



Prepared: 10/25/2018
Introduced: 11/06/2018
Revised:
Adopted:
Effective:

ORDINANCE O-23-2018

AN ORDINANCE TO ACCEPT WATER LINE, SANITARY SEWER, STREET AND STORM SEWER IMPROVEMENTS AND APPURTENANCES THERETO FOR NOTTINGHAM TRACE, PHASE 1, AS REQUESTED BY PULTE HOMES

WHEREAS, in accordance with New Albany Ordinance 77-91 as amended, and pursuant to written certification by the city engineer that the improvements and appurtenances thereto for Nottingham Trace, Phase 1, have been completed to the standards set by Ordinance 77-97 as amended; and

WHEREAS, a two-year maintenance bond in the amount of \$137,578, an engineering inspection fee deposit in the amount of \$2,408, and a five-year settlement bond of \$36,250 will be provided by the applicant prior to second reading. Any infrastructure items that cannot be completed due to weather conditions will be identified and a performance bond or escrow amount will be submitted in an amount deemed acceptable to the city as required by codified ordinance.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of New Albany, Counties of Franklin and Licking, State of Ohio that:

Section 1. The improvements and appurtenances thereto for are hereby accepted. Any weather-related items, street trees and landscaping covered under performance bonds must be installed as outlined in such performance bonds by July 30, 2019.

Section 2. It is hereby found and determined that all formal actions of council concerning and relating to the adoption of this ordinance were adopted in an open meeting and that all deliberations of council and any decision making bodies of the City of New Albany which resulted in such formal actions were in meetings open to the public and in compliance with all legal requirements of the City of New Albany, Franklin and Licking Counties, Ohio.

Section 3. Pursuant to Article VI, Section 6.07(B) of the charter of the City of New Albany, this ordinance shall be in effect on and after the earliest period allowed by law.

CERTIFIED AS ADOPTED this _____ day of _____, 2018.

Attest:

Sloan T. Spalding
Mayor

Jennifer H. Mason
Clerk of Council

Approved as to form:

Mitchell H. Banchefsky
Law Director

PROPOSED



Prepared: 10/26/2018
Introduced: 11/06/2018
Revised:
Adopted:
Effective:

ORDINANCE O-24-2018

AN ORDINANCE TO AMEND CHAPTER 907 "RIGHTS-OF-WAY", OF THE CITY OF NEW ALBANY, OHIO'S CODIFIED ORDINANCES TO ADDRESS SMALL CELL FACILITIES, WIRELESS SUPPORT STRUCTURES, RELATED DESIGN GUIDELINES TO COMPLY WITH H.B 478, PROTECT CITY RIGHT-OF-WAY, AND PRESERVE THE PUBLIC HEALTH SAFETY AND WELFARE

WHEREAS, following collaborative negotiations between municipal leaders, (including representatives of the city) and the wireless telecommunications industry, House Bill 478 (H.B. 478) dealing with municipal regulation of wireless telecommunications in the public right-of-way, was enacted effective August 1, 2018; and

WHEREAS, the city and its consultants have been working to draft an amendment to Chapter 907 of the codified ordinances in order to comply with H.B. 478 and to create related design guidelines to protect the aesthetics of the city's right-of-way to the maximum extent possible; and

WHEREAS, this ordinance authorizes the city's director of public service to establish, implement and amend from time to time Design Guidelines relating to the location of any small cell facilities and wireless support structures located in the public right-of-way, the appearance and concealment of such facilities, including materials used for the arranging, screening and/or landscaping such facilities, as well as the design and appearance of wireless support structures; and

WHEREAS, H.B. 478, this proposed ordinance and the related Design Guidelines do not modify existing city regulation of cellular towers or wireless facilities outside the city's right-of way.

NOW, THEREFORE, BE IT ORDAINED by Council for the City of New Albany, Counties of Franklin and Licking, State of Ohio, that:

Section 1. That portions of Codified Ordinance Chapter 907 "Rights-of-way" be amended as set forth in Exhibit A, which depicts these amendments in redline (strikethrough and underline).

Section 2. It is hereby found and determined that all formal actions of this council concerning and relating to the adoption of this ordinance were adopted in an open meeting of the council, and that all deliberations of the council and or any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements, including Section 121 of the Ohio Revised Code.

Section 3. Pursuant to Article 6.07(B) of the New Albany Charter, this ordinance shall become effective thirty (30) days after adoption and after the effective date of the associated annexation.

CERTIFIED AS ADOPTED this _____ day of _____, 2018.

Attest:

Sloan T. Spalding
Mayor

Jennifer H. Mason
Clerk of Council

Approved as to form:

Mitchell H. Banchefsky
Law Director

CHAPTER 907 - RIGHTS-OF-WAY

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CHAPTER 907 - RIGHTS-OF-WAY

907.01 - DECLARATION OF FINDINGS AND PURPOSE, SCOPE, DEFINITIONS.

(a) Findings and purpose.

- (1) The City of New Albany, Ohio (the "City") is vitally concerned with the use of all Rights-of-way in the City as such Rights-of-way are a valuable and limited resource.
- (2) Changes in the public utilities and communication industries have increased the demand and need for access to Rights-of-way and placement of facilities and structures therein.
- (3) It is necessary to comprehensively plan and manage access to, and structures and facilities in, the Rights-of-way.
- (4) The City has authority under the Laws and Constitution of the State of Ohio, including but not limited to Article 18, Sections 3, 4 and 7, to regulate public and private entities which use the Rights-of-way.

(b) Scope. The provisions of this Chapter shall apply to all users of the Rights-of-way as provided herein. To the extent that anything in this Chapter 907 conflicts with other sections of the Code, then the provisions of this Chapter 907 shall control.(c) Definitions. For the purposes of Chapter 907 the following terms, phrases, words, and their derivations have the meanings set forth herein. When not inconsistent with the context, words in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The words "shall" and "will" are mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning. References hereafter to "Sections" are, unless otherwise specified, references to Sections in this Chapter. Defined terms remain defined terms whether or not capitalized.

(1) "ABANDONED" means the designation given to a Facility, except for a Small Cell Facility or Wireless Support Structure in the Right-of-way, when its operations or use are discontinued in a manner that is not in accordance with Section 907.02(g); or for a period exceeding ninety (90) consecutive days or a total of one hundred eighty (180) days in any 365-day period, without notice of the discontinued operations or use given to the City by the Provider and without the City's approval; and except for a period of discontinued operations or use that has been caused by acts of God. Small Cell Facilities or Wireless Support Structures shall be deemed Abandoned if the Facilities or Support Structures are unused for a period of three hundred sixty-five (365) days without the Operator otherwise notifying the City and receiving the City's approval.

(21) "AFFILIATE" means each Person who falls into one or more of the following categories: (a) each Person having, directly or indirectly, a controlling interest in a Provider, (b) each Person in which a Provider has, directly or indirectly a controlling interest, (c) each officer, director, general partner, limited partner or shareholder holding an interest of fifteen percent (15%) or more, joint venturer or joint venture partner, of a Provider, and (d) each Person, directly or indirectly, controlling, controlled by, or under common control with the Provider; provided that Affiliate shall in no event mean any limited partner or shareholder holding an interest of less than fifteen percent (15%) of such Provider, or any creditor of such Provider solely by virtue of its status as a creditor and which is not otherwise an Affiliate by reason of owning a controlling interest in, being owned by, or being under common ownership, common management, or common control with, such Provider.

(3) "ANTENNA" means communications equipment that transmits or receives radio frequency signals in the provision of Wireless Service.

(24) "APPLICANT" means any Person who seeks to obtain a Certificate of Registration and/or a Permit.

- (35) "APPLICATION" means the process by which an Applicant submits a request to obtain a Certificate of Registration and/or a Permit.
- (46) "APPLICATION FEE" means the fee paid to the City for application for a Certificate of Registration pursuant to Section 907.03(Aa).
- (57) "BANKRUPTCY CODE" means the United States Bankruptcy Code of 1978, as amended including regulations promulgated by Title 11 of the United States Code.
- (68) "BEST EFFORT(S)" means the best reasonable efforts under the circumstances, taking into consideration, among other appropriate matters, all applicable Laws, regulations, safety, engineering and operational codes, available technology, human resources, and cost.
- (79) "CABLE FRANCHISE" means the same as "franchise" in the Cable Communications Policy Act of 1984, 98 Stat. 2779, 47 U.S.C. 522.
- (810) "CABLE OPERATOR" means the same as in the Cable Communications Policy Act of 1984, 98 Stat. 2779, 47 U.S.C. 522.
- (911) "CABLE SERVICE" means the same as in the Cable Communications Policy Act of 1984, 98 Stat. 2779, 47 U.S.C. 522.
- (1012) "CERTIFICATE OF REGISTRATION" means the document issued to each Provider and its unique System to occupy the Rights-of-way within the City that outlines the terms of that occupancy of the Rights-of-way.
- (1113) "CITY" means The City of New Albany, Ohio.
- (1214) "CITY COUNCIL" means the governing body of the City of New Albany, Ohio.
- (1315) "CITY OF COLUMBUS" means the City of Columbus, Ohio and/or its divisions or departments.
- (1416) "CITY MANAGER" means the duly appointed City Manager of the City of New Albany, Ohio.
- (1517) "CODE (or C.O.)" means the codified ordinances of New Albany, Ohio.
- (18) "COLLOCATION OR COLLOCATE" means- to install, mount, maintain, modify, operate, or replace Wireless Facilities on a Wireless Support Structure.
- (1619) "CONFIDENTIAL/PROPRIETARY INFORMATION" means all information that has been either identified or clearly marked as confidential/proprietary by the Provider prior to any submission.
- (1720) "CONSTRUCT" means, but not be limited to, digging, boring, tunneling, trenching, excavating, obstructing, installing wires, installing conduit, installing pipes, installing transmission lines, installing poles, installing signs or installing Facilities, other than landscaping, ornamental plantings in, on, above, within, over, below, under or through any part of the Rights-of-way. Construct shall also include the act of opening and/or cutting into the surface of any paved, unimproved or improved surface that is any part of the Right-of-way.
- (1821) "CONSTRUCTION" means, but not limited to, the act or process of digging, boring, tunneling, trenching, excavating, obstructing, installing wires, installing conduit, installing pipes, installing transmission lines, installing poles, installing signs or installing Facilities, other than landscaping, ornamental plantings in, on, above, within, over, below, under or through any part of the Rights-of-way. Construction shall also include the act of opening and/or cutting into the surface of any paved, unimproved or improved surface that is part of the Right-of-way.
- (1922) "CONSTRUCTION BOND" means a bond posted to ensure proper and complete Construction and/or repair of a Facility and the affected Rights-of-way pursuant to a Permit.
- (2023) "CONSTRUCTION AND MAJOR MAINTENANCE PLAN" means a written plan including maps of the expected location, design, other related equipment and Facilities of a Provider

which describes in full the Construction intended to be accomplished by the Provider in the Rights-of-way over the next calendar year.

(2124) "CONSTRUCTION PERMIT" means the Permit specified in Section 907.143 et seq. which must be obtained before a Person may Construct in, locate in, occupy, maintain, move or remove Facilities from, in or on the Rights-of-way.

(2225) "COUNTY" means Franklin County, Ohio or Licking County, Ohio. County specifically excludes any and all contractors, agents or other Persons acting on behalf of said County(s).

(2326) "CREDIBLE" means worthy of being believed.

(27) "DECORATIVE POLE" means a pole, arch, or structure other than a street light pole placed in the public-way Right-of-Way specifically designed and placed for aesthetic purposes and on which no appurtenances or attachments have been placed except for the following: (i) electric lighting; (ii) specifically designed informational or directional signage; or (iii) temporary holiday or special event attachments.

(28) "DESIGN GUIDELINES" means detailed guidelines and specifications promulgated by the City in accordance with ORC 4939 for the design and installation of Small Cell Facilities and Wireless Support Structures in the Right-of-way.

(2429) "DIRECTOR OF FINANCE" means the duly appointed Director of Finance of the City of New Albany, Ohio.

(2530) "DIRECTOR OF PUBLIC SERVICE" means the duly appointed Director of Public Service of the City of New Albany, Ohio or his/her designee.

(2631) "EMERGENCY" means a condition that poses a clear and immediate danger to life or health, or of a significant loss of property.

(2732) "FACILITY(IES)" means any tangible thing located in any Rights-of-way within the City, and includes Wireless Facilities and Wireless Support Structures; but shall not include boulevard plantings, ornamental plantings or gardens planted or maintained in the Rights-of-way between a Person's property and the street edge of pavement.

(2833) "FCC" means the Federal Communications Commission, or any successor thereto.

(2934) "FERC" means the Federal Energy Regulatory Commission as created and amended in accordance with the Federal Power Act, 16 U.S.C. 792, or its statutory successor.

(3035) "FINANCE DIRECTOR" means the duly appointed Finance Director of the City of New Albany, Ohio.

(3136) "FULL" means unable to accommodate any additional Facilities as determined by the Director of Public Service following a reasonable analysis taking into consideration all applicable Law; commonly accepted industry standards; and routine engineering practices.

(37) "HEIGHT" means the distance measured from the pre-existing grade level to the highest point on the structure, including the Small Cell Facility, even if said highest point is an Antenna or lightening protection device.

(38) "HISTORIC DISTRICT" means a building, property, or site, or group of buildings, properties, or sites that are either of the following:

(a) Listed in the national register for 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.

(b) A registered historic district as defined in ORC 149.311.

- (3239) "IN" when used in conjunction with Rights-of-way, means in, on, above, within, over, below, under or through a Rights-of-way.
- (3340) "INSPECTOR" means any Person authorized by the Director of Public Service to carry out inspections related to the provisions of Chapter 907.
- (3441) "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 Chapter 907 or at any time during the location of, and/or while a Provider's Facilities are located in the public Rights-of-way.
- (3542) "LAW DIRECTOR" means the duly appointed Law Director of the City of New Albany, Ohio.
- (43) "MICRO WIRELESS PERMIT" means a permit, which must be obtained before a person can construct, modify, collocate or replace a Small Cell Facility or Wireless Support Structure, as set forth in Section 907.07 et seq., in or on the Rights-of-way.
- (3644) "MINOR MAINTENANCE PERMIT" means a Permit, which must be obtained before a Person can perform minor maintenance, as set forth in Section 907.1516, in or on the Rights-of-way.
- (45) "OCCUPY OR USE" means, with respect to a public Right-of-way, to place a tangible thing in a 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 for the delivery of public utility services or any services provided by a cable operator.
- (3746) "OMUTCD" means the Ohio Manual of Uniform Traffic Control Devices which is the uniform system of traffic control devices promulgated by the Ohio Department of Transportation pursuant to ORC 4511.09.
- (3847) "ORC" means the Revised Code of the State of Ohio.
- (3948) "OHIO UTILITY PROTECTION SERVICE" means the utility protection service as defined in ORC 153.64 and/or Section 3781.26 or a statutory successor thereto.
- (4049) "OPEN VIDEO SERVICE" means any video programming Services provided to any Person through the use of Rights-of-way, which Person is certified by the FCC to operate an Open Video System pursuant to § 651 et seq. of the Telecommunications Act of 1996 (codified at 47 U.S.C. Title VI, Part V), regardless of the facilities used.
- (50) "OPERATOR" means Wireless Service Provider, Cable Operator, or a Video Service Provider that operates a Small Cell Facility and provides Wireless Service. For purposes 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), as services that are fixed in nature or use unlicensed spectrum.
- (4151) "PERMIT" means a Construction Permit~~or,~~ a Minor Maintenance Permit or a Micro Wireless Permit, as the context requires.
- (4252) "PERMIT COST" means all direct, incidental and indirect costs actually incurred or realized by the City for Permit issuance, Permit oversight and pavement degradation resulting from Construction activity.
- (4353) "PERMIT FEE" means money paid to the City for a Permit to Construct in the Rights-of-way and/or Collocate Small Cell Facilities and/or Wireless Support Structures in the Rights-of-Way, as the context requires, and as required by Chapter 907.

- (4454) "PERMITTEE" means any Person to whom a Construction Permit and/or, Minor Maintenance Permit and/or a Micro Wireless Permit has been granted by the City and not revoked.
- (4555) "PERSON" means any natural person or corporate personentity, business association or other business entity including, but not limited to, a partnership, a sole proprietorship, a political subdivision, a public or private agency of any kind, a utility, a successor or assign of any of the foregoing, or any other legal entity.
- (4656) "PROVIDER" means a Person who owns or operates a System and has a valid Certificate of Registration. The City, County, Schools, Small Cell Facility Operators and Cable Operators operating pursuant to a valid Cable Franchise, or Video Service Provider operating pursuant to a valid Video Service Authorization shall also be considered Providers.
- (57) "PUBLIC UTILITY" means a Wireless Service Provider as defined in division (A)(20) of ORC 4927.01 or any company described in ORC 4905.03 except in divisions (B) and (I) of that section, which company also is a Public Utility as defined in ORC 4905.02; and includes any electric supplier as defined in ORC 4933.81.
- (4758) "PUCO" means the Public Utilities Commission of Ohio as defined in ORC 4901.02.
- (4859) "REGISTRATION MAINTENANCE FEE" means the money paid to the City to maintain a Certificate of Registration and compensate the City for all actual costs incurred by the City in the management, administration and control of the Rights-of-way of the City, and which are not reasonably recoverable by the City through Construction Permit Fees or other approved recovery mechanisms.
- (4960) "REMOVAL BOND" means a bond posted to ensure the availability of sufficient funds to remove a Provider's Facilities upon abandonment or disuse, or discontinuance of a Provider's use or occupation of the Rights-of-way.
- (5061) "RESTORATION" means the process and the resultant effects by which a Rights-of-way is returned to a condition as good as or better than its condition immediately prior to the Construction. Restoration shall occur in accordance with the Rules and Regulations as may be enacted or amended from time to time.
- (5162) "RIGHT(S) OF WAY" means the surface of, and the space within, through on, across, above or below, the paved or unpaved portion of any public street, public road, public highway, public freeway, public lane, public path, public alley, public court, public sidewalk, public boulevard, public parkway, public drive, public easement, and any other land dedicated or otherwise designated for a compatible public use, which, on or after July 2, 2002, is owned or controlled by the City. Right of Way excludes a private easement, the surface and space in, above, within, over below, under or through any real property in which the City has an interest in Law or equity, whether held in fee, or other estate or interest, or as a trustee for the public, including, but not limited to any public street, boulevard, road, highway, freeway, lane, alley, court, sidewalk, parkway, river, tunnel, viaduct, bridge, conduit, or any other place, area, or real property owned by or under the legal or equitable control of the City that, consistent with the purposes for which it was dedicated, may be used for the purposes of constructing, operating, repairing, or replacing a System. Rights-of-way shall not include buildings, parks, or other public property or easements that have not been dedicated to compatible uses, except to the extent the use or occupation of such property is specifically granted in a Permit or by Law.
- (5263) "RIGHT(S) OF WAY COST" means all direct, incidental and indirect costs borne by the City for the management and administration of the Rights-of-way and this Chapter.
- (5364) "RULE(S) AND REGULATION(S)" means any rules or regulations adopted by the Director of Public Service pursuant to Section 907.06(Ee).
- (5465) "SCHOOLS" means the New Albany- Plain Local School District. Schools specifically exclude any and all contractors, agents or other Persons acting on behalf of said Schools.

(5566) "SERVICE(S)" means the offering of any service or Utility for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, or alternatively, the provision (for a fee or otherwise) of any service or Utility between two (2) or more points for a proprietary purpose to a class of users other than the general public that in the opinion of the Director of Public Service constitutes a service.

(67) "SMALL CELL FACILITY" a wireless facility that meets both of the following requirements:

(a) 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.

(b) 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.

(68) "STATE" means the State of Ohio.

(5669) "SUPPLEMENTARY APPLICATION" means any application made to Construct on or in more of the Rights-of-way than previously allowed, to extend a Permit that had already been issued, or to otherwise modify or amend the specifics of a Permit application.

(5770) "SYSTEM" means any System of conduit, cables, ducts, pipes, wires, lines, towers, antennae, wave guides, optic fiber, microwave, laser beams and any associated converters, equipment or Facilities or Utilities designed and constructed for the purpose of producing, receiving, amplifying, delivering or distributing Services within the City. A System shall specifically include, but not necessarily be limited to: electric distribution and/or transmission systems, natural or artificial gas distribution and/or transmission systems, water distribution systems, storm sewer systems, sanitary sewer systems, cable television systems, video service networks, telecommunications systems (whether voice, video, data, or other), fiber optic systems, and wireless communications systems.

(5871) "SYSTEM REPRESENTATIVE" means the specifically identified agent/employee of a Provider who is authorized to direct field activities of that Provider and serve as official notice agent for System related information. Any such System Representative shall be required to be available at all times to receive notice of and immediately direct response to System related emergencies or situations.

(5972) "TRANSFER" means the disposal by the Provider, directly or indirectly, by gift, assignment, voluntary sale, merger, consolidation or otherwise, of fifty-one percent (51%) or more at one time of the ownership or controlling interest in the System, or fifty-one percent (51%) cumulatively over the term of a Certificate of Registration of such interests to a corporation, partnership, limited partnership, trust, or association or Person or group of Persons acting in concert.

(6073) "TRENCHLESS TECHNOLOGY" means, but not be limited to, the use of directional boring, horizontal drilling, microtunneling and other techniques in the Construction of underground portions of Facilities which result in the least amount of disruption and damage to Rights-of-way as possible.

(6174) "UNDERGROUND FACILITY(IES)" means all lines, cables, conduits, pipes, posts, tanks, vaults and any other Facilities which are located wholly or partially underneath Rights-of-way.

(6275) "UNUSED FACILITY(IES)" means facilities located in the Rights-of-way which have remained unused for twelve (12) months and for which the Provider is unable to provide the City with a Credible plan detailing the procedure by which the Provider intends to begin actively using such Facilities within the next twelve (12) months, or that it has a potential purchaser or

user of the Facilities who will be actively using the Facilities within the next twelve (12) months, or that the availability of such Facilities is required by the Provider to adequately and efficiently operate its System.

(6376) "UTILITY(IES)" means any water, sewer, gas, drainage, sprinkler or culvert pipe and any electric power, telecommunications, signal communications, cable television or video service provider conduit, fiber, wire, cable, or an operator thereof.

(6477) "UTILITY CORRIDOR(S)" means those specific areas of the Rights-of-way designated as such by the Director of Public Service pursuant to Section 907.03(Ee)(1).

(78) "UTILITY POLE" A structure that is designed for, or used for the purpose of, carrying lines, cables, or wires for electric or telecommunications service. Utility Pole excludes street signs and decorative poles.

(6579) "VIDEO SERVICE" means the same as "video service" in ORC 1332.21(J).

(6680) "VIDEO SERVICE AUTHORIZATION (or VSA)" means a "video service authorization" as issued to a Video Service Provider by the Director of the Ohio Department of Commerce in accordance ORC 1332.24(A)(1).

(6781) "VIDEO SERVICE NETWORK" means the same as "video service network" in ORC 1332.21(L).

(6882) "VIDEO SERVICE PROVIDER (or VSP)" means the same as "video service provider" in ORC 1332.21(M).

(83) "WIRELESS FACILITY" means

(a) equipment at a fixed location that enables wireless communications between user equipment and a communications network, including all of the following:

(1) Equipment associated with wireless communications;

(2) Radio transceivers, Antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of the technological configuration.

(b) The term includes Small Cell Facilities.

(c) The term does not include any of the following:

(1) The structure or improvements on, under, or within which the equipment is Collocated;

(2) 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.

(84) "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.

(85) "WIRELESS SERVICE PROVIDER" means a person who provides Wireless Service as defined in division (A)(19) of ORC 4927.01.

(86) "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 is capable of supporting Small Cell Facilities. As used in this chapter, Wireless Support Structure excludes all of the following:

(a) A Utility Pole or other facility owned or operated by a municipal electric utility;

(b) A Utility Pole or other facility used to supply traction power to public transit systems including railways, trams, streetcars, and trolleybuses.

(6988) "WORKING DAY" means any Monday, Tuesday, Wednesday, Thursday, or Friday, but excluding legal holidays observed by the City.

(Ord. [O-06-2014](#). Passed 3-18-14.)

907.02 - RIGHTS-OF-WAY ADMINISTRATION.

- (a) Administration. The City Manager shall be the principal City official responsible for the administration of Chapter 907, except as otherwise provided herein. The City Manager may delegate any or all of the duties hereunder to the Director of Public Service or other designee.
- (b) Rights-of-Way Occupancy. Each Person who occupies, uses or seeks to ~~occupy~~ Occupy or use the Rights-of-way to operate a System located in the Rights-of-way, or who has, or seeks to have, a System located in any Rights-of-way, shall apply for and obtain a Certificate of Registration pursuant to Chapter 907. Any Person owning, operating or maintaining a System in the Rights-of-way without a Certificate of Registration, including Persons operating under a permit, license or franchise issued by the City prior to the effective date of Chapter 907 shall apply for and obtain a Certificate of Registration from the City, unless exempted by Section 907.02(~~Dd~~). Application will consist of providing the information set forth in Section 907.03 and as reasonably required by the Director of Public Service.
- (c) No Construction Without a Certificate of Registration. Following the effective date of Chapter 907, no Person shall Construct or perform any work on or in any Rights-of-way nor shall a Provider, ~~or~~ use any System or any part thereof located on or in any Rights-of-way without first obtaining a Certificate of Registration. Whoever violates this section is guilty of a misdemeanor of the fourth (4th) degree as provided for in Section 907.99.
- (d) Exceptions.
 - (1) The following entities are not obligated to obtain a Certificate of Registration: the City and resellers of Services or Persons that do not own any System or Facilities in the Rights-of-way.
 - (2) The following entities are required to participate in the Certificate of Registration process, but shall be exempt from the financial obligations of the Application Fee required by Section 907.03(A) and the Registration Maintenance Fee required by Section 907.05(~~Aa~~); Cable Operators for the purpose of providing only Cable Service and operating pursuant to a valid Cable Franchise; Video Service Provider for the purpose of providing only Video Service and operating pursuant to a valid Video Service authorization issued in accordance with ORC 1332.24; any entity which possesses an existing and valid non-terminable, non-amendable or non-revocable written privilege or authority previously granted by the City for the use or occupancy of the Right-of-way, whereby such exemption shall be limited to for specific term and limited conditions or obligations as previously granted; the Schools; the City of Columbus; and the County. In addition, Cable Operators shall be exempt from any requirement of the Certificate of Registration process that is in direct conflict with the requirements of, and/or specifically exempted by, a valid Cable Franchise with the City.
- (e) Systems in Place Without a Certificate of Registration. Any System or part of a System found in the Rights-of-way for which a Certificate of Registration has not been obtained or an exemption has been otherwise authorized by Chapter 907, shall be deemed to be a nuisance and an unauthorized use of the Rights-of-way. The City may exercise any remedies or rights it has at Law or in equity, including, but not limited to abating the nuisance; taking possession of the Facilities and/or non-complying portion of such System; and/or prosecuting the violator.
- (f) Future Uses. Subject to applicable Law, Iin allowing Providers and Permittees to place Facilities in the Rights-of-way, the City shall not be liable for any damages caused thereby to any Provider's Facilities that are already in place or that shall be placed in the Rights-of-way unless those damages arise out of the sole negligence, gross negligence, willful misconduct, or fraud of the City. No Provider is entitled to rely on the provisions of this Chapter as creating a special duty to any Provider.

(g) Discontinuance of Operations, Abandoned and Unused Facilities.

- (1) A Provider who has discontinued or is discontinuing its operations of any System in the City shall:
- A. Provide information satisfactory to the City that the Provider's obligations for its System in the Rights-of-way under this section and any other sections in the Code have been lawfully assumed by another Applicant and/or Provider; or
 - B. Submit a written proposal to re-use its Facilities in a manner that promotes the City's goals of providing innovative and economic solutions to efficiently and economically utilize limited Rights-of-way capacity. Such proposal must be approved or denied by the Director of Public Service. The Director of Public Service's denial of a proposal to re-use its Facilities in a manner that promotes the City's goals of providing innovative and economic solutions to efficiently and economically utilize limited Rights-of-way capacity shall be done in writing and describe the Director of Public Service's reasons for such a denial. The denial may be appealed by the Provider to the City Manager. The decision of the City Manager shall be final; or
 - C. Submit a written proposal for abandonment of Facilities in place indicating why good engineering practice would support this type of solution. The Director of Public Service must approve or deny said proposal. The Director of Public Service's denial of a proposal to abandon facilities in place shall be done in writing and describe the Engineers reasons for such a denial. The denial may be appealed by the Provider to the City Manager. The decision of the City Manager shall be final; or
 - D. Completely remove all specifically identified portion(s) of its System in a manner acceptable to the City within a reasonable amount of time if the City believes that there exists a reasonable justification for such removal; or
 - E. Submit to the City within a reasonable amount of time and in accordance with ORC 4905.20 and 4905.21, a proposal for transferring ownership of its Facilities to the City. If a Provider proceeds under this clause, the City may, at its option where lawful:
 - 1. purchase the Facilities; or
 - 2. unless a valid removal bond has already been posted pursuant to Section 907.1718(Bb), require the Provider to post a bond in an amount sufficient to reimburse the City for reasonably anticipated costs to be incurred in removing the Facilities.
- (2) Facilities of a Provider ~~who-that~~ fail to comply with this ~~S~~section and which remain Unused Facilities shall be deemed to be ~~a~~Abandoned. Abandoned Facilities are deemed to be a nuisance. The City may exercise any remedies or rights it has at Law or in equity, including, but not limited to:
- A. abating the nuisance;
 - B. taking possession of the Facilities and restoring them to a useable condition subject to a finding of the PUCO pursuant to the requirements of ORC 4905.20 and 4905.21; or
 - C. requiring removal of the Facilities by the Provider or by the Provider's surety.
- (3) If the City requires a Provider to remove Unused Facilities in any Rights-of-way, the City shall use reasonable efforts to direct that this removal occur in conjunction with other scheduled excavations of the Rights-of-way. If the City abates the nuisance it may take all action necessary to recover its costs and to abate said nuisance, including but not limited to, those methods set forth in ORC 715.261.
- (h) Nature of Issuance. A Certificate of Registration shall not convey equitable or legal title in the Rights-of-way. A Certificate of Registration is only the nonexclusive, limited right to occupy Rights-of-way in the City, for the limited purposes and for the limited period stated in the Certificate of Registration and in accordance with Chapter 907 of the Code. The rights to occupy the Right-of-way may not be subdivided or subleased; provided, however, that two (2) or more Providers may

~~collocate~~ Facilities in the same area of the Rights-of-way so long as each such Provider complies with the provisions of Chapter 907. ~~Collocating-Such~~ Providers may file a joint application for a Construction Permit. A Certificate of Registration does not excuse a Provider from obtaining appropriate access or pole attachment agreements before ~~collocating~~ its Facilities on Facilities of others, including the City's Facilities. A Certificate of Registration does not prevent a Provider from leasing space in or on the Provider's System, so long as the sharing of Facilities does not cause a violation of Law, including the provisions of Chapter 907. A Certificate of Registration does not excuse a Provider from complying with any provisions of the Code or other applicable Law.

