written notice of the Parks and Recreation Director, the Director of Finance shall bill the property owner the total cost by mail to his last known address.

(b) If the work has been done by contract, twenty-five percent (25%) shall be added to the contract price as a reasonable overhead charge to pay for the service of notice, inspection and other incidentals. If the work has been done by the City, the cost shall consist of the time expended by the City employees charged at the same hourly rate the City pays such employees plus the cost of the use of City equipment to which shall be added thirty-five percent (35%) as a reasonable overhead charge to pay for the service of notice, inspection, supervision and other incidentals.
(Ord. 24-1981. Passed 4-27-81.)

907.17 FAILURE TO PAY; ASSESSING ORDINANCE.

The Director of Finance may report to Council any bills for tree work done on private property by the City remaining unpaid after a thirty day period, whereupon Council may by ordinance levy five percent (5%) as a special assessment against the parcel of land upon which the tree existed, making such work necessary. Such assessment shall be payable in cash within thirty days of the passage of such ordinance, otherwise in one year and shall be certified to the County Auditor and collected as other taxes. Such assessing ordinance shall be published for two consecutive weeks in a newspaper of general circulation in the City, but no other notice need be given except as hereinbefore provided, and no other proceedings need be taken to make such levy valid assessment and lien against such parcel of land.

Assessments against more than one parcel of land may be combined in one assessing ordinance, provided that the assessment on any individual parcel shall be limited to the total cost of the work performed on that parcel.
(Ord. 24-1981. Passed 4-27-81.)

907.18 SUIT TO RECOVER COSTS AS ALTERNATE REMEDY.

In lieu of certifying unpaid costs to the County Auditor, the Law Director may seek recovery of such costs by civil action against the property owner involved.
(Ord. 24-1981. Passed 4-27-81.)

907.19 LICENSE REQUIRED FOR FORESTRY, TREE SURGERY OR TREE REMOVAL.

No person shall solicit for or engage in any kind of forestry or tree surgery or tree removal work within the City without first obtaining a written license from the Parks and Recreation Director. Written applications shall be made to the Director accompanied by evidence of adequate and acceptable liability insurance coverage and proof satisfactory to the Director that the applicant is reasonably qualified by experience, training and reputation to engage in such work. (Ord. 24-1981. Passed 4-27-81.)

907.20 LICENSE FEE, TERM AND REVOCATION.

(a) A fee of ten dollars (\$10.00) shall be charged for the issuance of a forestry or tree surgery license or a license to engage exclusively in tree removal.

(b) License shall expire on December 31 of the year of issue and may be renewed for a calendar year upon payment of a renewal fee equal to that of the original fee. The Parks and Recreation Director may revoke or suspend any license for violation of any provision of this chapter, misrepresentation or failure to perform work in a reasonably workmanlike manner.
(Ord. 24-1981. Passed 4-27-81.)

907.21 TREE PLANTING REQUIRED: FEE.

Any person, firm or corporation who is the owner or builder of any house or other buildings which shall be constructed and erected within the corporate limits of the City shall deposit the sum of seventy-five dollars (\$75.00) with the Building Commissioner to cover all expenses for the planting of a tree on

the tree lawn abutting such house or other building. One tree shall be planted for each multiple of forty feet of frontage of the lot wherein such house or other building is so constructed and erected. A minimum of one tree shall be planted for each house or other building regardless of the frontage of the lot.

Such tree shall comply with the Master Street Tree Plan as heretofore set out in this chapter. The Commissioner shall not issue a building permit to any person, firm or corporation engaged in the construction of houses or buildings for resale until such person, firm or corporation shall have complied with the requirements of this section.
(Ord. 24-1981. Passed 4-27-81.)

907.22 TREE PLANTING FUND.

(a) It is desirable to commence beautification of the City by going forth with a tree planting program under the control and the supervision of the City for residents of the community who desire to have trees planted on their tree lawns.

(b) For purposes of implementing and proceeding with this program, it has been determined that the City should have deposited prepaid from interested participants, the actual cost of planting and staking, including the cost of the tree and other incidental costs thereto, as may be initially or thereafter determined or ascertained. Fee for residents shall be seventy-five dollars (\$75.00).

(c) In furtherance of the tree planting program herein described, there is hereby established a Tree Planting Fund under the direction of the Finance Director for the following purposes:

- (1) To collect deposits from all resident participants of the program;
- (2) To hold such deposits in the Fund; and
- (3) To expend from such Fund such sums as may be directed for the actual cost of purchasing, staking and planting trees including necessary and incidental costs and supplies and labor thereto.

(d) The tree planting program shall be under the direction of and administered by the Parks and Recreation Director.

(e) The Parks and Recreation Director shall be authorized to set the rates charged for quantities of firewood and wood chips resulting from the tree trimming and tree removal programs. The Finance Director is authorized to deposit this in a tree preservation fund to be used to finance the tree preservation program as defined above.

(Ord. 24-1981. Passed 4-27-81.)

907.23 HEIGHT OF HEDGE FENCES.

Hedge fences adjacent to yard side lines in front of the building line and hedge fences adjacent to and parallel with the public sidewalk for a distance of fifteen feet from a private driveway, shall not exceed a height of two and one-half feet. In no event shall a hedge fence be permitted at a height that is greater than the height presently allowable for constructed fences under the Building Code and amendments thereto.

(Ord. 24-1981. Passed 4-27-81.)

907.24 HEDGES TO BE WITHIN CONFINES OF LOT.

(a) Hedges, bushes and trees on private property shall be planted in such proximity to other private property lines so as to be completely within the confines of the lot or yard in which planted at maximum growth.

(b) Property owners maintaining shrubs, hedges and bushes heretofore planted on their property shall keep same fully trimmed so that overgrowth from such shrubs, bushes and hedges does not extend on to adjoining properties, unless agreed to by such other property owner. Upon complaint of an adjoining property owner, not desiring such overgrowth on his property, the Building Commissioner or his duly authorized representative shall give a ten day notice to the property owner maintaining overgrowing shrubs, hedges and bushes, to remove such overgrowth, prior to the commencement of any prosecution hereunder.
(Ord. 24-1981. Passed 4-27-81.)

907.99 PENALTY.

Whoever violates any provision of this chapter is guilty of a misdemeanor of the first degree.

CHAPTER 908
Use of Public Rights-of-Way by Service Providers

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|--------|---|--------|--|
| 908.01 | Scope of chapter; definitions. | 908.07 | Construction permit and standards. |
| 908.02 | Consent to occupy or use the public right-of-way. | 908.08 | Recovery of costs in managing the public right-of-way. |
| 908.03 | Initial and annual registration of service providers. | 908.09 | Cable television franchise. |
| 908.04 | General public right-of-way regulations. | 908.10 | Private facilities in the public right-of-way. |
| 908.05 | Location, relocation and removal of facilities. | 908.11 | Miscellaneous provisions. |
| 908.06 | Notice of work, routine maintenance and emergency work. | 908.99 | Penalties and other remedies. |

908.01 SCOPE OF CHAPTER; DEFINITIONS.

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

- (7) Assure that the City fairly and responsibly protects the public health, safety and welfare.
- (8) Enable the City to discharge its public trust consistent with rapidly evolving federal and State regulatory policies, industry competition and technological development.

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

- (1) "Affiliate" means a Person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with another Person.
- (2) "Cable operator" means a Person providing or offering to provide Cable Service within the City.
- (3) "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.
- (4) "Cable System" means "cable system" as defined in the Cable Communications Policy Act of 1984, codified at 47 U.S.C. § 532, et seq., as amended by the Cable Television Consumer Protection and Competition Act of 1992 and the Telecommunications Act of 1996, as each might be further amended.
- (5) "Capital Improvement" means an addition made to enhance the value or extend the useful life of an existing System or Facilities, including Construction, Reconstruction, installation, rehabilitation, renovation, improvement, enlargement and extension of Facilities, but not including ordinary or Routine Maintenance.
- (6) "City" means the City of Garfield Heights, Ohio.
- (7) "City Property" means and includes all real property owned by the City, other than Public Streets and Public Easements as those terms are defined herein, and all property held in a proprietary capacity by the City, which are not subject to Public Right-of-Way consent and Permit requirements of this Chapter.
- (8) "Construct", "Constructing", "Construction", etc. means installing, repairing, replacing or removing and Public or Private Facility, regardless of the methods employed.
- (9) "Construction Permit" or "Permit" means a permit issued pursuant to Section 908.07 of this Chapter.
- (10) "Emergency" means an unforeseen occurrence or condition calling for immediate action.
- (11) "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.

- (12) “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.
- (13) “Facilities” or “Facility” means the plant, equipment and property, including but not limited to, cables, fibers, wires, pipes, conduits, ducts, pedestals, antennae, electronics, poles, pipes, mains, plant, equipment and other appurtenances located under, on or above the surface of the ground in the Public Right-of-Way of the City and used or to be used to operate a System to transmit, receive, distribute, provide or offer a Service but also including Private System.
- (14) “Lane obstruction” means the blocking or diverting of vehicular and/or pedestrian traffic from a street or sidewalk for the purpose of Constructing, Excavating, installing, repairing, maintaining, operating, replacing or removing any Facility, including:
 - A. The lifting or removing of manhole or manhole covers, and
 - B. The opening or accessing of at-grade or pole-mounted cabinets, pedestals, transformers, power supplies, amplifiers, splice enclosures, traps or other Facilities.
- (15) “Mayor” means the Mayor of the City of Garfield Heights, Ohio.
- (16) “New Service orders” means the connection from the Public Service Provider's existing Facilities on private property for the purpose of providing a new service to a customer in the City.
- (17) “Occupancy”, “Occupy” or “Use” means, with respect to the Public Right-of-Way, to place a tangible thing in the Public Right-of-Way for any purpose, including, but not limited to, Constructing, repairing, positioning, maintaining or operating lines, poles, pipes, conduits, ducts, equipment or other structures, appurtenances or Facilities necessary to operate a System for the delivery of public utility-like Services, including Service provided by a Cable operator, or other services over Private Facilities in the Public Right-of-Way.
- (18) “ODOT” means the Ohio Department of Transportation.
- (19) “Other Ways” means the highways, streets, alleys, Utility Easements or other rights-of-way within the City, but under jurisdiction and control of a governmental entity other than the City.
- (20) “Overhead Facilities” means utility poles and wires, cables and other such equipment running between and on such poles, including the underground supports and foundations for such Facilities.
- (21) “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.
- (22) “Private Facilities” means the plant, equipment and property, including but not limited to, cables, fiber optics, wires, pipes, conduits, ducts, pedestals, antennae, electronics and other appurtenances or Facilities used or to be used to operate a system to transmit, receive, distribute or provide telecommunications or other services between or among private buildings or facilities where there is no offer of Service to the public.

- (23) “Private Service Provider” means any Person who, pursuant to the consent to occupy or Use the Public Right-of-Way pursuant to Section 908.02 of this Chapter, directly or indirectly owns, controls, operates or manages Private Facilities within the City's Public Right-of-Way used or to be used for the purpose of operating a System to transmit, receive, distribute or provide telecommunications or other services between or among private buildings or facilities where there is no offer of Service to the public.
- (24) “Public Easements” 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 Right-of-Way” means the surface of, and the space within, through, on, across, above or below, any Public Street, public road, public highway, public freeway, public lane, public path, public alley, public court, public sidewalk, public boulevard, public parkway, public drive, Public Easement and any other land dedicated or otherwise designated for a compatible public use, which is owned or controlled by the City but excludes a private easement.
- (26) “Public Service Provider” means any Person that, pursuant to the consent to occupy or Use the Public Right-of-Way pursuant to Section 908.02 of this Chapter, directly or indirectly owns, controls, operates or manages Facilities within the City's Public Right-of-Way, used or to be used for the purpose of operating a System offering Service to the public within the City or outside of the City's boundaries.
- (27) “Public Street” means the paved and unpaved 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.
- (28) “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 Service in the State of Ohio.
- (29) “Reconstruct”, “Reconstruction”, etc. means substantial physical change to or Capital Improvement of all or a portion of an existing System or Facilities including a change in location, or additional locations, of Facilities along the same Right-of-Way involving Construction in Public Streets, Utility Easements, or Public Right-of-Way.
- (30) “Routine Maintenance” means repair, upkeep, replacement or restoration of existing Facilities located in the Public Right-of-Way that requires no more than three (3) working days to complete, is not an Emergency and does not include Excavation of the Public Right-of-Way.
- (31) “Service” means the offering of water, sewer, electric, gas, telephone, telecommunications, cable television, information or other utility-like service for a fee directly to the public, or to such classes of users as to be effectively available to the public regardless of the Facilities used.
- (32) “Service Providers” means any Public Service Provider and/or Private Service Provider.

- (33) “State” means the State of Ohio.
- (34) “Surplus Space” means that portion of the Usable Space on a utility pole which has the necessary clearance from other Public or Private Service Providers using the pole, as required by the orders and regulations of PUCo and other applicable State and local orders and regulations, to allow its use by an additional Public or Private Service Provider for a pole attachment.
- (35) “System” means a network of Facilities for the transmission and/or distribution of a Service.
- (36) “Trenchless Technology” means the use of directional boring, horizontal drilling and micro-tunneling and other techniques in the Construction of underground portions of Facilities that result in the least amount of disruption and damage to the Public Right-of-Way as possible.
- (37) “Underground Facilities” means that portion of a System located under the surface of the ground, excluding the underground foundations or supports for Overhead Facilities.
- (38) “Usable Space” means the total distance between the top of a utility pole and the lowest possible attachment point that provides the minimum allowable vertical clearance as specified in the orders and regulations of PUCO.
- (39) “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.
(Ord. 43-2006. Passed 8-14-06.)

908.02 CONSENT TO OCCUPY OR USE THE PUBLIC RIGHT-OF-WAY.

(a) Consent Required to Occupy Public Right-of-Way. No Person shall occupy or Use the Public Right-of-Way without obtaining prior consent from the City to do so.

(b) Initial Consent Presumed.

- (1) A Person with existing Facilities in the Public Right-of-Way on the effective date of this Chapter, and who either:
 - A. Is subject to jurisdiction by PUCO;
 - B. Has a valid franchise agreement with the City to provide Cable Services or other Services in the City, and/or
 - C. Is any other Person whose existing Facilities lawfully occupy the Public Right-of-Way on the effective date of this Chapter shall be presumed to have initial consent of the City for its existing Facilities to occupy or Use the Public Right-of-Way.
- (2) Initial presumed consent for Occupancy or Use of the Public Right-of-Way is limited to the Service or Private Service Provider's existing facilities.
- (3) A Person with initial presumed consent is not relieved from compliance with this Chapter with respect to the ongoing occupancy or Use of the Public Right-of-Way including, but not limited to, the Insurance, Indemnity, Performance Bond and Registration requirements pursuant to Sections 908.02(e), (f) and (g) and 908.03(a) and (b) of this Chapter.

- (4) Any Person with presumed initial consent to occupy or Use the Public Right-of Way for existing Facilities shall comply with the Initial Registration requirements pursuant to Sections 908.02(c)(2) and 908.03(a) within ninety (90) days of the effective date of this Chapter.
- (c) Application for Consent to Occupy or Use Public Right-of-Way.
- (1) The following shall apply to the City for consent to occupy or Use the Public Right-of-Way on a form provided by the Mayor; any Person who:
- A. Does not currently have an existing System or Facilities in the City's Public Right-of-Way and desires to Construct a System, Facilities or Private Facilities in the Public Right-of-Way;
 - B. Has an existing System, Facilities or Private Facilities in the Public Right-of-Way on the effective date of this Chapter and does not have presumed initial consent under Section 908.02(b)(1) above, or
 - C. Has initial presumed consent or City consent to Occupy or Use the Public Right-of-Way for an existing System, Facilities or Private Facilities, 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 application for Consent to Occupy or Use the Public Right-of-Way and/or initial registration pursuant to Section 908.03(a) for Service Providers with initial presumed consent to occupy or Use the Public Right-of-Way shall include the following information with respect to the applicant's or Service Provider's planned or existing System and/or Facilities in the Public Right-of-Way as well as plans for any planned Capital Improvements or Reconstruction for the following twelve (12) months:
- A. The identity, legal status and federal tax identification number of the applicant, including all Affiliates of the applicant or Service Provider that will Use or Occupy the Public Right-of-Way or are in any way responsible for the Services provided over the System in the Public Right-of-Way.
 - B. The name, address and telephone number of the local officer, agent or employee responsible for the accuracy of the application or initial 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 applicant or Service Provider over its System or Facilities. Where Services are or will be provided by a nonaffiliated provider, the applicant or Service Provider shall identify that provider.
 - D. A description of the type of transmission medium used, or to be used, by the applicant or Service Provider to operate a System.

