

ORDINANCE 2018 - 14

**TO ADOPT CHAPTER 901 OF THE CODIFIED ORDINANCES
REGARDING TELECOMMUNICATIONS, UTILITY, AND
SMALL CELL WIRELESS FACILITY ACCESS TO THE
RIGHT OF WAY AND TO DECLARE AN EMERGENCY**

WHEREAS, the Village has special power to regulate the use of streets and rights of way pursuant to Chapter 723 of the Ohio Revised Code; and

WHEREAS, the Village has previously utilized an administrative and informal process for granting utilities and related parties with the right to occupy the right of way; and

WHEREAS, recent changes to state law have provided different utilities, telecommunications companies, and wireless service providers with the rights to occupy the Village's right of way; and

WHEREAS, the Village desires to implement the recent changes in state law and otherwise adopt a formal ordinance establishing procedures for utilities to occupy the rights of way; and

WHEREAS, the changes in state law become effective and otherwise grant rights to occupy the right of way on August 1, 2018, and the City must implement changes prior to that time.

**NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE
OF CENTERBURG, OHIO:**

Section 1: That Chapter 901 of the Codified Ordinances be adopted to read as follows:

**"CHAPTER 901
Right-of-Way Use**

901.01 PURPOSE AND SCOPE OF CHAPTER.

- (a) The purpose of this Chapter is to provide requirements for the use or occupation of any and all Rights-of-Way and Public Property in the Village, the issuance of Permits to Persons for such use or occupancy, and to set forth the policies of the Village related thereto.
- (b) This chapter does not take the place of any franchise, license, or permit which may be additionally required by law. Each Permittee shall obtain any and all such additional franchises, licenses or permits necessary to the operations and conduct of its business.
- (c) No person shall use, occupy, own or operate facilities in, under or over any Rights-of-Way within the Village unless such Person first obtains a Permit conforming to the requirements set forth therein and in this chapter.
- (d) The policy of the Village with regard to Rights-of-Way is hereby declared to be:

- (1) To promote public safety and protect public property;
 - (2) To promote the utilization of Rights-of-Way for the public health, safety and welfare and to promote economic development in the Village;
 - (3) To promote the availability of a wide range of utility, communication and other services, including the rapid deployment of new technologies and innovative services, to the Village's citizens and taxpayers at reasonable rates;
 - (4) To promote cooperation among the Village and Permittees in the occupation of Rights-of-Way, and work therein, in order to minimize public inconvenience during work in the Rights-of-Way and avoid uneconomic, unneeded and unsightly duplication of facilities.
 - (5) To ensure adequate public compensation for the regulation of the private use of the Rights-of-Way and regulation thereof; and
 - (6) To promote and require reasonable accommodation of all uses of Rights-of Way and to establish the following priority of use of Rights-of-Way, when all requested usage of Rights-of-Way by Permittees cannot be accommodated:
 - A. Use by the Village shall have first priority;
 - B. Use by another governmental entity with Village's concurrence shall have second priority;
 - C. Utility Telecommunications Permittees shall have third priority;
 - D. Wireless Facility Permittees shall have fourth Priority; and
 - E. Special Permittees shall have fifth priority
- provided, however, that the Village may reasonably require Rights-of-Way Permittees to cooperate to accommodate use by other Permittees, and provided further that the Village Administrator may alter these priorities when the Village Administrator reasonably determines a deviation therefrom to be in the public interest.
- (e) Nothing in this chapter should be construed to apply the provisions of this chapter to facilities owned or operated by the Village or any of its operations
- (f) Unless otherwise specifically stated in a Permit, all Permits granted hereunder shall be non-exclusive.

901.02 DEFINITIONS.

For purposes of this chapter, the following terms, phrases, words, and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. All capitalized terms used in the definition of any other term shall have their meaning as otherwise defined in this Chapter. The words "shall" and "will" are mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

- (a) "Abandoned" means any facilities, structures, or equipment in the Right of Way that are unused for a period of three hundred sixty-five days without the operator otherwise notifying the Village and receiving the Village's approval.

- (b) "Antenna" means communications equipment that transmits or receives radio frequency signals in the provision of wireless service.
- (c) "Applicant" means any Person applying for a Permit hereunder.
- (d) "Approved" means approval by the Village pursuant to this Chapter or any regulations adopted hereunder.
- (e) "Best Efforts" means the best reasonable efforts under the circumstances, taking into consideration, among other appropriate matters, all applicable laws, regulations, safety, expedition, engineering and operational, available technology and human resources and cost.
- (f) "Cable operator," "cable service," and "franchise" have the same meanings as in the "Cable Communications Policy Act of 1984," 98 Stat. 2779, 47 U.S.C.A. 522.
- (g) "Collocation" or "collocate" means to install, mount, maintain, modify, operate, or replace wireless facilities on a wireless support structure.
- (h) "Council" means the Council of the Village of Centerburg.
- (i) "Decorative pole" means a pole, arch, or structure other than a street light pole placed in the Right of Way specifically designed and placed for aesthetic purposes and on which no appurtenances or attachments have been placed except for any of the following: (1) Electric lighting; (2) Specially designed informational or directional signage; (3) Temporary holiday or special event attachments.
- (j) "Design Guidelines" means detailed guidelines and specifications promulgated by the Village in accordance with Ohio Revised Code section 4939 for the design and installation of Small Cell Facilities and Wireless Support Structures in the Right-of-Way.
- (k) "Emergency" means a reasonably unforeseen occurrence with a potential to endanger personal safety or health, or cause substantial damage to property, that calls for immediate action.
- (l) "FCC" means the Federal Communications Commission, or any successor thereto.
- (m) "Force Majeure" means a strike, acts of God, acts of public enemies, orders of any kind of the government of the United States of America or the State of Ohio or any of their departments, agencies, or political subdivisions, riots, epidemics, landslides, lightning, earthquakes, fires, tornadoes, storms, floods, civil disturbances, explosions, partial or entire failure of utilities or any other cause or event not reasonably within the control of the disabled party, but only to the extent the disabled party notifies the other party as soon as practicable regarding such Force Majeure and then for only so long as and to the extent that, the Force Majeure prevents compliance or causes non-compliance with the provisions hereof.
- (n) "Historic district" means a building, property, or site, or group of buildings, properties, or sites that are either of the following: (1) Listed in the national register of historic places or formally

determined eligible for listing by the keeper of the national register, the individual who has been delegated the authority by the federal agency to list properties and determine their eligibility for the national register, in accordance with section VI.D.1.a.i-v of the nationwide programmatic agreement codified at 47 C.F.R. part 1, Appendix C; (2) A registered historic district as defined in section 149.311 of the Revised Code.

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

(p) "Micro wireless facility" means a small cell facility that is not more than twenty-four inches in length, fifteen inches in width, and twelve inches in height and that does not have an exterior antenna more than eleven inches in length suspended on cable strung between wireless support structures.

(q) "Municipal electric utility" has the same meaning as in section 4928.01 of the Revised Code.

(r) "Occupy or use" means, with respect to a Right of Way, to place a tangible thing in a 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 for the delivery of public utility services or any services provided by a cable operator.