- (i) Other Approvals, Permits, and Agreements . In addition to a Certificate of Registration, Providers shall obtain any and all regulatory approvals, permits, authorizations, or licenses necessary for the offering or provision of such Services from the appropriate federal, state and local authorities and upon the City's reasonable request, shall provide copies of such documents to the City. Further, a Certificate of Registration issued pursuant to Chapter 907 shall not entitle a Provider to use, alter, convert to, or interfere with, the Facilities, easements, poles, conduits, lines, pipelines, wires, fiber, cable or any other real or personal property of any kind whatsoever under the management or control of the City.

(Ord. O-06-2014 . Passed 3-18-14)

907.03 - CERTIFICATE OF REGISTRATION APPLICATIONS.

- (a) Certificate of Registration Applications . To obtain a Certificate of Registration to construct, own, or maintain any system within the City, or to obtain a renewal of a Certificate of Registration issued pursuant to this Chapter, an Application must be filed with the City on the form adopted by the City which is hereby incorporated by reference. For all Applications the City shall collect an Application Fee. The Application Fee shall be equal to all the actual and direct costs incurred by the City that are associated with receiving, reviewing, processing and granting (or denying) an Application. At the time of its decision to either grant or deny an Application the City shall calculate and assess all actual and direct costs involved in receiving, reviewing, processing and granting (or denying) the Application and provide a written invoice to the Applicant for the appropriate amount. The City shall require that the Applicant remit all Application Fee amounts invoiced within thirty (30) days of its decision to either grant or deny a Certificate of Registration. Any Applicant who fails to timely remit such invoiced Application Fee amounts shall be subject to the penalties of this Chapter, the imposition of any other legal or equitable remedies available to the City and the immediate revocation of any Certificate of Registration having been issued. Information Required for Application to Obtain a Certificate of Registration.
 - (1) The Applicant shall keep all of the information required in this section current at all times, provided further that Applicant or Provider shall notify the City of any changes to the information required by this section within thirty (30) days following the date on which the Applicant or Provider has knowledge of such change. The information provided to the City at the time of Application shall include, but not be limited to:
 - A. Each Applicant's name, legal status (i.e. partnership, corporation, etc.), street address and e-mail address, if applicable, and telephone and facsimile numbers; and
 - B. The name, address and e-mail address, if applicable, and telephone and facsimile numbers of a System Representative. The System Representative shall be available to the City at all times. Current information regarding how to contact the System Representative in an Emergency shall be provided at the time of Application and shall be updated as necessary to assure accurate contact information is available to the City at all times; and
 - C. A certificate of insurance where required to be provided to meet the requirements of this ~~S~~section shall:
 - 1. Verify that an insurance company licensed to do business in the State of Ohio has issued an insurance policy to the Applicant;

2. Verify that the Applicant is insured on an occurrence basis against claims for personal injury, including death, as well as claims for property damage arising out of the:
 - (i) Use and occupancy of the Rights-of-way by the Applicant, its officers, agents, employees and contractors; and
 - (ii) Placement and use of Facilities in the Rights-of-way by the Applicant, its officers, agents, employees and contractors, including, but not limited to, protection against liability arising from any and all operations, damage of Underground Facilities and collapse of property;
3. Name the City, its elected officials, officers, employees, agents and volunteers as an additional insured as to whom the comprehensive general liability and completed operation and products liability insurance required herein are in force and applicable and for whom defense will be provided as to all such coverage, as is required within Chapter 907;
4. Require that the City be notified thirty (30) days in advance of cancellation of, or coverage changes in, the policy. The liability insurance policies required by this section shall contain the following endorsement:
 - (i) "It is hereby understood and agreed that this policy may not be diminished in value, canceled nor the intention not to renew be stated, until thirty (30) days after receipt by the City, by registered mail, return receipt requested, of a written notice addressed to the Director of Public Service or her/his designee of such intent to cancel, diminish or not to renew."

Within thirty (30) days after receipt by the City of said notice, and in no event later than five (5) days prior to said cancellation, the Provider (or Applicant) shall obtain and furnish to the Director of Public Service a certificate of insurance evidencing replacement insurance policies.

5. Satisfy the requirements for comprehensive liability coverage, automobile liability coverage and umbrella coverage as follows:
 - (i) Comprehensive general liability insurance: comprehensive general liability insurance to cover liability, bodily injury, and property damage must be maintained. Coverage must be written on an occurrence basis, with the following minimum limits of liability and provisions, or their equivalent:

(1)	Bodily injury:	
	Each occurrence -	One Million Dollars
		(US \$1,000,000.00)
	Annual aggregate -	Three Million Dollars
		(US \$3,000,000.00)
(2)	Property damage:	
	Each occurrence -	One Million Dollars

		(US \$1,000,000.00)
	Annual aggregate -	Three Million Dollars
		(US \$3,000,000.00)
(3)	Personal Injury:	
	Annual aggregate -	Three Million Dollars
		(US \$3,000,000.00)
(4)	Completed operations and products liability shall be maintained for six (6) months after the termination of a Certificate of Registration.	
(5)	Property damage liability insurance shall include coverage for the following hazards: E — explosion, C — collapse, U — underground.	

- (ii) Comprehensive auto liability insurance: Comprehensive auto liability insurance to cover owned, hired, and non-owned vehicles must be maintained. Applicant may maintain comprehensive auto liability insurance as part of Applicant's comprehensive general liability insurance, however, said insurance is subject to approval by the Director of Public Service or his/her designee. Coverage must be written on an occurrence basis, with the following limits of liability and provisions, or their equivalent:

(1)	Bodily injury:	
	Each occurrence -	One Million Dollars
		(US\$1,000,000.00)
	Annual aggregate -	Three Million Dollars
		(US\$3,000,000.00)
(2)	Property damage:	
	Each occurrence -	One Million Dollars

		(US\$1,000,000.00)
	Annual aggregate -	Three Million Dollars
		(US\$3,000,000.00)

- (2) Additional insurance : The City reserves the right to require any other insurance coverage it deems necessary after review of any proposal submitted by Applicant.
- (3) Self-insurance : Those Applicants maintaining a book value in excess of fifty million dollars (\$50,000,000.00) may submit a statement requesting to self-insure. If approval to self-insure is granted, Applicant shall assure the City that such self-insurance shall provide the City with no less than would have been afforded to the City by a third party insurer providing Applicant with the types and amounts of coverage detailed in this sSection. This statement shall include:
- A. Audited financial statements for the previous year; and
 - B. A description of the Applicant's self-insurance program; and
 - C. A listing of any and all actions against or claims made against Applicant for amounts over one million dollars (\$1,000,000.00) or proof of available excess umbrella liability coverage to satisfy all total current claim amounts above fifty million dollars (\$50,000,000.00).
 - D. The Director of Public Service may modify or waive these requirements if they are not necessary in determining the sufficiency of the self-insurance. The Director of Public Service may request applicable and pertinent additional information if it is necessary in determining the sufficiency of the self-insurance.
- (4) The City's examination of, or failure to request or demand, any evidence of insurance in accordance with Chapter 907 shall not constitute a waiver of any requirement of this section and the existence of any insurance shall not limit Applicant's obligations under Chapter 907.
- (5) Documentation that Applicant or Provider maintains standard workers' compensation coverage as required by Law. Similarly, Provider shall require any subcontractor to provide workers' compensation coverage in amounts required by Law for all of the subcontractor's employees.
- (6) If the Person is a corporation, upon specific request of the City, a copy of the certificate of incorporation (or its legal equivalent) as recorded and certified to by the secretary of state (or legal equivalent) in the state or country in which incorporated.
- (7) A copy of the Person's certificate of authority from the PUCO and/or the FCC and/or FERC, if the Person is lawfully required to have or actually does possess such certificate from said commission(s) and any other approvals, permits, or agreements as set out in Section 907.02(h).
- (8) Upon request of the City, a narrative (or if applicable PUCO/FCC/FERC application information) describing Applicant's proposed activities in the City including Credible information detailing Applicant's financial, managerial, and technical ability to fulfill Applicant's obligations under Chapter 907 and carry on Applicant's proposed activities.
- (b) Criteria for Issuance of a Certificate of Registration .
- (1) In deciding whether to issue a Certificate of Registration, the City shall consider:
 - A. Whether the issuing of the Certificate of Registration will contribute to the health, safety, and welfare of the City and its citizens.
 - B. Whether issuing of the Certificate of Registration will be consistent with Chapter 907.

- C. Whether Applicant has submitted a complete Application and has secured all certificates and other authorizations required by Law in order to Construct and operate a System in the manner proposed by the Applicant.
 - D. Whether the Applicant is delinquent on any taxes or other obligations owed to the City, County or State of Ohio.
 - E. Unless Applicant is otherwise exempted from such consideration by ORC 4939.03(c)(5), whether the Applicant has the requisite financial, managerial, and technical ability to fulfill all its obligations under this Chapter and the issuance of a Certificate of Registration.
 - F. Any other applicable Law.
- (c) Grant or Denial of an Application for a Certificate of Registration .
- (1) The City, not later than sixty (60) days after the date of filing by an Applicant of a completed Application for a Certificate of Registration, shall grant or deny the Application.
 - (2) If an Application for a Certificate of Registration is denied, the City shall provide to the Applicant, in writing, the reasons for denying the Application and such other information as the Applicant may reasonably request to obtain consent.
- (d) Obligations of a Provider Upon Receipt of a Certificate of Registration . In addition to the other requirements set forth herein, in the City's Design Guidelines, and in the Rules and Regulations each Provider shall:
- (1) Use its Best Efforts to cooperate with other Providers and users of the Rights-of-way and the City for the best, most efficient, and least obtrusive use of Rights-of-way, consistent with safety, and to minimize traffic and other disruptions; and
 - (2) When possible, participate in joint planning, Construction and advance notification of Rights-of-way work, as may be required by the City; and
 - (3) Upon reasonable written notice, and at the direction of the Director of Public Service, promptly remove or rearrange Facilities as necessary for public safety; and
 - (4) Perform all work, Construction, maintenance or removal of Facilities within the Rights-of-way, in accordance with good engineering, construction and arboricultural practice (if applicable), including any appropriate state building codes, safety codes and Law and use Best Efforts to repair and replace any street, curb or other portion of the Rights-of-way, or Facilities located therein, to a condition to be determined by the Director of Public Service to be adequate under current standards and not less than materially equivalent to its condition prior to such work and to do so in a manner which minimizes any inconvenience to the public, the City and other Providers, all in accordance with all applicable provisions of this Chapter, any Rules and Regulations and Design Guidelines the City may adopt and the Code; and
 - (5) Construct, install, operate and maintain its Facilities and System in a manner consistent with all applicable Laws, ordinances, construction standards and governmental requirements including, but not limited to, The National Electric Safety Code, National Electric Code and applicable FCC, FERC, or other federal, state and/or local regulations; and
 - (6) Be on notice that removal of trees, or the use of vegetation management programs within the Rights-of-way of the City require prior written approval by the Director of Public Service or his/her designee. Any such activities, unless an Emergency, shall only be performed following the prior written approval of the Director of Public Service or his/her designee and must be performed in accordance with the then most current standard horticultural and arboreal practices as promulgated by entities such as the National Arbor Day Foundation, the International Society of Arboriculture, and the Tree Care Industry, all as may be required by the City. Pruning shall at a minimum meet or exceed the requirements of the most current version of the American National Standards Institute ANSI A300 standard. Any additionally required horticultural and arboreal practices and guidelines shall be described in the Rules and Regulations adopted by the Director of Public Service pursuant to Section 907.06(~~Ee~~).

Emergency removal of trees or the use of vegetation management programs within the Rights-of-way of the City may be performed in Rights-of-way as described herein and in accordance with the Rules and Regulations, but the Director of Public Service shall be provided notice of such Emergency work being performed within two (2) Business Days of the start of the work. Any non-emergency tree removal or the use of vegetation management programs within the Rights-of-way that is performed without the Director of Public Service or designee's written permission shall subject a Person to the penalties of Section 907.99 and may further require that the tree or vegetation be replaced, at the sole expense of the responsible Person, with a healthy tree or vegetation of like kind and quality; and

- (7) Warrant that all worker facilities, conditions and procedures that are used during Construction, installation, operation and maintenance of the Provider's Facilities within the Rights-of-way shall comply with all applicable standards of the Federal Occupational Safety and Health Administration; and
- (8) Use its Best Efforts to cooperate with the City in any Emergencies involving the Rights-of-way; and
- (9) Provider shall, weather permitting, remove all graffiti within ten (10) calendar days of notice. Provider shall use all reasonable efforts to remove any and all graffiti on any of the Provider's Facilities located within the City Rights-of-way. Should the Provider fail to do so, the City may take whatever action is necessary to remove the graffiti and bill the Provider for the cost thereof; and
- (10) Providers shall use all reasonable efforts to field identify their Facilities in the Rights-of-way whenever Providers are notified by the City that the City has determined that such identification is reasonably necessary in order for the City to begin planning for the Construction, paving, maintenance, repairing, relocating or in any way altering any street or area in the Rights-of-way as defined in this Chapter. The City shall notify the Providers of the City's date to begin the process at least thirty (30) days prior to the commencement of said activities. In field identifying Facilities:
 - A. Providers shall identify all Facilities that are within the affected Rights-of-way using customary industry standards and distinct identification; and
 - B. Facilities will be so marked as to identify the Provider responsible for said Facilities; and
 - C. Should any such marking interfere with the Facilities function, create a safety problem or violate any safety code, alternative methods of marking the Facilities may be approved by the Director of Public Service; and
 - D. All marking should be clearly readable from the ground and include the product name or logo only. No advertising will be permitted.
- (11) A Provider that is replacing an existing ~~utility-Utility pole-Pole~~ shall be responsible to coordinate with all other Providers to ensure the orderly transfer of all lines or cables to the replacement ~~Utility Poleutility-pole~~, the removal of the existing ~~Utility Poleutility-pole~~, and the restoration of the Rights-of-way within thirty (30) days weather permitting after the replacement ~~Utility Pole utility-pole~~ is installed. Upon request, the Director of Public Service may grant the Provider additional time for good cause.

(e) Establishment of Utility Corridors .

- (1) The Director of Public Service may assign specific corridors within the Rights-of-way, or any particular segment thereof as may be necessary, for each type of Facilities that are, or that the Director of Public Service expects, may someday be, located within the Rights-of-way.
- (2) Any Provider whose Facilities are in the Rights-of-way and are in a position at variance with Utility Corridors established by the Director of Public Service shall at the time of the next Construction of the area, excluding normal maintenance activities, move such Facilities to their assigned position within the Rights-of-way. Existing underground Facilities located within a designated Utility Corridor shall not be required to relocate into adjacent or alternative portions

of the Rights-of-way unless they are in conflict with an actual or proposed public improvement project. The above requirements may be waived by the Director of Public Service for good cause shown including, but not limited to, consideration of such factors as: the remaining economic life of the Facilities, public safety, customer service needs, Law precluding such underground Facilities, and hardship to the Provider. If a Provider is denied a requested waiver from the above requirements by the Director of Public Service, the Provider may appeal the denial to the City Manager. The decision of the City Manager shall be final

- (3) The Director of Public Service shall make every good faith attempt to accommodate all existing and potential users of the Rights-of-way as set forth in this Chapter.
- (4) Providers may enter into written agreements to use existing poles and conduits with the owners of same and shall use Best Efforts to install their Facilities within the Rights-of-way.
- (5) No Facility placed in any Rights-of-way shall be placed in such a manner that interferes with normal travel on such Rights-of-way.
- (6) Unless otherwise stated in a Certificate of Registration or Permit, ~~or Section 907.03(Ff)(6)(cC)~~ all Facilities within the Rights-of-way shall be Constructed and located in accordance with the Code and with the following provision:
 - A. Whenever all existing Facilities that have been traditionally located overhead are located underground in a certain area within the City, a Provider who desires to place its Facilities in the same area must also locate its Facilities underground.
 - B. Whenever a Provider is required to locate or re-locate Facilities underground within a certain area of the City, every Provider with Facilities within the same area of the City shall concurrently re-locate their Facilities underground.
 - C. The above requirements must be waived by the City for good cause shown including, but not limited to, consideration of such factors as: the remaining economic life of the Facilities, public safety, customer service needs, Law precluding such undergrounding of Facilities; and hardship to the Provider. If a Provider is denied a requested waiver from the above requirements, the Provider may appeal the denial of the Director of Public Service to the City Manager.

(f) Historic Districts .

- (1) Except as otherwise provided by Law, the City shall have the authority to prohibit the use or occupation of the Right-of-way by a Provider if the Right-of-way for which the Provider seeks use and occupancy lies within a Historic District.
- (2) As a condition for approval for the co-location or installation of Small Cell Facilities and/or Wireless Support Structures in an area of the City designated as a Historic District, the City may:
 - A. Require reasonable, technically feasible, and nondiscriminatory design or concealment measures for the Small Cell Facilities and Wireless Support Structures.
 - B. Request that a provider comply with the design and aesthetic standards of the Historic District or a residential district, as provided for in the City's Design Guidelines..
 - C. Request that a provider explore the feasibility of using certain camouflage measures to improve the aesthetics of the Small Cell Facilities and Wireless Support Structures to minimize the impact to the area aesthetics.
- (3) This section may not be construed to limit the City's authority to enforce local codes, administrative rules, or Rules and Regulations adopted by ordinance, which are applicable to a historic area designated by the State or City and historic preservation zoning regulations consistent with the preservation of local zoning authority under 47 U.S.C. Section 332(c)(7), the requirements for facility modifications under 47 U.S.C. Section 1455(a), or the National Historic Preservation Act of 1966 (54 U.S.C. Section 300101 et seq.), and the regulations adopted to implement those laws.

(Ord. [O-06-2014](#). Passed 3-18-14.)

907.04 - REPORTING REQUIREMENTS.

- (a) Construction and Major Maintenance Plan. Each Provider shall, at the time of initial Application and by January 1 of each following year, file a Construction and Major Maintenance Plan with the Director of Public Service. Such Construction and Major Maintenance Plan shall be provided for all geographical areas requested by the Director of Public Service, up to and including the entire geographical area of the City. It shall be submitted using a format(s) mutually agreeable to the Provider and the City and shall contain the information determined by the Director of Public Service to be necessary to facilitate the coordination and reduction in the frequency of Construction in the Rights-of-way. The Construction and Major Maintenance Plan shall include, but not be limited to, all currently scheduled and/or anticipated Construction projects for the next calendar year, if none are scheduled or anticipated then the Plan shall so state. The Provider shall use its Best Efforts in supplying this information and shall update the Construction and Major Maintenance Plan on file with the Director of Public Service whenever there is a material change in scheduled and/or anticipated Construction projects. In an effort to assist Providers with the completion of their annual Construction and Major Maintenance Plan, the Director of Public Service, on or before October 1 of each year, will send each Provider's System Representative a descriptive narrative (and any mapping information reasonably available) for all the planned Right-of-way improvements and/or scheduled maintenance that the City then currently intends to undertake during the next calendar year. The City may, in its sole discretion, update and/or modify the descriptive narrative and mapping information provided.
- (b) Mapping Data. With the filing of its Application for a Certificate of Registration, a Provider shall be required to accurately inform the City of the number of miles (rounded up to the nearest mile) of Right-of-way the Provider's System then currently occupies and begin submitting to the City all information that currently exists and which can be provided regarding the location of its Facilities in the Right-of-way in hard copy or in the most advanced format (including, but not limited to, electronic and/or digital format) then currently being used by the Provider that is then currently capable of technologically being read (or readily converted to a readable form) by the City. Unless otherwise required by Section 907.1314(Bb), a Provider shall have up to one year from the date of the Provider's initial filing of an Application for a Certificate of Registration to completely submit all the mapping data for a Provider's System in the entire geographical area of the City which it owns or over which it has control that are located in any Rights-of-way of the City in the most advanced format (including, but not be limited to electronic and/or digital format) then currently being used by the Provider that is then currently capable of technologically being read (or readily converted to a readable form) by the City. The mapping data is only required to be at the "Atlas" level of detail necessary for the City to reasonably determine the location of the Provider's facilities in the Rights-of-way. The Provider shall supply the mapping data on paper if the Director of Public Service determines that the format currently being used by the Provider is not capable of being read by the City. Anytime after the issuance of a Certificate of Registration, and upon the reasonable request of the Director of Public Service, a Provider shall be required to provide to the City any additional location information for any Facilities which it owns or over which it has control that are located in any Rights-of-way of the City required by the City. Unless otherwise required by Law, Any and all actual direct, incidental and indirect costs incurred by the City during the process of reviewing, inputting and/or converting a Provider's mapping information to comport with the City's then current standard format (whether electronic or otherwise) shall be directly billed to, and must be timely remitted by, the Provider. Failure to pay such mapping costs within sixty (60) days of receipt of an invoice shall subject an Applicant or Provider to revocation of its Certificate of Registration and the penalties of Section 907.99. Further, each Provider that has been issued a Certificate of Registration shall accurately inform the City on or before each subsequent January 1 of the number of miles (rounded up to the nearest mile) of Right-of-way the Provider's System then occupied as of the immediately previous December 1. The Director of Public Service may, in the future, adopt additional specifications and further define or modify the mapping data requirements under this section for reasons including, but not limited to, changes in technology or the Law regarding public disclosure of a Provider's mapping information. When the City modifies and/or amends the mapping data

requirements, the City shall use Best Efforts to avoid unreasonably increasing the burden to the Providers that may be associated with satisfying the amended mapping requirements. When the mapping requirements of Section 907.04(Bb) are amended, each Provider shall be served with a copy of the new specifications or modifications by regular U.S. Mail to the System Representative identified in each Certificate of Registration and in accordance with Section 907.2019(Dd); provided, however, that any failure of any Provider to actually receive such notice shall not in any way affect the validity or enforceability of said specifications or modifications.

- (c) Exemption from Disclosure. In the event that the City receives a request from a third party for the disclosure of information a provider has clearly marked as Confidential/Proprietary Information, then the City shall respond in accordance with ORC Ch. 149. However, the City will endeavor to notify the Provider of any such the request prior to making the subject document(s) available for inspection or copying, at which point it will be the Provider's sole and exclusive responsibility to take whatever steps it deems necessary to protect such documents from disclosure.

(Ord. [O-06-2014](#). Passed 3-18-14.)

907.05 - COMPENSATION FOR CERTIFICATE OF REGISTRATION.

- (a) Compensation. As compensation for the City's costs to administer Chapter 907, manage, administer and control the Rights-of-way and maintain each Certificate of Registration issued, every Provider or any Person operating a System shall pay to the City a Registration Maintenance Fee. The Registration Maintenance Fee shall be determined and assessed to Providers and other Persons operating a System or otherwise using and occupying the Rights-of-way in accordance with the following process and formula:
- (1) The City by February 28 of each year, shall calculate all actual and incurred costs associated with Rights-of-way management, administration and control for the previous calendar year that the City was not able to reasonably recover through Construction Permit Fees or other recovery mechanisms provided for in Chapter 907.
 - (2) Providers and Applicants, as required in Section 907.04(Bb), shall accurately inform the City upon application for a Certificate of Registration and on or before each subsequent January 1 of the number of miles (rounded up to the nearest mile) of Right-of-way the Provider's System then occupied as of the immediately previous December 1.
 - (3) The City shall total the entire number of miles of Right-of-way reported as being used or occupied by all Providers.
 - (4) The City shall divide the calculated costs referenced in Section 907.05(Aa)(1) by the total number of miles of Right-of-way reported as being used or occupied by all Providers as referenced in Section 907.05(Aa)(3) to arrive at a per-mile cost number.
 - (5) The City shall then multiply each Provider's mileage calculation as referenced in Section 907.05(Aa)(2) by the per-mile cost calculation referenced in Section 907.05(Aa)(4). The product shall be a Provider's then current annual Registration Maintenance Fee.
 - (6) The City shall perform its annual calculation of Registration Maintenance Fees following receipt of the Providers required December 1 mileage report. Registration Maintenance Fees shall be invoiced to Providers on or about March 1 of each calendar year and shall be due thirty (30) days following receipt.
 - (7) Cable companies operating under non-exclusive Cable Franchises for the purposes of providing Cable Service, Video Services Provider operating under a VSA for the purpose of providing Video Services, and providers of Open Video System services, which compensate the City under other mechanisms in an amount equal to or greater than the Annual Registration Maintenance Fee that would normally be required for their Right-of-way use in The City, shall have the mileage of the Right-of-way they use and/or occupy included in the calculations

described in Section 907.05, but shall not be required to contribute to the recovery of Rights-of-way Costs as defined by Chapter 907 with the exception of Permit Costs.

- (8) The City may by separate legislation enacted by City Council on or about February 28 of each year, in accordance with the results of Section 907.05(Aa)(4), enact an initial and thereafter a new annual Registration Maintenance Fee (per mile) by appropriately increasing or decreasing the previous year(s) Registration Maintenance Fee (per mile). Revised Registration Maintenance Fees shall be effective upon passage.
- (b) Timing. Registration Maintenance Fees shall be paid each calendar year in accordance with Section 907.05(Aa)(6). Registration Maintenance Fees shall be paid in full for the first year of the registration as a condition of the Certificate of Registration becoming effective. Fees may be prorated from the effective date of the Certificate of Registration to the end of the calendar year if less than one full year.
- (c) Taxes and Assessments. To the extent taxes or other assessments are imposed by any taxing authority or community authority on the use of City property as a result of a Provider's use or occupation of the Rights-of-way, the Provider shall be responsible for payment of such taxes or assessments. Such payments shall be in addition to any other fees payable pursuant to Chapter 907 and shall not be considered an offset to, or in lieu of, the fees and charges listed in Chapter 907. The Registration Maintenance Fee is not in lieu of any tax, fee, or other assessment except as specifically provided in Chapter 907, or as required by applicable Law.
- (d) Interest on Late Payments. In the event that any Registration Maintenance Fee is not paid to the City by April 1, the Provider shall pay a monthly late charge of one percent of the unpaid balance for each month or any portion thereof for which payment is not made.
- (e) No Accord and Satisfaction. No acceptance by the City of any Registration Maintenance Fee shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of such Registration Maintenance Fee payment be construed as a release of any claim the City may have for additional sums payable.
- (f) Cost of Publication. A Provider shall assume all actual and direct newspaper or other appropriate publication costs of up to one thousand dollars (\$1,000.00) associated with its certificate of Registration that may be required by Law or that may otherwise be required by its Application for a Certificate of Registration or other Permit as provided for herein.

(Ord. [O-06-2014](#). Passed 3-18-14.)

907.06 - OVERSIGHT AND REGULATION.

- (a) Reports. Upon reasonable request of the Director of Public Service, a Provider shall provide the City with a list of any and all material communications, public reports, petitions, or other filings, either received from or submitted to any municipal, county, state or federal agency or official (and any response thereto submitted by or received by a Provider), and any other information or report reasonably related to a Provider's obligations under Chapter 907 which in any way materially effects the operation of the System or a Provider's representations and warranties set forth herein, but not including tax returns or other filings which are confidential. Upon request, a Provider shall promptly, but in no case later than thirty (30) business days following the request, deliver to the City a complete copy of any item on said list. Upon the request of the City, a Provider shall promptly submit to the City any information or report reasonably related to a Provider's obligations under Chapter 907, its business and operations with respect to the System or its operation, in such form and containing such information as the City shall specify. Such information or report shall be accurate and complete and supplied within thirty (30) days.
- (b) Confidentiality. All information submitted to the City that is considered Confidential Information, trade secret and/or proprietary information or information that upon public its disclosure would be highly likely to place critical portions of the Provider's System in real danger of vandalism, sabotage

or an act of terrorism, must be clearly marked as such when submitted. The City shall endeavor to exercise all reasonable legal protections so as not to publicly disclose to any third party such information unless required by Law. The City shall, following receipt of a request for public disclosure of clearly marked trade secret and/or proprietary information submitted by a Provider, endeavor to use reasonable Best Efforts to timely place the Provider's System Representative on notice that such a request for public disclosure has been made.

- (c) Provider's Expense. All reports and records required under Chapter 907 shall be furnished at the sole expense of a Provider.
- (d) Right of Inspection and Audit. The City's designated representatives shall have the right to inspect, examine, or audit during normal business hours and upon reasonable notice to a Provider under the circumstances; documents, records, or other information which pertain to a Provider's operation of a System within the City that are related to its obligations under Chapter 907. All such documents shall be made available within the City or in such other place that the City may agree upon in writing in order to facilitate said inspection, examination, or audit.
- (e) Rules and Regulations. The Director of Public Service may propose and adopt (and from time to time amend) the Rules and Regulations regarding Chapter 907, Design Guidelines, Construction standards and occupancy requirements of the Right-of-way. Prior to the initial adoption of the Rules and Regulations, the Director of Public Service shall provide written notice and a copy of the proposed language of such adoption, via United States Regular Mail, to each Provider who holds a then current Certificate of Registration. Each Provider shall then have thirty (30) days following the date of the City's mailing to provide written comment regarding the proposed language to the Director of Public Service. At least forty-five (45) days, but not more than sixty (60) days following the date of the City's mailing, the Director of Public Service shall schedule and hold a meeting, to make available a forum at which all then current Providers may address any questions, concerns and make reasonable suggestions regarding the proposed new Rules and Regulations to the Director of Public Service. The Director of Public Service shall, following said meeting and the review of the Providers' comments and suggestions, adopt the Rules and Regulations in a manner that best serves the City.