- E. A description of the existing or proposed Facilities in the City's Public Right-of-Way, all in sufficient detail to identify:
 - 1. The location and route of the applicant's or Service Provider's Facilities or proposed Facilities.
 - 2. The location of all known existing overhead and/or Underground Facilities in the Public Right-of-Way along the route or proposed route of the applicant's or Service Provider's Facilities or proposed Facilities that is sufficient to show the impact of the applicant's Facilities on other existing Facilities.
 - 3. The location of all known overhead and underground Utility Easements.
 - F. A preliminary Construction schedule and completion date for all Capital Improvements planned for the twelve (12) month period following the date of application.
 - G. If the applicant or Service Provider is providing Services in the City:
 - 1. A description of the access and line extension policies or a copy of their PUCO tariff.
 - 2. The area or areas of the City in which the applicant or Service Provider is currently providing Service and a schedule for build-out of the entire area addressed by the Permit, if applicable.
 - H. Evidence that the applicant or Service Provider has complied, or will comply, with indemnification, Insurance, Performance Bond and Construction Bond requirements of this Chapter.
 - I. Information sufficient to determine that the applicant or Service Provider has received any certificate of authority required by the PUCO to operate a System and provide Services in the City.
 - J. Such other and further information as may reasonably be requested by the Mayor.
- (3) The City shall grant or deny, in writing, a Person's application for consent to Occupy or Use the Public Right-of-Way within sixty (60) days of the date on which the Person filed the application with the City.
- A. The City may withhold, deny or delay its consent to a Person's application to Occupy or Use the Public Right-of-Way based on the Person's failure to possess the financial, technical and managerial resources necessary to protect the public health, safety and welfare, or for other reasons based in the health, safety and welfare of the City and in accordance with Ohio law.
 - B. If the City denies a Person's application to Occupy or Use the Public Right-of-Way, the City shall provide its reasons in writing for denying the application, and shall provide any information that the Person may reasonably request necessary for the Person to obtain the City's consent to Occupy or Use the Public Right-of-Way.

- (4) The City's grant of consent for a Person to Occupy or Use the Public Right-of-Way shall be in the form of a Right-of-Way Occupancy Certificate which shall set forth the specific terms of the City's consent for such Person to Occupy or Use the Public Right-of-Way.
- (5) Each Person submitting an application for Consent to Occupy or Use the Public Right-of-Way shall pay a fee as determined by the Mayor to reimburse the City for its administrative costs related to the application as provided in Section 908.08.

(d) Application to Existing Franchise Ordinances and Agreements. For the purposes of this Chapter, a franchise ordinance or agreement shall be deemed consent authorizing the Franchisee's occupancy or Use of the Public Right-of-Way to the extent described in the franchise agreement or ordinance. The Franchisee's use of the Public Right-of-Way beyond that authorized by the franchise agreement or ordinance shall require additional consent for such additional occupancy or Use. Franchisees shall comply with the Registration provisions and Construction Standards to the extent that the provisions of this Chapter do not directly conflict with the franchise agreement or ordinance. If there is a direct conflict between the franchise agreement or ordinance and the provisions of this Chapter, the franchise agreement or ordinance shall control.

(e) Service Provider Insurance. As a condition of the consent to Occupy or Use the Public Right-of-Way, a Service Provider must secure and maintain, at a minimum, the following liability insurance policies insuring both the Service Provider and the City, and its elected and appointed officers, officials, agents, employees and representatives as additional insureds:

- (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 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 accident.
- (3) Worker's 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 throughout the period of time during which the Service Provider is occupying or Using the Public Right-of-Way, or is engaged in the removal of its Facilities. Each such insurance policy shall contain the following endorsement:

"It is hereby understood and agreed that this policy may not be canceled nor the intention not to renew be stated until ninety (90) days after receipt by the City, by registered mail, of a written notice addressed to the Mayor of such intent to cancel or not to renew."

- (6) Within sixty (60) days after receipt by the City of said notice, and in no event later than thirty (30) days prior to said cancellation, the Service Provider shall obtain and furnish to the City replacement insurance policies meeting the requirements of this Section.
- (7) Upon written application to, and written approval by, the Mayor, a Service Provider may be self-insured to provide all of the same coverages as listed in this Section; except that all coverages for Workers' Compensation shall be in compliance with State law. No approval for the self-insurance shall be given until the Mayor had made a complete review of the Service Provider's financial ability to provide such self-insurance. As part of the review process, the Mayor may require, and the self-insurance applicant shall provide, any and all financial documents necessary to make a valid determination of the applicant's ability to meet the needs of this Chapter.

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

(g) Performance Bond or Security Fund. As a condition of consent to occupy or Use the Public Right-of-Way, and to ensure the full and complete compliance with, and performance under, this Chapter, including costs, expenses, damages or loss the City pays or incurs because of any failure attributable to the Service Provider to comply with the codes, ordinances, rules, regulations or permits of the City, each Service Provider shall, in the amount of fifty thousand dollars (\$50,000) or such lesser amount as the Mayor may determine to be necessary (i) establish a permanent security fund with the City by depositing the required amount in cash, an unconditional letter of credit, or other instrument acceptable to the City, or (ii) furnish and file with the City a Performance Bond running to the City in the required amount from a company licensed to do business in the State of Ohio; which performance bond or security fund shall be maintained at the sole expense of the Service Provider so long as any of the Service Provider's Facilities are located within the Public Right-of-Way of the City.

- (1) Before claims are made against the Performance Bond or any sums are withdrawn from the security fund, the City shall give written notice to the Service Provider:
 - A. Describing the act, default or failure to be remedied, or the damages, costs or expenses which the City has incurred by reason of the Service Provider's act or default;

- B. Providing a reasonable opportunity for the Service Provider to first remedy the existing or ongoing default or failure, if applicable;
 - C. 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 or withdraws the amount from the security fund, if applicable;
 - D. That the Service Provider will be given an opportunity to review the act, default or failure described in the notice to the Mayor.
- (2) Service Providers shall maintain the full value of the Performance Bond regardless of claims against the Performance Bond made by, or paid to, the City; or shall replenish the security fund within fourteen (14) days after written notice from the City that there is deficiency in the amount of the fund, whichever is applicable.
(Ord. 43-2006. Passed 8-14-06.)

908.03 INITIAL AND ANNUAL REGISTRATION OF SERVICE PROVIDERS.

(a) Initial Registration. Any Service Provider with initial presumed consent to Occupy or Use the Public Right-of-Way as provided in Section 908.02(b) 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 Mayor, which shall include the information in Section 908.02(c)(2) of this Chapter.

(b) Annual Registration Required. All Service Providers with consent to occupy or Use the Public Right-of-Way as provided in Section 908.02 shall register with the City each calendar year between January 1 and January 31 on a form provided by the Mayor. Service Providers who file an Initial Registration after September 1, 2006 but before January 1, 2007 need not file an Annual Registration for calendar year 2007.

(c) Purpose of Registration. The purpose of registration under this Section 908.03 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 City's 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;
- (4) Assist the City in monitoring compliance with local, State and federal laws.

(d) Information Required for Registration. Registration forms will be provided by the City and shall require the following information:

- (1) Any material changes to the information the Service Provider provided the City in the application for consent to occupy or Use the Public Right-of-Way, including, but not limited to:
 - A. The identity, legal status, and federal tax identification number of the Service Provider, including any Affiliates.
 - B. The name, address and telephone number of the local officer, agent or employee responsible for accuracy of the Service Provider's registration statement and available at all reasonable times to be notified in case of emergency.
- (2) Evidence that the Service Provider is in compliance with the Insurance, Indemnity and Performance Bond requirements pursuant to Sections 908.02(e), (f) and (g) of this Chapter.
- (3) Information regarding, and a preliminary Construction schedule and completion date for, any Capital Improvements the Service Provider plans in the City's Public Right-of-Way for twelve (12) months following the date of registration, including:
 - A. A description clearly showing the location of all the proposed Capital Improvements, including horizontal and vertical information; Facility type, size, depth, and capacity; or such other information the Mayor determines necessary. In no event shall the description of the proposed Capital Improvement be less than by City quadrant and/or street name and Facility type. The service provider shall update all required information as soon as it becomes available.
 - B. If the Service Provider is Constructing a new System or Reconstructing all or a portion of its existing System, general description of the proposed System and the Facilities utilized to provide the Service that the Service Provider intends to offer or provide over the System within the City. Where a Service will be provided by a nonaffiliated provider, the Service Provider shall identify the provider.
 - C. Information sufficient to determine that the Service Provider has applied for and received any certificate of authority required by PUCO to provide Services or operate a System within the City.
 - D. Information sufficient to determine that the Service Provider has applied for and received any construction permit, operating license, certification, or other approvals required by the Federal Communications Commission to provide telecommunications or Cable Services or a System in the City.
- (4) Such other information as the Mayor may reasonably require.

(e) Facility 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 Facilities in the City's Rights-of-Way, upon ten (10) days notice to the Service Provider.

(f) Registration to be Kept Current. In addition to the annual registration requirement, each Service Provider shall keep all required registration information current at all times and shall provide the City with notice of changes to the required information within fifteen (15) days following the date on which the Service Provider has notice of such change.

(g) Registration Fee. Each Service Provider, except as provided in Section 908.09, shall pay an annual registration fee as determined by the Mayor to reimburse the City for its administrative costs related to maintaining annual registration and as provided in Section 908.08. (Ord. 43-2006. Passed 8-14-06.)

908.04 GENERAL PUBLIC RIGHT-OF-WAY REGULATIONS.

(a) Public Right-of-Way Route. Consent granted to a Service Provider to Occupy or Use the Public Right-of-Way under Section 908.02 shall be limited to a grant to occupy or Use the specific Public Right-of-Way and defined portions thereof including the specific Facilities and location along the Public Right-of-Way.

(b) Nonexclusive Consent to Occupy the Public Right-of-Way. No consent granted under Section 908.02 shall confer any exclusive right, privilege, license or franchise to Occupy or Use the Public Right-of-Way to operate a System for delivery of Services or any other purposes.

(c) Rights Permitted. No consent granted under Section 908.02 shall convey any right, title or interest in the Public Right-of-Way, but shall be deemed a consent only to Occupy or Use the Public Right-of-Way for the limited purposes granted by the consent. Further, no consent shall be construed as any warranty of title.

(d) Nondiscrimination. A Public Service Provider providing Service to the public in the City shall make its Services available to any customer within the designated service area who shall request such Service, without discrimination as to the terms, conditions, rates or charges for the Public Service Provider's Services; provided, however, that nothing in this Section 908.04 shall prohibit a Public Service Provider from making any reasonable classifications among differently-situated customers.

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

(f) Safety Procedures. A Service Provider or other Person acting on its behalf shall use suitable barricades, flags, flagmen, lights, flares and other measures as necessary and in accordance with applicable State and local requirements 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 such work in or affecting such Public Right-of-Way or property.

(g) Interference with the Public Rights-of-Way. No Service Provider may locate or maintain its Facilities so as to unreasonably interfere with the use of the Public Right-of-Way by the City, by the general public or by other Persons authorized to use or be present in or upon the Public Right-of-Way. All such Facilities shall be moved by the Service Provider, temporarily or permanently, as determined by the Mayor.

(h) 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.

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

- (1) When a Service Provider, or any Person acting on its behalf, does any work in or affecting any Public Right-of-Way, other Ways or City Property, it shall, after the work is completed and at its own expense, promptly remove any obstructions therefrom and restore such ways or property, within ten (10) to thirty (30) days at the Mayor's discretion, to as good 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 Mayor. Such temporary restoration shall be at the Service Provider's sole expense and the Service Provider shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration.

(j) Duty to Provide Information.

- (1) Within ten (10) days of a written request from the Mayor each Service Provider shall furnish the City with documentation sufficient to show that the Service Provider has complied with all requirements of this Chapter.
- (2) In addition, within ten (10) days of a written request from the Mayor, 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.

(k) Leased Capacity. A Service Provider shall have the right, without prior City approval, to lease capacity or bandwidth to an unaffiliated Service Provider, provided:

- (1) The Service Provider shall notify the City of the lease agreement within thirty (30) days of such lease agreement.
- (2) The lessee has complied, to the extent applicable, with the requirements of this Chapter.

(l) Assignments or Transfers of Consent. Consent 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; and
- (2) The transferee shall fully comply with this Chapter within sixty (60) days of the transfer, including, but not limited to:

- A. All information required by the application for consent to Occupy or Use the Public Right-of-Way pursuant to Section 908.02, and/or Registration required by Section 908.03 of this Chapter; and
- B. Any other information reasonably required by the Mayor.

(m) Transaction Affecting Control of Consent. Any transaction that singularly or collectively results 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 thereof, shall be considered an assignment or transfer pursuant to Section 908.04(1) hereof. Transactions between Affiliated entities are not exempt from Section 908.04(1).

(n) Revocation of Consent. Consent granted by the City to occupy or Use the Public Right-of-Way of the City may be revoked for any one of the following reasons:

- (1) Construction, Reconstruction, installation, location, operation or Excavation at an unauthorized location.
- (2) Construction, Reconstruction, installation, location, operation or Excavation in violation of City safety and/or Construction requirements.
- (3) Material misrepresentation or lack of candor by or on behalf of a Service Provider in any Permit 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 this Service Provider.
- (7) Violation of material provisions of this Chapter.

(o) Notice and Duty to Cure. In the event that the Mayor believes that grounds exist for revocation of consent to occupy or Use the Public Right-of-Way or Construction Permit, he shall give the Service Provider written notice of the apparent violation or noncompliance, providing a short and concise statement of the nature and general facts of the violation or noncompliance, and providing the Service Provider a reasonable period of time not exceeding thirty (30) days to furnish evidence:

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

(p) It is within the Mayor's reasonable discretion to waive a portion or portions of this Chapter where such requirements, in the Mayor's judgment, are not necessary or appropriate to protect the City's interests and the purposes and intent of this Chapter.
(Ord. 43-2006. Passed 8-14-06.)

908.05 LOCATION, RELOCATION AND REMOVAL OF FACILITIES.

(a) Location of Facilities. All Facilities shall be Constructed, Reconstructed, installed and located in accordance with the following terms and conditions;

- (1) Facilities shall be installed within an existing compatible underground duct or conduit whenever Excess Capacity exists within such Facility.
- (2) A Service Provider with permission to install Overhead Facilities shall install its Facilities on pole attachments to existing utility poles only, and then only if Surplus Space is available.
- (3) Whenever the existing electric, cable, telecommunications, and other similar Facilities are located underground in a Public Right-of-Way, a Service Provider with permission to occupy the same Public Right-of-Way with the electric, cable, telecommunications or other similar Facilities, must also locate its Facilities underground.
- (4) Except for overhead Facilities provided herein, no Facilities shall be located above ground in a Public Right-of-Way without the express written permission of the Mayor.
- (5) The City reserves the right to require a Service Provider to provide Excess Capacity in the Public Right-of-Way at the time of Construction, Reconstruction, installation, location or relocation of Facilities.

(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, wherever 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 such construction is in an areas in which Service Providers would likely construct Facilities in the future, the City may require 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.