(s) (1) "Operator" means a wireless service provider, cable operator, or a video service provider that operates a small cell facility and provides wireless service. For the purpose of this chapter, "operator" includes a wireless service provider, cable operator, or a video service provider that provides information services as defined in the "Telecommunications Act of 1996," 110 Stat. 59, 47 U.S.C. 153(20), and services that are fixed in nature or use unlicensed spectrum.

(2) For purposes of submitting a request for Village consent under this Chapter, "operator" also includes any person that, at the time of filing the request, provides the Village the person's written authorization to perform the specific work for which consent has been requested on behalf of an operator.

(t) "Permit" means the non-exclusive grant of authority to use or occupy all or a portion of Village's Rights-of-Way granted pursuant to this Chapter.

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

(v) "Person" Any natural person or corporate entity, business association or other business entity including, but not limited to, a firm, a partnership, a joint venture, a sole proprietorship, a

political subdivision, a public or private agency of any kind, a utility, a successor or assign of any of the foregoing, or any other legal entity, whether for profit or not-for-profit.

(w) "Public Property" means any real property, other than a Right-of-Way, except for the last sentence of the definition of the term "Right-of-Way" of this Chapter, owned by the Village.

(x) "Public utility" means a wireless service provider as defined in division (A)(20) of section 4927.01 of the Revised Code or any company described in section 4905.03 of the Revised Code except in divisions (B) and (I) of that section, which company also is a public utility as defined in section 4905.02 of the Revised Code and regulated by the PUCO; and includes any electric supplier as defined in section 4933.81 of the Revised Code.

(y) "PUCO" means the Public Utilities Commission of Ohio as defined in O.R.C. § 4901.02.

(z) "Regulation" means any rule adopted by and pursuant to the authority of this Chapter.

(aa) "Right-of-Way" or "Rights-of-Way" means the surface of and the space above and below any public street, public road, public highway, public freeway, public lane, public path, public way, public alley, public court, public sidewalk, public boulevard, public parkway, public drive or any public easement or right-of-way now or hereafter held by the Village which shall, within its proper use, entitle a Permittee or Franchisee, in accordance with the terms hereof and of any Permit, to the use thereof for the purpose of installing or operating any facilities as may be ordinarily necessary and pertinent to the provisions of utility, cable television, communications or other services as set forth in any Franchise or Permit. "Right-of-Way" shall also include Public Property, but only to the extent the use or occupation thereof is specifically granted in a Permit or by regulation. "Right of Way" excludes a private easement.

(bb) "Right-of-way Work Permit" means a permit granted by the Village Administrator that must be obtained in order to perform any work in, on, above, within, over, below, under, or through any part of the Right of Way, including, but not limited to, the act or process of digging, boring, tunneling, trenching, excavating, obstructing, or installing, as well as the act of opening and cutting into the surface of any paved or improved surface that is part of the Right of Way.

(cc) "Small Cell facility" means a wireless facility that meets both of the following requirements:

- (1) Each antenna is located inside an enclosure of not more than six cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an enclosure of not more than six cubic feet in volume
- (2) All other wireless equipment associated with the facility is cumulatively not more than twenty-eight cubic feet in volume. The calculation of equipment volume shall not include electric meters, concealment elements, telecommunications demarcation boxes, grounding equipment, power transfer switches, cut-off switches, and vertical cable runs for the connection of power and other services.

(dd) "Substantial change" means the same as defined by the FCC in 47 C.F.R. § 1.40001 (b)(7), as may be amended, and as applicable to facilities in the public Right-of-Way, which defines that term as a collocation or modification that:

- (1) increases the overall height more than 10% or 10 feet (whichever is greater);
- (2) increases the width more than 6 feet from the edge of the wireless support structure;
- (3) involves the placement of any new enclosures on the ground when there are no existing ground-mounted enclosures;
- (4) involves the placement of any new ground-mounted enclosures that are ten percent (10%) larger in height or volume than any existing ground-mounted enclosures;
- (5) involves excavation or deployment of equipment outside the area in proximity to the installation and other wireless communications equipment already deployed on the ground;
- (6) would defeat the existing concealment elements of the wireless support structure as determined by the Village Administrator; or
- (7) violates a prior condition of approval, provided however that the collocation need not comply with any prior condition of approval related to height, width, enclosures or excavation that is inconsistent with the thresholds for a substantial change.

Note: For clarity, the definition in this Chapter includes only the definition of a substantial change as it applies to installations in the public Right-of-Way. The thresholds for a substantial change outlined above are disjunctive. The failure to meet any one or more of the applicable thresholds means that a substantial change would occur. The thresholds for height increases are cumulative limits. For sites with horizontally separated deployments, the cumulative limit is measured from the originally-permitted wireless support structure without regard to any increases in size due to wireless facilities not included in the original design. For sites with vertically separated deployments, the cumulative limit is measured from the permitted site dimensions as they existed on February 22, 2012.

(ee) "Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

(ff) "Village" means the Village of Centerburg, Ohio, or, as appropriate in the case of specific provisions of this Chapter, any board, authority, agency, commission, department of, or any other entity of or acting on behalf of, the Village of Centerburg, or any officer, official, employee, representative or agent thereof, the designee of any of the foregoing, or any successor thereto.

(gg) "Village Administrator" means the Village Administrator or his/her designee.

(hh) (1) "Wireless facility" means equipment at a fixed location that enables wireless communications between user equipment and a communications network, including all of the following:

- (A) Equipment associated with wireless communications;

- (B) Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration.
- (2) The term includes small cell facilities.
- (3) The term does not include any of the following:
 - (A) The structure or improvements on, under, or within which the equipment is collocated;
 - (B) Coaxial or fiber-optic cable that is between wireless support structures or utility poles or that is otherwise not immediately adjacent to or directly associated with a particular antenna
- (ii) "Wireless service" means any services using licensed or unlicensed wireless spectrum, whether at a fixed location or mobile, provided to the public using wireless facilities.
- (jj) "Wireless service provider" means a person who provides wireless service as defined in division (A)(19) of section 4927.01 of the Revised Code.
- (hh) "Wireless support structure" means a pole, such as a monopole, either guyed or self-supporting, street light pole, traffic signal pole, a fifteen-foot or taller sign pole, or utility pole capable of supporting wireless small cell facilities. As used in this chapter, "wireless support structure" excludes all of the following:
 - (1) A utility pole or other facility owned or operated by a municipal electric utility;
 - (2) A utility pole or other facility used to supply traction power to public transit systems, including railways, trams, streetcars, and trolleybuses.
- (jj) "Wireline backhaul facility" is a facility used for the transport of communications service or any other electronic communications by coaxial, fiber-optic cable, or any other wire.

901.03 TYPES OF PERMITS.

- (a) The following types of Permits are available for use of the Rights-of-Way:
 - (1) Telecommunication or Utility Permit - granted to Persons who desire and are granted authority to utilize Rights-of-Way to provide a public utility and/or telecommunications service, other than Cable Television Service.
 - (2) Wireless Facility Permit: a permit granted to Persons to utilize Rights-of-Way for a Wireless Facility or a Wireless Support Structure, classified as follows:
 - a. TYPE-A: to do either of the following
 - i. To construct a wireless support structure associated with a small cell facility in a Right of Way.
 - ii. To modify or replace a wireless support structure and/or small cell facility that constitutes a substantial change
 - b. TYPE-B: to do either of the following:
 - i. Collocate small cell facilities on an existing wireless support structure; or

- ii. Replace or modify a small cell facility on a wireless support structure that does not constitute a substantial change,

(3) Special Permit - granted to Persons for a specific, limited use of the Rights-of-Way or a specific portion thereof.