(Ord. O-06-2014. Passed 3-18-14.)

907.07 - SMALL CELL FACILITIES AND WIRELESS SUPPORT STRUCTURES.

- (a) Use of Rights of Way. In accordance with ORC 4939, this section establishes terms and conditions for the use of the Right-of-way by an Operator to Collocate Small Cell Facilities and Construct, maintain, modify, operate, or replace Wireless Support Structures to distribute Wireless Service in the City.
- (b) Applicability. The application procedures, permit fees, and auditing procedures outlined in this chapter shall be applicable to applications to establish wireless facilities. However, Wireless Facilities that are not Small Cell Facilities or Wireless Support Structures as defined in this chapter are not subject to this section.
- (c) Certificate of Registration Required. In accordance with this chapter, and unless otherwise prohibited by Law, each Person who occupies, uses, or seeks to Occupy or Use the Rights-of-way to operate a Small Cell Facility or Wireless Support Structure in the Right-of-way, or who has, or seeks to have, a Small Cell Facility or Wireless Support Structure located in any Right-of-way, shall apply for and obtain a Certificate of Registration for the System pursuant to this chapter.
- (d) Construction Permit and Minor Maintenance Permit Required. All applications for the construction or modification of a Small Cell Facility or Wireless Support Structure shall comply with the

Construction Permit and Right-of-way Minor Maintenance Permit requirements set forth in this chapter and any other applicable Law.

(e) Micro Wireless Permit Submission. In addition to the requirements in (c) and (d) of this Section 907.07, a Micro Wireless Permit shall be submitted by any Person that seeks to Construct, modify, Collocate, or replace a Small Cell Facility or Wireless Support Structure in any Right-of-way. The City's consent shall not be required for the replacement of a Small Cell Facility and/or Wireless Support Structure with a Small Cell Facility and/or Wireless Support Structure, respectively, that is consistent with the City's Design Guidelines and is substantially similar to the existing Small Cell Facility and/or Wireless Support Structure, or the same size or smaller than the existing Small Cell Facility and/or Wireless Support Structure and complies with the requirements for Construction Permits as provided in this chapter.

(1) For processing a Micro Wireless Permit, the city may charge a fee for each Small Cell Facility and/or Wireless Support Structure in accordance with Law and as listed on the Micro Wireless Permit forms.

(2) The City shall grant or deny a Micro Wireless Permit in accordance with any required timelines under Law or any other timeline provided for in the City's Design Guidelines, whichever shall be more favorable to the Applicant.

A. If the City fails to approve or deny a Micro Wireless Permit within the required time period, provided that the time period is not otherwise tolled in accordance with the provisions of this section, the Micro Wireless Permit shall be deemed granted upon the requesting entity notifying the City that the time period for granting or denying the request of consent has lapsed.

(3) Requests for consent that do not meet the requirements listed on the application or stated herein or in the City's Design Guidelines shall be deemed incomplete or shall otherwise be denied by the City.

A. If a Micro Wireless Permit is deemed incomplete, within thirty (30) days of receiving the application, the City shall provide written notice to the Applicant that clearly and specifically delineates all missing documents or required information.

(i) Once the Applicant submits the documents or information in response to the City's notice of incompleteness, the time period for review resumes and the City shall grant, deny, or deem the Micro Wireless Permit to be incomplete due to not providing the information identified in the original notice of incompleteness.

(ii) For a Micro Wireless Permit that is deemed incomplete for a second or subsequent time, the city shall continue to follow the process in Section 907.07(e)(3)(A)(i) of this section until such time that a complete Application is received from the Applicant. At such time, the City shall, within the required time period for review, grant or deny the Micro Wireless Permit.

B. If a Micro Wireless Permit is denied, the City shall provide in writing its reasons for denying the request, supported by substantial, competent evidence, and such information that the Applicant may reasonably request to obtain consent.

(i) Except in the case of a Public Utility subject to the jurisdiction and recognized on the rolls of the public utilities commission or 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 city, 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.

(4) The City shall permit a Person seeking to Construct, modify, Collocate, or replace more than one Small Cell Facility or more than one Wireless Support Structure within the Right-of-way to file a consolidated application for consent.

A. No more than thirty (30) Small Cell Facilities or thirty (30) Wireless Support Structures shall be proposed within a single Application to receive a single Permit for the Construction, modification, Collocation, or replacement of Small Cell Facilities or Wireless Support Structures in the Right-of-way.

B. A single Application may only address multiple Small Cell Facilities or Wireless Support Structures if they each involve substantially the same type of Small Cell Facility and/or substantially the same type of Wireless Support Structure.

C. If an Applicant intends to submit five (5) or more Small Cell Facilities or Wireless Support Structures in a single Application, a pre-application meeting that includes the Applicant and the public service department may be required by the City in order to help expedite the permitting process. This pre-application meeting may also include a site visit if so requested by the City.

D. The Director of Public Service may separately address Applications for which incomplete information has been received or which are denied.

(5) If the number of requests for consent is likely to result in difficulty processing Applications within the time limits set forth in Law due to the lack of resources of the City, then the City may toll the time limits as follows:

A. The time period for the City to grant or deny a Micro Wireless Permit may be tolled for up to twenty-one (21) days for the first fifteen (15) requests for consent for Small Cell Facilities or Wireless Support Structures received by the City above the thresholds provided in the table below within any consecutive thirty-day period:

<u>Population of city at the time that the Small Cell facility or Wireless Support Structure request for consent is received:</u>	<u>Number of applications:</u>
<u>30,000 persons or less</u>	<u>15 applications or more</u>
<u>30,001 to 40,000 persons</u>	<u>20 applications or more</u>
<u>40,001 to 50,000 persons</u>	<u>25 applications or more</u>
<u>50,001 to 60,000 persons</u>	<u>30 applications or more</u>
<u>60,001 to 100,000 persons</u>	<u>60 applications or more</u>

B. For every additional fifteen (15) requests for consent that the City receives above the thresholds provided in the table above, the City may toll the time period to grant or deny its consent for up to fifteen (15) additional days.

C. In no instance shall the city toll the time period for any Small Cell Facility or Wireless Support Structure Micro Wireless Permit by more than ninety (90) consecutive days.

D. Upon request by the Applicant, the City shall provide written notice of the time limit for a Small Cell Facility or Wireless Support Structure Micro Wireless Permit.

(f) Annual Charge. The total annual charge to reimburse the City for Collocation of a Small Cell Facility by an Operator to a Wireless Support Structure owned by the City and located in the Right-of-way shall be in accordance with Law.

(g) Term. The City's approval term of a Collocation to a Wireless Support Structure shall be for a period of not less than ten (10) years, with a presumption of renewal for successive five-year terms,

unless otherwise terminated or not renewed for cause or by mutual agreement between the Operator and the City.

- (1) An Operator may remove its Small Cell Facilities at any time subject to applicable Permit requirements and may stop paying annual charges or fees established by Law.
 - (2) In the event that use of a Small Cell Facility or Wireless Support Structure is discontinued, the owner shall submit written notice to the City to discontinue use and the date when the use shall be discontinued. If the Small Cell Facility or Wireless Support Structure is not removed within three hundred sixty-five (365) days of discontinued use, the Small Cell Facility or Wireless Support Structure shall be considered Abandoned in accordance with ORC 4939 and the City may remove the Small Cell Facility or Wireless Support Structure at the owner's expense.
- (h) Design Guidelines. The Director of Public Service is authorized to establish, implement and amend, from time to time, Design Guidelines regarding, among other things: (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 City.
- (1) The City, as opposed to the Construction of a new Wireless Support Structure in the Right-of-way, shall prefer locating Small Cell Facilities on existing Wireless Support structures without increasing the Height of the Wireless Support Structure by more than five (5) feet, including the Antenna and any associated shroud or concealment material.
 - (2) The City shall permit, consistent with Law and for the purpose of providing Wireless Service, Collocation of a Small Cell Facility by an Operator to a Wireless Support Structure owned by the City and located in the Right-of-way, provided that the Operator comply with the Design Guidelines under (h) of Section 907.07 and any reasonable terms and conditions for such Collocation that are adopted by the City and consistent with the Design Guidelines and this chapter.
 - A. The City may condition approval of the Collocation on replacement or modification of the Wireless Support Structure at the Operator's cost if the City determines that replacement or modification is necessary for compliance with its construction or safety standards.
 - B. A replacement or modification of the Wireless Support Structure shall conform to the applicable Design Guidelines and the City's applicable specifications for the type of structure being replaced.
 - C. The City may retain ownership of a replacement Wireless Support Structure.
 - D. The City may require removal and relocation of a Small Cell Facility or Wireless Support Structure, at the Permittee's sole expense, in order to accommodate Construction of a public improvement project by the City.
 - (3) The City may propose an alternate location to the proposed location of a new Wireless Support Structure that is within one hundred (100) feet of the proposed location or within a distance that is equivalent to the width of the Right-of-way in or on which the new Wireless Support Structure is proposed, whichever is greater, which the Operator shall use of it has the right to use the alternate location on reasonable terms and conditions and the alternate location does not impose technical limits or additional costs.

907.087 - REGISTRATION TERM.

The term of each Certificate of Registration granted under Chapter 907 shall be valid from the date of issuance until such time as it is revoked, terminated, has lapsed or is properly amended.

(Ord. [O-06-2014](#) . Passed 3-18-14.)

907.098 - INDEMNITY.

- (a) Indemnity Required. Each Certificate of Registration issued pursuant to Chapter 907 shall contain provisions whereby Providers agree to defend, indemnify and hold the City and its agents, officers, elected officials, employees, volunteers, and subcontractors harmless from and against all damages, costs, losses or expenses:
- (1) For the repair, replacement, or restoration of City property, equipment, materials, structures and Facilities which are damaged, destroyed or found to be defective as a result of such Provider's acts or omissions; and
 - (2) From and against any and all claims, demands, suits, causes of action, and judgments:
 - A. for damage to or loss of the property of any Person, and/or the death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any Person;
 - B. arising out of, incident to, concerning or resulting from the act or omissions of such Provider, its agents, employees, and/or subcontractors, in the performance of activities pursuant to such Certificate of Registration, no matter how, or to whom, such loss may occur.
 - (3) In any event, all Persons using or occupying the Rights-of-way agree to defend, indemnify and hold harmless the City as set forth above as a condition of their use and occupancy of the Rights-of-way.

(Ord. [O-06-2014](#). Passed 3-18-14.)

907.109 - CIVIL FORFEITURES.

In addition to any other penalties set forth in this Chapter 907 and the remedy of specific performance, which may be enforced in a court of competent jurisdiction, the Director of Public Service may assess an additional penalty of civil forfeiture for failure to comply with any provision of Chapter 907. Such penalty shall be a monetary sum, payable to the City, in the amount of five hundred dollars (\$500.00) per twenty-four (24) hour day of violation and any subsequent portion of a day less than twenty-four (24) hours in length. Prior to assessing said penalty, the City will provide written notice to the Provider detailing the failure to comply with a specific provision of Chapter 907. Such notice shall also indicate that said penalty shall be assessed in fifteen (15) calendar days subsequent to the date of receipt if compliance is not achieved. If a Provider desires to challenge such penalty, Provider must request a hearing before the City Manager within ten (10) days of service of the notice. Such hearing shall be held within thirty (30) days of the Provider's request. If Provider requests such hearing before the City Manager, such penalty shall be temporarily suspended. However, if, after the hearing, the City Manager determines that Provider failed to comply with the specific provision(s) of Chapter 907 referenced in the notice, such penalty shall be assessed starting with the fifteen (15) calendar days after receipt of the notice referenced in this section and continuing each day thereafter until compliance is achieved. The determination of the City Manager shall be final. The Provider may file an administrative appeal pursuant to ORC Ch. 2506. The penalty shall continue to accrue during the appeal unless the Provider obtains a stay and posts a supersede as bond pursuant to ORC 2505.09 or the Provider comes into full compliance with Chapter 907.

(Ord. [O-06-2014](#). Passed 3-18-14.)

907.110 - TERMINATION OF CERTIFICATE OF REGISTRATION.

- (a) Default Notice Provided. The City through its Director of Public Service shall give written notice of default to a Provider if the City, in its sole discretion, determines that a Provider has:

- (1) Violated any material provision or requirement of the issuance or acceptance of a Certificate of Registration or any Law and failed to cure as may be required; or
 - (2) Evaded or Attempted to evade any provision of the issuance of a Certificate of Registration or the acceptance of it; or
 - (3) Practiced any fraud or deceit upon City; or
 - (4) Made a material misrepresentation of fact in the Application for a Certificate of Registration.
- (b) Cure Required. If a Provider fails to cure a default within thirty (30) calendar days after such notice is served by the City then such default shall be a material default and City may exercise any remedies or rights it has at Law or in equity to terminate the Certificate of Registration. If the Director of Public Service decides there is cause or reason to terminate, the following procedure shall be followed:
- (1) City shall serve a Provider with a written notice of the reason or cause for proposed termination and shall allow a Provider a minimum of ten (10) calendar days to cure its breach.
 - (2) If the Provider fails to cure within ten (10) calendar days, the Director of Public Service may declare the Certificate of Registration terminated.
 - (3) The Provider shall have ten (10) calendar days to appeal the termination to the City Manager. All such appeals shall be in writing. If the City Manager determines there was not a breach, then the City Manager shall overturn the decision of the Director of Public Service. Otherwise, the City Manager shall affirm the decision of the Director of Public Service to terminate. The determination of the City Manager shall be final.

(Ord. O-06-2014. Passed 3-18-14.)

907.~~121~~ - UNAUTHORIZED USE OF PUBLIC RIGHTS-OF-WAY.

- (a) No Use Without Authorization. No Person shall use the Rights-of-way to operate a System that has not been authorized by the City in accordance with the terms of Chapter 907 and been issued a Certificate of Registration.
- (b) No Use Without Certificate of Registration. No Person shall place or have placed any Facilities in, on, above, within, over, below, under, or through the Rights-of-way, unless allowed under Chapter 907 or having been issued a Certificate of Registration.
- (c) Unauthorized Use a Violation. Each and every unauthorized use shall be deemed to be a violation and a distinct and separate offense. Each and every day any violation of Chapter 907 continues shall constitute a distinct and separate offense.
- (d) Distinct and Separate Offense. No Person shall fail to comply with the provisions of Chapter 907. Each and every failure to comply shall be deemed a distinct and separate offense. Each and every day any violation of Chapter 907 continues shall constitute a distinct and separate offense.
- (e) Penalty Assessed. The violation of any provision of Chapter 907 shall be unlawful and a misdemeanor offense. The penalty for any violation of Chapter 907 shall be as provided in Section 907.99.

(Ord. O-06-2014. Passed 3-18-14.)

907.~~132~~ - ASSIGNMENT OR TRANSFER OF OWNERSHIP AND RENEWAL.

- (a) Assignment or Transfer Approval Required. A Certificate of Registration shall not be assigned or transferred, either in whole or in part, other than to an Affiliate, without the prior written consent of the City, which consent shall not be unreasonably withheld. Any assignment or transfer of Certificate of

Registration, including an assignment or transfer by means of a fundamental corporate change, requires the written approval of the City.

- (b) Procedure to Request Assignment or Transfer Approval. The parties to the assignment or transfer of Certificate of Registration shall make a written request to the City for its consent in the form of the Certificate of Registration Application. The City shall reply in writing within sixty (60) days of actual receipt of the request and shall indicate its approval of the request or its determination that a hearing is necessary. City may conduct a hearing on the request within thirty (30) days of such determination if it determines that a sale or transfer of the Certificate of Registration adversely affects the City.
- (c) Notice and Hearing. Notice of a hearing shall be given fourteen (14) days prior to the hearing by publishing notice thereof once in a newspaper of general circulation in the City. The notice shall contain the date, time and place of the hearing and shall briefly state the substance of the action to be considered by City.
- (d) Review by City. The City will review the qualifications (including, but not limited to legal, technical and financial where appropriate) of the proposed assignee or transferee and terms of the existing Certificate of Registration. City will make its decision in writing setting forth any conditions for assignment or transfer. Within one hundred twenty (120) days of actual receipt of the request for assignment or transfer, the City shall approve or deny such assignment or transfer request in writing.
- (e) Fundamental Corporate Change. For purposes of this section, fundamental corporate change means the sale or transfer of a controlling interest in the stock of a corporation or the sale or transfer of all or a majority of a corporation's assets, merger (including a parent and its subsidiary corporation), consolidation or creation of a subsidiary corporation. For the purposes of this section, fundamental partnership change means the sale or transfer of all or a majority of a partnership's assets, change of a general partner in a limited partnership, change from a limited to a general partnership, incorporation of a partnership, or change in the control of a partnership.
- (f) Certificate of Registration and Assignee/Transferee Replacement Issuance Required. In no event shall a transfer or assignment of ownership or control be ultimately acceptable to the City without transferee or assignee requesting and being issued a replacement Certificate of Registration within ninety (90) days of transfer or assignment.
- (g) Not a Transfer. Notwithstanding anything to the contrary, no such consent or approval shall be required for a transfer or assignment to any Person controlling, controlled by or under the same common control of the original holder of the Certificate of Registration.

(Ord. [O-06-2014](#). Passed 3-18-14.)

907.143 - CONSTRUCTION PERMITS.

- (a) Construction Permit Requirement. Except as otherwise provided in the Code, no Person may Construct in any Rights-of-way without first having obtained a Construction Permit as set forth below. This requirement shall be in addition to any requirements set forth in the Code.
 - (1) A Construction Permit allows the Permittee to Construct in that part of the Rights-of-way described in such Construction Permit and to obstruct travel over the specified portion of the Rights-of-way by placing Facilities described therein, to the extent and for the duration specified therein.
 - (2) A Construction Permit is valid only for the dates and the area of Rights-of-way specified in the Construction Permit itself and shall in no event be valid for more than one hundred eighty (180) days from the construction start date.
 - (3) No Permittee may Construct in the Rights-of-way beyond the date or dates specified in the Construction Permit unless such Permittee:
 - A. Submits a Supplementary Application for another Construction Permit before the expiration of the initial Construction Permit; and

B. Is granted a new Construction Permit or Construction Permit Extension.

- (4) Original Construction Permits issued pursuant to Section 907.13-14 shall, when possible, be conspicuously displayed at all times at the indicated work site and shall be available for inspection by Inspectors and authorized City personnel. If the original Construction Permit involves work conducted simultaneously at multiple locations, each location shall display a photocopy of the original Construction Permit. If the original Construction Permit is not conspicuously displayed at the indicated work site, then upon request, the original Construction Permit must be produced within twelve (12) hours or the first earliest Business Hour, whichever is later. For purposes of this ~~Section~~, Business Hour shall mean the hours between 8:00 a.m. and 5:00 p.m. during a Business Day.

(b) Construction Permit Applications.

1. Application for a Construction Permit, unless an Emergency shall be made to the Director of Public Service no less than fourteen (14) Business Days prior to the requested start of Construction.
2. All Construction Permit Applications shall contain, and will be considered complete only upon compliance with the requirements of the following provisions:
 - A. Credible evidence that the Applicant (where required) has been issued a Certificate of Registration or proof that the Applicant has written authority to apply for a Construction Permit on behalf of a party that has been issued a Certificate of Registration; and
 - B. Submission of a completed Construction Permit Application in the form required by the Director of Public Service, including, but not limited to, all required attachments, and scaled, dated drawings showing the location and area of the proposed project, number and location of street crossings, and the location of all then known existing and proposed Facilities of the Applicant or Provider within the proposed project area. All drawings, plans and specifications submitted with the Application shall comply with applicable technical codes, Rules and Regulations, or Design Guidelines where applicable, and be certified as to being in such compliance by trained technical personnel acceptable to the Director of Public Service. The mapping data is only required to be at the "Atlas" level of detail necessary for the City to reasonably determine the location of the Provider's facilities in the Rights-of-way. The City reserves the right, in circumstances that the Director of Public Service considers unique, complex or unusual, to request that certain submitted drawings, plans and specifications be accompanied by the certification of a registered licensed professional engineer; and
 - C. A City approved traffic control plan demonstrating the protective measures and devices that will be employed, consistent with the OMUTCD, to prevent injury or damage to Persons or property and to minimize disruptions to efficient pedestrian and vehicular traffic; and
 - D. If the Applicant wants to install new Facilities, evidence that there is no surplus space and evidence that the Applicant has received an appropriate Permit and is adhering to the City's Rules and Regulations; and
 - E. If Applicant is proposing an above ground installation on existing poles within the Rights-of-way, the applicant shall provide Credible information satisfactory to the City to sufficiently detail and identify:
 1. The size and ~~height~~-Height of the existing poles; and
 2. Based on the facilities currently on the existing poles, the excess capacity currently available on such poles before installation of Applicant's Facilities; and
 3. Based on the facilities currently on the existing poles, the excess capacity for like or similar Facilities that will exist on such poles after installation of Applicant's Facilities; and

- F. If the Applicant proposes to install new poles within the Rights-of-way, the Applicant shall provide:
 - 1. Credible evidence satisfactory to the City that there is no excess capacity on existing poles or in existing underground systems; and
 - 2. Credible evidence to the City that it is not financially and/or technically practicable for the Applicant to make an underground installation or locate its facilities on existing poles; and
 - 3. the location, size, ~~height~~Height, color, and material of the proposed poles; and
 - 4. Credible evidence satisfactory to the City that the Applicant will adhere to all the applicable Laws concerning the installation of new poles.
 - G. If Applicant is proposing an underground installation in existing ducts or conduits within the Rights-of-way, the Applicant shall provide Credible information satisfactory to the City to sufficiently detail and identify:
 - 1. based on the existing facilities, the excess capacity for like or similar facilities currently available in such ducts or conduits before installation of Applicant's Facilities; and
 - 2. based on existing facilities, the excess capacity for like or similar facilities that will exist in such ducts or conduits after installation of Applicant's Facilities.
 - H. If Applicant is proposing an underground installation within new ducts or conduits to be constructed within the Rights-of-way, the Applicant must provide Credible information satisfactory to the City to sufficiently detail and identify:
 - 1. the location, depth, size, and quantity of proposed new ducts or conduits; and
 - 2. the excess capacity for like or similar equipment that will exist in such ducts or conduits after installation of Applicant's Facilities.
 - I. A preliminary Construction schedule and completion date; and
 - J. Payment of all money then due to the City for:
 - 1. Permit Fees;
 - 2. Any loss, damage, or expense suffered by the City as a result of Applicant's prior Construction in the Rights-of-way or any Emergency actions taken by the City.
 - 3. Any Certificate of Registration issued to the Applicant/Person whose Facilities are being Constructed.
 - 4. Any other money due to the City from the Applicant/Person whose Facilities are being Constructed.
 - K. When a Construction Permit is requested for purposes of installing additional Systems or any part of a System, the posting of a Construction Bond and Removal Bond, acceptable to the City and subject to Chapter 907, for the additional Systems or any part of a System is required.
 - L. Upon request, the Director of Public Service may modify or waive the information requirements if they are not necessary in evaluating the Construction Permit application. The Director of Public Service may request applicable and pertinent additional information if it is necessary in evaluating the Construction Permit application.
- (c) Issuance of Permit; Conditions.
- (1) If the City determines that the Applicant has satisfied the requirements of Chapter 907 and the Construction Permit process, the Director of Public Service shall issue a Construction Permit subject to the provisions of Section 907.~~1314~~(Cc)(2).

- (2) The City may impose reasonable conditions upon the issuance of the Construction Permit and the performance of the Permittee thereunder in order to protect the City's investment in the Right-of-way, protect the public health, safety and welfare, to insure the structural integrity of the Rights-of-way, to protect the property and safety of other users of the Rights-of-way, or to minimize the disruption and inconvenience to the traveling public.
- (d) Construction Permit Fees.
1. The City shall collect a Construction Permit Fee equal to the actual and direct cost incurred by the City that is associated with receiving, reviewing, processing and granting (or denying) the Construction Permit and any oversight of the Construction Permit or the Construction work associated therewith. Following completion of the Construction work for which a Construction Permit has been granted (or at the time of the denial of Construction Permit) the City shall calculate and assess all actual and direct costs involved in receiving, reviewing, processing and granting (or denying) the Construction Permit and any oversight of the Construction Permit or Construction Work associated therewith. Quarterly, the City will cause the Director of Finance to issue a written invoice to a Provider that lists and summarizes the costs for each Construction Permit issued to and/or completed by the Provider over the previous ninety (90) days. The Provider shall remit payment to the City for the original quarterly invoice within thirty (30) days after the Director of Finance issues such invoice. Any Applicant who fails to timely remit such invoiced Construction Permit Fee amounts shall be subject to the penalties of this Chapter, the imposition of any other legal or equitable remedies available to the City and the immediate revocation of any Certificate of Registration or Construction Permit having been issued.
 2. The City may in addition to these direct and actual costs listed in ~~subsection 907.14(Dd)~~(1) may include in the Construction Permit Fee the cost of the value of degradation and reduction in the useful life of the Rights-of-way that will result from Construction that has taken place therein. "Degradation and the reduction in the useful life" for the purpose of this ~~S~~section means the accelerated depreciation of the Rights-of-way caused by Construction in or disturbance of the Rights-of-way, resulting in the need to reconstruct or repair such Rights-of-way earlier than would be required if the Construction did not occur.
 3. Except as otherwise provided herein, no future Construction Permits shall be issued to an Applicant without payment of all outstanding Construction Permit Fee invoices within thirty (30) days of the issuance of the original invoice. The City shall be exempt from payment of Construction Permit Fees. Construction Permit Fees that were paid for a Permit that the City has revoked due to breach and in accordance with the terms of Section 907.1~~19~~ or Section 907.1~~76~~(~~Ee~~) are not refundable.
- (e) Joint Applications. Applicants are encouraged to submit joint Applications for Construction Permits to work in the Rights-of-way at the same place and time. Joint Applicants shall have the ability to divide amongst themselves, in proportions the parties find appropriate, any applicable Construction Permit Fees.
- (f) Exceptions to Permit Requirements.
- (1) The following shall be excluded from the requirements of Section 907.~~1314~~:
 - A. The repairing or improvement of streets or other public places under or by virtue of a contract with the City.
 - B. The maintenance, planting or removal of trees and shrubs from within the Right-of-way.
 - C. The addition of an overhead customer service line for any Utility, which service line does not cross across the edge of pavement limits or extend over pavement at a ~~height~~ Height of less than fifteen (15) feet above the pavement.

(Ord. O-06-2014 . Passed 3-18-14.)

907.1~~54~~ - CONSTRUCTION, RELOCATION AND RESTORATION.

(a) Utility Engineering Study Required.

(1) Prior to commencement of any initial Construction, extension, or relocation of Facilities in the Rights-of-way, except for repair, maintenance or replacement with like Facilities or relocations requested or caused by a third party (excluding the City) or another Permittee, a Permittee shall conduct a utility engineering study on the proposed route of Construction expansion or relocation if requested by the Director of Public Service. Where such Construction and/or relocation is requested or caused by a third party, every Permittee located within the Rights-of-way at issue or involved with the work shall use all Best Efforts to cooperate and assist any other Permittee or person who is directed by the City to perform the required utility engineering study. A utility engineering study consists of, at minimum, completion of the following tasks:

- A. Secure all available "as-built" plans, plats and other location data indicating the existence and approximate location of all Facilities along the proposed Construction route.
- B. Visibly survey and record the location and dimensions of any Facilities along the proposed Construction route, including, but not limited to, manholes, valve boxes, utility boxes, posts and visible street cut repairs.
- C. Determine and record the presence and precise location of all Underground Facilities the Applicant or Person on whose behalf the Permit was applied for owns or controls in the Rights-of-way along the proposed System route. Upon request of the Director of Public Service, a Permittee shall also record and identify the general location of all other Facilities in the Rights-of-way along the proposed System route. For the purposes of this Section, general location shall mean the alignment of other Facilities in the Rights-of-way, but shall not necessarily mean the depth of other Facilities in the Rights-of-way.
- D. Plot and incorporate the data obtained from completion of the tasks described in Section 907.15 4(Aa)(1)(aA)—(eC) on the Construction Permittee's proposed System route maps and Construction plans.
- E. Where the proposed location of Facilities and the location of existing Underground Facilities appear to conflict on the plans drafted in accordance with Section 907.14(Aa)(1)(dD), Permittee has the option of either utilizing non-destructive digging methods, such as vacuum excavation, at the critical points identified to determine as precisely as possible, the horizontal, vertical and spatial position, composition, size and other specifications of the conflicting Underground Facilities, or re-designing the Construction plans to eliminate the apparent conflict. Unless waived by the Director of Public Service, a Permittee shall not excavate more than a three (3) feet by three (3) feet square hole in the Rights-of-way to complete this task.
- F. Based on all of the data collected upon completion of the tasks described in this section, adjust the proposed System design to avoid the need to relocate other Underground Facilities.

(2) The Director of Public Service may modify the scope of the utility engineering study as necessary depending on the proposed Construction plans.

(b) Copy to City. Upon completion of the tasks described in Section 907.1415(Aa), the Construction Permittee shall submit the proposed System route maps and Construction Plans, with the results of the utility engineering study, in the most advanced format (including, but not be limited to electronic and/or digital format) then currently being used by the Provider that is then currently capable of technologically being read (or readily converted to a readable form) by the City. The mapping data is only required to be at the "Atlas" level of detail necessary for the City to reasonably determine the location of the Provider's facilities in the Rights-of-way. The Provider shall supply the mapping data on paper if the Director of Public Service determines that the format currently being used by the Provider is not capable of being read by the City.