(c) City Owned Conduit. If the City owns or leases conduit in the path of a Service Provider's proposed Facilities, 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 shall be required to occupy the conduit owned or leased by the City in order to reduce the necessity to Excavate the Public Right-of-Way. The Service Provider shall pay to the City a fee for such occupancy which shall be the cost the Service Provider would have expended to construct its own conduit, as certified by the Service Provider's engineer and approved by the City Engineer. 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, a Service Provider shall, at its own expense, temporarily or permanently remove, relocate, change or alter the position of any Facilities in the Public Right-of-Way whenever the City shall have determined that such removal, relocation, change or alteration is reasonably necessary for:

- (1) The Construction, Reconstruction, repair, maintenance or installation of any City or other public improvement in or upon the Public Right-of-Way.
- (2) The operations of the City or other governmental entity in or upon the Public Right-of-Way.

(e) Removal of Unauthorized Facilities. Within thirty (30) days following written notice from the City, any Service Provider or other Person that owns, controls or maintains any unauthorized 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 the following circumstances:

- (1) Upon revocation of the Service Provider's consent to Occupy or Use the Public Right-of-Way;
- (2) If the System or Facility was Constructed, Reconstructed, installed, operated, located or maintained without the consent to do so, except as otherwise provided by this Chapter;
- (3) Upon 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;
- (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, without prior issuance of a required Construction Permit, except as otherwise provided by this Chapter;
- (5) 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 permitted pursuant to the City's consent to Occupy or Use the Public Right-of-Way or Construction Permit;
- (6) If the Service Provider fails to comply with the Registration requirements of Section 908.03 of this Chapter.

(f) Emergency Removal or Relocation of Facilities. 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. 43-2006. Passed 8-14-06.)

908.06 NOTICE OF WORK, ROUTINE MAINTENANCE AND EMERGENCY WORK.

(a) Notice of Work. Except in case of Emergency, as provided in Section 908.06(c), or for Routine Maintenance as provided in Section 908.06(b), no Service Provider, or any Person acting on the Service Provider's behalf, shall commence any work in the Public Right-of-Way of the City or other Ways without twenty-four (24) hours advance notice to the City, obtaining a Construction Permit pursuant to Section 908.07, if required, and obtaining consent to occupy or Use the Public Right-of-Way pursuant to Section 908.02, if required.

(b) Routine Maintenance and New Service Orders.

- (1) A Service Provider need not obtain a Construction Permit or notify the City prior to or after commencing any Routine Maintenance or New Service orders that do not include the Construction in, or Excavation or Lane obstruction of, a Public Right-of-Way or closing of a Public Street.
- (2) For Routine Maintenance and New Service orders that require the Service Provider to cause a Lane obstruction in a Public Street for more than four (4) hours, the Service Provider shall provide the City with forty-eight (48) hours advance notice prior to commencing the Routine Maintenance or New Service order, and shall submit a drawing showing the planned traffic maintenance and indicating how the Service Provider will meet all requirements of ODOT's Manual of Traffic Control Devices or other applicable ODOT regulations.

(c) Emergency Work. In the event of the need for any unexpected repair or Emergency work, a Service Provider may commence such Emergency response work as required under the circumstances, provided that for Emergency work that requires Excavation of the Public Right-of-Way or Lane obstruction or closing of a Public Street, the Service Provider shall notify the City as promptly as possible before commencing such Emergency work, or as soon as possible thereafter if advance notice is not practicable. When notice is required, the Service Provider shall notify the Mayor.

(Ord. 43-2006. Passed 8-14-06.)

908.07 CONSTRUCTION PERMIT AND STANDARDS.

(a) Construction Permit.

- (1) No Construction Permit is required for Routine Maintenance and New Service orders that do not include Excavation in a Public Street.
- (2) No Person shall commence or continue with the Construction, Reconstruction, installation, maintenance or repair of Facilities or Excavation in the Public Right-of-Way without obtaining a Construction Permit from the Service Director as provided in this Section 908.07, including but not limited to the following circumstances:
 - A. The Construction of a new System;
 - B. The extension of a Service Provider's System in the Public Right-of-Way in an area of the City not currently serviced by that Service Provider. This does not include New Service orders unless a Public Street will be Excavated;
 - C. The relocation or replacement of more than two hundred (200) lineal feet of a Service Provider's existing System or Facilities in the Public Right-of-Way;

- D. Any Reconstruction or replacement of Facilities requiring more than one (1) working day to complete work in the Public Right-of-Way;
 - E. Any Construction, Reconstruction, installation, maintenance, repair or New Service orders in the Public Right-of-Way requiring more than one (1) working day to complete; or
 - F. Any Construction, Reconstruction, installation, maintenance, repair or New Service orders requiring the Excavation of a Public Street.
- (3) No Construction Permit shall be issued for the Construction, Reconstruction, installation, maintenance or repair of Facilities, or Excavation, in the Public Right-of-Way unless the Service Provider has obtained consent from, and filed a current registration statement with, the City pursuant to Section 908.02 and Section 908.03, respectively, of this Chapter.
 - (4) The Mayor may waive or modify the construction permit requirements for Service Providers with Underground facilities whose routine maintenance of Facilities requires Excavation.

(b) Construction Permit Applications. Applications for permits to Construct, Reconstruct or install Facilities, or Excavate, shall be submitted upon forms provided by the City, provide the following information, if applicable, and be accompanied by drawings, plans and specifications in sufficient detail to demonstrate:

- (1) A preliminary construction schedule.
- (2) That the Facilities will be Constructed, Reconstructed, installed, maintained or repaired, or the Public Right-of-Way Excavated, in accordance with all applicable codes, rules and regulations.
- (3) If the applicant is proposing to Construct, Reconstruct, install, maintain, repair or locate Facilities above ground:
 - A. Evidence that Surplus Space is available for locating its Facilities on existing utility poles along the proposed route;
 - B. The location and route of all Facilities to be located or installed on existing utility poles.
- (4) If the applicant is proposing an underground installation of new Facilities in existing ducts, pipes or conduits in the Public Right-of-Way, information in sufficient detail to identify:
 - A. The Excess Capacity currently available in such ducts or conduits before the installation of the applicant's Facilities.
 - B. The Excess Capacity, if any, that will exist in such ducts or conduits after installation of the applicant's Facilities.
- (5) If the applicant is proposing an underground installation of New Facilities in new ducts or conduits to be Constructed in the Public Right-of-Way:
 - A. The location and depth proposed for the new ducts or conduits; and
 - B. The Excess Capacity that will exist in such ducts or conduits after installation of the applicant's Facilities.

- (6) The location and route of all Facilities to be located under the surface of the ground, including the line and grade proposed for the burial at all points along the route which are in the Public Right-of-Way. Included with the installation shall be magnetic and florescent tape to be placed at a minimum of one (1) foot to a maximum of two (2) feet above the entire Facility as installed for the purpose of locating the Facility during future Construction activities or other such location device as approved by the Mayor. The tape shall be marked with the type of Facility installed as approved by the City.
- (7) The location of all known existing underground utilities, conduits, ducts, pipes, mains and installations that are in the Public Right-of-Way along the underground route proposed by the applicant.
- (8) The location(s), if any, for interconnection with the Facilities of other Service Providers.
- (9) The construction methods to be employed for protection of existing structures, fixtures and Facilities in or adjacent to the Public Right-of-Way.
- (10) The structures, improvements, Facilities and obstructions, if any, that the applicant proposes to temporarily or permanently remove or relocate.
- (11) The impact of Construction, Reconstruction, installation, maintenance or repair of Facilities on trees in or adjacent to the Public Right-of-Way along the route proposed by the applicant, together with a landscape plan for protecting, trimming, removing, replacing and restoring any trees or areas disturbed during Construction.
- (12) Information to establish that the applicant has obtained all other governmental approvals and permits to Construct and operate the Facilities and to offer or provide the Services.

(c) Construction Codes. Facilities shall be Constructed, Reconstructed, installed, repaired operated, Excavated and maintained in accordance with all applicable federal, State, and local codes, rules, regulations and technical codes including, but not limited to, the National Electrical Safety Code.

(d) Traffic Control Plan. All Permit applications which involve a Lane obstruction or work on, in, under, across or along any Public Right-of-Way shall be accompanied by a traffic control plan demonstrating the protective measures and devices that will be employed, consistent with the ODOT's Uniform Manual of Traffic Control Devices and other applicable ODOT regulations, to prevent injury or damage to Persons or property and to minimize disruptions to efficient pedestrian and vehicular traffic. The Mayor may require the Service Provider to use and employ the City Police Force for Traffic Control.

(e) Issuance of Permit. Within ten (10) business days after submission of all plans and documents required of the applicant, the Mayor, if satisfied that the applications, plans and documents comply with all requirements of this Chapter, shall issue a Construction Permit authorizing the Construction, Reconstruction, installation, maintenance or repair of the Facilities, or Excavation in the Public Right-of-Way, subject to such further conditions, restrictions or regulations affecting the time, place and manner of performing the work as the Mayor may deem necessary or appropriate. Such ten (10) business day period shall begin after all submissions are deemed by the Mayor to be in accordance with the requirements of, including information submitted in the form required by, this Chapter.

(f) Coordination of Construction Activities. All Service Providers are required to cooperate with the City, including its Service and Safety forces, and with each other. All Construction, Reconstruction, installation, Excavation, activities and schedules shall be coordinated, as ordered by the Mayor, to minimize public inconvenience, disruption or damages.

(g) Modification of Construction Schedule. The Service Provider may modify the construction schedule at any time provided that forty-eight (48) hours advance notice is given to the Mayor. The Service Provider shall further notify the Mayor and the Ohio Utility Protection Service (OUPS) not less than forty-eight (48) hours in advance of any Excavation or work in the Public Right-of-Way.

(h) Lease Disruptive Technology. To the extent reasonably possible, all Facilities shall be Constructed, Reconstructed, installed, maintained or repaired in the manner resulting in the least amount of damage and disruption of the Public Right-of-Way. Unless otherwise authorized by the Mayor for good cause, Service Providers Constructing, Reconstructing, installing, maintaining or repairing Underground Facilities shall utilize Trenchless Technology, including, but not limited to, horizontal drilling, directional boring, and micro-tunneling, if technically and/or technologically feasible.

(i) Compliance with Permit. All Construction practices and activities shall be in accordance with the Construction Permit and approved final plans and specifications for the Facilities. The Mayor shall be provided access to the work and such further information as he or she may require to ensure compliance with such requirements. Field changes may be approved by the Mayor if such changes are determined to be necessary due to site conditions or other changed circumstances.

(j) Display of Permit. The Service Provider shall maintain a copy of the Construction Permit and approved plans at the construction site, which shall be displayed and made available for inspection by the Mayor at all times when construction work is occurring.

(k) Any Service Provider planning a Capital Improvement may submit a joint application for:

- (1) Consent to occupy or Use the Public Right-of-Way pursuant to Section 908.02 and
- (2) A Construction Permit.

The City is not required to take action on the Construction Permit until ten (10) days after granting consent to Occupy or Use the Public Right-of-Way.

(l) Noncomplying Work. Upon order of the Mayor, all work that does not comply with the Permit, the approved plans and specifications for the work, or the requirements of this Chapter, shall immediately cease and shall be immediately removed and/or corrected by the Service Provider.

(m) Record Drawings. Within sixty (60) days after completion of Construction, the Service Provider shall furnish the City with two (2) complete sets of plans, drawn to scale and certified to the City as accurately depicting the location of all Facilities Constructed pursuant to the Permit. At such time, the Service Provider shall submit the Record Drawings in a digital format compatible with the City's current software.

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

(o) Landscape Restoration.

- (1) All trees, landscaping and grounds removed, damaged or disturbed as a result of the Construction, Reconstruction, installation, maintenance, repair or replacement of Facilities must be replaced or restored as nearly as may be practicable, to the condition existing prior to performance of work, except to the extent that tree trimming is necessary to prevent the interference of tree branches with overhead Facilities.
- (2) All restoration work within the Public Right-of-Way shall be done in accordance with landscape approved by the Mayor.

(p) Construction and Completion Bond. Prior to issuance of a Construction Permit the Service Provider shall provide the City with a Construction Bond written by a corporate surety acceptable to the City equal to at least one hundred percent (100%) of the estimated cost of Constructing, Reconstructing, installing or repairing the Service Provider's Facilities or Excavation in the Public Right-of-Way of the City, or such lesser amount as the Mayor may determine to adequately protect the City's interest. The Construction Bond shall be deposited with the City prior to commencing Construction.

- (1) The Construction Bond shall remain in force until eighteen (18) months after substantial completion of work, as determined by the Mayor, including restoration of the Public Right-of-Way and other property affected by the Construction.
- (2) The Construction Bond shall guarantee, to the satisfaction of the City:
 - A. Timely completion of Construction;
 - B. Construction in compliance with applicable plans, permits, technical codes and standards;
 - C. Proper location of the Facilities as specified by the City;
 - D. Restoration of the Public Right-of-Way and other property affected by the Construction;
 - E. The submission of Record Drawings, in both written and digital format, after completion of the work as required by this Chapter; and
 - F. Timely payment and satisfaction of all claims, demands or liens for labor, material or services provided in connection with the work.

- (3) In lieu of filing a Construction Bond with the City for each Construction Permit, a Service Provider with the approval of the Mayor may file an Annual Construction Bond (or Annual Bond) in the form described above in an amount that the Mayor may determine will adequately protect the City's interests as described above.

(q) 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 an compliance with all provisions of this Section. (Ord. 43-2006. Passed 8-14-06.)

908.08 RECOVERY OF COSTS IN MANAGING THE PUBLIC RIGHT-OF-WAY.

(a) Purpose. It is the purpose of this Section 908.08 to provide for the recovery of all direct and indirect costs and expenses actually incurred by the City and associated with a Public or Private Service Provider's occupancy or Use of the Public Right-of-Way and related to the enforcement and administration of this Chapter. All fees related to the Occupancy or Use of the Public Right-of-Way shall be assessed in a manner to be determined by the Mayor.

(b) Regulatory Fees and Compensation Not a Tax. The regulatory fees and costs provided for in this Chapter are separate from, and additional to, any and all federal, State, local and City taxes as may be levied, imposed or due from a Service Provider, its customers or subscribers, or an account of the lease, sale, delivery or transmission of Services. (Ord. 43-2006. Passed 8-14-06.)

908.09 CABLE TELEVISION FRANCHISE.

(a) Cable Television Franchise. Any Person who desires to Construct, Reconstruct, install, operate, maintain or locate Facilities in any Public Right-of-Way of the City for the purpose of providing Cable Service to Persons in the City shall first obtain a non-exclusive franchise to provide Cable Services from the City.

(b) Compliance with Chapter Required. All Cable operators providing Cable Service within the City pursuant to a valid franchise shall comply with the registration and Construction Permit requirements of this Chapter.

(c) Cable Television Franchise Expiration.

- (1) In the event a franchise expires by its terms, the franchise shall be automatically renewed on a month-to-month basis until the parties enter into a renewal franchise or until terminated by either party in accordance with law.
- (2) At the expiration of the franchise or upon revocation of the franchise, the City may, in lawful manner and upon the payment of fair market value, determined on the basis of the Cable System as valued as a going concern exclusive of any value attributable to the franchise itself, lawfully obtain, purchase, condemn, acquire, takeover and hold the Cable System.

(d) Cable System Capacity. No Cable operator shall provide Service other than Cable Service without obtaining consent from the City, pursuant to Section 908.02 of this Chapter, which consent shall not be unreasonably withheld.

(e) Credit for Payment of Franchise Fee. Any Cable operator paying a franchise fee or providing free service or other non-monetary compensation to the City pursuant to a franchise agreement shall be entitled to a credit, offset or deduction against any reimbursement of City costs assessed under this Chapter for all such franchise fees and the retail value of the free service or other non-monetary compensation.
(Ord. 43-2006. Passed 8-14-06.)

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

Private Facilities. Persons who wish to use the Public Right-of-Way of the City for Private Facilities shall obtain a consent from the City pursuant to Section 908.02, register pursuant to Section 908.03, obtain a Construction Permit (if applicable) pursuant to Section 908.07 and comply with all provisions of this Chapter.
(Ord. 43-2006. Passed 8-14-06.)

908.11 MISCELLANEOUS PROVISIONS.

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

(b) Exemption for City-Owned or Operated Facilities. Nothing in this Chapter shall be construed to apply the provisions of this Chapter to Facilities owned or operated by the City or any of its operations.