(4) Right of Way Work Permit: a permit granted by the Village Administrator, authorizing actual physical work by Permittee in the Right-of-Way

(b) All permits shall specify the use or uses for which such Permits are granted and shall contain such other non-discriminatory terms and conditions as are appropriate and as are set forth in this Chapter or conditions negotiated and agreed to by the Village and the Permittee to provide for the public safety and welfare.

901.04 APPLICATION PROCESS.

(a) Telecommunication or Utility Permits.

(1) Applicants for Telecommunication or Utility Permits shall file an application therefor, in such form as the Village may require, along with an application fee of one thousand dollars (\$1,000). The Village Administrator shall determine if the application is in order and shall determine whether, in accordance with the criteria set forth in Section 901.05, the Applicant should be granted a Permit hereunder.

(2) Except as otherwise provided in law or ordinance, the Village, not later than sixty days after the date of filing by a person a completed Telecommunications and Utility Permit, shall grant or deny the Permit.

(3) Except in the case of a public utility subject to the jurisdiction and recognized on the rolls of the public utilities commission or of a cable operator possessing a valid franchise awarded pursuant to the "Cable Communications Policy Act of 1984," 98 Stat. 2779, 47 U.S.C.A. 541, the Village, for good cause shown, may withhold, deny, or delay its consent to any person based upon the person's failure to possess the financial, technical, and managerial resources necessary to protect the public health, safety, and welfare.

(b) Applications for Wireless Facility Permits shall be processed in accordance with Section 21 of this Chapter.

(c) Applicants for Special Permits shall file an application therefor, in such form as the Village requires along with an application fee of three hundred dollars (\$300.00). The Village Administrator shall determine if the application is in order and if the Village Administrator also finds, in accordance with the criteria set forth in Section 901.05, that the application should be granted, the Village Administrator shall grant such a Permit.

(e) Any Applicant may appeal the failure of the Village Administrator to process an Application or to grant a Permit. In order to perfect such appeal, the Applicant shall file an appeal to Council with the Clerk of Council. The appeal shall be filed within ten days of the Village

Administrator's determination or recommendation, or within 90 days of the filing of the application if the Village Administrator has taken no action. The appeal shall be in writing and shall provide sufficient information to identify application and matter being appealed and the reasons why the Applicant has requested the appeal. Council shall then review the matter after affording the Applicant an opportunity to be heard either in person or in writing. Except to the extent otherwise appealable by law, Council's decision shall be final.

(f) A Permittee that desires to renew its Permit under this Chapter shall, not more than 180 days nor less than 90 days before expiration of the current Permit, file an application with the Village for renewal of its Permit which shall include the information required in the original application. Within 90 days after receiving a complete application under this Section, the Village shall issue a written determination granting or denying the renewal application in whole or in part, applying the criteria set forth in Section 901.05. If the renewal application is denied, the written determination shall include the reasons for non-renewal. No Permit shall be renewed until any ongoing violations or defaults in the Permittee's performance of the Permit, or of the requirements of this Chapter, have been cured, or a plan detailing the corrective action to be taken by the Permittee has been approved by the Village.

901.05 CRITERIA FOR GRANTING PERMITS.

(a) Telecommunications and Utility, Wireless Facility, and Special Permits shall be granted, or renewed, to Persons based upon a determination by the Village that the following criteria are met:

(1) The granting or renewal of the Permit will contribute to the public health, safety or welfare in the Village;

(2) The granting or renewal of the Permit will be consistent with the policy of the Village as set forth in Sections 901.01 and 901.07;

(3) That the Applicant has and will continue to have liability insurance, which names the Village as an additional insured, in effect in such amounts and for such liability as the Village may require or be self-insured pursuant to the terms of this Chapter;

(4) That the Applicant is a proper Person to hold a Permit and will fulfill all its obligations hereunder;

(5) That the Applicant possesses sufficient financial and technical ability;

(6) That the application complies with applicable federal, state and local telecommunications laws, rules and policies; and

(7) For Permit renewals, that the Rights-of-Way possess a continuing capacity to accommodate the Applicant's existing facilities; the Applicant's compliance with the requirements of this chapter and the Permit provisions; and such other factors as may demonstrate that the continued grant to use the Rights-of-Way will serve the community interest.

(b) The Village reserves the right to deny an application if any one of the following conditions exist:

- (1) The application does not comply with a provision of this Chapter or a provision of the Village of Centerburg Codified Ordinances;
- (2) The applicant is not authorized to conduct business in the State of Ohio;
- (3) The applicant is not current in its obligation to pay to the Village fees or taxes imposed by this Chapter;
- (4) The design or location is deemed unsafe or non-compliant in regards to transportation and engineering standards for construction within the Right-of-Way;
- (5) The design is counter to the health, safety, and welfare of the Village;
- (6) The design or location is in conflict with current or proposed accessibility standards;
- (7) The design does not meet standards related to electrical, structural, safety or construction best practices.
- (8) The proposed design or location is in conflict with existing or already proposed infrastructure, facilities, and/or utilities.

(c) If multiple applications are received by the Village to install two or more wireless support structures that would violate spacing requirements, or to collocate two or more small cell facilities on the same wireless support structure, the Village shall process and render a decision in the order they are received. In the event that an application is received by the Village to install a wireless support structure or small cell facility in a location in common with another application for a facility in the right of way, preference shall be granted in accordance with the priorities established in Section 901.01(d)(6) of this Chapter.

(d) During the Village's review, if an Applicant amends an Application to substantially modify the location, height, volume, or significant aesthetic appearance of a proposed facility or structure, the Village Administrator may determine that the pending Application has been withdrawn and a new Application has been resubmitted effective as of the date the amendments were received by the Village.

901.06 TERMS OF PERMITS.

(a) Telecommunications and Utility Permits shall be granted for a term not to exceed ten (10) years.

(b) The terms of Special Permits shall be determined by the Village Administrator but shall in no event exceed ten (10) years.

(c) The term of a Wireless Facility Permit shall be as set forth in Section 21 of this chapter.

(d) The term of a Right of Way Work Permit shall be determined by the Village Administrator, but in no event shall exceed one (1) year.

(e) Accelerated permit terms due to invalidation or revocation. In the event that any court of competent jurisdiction invalidates any portion of federal or state law such that it would not mandate approval of any Permit, or in the event that the Public Utilities Commission of Ohio issues a ruling

or otherwise revokes a certificate under which a Permit was issued, such Permit shall automatically expire one year from the effective date of the judicial order, unless the decision specifically does not authorize accelerated termination of previously approved Permits. A permittee shall not be required to remove its improvements approved under the invalidated Permit if it submits an application for a Permit for those improvements before the one-year period ends. The Village Administrator may extend beyond one-year the time in which a permittee may apply for a Permit.