(c) Qualified Firm. All utility engineering studies conducted pursuant to this section shall be performed by the Permittee if in the discretion of the Director of Public Service the Construction Permittee is

qualified to complete the project itself, alternatively utility engineering studies shall be performed by a firm specializing in utility engineering that is approved by the City.

- (d) Cost of Study. The Permittee shall bear the cost of compliance with Section 907.~~1415(Aa)~~—(~~Cc~~).
- (e) Construction Schedule. Unless otherwise provided for in Chapter 907 or in the Rules and Regulations, or unless the Director of Public Service waives any of the requirements of this ~~s~~Section due to unique or unusual circumstances, a Permittee shall be required to submit a written Construction schedule to the City fourteen (14) Working Days before commencing any work in or about the Rights-of-way, and shall further notify the City not less than two (2) Working Day in advance of any excavation in the Rights-of-way. This ~~s~~Section shall apply to all situations with the exception of circumstances under Section 907.~~1617(Dd)~~(1) (Emergency Situations) and Section 907.~~15-16~~ (Minor Maintenance).
- (f) Location of Facilities.
 - (1) The placement of new Facilities and replacement of old Facilities, either above ground or underground, shall be completed in conformity with applicable Laws and the City's Rules and Regulations.
 - (2) The City shall have the power to prohibit or limit the placement of new or additional Facilities within the Rights-of-way if the Right-of-way is Full. In making such decisions, the City shall strive to the extent possible to accommodate all existing and potential users of the Rights-of-way, but shall be guided primarily by considerations of the public health, safety and welfare, the condition of the Rights-of-way, the time of year with respect to essential Utilities, the protection of existing Facilities in the Rights-of-way, future City and County plans for public improvements, development projects which have been determined to be in the public interest and nondiscriminatory and competitively neutral treatment among Providers.
- (g) Least Disruptive Technology. All Construction or maintenance of Facilities shall be accomplished in the manner resulting in the least amount of damage and disruption of the Rights-of-way. Specifically, every Permittee when performing underground Construction, if technically and/or technologically feasible and not economically unreasonable, shall utilize Trenchless Technology, including, but not limited to, horizontal drilling, directional boring, and microtunneling. In addition, all cable, wire or fiber optic cable installed in the subsurface Rights-of-way pursuant to Chapter 907 may be required to be installed in conduit, and if so required, no cable, wire or fiber optic cable may be installed pursuant to Chapter 907 using "direct bury" techniques.
- (h) Special Exceptions. The City, in its sole discretion, may grant a special exception to the requirements of Section 907.~~1415(Ff)~~ and 907.~~1415(Gg)~~ if a Permittee, upon application, demonstrates with written evidence that:
 - (1) The exception will not create any threat to the City's investment or in the Rights-of-way, the public health, safety or welfare.
 - (2) Permittee demonstrates that the increased economic burden and the potential adverse impact on the Permittee's Construction schedule resulting from the strict enforcement of the requirement actually or effectively inhibits the ability of the Permittee to provide Services in the City.
 - (3) The Permittee demonstrates that the requirement unreasonably discriminates against the Permittee in favor of another Person.
 - (4) The requirements requested by the City herein create an unreasonable economic burden for the Permittee that outweighs any potential benefit to the City.
- (i) Relocation of Facilities.
 - (1) A Provider shall as promptly as reasonably possible and at its own expense, permanently remove and relocate its Facilities in the Rights-of-way whenever the City finds it necessary to request such removal and relocation. In instances where the City requests removal and/or relocation, the City shall waive all applicable Construction Permit Fees. Upon removal and/or

relocation, the Provider shall restore the Rights-of-way to the same or better condition it was in prior to said removal or relocation. If existing poles are required to be removed and/or relocated, then the existing poles will be replaced with poles of the same or similar size. In accordance with Law, the Director of Public Service may request relocation and/or removal in order to prevent unreasonable interference by the Provider's Facilities with:

- A. A public improvement undertaken or approved by the City.
 - B. The City's investment in the Right-of-way.
 - C. When the public health, safety, and welfare requires it, or when necessary to prevent interference with the safety and convenience of ordinary travel over the Rights-of-way.
 - D. The sale, conveyance, vacation, or narrowing of all or any part of a Right-of-way.
- (2) Notwithstanding the foregoing, a Provider who has Facilities in the Right-of-way subject to a vacation or narrowing that is not required for the purposes of the City, shall have a permanent easement in such a vacated portion or excess portion in conformity with ORC 723.041.
- (3) If, in the reasonable judgment of the City, a Provider fails to commence removal and/or relocation of its Facilities as designated by the City, within thirty (30) days after the City's removal order, or if a Provider fails to substantially complete such removal, including all associated repair of the Rights-of-way of the City, within twelve (12) months thereafter, then, to the extent ~~not~~ inconsistent with applicable Law, the City shall have the right to:
- A. Declare that all rights, title and interest to the Facilities belong to the City with all rights of ownership, including, but not limited to, the right to connect and use the Facilities or to effect a transfer of all right, title and interest in the Facilities to another Person for operation; or
 - B. Authorize removal of the Facilities installed by the Provider in, on, over or under the Rights-of-way of the City at Provider's cost and expense, by another Person; however, the City shall have no liability for any damage caused by such action and the Provider shall be liable to the City for all reasonable costs incurred by the City in such action; and
 - C. To the extent consistent with applicable Law, any portion of the Provider's Facilities in, on, over or under the Rights-of-way of the City designated by the City for removal and not timely removed by the Provider shall belong to and become the property of the City without payment to the Provider, and the Provider shall execute and deliver such documents, as the City shall request, in form and substance acceptable to the City, to evidence such ownership by the City.

(j) Pre-Excavation Facilities Location .

- (1) Before the start date of any Rights-of-way excavation, each Provider who has Facilities located in the area to be excavated shall, to the best of its ability, mark the horizontal and approximate vertical placement of all its Facilities.
- (2) All Providers shall notify and work closely with the excavation contractor in an effort to establish the exact location of its Facilities and the best procedure for excavation.

(k) Rights-of-way Restoration .

- (1) The work to be done under the Permit, and the Restoration of the Rights-of-way as required herein, weather permitting, must be completed within the dates specified in the Permit. In addition to its own work, the Permittee must restore the general area of the work, and the surrounding areas, including trench backfill, paving and its foundations in accordance with the Code and Rules and Regulations. If a Permittee is unable to timely complete the restoration of Rights-of-way due to unreasonable inclement weather conditions, the Permittee shall complete the restoration of the Rights-of-way as soon as weather conditions make it possible to do so and upon said completion notify the City.

- (2) In approving an Application for a Construction Permit, the City may ~~choose either to~~ have the Permittee restore the Rights-of-way or ~~alternatively to the City may~~ restore the Rights-of-way itself at the Permittee's cost if the Permittee has in the past not abided by requirements of Chapter 907.
 - (3) If the City chooses to allow Permittee to restore the Right-of-way, the Permittee shall at the time of Application for a Construction Permit post a Construction Bond in an amount determined by the City to be sufficient to cover the cost of restoring the Rights-of-way to its approximate pre-excavation condition. If, twelve (12) months after completion of the Restoration of the Right-of-way, the City determines that the Rights-of-way have been properly restored, the surety on the Construction Bond shall be released.
 - (4) The Permittee shall perform the work according to the standards and with the materials specified by the City. The City shall have the authority to prescribe the manner and extent of the Restoration, and may do so in written procedures of general application or on a case-by-case basis. The City in exercising this authority shall be guided by the following standards and considerations: the number, size, depth and duration of the excavations, disruptions or damage to the Rights-of-way; the traffic volume carried by the Rights-of-way; the character of the neighborhood surrounding the Rights-of-way; the pre-excavation condition of the Rights-of-way; the remaining life-expectancy of the Rights-of-way affected by the excavation; whether the relative cost of the method of Restoration to the Permittee is in reasonable balance with the prevention of an accelerated depreciation of the Rights-of-way that would otherwise result from the excavation, disturbance or damage to the Rights-of-way; and the likelihood that the particular method of Restoration would be effective in slowing the depreciation of the Rights-of-way that would otherwise take place. Methods of Restoration may include, but are not limited to, patching the affected area, replacement of the Rights-of-way base at the affected area, and in the most severe cases; milling, overlay and/or street reconstruction of the entire area of the Rights-of-way affected by the work.
 - (5) By restoring the Rights-of-way itself, the Permittee guarantees its work and shall maintain it for twelve (12) months following its completion. During this twelve (12) month period, it shall, upon notification from the Director of Public Service, correct all Restoration work to the extent necessary using the method required by the Director of Public Service. Weather permitting, said work shall be completed within five (5) calendar days of the receipt of the notice from the Director of Public Service, unless otherwise extended by the Director of Public Service.
 - (6) If the Permittee fails to restore the Rights-of-way in the manner and to the condition required by the City, or fails to satisfactorily and timely complete all repairs required by the City, the City, at its option, may do such work. In that event, the Permittee shall pay to the City, within thirty (30) days of billing/invoicing, the Restoration cost of restoring the Rights-of-way and any other costs incurred by the City. Upon failure to pay, the City may call upon any bond or letter of credit posted by Permittee and/or pursue any and all legal and equitable remedies.
 - (7) If the work to be done under the Permit is being done at the same location and the same period of time as work by the City and/or another Permittee(s), then the Director of Public Service may reasonably apportion the Restoration responsibility among the City, Providers and/or other Persons.
- (I) Damage to Other Facilities .
- (1) In the case of an Emergency, and if possible after reasonable efforts to contact the Provider seeking a timely response, when the City performs work in the Rights-of-way and finds it necessary to maintain, support, or move a Provider's Facilities to protect those Facilities, the costs associated therewith will be billed to that Provider and shall be paid within thirty (30) days from the date of billing. Upon failure to pay, the City may pursue all legal and equitable remedies in the event a Provider does not pay or the City may call upon any bond or letter of credit posted by the Permittee and pursue any and all legal or equitable remedies. Each Provider shall be responsible for the cost of repairing any damage to the Facilities of another

Provider caused during the City's response to an Emergency occasioned by that Provider's Facilities.

- (2) Each Provider shall be responsible for the cost of repairing any City-owned Facilities in the Rights-of-way which the Provider or its Facilities damage.

(m) Rights-of-way Vacation.

- (1) If the City sells or otherwise transfers a Right-of-way which contains the Facilities of a Provider, such sale or transfer shall be subject to any existing easements of record and any easements required pursuant to ORC 723.041.

(n) Installation Requirements. The excavation, backfilling, Restoration, and all other work performed in the Rights-of-way shall be performed in conformance with all applicable Laws, Rules and Regulations, other standards as may be promulgated by the Director of Public Service.

(o) Inspection. When the Construction under any Permit hereunder is completed, the Permittee shall notify the Director of Public Service.

- (1) The Permittee shall make the Construction site available to the Inspector and to all others as authorized by Law for inspection at all reasonable times during the execution and upon completion of the Construction.
- (2) At the time of inspection, the Inspector may order the immediate cessation of any work which poses a serious threat to the life, health, safety or well-being of the public, violates any Law or which violates the term and conditions of the Permit and/or Chapter 907. The City may inspect the work, however; the failure of the City to inspect the work does not alleviate the responsibility of the Permittee to complete the work in accordance with the approved Permit and the requirements of Chapter 907.
- (3) The Inspector may issue an order to the Permittee for any work which does not conform to the Permit and/or applicable standards, conditions or codes. The order shall state that failure to correct the violation will be cause for revocation of the Permit. The order may be served on the Permittee as provided in Section 907.~~1920(Dd)~~. An order may be appealed to the Director of Public Service. The decision of the Director of Public Service may be appealed to the City Manager whose decision shall be final. If not appealed, within ten (10) days after issuance of the order, the Provider shall present proof to the Director of Public Service that the violation has been corrected. If such proof has not been presented within the required time, the Director of Public Service may revoke the Permit pursuant to Section 907.~~1617(Ee)~~.

(p) Other Obligations.

- (1) Obtaining a Construction Permit does not relieve Permittee of its duty to obtain all other necessary Permits, licenses, and authority and to pay all fees required by any other Laws.
- (2) Permittee shall comply with all requirements of all Laws, including the Ohio Utility Protection Service.
- (3) Permittee shall perform all work in conformance with all applicable Laws and standards, and is responsible for all work done in the Rights-of-way pursuant to its Permit, regardless of who performs the work.
- (4) No Rights-of-way obstruction or excavation may be performed when seasonally prohibited or when conditions are unreasonable for such work, except in the case of an Emergency as outlined in Section 907.~~1617(Dd)~~(1).
- (5) Permittee shall not obstruct a Right-of-way so that the natural free and clear passage of water through the gutters or other waterways shall be interfered with. The Director of Public Service may waive this requirement if it is technically or economically unreasonable in the circumstances.

- (6) Private vehicles other than necessary Construction vehicles may not be parked within or adjacent to a Permit area. The loading or unloading of trucks adjacent to a Permit area is prohibited unless specifically authorized by the Permit.
- (q) Undergrounding Required . Any owner of property abutting upon a street or alley where Service Facilities are now located underground and where the Service connection is at the property line, shall install or cause others to install underground any Service delivery infrastructure from the property line to the buildings or other structures on such property to which such Service is supplied. Where not otherwise required to be placed underground by Chapter 907, a Provider shall locate Facilities underground at the request of an adjacent property owner, provided that such placement of Facilities underground is consistent with the Provider's normal construction and operating standards and that the additional costs of such undergrounding over the normal aerial or above ground placement costs of identical Facilities are borne directly by the property owner making the request. A Provider, under any circumstance shall, upon the reasonable request of the City, always use Best Efforts to place Facilities underground. Where technically possible and not economically unreasonable or unsafe (based upon the technology employed and Facilities installed), all Facilities to be installed by a Provider under the Right-of-way shall be installed in conduit.

(Ord. [O-06-2014](#) . Passed 3-18-14.)

907.165 - MINOR MAINTENANCE PERMIT.

- (a) Right-of-way Minor Maintenance Permit Requirement . No Person shall perform Minor Maintenance of Facilities in the Rights-of-way without first having obtained a Right-of-way Minor Maintenance Permit as set forth in this Chapter. Minor Maintenance means: (i) the routine repair or replacement of Facilities with like Facilities not involving Construction and not requiring traffic control for more than two (2) hours at any one location; (ii) or the routine repair or replacement of Facilities with like Facilities not involving Construction and taking place on thoroughfares and arterials between the hours of 9:00 A.M. and 3:00 P.M.; (iii) or the routine repair or replacement of Facilities with like Facilities not involving construction on all Rights-of-ways, other than thoroughfares and arterials, that does not impede traffic and is for a period of less than eight (8) contiguous hours; (iv) or Construction other than on thoroughfares and arterials that takes less than eight (8) contiguous hours to complete, does not impede traffic and does not involve a pavement cut. The Director of Public Service may adopt Rules and Regulations pursuant to Section 907.06(~~Ee~~) that clarify the definition of Minor Maintenance and/or provide a process for a Provider to determine whether particular activity constitutes Minor Maintenance.
- (1) A Right-of-way Minor Maintenance Permit allows the Right-of-way Minor Maintenance Permittee to perform all minor maintenance in any part of the Rights-of-way as required.
 - (2) A Right-of-way Minor Maintenance Permit is valid from the date of issuance until revoked by the Director of Public Service.
 - (3) A Right-of-way Minor Maintenance permit must be displayed or upon request produced within twelve (12) business hours.
 - (4) A Right-of-way Minor Maintenance Permit by itself shall under no circumstances provide a Permittee with the ability to cut pavement without seeking additional authority from the Director of Public Service.
- (b) Right-of-way Minor Maintenance Permit Applications . Application for a Right-of-way Minor Maintenance Permit shall be made to the Director of Public Service. In addition to any information required by the Director of Public Service, all Right-of-way Minor Maintenance Permit Applications shall contain, and will only be considered complete upon compliance with the following provisions:
- (1) Credible evidence that the Applicant has obtained a Certificate of Registration or proof that the Applicant has written authority to apply for a Right-of-way Minor Maintenance Permit on behalf of a party that has been issued a Certificate of Registration.

- (2) Submission of a completed Right-of-way Minor Maintenance Permit Application in the form required by the Director of Public Service.
 - (3) A statement that the Applicant will employ protective measures and devices that, consistent with the OMUTCD, will prevent injury or damage to Persons or property and to minimize disruptions to the efficient movement of pedestrian and vehicular traffic.
- (c) Issuance of Right-of-way Minor Maintenance Permits; Conditions .
- (1) If the Director of Public Service determines that the Applicant has satisfied the requirements of this Chapter and the Right-of-way Minor Maintenance Permit process, the Director of Public Service shall issue a Right-of-way Minor Maintenance Permit subject to the provisions of this Chapter.
 - (2) The City may impose reasonable conditions, in addition to the Rules and Regulations enacted by the Director of Public Service, upon the issuance of the Right-of-way Minor Maintenance Permit and the performance of the Right-of-way Minor Maintenance Permittee thereunder in order to protect the public health, safety, and welfare, to insure the structural integrity of the Rights-of-way, to protect the property and safety of other users of the Rights-of-way, to protect the City's investment in the Right-of-way, or to minimize the disruption and inconvenience to the traveling public.
- (d) Right-of-way Minor Maintenance Permit Fees . The Director of Public Service shall not charge a fee for the issuance of the Right-of-way Minor Maintenance Permit but may revoke the Right-of-way Minor Maintenance Permit as any other Permit may be revoked under this Chapter.

(Ord. [O-06-2014](#) . Passed 3-18-14.)

907.176 - ENFORCEMENT OF PERMIT OBLIGATION.

- (a) Mandatory Denial of Permit . Except in the case of an Emergency, no Permit will be granted:
- (1) To any Person who has not yet made an Application or who is occupying any Right-of-way without a valid Certificate of Registration; or
 - (2) To any Person who has outstanding debt owed to the City unless payment in full has been placed in an escrow account approved by the City Director of Finance and the Law Director; or
 - (3) To any Person as to whom there exists grounds for the revocation of a Permit; or
 - (4) If, in the discretion of the Director of Public Service, the issuance of a Permit for the particular date and/or time would cause a conflict or interfere with an exhibition, celebration, festival, or any other event. The Director of Public Service, in exercising this discretion, shall be guided by the safety and convenience of ordinary travel of the public over the Rights-of-way considerations relating to the public health, safety and welfare and/or the City's investment in the Right-of-way.
- (b) Permissive Denial of Permit . The Director of Public Service may deny a Permit in order to protect the public health, safety and welfare, and/or protect the City's investment in the Right-of-way to prevent interference with the safety and convenience of ordinary travel over the Rights-of-way, or when necessary to protect the Rights-of-way and its users.
- (1) The Director of Public Service, in his/her discretion, may consider one or more of the following factors:
 - A. The extent to which Rights-of-way space where the Permit is sought is available; and/or
 - B. The competing demands for the particular space in the Rights-of-way; and/or
 - C. The availability of other locations in the Rights-of-way or in other Rights-of-way for the proposed Facilities; and/or

- D. The applicability of Chapter 907 or other regulations of the Rights-of-way that affect location of Facilities in the Rights-of-way; and/or
 - E. The degree of compliance of the Provider with the terms and conditions of its Certificate of Registration, Chapter 907, and other applicable ordinances and regulations; and/or
 - F. The degree of disruption to surrounding communities and businesses that will result from the use of that part of the Rights-of-way; and/or
 - G. The condition and age of the Rights-of-way, and whether and when it is scheduled for total or partial re-construction; and/or
 - H. The balancing of the costs of disruption to the public and damage to the Rights-of-way, against the benefits to that part of the public served by the expansion into additional parts of the Rights-of-way; and/or
 - I. Whether such Applicant or its agent has failed within the past three (3) years to comply, or is presently not in full compliance with, the requirements of Chapter 907 or, if applicable, any other Law.
- (2) Under no circumstances will open cutting take place on any street except where:
- A. An absolute emergency situation constitutes that an open cut is necessary; and/or
 - B. Vital services to resident(s) or business(es) are needed or have been cut off and there is no reasonable alternative (such as jacking or boring) in supplying or restoring such services; and/or
 - C. The Director of Public Service determines it is in the best interests of the City that such an open cut take place.
- (c) Discretionary Issuance of Permit.
- (1) Notwithstanding the provisions of Sections 907.4617(Aa)(1) and 907.176(Aa)(2), the Director of Public Service may issue a Permit in any case where the Permit is necessary;
 - A. To prevent substantial economic hardship to a customer of the Permit Applicant, if established by Credible evidence satisfactory to the City; or
 - B. To allow such customer to materially improve its Service; or
 - C. To allow a new economic development project to be granted a Permit under this section.
 - (2) To be granted a Permit under this ~~s~~Section, the Permit Applicant must not have had knowledge of the hardship, the plans for improvement of Service, or the development project when it was required to submit its list of next year projects.
- (d) Work Done Without A Permit in Emergency Situations.
- (1) Each Provider shall, as soon as is practicable, immediately notify the Director of Public Service of any event regarding its Facilities which it considers to be an Emergency. The Provider may proceed to take whatever actions are necessary in order to respond to the Emergency. Within five (5) business days, unless otherwise extended by the Director of Public Service, after the occurrence or discovery of the Emergency (whichever is later), the Provider shall apply for the necessary Permits, pay the fees associated therewith or have those fees attributed to its quarterly invoice balance in accordance with Sections 907.4314(Dd) and fulfill the rest of the requirements necessary to bring itself into compliance with Chapter 907 for any and all actions taken in response to the Emergency. In the event that the City becomes aware of an Emergency regarding a Provider's Facilities, the City may use Best Efforts to contact the Provider or the System Representative of each Provider affected, or potentially affected, by the Emergency. In any event, the City may take whatever action it deems necessary in order to respond to the Emergency, the cost of which shall be borne by the Provider whose Facilities caused the Emergency.

- (2) Except in the case of an Emergency, any Provider who Constructs in, on, above, within, over, below or through a Rights-of-way without a valid Permit must subsequently obtain a Permit, pay double the calculated fee for said Permit, pay double all the other fees required by the Code, deposit with the City the fees necessary to correct any damage to the Rights-of-way and comply with all of the requirements of Chapter 907.

(e) Revocation of Permits.

- (1) Permittees hold Permits issued pursuant to the Code as a privilege and not as a right. The City reserves its right, as provided herein, to revoke any Permit, without refunding any fees, in the event of a substantial breach of the terms and conditions of any Law, ordinance, Rule or Regulation, or Design Guideline where applicable, or any provision or condition of the Permit. A substantial breach by Permittee shall include, but shall not be limited to, the following:
- A. The violation of any provision or condition of the Permit; or
 - B. An evasion or attempt to evade any provision or condition of the Permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the City or its citizens; or
 - C. Any material misrepresentation of fact in the Application for a Permit; or
 - D. The failure to maintain the required Construction or Removal Bonds and/or insurance; or
 - E. The failure to obtain and/or maintain, when required, a Certificate of Registration; or
 - F. The failure to complete the Construction in a timely manner; or
 - G. The failure to correct a condition of an order issued pursuant to Section 907.~~1615(Oo)~~(3).
- (2) If the Director of Public Service determines that the Permittee has committed a substantial breach of a term or condition of any Law, or any condition of the Permit, the Director of Public Service shall serve a written demand upon the Permittee to remedy such violation. The demand shall state that continued violations may be cause for revocation of the Permit. Upon a substantial breach, as stated above, the Director of Public Service may place additional or revised conditions on the Permit.
- (3) By the close of the next business day following receipt of notification of the breach, Permittee shall contact the Director of Public Service with a plan, acceptable to the Director of Public Service, for its correction. Permittee's failure to so contact the Director of Public Service, or the Permittee's failure to submit an acceptable plan, or Permittee's failure to reasonably implement the approved plan, shall be cause for immediate revocation of the Permit.
- (4) If a Permittee commits a second substantial default as outlined above, Permittee's Permit will automatically be revoked and the Permittee will not be allowed further Permits for up to and including one full year, except for Emergency repairs.
- (5) If a Permit is revoked, the Permittee shall also reimburse the City for the City's reasonable costs, including Restoration costs and the costs of collection and reasonable attorneys' fees incurred in connection with such revocation.

(Ord. O-06-2014. Passed 3-18-14.)

907.~~187~~ - CONSTRUCTION AND REMOVAL BONDS.

- (a) Construction Bond. Prior to the commencement of any Construction, a Construction Permittee, excluding the County, shall deposit with the Finance Director an irrevocable, unconditional letter of credit and/or surety bond in an amount determined by the Director of Public Service to be appropriate based upon fair and reasonable criteria. Unless a Construction default, problem or deficiency involves an Emergency or endangers the safety of the general public, the Director of Public Service shall serve written notice to the Construction Permittee detailing the Construction default, problem or deficiency. If the Director of Public Service determines that correction or repair of

the Construction default, problem or deficiency has not occurred or has not been substantially initiated within ten (10) calendar days after the date following service and notification and detailing the Construction default, problem or deficiency, then the City may attach the letter of credit or surety bond. Upon attachment, written notice shall be served on the Construction Permittee by the Director of Public Service.

- (b) Removal Bond. Upon issuance of a Certificate of Registration and continuously thereafter, and until one hundred twenty (120) days after a Provider's Facilities have been removed from the Rights-of-way, (unless the Director of Public Service notifies the Provider that a reasonably longer period shall apply), a Provider shall deposit with the Finance Director and maintain an irrevocable, unconditional letter of credit or surety bond in an amount equal to or greater than one hundred thousand dollars (\$100,000.00), the director of public Service shall make all reasonable efforts to allow Provider a period of five (5) calendar days after serving notification in writing to correct or repair any default, problem or deficiency prior to the Director of Public Service attachment of the letter of credit or surety bond regarding the removal of Facilities. Upon attachment, written notice shall be provided to the Provider by the Director of Public Service.

- (c) Blanket Bond.

- (1) In lieu of the Construction Bond required by Section 907.~~2019~~(Aa) and the Removal Bond required by Section 907.~~187~~(Bb), Provider may deposit with the Finance Director an irrevocable, unconditional letter of credit and/or surety bond in the amount of five million dollars (\$5,000,000.00). Unless a Construction default, problem or deficiency involves an Emergency or endangers the safety of the general public, the Director of Public Service shall make all reasonable effort to allow Permittee a period of five (5) calendar days after sending notification in writing to correct or repair any default, problem or deficiency prior to Director of Public Service's attachment of the letter of credit or surety bond.

- (d) Self-Bonding. In lieu of the Construction Bond required by Section 907.~~1718~~(Aa), the Removal Bond required by Section 907.~~1920~~(Bb) and the Blanket Bond required by Section 907.~~1718~~(Cc), those Providers maintaining a book value in excess of fifty million dollars (\$50,000,000.00) may submit a statement to the Finance Director requesting to self-bond. If approval to self-bond is granted, a Provider shall assure the City that such self-bonding shall provide the City with no less protection and security than would have been afforded to the City by a third party surety providing Provider with the types and amounts of bonds detailed in the above named ~~S~~sections. This statement shall include:

- (1) Audited financial statements for the previous year; and
- (2) A description of the Applicant's self-bonding program.
- (3) Other applicable and pertinent information as reasonably requested by the Director of Public Service.

- (e) Purposes.

- (1) The bonds required by this section, and any self-bonding to the extent it has been permitted, shall serve as security for:
- A. The faithful performance by the Permittee or Provider of all terms, conditions and obligations of Chapter 907; and
 - B. Any expenditure, damage, or loss incurred by the City occasioned by the Permittee or Provider's violation of Chapter 907 or its failure to comply with all rules, regulations, orders, Permits and other directives of the City issued pursuant to Chapter 907; and
 - C. The payment of all compensation due to the City, including Permit Fees; and
 - D. The payment of premiums (if any) for the liability insurance required pursuant to Chapter 907; and
 - E. The removal of Facilities from the Rights-of-way pursuant to Chapter 907; and

- F. The payment to the City of any amounts for which the Permittee or Provider is liable that are not paid by its insurance or other surety; and
 - G. The payment of any other amounts which become due to the City pursuant to Chapter 907 or the Law.
- (f) Form. The bond documents required by this sSection and any replacement bond documents shall contain the following endorsement: "It is hereby understood and agreed that this bond may not be canceled or not renewed by the surety nor the intention to cancel or not to renew be stated by the surety until ninety (90) days after completion of Construction of the Facilities and, notwithstanding the foregoing, shall in no case be canceled or not renewed by the surety until at least ninety (90) days' written notice to City of surety's intention to cancel or not renew this bond.

(Ord. O-06-2014. Passed 3-18-14.)

907.198 - INDEMNIFICATION AND LIABILITY.

(a) City Does Not Accept Liability.

- (1) By reason of the acceptance of an Application, the grant of a Permit or the issuance of a Certificate of Registration, the City does not assume any liability:
- A. For injuries to Persons, damage to property, or loss of Service claims; or
 - B. For claims or penalties of any sort resulting from the installation, presence, maintenance or operation of Facilities.

(b) Indemnification.