(c) Application to Existing Code Provisions. In the event of a direct conflict between any provision of this Chapter and any other section of the City's Codified Ordinances, the provisions of this Chapter shall apply.

(d) Severability. If any section, subsection, sentence, clause, phrase, or other portion of this Chapter, or its application to any Person, is, for any reason, declared invalid, in whole or in part by any court or agency of competent jurisdiction, said decision shall not affect the validity of the remaining portions hereof.
(Ord. 43-2006. Passed 8-14-06.)

908.99 PENALTIES AND OTHER REMEDIES.

(a) Criminal Penalties. 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 fourth (4th) degree. A separate and distinct offense shall be deemed committed each day on which a violation occurs or continues.

(b) Civil Violations and Forfeiture.

(1) In lieu of the criminal penalties set forth above, the Mayor may make an initial finding of a civil violation by the Service Provider for violating, disobeying, omitting, neglecting or refusing to comply with any of the provisions of this Chapter.

- (2) The Civil Forfeiture shall be in an amount payable to the City of not less than \$100.00 nor more than \$500.00 for each offense. A separate and distinct offense shall be deemed committed each day on which a violation occurs or continues.
- (3) An action for civil forfeiture shall be commenced by providing the Service Provider with written notice describing in reasonable detail the Service Provider's alleged violation of one or more provisions of this Chapter and the amount of the penalty that will be assessed against it.
- (4) The Service Provider shall have fifteen (15) days subsequent to receipt of the notice of violation in which to correct the violation before the City may assess penalties against the Service Provider. The time in which to cure the violation may be extended by the City of additional time is required to correct the violation; provided that the Service Provider commences corrective action within seven (7) days of the notice of violation and proceeds with reasonable diligence.
- (5) The Service Provider may dispute the alleged violation by providing the City with written notice within five (5) days of receipt of the notice of violation, setting forth in reasonable detail the reasons for its dispute. The City shall set a date for hearing of the alleged violation no sooner than thirty (30) days and no later than (60) days from receipt of the notice of dispute.
- (6) The City shall issue a written decision on the Service Provider's alleged violation within thirty (30) days of the hearing, which decision shall be final and subject to the administration appeal procedures under Ohio law. If the City finds after hearing that the alleged violation(s) did occur, the penalty shall be assessed starting fifteen (15) days from the notice of the violation and shall continue until the violation has been corrected.

(c) 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. 43-2006. Passed 8-14-06.)

TITLE THREE - Public Services and Utilities.
 Chap. 911. Water and Sewer Regulations.
 Chap. 913. Garbage and Rubbish.
 Chap. 917. Garfield Park.

CHAPTER 911
 Water and Sewer Regulations

| | | | |
|--------|--|--------|---|
| 911.01 | Definition. | 911.05 | Sewer photographs required. |
| 911.02 | Utilities to be in front of property. | 911.06 | Uniform rules, regulations and standards for sewerage improvements. |
| 911.03 | Exceptions. | 911.99 | Penalty. |
| 911.04 | Notice to change connections; exception. | | |

CROSS REFERENCES

Power to construct sewerage system - see Ohio R.C. 715.40, 717.01
 Compulsory sewer connections - see Ohio R.C. 729.06
 Power to provide and regulate water system - see Ohio R.C. 715.08, 717.08, 717.01, 743.01
 Theft; tampering - see GEN. OFF. 545.19

911.01 DEFINITION.

"Utilities" as used in this chapter shall refer to sewers, storm and sanitary and water lines.
 (Ord. 210-1956. Passed 12-10-56.)

911.02 UTILITIES TO BE IN FRONT OF PROPERTY.

All utilities to any property shall be made in the street directly in front upon which the parcel of land fronts as shown by the subdivision or City plat maps. Utility mains shall be deemed in front of the parcel of property if a prolongation of the side lines of the parcel into the center of the street shows that such main is within the side line prolongation.
 (Ord. 210-1956. Passed 12-10-56.)

911.03 EXCEPTIONS.

Exceptions to Section 911.02 shall be permitted only in the following cases and subject to the following requirements:

- (a) In cases where utilities are unavailable, septic tanks will be permitted subject to the approval of the County Board of Health

after recommendation for the same by the Mayor based on the lack of probability that utilities will be constructed (as provided in the Subdivision Regulations) in accordance with the rules and regulations governing the Board of Health of Cuyahoga County.

- (b) In cases where utilities are not available in the street upon which such property fronts but in adjoining streets to which connection is desired, application shall be made to the Planning Commission who shall authorize such connection upon compliance with the following requirements:
- (1) That there is no improvement with the desired utility contemplated in the immediate future or by present Council action or by the circulation of a petition of abutting owners petitioning for such improvement.
 - (2) That the applicant execute a covenant running with the land, in form approved by the Law Director, guaranteeing the cooperation of the applicant in any future proceeding for the construction of such utility and relieving the City from any claim for damages by reason of the failure of such utility to properly function or if it be necessary to discontinue such applicant's use of such utility in the future for any reason.
 - (3) That the applicant pay a minimum fee of two hundred dollars (\$200.00) plus twenty-five dollars (\$25.00) for each additional utility connection if more than one is required, to the Finance Director, which shall be paid into the Bond Retirement Fund.
(Ord. 210-1956. Passed 12-10-56.)

911.04 NOTICE TO CHANGE CONNECTIONS; EXCEPTION.

In the event of improvement by construction of a utility in a street which has fronting thereon improved parcels of real estate serviced by utilities in adjoining streets, the Service Director shall issue a written notice requiring the connection to be changed to the proper street unless the Engineer shall certify that the efficient operation of such utility in the adjoining street will not be impaired by such continued use. Permission to retain the former connection will not permit the owner to deny benefit from the improvement constructed in the street on which such property fronts as shown by the City or subdivision plats.

Within six months after notice given by the Service Director, the owner shall have completed such connection to the proper utility servicing the property, unless certification by the Engineer permits otherwise.

(Ord. 210-1956. Passed 12-10-56.)

911.05 SEWER PHOTOGRAPHS REQUIRED.

(a) The Service Director is hereby directed, prior to final approval of any newly installed sewer system and/or reconstructed sewer, to require that any and all contractors cause to be made photographs or video taping of the entire sewer system installed, showing thereby that the sewer system has been constructed upon a sound engineering basis, that the sewer system is free of any and all accumulations of foreign substances of any nature and that the passage and flow of sewage and storm water is free and clear. If, in the discretion of the City Engineer, the sewers are large enough for a visual inspection to be made in lieu of photographs, such a visual inspection shall be made and a report of such inspection submitted to the City.

(b) Upon inspection of such photographs and/or visual inspection reports and, if satisfied that such sewer is free and clear of all foreign substances and there is nothing present to prevent free flow of sewage and storm waters, the Director is hereby authorized to approve same as a final inspection, placing in safekeeping all photographs and/or inspection records for future reference by the City.

(c) The cost of such photographing and photographs and/or inspection reports shall be entirely paid for by the contractor or developer of such land and/or sewer system, and such photographs and/or inspection reports shall remain the property of the City.
(Ord. 128-1965. Passed 12-13-65.)

911.06 UNIFORM RULES, REGULATIONS AND STANDARDS FOR SEWERAGE IMPROVEMENTS.

The City hereby approves and adopts the Uniform Rules, Regulations and Standards for the Design and Construction of Sewerage Improvements as formulated by the Committee on Uniform Standards dated December, 1998, a copy of which Standards is incorporated herein by reference and a copy is to be on file with the Clerk of Council.
(Ord. 86-2004. Passed 12-13-04.)

911.99 PENALTY.

Whoever violates any provision of this chapter is guilty of a misdemeanor of the third degree.

CHAPTER 913
Garbage and Rubbish

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| <p>913.01 Burning refuse. 913.02 Collection regulations. 913.03 Rates for collection of commercial garbage and refuse. 913.04 Garbage and rubbish containers.</p> | <p>913.05 Regulation of trash containers used by business or apartment building. 913.06 Hours of collection and transportation. 913.07 Issuance of citations by employees of the Department of Public Service. 913.99 Penalty.</p> |
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CROSS REFERENCES

Collection and disposal of garbage - see Ohio R.C. 715.43, 717.01
 Disposal and transportation upon public ways - see Ohio R.C. 3767.20 et seq.
 Transportation of waste materials - see S.U. & P.S. 921.13
 Garbage incinerators - see BLDG. Ch. 1353
 Littering - see GEN. OFF. Ch. 527

913.01 BURNING REFUSE.

No person shall burn any refuse, rubbish, garbage or other material of any sort, or being the owner or in possession or control of any premises within the City, cause, procure or knowingly permit such burning in a manner as to produce smoke or odors which are offensive or injurious, or in any way prejudicial to the health or comfort of any person within the City or injurious or destructive to any property therein, or in violation of Chapter 1511 of the Fire Prevention Code.

(Ord. 4-1953. Passed 5-11-53.)

913.02 COLLECTION REGULATIONS.

(a) The owner, agent, lessee or occupant of any building or portion thereof or any premises where ashes, garbage, rubbish, waste paper, brush, lawn clippings or leaves is produced or permitted to accumulate shall provide one or more receptacles for each such material as accumulated on his property, which receptacles shall comply with the following requirements:

- (1) Receptacles for ashes shall be made of metal, shall have a capacity of not less than ten gallons nor more than thirty gallons or 100 pounds each, shall be placed out-of-doors for collection and shall be sufficient in quantity to hold not less than one week's accumulation of ashes.
- (2) Receptacles for garbage shall be made of metal, shall be watertight, shall be provided with close-fitting covers, shall

have a capacity of not less than ten gallons nor more than thirty gallons or 100 pounds each, shall be provided with suitable handles and shall be placed out-of-doors for collection.

- (3) Receptacles for rubbish shall be so constructed and filled as not to leak or spill such rubbish when moved, shall have a capacity of not more than one hundred pounds each and shall be placed out-of-doors for collection. Cardboard boxes shall not be used as receptacles.
- (4) All cardboard boxes shall be broken down at the four corners and tied into bundles to be collected with the waste paper and shall be placed out-of-doors for collection.
- (5) Receptacles for lawn clippings and leaves shall be of substantial construction, shall have a capacity of not over one hundred pounds each, shall be provided with suitable handles and shall be placed out-of-doors for collection. Barrels and cardboard boxes shall not be used as receptacles.
- (6) Brush shall be tied into bundles with substantial cord of lengths not to exceed six feet, shall be of a weight not to exceed forty pounds, and shall be placed out-of-doors for collection.
- (7) All ashes, garbage, waste paper, rubbish, lawn clippings or leaves when so kept shall be collected from dwellings and disposed of.

(b) No person shall deposit any ashes, garbage, rubbish, waste paper, brush, lawn clippings or leaves, nor permit the same to be deposited at any place within the City and under his control, except in receptacles as above described and within his premises.
(Ord. 4-1953. Passed 5-11-53.)

913.03 RATES FOR COLLECTION OF COMMERCIAL GARBAGE AND REFUSE.

Charges for the collection, removal and disposal of commercial garbage and refuse by the City shall be in accordance with the following schedule of rates, which rates shall be payable at least quarterly in advance except as may be provided for by the Service Director under the provisions of subsection (c) hereof.

- (a) Each apartment building, retail store, tavern, restaurant, hotel, motel, fruit and/or vegetable market, or place of business with a central place of pick-up shall pay five dollars (\$5.00) per week for one complete collection of garbage and refuse material per week provided that the quantity of garbage and refuse shall not exceed ten cubic feet, or, four cans or six bags, per collection.
- (b) In the event that the quantity of garbage and refuse collected shall be greater than ten cubic feet and less than 100 cubic feet per stop, each apartment building, retail store, tavern, restaurant, motel, hotel, fruit and/or vegetable market, or place of business producing garbage and/or refuse shall pay the sum of ten dollars (\$10.00) per week for each ten cubic feet or fraction thereof in excess of the first ten cubic feet and less than 100 cubic feet, in addition to the charges prescribed in subsection (a) hereof.

- (c) Any producer of refuse in excess of 100 cubic feet per stop, or any producer requiring more frequent pick-up than once a week, or any occasional or nonscheduled commercial producer of refuse or garbage shall pay such reasonable charges and in such manner and at such time as shall be agreed upon by and between such producer or producers and the Director, provided however, when such collections are made by the City, such services shall not be rendered for less than at the rate of sixty dollars (\$60.00) per stop.
- (d) Nothing in this section shall be construed to impose an obligation or duty upon the City to pick-up and remove garbage and refuse from every commercial establishment within this City. The Director is hereby authorized to deny or discontinue service to commercial establishments within this City who use improper containers or receptacles, for nonpayment of determined charges, or for other good or valid reason.
(Ord. 62-1980. Passed 7-14-80.)

913.04 GARBAGE AND RUBBISH CONTAINERS.

(a) Waste containers and waste or refuse not placed in containers shall not be placed in front of any house or other building by the owner, agent, lessee or occupant of that building for collection prior to 6:00 p.m. on the evening immediately preceding the day for refuse collection.

(b) Empty waste containers shall not be permitted to remain in the front of any house or other building by the owner, agent, lessee or occupant of that building for a period in excess of twelve hours from the time of collection by the City.
(Ord. 59-2006. Passed 9-25-06.)

913.05 REGULATION OF TRASH CONTAINERS USED BY BUSINESS OR APARTMENT BUILDING.

(a) As used in this section certain terms are defined as follows:

- (1) "Rubbish" means all rejected waste matter accumulating in places of business and which includes such matter as rags, excelsior, straw, pastboard boxes, rubber scraps, burlap, junk, scrap metal, broken glass and the like.
- (2) "Refuse" means all putrescible and nonputrescible solid waste, including garbage, rubbish, ashes, dead animals, abandoned vehicles, solid market wastes and industrial wastes.
- (3) "Garbage" means putrescible animal and vegetable wastes resulting from the handling, preparation, cooking and consumption of food.
- (4) "Business" refers to any commercial establishment engaged in the purchase or sale of commodities or in related financial transactions.
- (5) "Apartment building" means any building consisting of three or more dwelling units.

(b) Every business or apartment building within the City shall enclose all its rubbish, refuse or garbage by one of the following:

- (1) Using closed, watertight containers; as approved by the Building Commissioner.
- (2) Constructing enclosures to house the garbage, rubbish or refuse.

All such containers and enclosures must be located at the extreme rearmost property line of the business. (Ord. 07-1998. Passed 1-12-98.)

913.06 HOURS OF COLLECTION AND TRANSPORTATION.

(a) No person owning or driving a vehicle hauling solid waste shall cause the collection, transportation or transfer of such waste other than between the hours of 7:00 a.m. and 6:30 p.m. No collection, transportation or transfer shall occur on Saturdays after 4:00 p.m. or on Sundays.

(b) Application for exemptions to this provision may be made to Council, on a form provided by the Director of Service. Such exemptions shall be granted only where the applicant is able to demonstrate circumstances of great practical difficulty in the collection and transportation of solid waste in areas where there is heavy daytime vehicular and pedestrian traffic and a concentration of commercial activity.
(Ord. 16-1991. Passed 2-11-91.)

913.07 ISSUANCE OF CITATIONS BY EMPLOYEES OF THE DEPARTMENT OF PUBLIC SERVICE.

In addition to any other means of enforcement provided for in these Codified Ordinances, the Director of Public Service, and his designees, when commissioned by the Mayor as special police, may enforce the minor misdemeanor offenses contained in this chapter through the issuance of citations. (Ord. 23-2006. Passed 6-12-06.)

913.99 PENALTY.

(a) Whoever violates any provision of this chapter where no other penalty is provided is guilty of a misdemeanor of the third degree.

(b) Whoever violates any provision of Section 913.06 or participates in such violation shall be fined not more than two hundred fifty dollars (\$250.00) for a first offense and not more than five hundred dollars (\$500.00) for a second or additional offense.
(Ord. 16-1991. Passed 2-11-91.)

(c) Whoever violates any provision of Section 913.04 is guilty of a minor misdemeanor and shall be fined not more than one hundred fifty dollars (\$150.00). The above listed minor misdemeanor may be enforced by the issuance of a citation.
(Ord. 23-2006. Passed 6-12-06.)