901.07 OBLIGATIONS OF PERMITTEES.

(a) In addition to the other requirements set forth herein, each Telecommunication and/or Utility and Special Permittee shall:

(1) Use its Best Efforts to cooperate with other Permittees and the Village for the best, most efficient, most aesthetic and least obtrusive use of Rights-of-Way, consistent with the public safety, and to minimize traffic and other disruptions including street cuts. A Permittee shall not place location markers unless such markers are otherwise required by law.

(2) Participate in joint planning and advance notification of Right-of-Way work, excepting such work performed in Emergencies or other exigent circumstances.

(3) Cooperate with other Permittees in utilization of, construction in, and occupancy of private rights-of-way, but only to the extent the same is not inconsistent with the grant thereof or state or federal law.

(4) Unless otherwise prohibited by law, upon written notice of, and at the direction of, the Village Administrator and at the Permittees' sole cost, promptly remove or rearrange facilities as necessary, including but not limited to times during any construction, repair or modification of any street, sidewalk, Village utility or other governmental uses, or if additional or subsequent Village or other public uses of Rights-of-Way are inconsistent with then current uses of Permittees or for any other reasonable cause as determined by the Village Administrator.

(5) All Persons granted a Permit on or after the effective date of this Chapter shall provide maps or other information in such form (including digital form) and at such times as the Village may reasonably require. Said maps and information shall locate, describe and identify all structures and facilities of such Permittee, including pole attachments, above and in the Rights-of-Way.

(6) Perform all work, construction, maintenance or removal of structures and facilities within the Right-of-Way in accordance with good engineering and construction practice, including any appropriate safety codes and in accordance with the Best Efforts to repair and replace any street, curb, or other portion of the Right-of-Way, or facilities or structures located therein, to a condition materially equivalent to this condition prior to such work, and to do so in a manner which minimizes inconvenience to the public, the Village and other Permittees, all in accordance with all applicable regulations.

(7) Register with all appropriate underground reporting services.

(8) Unless otherwise set forth in a Permit, not enter into leases or other agreements for physical space in or on Permittee's facilities located within the Rights-of-Way without prior notice to the Village Administrator to include a general description of the uses to be made to the facilities.

(9) Designate a single point of contact for all activities related to the Permit in the Village.

(10) Assure subcontractor compliance with all permit provisions.

(b) If requested by the Village, in order to accomplish construction and maintenance activities directly related to improvements for the health, safety, and welfare of the public, a Permittee shall, unless otherwise prohibited by law, relocate or adjust its facilities within the Right of Way at no cost to the Village, as long as such request similarly binds all users in or on such Right of Way. Such relocation or adjustment shall be completed in accordance with local law.

901.08 PERMIT FEES.

(a) Telecommunication and Utility Permittees pay an annual fee determined by the following:

(1) Permittees utilizing equal to or greater than thirty linear miles of Right-of-Way shall pay a fee of Three Thousand Dollars per year.

(2) Permittees utilizing less than thirty linear miles of Right-of-Way shall pay a fee of One Thousand Dollars per year.

Such fee shall be paid in advance for each year prior to January 31. Partial year permits shall be prorated.

(b) Special Permittees shall pay an annual fee of Ten Cents (\$.10) per linear foot of Right-of-Way used or occupied. Such fee shall be paid in advance for each year prior to January 31 of such year. Partial year permits shall be prorated.

(c) In addition to the annual fees set forth in subsection (a) and (b) hereof, Permittees shall reimburse the Village for the cost of inspection of the erection, installation, maintenance and/or restoration authorized by the Right-of-Way Work Permit. Such reimbursement is payable upon receipt of an invoice from the Village.

(d) Recovery of Additional Costs Incurred in Processing Application. The Village is authorized to charge the Applicant to recover additional, reasonable costs that are actually and directly incurred for an analysis, evaluation, or response to an application under this Chapter if the actual and direct costs of review exceed the application fee, and are reasonably related to a unique request of the application/applicant. Additional costs may include unforeseen Village staff review costs and the costs of Independent Consultants in accordance with Section 901.20 hired to assist with review of the application. No Permits shall issue until and unless the applicant pays the application fee and any such additional costs as are authorized to be recovered under this Subsection.

(e) As additional compensation for the use of the Right-of-Way, the Village Administrator, in his sole discretion, may require Permittees to release the Village from any obligation to pay compensation to the Permittee for the cost of relocation of utilities located in private easements in conjunction with road improvement projects.

(f) The Village Administrator may determine that a Permittee is exempt by law from such Permit fees, or has already provided other compensation to the Village sufficient to justify waiving a payment of some or all of the Permit Fees outlined herein.

901.09 CONSTRUCTION AND TECHNICAL STANDARDS.

(a) Upon grant of the Permit and in order to construct, operate and maintain a telecommunications system or utility in the Village, the Permittee may enter into contracts with any public utility companies or any other owner or lessee of any poles or underground facilities located within or without the Village; obtain right-of-way permits from appropriate Village, State, County, and Federal officials necessary to cross or otherwise use highways, roads, watercourses or other environmentally-sensitive areas, under their respective jurisdiction, obtain permission from the Federal Aviation Administration to erect and maintain antennas; and obtain whatever other permits a Village, County, State or Federal agency may require.

(b) In those areas of the Village where telephone and electric services are provided by underground facilities, or are specified in applicable design guidelines that any new services shall be underground, all new facilities of a Permittee shall be placed underground. In all other areas, the Permittee, upon request by the Village, shall use its Best Efforts to place facilities underground or on the ground, as opposed to above ground (i.e. on a pole). However, "Facilities" as used in the preceding sentence shall not include a Wireless facility, or equipment which is customarily placed on or above the ground in conjunction with underground transmission facilities (e.g. splice and terminal pedestals, equipment cabinets and transformers). Where not otherwise required to be placed underground by this Chapter, the Permittee's placement of such system shall be consistent with the Permittee's construction and operating standards and provided that the excess cost over the aerial location shall be borne by the property owner making the request. In no circumstance shall a new pole be located in any area of the Village where it is not replacing an existing pole without written approval included in a permit, which approval shall not be unreasonably withheld.

(c) In accordance with R.C. 4939.0314, the Village Manager may adopt, implement, and amend from time to time reasonable written design guidelines with objective, technologically-feasible criteria that reasonably match the aesthetics and character of the immediate area, regarding

- (1) the location of any ground-mounted small cell facilities;
- (2) the location of a small cell facility on a wireless support structure;
- (3) the appearance and concealment of small cell facilities, including those relating to materials used for arranging, screening, or landscaping; and
- (4) the design and appearance of a wireless support structure, including any height requirements adopted by the Village.