- (1) By applying for and being issued a Certificate of Registration with the City a Provider is required, or by accepting a Permit a Permittee is required to protect, defend, indemnify, and hold harmless the City's agents, elected officials, officers, employees, volunteers and subcontractors from all costs, liabilities, claims, and suits for damages of any kind arising out of the Construction, presence, installation, maintenance, repair or operation of its Facilities, or out of any activity undertaken in or near on a Rights-of-way, whether any act or omission complained of is authorized, allowed, or prohibited by a Permit. A Provider or Permittee shall not bring, nor cause to be brought, any action, suit or other proceeding claiming damages, or seeking any other relief against the City's agents, elected officials, officers, employees, volunteers, and subcontractors for any claim nor for any award arising out of the presence, installation, maintenance or operation of its Facilities, or any activity undertaken in or near a Rights-of-way, whether the act or omission complained of is authorized, allowed or prohibited by a Permit. This Ssection is not, as to third parties, a waiver of any defense or immunity otherwise available to the Provider, Permittee or to the City; and the Provider or Permittee, in defending any action on behalf of the City, shall be entitled to assert in any action every defense or immunity that the City could assert in its own behalf. Any and all exercise of the above shall be consistent with, but not limited to, the following:
- A. To the fullest extent permitted by Law, all Providers and Permittees shall, at their sole cost and expense, fully indemnify, defend and hold harmless the City, its elected officials, agents, officers, employees, volunteers and subcontractors from and against any and all lawsuits, claims (including without limitation worker's compensation claims against the City or others), causes of actions, actions, liability, and judgments for injury or damages (including, but not limited to, expenses for reasonable legal fees and disbursements assumed by the City in connection therewith); and
1. Persons or property, in any way arising out of or through the acts or omissions of Provider or Permittee, its subcontractors, agents or employees attributable to the occupation by the Provider or Permittee of the Rights-of-way, to which Provider's or Permittee's negligence shall in any way contribute, and regardless of whether the

City's negligence or the negligence of any other party shall have contributed to such claim, cause of action, judgment, injury or damage; and

2. Arising out of any claim for invasion of the right of privacy, for defamation of person, firm or corporation, or the violation or infringement of any copyright, trademark, trade name, service mark or patent or any other right of any person, firm and corporation by the Provider, but excluding claims arising out of or related to The City's actions; and
 3. Arising out of Provider or Permittee's failure to comply with the provisions of Law applicable to Provider or Permittee in its business hereunder.
- B. The foregoing indemnification is conditioned upon the City:
1. Giving Provider or Permittee prompt notice of any claim or the commencement of any action, suit or proceeding for which indemnification is sought; and
 2. Affording the Provider or Permittee the opportunity to participate in any compromise, settlement, or other resolution or disposition of any claim or proceeding subject to indemnification; and
 3. Cooperate in the defense of such claim and making available to the Provider or Permittee all pertinent information under the City's control.
- C. The City shall have the right to employ separate counsel in any such action or proceeding and to participate in the investigation and defense thereof, and the Provider or Permittee shall pay all reasonable fees and expenses of such separate counsel if employed.

(Ord. [O-06-2014](#). Passed 3-18-14.)

907.~~2019~~ - GENERAL PROVISIONS.

- (a) Non-exclusive Remedy. The remedies provided in Chapter 907 are not exclusive or in lieu of other rights and remedies that the City may have at Law or in equity. The City is hereby authorized at any time to seek legal and equitable relief for actual or threatened injury to the public Rights-of-way, including damages to the Rights-of-way, whether caused by a violation of any of the provisions of Chapter 907 or other provisions of the Code.
- (b) Severability. If any section, subsection, sentence, clause, phrase, or portion of Chapter 907 is for any reason held invalid or unconstitutional by any court or administrative agency of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof. If a regulatory body or a court of competent jurisdiction should determine by a final, non-appealable order that any Permit, right or any portions of this section are illegal or unenforceable, then any such Permit or right granted or deemed to exist hereunder shall be considered as a revocable Permit with a mutual right in either party to terminate without cause upon giving sixty (60) days written notice to the other. The requirements and conditions of such a revocable Permit shall be the same requirements and conditions as set forth in the Permit, right or registration, respectively, except for conditions relating to the term of the Permit and the right of termination. If a Permit or right shall be considered a revocable Permit as provided herein, the Permittee must acknowledge the authority of the City to issue such revocable Permit and the power to revoke it.
- (c) Reservation of Regulatory and Police Powers. The City, by the granting of a Permit or by issuing a Certificate of Registration pursuant to Chapter 907, does not surrender or to any extent lose, waive, impair, or lessen the lawful powers and rights, which it has now or may be hereafter vested in the City under the Constitution and Laws of the United States, State of Ohio and under the Charter of the City of New Albany to regulate the use of the Rights-of-way. The Permittee by its acceptance of a Permit, or Provider by applying for and being issued a Certificate of Registration, is deemed to acknowledge that all lawful powers and rights, regulatory power, or police power, or otherwise as now are or the same as may be from time to time vested in or reserved to the City, shall be in full

force and effect and subject to the exercise thereof by the City at any time. A Permittee or Provider is deemed to acknowledge that its rights are subject to the regulatory and police powers of the City to adopt and enforce general ordinances necessary to the safety and welfare of the public and is deemed to agree to comply with all applicable general Laws and ordinances enacted by the City pursuant to such powers.

- (d) Method of Service. Any notice or order of the Director of Public Service or the City Manager shall be deemed to be properly served if a copy thereof is:

- (1) Delivered personally; or
- (2) Successfully transmitted via facsimile transmission to the last known fax number of the person to be served; or
- (3) Left at the usual place of business of the person to whom it is to be served upon and with someone who is eighteen (18) years of age or older; or
- (4) Sent by certified, preposted U.S. mail to the last known address; or
- (5) If the notice is attempted to be served by certified, preposted U.S. mail and then returned showing that the letter was not delivered, or the certified letter is not returned within fourteen (14) days after the date of mailing, then notice may be sent by regular, preposted, first-class U.S.; or
- (6) If the notice is attempted to be served by regular, first class U.S. mail, postage prepaid, and the letter is then returned showing that the letter was not delivered, or is not returned within fourteen (14) days after the date of mailing, then notice shall be posted in a conspicuous place in or about the structure, building, premises or property affected by such notice.

- (e) Applies to All Providers. Chapter 907 shall apply to all Providers and all Permittees unless expressly exempted.

- (f) Police Powers. All Persons' rights are subject to the police powers of the City to adopt and enforce ordinances necessary to the health, safety and welfare of the public. All persons shall comply with all applicable Laws enacted by the City pursuant to its police powers. In particular, all persons shall comply with City zoning and other land use requirements pertaining to the placement and specifications of Facilities, unless otherwise prohibited by Law.

- (g) Compliance. No Person shall be relieved of its obligation to comply with any of the provisions of Chapter 907 by reason of any failure of the City to enforce prompt compliance.

- (h) Foreclosure and Receivership.

- (1) Upon the filing of any voluntary or involuntary petition under the Bankruptcy Code by or against any Provider and/or Permittee, or any action for foreclosure or other judicial sale of the Provider and/or Permittee Facilities located within the Rights-of-way, the Provider and/or Permittee shall so notify the Director of Public Service within fourteen (14) calendar days thereof and the Provider and/or Permittee's Certificate of Registration or Permit (as applicable) shall be deemed void and of no further force and effect.
- (2) The City shall have the right to revoke, pursuant to the provisions of the Code, any Certificate of Registration or Permit granted pursuant to Chapter 907, subject to any applicable provisions of Law, including the Bankruptcy Code, one hundred and twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of the Provider and/or 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:

- A. Within one hundred and twenty (120) days after election or appointment, such receiver or trustee shall have fully complied with all the provisions of the relevant Certificate of Registration, any outstanding Permit, Chapter 907, and remedied all defaults thereunder; and

- B. Said receiver or trustee, within said one hundred and twenty (120) days, shall have executed an agreement, duly approved by a court having jurisdiction over the Facilities, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of the relevant Certificate of Registration, Permit and Chapter 907.
- (i) Choice of Law and Forum. This Chapter 907 and the terms and conditions of any Certificate of Registration or Permit shall be construed and enforced in accordance with the substantive Laws of the City, State of Ohio and United States, in that order. As a condition of the grant of any Permit or issuance of any Certificate of Registration all disputes shall be resolved in a court of competent jurisdiction for Franklin County, Ohio.
 - (j) Force Majeure. In the event any Person's performance of any of the terms, conditions or obligations required by Chapter 907 is prevented by a cause or event not within such Person's control, such inability to perform shall be deemed excused and no penalties or sanctions shall be imposed as a result thereof. For the purpose of this section, causes or events not within the control of a Provider shall include, without limitation, acts of God, strikes, sabotage, riots or civil disturbances, failure or loss of, explosions, acts of public enemies, and natural disasters such as floods, earthquakes, landslides, and fires.
 - (k) No Warranty. The City makes no representation or warranty regarding its right to authorize the Construction of Facilities on any particular Rights-of-way. The burden and responsibility for making such determination shall be upon the Person installing Facilities in the Rights-of-way.
 - (l) Continuing Obligation and Holdover. In the event a Provider or Permittee continues to operate all or any part of the Facilities after the termination, lapse, or revocation of a Certificate of Registration, such Provider or Permittee shall continue to comply with all applicable provisions of this Chapter and other Laws throughout the period of such continued operation, provided that any such continued operation shall in no way be construed as a renewal or other extension of the Certificate of Registration, nor as a limitation on the remedies, if any, available to the City as a result of such continued operation after the term, including, but not limited to, damages and restitution. Any conflict between the issuance of a Certificate of Registration or of a Permit and any other present or future lawful exercise of the City's regulatory or police powers shall be resolved in favor of the latter.
 - (m) Appeals. All appeals provided for by this Chapter and any notification to the City required by this Chapter shall be in writing and sent via certified U.S. mail to the City Manager or Director of Public Service as specified in this Chapter 907.
 - (n) City Facilities. As part of City required standards wherever Rights-of-way are under Construction, if deemed advisable and practicable by the Director of Public Service, the City may install all such Facilities deemed necessary to accommodate future Provider needs. Any such installed Facilities shall be City property and may be conveyed to any Person under such terms and conditions as are deemed advisable by the City.
 - (o) Section Headings. Section headings are for convenience only and shall not be used to interpret any portion of this Chapter.

(Ord. [O-06-2014](#). Passed 3-18-14.)

907.99 - PENALTIES.

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

- (1) Any Person violating the provisions of this Chapter shall be guilty of a misdemeanor of the fourth (4th) degree. Each day such violation continued shall be deemed a separate offense.

(Ord. [O-06-2014](#). Passed 3-18-14.)



Prepared: 10/29/2018
Revised: 11/02/2018
Introduced: 11/06/2018
Revised:
Adopted:
Effective:

ORDINANCE O-25-2018

ANNUAL APPROPRIATION ORDINANCE

AN ORDINANCE TO MAKE APPROPRIATIONS FOR CURRENT EXPENSES AND OTHER EXPENDITURES OF THE CITY OF NEW ALBANY, STATE OF OHIO, DURING THE FISCAL YEAR ENDING DECEMBER 31, 2019

WHEREAS, Ohio Revised Code §5705.38(A) requires the taxing authority of each political subdivision to pass an annual appropriation measure on or about the first day of each year; and

WHEREAS, Council for the City of New Albany, State of Ohio, wishes to provide for funding for current expenses and other expenditures of the city during fiscal year 2019.

NOW, THEREFORE, BE IT ORDAINED by Council for the City of New Albany, Counties of Franklin and Licking, State of Ohio that:

Section 1: To provide for the current expenses and other expenditures within the 2019 Annual Budget Program of the City of New Albany during the fiscal year ending December 31, 2019, the annual sums as follows are hereby set aside and appropriated:

Fund	Department	Category	Amount
General	Police	Personal Services	4,754,619
General	Police	Operating and Contractual Services	237,940
General	Community Development	Personal Services	1,523,690
General	Community Development	Operating and Contractual Services	1,496,700
General	Public Service	Personal Services	2,900,716
General	Public Service	Operating and Contractual Services	906,500
General	Land & Building Maintenance	Personal Services	62,280
General	Land & Building Maintenance	Operating and Contractual Services	1,288,900
General	Council	Personal Services	208,544
General	Council	Operating and Contractual Services	504,250
General	Administrative Services	Personal Services	1,390,185
General	Administrative Services	Operating and Contractual Services	1,162,685

Fund	Department	Category	Amount
General	Finance	Personal Services	599,717
General	Finance	Operating and Contractual Services	580,150
General	Legal	Operating and Contractual Services	400,000
General	General Administration	Personal Services	187,029
General	General Administration	Operating and Contractual Services	675,500
General	N/A	Capital	77,500
General	N/A	Transfers & Other Financing Uses	1,734,723
Total General Fund			20,691,629

Fund	Department	Category	Amount
Severance Liability	General Administration	Personal Services	250,000
Street Construction, Maintenance & Repair	Public Service	Operating and Contractual Services	80,000
Street Construction, Maintenance & Repair	N/A	Capital	300,000
State Highway	Public Service	Operating and Contractual Services	20,000
State Highway	N/A	Capital	20,000
Permissive Tax	Public Service	Operating and Contractual Services	65,000
Permissive Tax	N/A	Capital	30,000
Economic Development (NACA)	Community Development	Operating and Contractual Services	2,474,562
Economic Development (NACA)	N/A	Transfers & Other Financing Uses	525,438
Economic Development (NAECA)	N/A	Transfers & Other Financing Uses	99,847
Hotel Excise Tax	Community Development	Operating and Contractual Services	110,000
Healthy New Albany Facilities	Land & Building Maintenance	Operating and Contractual Services	460,000
Healthy New Albany Facilities	N/A	Transfers & Other Financing Uses	255,193
Mayors Court Computer	Administrative Services	Operating and Contractual Services	6,500
Oak Grove EOZ	Finance	Operating and Contractual Services	3,631,000
Central College EOZ	Finance	Operating and Contractual Services	1,748,000
Oak Grove II EOZ	Finance	Operating and Contractual Services	1,648,000
Blacklick EOZ	Finance	Operating and Contractual Services	3,800,000
Alcohol Education	Police	Operating and Contractual Services	1,000
Drug Use Prevention Program Grant	Police	Personal Services	35,500
Law Enforcement & Education	Police	Operating and Contractual Services	2,250
Safety Town	Police	Operating and Contractual Services	42,000
DUI Grant	Police	Personal Services	2,500
Law Enforcement Assistance	Police	Personal Services	1,200
K-9 Patrol	Police	Operating and Contractual Services	10,000

Fund	Department	Category	Amount
Windsor TIF	General Administration	Operating and Contractual Services	652,000
Windsor TIF	N/A	Transfers & Other Financing Uses	727,362
Wentworth Crossing TIF	General Administration	Operating and Contractual Services	126,000
Wentworth Crossing TIF	N/A	Transfers & Other Financing Uses	90,000
Hawksmoor TIF	General Administration	Operating and Contractual Services	66,000
Hawksmoor TIF	N/A	Transfers & Other Financing Uses	76,201
Enclave TIF	General Administration	Operating and Contractual Services	23,000
Enclave TIF	N/A	Transfers & Other Financing Uses	50,000
Saunton TIF	General Administration	Operating and Contractual Services	47,000
Saunton TIF	N/A	Transfers & Other Financing Uses	75,000
Richmond Square TIF	General Administration	Operating and Contractual Services	47,000
Richmond Square TIF	N/A	Transfers & Other Financing Uses	85,282
Tidewater I TIF	General Administration	Operating and Contractual Services	127,000
Tidewater I TIF	N/A	Transfers & Other Financing Uses	125,000
Ealy Crossing TIF	General Administration	Operating and Contractual Services	100,000
Ealy Crossing TIF	N/A	Transfers & Other Financing Uses	150,000
Upper Clarendon TIF	General Administration	Operating and Contractual Services	179,000
Upper Clarendon TIF	N/A	Transfers & Other Financing Uses	80,000
Balfour Green TIF	General Administration	Operating and Contractual Services	12,000
Balfour Green TIF	N/A	Transfers & Other Financing Uses	12,130
Straits Farm TIF	General Administration	Operating and Contractual Services	315,316
Blacklick TIF	General Administration	Operating and Contractual Services	16,000
Blacklick TIF	N/A	Capital	2,000,000
Blacklick TIF	N/A	Transfers & Other Financing Uses	265,480
Blacklick II TIF	General Administration	Operating and Contractual Services	500
Village Center TIF	General Administration	Operating and Contractual Services	518,000
Village Center TIF	N/A	Transfers & Other Financing Uses	536,025
Research & Technology District TIF	General Administration	Operating and Contractual Services	3,000
Oak Grove II TIF	General Administration	Operating and Contractual Services	9,000
Oak Grove II TIF	N/A	Capital	1,000,000
Total Special Revenue Funds			23,131,286

Fund	Department	Category	Amount
Debt Service	N/A	Debt Service	4,847,661
Total Debt Service Funds			4,847,661

Fund	Department	Category	Amount
Capital Improvement	N/A	Capital	9,980,000
Capital Improvement	Finance	Operating and Contractual Services	64,000
Park Improvement	N/A	Capital	1,100,000
Park Improvement	Finance	Operating and Contractual Services	13,000
Water & Sanitary Sewer Improvement	N/A	Capital	12,500,000
Water & Sanitary Sewer Improvement	N/A	Transfers & Other Financing Uses	220,513
Leisure Trail Improvement	N/A	Capital	260,000
Bond Improvement	N/A	Capital	1,000,000
Capital Equipment Replacement	N/A	Capital	556,600
Oak Grove II Infrastructure	N/A	Capital	2,000,000
Oak Grove II Infrastructure	Finance	Operating and Contractual Services	24,000
Economic Development Capital	N/A	Capital	25,000
		Total Capital Projects Funds	27,743,113
		Total All Funds	76,413,689

Section 2: To affect the purposes of the foregoing appropriations, the city manager is authorized to enter into agreements on such terms determined in the city manager's discretion, consistent with all other ordinances and resolutions in effect and enacted from time to time.

Section 3: The Director of Finance is authorized to allocate the appropriations for a department within activities. Except as provided in Section 4, the Director of Finance is authorized to approve transfers between activities, provided that funds may not be transferred between appropriation line items.

Section 4: The Director of Finance is authorized to transfer up to \$10,000 between appropriation line items, provided that such transfers are within the same fund and department, where applicable.

Section 5: The Director of Finance is authorized create the Economic Development – NAECA fund for the purpose of receiving distributions from the New Albany East Community Authority to be used for Economic Development purposes.

Section 6. It is hereby found and determined that all formal actions of this council concerning and relating to the adoption of this legislation were adopted in an open meeting of the council, and that all deliberations of the council and or any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements, including Section 121 of the Ohio Revised Code.

Section 7: Pursuant to the Article VI, § 6.07(a) of the charter of the City of New Albany, this ordinance shall take effect upon passage.

CERTIFIED AS ADOPTED this _____ day of _____, 2018.

Attest:

Sloan T. Spalding
Mayor

Jennifer H. Mason
Clerk of Council

Approved as to form:

Mitchell H. Banchefsky
Law Director

**CERTIFICATION BY CLERK OF COUNCIL
OF PUBLICATION OF LEGISLATION**

I certify that copies of Ordinance O-25-2018 were posted in accordance with Section 6.12 of the Charter for 30 days starting on _____, 2018.

Jennifer Mason, Clerk of Council

Date



Prepared: 11/20/2018
Introduced: 12/04/2018
Revised:
Adopted:
Effective:

ORDINANCE O-26-2018

APPROPRIATION AMENDMENT ORDINANCE

AN ORDINANCE TO AMEND APPROPRIATIONS FOR CURRENT EXPENSES AND OTHER EXPENDITURES DURING THE FISCAL YEAR ENDING DECEMBER 31, 2018

WHEREAS, it is necessary to increase and/or transfer expenditure appropriations within multiple funds to ensure expenditures do not exceed appropriations;

WHEREAS, it is necessary to reduce certain expenditure appropriations in multiple funds at year end to ensure that funds are not over appropriated;

WHEREAS, it is the city's intention to stay in compliance with all Ohio Revised Code budgetary requirements.

NOW, THEREFORE, BE IT ORDAINED by Council for the City of New Albany, Counties of Franklin and Licking, State of Ohio that:

Section 1. Council hereby authorizes the following amendments to appropriations for the year ended December 31, 2018:

Fund	Department	Category	Increase/ (Decrease)
101 - General	Finance	Operating and Contractual Services	\$ 150,000
231 - Hawksmoor TIF	General Administration	Operating and Contractual Services	4,000
234 - Richmond Square TIF	General Administration	Operating and Contractual Services	2,000
235 - Tidewater TIF	General Administration	Operating and Contractual Services	(33,700)
237 - Upper Clarenton TIF	General Administration	Operating and Contractual Services	100
252 - Village Center TIF	General Administration	Operating and Contractual Services	198,000
301 - Debt Service Fund	N/A	Debt Service	27,000
417 - Oak Grove II Infrastructure Fund	Finance	Operating and Contractual Services	5,000
Total Appropriation Amendments			\$ 352,400

Section 2. Council hereby authorizes the finance director to make transfers as needed between appropriation line items of funds in order to bring expenditures in line with appropriation line items and restore appropriations reduced within this ordinance if necessary to bring expenditures in line with appropriation line items.

Section 3. Council hereby authorizes the finance director to increase appropriations as needed up to \$100,000 in order to accommodate unforeseen expenditures and ensure amounts are within appropriations.

Section 4. Council hereby authorizes the finance director to adjust appropriations within the Economic Opportunity Zone funds and the Hotel Excise Tax fund in accordance with actual receipts received in 2018 to ensure compliance with ORC 5705.36(A)(4) for the fiscal year ended December 31, 2018.

Section 5. Council hereby authorizes the finance director to reduce appropriations within any fund to ensure compliance with ORC 5705.36(A)(4) for the fiscal year ended December 31, 2018 so long as compliance with ORC 5705.40 and ORC 5705.41 is maintained.

Section 6. It is hereby found and determined that all formal actions of this council concerning and relating to the adoption of this ordinance were adopted in an open meeting of the council, and that all deliberations of the council and or any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements, including Section 121 of the Ohio Revised Code.

Section 7. Pursuant to the Article VI, § 6.07(a) of the Charter of the City of New Albany, this ordinance shall take effect upon passage.

CERTIFIED AS ADOPTED this _____ day of _____, 2018.

Attest:

Sloan T. Spalding
Mayor

Jennifer H. Mason
Clerk of Council

Approved as to form:

Mitchell H. Banchefsky
Law Director

**CERTIFICATION BY CLERK OF COUNCIL
OF PUBLICATION OF LEGISLATION**

I certify that copies of Ordinance **O-26-2018** were posted in accordance with Section 6.12 of the Charter, for 30 days starting on _____, 2018.

Jennifer Mason, Clerk of Council

Date



Prepared: 11/21/2018
Introduced: 12/04/2018
Revised:
Adopted:
Effective:

ORDINANCE O-27-2018

AN ORDINANCE TO AMEND THE CODIFIED ORDINANCES OF THE CITY OF NEW ALBANY CHAPTER 155 "PERSONNEL POLICIES"

WHEREAS, Chapter 155 the Codified Ordinances of the City of New Albany sets forth the city's personnel policies including job titles, compensation, time off, leaves of absence, sick leave reciprocity, discipline, and other personnel-related matters; and

WHEREAS, updates are needed to Codified Ordinance Chapter 155 to bring it consistent with current practices, maintain market competitiveness, provide clarity where certain management practices exist, and provide consistency between non-bargaining policies and policies that have evolved due to collective bargaining agreements since 2012; and

WHEREAS, it has been found that the Codified Ordinances of the City of New Albany, Chapter 155 Personnel Policies, should be amended accordingly.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of New Albany, Counties of Franklin and Licking, State of Ohio, that:

Section 1. Codified Ordinance Chapter 155 "Personnel Policies" be amended as requested by the City of New Albany as set forth on the attached Exhibit A.

Section 2. The attached Personnel Policies changes shall be effective January 1, 2019.

Section 3. It is hereby found and determined that all formal actions of this council concerning and relating to the adoption of this legislation were adopted in an open meeting of the council, and that all deliberations of the council and or any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements, including Section 121 of the Ohio Revised Code.

Section 3. Pursuant to Article VI, Section 6.07(b) of the Charter of the City of New Albany, this ordinance shall be in effect on and after the earliest period allowed by law.

CERTIFIED AS ADOPTED this _____ day of _____, 2018.

Attest:

Sloan T. Spalding
Mayor

Jennifer H. Mason
Clerk of Council

Approved as to form:

Mitchell H. Banchefsky
Law Director

EXHIBIT A – O-27-2018

CHAPTER 155
Personnel Policies

155.01	Definitions.	155.17	Jury Service.
155.02	Administration.	155.18	Precinct Election Official Leave.
155.03	Compensation.	155.19	Insurance Benefits.
155.04	Probationary Period.	155.20	Merit Compensation.
155.05	Promotions, Transfers and Demotions	155.21	Miscellaneous Compensation
155.06	Overtime.	155.22	OPERS and OPFPF.
155.07	Holidays.	155.23	Licensing; Certification.
155.08	Personal Days.	155.24	Personnel Records.
155.09	Vacation.	155.25	Individuals with Disabilities.
155.10	Sick Leave.	155.26	Disciplinary Actions.
155.11	Sick Leave Reciprocity	155.27	Procedure for Appeal of Disciplinary Action
155.12	Injury Leave.	155.28	Investigative Procedures.
155.13	Family Medical Leave.		
155.14	Bereavement Leave.		
155.15	Leaves of Absence.		
155.16	Military Leave.		

CROSS REFERENCES

Powers of Council - see CHTR. 4.02
Conflict of interest - see CHTR. 12.01
Personnel Appeals Board - see CHTR. 10.04
Personnel systems - see CHTR. 8.07

155.01 DEFINITIONS.

- (a) "Applicant" means a person requesting consideration for employment in the unclassified or classified service.
- (b) "Appointing Authority" means the City Manager or body having the power of appointment to, or removal from a position in the classified service and unclassified service.
- (c) "Class or (Classification)" means a group of positions with the same descriptive title having equivalent duties and responsibilities and requiring equivalent qualifications, which can be distinguished from other groups of positions. There may be only one position in a particular class (e.g. Deputy City Manager).
- (d) "Class Series" means two or more classes which are similar as to type of work but which differ as to degree of responsibility, difficulty, complexity, skill and/or technical knowledge and which have been arranged in a ladder of steps in a normal line of promotion.
- (e) "Classified Service" means all employees of the City of New Albany unless the positions which they occupy have been exempted from "classified service" pursuant to Section 8.07, personnel systems, of the City Charter and Section 155.02 of these Codified Ordinances; and who, after completion of the original probationary period, or the probationary period following a promotion, may only be disciplined, dismissed or reduced in

pay or position for just cause in accordance with the procedures contained within these Codified Ordinances.

- (f) "Continuous Service" means the length of service as a full-time employee uninterrupted by resignation, retirement, discharge for cause or any other separation from municipal employment. Military leave, leave resulting from injury in the line of duty, leave for approved disability coverage, authorized leave without pay or administrative leave without pay for periods of six (6) weeks or less is not considered separation from municipal service.
- (g) "Demotion" means a change in employment status from a position of one classification to a position in another classification or a change in employment status from one position to a position with lesser duties, having a lower maximum salary limit than the original classification.
- (h) "Department" means any department, office, commission, board or other body as defined under the Charter or Codified Ordinances.
- (i) "Discipline" means positive corrective action taken by supervisory personnel to change or control the behavior of subordinate employees to conform with prescribed policy.
- (j) "Eligible" means a person who has satisfactorily met all qualifications and requirements for employment in the job class for which the person has made application and whose name should appear on an eligible list.
- (k) "Flex time" means a work schedule that varies from the standard work hours by altering the workday start and/or finish times (including breaks) to complete a 40-hour workweek.
- (k) "Full-time Employee" means an employee that is regularly scheduled to work not less than forty (40) hours within seven (7) consecutive calendar days.
- (l) "Grievance" is any dispute, regarding the meaning, interpretation, application, or alleged violation in the administration of discipline.
- (m) "Immediate Family" means parents, parents-in-law, step-parents, in loco parentis, legal guardian, brother-in-law, sister-in-law, spouse, children, daughters- and sons-in-law, step-children, brothers, sisters, grandchildren, grandparents, and grandparents-in-law unless otherwise specified.
- (n) "Intermittent" means an employee working an irregular schedule less than 1,000 hours per fiscal year.
- (o) "Official" means a person appointed by City Council or the City Manager who directs the functions of government.
- (p) "Part-time Employee" means any employee regularly working less than 40 hours per week and having been hired with the intention of working on an ongoing basis until an appropriate reason for termination of employment arises.
- (q) "Human Resources Personnel Officer" means the position duly designated by the City Manager to coordinate the administration of this chapter.
- (r) "Position" means any office, employment or job calling for the performance of certain duties and the exercise of certain responsibilities by one individual. A position may be vacant or occupied (part-time or full-time) and it may be designated regular, part-time, intermittent, temporary or seasonal.

- (s) "Probationary Period" means a working test period during which an employee is required to demonstrate fitness for the duties to which appointed by actual performance of the duties of the position.
- (t) "Promotion" means the change of an employee from a position in one classification to a position in another classification having a higher maximum salary.
- (u) "Seasonal Employee" means any employee hired for a specified short term or interim period of time to perform work or activity limited to a season or period of year.
- (v) "Temporary Position" means a position of non-permanent character not to exceed 120 days, unless for sickness, illness or disability.
- (w) "Transfer" is a change of classification created by an employment need as determined by the City Manager.
- (x) "Unclassified Service" means all employees of the City who occupy positions which have been exempted from the "classified service" and who serve at the pleasure of the City and employees serving in a fiduciary capacity, do not serve a probationary period, and may be dismissed, disciplined or reduced in pay or position at any time without regard to the procedures contained within these Codified Ordinances without a right of appeal.
- (y) "Workday" means a regularly scheduled working time assigned by a supervisor or manager.
- (z) "Workweek" means a regularly recurring period of seven (7), twenty-four (24) hour days.

155.02 ADMINISTRATION.

(a) The City Manager shall appoint a ~~Human Resources Personnel~~ Officer, to serve part-time or full-time, to administer the personnel system of the ~~Municipality~~City. The ~~Human Resources Personnel~~ Officer shall:

(1) Prepare and recommend to the City Manager for approval rules to establish and maintain the merit system of the ~~Municipality~~City. When approved by the City Manager, the rules shall be proposed to the City Council for adoption by ordinance, with or without amendment.

(2) Classify positions, establish job standards with adequate provisions for reclassification, and establish the probation period. Conduct recruitment, examinations, in-service training programs, and other such duties in relation to personnel as the City Manager may direct.

(3) Maintain a personnel file for each employee and official and keep all personnel information and necessary records.

(b) All positions shall be filled pursuant to a competitive selection process.

(c) City Council shall establish a classified and unclassified service for employees of the City. The classified and unclassified service is hereby established as follows:

(1) All employees of the City are presumed to be classified employees unless the positions which they occupy have been exempted from the classified service pursuant to Section 8.07, Personnel Systems, New Albany Charter. After completion of

the original probationary period, or the probationary period following a promotion, classified employees may only be disciplined for just cause and in accordance with the procedures contained within these Codified Ordinances.