CHAPTER 917
Garfield Park

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|--------|--------------------------------------|--------|----------|
| 917.01 | Hours of operation. | 917.99 | Penalty. |
| 917.02 | City owned parks hours of operation. | | |

CROSS REFERENCES

- Land appropriation for parks - see Ohio R.C. 715.21, 719.01
 Playgrounds - see Ohio R.C. 755.12 et seq.
 Power to regulate vehicle speed in parks - see Ohio R.C. 4511.07(e)
 Litter in parks - see GEN. OFF. 527.08

917.01 HOURS OF OPERATION.

No person, other than an employee of the City of Cleveland Department of Parks and Public Property, shall be allowed within the limits of Garfield Park, except upon the extension of Garfield Boulevard from Turney Road on the west to Broadway Avenue on the northeast between the hours of 10:00 p.m. and 5:00 a.m. (Ord. 71-1978. Passed 10-23-78.)

917.02 CITY OWNED PARKS HOURS OF OPERATION.

(a) Unless otherwise decreed by, or securing written permission from the Director of Parks and Recreation, no person shall be allowed within the limits of any City owned or operated park between the hours of dark and 8:00 a.m.

(b) For the purpose of enforcement of this section, dark is determined to be thirty (30) minutes after the published time of sunset.

(c) The Parks and Recreation Director is hereby authorized and directed to post signage reflecting the park hours at the following parks within the City limits:

Jack C. Donovan Park, Crudele Park, Cranwood Park, Frank J. Debelak Recreation Area, Hy Court Playground, Forestdale Playground, and any future parks, playgrounds and recreation areas that may be developed for public use by the City.

(Ord. 58-2006. Passed 9-25-06.)

917.99 PENALTY.

Whoever violates any provision of this chapter is guilty of a misdemeanor of the fourth degree. (Ord. 71-1978. Passed 10-23-78.)

TITLE FIVE - Landfill and Land Removal
 Chap. 921. Landfill Operations.
 Chap. 923. Topsoil Removal.
 Chap. 925. Excavation of Gravel.

CHAPTER 921
 Landfill Operations

| | | | |
|--------|----------------------------|--------|--|
| 921.01 | Permit application. | 921.11 | Inspection. |
| 921.02 | Approval by Council. | 921.12 | Number of landfill operations. |
| 921.03 | Annual permit fee. | 921.13 | Transportation of garbage and other waste materials. |
| 921.04 | Suspension or revocation. | 921.14 | Disposal on own premises. |
| 921.05 | Sanitary requirements. | 921.15 | Miscellaneous regulations. |
| 921.06 | Equipment. | 921.99 | Penalty. |
| 921.07 | Operation and maintenance. | | |
| 921.08 | Depositing of materials. | | |
| 921.09 | Compacting. | | |
| 921.10 | Covering. | | |

CROSS REFERENCES

Municipal power and duties - see Ohio R.C. 715.47
 State licenses - see Ohio R.C. 3734.05 et seq.
 Class U(10) special use - see P.& Z. 1141.03

921.01 PERMIT APPLICATION.

No person shall dump or deposit any garbage or other waste materials of any kind on any public or private property within the City, nor shall any incinerator, landfill or other structure or device for the disposal of garbage or other waste materials be established, erected or operated within the City, without a permit duly issued as provided herein. Applications for such permits shall be sworn to by the applicant and filed with the Service Director setting forth the following information:

- (a) Name and address of applicant and all persons who shall engage in the activity.
- (b) Description of land in which such activity shall take place.

- (c) The nature of the garbage or waste materials and its source.
- (d) Proposed methods of collections, storage and disposal, including all equipment to be used in the activity.
- (e) Such other pertinent and additional data as may be deemed necessary to enable the Zoning Board of Appeals to determine the nature and scope of the proposed operation.

The application shall be processed by the Service Director and forwarded to the Board for hearing. The Board shall then set a date for a public hearing on the proposal or application. The Board shall attach the rules and regulations contained in this chapter as a condition to the issuance of any permit hereunder. (Ord. 30-1961. Passed 2-27-61.)

921.02 APPROVAL BY COUNCIL.

Any decision of the Zoning Board of Appeals on any hearing for a permit shall be subject to approval by Council, which approval may be in the form of an oral resolution spread upon its minutes. (Ord. 30-1961. Passed 2-27-61.)

921.03 ANNUAL PERMIT FEE.

If the application is approved by the Zoning Board of Appeals and Council, as herein provided, a permit shall then be issued by the Service Director upon payment of the annual fee of twelve thousand dollars (\$12,000). Such annual fee may be paid for good cause shown in semiannual payments of six thousand dollars (\$6,000) each on January 1 and July 1 of each year. (Ord. 63A-1966. Passed 8-8-66.)

921.04 SUSPENSION OR REVOCATION.

Permits to operate a sanitary landfill may be suspended by the Service Director or revoked after an opportunity for a hearing before a committee composed of the Mayor, the Law Director, the Safety Director and three members of Council, appointed by the President of Council, upon violation by the holder of any of the terms of the regulations and requirements contained in this chapter.

Notices of violations of any item or section of these regulations shall be given to the attendant in writing by the Service Director. Abatement of the nuisance or correction of the condition complained of shall be made within the time designated by the Service Director in the notice.

If two notices or more, covering the same violation, are received by the attendant from the Service Director during any one period of thirty days, the permit shall be automatically suspended. An assessment of one hundred dollars (\$100.00) shall be levied to cover the costs of any hearing on such suspension.

If, in the opinion of the aforesaid committee consisting of the Mayor, the Law Director, the Safety Director, and the aforesaid three members of Council, an excess number of written violations are issued by the Service Director against any one operation in any one calendar year, the renewal permit for the following year may be refused.

Each sanitary landfill operation shall display at all times, in a conspicuous place, the permit for the operation. In case of suspension or revocation, the permit shall be removed or suitably covered.

The refusal for renewal of a permit because of frequent or continued violations is permanent and shall not be reviewed or re-established.
(Ord. 30-1961. Passed 2-27-61.)

921.05 SANITARY REQUIREMENTS.

(a) It is understood that any site may be objected to by residents and officials of any area. Objections of this type shall be considered by Council in its decision on granting approval of a permit. Reasonable or justified objections shall be a factor in granting permits.

(b) It is contemplated that whenever possible the operation shall be so located as to be convenient and easily accessible, and, where practicable, be located in an area so as to improve land conditions, such as in waste lands, ravines, abandoned sandpits, etc.

(c) In no instance shall the operation be located where it will endanger the health, comfort or safety of the public.

(d) No permanent disposal shall be conducted in a location nearer than three hundred feet to any public or private water supply well or other source of water supply.

(e) No permanent disposal shall be located so that it will obstruct any natural drainage channel.

(f) No refuse, garbage or other putrescible wastes shall be deposited permanently nearer than 200 feet of any highway, public roadway or any property boundary, unless written approval is received in advance from the Health Department of this City, or if there is none, then from the Cuyahoga County General Health District.

(g) There shall be sufficient cover material available to meet covering requirements at all times.

(h) Subsoil or cover materials shall preferably be sandy loam or clay with gravel content.

(i) Suitable hard surface access roads shall be available or satisfactorily provided for.

(j) The area shall be of sufficient size to accommodate the extent of the operation.

(k) Areas with high ground-water levels shall be avoided.
(Ord. 30-1961. Passed 2-27-61.)

921.06 EQUIPMENT.

(a) At all times there shall be equipment on the site capable of performing the required excavating, compacting and covering requirements necessary for the amount of the materials received. This equipment shall at all times be in good repair and maintained in good working condition. The extent of the operation will determine the amount and kind of equipment necessary and must meet the approval of the Service Director and the City Engineer, and shall be subject to change in accordance with what is necessary to provide satisfactory compliance in regard to the operation.

(b) Stand-by equipment shall be available at all times in event of breakdowns. If required, the operator shall furnish in writing the availability of such equipment and is obliged to maintain the same so that covering operations are completed by the end of the day's operation.

(c) Fire control equipment shall be maintained in sufficient quantity to extinguish all fires that may occur, accidental or otherwise, and shall be approved by the Fire Chief. (Ord. 30-1961. Passed 2-27-61.)

921.07 OPERATION AND MAINTENANCE.

(a) There are two types of operations for sanitary landfill, namely, the "Area Method" and the "Trench Method", both of which are approved. Both operations shall be carried on in accordance with the procedures which are considered to be approved methods therefor, in such a manner as to safeguard the public health and safety.

(b) A competent attendant or site operator shall be on the site during all hours the landfill operation is open for use. The attendant will direct all of the operations, such as place of dumping, type of materials deposited, storage, compacting, covering, etc. He shall be held responsible for the satisfactory and sanitary condition of the operation at all times. He shall be served with all notices regarding the operation of the landfill. (Ord. 30-1961. Passed 2-27-61.)

921.08 DEPOSITING OF MATERIALS.

All garbage, rubbish and other waste materials shall be deposited directly to the fill area or trench in even, level layers or deposited on the bank or surface above the fill area and bulldozed immediately into the fill area and compacted. (Ord. 30-1961. Passed 2-27-61.)

921.09 COMPACTING.

(a) The layers of refuse deposited should not exceed that which can be easily and completely compacted. Compacted layers should be approximately one foot in depth. Compacted refuse shall not be more than four feet in depth before covering in the area method. Four-foot layers are recommended for the trench method.

(b) The face of the working fill shall be kept as narrow as is consistent with proper operation of trucks and equipment in order that the area of the waste materials exposed during the day is minimal.

(c) Waste building materials, concrete or other bulky materials shall not be used for the final surface or side slopes, but shall be promptly incorporated within the main fill.

(d) Other bulky materials such as tree branches, stumps and trunks, bales of wire, large boxes or crates, etc., shall be cut or broken up before placing in fill to be compacted.

(e) Approximately thirty degree slopes shall be maintained in the surface of the compacted materials in the area method.
(Ord. 30-1961. Passed 2-27-61.)

921.10 COVERING.

(a) Sufficient dirt shall be available at a convenient location so that covering of compacted materials can be made immediately and with ease. Storing or stocking and stockpiling of dirt will be required if deemed necessary by the Service Director. Stockpiling and protection of dirt for winter operation is advisable.

(b) After compacting of wastes is completed, all exposed areas shall be covered as promptly as is consistent with proper operation, with a twelve-inch layer of clean, compacted earth in the case of area method, where additional layers are to be built. This cover layer of dirt shall be free of large rocks, stones or other bulky material. The covering shall be done in such a manner as to form a closed cell of each day's deposits.

(c) The final covering of surface and side slopes in area methods or trench fill methods, shall be maintained at a depth of not less than twenty-four inches of clean, compacted earth.

(d) All wastes deposited must be compacted and covered at the end of each day's operation. The hours of operation shall be set by the Service Director and shall be strictly complied with. (Ord. 30-1961. Passed 2-27-61.)

921.11 INSPECTION.

(a) There shall be provided a full-time Inspector at the site of the operation of the sanitary landfill. It shall be his duty to inspect each load of waste material being delivered to the site and to enforce and carry out the provisions of this chapter relating to the safe and proper conduct of the landfill operation. He shall also arrange for periodic inspection of the site by public health authorities whenever in his opinion he deems it may be necessary. He shall make a daily report of this inspection to the Service Director. Failure on the part of the operator to carry out any proper order of the Service Director shall be grounds to commence proceedings for the revocation of the license of the operator or suspension of the operation of the landfill.

(b) The operator of the landfill shall likewise arrange for inspection of the loads for type of waste materials being delivered and inspection of the vehicles used in collecting and delivering the waste materials to the site.

(c) All costs sustained by the City by reason of any sanitary landfill operation and the inspection thereof shall be out of the annual permit fee provided for in Section 921.03. The balance of any such receipts shall be deposited to the City Recreation Fund. (Ord. 64A-1966. Passed 8-8-66.)

921.12 NUMBER OF LANDFILL OPERATIONS.

Due to the nature of sanitary landfill operations, only one such operation shall be permitted at any time. Any applications for a permit to conduct a sanitary landfill operation made while there is at such time such an operation being conducted shall be kept on file in the order in which received, and shall be valid for a period of six months. Such applications may be renewed for an additional period of six months, after which a new application shall be made. (Ord. 30-1961. Passed 2-27-61.)

921.13 TRANSPORTATION OF GARBAGE AND OTHER WASTE MATERIALS.

All garbage or other waste materials transported on the streets or other public thoroughfares shall be in vehicles, the bodies of which are leakproof and of easily cleanable construction and completely covered with metal or heavy canvas. Any spillage or drippage from vehicles transporting garbage or other waste materials through the City shall be a violation of this chapter.

(Ord. 30-1961. Passed 2-27-61.)

921.14 DISPOSAL ON OWN PREMISES.

Nothing contained herein shall prevent any person from disposing of his own garbage and waste materials on his own premises on which such refuse is created, in such amount and in such manner which does not create a nuisance or interfere with the enjoyment of the property of others in the immediate vicinity. (Ord. 30-1961. Passed 2-27-61.)

921.15 MISCELLANEOUS REGULATIONS.

(a) Spraying of exposed waste materials and adjacent surfaces shall be done when so ordered by the Service Director to allay dust.

(b) Control of blowing papers and other loose materials shall be adequately maintained by moveable snow fences or other suitable means.

(c) A suitable rodent, insect and fly control program shall be maintained at all times and until fills are stabilized. After the active period of filling operations is completed, a maintenance program, approved by the Board of Health, shall be continued to insure prompt repairs of cracks, depressions and erosion of surface and side slopes. Insecticidal control methods must be used during fly and insect seasons.

(d) Where necessary, effective steps shall be taken to prevent floating of waste materials into open waters.

(e) All collections of surface waters resulting from the operations shall be drained, filled and treated with effective chemicals so as to prevent mosquito production and to allay odors.

(f) Site property lines shall be fenced or otherwise protected, and all entrances must be provided with a gate or barricade. These gates or barricades shall be closed and secured when the operation is closed or an attendant is not on duty.

(g) Burning of combustible materials shall not be permitted unless written permission is obtained from the Fire Chief, and then only upon presentation of evidence substantiating its necessity. Burning of any materials which give off obnoxious or disagreeable odors is absolutely forbidden. Materials containing garbage or other putrescible wastes shall not be burned under any circumstances.

(h) Salvage operations are absolutely forbidden, and such operations shall be considered a ground for revocation of the permit.

(i) It is understood that a sanitary landfill operation may be abandoned, closed or its operations suspended indefinitely. Therefore, it is a prime requisite that an applicant for a sanitary landfill operation shall provide a bond in form and content acceptable and approved by the Law Director, in amount sufficient to guarantee the rehabilitation of the site from both a health and aesthetic viewpoint. Council shall set the amount of the bond, after recommendation of the Service Director and the Engineer.

(j) The operation shall be maintained in such a manner as not to constitute a nuisance at any time, or to be considered as dangerous to the health of the general public. (Ord. 30-1961. Passed 2-27-61.)

(k) No holder of a permit to conduct a landfill operation in the City shall transfer such operations to a site other than the site described in his initial application without a resolution approved by Council.

Request for such approval shall be made in writing and shall contain an adequate description of the proposed new site of operations.

All such requests for transfer of site shall comply with the requirements of Section 921.05 (Ord. 58-1965. Passed 6-14-65.)

921.99 PENALTY.

Whoever violates any provision of this chapter is guilty of a misdemeanor of the third degree. Each day's continued violation shall constitute a separate offense.

CHAPTER 923
Topsoil Removal

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|--------|-----------------------------------|--------|-------------|
| 923.01 | Permit required. | 923.04 | Bond. |
| 923.02 | Application. | 923.05 | Exceptions. |
| 923.03 | Board of Zoning Appeals approval. | 923.99 | Penalty. |

CROSS REFERENCE

Gravel excavations - see S.U.& P.S. 925.01 et seq.

923.01 PERMIT REQUIRED.

No person owning, renting, leasing or having possession of any lots or lands in the City shall remove, cause to be removed, or permit to be removed from such lots or lands any topsoil, earth or dirt, without first obtaining a permit to do so from the Service Director. (Ord. 97-1952. Passed 11-24-52.)