- (d) A Permittee shall use its Best Efforts not to locate any facilities under improved roadway surfaces (i.e. pavement). When a Permit has been granted that includes facilities under roadway surfaces, all wires, fiber, and cable to be installed under the roadway shall be installed in conduit.
- (e) Permittee shall construct, install, operate and maintain its system in a manner consistent with all laws, ordinances, construction standards, governmental requirements, and FCC technical standards, and those standards are incorporated by reference herein.
- (f) The Permittee shall comply with the Village's normal permitting process prior to commencing any work in the Rights-of-Way except for emergencies and otherwise as provided in this Chapter. No work in the Rights-of-Way shall be commenced until such time as any and all required permits, including a Right-of-Way Work Permit, have been issued by the Village. The Village shall not unreasonably withhold the granting of any permit.
- (g) Any contractor proposed for work of construction, installation, operation, maintenance, and repair of system equipment must be properly licensed under laws of the State, and all local ordinances. The Contractor's or Permittee's system and associated equipment erected by the Permittee within the Village shall be so located as to cause minimum interference with the proper use of streets, alleys, and other Rights of Way and places, and to cause minimum interference with the rights and reasonable convenience of property owners who adjoin any of the said streets, alleys or other Rights of Way and places. No pole or other fixtures placed in any Rights of Way by the Permittee shall be placed in such a manner as to interfere with normal travel on such Right of Way.
- (h) The Village does not guarantee the accuracy of any maps showing the horizontal or vertical location of existing substructures. In Rights-of-Way, where necessary, the location shall be verified by excavation.
- (i) Construction, installation, operation, and maintenance of the utility or telecommunications system shall be performed in an orderly and workmanlike manner. When consistent with the safety codes and standards set forth in this Chapter, all cables and wires shall be installed, where possible, parallel with electric and telephone lines. Multiple configuration shall be arranged in parallel and bundled with due respect for engineering considerations.
- (j) The Permittee shall at all times comply with applicable National Electrical Safety Code (National Bureau of Standards); applicable National Electrical Code (National Bureau of Fire Underwriters); applicable FCC or other Federal, State and local regulations; and standards as set forth in the Permit.
- (k) In any event, the system shall not endanger or interfere with the safety of persons or property in the Permit area or other areas where the Permittee may have equipment located.
- (l) All worker facilities, conditions, and procedures that are used during construction, installation, operation, and maintenance of the utility or telecommunications system shall comply with the applicable standards of the Federal Occupational Safety and Health Administration.

901.10 RIGHT OF WAY WORK PERMITS

(a) All Permittees shall obtain a Right-of-Way Work Permit from the Village Administrator prior to beginning the erection, installation or maintenance, including tree trimming, of any lines or equipment. Prior Village approval shall not be required for Emergency repairs, or routine maintenance repairs or operations which do not require excavation in the Right-of-Way, blockage of any street or alley, or material disruption to any landscaping or structures and/or irrigation systems. The Permittee and/or its subcontractors shall leave Rights-of-Way where such work is done in as good condition or repair as they were before such work was commenced and to the reasonable satisfaction of the Village. Such Right-of-Way Work Permit shall be issued in writing and is subject to conditions that may be attached by the Village Administrator including, but not limited to, requirements concerning traffic control, safety, scheduling, notification of adjoining property owners, and restoration with seed, sod or specific plant materials as directed by the Village. The Permittee and/or its subcontractors shall endeavor to complete, in a timely manner, repairs to the Right-of-Way. All workmanship and materials used by the Permittee and/or its subcontractors to perform work within the Right-of-Way and to complete restoration, including repair the streets and roadways shall be subject to the inspection and approval of the Village Administrator or his authorized agent and shall be warranted for a period of one (1) year from the date of completion for any failure due to workmanship or quality of materials.

(b) All Applicants for Right-of-Way Work Permits shall file a written notice with the Village Administrator, except in the case of emergency as determined by the Village Administrator. The applicant shall file such written notice prior to working in or on the Right-of-Way so as to provide the Village with a reasonable and sufficient amount of time to review such Right-of-Way Work Permit Application. In addition to such other information this Chapter shall require, this notice shall contain or indicate to the extent applicable:

- (1) The Right-of-Way affected;
- (2) A description of any facilities to be installed, constructed or maintained;
- (3) Whether or not any street will be opened or otherwise need to be restricted, blocked or closed;
- (4) An estimate of the amount of time needed to complete such work;
- (5) A description and timetable of any remedial measures planned to close any street opening or repair any damage done to facilitate such work;
- (6) A statement verifying that other affected or potentially affected Permittees have been notified; and
- (7) A statement that any consumers of any utility, cable television, communications or other service which will be adversely affected by such work have been or will be notified in conformance with applicable rules and regulations of the Public Utilities Commission of Ohio.

(c) An Applicant for a Right-of-Way Work Permit shall not begin working in or on the Right-of-Way until 48 hours after the issuance of a Right-of-Way Work Permit.

(d) Permittee shall furnish Village "as built" drawings not later than one hundred twenty (120) days after construction has been completed. Drawings shall show ownership of conduits, ducts, poles and cables used for the telecommunications or utility system. Drawings shall be drawn to a scale of no smaller than one inch (1") equals one hundred feet (100') using the standard format adopted by the Village. Permittee shall provide one (1) set of blue or black line "as built" drawings to the Village Administrator. State plane coordinates shall be shown for benchmarks, curb lines, and structures. Drawings shall show horizontal dimensions from the curb line and elevations.

(e) Permittees may, under emergency or other exigent circumstances, work in the Right-of-Way so long as the Permittee uses Best Efforts to provide the Village the notice required by this subsection at the earliest possible time.

901.11 VILLAGE USE OF FACILITIES.

(a) The Village may request the right to install and maintain upon any poles or wireless support structures and within any underground pipes and conduits or like facilities of any Permittee, certain facilities ("Village Facilities") solely for governmental use desired by the Village unless:

(1) Such installation and maintenance unreasonably and materially interferes with existing and future operations of the Permittee; or

(2) Such installation and maintenance would be unduly burdensome to such Permittee. Each Permittee shall cooperate with the Village in the planning and design of its facilities so as to accommodate the Village's reasonably disclosed governmental requirements. Neither the Village Facilities nor the capacity or bandwidth thereon shall be leased, licensed or otherwise made available to third parties.

(b) The Village's use of a Permittee's poles or conduit shall be subject to any and all reasonable terms and conditions the Permittee requires of other third party users of its poles and conduit. The Village shall pay the Permittee the reasonable cost to make the poles or conduit ready for the Village's use and occupancy. Nothing herein shall be construed to require a Permittee to construct poles or conduits where none exist or to rearrange, modify or alter its facilities on a pole or conduit in order to provide space for Village Facilities where space is not otherwise available, unless otherwise required by the terms and conditions of a Permit.

901.12 INDEMNIFICATION AND INSURANCE.

(a) To the fullest extent permitted by law, all Permittees shall, at their sole cost and expense, fully indemnify, defend and hold harmless the Village, its officers, public officials, boards and commissions, agents, and employees from and against any and all lawsuits, claims (including without limitation Worker's Compensation claims against the Village or others), causes of actions, actions, liability, and judgments for injury or damages (including but not limited to expenses for reasonable legal fees and disbursements assumed by the Village in connection therewith):

(1) To persons or property, in any way arising out of or through the acts or omissions of Permittee, its subcontractors, agents or employees attributable to the occupation by the

Permittee of the Right-of-Way, to which Permittee's negligence shall in any way contribute, and regardless of whether the Village's negligence or the negligence of any other party shall have contributed to such claim, cause of action, judgment, injury or damage.

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

(3) Arising out of Permittee's failure to comply with the provisions of any federal, state, or local statute, ordinances or regulations applicable to Permittee in its business hereunder.