(2) Some employees of the City serve in the unclassified service, or occupy positions which have been exempted from the classified service. Such employees serve at the pleasure of the City, do not serve a probationary period, and may be dismissed, disciplined or reduced in pay or position at any time without regard to the procedures contained within these Codified Ordinances. The following positions/personnel are hereby designated as unclassified:

- A. All seasonal, intermittent, temporary, and part-time personnel.
- B. Other positions/personnel identified as follows:
 - 1. City Manager
 - 2. Deputy City Manager
 - 3. Department Heads
 - 4. Deputy Directors
 - 5. Clerk of Council
 - 6. Public—Information Chief Communications & Marketing Officer
 - 7. Engineering-Manager
 - 8. Fiscal Manager
 - 9. Operations Manager
 - 10. Development Services Manager
 - 11. Dispatch Manager
 - 12. Any employee serving in a fiduciary capacity

155.03 COMPENSATION.

(a) A compensation plan consisting of pay grades and step schedules for all authorized positions shall establish minimum and maximum rates of pay defined on an hourly, biweekly and/or annual basis.

(b) The following are the categories of compensation: Administrative, Professional/Mid-management, Clerical, and Technical/Service.

(c) The entry level of pay for all positions shall be the minimum rate established for the classification, except that appointment rates above the minimum may be authorized if the Department Head and the Human Resources Personnel—Officer submit adequate reasons in writing and the action is approved by the City Manager. Approval will be based upon the exceptional qualification of the appointee or the inability to employ adequately qualified personnel at the minimum rate.

(d) It shall be the responsibility of the City Manager to implement the performance appraisal process by conducting or having conducted an appraisal of the performance of officials and employees.

(e) The pay schedule of all employees, including City Council members, shall be on a biweekly basis.

(f) Full-time and part-time employees are eligible for merit-based performance adjustments in accordance with the procedures established by the City Manager. Employees shall be evaluated at or upon their anniversary date. The

anniversary date shall be the effective date of appointment to the current classification or date of employment. An employee placed on probationary status as set forth in Codified Ordinance 155.04(e) shall be ineligible to move to the next succeeding step in the classification during that probationary period.

(g) Any employee assigned temporarily to a position of higher classification shall be compensated at the minimum of that class or seven percent (7%) above the employee's present rate, whichever is higher, for all hours worked at the higher classification, provided a minimum of eight (8) hours are worked in the higher class.

(h) When an employee does not possess the necessary minimum training, experience and/or special requirements to independently perform the essential duties and responsibilities of a position, the City Manager shall have the discretion to establish a training wage. Such wage shall be agreed upon, in writing, by the affected employee and the City Manager.

155.04 PROBATIONARY PERIOD.

(a) An employee entering the service of the ~~Municipality~~City on a full-time or part-time basis shall be considered a probationary employee for a period of one (1) year. Probationers may be removed or demoted any time during the probationary period by a written notice to the employee from the City Manager indicating that his/her services and performance are not satisfactory. Such removals and demotions are not subject to appeal. At the end of the one-year probationary period, the employee shall be evaluated. If the employee is adequately performing the duties and responsibilities required for the position and is complying with City policies, he/she shall be considered a permanent employee in the classification to which he/she is assigned. If the employee has failed to adequately perform the duties and responsibilities required for the position and/or has failed to comply with City policies, the employee shall:

(1) Be dismissed; or

(2) Have his/her probationary period extended for an additional six months. A probationary period may only be extended for an additional six months if the Department Head and City Manager agree after a conference with the employee.

(b) A probationary employee shall accrue vacation leave and sick leave. Vacation leave and sick leave may be used during the probationary period in accordance with Codified Ordinance 155.09 and Codified Ordinance 155.10.

(c) Leave without pay during the probationary period shall not be counted as part of the probationary period.

(d) An employee promoted to a higher position or transferred to another classification shall be classified as a probationary employee in that position for a period of six months. If the employee does not perform satisfactorily during the six-month probationary period, he shall be returned to his previous position and his seniority in that position shall be maintained. If the employee's previous position is occupied, the employee may be returned to a similar position the employee is otherwise qualified to occupy.

(e) An employee who is changing his status from part-time or seasonal status to full-time status, even if he is performing the same tasks as performed in the part-time

or seasonal status, shall be considered a probationary employee for a period of six months.

(f) An employee who fails to achieve a satisfactory level of performance as documented through the annual performance evaluation process may be placed on probationary status for a six (6) month period. After the six (6) month period a performance evaluation shall be made. The employee shall either:

- (1) Be dismissed by reason of failing to adequately perform the duties and responsibilities required for the position;
- (2) Have his/her probationary period extended for an additional six (6) months; or
- (3) Be returned to regular status.

155.05 PROMOTIONS, TRANSFERS and DEMOTIONS.

(a) If an employee is transferred, promoted or demoted, the rate of pay for the new position shall be determined as follows:

- (1) If the rate of pay in the former classification is less than the minimum rate established for the classification of the new position, the rate of pay shall be advanced to the minimum for the classification.
- (2) If the rate of pay in the former classification is more than the maximum rate established for the new classification, the pay range shall be reduced to the maximum rate or an intermediate rate within the new range, as recommended by the Department Head and approved by the City Manager.
- (3) If the rate of pay of the former classification falls within the new range of pay, the rate shall remain the same in the case of a transfer; increase in the case of a promotion; or remain the same or be lowered in the case of demotion as determined by the City Manager.

(b) All promotions of employees shall be made according to merit and fitness, to be ascertained, as far as practicable, by competitive examinations, unless the promotion is to a position exempted from competitive examinations under Section 8.07 of the Charter. The City Manager in consultation with the Department Head shall determine the practicality of competitive examinations where the vacancy exists. An examination may include an evaluation of such factors as education, training, capacity, knowledge, manual dexterity, and physical or psychological fitness. An examination shall consist of one or more tests in any combination. Tests may be written, oral, physical, demonstration of skill, or an evaluation of training and experiences and shall be designed to fairly test the relative capacity of the persons examined to discharge the particular duties of the position for which appointment is sought. Tests may include structured interviews, assessment centers, work simulations, examinations of knowledge, skills, and abilities, and any other acceptable testing methods.

155.06 OVERTIME.

(a) The use of overtime may be authorized by the Department Head in order to meet emergency service requirements or to maintain existing services.

(b) The City shall use a forty-hour workweek as the basis for making any Fair Labor Standards Act (FLSA) related overtime determinations.

(c) The calculation of an employee's 'paid status' shall include all hours permitted or suffered to be worked, as well as all hours in other paid status while on any approved leave, including holiday, vacation, personal, injury, paid military leave, sick, call out, training or other paid leave accrued to an employee on an hour-for-hour basis. The use of compensatory time is specifically excluded from the calculation of paid status.

(d) Employees who are not overtime-exempt based on FLSA regulations and who work a forty-hour workweek shall be compensated at a rate of one and one-half times their regular hourly rate for hours in paid status in excess of forty. Pursuant to C.O. 155.06, the use of previously earned compensatory time shall not be considered "hours worked" for the purpose of calculating any overtime hours worked in accordance with FLSA requirements.

(e) An employee may elect to take compensatory time in lieu of the compensation provided herein. An employee's election to take compensatory time is the sole decision of the employee and no one should coerce or pressure the employee to take compensatory time. Such compensatory time shall not exceed a total accumulation over eighty (80) hours. ~~In the event of exigent circumstances in the Public Service Department employees who engage in snow removal activities may, the City Manager may allow a Public Service Department employee to~~ accumulate in excess of eighty (80) hours, provided that any ~~approved~~ hours in excess of the eighty (80) hour limit shall be taken by the last pay period in the month of June. Any remaining compensatory time in excess of eighty (80) hours remaining at the last *pay period in June shall be paid out. In no case shall the total hours accrued be in excess of one hundred twenty (120) hours.* Compensatory time may be taken at a time that is convenient to both the employee and employer. The balance remaining at the conclusion of the first pay period ending in December shall be paid out in full.

(f) With the approval of the Department Head, employees may use "flex time" for the benefit of the employee or the City to accommodate scheduling needs.

155.07 HOLIDAYS.

(a) The following days are declared paid holidays from which the full-time employees and officials will be excused from work and shall receive eight (8) hours of compensation at their base rate.

New Year's Day	January 1
Martin Luther King Day	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Day after Thanksgiving	The day following Thanksgiving
Christmas Eve	second half of the last work day before Christmas

Christmas Day

Day observed, four (4) hours
December 25

(b) For employees whose normal work week is Monday through Friday, when any holiday listed above falls on Saturday, the preceding workday shall be considered the holiday. When the holiday falls on a Sunday, the following workday shall be considered the holiday. For employees (essential safety services) whose normal work week includes the weekend, the holiday shall be observed on the actual holiday.

(c) Each full-time employee shall be paid eight (8) hours pay for a holiday.—In order for an employee to be entitled to a holiday, he/she must have actually worked on the day before and the day after the holiday unless utilizing permissible leave time such as vacation, sick leave, bereavement leave, jury duty, personal day(s) or other paid leave approved by the City Manager.

(d) When any holiday listed above falls while an employee or official is on approved vacation time, such holiday shall not be charged against vacation leave.

(e) In the event the Federal and State governments shall designate a day of the week for any of the holidays specified above, then said day shall be observed in accordance with said designation.

(f) Each full-time employee, except as provided in (g), below, who is required to work on a day designated as a holiday shall, in addition to receiving eight hours pay for the holiday, be compensated in either of the following ways:

- (1) The employee shall be paid at the rate of one and one half times their hourly rate of pay for all hours worked on the holiday.
- (2) The employee shall be credited with one and one half hours of personal leave at their regular, hourly rate of pay, for all hours worked on the holiday. Personal leave may be taken as time off, with the approval of their supervisor, at any time during the calendar year in which it is credited. Any balance of unused time remaining at the end of the calendar year will be paid in cash at the employee's base rate of pay.

(g)—(g)—Effective January 1, 2019, Dispatchers and Sergeants and other 24/7 non-exempt positions within the Police Department will be provided a holiday leave bank, prorated for the holidays remaining in the calendar year. Thereafter, employees will receive a holiday leave bank at the beginning of each calendar year. Employees may use holiday leave hours on the actual holiday or another day of the year with supervisor approval. In the event an employee with holiday leave does not use or submit to use all the leave remaining as of the next to last pay period of the fiscal year, such amount will be paid to the employee at the employee's base rate in the last pay period of the fiscal year.

(1) Upon initial appointment to a position described under (g), above, a pro-rated bank of hours for remaining holidays will be provided for the employee.

(2) An employee who terminates with unused holiday leave will be paid out the remaining leave at the employee's base rate of pay. Employees who separate and have used more holiday leave than accrued will have the equivalent number of hours at the employee's base rate withheld from the employee's final paycheck.

Holiday leave hours not accrued are considered forfeited upon separation.

~~(g)(h)~~ Each full-time employee shall be paid eight (8) hours pay for a holiday.

~~(hh)~~ Employees who begin a shift on the day prior to the designated holiday, but work more than 50% of their hours on the holiday, shall be credited for the holiday on the date that their shift begins.

155.08 PERSONAL DAYSLEAVE.

(a) In addition to the observed holidays set forth in C.O. 155.07(a), all full-time employees shall be authorized to observe ~~two (2) additional paid days off (sixteen (16) hours)~~, designated as "personal daysleave". Such time shall be scheduled as far in advance as possible and approved by the supervisor, except that no reasonable request shall be denied. Wages shall be computed on the basis of ~~an eight-hour day~~ at the employee's existing rate of compensation at the time the leave is taken. Any unused personal ~~days-leave~~ remaining after the last pay period of the same year or when an employee terminates his/her employment shall be forfeited.

(b) New employees hired before June 30 will be authorized to observe ~~both sixteen (16) hours of~~ personal daysleave. New employees hired between July 1 and November 30 will be authorized to observe ~~one-eight (18) hours of~~ personal dayleave. New employees hired December 1 or after will not be eligible for any personal ~~days-leave~~ that year.

155.09 VACATION.

(a) Full-time, non-exempt employees shall accrue vacation on the following schedule:

- (1) At employment up to the completion of the 4th year of employment - 3.077 hours per pay period
- (2) Upon completion of the 4th year of employment up to the completion of the 9th year of employment - 4.615 hours per pay period
- (3) Upon completion of the 9th year of employment up to the completion of the 14th year of employment - 6.154 hours per pay period
- (4) Upon completion of the 14th year of employment and beyond - 7.70 hours per pay period

(b) The annual vacation schedule for full-time, exempt employees shall be as follows:

(1) At appointment - three weeks. Employees who move from a non-exempt position to an exempt position will be provided three weeks upon appointment to the exempt position and continue to accrue at the rate otherwise qualified for based on length of continuous service with the city.

- (2) Upon completion of the 1st year of employment up to the completion of the 4th year of employment - 4.615 hours per pay period

- (3) Upon completion of the 4th year of employment up to the completion of the 7th year of employment – 6.154 hours per pay period
- (4) Upon completion of the 7th year of employment and beyond - 7.70 hours per pay period.
- (c) Vacations shall be at full pay at the current salary rate.
- (d) Each full-time employee and official shall be permitted an annual standard maximum carryover of three (3) times the annual vacation accrual rate. Any accrued vacation leave in excess of the appropriate above maximum carryover limits standing to the credit of the employee on December 1 shall become void on December 31 unless used by the employee or carried over to the subsequent calendar year following the submission to and approval of such request by the City Manager on December 1. Approval of such requests will be limited to instances where factors beyond the employee's control or directly related to the operational needs of the ~~Municipality~~City prevented the employee from using the accrued vacation.
- (e) No advance of vacation is permitted. Only requests for vacation less than or equal to the accrued balance will be approved.
- (f) Leave is accrued on the basis of an 80 hour pay period such that any time not in paid status during a pay period will result in a reduced, pro-rated accrual for that pay period.
- (g) In order to recruit and retain qualified persons, employees shall accrue vacation leave as provided in (a) or (b), above, except that accrual rates above the minimum may be authorized if the Department Head and the Human Resources Officer submit adequate reasons in writing and the action is approved by the City Manager. Approval will be based upon the exceptional qualification of the applicant or the inability to employ adequately qualified personnel. In awarding a higher accrual rate, consideration shall be given to the applicant's qualifications, work experience, the level of responsibility required in the position and the availability of qualified applicants or other relevant market factors. Employees granted higher accrual rates shall move to the next accrual rate upon completion of four (4) years of employment with the City.
- ~~—(hf)~~ Compensation for vacation leave in lieu of time off shall not be granted.
- ~~(gi)~~ Vacation leave shall be scheduled as far in advance as possible and at the discretion of the supervisor. In the event of conflicting requests, the Department Head shall resolve the conflict based on the operating needs of the department/division.
- ~~(hj)~~ Where an employee becomes deceased while in paid status in municipal employment, any accrued vacation leave to his/her credit shall be paid in a lump sum first to the surviving spouse, then to the deceased's estate.
- ~~(ik)~~ Upon retirement or termination, unused accrued vacation leave will be cashed out in the form of a lump sum monetary payment.

155.10 SICK LEAVE.

- (a) All full-time employees and officials shall be credited sick leave at the rate of 4.615 hours for each pay period. Leave is accrued on the basis of an 80 hour pay period such that any hours not in paid status during a pay period will result in a reduced pro-rated accrual for that pay period.
- ~~—(b)~~ Sick leave may be accumulated without limit.

(c) When used, sick leave shall be deducted from the cumulative total on an ~~hour-for-hour~~quarter-hour basis.

(d) Employees may use leave for absence due to personal illness, pregnancy, injury, exposure of contagious disease which could be communicated to other employees, and to illness or injury of the employee's spouse, child, mother, father, or other relative residing in the employee's household. Sick leave may also be used for medical, vision or dental related examination and care.

(e) Employees may be required to furnish proof of illness by furnishing a doctor's statement if the duration of the illness exceeds three (3) working days.

(f) Absence due to sickness in the immediate family not residing in the employee's household, and requiring the continuing presence of the employee to make arrangements for hospitalization or other care shall not exceed three consecutive workdays. The City Manager may approve additional absences for this purpose.

(g) Excessive use, abuse of, or misuse of sick leave may be cause for disciplinary action or dismissal.

(h) Employees for whom a replacement must be found and who are unable to report to work for any reason listed herein must report their anticipated absence to their supervisor at least one hour prior to the start of their shift on the first day of their absence. Other employees must report their anticipated absence before the expiration of the first half-hour of the start of their shift. All employees shall report accordingly on each succeeding day of their absence unless other arrangements are authorized.

(i) Sick leave may be transferable between employees due to exigent circumstances, with the approval of the City Manager.

(j) Use of sick leave is limited to employee absence due to illness or non-work related injury and quarantine of the employee by health authorities. For family medical incidents, an employee may use up to four (4) days for each discrete incident.

(k) Following the fourth (4th) occurrence of sick leave absence of one day or more in a twelve month period of time, the employee may be required to secure and present a certificate from a doctor giving information as to the circumstances involved or nature of the illness to receive pay for each subsequent absence involving sick leave in the remainder of that twelve month period. The documentation shall be sent to the Human Resources Personnel-Officer to be placed in the individual's personnel file.

(l) Sick leave accumulated during former employment with the City or with another public agency may be credited to the employee upon his/her re-employment or hire with the City provided such re-employment/employment takes place within ten (10) years of the former termination date.

a. Up to 1,920 hours of previously accumulated sick leave from another public agency may be transferred to the employee's credit at a rate of two (2) to one (1) for each hour accrued as an employee of the City of New Albany.

b. Rate of accrual shall be in conformance with C.O. 155.10(a).

(m) Upon retirement or separation in good standing, full-time employees may convert unused accrued sick leave to a lump sum monetary payment on the following conditions:

(1) For the first 120 hours (15 days) of sick leave accrued, payment shall be hour for hour. Accumulated sick leave above 120 hours shall be paid at the rate of eight (8) hours pay for every 24 hours accumulated.

(2) Payment will be at the hourly rate in effect at the time of retirement or termination.

(3) Employees terminated for cause or who fail to give two weeks' written notice of intent to terminate are not eligible for the sick leave conversion benefit.

155.11 SICK LEAVE RECIPROCITY

(a) During January, each permanent full-time non-union employee may receive payment in cash for a portion of unused accrued sick leave hours at the end of the preceding fiscal year, provided such employee was entitled to sick leave benefits during all of the twenty-six (26) pay periods of the previous year and did not use more than 40 hours of paid sick leave or injury leave during the calendar year. Additionally, in order to participate, an employee must have at least 480 hours of sick leave after cash benefit hours are taken. Those who are eligible may cash in up to 48 hours of sick leave. Eligible employees must elect, no later than September 1 of each year, to convert up to forty-eight (48) hours of sick leave for payment in the first full pay period in January of the next calendar year (payable at the employees base rate of pay as of December 31 of the year of the election). Conversion of sick leave shall be based on the following table:

Hours of Sick Leave or Injury Leave Taken	Maximum Cash Benefit - Sick Leave Hours Allowed
0—8—hours	48 hours
9—16—hours	32 hours
17—24—hours	24 hours
25—32—hours	16 hours
33—40—hours	8 hours
>40—hours	0 hours

(b) The number of reciprocity hours paid each employee will be subtracted from the total accrued unused sick leave. The balance of unused sick leave will be carried forward each year as the current sick leave account.

~~(c) Employee elections to participate in the program will be made during the December preceding the year of participation. If the employee remains eligible at the conclusion of the participation year and still opts to participate in the program based upon the chart above, the sick leave reciprocity payments will be made in January of the year following the year of participation. Payment will be calculated at the employee's hourly rate in effect as of the final pay period of the fiscal year preceding payment. The participating employee can opt to convert sick leave hours at any level up to the maximum amount described.~~

~~(d)(c) Cash benefit hours taken cannot reduce eligible employee's year-end sick balance below 480 hours.~~

155.12 INJURY LEAVE.

When a full-time non-union employee's absence from work is necessitated because of an illness or injury incurred while on the job with the ~~Municipality~~City and the illness or injury is compensable under Ohio Workers' Compensation Law, injury leave may be granted at the discretion of the City Manager for a period of time not to exceed 180 calendar days. Such leave may be granted by the City Manager based upon the recommendation of the employee's Department Head and upon submittal by the employee or a statement from a licensed physician justifying that the employee is unable to return to full work status due to the illness/injury. Such leave shall not be charged against the employee's sick leave balance unless it is determined that the illness or injury is a non-work related illness or injury and is not compensable under Ohio Workers' Compensation Law. In order to be eligible for injury leave, the employee must report the illness/injury to his supervisor within three workdays of the incident-giving rise to the illness/injury. Simultaneously with the request for injury leave, the employee shall make application and actively prosecute a claim for lost wage benefits under Ohio Workers' Compensation Law. If the application is favorably considered, the ~~Municipality~~City's obligation under the continued use of injury leave shall be the monetary difference between the employee's regular rate of pay and the benefits received under Workers' Compensation.

155.13 FAMILY MEDICAL LEAVE

The ~~Municipality~~City offers family medical leave in compliance with all federal provisions of the Family and Medical Leave Act (FMLA).

155.14 BEREAVEMENT LEAVE.

(a) A full-time employee may be granted up to five (5) regularly scheduled workdays without loss of pay in case of a death in the immediate family.

(b) Sick leave, vacation leave, personal day(s) or compensatory time may be used for bereavement leave for additional days for immediate family, with the approval of the City Manager.

(c) Up to three (3) days of leave is permissible for deaths other than the immediate family, but such leave shall be charged to vacation leave, compensatory time or personal day(s).

155.15 LEAVES OF ABSENCE.

(a) In an effort to be flexible and provide latitude to employees in unique or special circumstances, leaves of absence may be granted to employees under special circumstances. Eligibility for a leave of absence will be reviewed on a case-by-case basis and will be limited to full-time, regular employees with at least two (2) consecutive years of service.

(b) Leaves of absence for the following situations or emergencies will be considered:

(1) To allow employees to attend courses at recognized colleges or universities, if the courses are deemed to be of benefit to the ~~Municipality~~City.

(2) Family leave of absence. Female employees (not disabled by childbirth or pregnancy) and male employees may be granted a leave for the purpose of caring for a newborn child, adopted child, or a seriously ill child or other member of the family.

(3) Personal leave of absence may be granted to an employee to attend to personal matters in cases in which the City Manager determines that an extended period of time off would be in the best interest of the employee and the ~~Municipality~~City, including but not limited to inpatient substance abuse treatment.

(4) For other purposes deemed beneficial to the ~~Municipality~~City and the employee.

(c) Leaves of absence are granted without pay except in special and unusual circumstances. Insurance benefits may be continued during leaves of absence, based on a determination by the City Manager.

(d) A request for a leave of absence must be made in writing by the employee. All leaves must be approved by the City Manager and Department Head. Permitted leaves are limited to six weeks at which time any request for additional leave must be made.

(e) An employee returning to work from leave shall be reinstated to the employee's former position or a comparable position.

(f) If an employee fails to return to work at the conclusion of a permitted leave, the employee will be terminated from employment, unless the City Manager, in consultation with the Department Head, grants an extension.

155.16 MILITARY LEAVE.

The ~~Municipality~~City will adhere to all applicable state and federal provisions for military leave.

155.17 JURY SERVICE.

The City of New Albany encourages employees to fulfill their civic responsibilities by serving jury duty when required.

(a) Full-time employees may request jury duty leave. Jury duty pay will be calculated on the employee's regular pay rate times the number of hours the employee would otherwise have worked on the day of the absence.

(b) The employee, upon notice of jury service, shall present such notice to his immediate supervisor. A copy of such notice shall be filed in the employee's personnel file.

(c) Jury service requiring less than four (4) hours of the employee's regular work day as verified by the time report, shall require the employee to report to his supervisor for completion of his/her regular work day with the ~~Municipality~~City.

(d) Either the City or the employee may request that an employee be excused from jury duty if, in the City's judgment, the employee's absence would create serious operational difficulties.

155.18 PRECINCT ELECTION OFFICE LEAVE.

The City of New Albany encourages employees to fulfill their civic responsibility by working on Election Day at the polls.

(a) Any employee who is a registered voter and meets the other requirements established by law and the Board of Elections may request Precinct Election Official Leave with pay for the purposes of being a judge of an election engaged by the Board of Elections. Precinct Election Official Leave will be calculated on the employee's regular pay times the number of hours the employee would otherwise have worked on the day of the absence.

(b) If the employee must attend the Precinct Election Official training courses, as mandated by Ohio Law and conducted by the Board of Elections, the employee must request leave with vacation, personal day(s) or compensatory time if the training is during regular work hours. Leave without pay will not be permitted to attend the training session(s).

(c) This leave with pay is not considered "hours worked" for the purpose of computing overtime.

(d) The employee must provide the City with a copy of the employee's poll worker pay stub provided by the Board of Elections.

155.19 INSURANCE BENEFITS.

(a) The ~~Municipality~~City shall make available group medical, prescription drug, dental, and vision benefits to all full-time non-union employees and their dependents as well as to all currently serving, elected members of City Council and Mayor. The benefits shall be based on the benefits of the carrier or carriers.

(b) All full-time non-union employees shall be entitled to group term life and accidental death and dismemberment insurance coverage. The ~~Municipality~~City shall provide coverage in the amount equal to the employee's annual salary, rounded up to the nearest thousand dollars. The maximum coverage shall be one and one half times their annual base wages, up to a maximum of one hundred and fifty thousand dollars (\$150,000).

(c) The City may offer an incentive for opting out of City provided insurance benefits on an annual basis.

155.20 MERIT COMPENSATION.

Non-Exempt and Exempt Employees. In recognition of exceptional City service, each non-union employee shall be eligible for additional compensation in the form of cash payment and/or additional personal leave as prescribed in the City's merit bonus program. An employee becomes eligible for merit bonus program compensation in the year following their attainment of the maximum rate of compensation on the City's merit based compensation program. ~~The merit bonus program consists of two parts. The first part will be based on the individual's job performance. The second part is based on the~~

~~individual's voluntary participation in an objective setting program and the individual's attainment of agreed upon objectives. Performance standards and the schedule of merit compensation shall be established by the City Manager.~~

155.21 MISCELLANEOUS COMPENSATION PROVISIONS.

(a) Call Out Pay. ~~A full-time non-exempt employee who is called to return to duty after leaving work for at least thirty (30) minutes or another time when the employee is not scheduled to work will be guaranteed a minimum of three (3) hours at time and one-half times the regular rate of pay, so long as the hours do not abut the employee's regularly scheduled hours. Such pay does not apply to pre-scheduled meetings or other events that an employee attends even though the hours do not abut the employee's scheduled hours, e.g., boards and commission meetings.~~~~A full-time non-exempt non-union employee who is called out will be guaranteed a minimum of three (3) hours when called to duty, after normal working hours not abutting the employee's regular work hours, at a rate of compensation of time and one-half.~~

(b) A full-time non-exempt non-union employee who is required to attend a court session due to professional obligations while not on regular duty shall be entitled to a minimum of three (3) hours pay at time and one-half for the actual hours spent in court.

(c) Municipal employees who use a personal automobile for municipal use shall be reimbursed for such at the rate set annually by the Internal Revenue Service as tax-deductible mileage rate.

(d) The ~~Municipality~~City shall have the right to require a physical examination of all new employees, and to require periodic physical examinations, including drug testing, of all employees. All required physical examinations shall be at the expense of the ~~Municipality~~City.

(e) The ~~Municipality~~City shall provide uniforms and/or a uniform allowance for the ~~Mechanic, Maintenance Superintendent, maintenance workers, maintenance supervisors, community development inspectors and all non-union police staff~~ prescribed or permitted to wear a uniform. Such benefits shall be processed in compliance with any and all applicable Internal Revenue Service regulations.

(f) Tuition Reimbursement Program.

(1) All full-time employees and officials with twelve or more months of satisfactory service shall be eligible to participate in a tuition reimbursement program.

(2) An employee or official shall provide a written request to the Department Head indicating the course of instruction that is to be followed and how the course of instruction will benefit both the employee and the ~~Municipality~~City. The Department Head shall make a recommendation and shall forward the request to the ~~Human Resources~~ Personnel Officer. The ~~Personnel~~ Human Resources Officer shall evaluate the course work or degree program for job-relatedness and shall notify the employee in writing regarding approval or disapproval. The approval may be for the entire course of study for an entire degree program, and the employee or official need not reapply for each course within the overall program. If the request is disapproved, a request may be made to the City Manager for reconsideration. The City Manager's decision shall be final.

(3) Courses are to be taken on other than scheduled working hours, unless approval is obtained from the Department Head, ~~Personnel~~ Human Resources Officer and City Manager.

(4) Reimbursement shall be made upon successful completion of the course with a grade of B (3.0) or better. The employee/official shall submit an official transcript or certificate demonstrating successful completion of the course and a receipt from the institution confirming the amount paid for tuition and textbooks.

(5) In the event that the employee/official receiving reimbursement separates from the ~~Municipality~~ City following any reimbursement, he/she shall pay back to the City 100% of the reimbursement amount made during the ~~twenty-four (24) thirty-six (36)~~ previous months preceding the separation back to the Municipality ~~City~~.

(6) Employees shall be eligible for up to a maximum ~~of~~ of three thousand ~~five hundred~~ dollars (~~\$3,500~~ \$3,000) per calendar year for tuition and textbooks. The total amount for tuition and textbooks paid to any individual without special consideration from City Council shall be ~~seven~~ twelve thousand dollars (~~\$7~~ \$12,000).

(7) Courses of instruction eligible for reimbursement under this program shall be provided by a recognized institution (e.g., college, university, community college, post-secondary technical school, etc.). No reimbursement shall be provided for correspondence courses.

(g) Police Officers shall be eligible to receive Special Duty Pay directly from the contractor of special duty services in accordance with such rules, regulations and procedures in effect with the New Albany Police Department. The rates for Special Duty shall be established by the City Manager.