923.02 APPLICATION.

No permit shall be issued by the Service Director for the removal of topsoil, earth or dirt from any lots or lands in the City, unless such person owning, renting, leasing or having possession of such lots or lands files with the Service Director a written application therefor, and the application shall contain the following information:

- (a) The full name and address of the applicant, and if the applicant is a partnership, the name and address of each of the partners, and if the applicant is a corporation, the names of its principal officers;
- (b) The description of the land from which the topsoil, dirt or earth is to be stripped and removed, specifying the quantity of land involved; the description shall be accompanied by a plat plan;
- (c) If the applicant is not the owner of the land described, then the names and address of the owner shall be stated and the owner's written consent to the work proposed shall be attached to the application;
- (d) Permits for removal of topsoil, earth or dirt shall be issued only upon proof by the applicant that the land is free from any liens, unpaid taxes, assessments and judgments obtained by the City;
- (e) The method of stripping and removal to be employed;
- (f) The time within which the work shall be commenced and completed;
- (g) The type of reseeded or replanting proposed for the land;

- (h) The depth of topsoil now on the property, the amount to be removed and the amount to remain;
- (i) The method of drainage to be used during the operation and after its completion and the topography of the land after removal therefrom;
- (j) The ultimate purpose of the land after removal of the topsoil, earth or dirt;
- (k) A statement that the applicant shall bear the expense of the city inspector during the operation under the permit;
- (l) The applicant shall furnish a minimum performance bond in the sum of one thousand dollars (\$1,000), and an additional bond of five hundred dollars (\$500.00) for each acre or fraction thereof included in the permit; and
- (m) Such other information as the Director shall deem necessary.
(Ord. 97-1952. Passed 11-24-52.)

923.03 BOARD OF ZONING APPEALS APPROVAL.

Upon the filing of the written application, the Service Director shall investigate the statements contained therein and shall submit the application and his findings to the Board of Zoning Appeals. The Board shall set a date for a hearing upon the application and shall notify the applicant of the date. If, after a hearing, the Board determines that the granting of the application shall not adversely affect the public welfare, health, safety and convenience, it shall grant the application with such conditions relating to the method of the removal, the terms of the permit, the amount of topsoil, earth or dirt to be left on the land, the reseeded or replanting, the drainage or topography and such other conditions as the Board may deem necessary for the protection of the public interest, health, safety and welfare. Any conditions imposed by the Board shall be made a part of the permit and constitute limitations therein.

In the event that the Board denies any application, the applicant may appeal its decision to Council within thirty days and Council may, by majority vote, act on the application, subject to the limitations set forth in this chapter.
(Ord. 97-1952. Passed 11-24-52.)

923.04 BOND.

Upon the granting of the application, the Service Director shall be instructed to issue the permit containing the conditions imposed upon it, if any, by the granting body and the permit shall be issued to the applicant upon the posting of a bond running to the City, conditioned upon the faithful performance of the permit in accordance with its terms. The bond shall be signed by the applicant and a good and sufficient surety company satisfactory to the Mayor. The bond shall be in a minimum amount of one thousand dollars (\$1,000), and additional bond of five hundred dollars (\$500.00) for each acre or fraction thereof included in the permit. The bond shall be filed with the Finance Director.
(Ord. 97-1952. Passed 11-24-52.)

923.05 EXCEPTIONS.

This chapter shall not be construed as limiting the issuance of a permit by the Service Director or Commissioner for the removal of surplus topsoil,

earth or dirt where a permit has been taken out for the construction of a building upon any lots or lands, and such surplus topsoil, earth or dirt is from the excavation for the construction of such a building.

This chapter shall not be construed in any manner as limiting or superseding the provisions of Chapter 925.

(Ord. 97-1952. Passed 11-24-52.)

923.99 PENALTY.

Whoever violates any provision of this chapter is guilty of a misdemeanor of the first degree for each offense.

CHAPTER 925
Excavation of Gravel

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| <p>925.01 Excavations of earth, sand or gravel.</p> <p>925.02 Permit required.</p> <p>925.03 Applications; plat plan.</p> <p>925.04 Encumbrances.</p> <p>925.05 Planning Commission's approval.</p> <p>925.06 Excavation depth; side walls.</p> | <p>925.07 Drainage.</p> <p>925.08 Filling abandoned excavations.</p> <p>925.09 Fencing dangerous excavations.</p> <p>925.99 Penalty.</p> |
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CROSS REFERENCES

Barricade; warning lights - see GEN. OFF. 521.03
Topsoil removal - see S.U.& P.S. 923.01 et seq.

925.01 EXCAVATIONS OF EARTH, SAND OR GRAVEL.

An excavation made for the purpose of taking soil, earth, sand, gravel or other material shall be made in such a manner as will prevent injury to neighboring properties, to the street which adjoins the lot where such excavation is made and to the public health, safety and welfare. (Ord. 57-1952. Passed 6-23-52.)

925.02 PERMIT REQUIRED.

Such excavations shall not be commenced until a permit therefor has been obtained from the Service Director. (Ord. 57-1952. Passed 6-23-52.)

925.03 APPLICATIONS; PLAT PLAN.

Applications for permits shall be in such form as may be prescribed by the Service Director and shall be accompanied by a plat plan on which is indicated the location of the plat, the exact location of the proposed excavation and the area and depth of excavation. (Ord. 57-1952. Passed 6-23-52.)

925.04 ENCUMBERANCES.

Permits for the operation of such excavations shall be issued only upon proof by the applicant that the land is free from any liens, unpaid taxes, assessments and judgments obtained by the City. In addition, if there is an unpaid mortgage upon the property, the consent of the mortgagee shall also be obtained. (Ord. 57-1952. Passed 6-23-52.)

925.05 PLANNING COMMISSION'S APPROVAL.

All applications for permits shall be submitted for approval to the Planning Commission before issuance thereof, for its recommendation or disapproval thereof.
(Ord. 57-1952. Passed 6-23-52.)

925.06 EXCAVATION DEPTH; SIDE WALLS.

No excavation shall exceed a depth greater than nine feet below the grade of the street or streets adjacent thereto, as may be established by the City Engineer, unless the side walls of such excavation be maintained at an incline of not less than forty-five degrees from horizontal, or the side walls be supported by piling or other retaining equipment equal to that specified for building excavations. (Ord. 57-1952. Passed 6-23-52.)

925.07 DRAINAGE.

Such excavation shall be properly drained as long as the excavation remains.
(Ord. 57-1952. Passed 6-23-52.)

925.08 FILLING ABANDONED EXCAVATIONS.

Abandoned excavations, which shall become unsafe, menacing or dangerous to life or limb, shall be filled in by the owner, as the Service Director may require, with clean ashes, sand or earth, or otherwise made safe and secure.
(Ord. 57-1952. Passed 6-23-52.)

925.09 FENCING DANGEROUS EXCAVATIONS.

(a) When any excavation or cut is, or in the course of operations can be reasonably expected to attain, a depth exceeding ten feet below the original ground level, and the steepness of the slope adjacent to the original ground line at the top of the incline exceeds a ratio of 1 to 1.5 slope, then such excavation or cut is hereby declared to be unsafe, menacing and dangerous to life and limb.

(b) Whenever such excavation or cut exceeds the standard set forth in subsection (a) hereof, the Safety Director shall order the owner, tenant or operator, in writing by registered or certified mail, to erect a protective seven-foot chain link type fence as hereinafter set forth or to construct horizontal benches as hereinafter set forth:

- (1) Each such protective fence shall be installed on a horizontal offset of at least five feet from the top of the excavation or cut.
- (2) Each such fence shall project at least ten feet beyond each end of the hazardous incline.
- (3) Each end of such fence shall diverge from the length of the run so as to intersect the tip of the incline of the excavation or cut so as to prevent unauthorized persons from traversing the area between the fence and the top of such excavation or cut.

(c) In lieu of installing a protective fence, such owner, tenant or operator may incorporate the use of horizontal benches in such hazardous slope, at intervals in vertical height of every ten feet.

- (1) Each such horizontal bench shall project at least ten feet beyond each end of such hazardous incline.
- (2) Each such horizontal bench shall have a horizontal width of at least five feet normal to the length of run of the bench.
- (3) Both ends of the run of each horizontal bench shall merge gradually into the slope of the excavation or cut so as to avoid the creation of additional hazardous inclines.
- (4) The surface of each bench shall have a slight pitch towards the slope immediately above, thereby serving as an intercepting drainage ditch for surface waters.
- (5) When horizontal benches are used, a drainage intercepting ditch shall be constructed at the top of such excavation or cut, so as to divert the flow of surface waters away from such excavation or cut.

(d) Temporary excavations or cuts which shall be in existence for less than one month shall require the installation of a temporary snow fence at the top of such excavation or cut, in lieu of the foregoing provisions. Applications for such provision shall be made to the Director.

(e) All owners, tenants or operators within the City, on whose property hazardous excavations and cuts exist prior to the effective date of this section (Ordinance 83-1965, passed August 23, 1965) shall be notified of the provisions of this section, in writing by registered or certified mail, by the Safety Director. Upon receipt of such notice, all such owners, tenants or operators shall comply with the provisions of this section within six months from the date of receipt of such notice. Upon failure to comply at the end of such six-month period, the Safety Director shall then order such party, in writing by registered or certified mail, to comply herewith in the manner set forth in subsection (b) hereof.

(f) All appeals and requests for waivers of any of the foregoing provisions shall be made to Council, in writing, and shall be accompanied by supporting evidence. The granting of any appeal or waiver shall be by resolution of Council, concurred in by three-fourths of the members elected to Council.

(g) Any owner, operator or tenant that fails to comply with the order of the Safety Director within a period of thirty days after receipt thereof shall be subject to the penalty provided in Section 925.99.

(h) It is the purpose and intent of this section that it shall apply to excavations made where not covered by the Building Code or general ordinance relative to excavations on streets and public grounds, and it is further the

intent of this section to supplement the provisions of the Building Code and the general ordinance relating to excavations on streets and public grounds, and that if any provision of this section shall be held invalid or ineffective, in whole or in part, or inapplicable to any person, firm, corporation or situation, it is the purpose and intent that all other provisions thereof shall be separately and fully effective and that the application of any such provision to other persons, firms, corporations or situations shall not be affected. (Ord. 83-1965. Passed 8-23-65.)

925.99 PENALTY.

Whoever violates any provision of this chapter is guilty of a misdemeanor of the first degree. (Ord. 57-1952. Passed 6-23-52.)

TITLE SEVEN - Oil and Gas Extraction
 Chap. 927. Methane Gas Wells.
 Chap. 929. Oil and Natural Gas Wells.

CHAPTER 927
 Methane Gas Wells

| | | | |
|--------|---|--------|---|
| 927.01 | Definitions. | 927.11 | State law requirements; performance standards. |
| 927.02 | Permit required. | 927.12 | Map and spill prevention plan. |
| 927.03 | Application for permit; fee. | 927.13 | Landscape plan required. |
| 927.04 | Investigation of premises. | 927.14 | Protection of ground water. |
| 927.05 | Recommendation of Planning Commission; referral to Council. | 927.15 | Plugging and abandonment of wells. |
| 927.06 | Permit limitations. | 927.16 | Restoration. |
| 927.07 | Revocation of permit. | 927.17 | Inspections. |
| 927.08 | Effective period of permit; renewal fee. | 927.18 | Log book required. |
| 927.09 | Duties of permittee. | 927.99 | Penalty. |
| 927.10 | Insurance. | | |

CROSS REFERENCES

State law provisions - see Ohio R.C. Ch. 1509
 Oil and gas drilling - see OAC 1501:9-1, 1501:9-9

927.01 DEFINITIONS.

(a) "Oil" means crude petroleum oil and all other hydrocarbons, regardless of gravity, that are produced in liquid form by ordinary production methods, but does not include hydrocarbons that were originally in a gaseous phase in the reservoir.

(b) "Gas" means all natural gas and other fluid hydrocarbons not defined herein as oil or methane gas, including condensate.

(c) "Condensate" means liquid hydrocarbons that were originally in the gaseous phase in the reservoir.

(d) "Methane Gas" means that gas which is produced as a result of the decomposition of garbage and/or debris.

(e) "Well" means any bore hole, whether drilled or bored, for production, extraction or injection of any gas or liquid mineral, excluding potable water to be used as such, but including natural or artificial brines and oil filled waters.
(Ord. 79-1985. Passed 11-25-85.)

927.02 PERMIT REQUIRED.

No person, firm, partnership, corporation or other legal entity shall drill a well for methane gas, or deepen an existing well for methane gas, or carry on such development within the City, without first obtaining a permit therefor from the Building Commissioner as provided in this chapter.

(Ord. 79-1985. Passed 11-25-85.)

927.03 APPLICATION FOR PERMIT; FEE.

Permits required by Section 927.02 may be obtained by making application therefor to the Building Commissioner upon such forms as he may prescribe. Such application shall be accompanied by a nonrefundable fee in the amount of one hundred dollars (\$100.00) for methane production gas wells. Applications shall include, but are not limited to the following information:

- (a) An affidavit evidencing compliance with all applicable Environmental Protection Agency rules and regulations.
- (b) Three copies of a surveyed site plan and vicinity map drawn to scale dimensions and showing all of the following:
 - (1) Proposed locations of the well, tanks and other large equipment, access drives, pipelines, fences, landscaping and any culverts, ditching or other physical changes to the existing drainage or finished grade of the site.
 - (2) Such dimensions as necessary to indicate compliance with all minimum distances required by this chapter.
 - (3) Designated route for City inspection and emergency access, proposed truck routes into and out of the site, and a designated truck route to and from the site for the entire period such trucks are within the City. The latter route may be provided at any convenient but adequate scale.
- (c) Name, address and telephone number of the person or persons responsible for the operation and maintenance of the site, and available for contact for emergency or other purposes.
- (d) Schematic of all pipelines, connections and shut-off valves for emergency purposes.
- (e) Copies of easements or options for easements for all proposed pipelines, production and processing equipment and access drives where such facilities are to cross properties not included as part of the drill site or drill unit.
- (f) An affidavit stating the applicant has complied with all the requirements of this chapter and State law or stating any non-compliance and the reasons therefore.

- (g) Specific plans for the removal, disposal method and disposal site of all waste products, including but not limited to brine waste resulting from the drilling, fracturing, production or extraction of methane gas wells. Such plans shall include the name, address and telephone numbers of all persons or companies disposing of the brine waste and the ultimate location of its disposal. Any change in the plan for disposal shall be submitted immediately to the Building Commissioner.
- (h) A detailed landscaping and screening plan showing the applicant's proposed plan to comply with Section 927.12.
- (i) A detailed restoration plan showing the applicant's plans to return the site to a condition as close as practicable to that prior to commencement of drilling operations as required by Section 927.16.
- (j) Any other information necessary to adequately determine compliance with this chapter or as may be required by the Building Commissioner.
(Ord. 79-1985. Passed 11-25-85.)

927.04 INVESTIGATION OF PREMISES.

Upon compliance, the Building Commissioner shall cause an investigation of the premises for which such permit is sought. When the investigation is completed, the application and report of the investigation shall be forwarded to the Planning Commission for its recommendation.

(Ord. 79-1985. Passed 11-25-85.)

927.05 RECOMMENDATION OF PLANNING COMMISSION; REFERRAL TO COUNCIL.

The Planning Commission shall refer its recommendation with such exceptions or modifications as it deems necessary to Council. The Commission when reviewing an application for the permit authorized under Section 927.02 hereof, shall review the particular facts and circumstances of the proposed well in terms of the following standards, and if in its judgment favorable action is appropriate on the application, shall find adequate evidence that such well:

- (a) Will be harmonious with and in accordance with the general objectives of the City's land use scheme and requirements of this chapter;
- (b) Will be designed, constructed, operated and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity.
- (c) Will not be hazardous or unreasonably disturbing to existing or future residents or uses;
- (d) Will not be detrimental to residents or property in the immediate vicinity or to the community as a whole;
- (e) Will be served adequately by essential public facilities and services such as highways, streets, police and fire protection, drainage structures and refuse disposal; or the proposed use shall be able to provide adequately any such service; and
- (f) Will have adequate vehicular access to the property so as not to create an interference with traffic on surrounding public streets or roads.