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

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

(2) Affording the Permittee the opportunity to participate in and fully control any compromise, settlement, or other resolution or disposition of any claim or proceeding subject to indemnification; and

(3) Fully cooperating in the defense of such claim and making available to the Committee all pertinent information under the Village's control.

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

(d) Each Permittee shall maintain insurance coverages (or self-insurance coverage by Permittees having capitalization in excess of Fifty Million Dollars), as determined by the Village Administrator in accordance with the following:

(1) General Liability Insurance. By its acceptance of any Permit granted hereunder, Permittee specifically agrees that it will maintain throughout the term of the Permit, general liability insurance insuring the Permittee in the minimum of:

A. \$1,000,000 per occurrence;

B. \$2,000,000 annual aggregate;

C. \$1,000,000 excess general liability per occurrence and annual aggregate.

Such general liability insurance must be written on a comprehensive coverage form, including the following: premises/operations, explosion and collapse hazard, underground hazard, products/completed operations hazard, contractual insurance, broad form property damage, and personal injury.

(2) Automobile Liability Insurance. The Permittee shall maintain, and by its acceptance of any Permit granted hereunder specifically agrees that it will maintain throughout the term of the Permit, automobile liability insurance for owned, non-owned, or rented vehicles in the minimum amount of:

- A. \$1,000,000 per occurrence; and
- B. \$1,000,000 excess automobile liability per occurrence.

(3) Worker's Compensation and Employer's Liability Insurance. The Permittee shall maintain and by its acceptance of any Permit granted hereunder specifically agrees that it will maintain throughout the term of the Permit, Worker's Compensation and employer's liability, valid in the State of Ohio, in the minimum amount of:

- A. Statutory limit for Worker's Compensation;
- B. \$1,000,000 for employer's liability per occurrence; and
- C. \$1,000,000 excess employer liability.

(e) The liability insurance policies required by this section shall be maintained by the Permittee throughout the term of the Permit, and such other period of time during which the Permittee is operating without a Permit hereunder, or is engaged in the removal of its telecommunications or utility 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 90 days after receipt by the Village, by registered mail, of a written notice addressed to the Village Administrator of such intent to cancel or not to renew.

Within sixty (60) days after receipt by the Village of said notice, and in no event later than thirty (30) days prior to said cancellation, the Permittee shall obtain and furnish to the Village replacement insurance policies meeting the requirements of this section.

(f) The Permittee shall provide either a Performance Bond (or self bonding by Permittee having capitalization in excess of Fifty Million Dollars), as determined by the Village Administrator, an Irrevocable Letter of Credit acceptable to the Village, or a Certified Check in an amount determined by the Village Administrator, to pay the cost of restoration of the Right-of-Way should the Permittee fail to perform restoration required by this Chapter or the Permit or to pay for the cost of removal or relocation of the system required by this Chapter should the Permittee fail to perform said removal or relocation.

(g) Any operator who owns or operates small cell facilities or wireless support structures in the Right of Way shall indemnify, protect, defend, and hold the municipal corporation and its elected officials, officers, employees, agents, and volunteers harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees to include reasonable attorney fees and costs of defense, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including personal or bodily injury or death, property damage or other harm for which recovery of damages is sought, to the extent that it is caused by the negligence of the operator who owns or operates small cell facilities and wireless service in the Right of Way, any agent, officer,

director, representative, employee, affiliate, or subcontractor of the operator, or their respective officers, agents, employees, directors, or representatives while installing, repairing, or maintaining facilities in a Right of Way.

901.13 ABANDONMENT.

(a) Prior to abandoning any underground facilities (including pipes, conduits, or manholes) that are solely owned and exclusively used by the Permittee, the Permittee shall either remove and repair, or shall otherwise sufficiently fill, such facilities so as to prevent their collapse.

(b) Voluntary Abandonment. In the event any Permittee intends to remove facilities, excluding normal repairs and maintenance, or abandon any facilities within the Rights-of-Way, such Permittee shall submit a notice to the Village Administrator describing the portion of the facilities to be removed or abandoned and the date of removal or abandonment, which date shall not be less than thirty (30) days from the date such notice is submitted to the Village Administrator. The Permittee may not remove, destroy or permanently disable any such facilities after such notice without the written approval of the Village Administrator. The Permittee shall remove and secure such facilities as set forth in the notice unless directed by the Village Administrator to abandon such facilities in place.

(c) Determination of Abandonment. The Village Administrator may administratively determine that facilities, structures, or equipment are unused, and upon such determination, shall cause to be issued written notice to the Permittee of record. If the Permittee of record does not notify the Village Administrator that the facility, structure, or equipment is being used within a period of three hundred sixty-five days of the day the Village Administrator issues such notice, the facility, structure, or equipment shall be deemed abandoned and may be removed by the Village. If the Permittee provided a bond or other insurance the Village may proceed to recover its costs in accordance with law and the terms of such bond or insurance.

(d) Upon such abandonment the Village may elect to accept title to the abandoned facility. Such acceptance shall be in writing and upon such acceptance, full title and ownership of such abandoned facilities shall pass to the Village without the need to pay compensation to the Permittee. The Permittee shall, however, continue to be responsible for all taxes on such facilities or other liability associated therewith, until the date the same was accepted by the Village.

901.14 REMOVAL OF FACILITIES.

(a) Within thirty (30) days following written notice from the Village, any Permittee or other Person that owns, controls or maintains any unauthorized telecommunications or utility facility or Wireless Service Facility or related appurtenances within the Rights-of-Way of the Village shall, at its own expense, remove such facilities or appurtenances from the Rights-of-Way of the Village. A telecommunications or utility facility is unauthorized and, unless otherwise prohibited by law, subject to removal in the following circumstances:

- (1) Upon expiration or termination of the Permittee's Permit.
- (2) Upon abandonment of a facility within the Rights-of-Way of the Village.

- (3) If the system or facility was constructed or installed without the prior grant of a Permit.
- (4) If the system or facility was constructed or installed without the prior issuance of a required construction permit.
- (5) If the system or facility was constructed or installed at a location not permitted by the Permittee's Permit.
- (b) The Village retains the right and privilege to cut or move any wireless or telecommunications facilities located within the Rights-of-Way as the Village may determine to be necessary, appropriate or useful in response to any public health or safety emergency.
- (c) If a Permittee fails to move or relocate in accordance with this Chapter, the Village may charge and invoice the Permittee for any and all costs, damages, or other liabilities incurred. Such charges include, but are not limited to, increased construction costs for delay, attorney's fees or similar costs incurred attempting to achieve the Permittee's compliance, and the Village's actual costs incurred in completing relocation or removal. If a Permittee submits a subsequent Application for a permit pursuant to this Chapter while such charges remain unpaid, the Village may deny or withhold the subsequent Application until payment in full has been made.
- (d) Unless directly and proximately caused by the willful, intentional or malicious acts by the Village, the Village shall not be liable for any damage to or loss of any telecommunications or utility facility within the Rights-of-Way as a result of or in connection with any public works, public improvements, construction, excavation, grading, filling, or work of any kind in the Rights-of-Way by or on behalf of the Village.