(h) A shift differential of one dollar (\$1.00) per hour shall be provided to non-union police sergeants and non-union dispatch personnel (excluding hours in paid status while on approved leaves, restricted duty, and off-duty court time hours) for those who are regularly assigned to work second shift, third shift, or any shift that commences after the starting time of second shift and ends prior to the ending time of third shift. Shift differential will be paid for actual hours worked. Shift differential shall not be paid in addition to regular pay for any hours spent on approved paid leave. Time spent in optional training programs shall not qualify for shift differential pay. If shift differential pay is applicable, and overtime occurs, the shift differential pay shall be added to the base hourly rate prior to computing the overtime rate.

(i) The City Manager shall have the authority to establish monetary and non-monetary compensation programs that recognize the special efforts of employees that benefit the community and/or the organization.

(j) The City Manager shall have the authority to establish an employee recognition program and may, at his/her discretion, provide awards in recognition of service such as plaques, trophies, service pins, etc.; and any other type of non-monetary remuneration. The City Manager may expend City funds for such items including recognition luncheons, dinners, or other such expenditure in keeping with the objective of an employee recognition program. The City Manager may establish a monetary, performance-based merit program in addition to the merit compensation under the provisions of C.O. 155.20.

155.22 OPERS and OPFPF.

(a) The full amount of the statutorily required employee contributions to the Ohio Public Employees Retirement System of Ohio (OPERS) and to the Ohio Police and Fire Pension Fund (OPFPF) shall be withheld from the gross pay of each employee and shall be paid to OPERS and to OPFPF by the MunicipalityCity on the employee's behalf. This withholding shall be in lieu of direct contributions to OPERS and OPFPF by each employee. No person subject to this withholding shall have the option of choosing to receive the statutorily required contribution to OPERS or to OPFPF directly. The MunicipalityCity shall, in reporting and making remittance to OPERS and OPFPF, report that the public employee's contribution for each person subject to this payment has been made as provided by the statute.

(b) The payment by the MunicipalityCity provided by this section shall apply to all persons that are employees of the MunicipalityCity who are or become contributing members of OPERS or OPFPF.

(c) The total salary for each employee shall be the salary otherwise payable under the MunicipalityCity's Policies. Such total salary of each employee shall be payable by the MunicipalityCity in two parts:

- (1) Deferred salary and
- (2) Cash salary.

An employee's deferred salary shall be equal to that percentage of that employee's total salary which is required from time to time by OPERS and OPFPF to be paid as an employee contribution by that employee, and shall be paid by the MunicipalityCity to OPERS and OPFPF on behalf of that employee as a pickup and in lieu of the OPERS and OPFPF employee contribution otherwise payable by that employee.

An employee's cash salary shall be equal to that employee's total salary less the amount of the pickup for that employee, and shall be payable, subject to applicable payroll deductions, to that employee. The MunicipalityCity shall compute and remit its employer contributions to OPERS and OPFPF based upon an employee's total salary. The total combined expenditures of the MunicipalityCity for such employees' total salaries payable under applicable municipal policies and the pickup provisions of this chapter shall not be greater than the amounts it would have paid for those items had this provision not been in effect.

155.23 LICENSING; CERTIFICATION.

(a) Certain job classifications within the MunicipalityCity require the employee to maintain current licenses and/or certifications pursuant to the performance of the job. It is the responsibility of the employee who holds a position that mandates special licensing or certification to keep same in full force and effect while in the employ of the MunicipalityCity. A complete and updated training record shall be forwarded to the PersonnelHuman Resources Officer to be kept in the employee's personnel file.

(b) The MunicipalityCity may pay for training required to maintain certification and/or special licenses of employees. However, failure of the employee to notify the MunicipalityCity of needed training in such a manner so as to avoid loss of certification and/or license shall result in disciplinary action, including, but not limited to, requiring the employee, at his/her own expense and on his/her own time, to take the necessary training or tests to regain his/her license and/or certification.

155.24 PERSONNEL RECORDS.

(a) Personnel File. One, and only one, personnel file shall be maintained for each employee and shall be in the custody of the PersonnelHuman Resources Officer. The personnel file shall contain all the official records of the MunicipalityCity regarding an individual employee. An employee may review his personnel file at reasonable times in the presence of the PersonnelHuman Resources Officer upon written request to the PersonnelHuman Resources Officer. Copies of documents shall be made available to the employee at a cost as established in the City's Schedule of Fees and Service Charges. All such copies shall be marked "copy". The confidentiality of matters contained in the personnel files shall be the responsibility of the PersonnelHuman Resources Officer who shall release only such information permitted by law.

(b) Retention of Records. All actions of records, including appointment, evaluations, promotions, transfers, demotions, written reprimands, dismissals, suspensions, will be maintained in each employee's personnel file throughout his/her period of employment with the following exceptions: Records of oral appeals will be removed from the file upon the written request of the employee twelve months after such reprimand was issued, provided no further disciplinary action has occurred within that twelve month period of time. Records of written reprimands will be removed from the file upon the written request of the employee two years after such was given, provided no further disciplinary action has occurred within that two year period of time. Records of suspensions of three days or less will be removed from the file upon the written request of the employee five years after such was given, provided no further disciplinary action has occurred within that five year period of time. In any case in which a written suspension, demotion or dismissal is disaffirmed through the appeal procedure, the personnel record shall clearly indicate such disaffirmance. Copies of commendations, letters of appreciation, and training certificates or records, shall also be maintained in the personnel file.

(c) Inaccurate Documents. If an employee has reason to believe that there are inaccuracies in documents contained in their personnel file, the employee may write a memorandum to the PersonnelHuman Resources Officer explaining the alleged inaccuracy. If the PersonnelHuman Resources Officer concurs with the employee's contentions, the PersonnelHuman Resources Officer shall either correct or remove the faulty document or attach the employee's memorandum to the document and note thereon concurrence with the memorandum. The PersonnelHuman Resources Officer may also attach the memorandum to the document and note disagreement with memorandum's contents. The decision of the PersonnelHuman Resources Officer with regard to inaccurate documents shall be final.

155.25 INDIVIDUALS WITH DISABILITIES

The MunicipalityCity will adhere to all applicable state and federal provisions including the American with Disabilities Act.

155.26 DISCIPLINARY ACTIONS.

It shall be the responsibility of each Department Head to maintain control and discipline in his/her Department. This responsibility involves dealing promptly with violations of this chapter, municipal ordinances, the Charter, administrative orders of the City Manager, and federal and state laws by employees in their Department.

(a) Just Cause. No employee shall be reduced in pay or position, suspended (paid or unpaid), removed or reprimanded except for just cause, including incompetency, inefficiency, dishonesty, drunkenness, immoral conduct, insubordination, discourteous treatment of the public, neglect of duty, violation of any policy, work rule, or codified ordinance of New Albany, any other failure of good behavior, unbecoming conduct, any act of misfeasance, malfeasance or nonfeasance or the conviction of a felony. The denial of a one-time pay supplement or bonus is not a reduction in pay.

(b) Progressive Discipline.

(1) The principles of progressive disciplinary action will be followed with respect to minor offenses. For minor offenses, an oral reprimand, a written reprimand and a suspension shall be given prior to demotion or dismissal. However, more serious discipline may be imposed for more serious offenses consistent with "just cause".

(2) Disciplinary action may consist of any action which is appropriate to the offense, including:

- A. Informal (oral) reprimand;
- B. Formal, written reprimand which becomes part of the employee's personnel file;
- C. Suspension from duty with or without pay;
- D. Demotion in rank or reduction in salary; or
- E. Dismissal.

(3) Disciplinary action taken against an employee, which is other than in the nature of a minor first offense warning, shall be in writing and made a part of the employee's permanent personnel file.

(4) A suspension from duty without pay for a period exceeding three days must be reviewed and approved by the City Manager prior to becoming effective. Informal reprimands, formal reprimands and suspensions from duty without pay for three days or less shall not require prior approval by the City Manager. However, it is suggested that the Department Head notify the City Manager whenever an employee is suspended for three days or less. All demotions in rank, reductions in salary and dismissals must be reviewed and approved by the City Manager prior to becoming effective. Nothing in this section shall be deemed to preclude an employee from being relieved of duty if in the judgment of his supervisor such action is necessary. In all cases of discipline, the grievance procedure set forth in Section 155.27 shall control. Disciplinary actions shall in all cases be dealt with in a confidential manner. Specifically, employees who are or who may be the subject of any disciplinary action and supervisors/superiors who take or are considering taking any disciplinary action shall refrain from discussing or otherwise disclosing such action to any persons except those who by this chapter or other law are entitled to such information. Whenever a written communication is transmitted to a higher supervisory authority in which matters are discussed which, if true, could become the basis of disciplinary action against an employee, whether or not such disciplinary action is subsequently taken, the employee who is the subject of such communication shall be given a copy of it at the time of its

transmittal. This subsection does not apply to communications regarding a criminal investigation into activities of any employee.

(c) Responsibility for Discipline. The duty of maintaining discipline among employees shall rest initially with the immediate supervisor and finally with the City Manager. The City Manager has the power and duty, when he/she deems it necessary for the good of the service, to suspend, remove, or otherwise discipline all municipal employees and appointive administrative officers.

(d) Copy of Discipline Record. Whenever a disciplinary action is taken which results in a disciplinary action of record, the employee shall be given a written copy of such record at the time it is placed in the employee's personnel file. No public statement regarding the final decision shall be made until the written decision has been distributed to the employee.

155.27 PROCEDURE FOR APPEAL OF DISCIPLINARY ACTION.

(a) An employee of the ~~Municipality~~City who feels aggrieved by the action of his/her supervisor in the administration of discipline may appeal such disciplinary action according to the step(s) set forth in Table I herein. For a particular disciplinary action, the employee shall follow the procedural steps in the order established, and the last step listed is the final point of appeal. The City Manager shall discipline employees and the Personnel Appeals Board has the power to hear appeals from administrative determinations made pursuant to this chapter and as may be authorized by this chapter.

(b) In accordance with the provisions of C.O. 155.02, employees serving in the unclassified service, or occupying positions which have been exempted from the classified service, serve at the pleasure of the City and may be dismissed, disciplined or reduced in pay or position at any time without regard to the procedures contained within these Codified Ordinances.

(c) Disciplinary actions and the associated appeal steps are as follows:

**TABLE I
DISCIPLINE APPEAL PROCEDURE**

<i>Disciplinary Action</i>	<i>Appeal Steps</i>
Informal (oral) reprimand	(1)*
Formal (written) reprimand	(1), (2)
Suspension from duty without pay for 5 or less working days	(1), (2), (3)
Suspension from duty without pay for 6 or more working days	(1), (2), (3), (4)
Demotion in rank or reduction in salary	(1), (2), (3), (4)
Dismissal	(1), (2), (3), (4)

~~*If the department head issues the initial discipline, the employee has the right to appeal directly to the Personnel Officer. The appeal procedures shall follow those outlined in (b)(1).~~

(b) Appeal Steps.

(1) Department/Division Head review. The aggrieved employee may present a written statement of his/her appeal to the Department/Division Head within fourteen (14) calendar days of the effective date of the disciplinary action being appealed and shall ask for a review and modification or reversal of the action. The Department/Division Head shall issue a written response within fourteen (14) calendar days of receipt of the written appeal.

(2) ~~Personnel~~Human Resources Officer hearing. If an appeal is not resolved to the satisfaction of the employee under step (1) and the action being appealed is allowed to proceed to step (2), the employee may request in writing a review by the ~~Personnel~~Human Resources Officer. The written appeal must be presented to the ~~Personnel~~Human Resources Officer within seven (7) calendar days of receipt of the Department/Division Head response. The ~~Personnel~~Human Resources Officer shall hold a hearing within fourteen (14) calendar days of the receipt of such written statement. At such hearing the Department/Division Head shall present the facts and circumstances upon which the disciplinary action was taken. Prior to such hearing the ~~Personnel~~Human Resources Officer shall notify the employee, in writing as soon as is practicable, of the time and place of the hearing and the specific matters or charges which will be considered. At the hearing, the employee may be represented by an individual of his/her choosing, and will be permitted to present witnesses. The employee's personnel file shall be made available for him/her to review prior to the hearing upon written request to the ~~Personnel~~Human Resources Officer. The ~~Personnel~~Human Resources Officer, after the close of the hearing, shall issue a written decision within fourteen (14) calendar days from the close of the hearing that shall be forwarded to the employee. A copy of the written decision shall be provided to the employee and his/her representative at the time it is placed in the employee's personnel file. No public statements shall be made by the employee or employer regarding the final decision, until the written decision has been given to the employee. The written decision of the ~~Personnel~~Human Resources Officer shall be a prerequisite to a request for a hearing before the City Manager.

(3) City Manager hearing. If an appeal is not resolved to the satisfaction of the employee by the ~~Personnel~~Human Resources Officer under step (2) and the action being appealed is allowed to proceed to step (3), the employee may request in writing within seven (7) calendar days of the issuance of the ~~Personnel~~Human Resources Officer's written decision, a hearing before the City Manager. If such request is not made within seven (7) calendar days, the matter shall be closed. At such hearing, which shall occur within fourteen (14) calendar days, the department/division shall present the facts and circumstances upon which the disciplinary action was taken. Prior to the hearing, the City Manager shall notify the employee in writing, as soon as is practicable, of the time and place of the hearing and the specific matters or charges which will be considered. At the hearing, the employee may be represented by an individual of his/her choosing; he/she will be permitted to present witnesses. The employee's personnel file shall be made available to him/her for review prior to the hearing upon written request to the ~~Personnel~~Human Resources Officer. The City Manager shall issue a written decision, after the close of the hearing, which shall be forwarded to the employee within twenty-one (21) calendar days. A copy of the written decision shall be provided to the employee and his/her representative at the time it is placed in the employee's personnel file. No public statements shall be made by the employee or employer regarding the final decision, until the written decision has been

given to the employee. The written decision of the City Manager shall be a prerequisite to a request for a hearing before the Personnel Appeals Board.

(4) Personnel Appeals Board Hearing. The Charter provides for a three member Personnel Appeals Board. An aggrieved non-exempt classified employee may request in writing a hearing before the Personnel Appeals Board. The Personnel Appeals Board may also hear appeals of union employees in accordance with the grievance procedure in the applicable collective bargaining agreement. Such request must be submitted within fourteen (14) calendar days of receipt by the employee of the City Manager's decision under step (3). Such request shall be submitted to the Personnel/Human Resources Officer, who will notify the Personnel Appeals Board. The Board shall set a time, date and location to hear such appeal and notify the Personnel/Human Resources Officer as well as the employee, or designated representative, if any/know. The notice of the hearing will be either hand-delivered upon the employee or known representative or mailed to the employee's last known post office address. Alternate methods of notice may also be provided, such as pursuant to electronic means, upon the request of the employee, or the employee's designated representative, if any. Such notice of the hearing will be provided as outlined above at least fourteen (14) calendar days prior to the date of the hearing, unless an extension of time is requested or waived by the employee.

During the hearing, all witnesses must testify under oath or affirmation. Any Board member shall have power to administer oaths and affirmations to witnesses and to take testimony concerning any matter which the Board has the authority to hear.

The Board shall have the power to issue a subpoena and require the attendance of witnesses and the production of documents pertinent to any hearing. Either party may request that a subpoena be issued by the Board. Such requests for a subpoena or a request for production of documents shall be submitted no later than seven (7) days prior to the hearing. It is the responsibility of the requesting party to ensure proper service of the subpoena.

Amendments or modifications to the orders of dismissal, discipline or reduction in pay or position may be made by the appointing authority at any time prior to the start of the hearing, provided the employee and his/her attorney, if any, receive copies of the amended order prior to the time set for the hearing as provided herein.

Hearings before the Board shall be conducted in an orderly manner. The Board is not required to strictly follow the rules of evidence as applied by the courts in civil cases. The parties may be represented by counsel or other representative. The Board may also be represented by independent legal counsel when, in the Board's opinion, such independent legal counsel is needed and the cost of such representation shall be paid by the City.

In a hearing on an appeal before the Board, the following procedure shall be followed:

- a) Hearings may be public as required by Ohio law; however, upon the request of either party, witnesses may be separated during the hearing.

- b) The appointing authority taking the action affecting the employee shall proceed first with the burden of supporting the charges and specifications.
- c) The affected employee shall then produce such evidence as they wish to rebut the charges and specifications brought against the employee.
- d) The appointing authority will have the opportunity to offer rebuttal evidence.
- e) The burden of proof to be utilized by the Board shall be by a preponderance of the evidence.
- f) Each party may call witnesses to testify on their behalf. The Board on its own initiative may call witnesses other than those called by either party if in its judgment the merits of the case so require. In no instance shall more than five (5) witnesses be called by each party without the consent of the Board.
- g) The Board may, in its discretion, hear final arguments or allow post-hearing briefs.
- h) Hearings may be recorded by the Board in a manner it deems appropriate. Copies of any transcript may be provided to any parties upon written request.
- i) The Board will render its decision within a reasonable time from the date of the hearing. Upon the completion of all evidence introduced, the Board may render its final order immediately, or may take the matter under advisement and render its final order within a reasonable time thereafter.
- j) A written copy of the final order shall be transmitted to the appointing authority and the employee or their designated representative, if any.
- k) If the employee fails to appear at the hearing, the Board may hear the evidence offered by the appointing authority and render judgment thereon. If the appointing authority, or its designated representative fails to appear at the time fixed for the hearing, and if no evidence is offered in support of the charges against the employee, the Board may render judgment as by default or may hear evidence offered by the employee and render judgment thereon.

The acceptance by an appointing authority of the resignation of a person discharged, before the final action by the Board, will terminate the appeal process. Notice of the employee's resignation shall be submitted immediately to the Board and shall be entered into the Board's records.

The decision of the Personnel Appeals Board is final.

155.28 INVESTIGATIVE PROCEDURES.

With the approval of the City Manager, investigative procedures shall be undertaken any time an employee is suspected of or charged with an act which could result in criminal and/or administrative charges being filed against such employee. The

investigative procedure for an administrative investigation shall be determined by the City Manager. The investigative procedure for a criminal investigation shall be as set forth hereinafter.

(a) When any anonymous complaint is made against an employee and there is no corroborative evidence of any kind, then the complaint shall be classified as unfounded and the accused employee shall not be required to submit a written report.

(b) An employee shall be informed of the nature of an investigation prior to any questioning.

(c) An employee who is to be questioned as a suspect in an investigation that may lead to criminal charges shall be advised of his constitutional rights in accordance with law and shall then and continually thereafter have a right to counsel or other representative of his choosing.

(d) The use of administrative pressures, threats, coercion or promises shall not be employed for any purpose during the course of an investigation regarding any employee.

(e) An employee who declines or refuses to answer questions or to otherwise participate in an investigation may be charged with insubordination or a like offense except where such refusal is based on an exercise of his constitutional rights as referenced in subsection (c) hereof.

(f) The interrogation of an employee in connection with an investigation shall be conducted at reasonable times and for reasonable periods of time that shall include rest periods and time to attend to physical necessities.

(g) Commencing at the time during an investigation when an employee is advised of his constitutional rights as provided in subsection (c) hereof, an interrogation shall be recorded at the request of either party.

(h) In the course of an investigation, an employee may be given a polygraph examination, in compliance with applicable laws.

(i) During the course of an investigation, interviews of employees not the subject of such investigation may be conducted. Where appropriate, the procedures set forth herein shall be followed with respect to such other employees.

(j) Upon request, an employee shall be afforded reasonable access to written documents and to taped interviews made in accordance with subsection (g) hereof during which time he/she may listen to and make personal notes. If a written transcript of a recorded interview is made, the employee will be provided a copy of such transcript upon written request to the City Manager.

(k) If in lieu of the filing of criminal charges an investigation results in the necessity of disciplinary action in accordance with Section 155.26, disciplinary actions shall be taken. An employee whose conduct is the subject of such disciplinary action shall be afforded access to evidentiary matters expected to be presented in the course of any appeal process hearing associated with the disciplinary action.

(l) If any of these procedures are alleged to have been violated, such allegations shall be subject to the appeal procedure provided in Section 155.27 beginning at the level of the ~~Personnel~~Human Resources Officer.



Prepared: 11/07/2018
Introduced: 12/04/2018
Revised:
Adopted:
Effective:

RESOLUTION R-47-2018

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO THE JOINT SELF-INSURANCE AGREEMENT WITH THE CENTRAL OHIO HEALTH CARE CONSORTIUM FOR THE THREE YEAR TERM, JANUARY 1, 2019 THROUGH DECEMBER 31, 2021

WHEREAS, the City of New Albany ("City") provides health and other insurance benefits to employees through the Central Ohio Health Care Consortium ("COHCC"); and,

WHEREAS, the COHCC requires the City and other COHCC members to adopt the Joint Self-Insurance Agreement ("Agreement") every three (3) years; and,

WHEREAS, the Agreement has been revised for the next three (3) year term, January 1, 2019 through December 31, 2021; and

WHEREAS, Council has determined that the Agreement should be executed.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of New Albany, Counties of Franklin and Licking, State of Ohio, that:

Section 1. Council authorizes the city manager to enter into the Agreement attached hereto as Exhibit A regarding health and other insurance benefits.

Section 2. This Agreement shall supersede and replace all applicable state and local laws, which it has the authority to supersede and replace.

Section 3. It is hereby found and determined that all formal actions of this council concerning and relating to the adoption of this resolution were adopted in an open meeting of the council, and that all deliberations of the council and or any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements, including Section 121 of the Ohio Revised Code.

Section 4. Pursuant to Article 6.07(A) of the New Albany Charter, this resolution shall take effect upon adoption.

CERTIFIED AS ADOPTED this _____ day of _____, 2018.

Attest:

Sloan T. Spalding
Mayor

Jennifer H. Mason
Clerk of Council

Approved as to form:

Mitchell H. Banchefsky
Law Director

**AMENDED AND RESTATED
CENTRAL OHIO HEALTH CARE CONSORTIUM
JOINT SELF-INSURANCE AGREEMENT**

WHEREAS, Section 9.833 of the Ohio Revised Code permits any POLITICAL SUBDIVISION that provides health care benefits for its officers or employees to join in any combination with other POLITICAL SUBDIVISIONS to establish and maintain a joint self-insurance program to provide health care benefits pursuant to a written agreement (the “AGREEMENT”); and

WHEREAS, effective January 1, 1992, a number of POLITICAL SUBDIVISIONS joined together to form the Central Ohio Health Care Consortium Joint Self-Insurance Agreement with other POLITICAL SUBDIVISIONS and established a joint self-insurance program (the “Original Agreement”) to provide health care benefits for its officers and/or employees; and

WHEREAS, the Original Agreement was restated on July 1, 1994, through the implementation and execution of Amendment No. 1 to Central Ohio Health Care Consortium Joint Self-Insurance Agreement (“Amendment No. 1”); and

WHEREAS, in 1997, the MEMBERS of the POOL adopted Amendment No. 2 to Amendment No. 1 (“Amendment No. 2”), pursuant to which Sections 3.06(a) and 8.01(b) of Amendment No. 1 were amended; and

WHEREAS, in 2000, the MEMBERS further amended Amendment No. 1 and Amendment No. 2 by replacing existing Section 6.03 with a new provision regarding the POOL CONTRIBUTION FACTOR; and

WHEREAS, in 2003, the MEMBERS further amended Amendments No. 1 and No. 2 by modifying Section 7.01 Monthly Payments and Section 7.04 Assessments adding “Thereafter, payment is subject to a 5% penalty with the interest of 1½% per month or portion thereof”; and

WHEREAS, in 2006, the MEMBERS further amended Amendments No. 1 and No. 2 by modifying Section 3.05 and making other minor clarification modifications; and

WHEREAS, in 2009, the MEMBERS amended Amendments No. 1 and No. 2 by modifying Section 4.03 to add the BOARD office of Treasurer; by modifying Section 4.03 to add the Treasurer to the Executive Committee; by modifying Section 4.05 to create a Finance Committee; and by modifying Section 4.03 to eliminate the term limitation for BOARD Chairman; and

WHEREAS, in 2016, the MEMBERS amended and restated the AGREEMENT (the “RESTATED AGREEMENT”) to incorporate all prior and current amendments into one document and to modify the AGREEMENT to: 1) create a mandatory reserve and

specify the method to determine and create the mandatory funding level; and 2) establish October 1st as the MEMBER withdrawal deadline; and

WHEREAS, in 2018, the MEMBERS again desire to amend and restate the AGREEMENT to provide current operating terms under the AGREEMENT for the three-year TERM of the AGREEMENT beginning January 1, 2019, making the changes identified herein;

NOW, THEREFORE, the undersigned agree as follows:

ARTICLE ONE NAME

Section 1.01. Name. The unincorporated joint self-insurance program known as the Central Ohio Health Care Consortium (the "POOL") is hereby continued as stated herein.

Section 1.02. Duration. The POOL shall have a perpetual duration and shall continue until terminated pursuant to this AGREEMENT. Health benefits coverage hereunder for VESTED MEMBERS initially commenced on January 1, 1992, immediately upon the termination of the health care coverage that previously was provided by Central Benefits Mutual Insurance Company.

Section 1.03. Legal Status. The POOL shall be deemed to be a legal entity, separate and apart from its MEMBERS, formed for the public purpose of enabling its MEMBERS to obtain insurance, to create a joint self-insurance program, and to provide for the joint administration of POOL as well as the FUNDS of the POOL.

Section 1.04. Effective Date. This AGREEMENT amends and completely supercedes the existing Central Ohio Health Care Consortium Joint Self-Insurance Agreement (the "RESTATED AGREEMENT"). This restated AGREEMENT shall become effective as of January 1, 2019.

ARTICLE TWO DEFINITIONS

Section 2.01. Act. "ACT" means Section 9.833 of the Ohio Revised Code ("ORC") and any successor statute thereto, as amended from time to time.

Section 2.02. Administrator. "ADMINISTRATOR" means the entity designated to supervise the administration of the POOL and to perform such other duties as are set forth in any applicable Administration Agreement.

Section 2.03. Agreement. "AGREEMENT" means this Amended and Restated Central Ohio Health Care Consortium Joint Self-Insurance Agreement and all counterparts hereto, as amended from time to time.

Section 2.04. Board. “BOARD” means the Board of Directors of the POOL.

Section 2.05. Contribution(s). “CONTRIBUTION(S)” means any amounts paid by a MEMBER to any FUND.

Section 2.06. Fund. “FUND” or “FUNDS” means those amounts paid by MEMBERS pursuant to Articles Six and Seven of this AGREEMENT.

Section 2.07. Member. “MEMBER” means a POLITICAL SUBDIVISION that is a party to this AGREEMENT and that has not withdrawn from or been terminated from participation in the POOL.

Section 2.08. Political Subdivision. “POLITICAL SUBDIVISION” has the same meaning given to it by the ACT.

Section 2.09. Pool Contribution Factor. “POOL CONTRIBUTION FACTOR” has the meaning as defined in Section 6.03 hereof.

Section 2.10. Scope of Coverage. “SCOPE OF COVERAGE” means the coverage, limits and deductibles set forth in Section 4.07 hereof.

Section 2.11. Surplus Funds. “SURPLUS FUNDS” means the amount by which the FUNDS available to operate the POOL for any year or years exceed all of the costs, liabilities (including claim liabilities, claim reserves and reserves for terminal liability) and expenses of operating the POOL.

Section 2.12. Term. “TERM” means a three-year contract period entered into by the MEMBERS beginning January 1 of any of the following years: 2010, 2013, 2016, 2019, 2022, 2025.

Section 2.13. Vested and Non-Vested Members. “VESTED MEMBER” means any MEMBER who was an original MEMBER of the POOL as well as any MEMBER after such MEMBER has completed one full three-year TERM, and “NON-VESTED MEMBER” means any MEMBER who has not completed one full three-year TERM. Prior to this 2019 restatement, such MEMBERS were referred to as FOUNDING and NON-FOUNDING MEMBERS.

Section 2.14. Terms Defined Elsewhere.

ACTUARY	Section 4.07(s)
CERTIFIED PUBLIC ACCOUNTANT or CPA	Section 4.07(s)
DIRECTOR	Section 3.04(c)
ELECTION	Section 3.05(c)
EXPECTED COSTS	Section 7.01
FUNDING RATE	Section 7.01
INCURRED BUT NOT REPORTED or IBNR	Section 6.04
POOL	Section 1.01

**ARTICLE THREE
MEMBERSHIP**

Section 3.01. Qualification. An applicant seeking membership in the POOL must meet all of the qualifications required by the ACT and, in the case of a NON-VESTED MEMBER, must demonstrate to the satisfaction of the BOARD the financial ability to pay all CONTRIBUTIONS.

Section 3.02. Application. All applicants to become MEMBERS shall apply for membership in any manner and on any form approved by or acceptable to the BOARD.

Section 3.03. Effective Time of Membership. An applicant shall become a MEMBER at the time that a duly authorized officer of the applicant executes, and a duly authorized officer of the POOL accepts, this AGREEMENT on behalf of the POOL. No applicant shall be permitted to become a MEMBER unless it provides written documentation satisfactory to the BOARD, in its sole judgment, that the applicant has the requisite capacity and authority, and has obtained all required approvals, to execute this AGREEMENT and to perform all of its obligations hereunder.

Section 3.04. Duties of Members. Each MEMBER agrees to do or cause to be done all of the following:

(a) to cooperate with and institute all loss prevention procedures and guidelines developed by the BOARD or the ADMINISTRATOR;

(b) to adopt and institute wellness program components or options as identified by the BOARD or the ADMINISTRATOR;

(c) to designate a representative of the MEMBER (a "DIRECTOR") to serve on the BOARD, and to cause that DIRECTOR to attend all monthly and special meetings of the BOARD;

(d) to provide the ADMINISTRATOR access to the records of the MEMBER during normal business hours, upon 24 hours' prior written notice and only for the purpose of conducting necessary services related to the operation of the POOL and for no other purpose;

(e) to permit the ADMINISTRATOR and any agent or attorney thereof to represent the MEMBER in investigating, litigating and settling any claim made against the POOL or the MEMBER that is within the SCOPE OF COVERAGE provided by the POOL; and

(f) to promptly pay when and as due all CONTRIBUTIONS, assessments and uncovered losses (as described in Sections 7.02 and 7.03), if any, required under this AGREEMENT.