Council shall thereafter authorize the issuance of the permit or reject such application where, by reason of public health, safety and general welfare, the drilling or operation of methane gas wells will constitute a serious disadvantage to the City or any of its inhabitants. Should Council authorize the issuance of a permit pursuant to Section 927.02 hereof, the Building Commissioner shall issue the permit within ten days thereof.
(Ord. 79-1985. Passed 11-25-85.)

927.06 PERMIT LIMITATIONS.

After the issuance of a permit, the same shall terminate and become null and void without any action on the part of the City unless within 180 days from the date of issuance actual drilling of the well has commenced. The cessation of the extraction of methane gas from the well after extraction has commenced, except for mandatory shut-ins by gas purchasers, shall operate to terminate and cancel the permit and no person shall drill or operate any such well without the issuance of another permit. The above-mentioned time limit for commencing actual drilling of the well may be extended by the Building Commissioner for good cause shown for an additional 180 days.

(Ord. 79-1985. Passed 11-25-85.)

927.07 REVOCATION OF PERMIT.

Upon a finding by the Building Commissioner or his designee, that any provision of this chapter has been violated, the Commissioner may find and determine that grounds exist to revoke a permit issued under the provisions of this chapter, and the permit shall be revoked. Same shall also be grounds to refuse a future permit to drill a well. Revocation of the applicant's permit shall remove all rights of the permit holder to continue any operation at the site other than those operations the Commissioner deems necessary to protect the health, safety and welfare of the residents of this City. The permit holder shall be notified of such revocation by certified mail, return receipt requested, and by the posting of a notice of violation in a conspicuous location at the well site. The revocation shall be effective upon posting of the notice of violation and shall remain in effect until the permit holder complies with the provisions of this chapter, and State law, and the Commissioner determines compliance. Operation after revocation, except as allowed above, shall constitute a violation of this section.

(Ord. 79-1985. Passed 11-25-85.)

927.08 EFFECTIVE PERIOD OF PERMIT; RENEWAL FEE.

The effective period of a permit issued under this chapter, and all rights and privileges granted under this chapter, shall not exceed fifteen years from the date the permit is issued. At the end of such fifteen year period, if the well is still operational and the permittee is not in violation of any provisions contained in this chapter or any amendments made thereto, the Building Commissioner shall renew the permit upon the payment of a one hundred dollar (\$100.00) fee per well. (Ord. 79-1985. Passed 11-25-85.)

927.09 DUTIES OF PERMITTEE.

The permittee shall observe all Federal, State and City laws now effective or which may subsequently be enacted relative to the drilling or operation of methane gas wells. The permittee shall also restore the streets, sidewalks and other public places which may be disturbed or damaged as a result of its activity to their former conditions and shall clear the area of all litter, machinery, derricks, buildings or other structures not necessary for the proper drilling or operation of the well.

(Ord. 79-1985. Passed 11-25-85.)

927.10 INSURANCE.

The applicant shall provide with his application, proof that it currently is insured in an amount, and to the extent deemed appropriate by the Building Commissioner given the number of wells contemplated, and the maximum amount of insurance coverage available in the industry. The aforementioned policy or policies of insurance shall be in full force and effect prior to the issuance of a permit, and shall continue in effect until such well is plugged or abandoned as hereinafter provided. (Ord. 10-86. Passed 1-27-86.)

927.11 STATE LAW REQUIREMENTS; PERFORMANCE STANDARDS.

All methane gas activities shall be conducted pursuant to Ohio R.C. Chapter 1509 and Ohio Administrative Code Chapter 1501, to the extent the Chapters apply, and any amendments made thereto, and in accordance with the following provisions:

- (a) Any methane gas processing facility shall be entirely enclosed by a minimum six foot high chain link type fence, plus three strands of barbed wire above, and shall be installed within six months after commencement of drilling production wells. This section shall constitute an exception to the provisions of Section 1155.04 of the Codified Ordinances.
- (b) All hatch lids on tanks greater than eight inches in diameter must be equipped with a wire insert to prevent accidental entry into such tanks.
- (c) No waste, sludge, water or effluents of any type shall in any manner be dumped, emptied or drained into any storm drainage course or storm or sanitary sewer, or otherwise disposed of so as to cause any pollution of the waters or lands of the City or create any environmental hazard. After any spill, leak or malfunction, the responsible party shall remove or cause to be removed to the satisfaction of the Building Commissioner all oil and waste materials from any public or private property affected by such spill, leak or malfunction. The responsible party shall also pay for any and all damage to municipal utility services and any extraordinary expenses incurred by the City regarding the use of safety forces at an emergency caused by the drilling operation.

- (d) All pits used in the drilling and fracturing process shall be constructed and adequately lined so as to prevent the absorption of any wastes, brines, sludges, oil, oil by-products or other deleterious substances into the ground. All pits must be maintained with water-tight integrity and must be nonleaking. Within forty-five days of the completion of the well, all substances contained in such pits shall be completely removed and safely disposed of and all pits shall be filled, leveled and landscaped.
- (e) Prior to the commencement of the drilling operation and prior to the installation of any tanks, the permit holder shall provide ingress and egress roads to all well and tank sites. All tank access roads shall be constructed of suitable slag, gravel, crushed stone or other suitable road surface material, be of adequate width to allow travel by firefighting equipment, and be maintained in good condition free of mud or dust. In the event any mud is carried onto any public street, the permit holder shall immediately remove same from the street to the satisfaction of the Building Commissioner.
- (f) The permit holder shall notify the City Police Department prior to moving the drilling rig onto or off the well site.
- (g) Only drilling rigs sufficiently muffled against noise emissions shall be used in any drilling operations.
- (h) All storage tanks and/or separators located at the well site shall be diked in accordance with the requirements of the National Fire Codes and the National Fire Protection Association, such dikes to be maintained during the entire time of the well construction and operation phases.
- (i) No storage tanks, blowers, processing facility or other equipment shall be located within 200 feet of any habitable building in a commercial or industrial zoned area or within 250 feet of any habitable building in any other zoning district.
- (j) Tanks used in the storage of water may not exceed eight feet in height or 140 barrels in capacity and are to be painted a color, approved by the Building Commissioner, so as not to contrast with the surrounding environment. Not more than one tank per well site shall be permitted.
- (k) All gates are to be padlocked with a duplicate of the key given to the Building Commissioner, Police Chief and Fire Chief. All oil and water lines with valves extending beyond the chain link fence shall be locked and capped.
- (l) In order that some responsible person may be reached at any time in the event of an emergency, the name, address and telephone numbers of the persons responsible for the ownership, operation and all maintenance of each drilled well, whether capped, temporarily out of production, not yet fractured or in production, located within

the City, shall be furnished to the Building Commissioner. This information shall include the street location, state permit number and name of the well. The applicant shall inform the Commissioner in writing as to shut-off procedures for any drilled well. The emergency information required by this subsection shall be prominently posted at the entrance to the access road to the drilled well site.

- (m) Adequate firefighting apparatus and supplies approved by the City Fire Department shall be maintained on the well site at all times during drilling and production operations. All machinery, equipment and installations on all well sites within the City shall conform with such requirements as may from time to time be issued by the City Fire Department.
- (n) No well, storage tank or separator shall be permitted within 500 feet of any existing school, church, hospital, theater, assembly hall or other public building.
- (o) All methane gas wells that use a flair shall be equipped with an automatic ignition system, as well as a low pressure cut-off valve.
(Ord. 79-1985. Passed 11-25-85.)

927.12 MAP AND SPILL PREVENTION PLAN.

At the time of application, the applicant shall provide a map, prepared by a registered surveyor, showing that exact location where the proposed well is to be drilled. The map shall also identify the location, type and size of proposed pipelines, either above or below ground, and any structures within 300 feet of the proposed well location. Additionally, the map shall indicate the location of all power shut-offs along with a detailed description of the operation of same, the location of all transmission lines, the location of oil flow shut-offs along with a detailed description of the operation of same and the location of any access roads. Any amendments to this map shall be immediately filed with the Building Commissioner. In the event a permit is granted, the map shall remain on file in the office of the Commissioner.

At the time of application, the applicant shall provide a satisfactory spill prevention plan and a list of telephone numbers of the drillers' business and residence, and any other telephone numbers which can be used for emergency notification to the driller or his employees or agents.
(Ord. 79-1985. Passed 11-25-85.)

927.13 LANDSCAPE PLAN REQUIRED.

Methane gas wells, associated equipment, and storage tanks located within 1,000 feet of an existing residence or within 500 feet of the right-of-way of a public road, highway, street or alley, shall be effectively screened from the residence or public roadways in a manner which is aesthetically pleasing and appropriate for the general area. In addition to fine grading, grass or other vegetative cover shall be restored to create an environment and appearance compatible with the adjacent properties, neighborhood and area. All landscaping and/or screening shall be in place

ninety days after the well is placed in operation unless an extension due to adverse weather is granted by the Building Commissioner. All artificial lighting at the drilling site shall be designed and maintained so as to minimize the amount of light cast upon adjoining property. The permit holder shall grade the property in an effort to prevent excessive soil erosion and/or surface water runoff in excess of that which presently exists. All areas disturbed during the drilling operation shall be graded to prevent soil erosion. In addition, all areas disturbed shall be seeded immediately upon completion of the drilling operation. As long as the well is in production, the permit holder and/or operator, shall maintain the site in a neat, clean and orderly condition. The permit holder and/or operator shall maintain all gates, access routes, fences, tanks, dikes, landscaping and any other structure or appurtenances located on the site.
(Ord. 79-1985. Passed 11-25-85.)

927.14 PROTECTION OF GROUND WATER.

It shall be the duty of the permit holder to seal methane gas wells to protect fresh ground water wells and natural aquifers from saltwater or other pollution or contamination. Both the permit holder and well driller shall establish contingency plans for the immediate furnishing of potable water to affected residents for such period as may be required to reestablish proper potability on any polluted or contaminated well or wells. The permit holder and the well driller shall be jointly and severally responsible for the obligation to provide potable water, without cost to the residents receiving the same. Driller responsibility shall include covering the cost of drilling new wells or extending City water service including a tap in fee should that be necessary.
(Ord. 79-1985. Passed 11-25-85.)

927.15 PLUGGING AND ABANDONMENT OF WELLS.

No person, partnership, corporation or other legal entity shall plug and/or abandon a methane gas well without first obtaining a permit therefor from the Building Commissioner. The fee for such permit shall be twenty-five dollars (\$25.00). Upon the granting of the permit the Commissioner shall make note of such fact upon the map provided at the time of the original permit application. The plugging and/or abandonment of the well shall be in accordance with the laws of the State of Ohio and the ordinances of the City. Such plugging and/or abandonment shall be done under the supervision of the Commissioner.
(Ord. 79-1985. Passed 11-25-85.)

927.16 RESTORATION.

Upon abandonment, the permit holder and/or operator shall restore the area disturbed by the equipment and persons involved in the drilling or production of methane gas in accordance with the restoration plan filed pursuant to Section 927.03 hereof. Included in such restoration shall be the removal of all fences, gates and access roads so that the area disturbed is returned to a condition as close as practicable to the prior condition.
(Ord. 79-1985. Passed 11-25-85.)

1987 Replacement

927.17 INSPECTIONS.

The Building Commissioner, or an authorized representative, and the Police Chief and Fire Chief, or their authorized representatives, shall have the authority at any time to enter upon property where a drilling site is contemplated, upon property where a well is in the process of being drilled, or upon a well site, for the purpose of inspecting the site, equipment and all other things necessary to assure compliance with this chapter or any other applicable ordinances of the City. Gas samples shall be taken periodically from any and all gas flairs to ensure that complete combustion is taking place.

(Ord. 79-1985. Passed 11-25-85.)

927.18 LOG BOOK REQUIRED.

The applicant shall maintain a hard bound log book of all waste shipped out pursuant to the plans submitted by applicant, pursuant to Section 927.03(g). Said log book shall list the date, type of waste material, quantity and destination of waste for disposal. The applicant shall retain the receipts from the disposal site. The log book and disposal receipts shall be maintained for a period of at least two years. All records shall be made available to the Building Commissioner or his designee upon request.

(Ord. 79-1985. Passed 11-25-85.)

927.99 PENALTY.

Whoever violates any provision of this chapter is guilty of a misdemeanor of the first degree. In the event of a continuous violation, each day the violation exists shall be deemed a separate offense.

(Ord. 79-1985. Passed 11-25-85.)

CHAPTER 929
Oil and Natural Gas Wells

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CROSS REFERENCES

State law provisions - see Ohio R.C. Ch. 1509

Oil and gas drilling - see OAC 1501:9-1, 1501:9-9

929.01 PERMIT REQUIRED; FEE.

No drilling operation for the exploration of gas and/or oil shall be commenced on property within the Municipality until a drilling permit is obtained from the Inspector of Buildings of the Municipality. A separate permit is required for each gas and/or oil well. A nonrefundable fee of five hundred dollars (\$500.00), payable to the Municipality, shall be submitted with the permit application.

(Ord. 18-2004. Passed 5-10-04.)

929.02 SITE PLAN AND VICINITY MAP REQUIREMENTS.

Each application for a drilling permit shall be accompanied by the documents listed herein and a site plan and vicinity map of the area involved in the application, drawn to scale, showing the following:

- (a) The owners' names and addresses and the current lot lines of the lot containing the proposed drilling unit and all properties within 1,000 feet of the proposed location of the well, storage tanks, and associated equipment;
- (b) The current locations, dimensions and uses of all buildings, structures, ponds, lakes, wetlands and streams within the drilling unit, and structures suitable for occupancy within 1,000 feet of the proposed location of the well, storage tanks, and associated equipment;
- (c) The proposed location of the well and all associated appliances and facilities, such as the wellhead, piping, separators, scrubbers, tank batteries, access roads, dikes, fences and the like;
- (d) The proposed landscaping, screening and restoration plans;
- (e) The proposed locations of pipelines to be utilized to transmit the gas and/or oil to off-site locations, and the facilities to be established at receiving facilities locations;
- (f) For emergency purposes, a schematic diagram of all flowlines, connections and shut-off valves, the diagram to be modified and resubmitted to the Municipality any time that a change in the equipment or facility occurs;
- (g) Specific plans for the removal, disposal methods and disposal sites of all drilling fluids, spoils, cuttings, brine water and other residues and waste materials resulting from the drilling, fracturing or production of the well;
- (h) Existing contours with intervals of not more than five feet where the slope is greater than ten percent (10%) and not more than two feet where the slope is less than ten percent (10%). However, one-foot contours are recommended and will be required in relatively flat topography. Elevations shall be based on sea level datum;
- (i) The names and addresses of all property owners of mineral rights within a radius of 1,000 feet of the proposed location of the well, storage tank and associated equipment;
- (j) The names, addresses and telephone numbers of all persons who will be contracted to haul oil, condensate and/or brine salt water, together with the names, addresses and telephone numbers of all subcontractors thereof;
- (k) The proposed truck routes in and out of the site on public roads during drilling and/or plugging operations;
- (l) Copies of all easements or options for easements for the pipeline, production and processing equipment and access roads;
- (m) A statement stipulating that copies of the Spill Prevention Control and Countermeasure Plan for certain site storage facilities, per Title 40, C.F.R. No. 237, Part 112, shall be submitted prior to commencement of production; and
- (n) A policy of liability insurance with a certificate listing the Municipality as a named insured as required by Section 929.24;
- (o) A statement that the applicant shall provide for independent testing for the presence of chlorides and/or total dissolved solids, either by a qualified consultant or a qualified Ohio Department of Natural Resources laboratory, prior to drilling, upon turn-on, annually thereafter, in any water wells within 1,000 feet of the proposed location of the well, storage tanks, and associated equipment. (Ord. 18-2004. Passed 5-10-04.)

929.03 PERFORMANCE GUARANTEE.

A cash deposit, letter of credit or performance bond acceptable to the Law Director in the amount of twenty thousand dollars (\$20,000) shall be deposited with the Treasurer to serve as a financial guarantee of compliance with this chapter. Compliance shall be determined by the City Engineer after inspection of the facilities and site and assurances of compliance for the Ohio Department of Natural Resources, Division of Oil and Gas.
(Ord. 18-2004. Passed 5-10-04.)