901.14 REMEDIES AND REVOCATION OF PERMIT.

- (a) Nothing in this Chapter shall be construed as limiting any judicial remedies that the Village may have, at law or in equity, for enforcement of this Chapter. In addition to any rights set out elsewhere in this Chapter, the Village reserves the right to seek termination of a Permit pursuant to the provisions hereof, and all rights and privileges pertaining thereto, in the event that any of the following are found to have occurred:
 - (1) A violation of any material provision of the Permit; or,
 - (2) The Permittee becomes insolvent, or is adjudged a bankrupt; or,
 - (3) An unauthorized sale, assignment or transfer of Permittee's Permit or a substantial interest therein; or
 - (4) Misrepresentation by or on behalf of a Permittee in any application to the Village; or
 - (5) Abandonment of telecommunications or utility facilities in the Rights-of-Way; or
 - (6) Failure to relocate or remove facilities as required in this Chapter; or
 - (7) Failure to pay taxes, compensation, fees or costs when and as due the Village.

(b) Upon failure of the Permittee to comply with the material terms of the Permit, the Village may by ordinance terminate the Permit in accordance with the procedures set forth in this Section. Upon termination, all rights of the Permittee shall immediately be divested without a further act upon the part of the Village. At Village's option and to the extent permitted or in the manner required by applicable State law, Village shall either accept title to Permittee's facilities in accordance with Section 901.12, or Village shall require or seek to require, as the case may be, Permittee to remove its facilities from the Rights-of-Way. If Village requires removal, the Permittee shall forthwith remove its structures or property from the Rights-of-Way and restore it to such condition as the Village may require. The cost thereof shall be a lien upon all facilities and property of the Permittee. Such lien shall not attach to property of Permittee located on the poles of other utilities until removal of such property from the pole or poles.

(c) Procedures for Termination.

(1) Upon written recommendation by the Director or upon its own motion, the Village Council shall give written notice to the Permittee of the existence of a material violation or failure to comply with the Permit. Permittee shall have a period of sixty (60) days after receipt of such notice from the Village in which to cease such violation and comply with the terms and provisions hereof. In the event Permittee fails to cease such violation or to otherwise comply with the terms hereof, then Permittee's Permit is subject to termination under the following provisions; provided, however, if the Permittee commences work or other efforts satisfactory to the Village to cure such violations within thirty (30) days after receipt of written notice and shall thereafter prosecute such curative work with reasonable diligence until such curative work is completed, then such violations shall cease to exist, and the Permit will not be terminated. If the curative work is not completed within ninety (90) days of commencement of such work, Permittee shall report to Village with respect to the progress made on such curative work and the anticipated completion date.

(2) Termination shall be declared only by a written decision of the Village Council after an appropriate public proceeding whereby the Permittee is afforded the full opportunity to be heard and to respond to any such notice of violation or failure to comply. The Permittee shall be provided at least ten (10) days prior written notice of any public hearing concerning the termination of the Permit and, in addition, ten (10) days' notice by publication shall be given of the date, time and place of any public hearing to interested members of the public, which notice shall be paid for by the Permittee.

(3) The Village Council, after full public hearing, and upon finding a material violation or failure to comply, may in its discretion terminate the Permit, or impose a lesser penalty than termination of the Permit, or excuse the violation or failure to comply upon a showing by the Permittee of mitigating circumstances or upon a showing of good cause of said violation or failure to comply as may be determined by the Village Council.

(d) Receivership. The Village shall have the right to terminate the Permit one hundred and twenty (120) days after the appointment of a receiver, or trustee, to take over and conduct the business of the Permittee, whether in receivership, reorganization, bankruptcy, or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred and twenty (120) days or unless:

(1) Within one hundred and twenty (120) days after his/her election or appointment, such receiver or trustee shall have fully complied with all the provisions of the Permit and remedied all defaults thereunder; and

(2) Such receiver or trustee, within said one hundred and twenty (120) days, shall have executed an agreement, duly approved by the court having jurisdiction in the premises, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of the Permit.

901.15 RESERVATION OF RIGHTS.

(a) Nothing in this Chapter shall be construed to prevent the Village from constructing, maintaining, repairing or relocating any Village utility, communications or like facilities; grading, paving, maintaining, repairing, relocating or altering any street or Right-of-Way; or constructing, maintaining, relocating or repairing any sidewalk or other public work or improvement.

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

901.16 STREET VACATION.

Unless pre-empted by state or federal law, in the event any street or Right-of-Way used by a Permittee shall be vacated by the Village during the term of any Permit granted pursuant to this Chapter, the Permittee shall, at the Permittee's expense, forthwith remove its facilities therefrom unless specifically permitted by the Village to continue the same or such continuance of use is permitted by state law, and upon the removal thereof, restore, repair, or reconstruct the area where such removal has occurred to a condition materially equivalent to that existing before such removal took place. In the event of failure, neglect or refusal of the Permittee after thirty (30) days written notice by the Village to remove the facilities or to repair, restore, reconstruct, improve or maintain such vacated area, the Village may, if in accordance with applicable law, do such work or cause it to be done, and the cost thereof as found and declared by the Village shall be paid by the Permittee as directed by the Village and collection may be made by any available remedy.

901.17 TEMPORARY MOVEMENT OF FACILITIES.

In the event it is necessary temporarily to move or remove any of the Permittee's wires, cable, poles or other facilities placed pursuant to this Chapter, in order to lawfully move a large object, vehicle, building or other structure over the streets of the Village, upon five (5) days written notice by the Village to the Permittee the Permittee shall, at the expense of the Person requesting the temporary removal of such facilities, comply with Village's request.

901.18 TRANSFER/ASSIGNMENT LIMITATIONS.

A permit granted hereunder may not, directly or indirectly, be transferred, assigned or disposed of by sale, lease, merger, consolidation or other act of the Permittee, by operation of law or otherwise, without the prior consent of the Village, which consent shall not be unreasonably withheld or delayed, as expressed by ordinance and then only on such reasonable conditions as may be prescribed therein. No transfer of the Permit shall be approved unless the assignee or transferee has the legal, technical, financial and other requisite qualifications to own a Permit pursuant to this

Chapter. Unless otherwise provided in a Permit, the Permittee shall reimburse the Village for all direct and indirect fees, costs, and expenses reasonably incurred by the Village in considering a request to transfer or assign a Permit. Any transfer or assignment of a Permit without prior approval of the Village or pursuant to a Permit shall be void and is cause for revocation of the Permit.

901.19 PAVEMENT CUTS.

(a) No cuts shall be made in any paved street or alley within three years after the surfacing thereof, except as specifically authorized by the Director of Public Service. At least ninety days prior to the paving or resurfacing of any street or alley with concrete or asphaltic concrete or reconstruction of any brick street, property owners and all appropriate public utility agencies shall be notified of the paving, resurfacing and/or reconstruction to be done and advised that no pavement cuts shall be permitted for three years after such resurfacing, and/or reconstruction is completed except in cases of emergency, as approved by the Village Administrator.

(b) In the event of an emergency, as required by law, or otherwise authorized pursuant to subsection (a), Permittees who make pavement cuts within three years after the surfacing thereof may be required by the Village Administrator to resurface the roadway for the entire distance between two intersections as determined by the Village Administrator.

901.20 INDEPENDENT CONSULTANTS

(a) Authorization to retain independent consultants. During review of any permit application, the Village may select and retain an independent consultant, or agree with an Applicant to use a mutually-approved consultant, who has expertise in a relevant field that is beyond the Village's capability, and whose review is reasonably related to a unique aspect of the application. In the event that the Village decides to retain an independent consultant for technical review, it shall send written notice to the Applicant including a nonbinding estimate of the cost for such review. The applicant shall have five business days from the date of mailing of notice to do any of the following:

- (1) amend the application to avoid the need for independent review, (subject to tolling the time for a Village response);
- (2) propose and agree upon an independent consultant to provide opinions as part of the application; or
- (3) elect to withdraw the application without any liability for any costs or expenses in connection with the independent technical review;

(b) Scope. The Village may request independent consultant review on any issue that involves specialized or expert knowledge in connection with the permit application. Technical review issues may include, but are not limited to:

- (1) Permit application completeness or accuracy;
- (2) Planned compliance with applicable RF exposure standards;
- (3) Whether and where a significant gap exists or may exist, and whether such a gap relates to service coverage or service capacity;
- (4) The applicability, reliability, and/or sufficiency of analyses or methodologies used by the applicant to reach conclusions about any issue within this scope; and

- (5) Any other issue that requires expert or specialized knowledge identified by the Village.

901.21 WIRELESS FACILITY PERMIT – APPLICATION

(a) Applicants who request a Wireless Facility Permit shall file an Application which shall include the name of the person who owns or will own the facility, structure, or equipment for which consent is requested, and who will be performing the work in the Right of Way in such form. The application shall have such attachments as the Village may reasonably require, including but not limited to:

(1) Statement of Intent. The applicant shall provide a statement of a wireless support structure's intended purpose.

(2) Site Plans and Structural Calculations. The applicant must submit fully dimensioned site plans, elevation drawings and structural calculations prepared, sealed, stamped and signed by a Professional Engineer licensed and registered by the State of Ohio. Drawings must depict any existing wireless facilities with all existing wireless communications equipment and other improvements, the proposed facility with all proposed wireless communications equipment and other improvements (including proposed backhaul for electric and telecommunications connectivity) and the legal boundaries area surrounding the proposed facility and any associated access or utility easements.

(3) Equipment and Enclosure Specifications. The applicant shall provide dimensioned elevations, cut sheets, material samples or other construction documents necessary to evaluate for compliance with this Chapter.

(4) RF Compliance Affidavit - RF Compliance Affidavit – Applicants must submit a sworn affidavit prepared and signed by an RF engineer with knowledge about the proposed project that affirms the proposed project will be compliant with all applicable governmental regulations in connection with human exposure to radiofrequency emissions. Nothing herein shall grant the Village authority to impose or enforce regulations independent of applicable federal regulations beyond the Applicant's verification of compliance therewith.

(b) Time Limits. Subject to existing statute or ordinance, the Village shall grant or deny an Application a Wireless Facility Permit within the applicable time limits set forth in statute.

(c) Tolling.

(1) The time period required by statute may be tolled only:

(A) By mutual agreement between the Applicant and the Village;

(B) In cases where the Village determines that the Application is incomplete; or

(C) The number of applications for Wireless Facility Permits exceeds the Village's capacity to process them within the time limits set forth in law, in which case the Village may toll the time limits in accordance therewith.

(2) To toll the time period for incompleteness, the Village shall provide written notice to the Applicant not later than thirty days after receiving the request. Such notice shall include a list of the missing documents or information shall be reasonably related to determining whether the request meets the requirements of applicable federal and state law. Any notice of incompleteness requiring other information or documentation, including information of the type

described in section 4939.0313 of the Revised Code or documentation intended to illustrate the need for the request or to justify the business decision for the request, does not toll the time period.

(3) The time period resumes when the Applicant makes a supplemental submission in response to the Village's notice of incompleteness.

(4) If a supplemental submission is inadequate, the Village shall notify the Applicant not later than ten days after receiving the supplemental submission that the supplemental submission did not provide the information identified in the original notice delineating missing documents or information. The time period may be tolled in the case of second or subsequent notices under the procedures identified in this section. Second or subsequent notices of incompleteness may not specify missing documents or information that was not delineated in the original notice of incompleteness.

(5) In no instance shall the Village toll the time period for any small cell facility or wireless support structure request by more than ninety consecutive days. Upon request the Village shall provide an operator written notice of the time limit for a small cell facility or wireless support structure request.

(d) The Village's approval term of a Wireless Facility Permit shall be for a period of not less than ten years, with presumption of renewal for successive five-year terms, subject to terms providing for early termination or nonrenewal for cause or by mutual agreement and unless otherwise agreed to by both the operator and the Village, except for generally applied permitting to safeguard the public health, safety, and welfare. An operator may remove its small cell facilities at any time subject to applicable work permit requirements and may stop paying annual charges or fees under division (B) of section 4939.0322 of the Revised Code.

(e) If the Village fails to approve or deny Wireless Facility Permit within the required time period, provided the time period is not tolled in accordance with law, the request shall be deemed granted upon the requesting entity providing notice to the Village that the time period for acting on the request has lapsed.

901.22 CONSOLIDATED REQUESTS

(a) A person seeking a Wireless Facility Permit may file, at the person's discretion, a consolidated request application for up to thirty small cell facilities requests in a single application or up to thirty wireless support structure requests in a single application and receive a single Wireless Facility Permit for the construction, modification, collocation, or replacement of the micro wireless small cell facilities or associated wireless support structures. However, this single application may only address multiple small cell facilities or multiple wireless support structures if they each involve substantially the same type of small cell facilities or substantially the same type of wireless support structures. The Village may separately address small cell facility collocations or wireless support structures for which incomplete information has been received or which are denied.

(b) In the case of a consolidated application, the fees provided for in this Chapter may be cumulative. However, the Village, at its discretion, may opt to reduce such fees in order to encourage persons to submit consolidated applications.

(c) In the case of a consolidated application, each small cell facility or wireless support structure proposed to be constructed, modified, collocated on, or replaced shall constitute a separate request for consent for purposes of tolling the response deadline as authorized under section 4939.036 of the Revised Code. A request by a single operator for a new or replacement support structure and associated small cell facility constitutes one request.

901.99 PENALTY.

Whoever violates any of the provisions of this Chapter shall be fined not more than Five Hundred Dollars (\$500.00). A separate offense shall be deemed committed each day during or on which a violation occurs or continues.

Section 2: This Resolution is hereby declared to be an emergency immediately necessary for the preservation of the public health, safety and welfare to ensure that the Village ordinances are consistent and effective as of the date of the effective date of the state statutes regarding the same;

WHEREFORE, this Resolution is declared an emergency and shall take effect immediately and be in force from and after its passage and approval by the Mayor.

DATE PASSED 7-2-19

Signature on file

PRESIDENT OF COUNCIL

ATTEST Signature on file
CLERK OF COUNCIL

Signature on file

MAYOR

APPROVED AS TO FORM:

DATE APPROVED: 7/2/19

LEGAL COUNSEL

I hereby certify that the ordinance or a summary of the ordinance was published once a week for two consecutive weeks on 8-9-18, 2018 and 8-16-18, 2018 in the *Mount Vernon News* in conformance with the Ohio Revised Code.

Signature on file

CLERK-TREASURER