929.04 DISTANCES FROM BOUNDARY LINES, PUBLIC BUILDINGS AND RESIDENCES.

(a) No gas or oil well storage tanks, separators or other equipment associated with the gas or oil well shall be placed closer than 500 feet from any boundary line of the drilling unit and 500 feet from any structure suitable for occupancy.

(b) A drilling unit shall contain not less than twenty acres and be located within a single individually taxed lot. Lots may not be pooled to form a drilling unit.

(c) For purposes of this section, the following definitions shall apply:

(1) "Boundary line of a drilling unit" means the perimeter of the lands within the drilling unit as depicted on the site plan submitted pursuant to Section 929.02.

(2) "Drilling unit" means the total area of all property included in any one application for a drilling permit.
(Ord. 18-2004. Passed 5-10-04.)

929.05 PUBLIC HEARING.

The Planning Commission shall hold a public hearing on the application for a drilling permit and no drilling permit shall be issued by the Inspector of Buildings unless the application for the permit has been reviewed and approved by the Planning Commission.
(Ord. 18-2004. Passed 5-10-04.)

929.06 EASEMENTS OR OPTIONS.

Copies of easements or options for easements shall be submitted with the application for all pipelines, appurtenant structures and access drives where such facilities cross properties not included as part of the drilling unit.
(Ord. 18-2004. Passed 5-10-04.)

929.07 STATE PERMIT REQUIRED.

Before any drilling or any activity related thereto commences, the applicant shall obtain and submit to the Municipality a permit from the Ohio Department of Natural Resources, Division of Oil and Gas.
(Ord. 18-2004. Passed 5-10-04.)

929.08 EMERGENCY CONTACT.

The permit holder must furnish to the Municipality the current name, address and telephone number of the person responsible for the ownership, operation and maintenance of each drilled well located within the Municipality to be contacted in the event of an emergency. This information shall include the street location, state permit number and name of the well.
(Ord. 18-2004. Passed 5-10-04.)

929.09 DISPOSAL OF WASTE MATERIALS.

All waste materials, such as sludge, brine or other waste effluents from well to tank sites, shall be hauled off the property and deposited at a disposal site approved by the State of Ohio. The permit holder may bury spoils from the drilling and temporarily store other waste on the site upon conditions approved by the City Engineer only if the City Engineer determines that the proposed on-site burial or temporary storage of these materials will not adversely affect the site or other property.

(Ord. 18-2004. Passed 5-10-04.)

929.10 LANDSCAPING.

Landscaping must be installed and maintained in accordance with a plan approved by the Planning Commission.

(Ord. 18-2004. Passed 5-10-04.)

929.11 FENCES; PADLOCKS.

Storage tanks, separators, well installations and other permanent producing facilities shall be entirely enclosed by an eight-foot high chain link fence with three strands of barbed wire. Fences shall be kept in good repair until the well is abandoned and the tanks taken out of service. Gates shall be padlocked. Shipping valves extending beyond the fence shall be padlocked. (Ord. 18-2004. Passed 5-10-04.)

929.12 SIGNS.

During the entire time of drilling or production of a gas or oil well, a metal sign identifying the site as a drilling site and stating the site's street address shall be installed near the entrance to the designated access road from the public street to facilitate emergency access.

(Ord. 18-2004. Passed 5-10-04.)

929.13 SITE RESTORATION PRIOR TO PRODUCTION.

Prior to the installation of production following the drilling phase, the City Engineer shall be notified by the permit holder. No production may proceed until the City Engineer has verified in writing that the following preconditions for such approval have been fulfilled:

- (a) All disturbances of land associated with the drilling and development of the well have been restored in such a manner as to approximate the original shape and condition of the drilling site prior to the initiation of drilling procedures, except as necessary and approved for production. Drilling pits must be solidified and buried with a minimum of three feet of cover.
- (b) The permit holder has cleared the site of all litter, rubbish, machinery, equipment, buildings, oil or other substances associated with the drilling and development of the well.
- (c) The permit holder has restored, to their former condition, all streets, sidewalks and other public places of the Municipality which have been damaged or disturbed in the operation of drilling or preparing to drill, or in connection with drilling.
- (d) A final plat has been prepared and submitted to the Engineer showing "as built" locations of wells, permanent storage facilities, pipelines, fences, property boundaries and service roads. Such plat shall be prepared by a registered surveyor of the State.

(Ord. 18-2004. Passed 5-10-04.)

929.14 MAINTENANCE OF SITE, ACCESS DRIVES AND PUBLIC ROADS.

For the duration of a drilling and production operation, the site shall be maintained in a neat, clean and orderly condition. Access drives shall be maintained in a dust-free condition. The permit holder shall be responsible for clearing public roads of all mud, debris or other accumulations resulting from operation, as many times each day as necessary to keep the roads clean and safe at all times.

(Ord. 18-2004. Passed 5-10-04.)

929.15 USE OF PUBLIC ROADS.

A minimum of twelve hours prior to the movement of any drilling equipment, a map indicating routes to be used in conjunction with the drilling operations shall be submitted to the City Engineer. The City Engineer shall then visually inspect the roads in the company of an agent of the permittee to determine the condition of such roads prior to any activity on the part of the applicant.

A minimum of twelve hours prior to the movement of any drilling equipment into the Municipality, notice shall be given to the Police Chief and written consent for the movement of drilling equipment from the Police Chief shall be secured.

The Mayor shall have the right and discretion to revoke approval of transportation of well drilling equipment on twelve hours notice at any time that the condition of roads, weather or traffic makes travel unsafe.

(Ord. 18-2004. Passed 5-10-04.)

929.16 CONSTRUCTION OF ACCESS DRIVES.

Prior to the drilling of any well, service and emergency access drives shall be constructed. They shall be paved with suitable road materials acceptable to the City Engineer to prevent mud deposits on public streets and to permit emergency vehicles access during inclement weather. Access drives shall be adequately fenced and shall have a gate with a locking device to prevent unauthorized entry. Drives, fences and gates shall be maintained by the permit holder for the life of the well.

(Ord. 18-2004. Passed 5-10-04.)

929.17 SECURITY.

All gate, storage tank manholes, discharge valves, fill valves, shut-off valves and fence gates shall be locked. All locks at a given well shall utilize a master key. Master keys marked with well identification shall be provided to the Inspector of Buildings.

(Ord. 18-2004. Passed 5-10-04.)

929.18 FLOODWAYS.

No permit shall be issued for a gas or oil well located in a floodway, as designated by Chapter 1365. (Ord. 18-2004. Passed 5-10-04.)

929.19 NUISANCES.

(a) At all times, equipment and machinery shall be operated and maintained in such a manner as to minimize dust, noise and vibration.

(b) All permanent pumps and/or compressors shall be chosen with due regard to the minimization of potentially harmful acoustic levels upon adjacent properties.

(c) Drilling operations shall be controlled by double exhausts or otherwise so that the noise level of actual drilling does not exceed a noise level of seventy-five decibels at the boundary of the drilling unit during maximum noise production periods.

(d) All pumping units and compression equipment shall be electrically driven when located less than 700 feet from the right-of-way line of any public road, or less than 1,000 feet from any dwelling. (Ord. 18-2004. Passed 5-10-04.)

929.20 POLLUTION PREVENTION.

(a) Permanent or temporary waste holes, storage lagoons, service ponds or similar storage facilities, if permitted by the City Engineer pursuant to Section 929.09, shall be designed, constructed and maintained so as to prevent any drainage into ditches, natural watercourses, sewers, ponds, ground water, etc. There shall be a protective lining of impermeable material installed in storage lagoons to prevent the percolation of harmful chemicals or residues into the soil. All Environmental Protection Agency rules shall be followed relative to the disposal of wastewater.

(b) Storage tanks shall be diked or otherwise designated, constructed and maintained so as to prevent any seepage or drainage beyond a five-foot distance from each tank. Such seepage or drainage shall, under no circumstances, be allowed to enter upon adjacent property or any road drainage ditch, natural watercourse or man-made body of water. Dikes will be constructed to contain not less than one hundred fifty percent (150%) of the tank capacity.

(c) The permit holder shall seal gas and oil wells to protect fresh water wells from salt water or other pollution or contamination in such a proper manner as is in accordance with good practice. The permit holder shall establish contingency plans for the immediate furnishing of potable water to affected residents for such period as may be required to reestablish proper potability on any polluted or contaminated well. The permit holder is responsible for the obligation to provide potable water without cost to the residents receiving the same, provided that liability is established by the Ohio Department of Natural Resources. (Ord. 18-2004. Passed 5-10-04.)

929.21 ABANDONING WELLS.

When a well is to be abandoned, the permit holder shall notify the Inspector of Buildings of such abandonment before the well is abandoned and the equipment removed.

A permit holder is required to pull and/or plug a well site on abandonment to remove all above-ground appurtenances, to return the site to the original grade and condition and to follow any other rules and regulations promulgated by any department or division of the State relative to pulling, plugging and abandoning oil or gas wells. (Ord. 18-2004. Passed 5-10-04.)

929.22 ADDITIONAL SAFEGUARDS.

(a) The drilling preparation used in wells drilled with rotary equipment shall be capable of sealing off each oil, gas, brine or fresh water stratum above the producing horizon or objective formation and shall be capable of preventing blowouts and flows of salt or fresh water in accordance with good well drilling practice. Rotary tools shall have the innermost string of casing equipped with a blowout preventer, properly installed and tested prior to drilling into any formation likely to contain oil or gas.

(b) Wells drilled with cable tools shall have the innermost string of casing equipped with a high-pressure master gate valve and control head, and an oil saver, securely anchored by concrete, prior to drilling onto any formation likely to contain oil or gas.

(c) When drilling any well for oil or gas, the drilling rig shall have a blowout preventer, in good working order, attached to the drilling equipment to prevent gas or oil from blowing out of control, causing damage to the surrounding area or the wasting of natural resources.

(d) Increasing porosity and permeability of any pay horizon or potential pay horizon by means of explosives is strictly prohibited.

(e) All movable valves and access points in the producing complex shall be made vandal-proof with all appropriate methods, such methods to be submitted to the Municipality for final approval.

(f) All crews shall be trained in the operation of the blowout preventer, control head and related equipment, and all equipment to be used shall be in good condition.

(g) All gas and oil lines shall be buried at a minimum depth of thirty inches.

(h) Openings in tanks in excess of four inches in diameter shall be equipped with gratings with openings not greater than four inches by four inches.

(i) Cuttings or residual materials accumulated in the pits upon completion of drilling shall be treated in the same way as those which fall under regulations for special permit areas, as required by Ohio Department of Natural Resources, Division of Oil and Gas.

(j) Weeds shall be kept cleared at all times from inside the tank battery fencing and shall be cut outside the perimeter of the fencing to a distance of at least thirty-six inches.

(k) Shut-off valves on lines coming from the well, located in the tank battery, shall be positioned within the fencing perimeter and no closer than fifteen feet to tanks, separators, regulators, meters, etc., to permit access by emergency personnel in the event of fire.

(l) All gates surrounding wells, tanks, pumps and similar devices that permit access to the site shall be kept locked at all times, except when maintenance activities are in progress and/or when products are being removed.

(m) All drilling within 1,000 feet of any floodway, wetland or body of water used as public water supply shall utilize those same requirements as established for special permit areas by the Ohio Department of Natural Resources, Division of Oil and Gas.

(n) Address numbers no less than ten inches in height shall be displayed at the access road entrance to all sites.

(o) All operations shall be shut in or enclosed when any heating or products takes place. (Ord. 18-2004. Passed 5-10-04.)

929.23 INSPECTIONS.

The City shall have the authority, at any time, to enter upon property where a well is in the process of being drilled, or upon a producing well site, for the purposes of inspecting the site, equipment and all other operations and conditions as may be necessary to ensure compliance with this chapter.

(Ord. 18-2004. Passed 5-10-04.)

929.24 INSURANCE.

The applicant shall furnish a certificate of insurance of a commercial general liability policy including pollution liability coverage naming the Municipality as an additional insured on its policy, in an amount not less than two million dollars (\$2,000,000) per occurrence and three million dollars (\$3,000,000) in the aggregate. The insurance shall be kept in force for such period of time that the drilling is in progress and the well is in operation or is producing oil or gas, and until such well is plugged and the storage tanks and all other equipment are taken out of use and removed from the site.

(Ord. 18-2004. Passed 5-10-04.)

929.25 LIABILITY.

This chapter shall apply to the heirs, executors or assigns of any individual permittee, and the successors and assigns of any firm, partnership, association or corporation permittee, as fully as this chapter applies to the original permittee.

Provisions of this chapter requiring responsibility of or compliance by the permit holder, including bond conditions, shall also apply to any assignee, employee, contractor, subcontractor or other party performing services in connection with the permit.

The permit holder shall pay to the owner of any realty, crops, buildings, improvements, goods or chattels located in the area any extra costs of insurance on the property imposed by reason of the granting of the permit or the operations carried on thereunder, and any and all damages suffered by any person as to property within the Municipality from fire or from oil, gas or water caused by or originating from any operation connected with the well, and shall hold the Municipality harmless and indemnify and release the Municipality from any and all liability growing out of the granting of such permit.

The correction of any damage to any road surface occurrence as the direct or indirect result of the movement of heavy drilling equipment or heavy trucks in any way associated with the drilling is the responsibility of the permit holder. The Municipality assumes no liability for damage to the applicant's equipment or load being moved due to the failure of municipal streets. The permit holder shall compensate the Municipality for personal injury and/or property damages and all claims, damages or proceedings of any kind and from all responsibility for personal injury or property damage, public or private, caused directly or indirectly as a result of the transportation of any equipment related to the drilling activities.

(Ord. 18-2004. Passed 5-10-04.)

929.26 APPLICATION OF OTHER STATE AND LOCAL REQUIREMENTS.

All drilling and production operations shall comply with all ordinances of the Municipality and all state regulations, except as otherwise required in this chapter.

(Ord. 18-2004. Passed 5-10-04.)

929.27 CONDITIONS FOR NONISSUANCE OR REVOCATION OF PERMITS,
STOP ORDERS.

Failure to comply with any of the provisions of this chapter shall be grounds to refuse issuance of a permit to drill or to revoke a permit already issued by the Municipality. The Mayor or his or her authorized representative shall also have the authority to order the immediate cessation of all drilling or any other work at the site where he or she finds specific cause, as identified elsewhere in this chapter, or where continuation would constitute a direct danger to persons or property.

Revocation of a permit or issuance of a stop order shall remove all rights of the permit holder to continue operations until such time as steps are taken and approved to come into compliance with this chapter. Any operation carried on by the permit holder after revocation of the permit or issuance of a stop order shall constitute a violation of this chapter and shall be punishable as provided in Section 929.99.
(Ord. 18-2004. Passed 5-10-04.)

929.28 ANNUAL REPORTING.

The permit holder shall annually file with the City during the thirty-day period before June of each year the following information:

- (a) A current certificate of insurance in compliance with Section 929.24.
- (b) Current information concerning emergency contacts as required by Section 929.08.
- (c) Current schematic diagrams of flowlines, connections and shut-off valves required by Section 929.02(f).
- (d) Current information concerning contractors hauling material from site as required by Section 929.02(j).
- (e) The results of the testing concerning water wells required by Section 929.02(o).
(Ord. 18-2004. Passed 5-10-04.)

929.29 CONFLICT OF LAWS.

If there is any conflict between the regulations of this chapter and Ohio R.C. Chapter 1509 or the rules and regulations of the Ohio Division of Oil and Gas, the more stringent regulations shall apply. (Ord. 18-2004. Passed 5-10-04.)

929.99 PENALTY.

Whoever violates or fails to comply with any of the provisions of this chapter is guilty of a misdemeanor of the first degree and shall be fined not more than one thousand dollars (\$1,000) or imprisoned not more than six months, or both, for each offense. A separate offense shall be deemed committed each day during or on which a violation or noncompliance occurs or continues. (Ord. 18-2004. Passed 5-10-04.)