Section 3.05. Terms of Membership.

(a) Each original VESTED MEMBER of the POOL committed to remain a MEMBER for three years, until December 31, 1994. Thereafter, the MEMBERS agreed to continue the POOL for three successive three-year terms (each such three-year period hereunder, a "TERM"). In 2003, the MEMBERS agreed to continue the POOL for successive three-year TERMS indefinitely.

(b) The MEMBERS intend that the POOL shall continue in effect indefinitely, for succeeding three-year TERMS, subject to the continual election of MEMBERS to remain participants in the POOL as provided below.

(c) On or before October 1, of the last year of the current TERM (the "ELECTION"), each MEMBER of the POOL shall indicate in writing to the BOARD whether or not it intends to continue its participation beyond the current TERM. At least two MEMBERS must elect to continue their participation for the POOL to continue. If less than two MEMBERS elect to continue, the POOL shall terminate effective as of 11:59 p.m., local Columbus, Ohio time, on December 31 of the last year of the current TERM, and the BOARD shall be responsible for winding up and dissolving the affairs of the POOL.

(d) If MEMBERS representing more than one-third (1/3) of the employees and officers of MEMBERS insured by the POOL elect to leave the POOL at the ELECTION, the remaining MEMBERS shall be given another opportunity to indicate in writing whether they desire to continue in the POOL (the "SECOND ELECTION"). The SECOND ELECTION shall be made by each remaining MEMBER on or before November 1, and at least two MEMBERS must elect to continue their participation for the POOL to continue. If less than two MEMBERS elect to continue, the POOL shall terminate effective as of 11:59 p.m., local Columbus, Ohio time, on December 31 of the last year of the current TERM, and the BOARD shall be responsible for winding up and dissolving the affairs of the POOL.

(e) If two or more MEMBERS elect to continue, either at the ELECTION or SECOND ELECTION, all such MEMBERS shall be required to participate for another three-year TERM; provided, however, that any such continuing MEMBER may voluntarily withdraw at the end of any year within that subsequent TERM upon compliance with the withdrawal provisions of Section 8.01 herein. The rights of MEMBERS to share in the SURPLUS FUNDS of the POOL upon withdrawal are governed by Section 8.01 hereof.

Section 3.06. Terms of Membership for Non-Vested Member.

(a) Upon initial entry into the POOL, each NON-VESTED MEMBER shall be required to remain a MEMBER, and may not withdraw from the POOL, until the December 31st following the second anniversary of the MEMBER'S joining the POOL.

A MEMBER'S rights to participate in and/or withdraw from the POOL for any subsequent TERM shall be governed by Section 3.05 hereof.

(b) Subject to Section 8.01 hereof, NON-VESTED MEMBERS shall be entitled to share in SURPLUS FUNDS of the POOL on the same basis as VESTED MEMBERS. NON-VESTED MEMBERS shall pay a surcharge and/or otherwise buy into such surplus on terms established by the BOARD.

ARTICLE FOUR BOARD OF DIRECTORS

Section 4.01. Establishment of Board. The POOL shall have a Board of Directors, which shall, among other duties, determine the general policy of the POOL. Each MEMBER shall be entitled to appoint one DIRECTOR to the BOARD.

Section 4.02. Term of Directorships. A person appointed by a MEMBER to serve as a DIRECTOR on the BOARD shall remain in office until (1) the POOL receives evidence of the appointment of his or her successor or (2) the effective time of the withdrawal from or termination of the MEMBER'S participation in the POOL.

Section 4.03. Officers and Executive Committee. The BOARD shall annually elect from the DIRECTORS of the BOARD a Chairman, a Vice-Chairman, a Secretary, and a Treasurer. The DIRECTORS receiving the largest number of votes for each office shall be elected.

The BOARD shall annually elect an executive committee to be comprised of the Chairman, the Vice-Chairman, the Secretary and the Treasurer of the POOL, and two other DIRECTORS. The two DIRECTORS receiving the largest number of votes for the executive committee shall be elected. The executive committee may bind the BOARD only as to matters over which the BOARD has given express authorization.

Section 4.04. Meetings.

(a) Meetings of the BOARD shall be held monthly at such time as the Secretary shall prescribe. Such meetings may be held and attended in person or electronically through teleconference, video conference or other appropriate means. The Secretary shall give written or electronic notice to each DIRECTOR of the time, date, place, and format of each meeting, at least seven days prior to each meeting. This notice may, but is not required to, contain an agenda of items to be discussed. Any item of POOL business may be considered at the monthly meetings contained in the notice of the meeting.

(b) Special meetings may be called by the ADMINISTRATOR, the Chairman, or by a majority of the DIRECTORS. Only items listed for discussion in the notice of the special meeting may be considered. The Secretary shall give written or electronic notice to each DIRECTOR of the time, date, place, format and purposes of a special meeting at least three days prior to each meeting.

Section 4.05. Committees of the Board.

(a) The BOARD shall appoint a standing Finance Committee consisting of as many DIRECTORS, proxies or other designees as the BOARD chooses and to be chaired by the Treasurer. The Finance Committee shall be responsible for the POOL's pricing policies and related matters.

(b) The BOARD shall also appoint a standing Benefits Committee consisting of as many DIRECTORS, proxies or other designees as the BOARD chooses and to be chaired by a member of the Benefits Committee as selected by the Committee members. The Benefits Committee shall be responsible for evaluating benefit plan designs, wellness initiatives and related matters.

(c) The Chairman or BOARD may from time to time appoint ad hoc committees consisting of no fewer than five of the DIRECTORS. Membership of the ad hoc committees may be changed at any time by the Chairman or by the BOARD. An ad hoc committee may bind the BOARD only as to matters over which the BOARD has given such committee express authorization.

Section 4.06. Compensation. DIRECTORS shall be entitled to reimbursement of actual expenses incurred in the pursuit of POOL business and such other reasonable and lawful compensation as may be awarded from time to time by the BOARD.

Section 4.07. Powers and Duties. The BOARD is authorized and directed to carry out each and every act necessary, convenient or desirable to and for carrying out the purpose of this AGREEMENT and the POOL, including, but not limited to:

- (a) hiring the ADMINISTRATOR;
- (b) receiving MEMBERS' CONTRIBUTIONS;
- (c) administering the POOL and settling and paying, or causing the payment of, claims on behalf of the MEMBERS;
- (d) making and entering into contracts to conduct and operate the POOL, including, but not limited to, the execution of an administrative agreement with the ADMINISTRATOR;
- (e) employing agents and employees on behalf of the POOL;
- (f) establishing and adopting requirements for membership in the POOL, including, but not limited to, a potential member's commitment to certain wellness initiatives to be identified by the BOARD and/or the ADMINISTRATOR;
- (g) approving new MEMBERS;

- (h) terminating the participation of existing MEMBERS;
- (i) approving and amending the annual budget of the POOL;
- (j) resolving disputes over the SCOPE OF COVERAGE provided by the POOL;
- (k) approving educational and other programs relating to risk reduction;
- (l) approving reasonable and necessary loss reduction and preventive procedures to be followed by all MEMBERS;
- (m) approving each MEMBER'S FUNDING RATE (as that term is defined in Section 7.01 hereof);
- (n) establishing rules and regulations regarding the payment of FUNDS from the POOL as shall from time to time seem appropriate or necessary, including the payment of reasonable expenses related to the administration of the POOL;
- (o) establishing and adopting policies for the administration of the POOL and/or the FUNDS, including, but not limited to investment and mandatory reserve policies as well as policies for pricing and rating;
- (p) investing POOL monies;
- (q) providing surety and/or fidelity bonds for DIRECTORS and all persons charged with the custody or investment of POOL FUNDS;
- (r) purchasing directors and officers, errors and omissions and such other insurance coverage for the benefit of the POOL and its DIRECTORS as the BOARD shall deem necessary, appropriate or desirable;
- (s) hiring an independent actuary who shall be a member of the American Academy of Actuaries (the "ACTUARY") as well as a CERTIFIED PUBLIC ACCOUNTANT (the "CPA") to perform duties required by ORC Section 9.833 or otherwise by the BOARD;
- (t) hiring independent legal counsel to provide services to the BOARD and POOL, as necessary;
- (u) establishing one or more bank accounts, which may include establishing a trust(s) with the trust department(s) of one or more National bank(s), to collect premiums, pay claims and otherwise to manage and account for all POOL FUNDS;
- (v) requiring the ADMINISTRATOR to provide evidence of coverage satisfactory to the BOARD with respect to stop-loss and/or any other kind of insurance purchased by the ADMINISTRATOR for the benefit of the POOL; and

(w) determining whether the POOL has any SURPLUS FUNDS and, if so, how such SURPLUS FUNDS shall be utilized for the operation of the POOL and/or shall be distributed to MEMBERS, in accordance with the terms of this AGREEMENT.

The coverage, limits, deductibles and other terms of the health care benefits (the "SCOPE OF COVERAGE") to be provided by the POOL are described in documents maintained by the BOARD and incorporated herein by this reference. From time to time, the BOARD may revise the SCOPE OF COVERAGE as it deems necessary or appropriate.

The BOARD may delegate one or more of these duties to one or more committees established under Section 4.05, with oversight and approval retained by the BOARD.

Section 4.08. Voting; Proxies. Each DIRECTOR shall be entitled to one vote on each matter voted upon by the BOARD, except that the Chairman shall have an additional vote in the event of a tie. A DIRECTOR may be represented and may vote by a proxy appointed by an instrument in writing signed by the DIRECTOR and confirmed by the MEMBER which elected such DIRECTOR, but such instrument must be filed with the Secretary of the meeting before the person holding the proxy shall be allowed to vote.

The BOARD may include in any process or procedure for administering the POOL, including voting, the use of alternative media, including, but not limited to, telephonic, facsimile, computer or other such electronic means as available. Use of alternative media shall be deemed to satisfy any requirements of the POOL or this AGREEMENT requiring a "written" document or an instrument signed "in writing" to the extent permissible under the ORC, or the Internal Revenue Code of 1986, as amended, if applicable.

Section 4.09. Quorum. A quorum of the BOARD shall consist of fifty percent (50%) of the DIRECTORS. Except as provided in Section 11.09 below, the affirmative vote of a majority of the DIRECTORS present at a meeting at which a quorum is present shall be the vote of the BOARD.

ARTICLE FIVE ADMINISTRATOR

Section 5.01. Contract. The BOARD shall contract with an ADMINISTRATOR and delegate to such ADMINISTRATOR some or all of its contractual powers and duties (set forth in Article Four above), as the BOARD shall deem advisable.

Section 5.02. Annual Report. The BOARD shall require the ADMINISTRATOR to prepare and present to the BOARD an annual report regarding the condition of the POOL, within 90 days after each calendar year end. The report shall be in such form and include such information as is prescribed by, or acceptable to, the

BOARD. The report may be consolidated with the ADMINISTRATOR'S budget recommendation required by Section 6.02 hereof.

ARTICLE SIX POOL FUNDS

Section 6.01. Establishment of the Funds(s). The BOARD shall establish one or more FUNDS which shall consist of MEMBER CONTRIBUTIONS in amounts it deems sufficient to annually fund the administrative expenses of the POOL, to purchase excess insurance, stop-loss insurance or reinsurance for the POOL, to pay current year claims and claim expenses and to establish and maintain sufficient reserves. At or about the close of any three-year TERM hereunder, the BOARD may also establish one or more FUNDS, which may consist of MEMBER CONTRIBUTIONS and/or any existing SURPLUS FUNDS, in amounts it deems appropriate to fund the claims, claims expense and other costs and expenses associated with the termination and run-off of the three-year TERM then ending.

Section 6.02. Budget. No later than October 1 in each POOL year, the ADMINISTRATOR shall prepare and submit to the BOARD an estimate of the budget of the POOL for the succeeding calendar year. If the budget is acceptable to the BOARD, the BOARD shall approve such budget in the manner established in Article Four.

Section 6.03. Pool Contribution Factor. The POOL CONTRIBUTION FACTOR for each MEMBER of the POOL shall be as follows:

Number of Employees and Officers Insured by the MEMBER	Percentage of Adjustment Related to the MEMBER'S Loss Experience	Percentage of Adjustment Related to the POOL'S Loss Experience
-----	-----	-----
50-99	20%	80%
100-124	30%	70%
125-149	40%	60%
150-199	50%	50%
200-299	60%	40%
300 +	80%	20%

With respect to those MEMBERS whose number of insured employees and officers is fewer than 50, all such MEMBERS shall be treated as a single group (the "SMALL MEMBER GROUP"). The POOL CONTRIBUTION FACTOR for each MEMBER in the SMALL MEMBER GROUP shall be determined by adding all employees and officers insured by each MEMBER in the SMALL MEMBER GROUP, and by then applying the percentages shown in the chart shown above to that total. Such determination shall reviewed at the conclusion of each TERM in order to determine whether any MEMBER should be removed from or return to the SMALL MEMBER GROUP, as well as the POOL CONTRIBUTION FACTOR to be applied for the upcoming TERM.

Each POOL CONTRIBUTION FACTOR shall remain constant for the entire life of the POOL, subject to change only as provided in Section 11.09 hereof. Notwithstanding the above, the BOARD shall have the authority to use reasonable discretion in the consideration of extenuating circumstances that may apply to any MEMBER in the determination and application of the appropriate POOL CONTRIBUTION FACTOR for such MEMBER. Further, the BOARD may develop and adopt policies regarding pricing and rates for MEMBERS, and particularly new NON-VESTED MEMBERS (as provided in Section 4.07(o)), based on the prior status of such MEMBER's benefit programs (e.g., fully-insured, self-funded with run-out claims liability, self-funded without run-out claims liability, etc.).

Additionally, and notwithstanding anything contained in this AGREEMENT elsewhere to the contrary, the MEMBERS in the SMALL MEMBER GROUP shall be treated as if they were a single MEMBER not only for purposes of determining their POOL CONTRIBUTION FACTOR, but also for purposes of allocating and distributing SURPLUS FUNDS, establishing the FUNDING RATE for the SMALL MEMBER GROUP and for determining and assessing supplemental payments to the POOL under Article Seven of the AGREEMENT. In each such case, the MEMBER'S rights and/or liabilities within the SMALL MEMBER GROUP shall be determined by dividing (a) the number of employees and officers insured by the MEMBER by (b) the total number of all employees and all officers insured by all MEMBERS within the SMALL MEMBER GROUP, and applying that fraction to each such MEMBER as the BOARD shall deem appropriate under the circumstances.

Except as otherwise provided in the preceding paragraph, the MEMBERS in the SMALL MEMBER GROUP shall be treated as separate and distinct MEMBERS for all other purposes under the AGREEMENT. The BOARD shall have the authority to interpret this AGREEMENT to resolve any conflicts or issues arising out of the creation of the SMALL MEMBER GROUP and the allocation of any rights and liabilities to each MEMBER within the SMALL MEMBER GROUP.

Section 6.04. Mandatory Reserve. The BOARD shall establish a mandatory reserve for the purposes of protecting the FUND from future losses and maintaining fiscal solvency. This reserve shall be set aside for contingencies and potential unforeseen liabilities such as a spike in claims payments in excess of expected claims. As a part of the annual budget process, the mandatory reserve target shall be calculated as the greater of either the FUND'S INCURRED BUT NOT REPORTED ("IBNR") estimate as identified by the ADMINISTRATOR, or the prior year's average three month claims expense. For purposes of a NON-VESTED MEMBER, the pricing of such reserve amount will be phased in over the first two years of the NON-VESTED MEMBER's participation in the POOL. Should additional CONTRIBUTIONS be required to achieve the reserve funding target, the BOARD shall determine a reserve surcharge for MEMBERS to be included in the MEMBERS' CONTRIBUTIONS.

Section 6.05. Surplus Funds. In the event that MEMBER CONTRIBUTIONS exceed claims and expenses for the FUND, the BOARD, shall first apply the SURPLUS FUNDS to the mandatory reserve. Should the reserve exceed the BOARD'S established funding target, the BOARD may, in its sole discretion, apply SURPLUS FUNDS toward

the CONTRIBUTIONS of MEMBERS for any subsequent year, and/or fund any other necessary and proper cost, liability and/or expense of the POOL. Additionally, the BOARD may refund to its MEMBERS all or some portion of the excess payments, if any, made by its MEMBERS to the POOL, which reimbursement may be based on each MEMBER'S and the POOL'S loss experience and such other factors as the BOARD deems appropriate under the circumstances. The BOARD shall determine the amount of SURPLUS FUNDS, if any, as of December 31 of each year hereunder on or before April 1 in each succeeding year, and shall promptly communicate this information to each MEMBER.

Section 6.06. Purchase of Stop-Loss Insurance. The BOARD shall use its best efforts hereunder to purchase aggregate stop-loss insurance for the POOL. The BOARD shall also investigate the purchase of specific stop-loss coverage, and upon the termination of the POOL, the availability of insurance to cover the terminal liabilities of the withdrawing MEMBERS, and shall purchase such coverage if deemed to be in the best interests of the MEMBERS at that time. The BOARD may, in its discretion, create sub-pools for the allocation of the costs for any purchased stop-loss coverage, with such factors to be reviewed on an actuarial basis, and applied each TERM.

Section 6.07. Actuarial and Financial Reports. The BOARD shall require the ACTUARY and the CPA to prepare and deliver to the BOARD the report(s) required by ORC Section 9.833.

ARTICLE SEVEN FUNDING SCOPE OF RISK SHARING PROTECTION

Section 7.01. Monthly Payments. On or before October 1 in each year, the BOARD (after consultation with its ADMINISTRATOR, its ACTUARY or such other persons as the BOARD may deem necessary or appropriate) shall calculate the expected costs ("EXPECTED COSTS") for the POOL for the next calendar year. EXPECTED COSTS shall include anticipated claims costs and fixed and administrative costs associated with the operation of the POOL, including premiums for stop-loss insurance, excess insurance and directors and officers' liability insurance, errors and omissions insurance and fees for its ADMINISTRATOR, ACTUARY, CPA and legal counsel. After calculating EXPECTED COSTS and on or about October 1 in each year, the BOARD shall determine each MEMBER'S FUNDING RATE ("FUNDING RATE"). A MEMBER'S FUNDING RATE shall be determined with reference to the number of employees and officers of the MEMBER who are covered by the POOL as of September 1, the loss experience of the MEMBER and the MEMBER'S POOL CONTRIBUTION FACTOR. FUNDING RATES shall be established so as to enable the POOL to satisfy its EXPECTED COSTS, as well as any additional funding deemed necessary or appropriate by the BOARD. By way of example, the BOARD may establish FUNDING RATES to provide funds in excess of EXPECTED COSTS in order to establish reserves for future POOL year operations.

FUNDING RATES shall be paid monthly by MEMBERS, and payment must be received by the POOL on or before the 15th of each month hereunder with no grace period whatsoever. Thereafter, payment is subject to a 5% penalty with the interest of 1½% per month or portion thereof.

Section 7.02. Assessments. From time to time, the BOARD may require that MEMBERS make supplemental payments to the POOL for any necessary or appropriate purpose where there is reasonable concern that FUNDS then available to the POOL (whether through surplus, monthly payments of FUNDING RATES, stop-loss coverage, reinsurance or otherwise) will not be sufficient to meet the responsibilities of the POOL; provided, however, that the total of such supplemental payments and all payments under Section 7.01 hereof in any year shall not exceed two hundred percent (200%) of the EXPECTED COSTS for that POOL year. The BOARD may assess supplemental payments from MEMBERS, including withdrawn or terminated MEMBERS (related to their period of membership in the POOL), for any one or more years of their membership. All assessments for supplemental payments shall be made proportionately among the MEMBERS of the POOL for the year as to which the assessment relates, in direct relation to each MEMBER'S FUNDING RATE for that year.

MEMBERS shall be responsible for supplemental payments during the life of the POOL and any later period when claims or expenses need to be paid which are attributable to any year of membership during which the event causing the expenses or claims requiring the supplemental payments occurred.

Section 7.03. Member Reversion.

(a) In the event that the losses of the POOL in any year exceed amounts paid to the POOL under Sections 7.01 and 7.02, together with all stop-loss, reinsurance and other coverage then in effect, then the payment of any uncovered losses shall be covered by the POOL and such losses shall be allocated to the MEMBERS as part of the POOL CONTRIBUTION FACTOR described in Section 6.03.

(b) In the event that the administrative costs and expenses of operating the POOL exceed the FUNDS available therefor, including but not limited to amounts available to the POOL by assessment under Section 7.02, then the BOARD may assess the MEMBERS for such deficiency. All such assessments shall be made proportionately among the MEMBERS for the year, as to which the assessment relates, in direct relation to each MEMBER'S FUNDING RATE for that year.

Section 7.04. Payment of Assessments. Each MEMBER shall promptly pay all assessments hereunder, and in each case no later than the forty-fifth (45th) day after the BOARD has given the MEMBER written notice of the assessment, with no grace period whatsoever. Thereafter, payment is subject to a 5% penalty with the interest of 1½% per month or portion thereof.

**ARTICLE EIGHT
MEMBER'S WITHDRAWAL OR TERMINATION**

Section 8.01. Withdrawal.

(a) A VESTED MEMBER, or a NON-VESTED MEMBER that has completed its membership requirement as described in Section 3.06, may withdraw from the POOL by giving prior written notice to the POOL no later than October 1 of the year in which membership is to cease. The MEMBER'S withdrawal shall be effective as of 11:59 p.m., local Columbus, Ohio time, on December 31 in the year in which such notice is given; provided, however, that the MEMBER shall remain liable thereafter for any assessments which the BOARD may make under Sections 7.02 and/or 7.03. At and after the effective time of withdrawal, the withdrawing MEMBER shall be wholly and solely responsible for providing health care (and other, if any) benefits that previously had been provided by the POOL, including but not limited to any and all IBNR and/or terminal liabilities related to its prior POOL participation, to the extent such expenses exceed the total of the MEMBER's CONTRIBUTIONS for the last three months as an active MEMBER, and the POOL shall have absolutely no liabilities to the MEMBER in that regard.

(b) No withdrawing MEMBER shall have any rights whatsoever to participate in a distribution of the SURPLUS FUNDS of the POOL, whether then or any time thereafter.

Section 8.02. Termination. Upon a vote of the BOARD taken in accordance with Article Four and upon five days' written notice, a MEMBER'S participation may be terminated if such MEMBER materially breaches or violates any of the terms of this AGREEMENT. Without limiting the generality of the foregoing, the failure of a MEMBER to promptly make payments to the POOL in complete conformity with the provisions of Article Seven shall be deemed to be a material breach and violation of this AGREEMENT which warrants termination. Upon termination, the terminated MEMBER shall (a) remain liable for any and all amounts remaining due and unpaid under Article Seven, (b) have no rights whatsoever to share in any SURPLUS FUNDS then and/or at any time thereafter, and (c) effective as of 11:59 p.m., local Columbus, Ohio time, on the date on which such termination is effective, the terminated MEMBER shall be wholly and solely responsible for providing health care (and other, if any) benefits that previously had been provided by the POOL, including, but not limited to, any and all IBNR and/or terminal liabilities related to its prior POOL participation, to the extent such expenses exceed the total of the MEMBER's CONTRIBUTIONS for the last three months as an active MEMBER, and the POOL shall have absolutely no liabilities to the MEMBER in that regard.

**ARTICLE NINE
TERMINATION OF POOL**

Section 9.01. Termination. This AGREEMENT may be terminated only by the written agreement of no less than two-thirds (2/3) of all MEMBERS. After a vote to terminate the POOL, the BOARD shall wind-up the POOL'S business as quickly as practicable, but in any event shall complete this process no later than 12 months after the

termination date. During such period, the POOL shall continue to pay all claims and expenses until the POOL FUNDS are exhausted.

After payment of all claims and expenses, or upon the termination of the 12-month period, any remaining SURPLUS FUNDS held by the POOL shall be paid to the MEMBERS of the POOL who are MEMBERS as of the termination date. The BOARD shall determine the manner in which such SURPLUS FUNDS shall be distributed, and shall consider (a) the percentage relationship which each MEMBER'S CONTRIBUTIONS to the POOL for the prior three calendar years of the POOL bears to all MEMBERS' CONTRIBUTIONS to the POOL for that same period and (b) the loss experiences of each MEMBER for the prior three calendar years of the POOL. If, after the payment of all claims and expenses, or upon the termination of the 12-month period, the POOL'S funds are not sufficient to pay claims and expenses, the payment of any uncovered losses shall revert to and be the sole obligation of the individual MEMBERS against which the claims or expenses were made, and the BOARD shall assess such MEMBERS for the full amount owed.

The POOL, through the BOARD, may require that MEMBERS provide written documentation satisfactory to the BOARD, in its sole judgment, that such MEMBER has the requisite capacity and authority, and has obtained all required approvals, to vote on any matter contemplated by this Section 9.01.

The POOL shall not be responsible for any claims filed after the 12-month period. MEMBERS shall remain obligated to make payments to the POOL pursuant to Article Seven related to periods prior to the termination date.

ARTICLE TEN INDEMNIFICATION

Section 10.01. Indemnification. Subject to the determination required by Section 10.03 below, the POOL shall indemnify any officer or DIRECTOR of the POOL who was or is a party, or is threatened to be made a party, to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (including, without limitation, any action threatened or instituted by or in the right of the POOL), against expenses (including, without limitation, reasonable attorneys' fees, filing fees, court reporters' fees and transcript costs), judgments, fines and amounts paid in settlement actually and reasonably incurred by the officer or DIRECTOR in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the POOL, and with respect to any criminal action or proceeding, he had no reasonable cause to believe his conduct was unlawful. A person claiming indemnification under this Section 10.01 shall be presumed, in respect of any act or omission giving rise to such claim for indemnification, to have acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the POOL, and with respect to any criminal matter, to have had no reasonable cause to believe his conduct was unlawful, and the termination of any action, suit or proceeding by judgment, order, settlement or

conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, rebut such presumption.

Section 10.02. Court-Approved Indemnification. Anything contained in this AGREEMENT or elsewhere to the contrary notwithstanding:

(a) the POOL shall not indemnify any officer or DIRECTOR of the POOL who was a party to any completed action or suit instituted by or in the right of the POOL to procure a judgment in its favor by reason of the fact that he is or was a DIRECTOR, officer, employee or agent of the POOL, in respect of any claim, issue or matter asserted in such action or suit as to which he shall have been adjudged to be liable for acting with reckless disregard for the best interests of the POOL or misconduct (other than negligence) in the performance of his duty to the POOL unless and only to the extent that the Court of Common Pleas of Franklin County, Ohio or the court in which such action or suit was brought shall determine upon application that, despite such adjudication of liability, and in view of all the circumstances of the case, he is fairly and reasonably entitled to such indemnity as such Court of Common Pleas or such other court shall deem proper; and

(b) the POOL shall promptly make any such unpaid indemnification as is determined by a court to be proper as contemplated by this Section 10.02.

Section 10.03. Determination Required. Any indemnification provided for under Section 10.01 and not precluded under Section 10.02 shall be made by the POOL only upon a determination that such indemnification of the officer or DIRECTOR is proper in the circumstances because he has met the requirements set forth in Section 10.01. Such determination may be made only (a) by a majority vote of a quorum consisting of DIRECTORS of the BOARD who were not and are not parties to, or treated with, any such action, suit or proceeding, or (b) if such a quorum is not obtainable or if a majority of a quorum of disinterested DIRECTORS so directs, in a written opinion by independent legal counsel other than an attorney, or a firm having associated with it an attorney, who has been retained by or who has performed services for the POOL or any person to be indemnified, within the past five years, or (c) by the court in which such action, suit or proceeding was brought, if any.

Section 10.04. Advances for Expenses. Expenses (including, without limitation, reasonable attorneys' fees, filing fees, court reporters' fees and transcript costs) incurred in defending any action, suit or proceeding referred to in Section 10.01 shall be paid by the POOL in advance of the final disposition of such action, suit or proceeding to or on behalf of the officer or DIRECTOR promptly as such expenses are incurred by him, but only if such officer or DIRECTOR shall first agree, in writing, to repay all amounts so paid in respect of any claim, issue or other matter asserted in such action, suit or proceeding in defense of which he shall not have been successful on the merits or otherwise:

(a) if it shall ultimately be determined as provided in Section 10.03 that he is not entitled to be indemnified by the POOL as provided under Section 10.01; or

(b) if, in respect of any claim, issue or other matter asserted by or in the right of the POOL in such action or suit, he shall have been adjudged to be liable for acting with reckless disregard for the best interests of the POOL or misconduct (other than negligence) in the performance of his duty to the POOL, unless and only to the extent that the Court of Common Pleas of Franklin County, Ohio or the court in which such action or suit was brought shall determine upon application that, despite such adjudication of liability, and in view of all the circumstances, he/she is fairly and reasonably entitled to all or part of such indemnification.

Section 10.05. Article Ten Not Exclusive. The indemnification provided by this Article Ten shall not be exclusive of, and shall be in addition to, any other rights to which any person seeking indemnification may be entitled, and shall continue as to a person who has ceased to be an officer or DIRECTOR of the POOL and shall inure to the benefit of the heirs, executors, executors, and administrators of such a person.

ARTICLE ELEVEN MISCELLANEOUS

Section 11.01. Ohio Law Governs. This AGREEMENT shall be governed by and construed in accordance with the laws of the State of Ohio.

Section 11.02. Enabling Action by Members. If any action requiring the vote, consent or approval of any or all MEMBERS of the POOL, is required in order to make permissible or lawful any actions contemplated by this AGREEMENT, each DIRECTOR will vote for such action on behalf of its MEMBER.

Section 11.03. Counterparts. This AGREEMENT and any amendment hereto may be executed in one or more counterparts, each of which shall be deemed to be an original, but all counterparts taken together shall constitute one and the same AGREEMENT.

Section 11.04. Severability. The invalidity or unenforceability of any provision of this AGREEMENT in any particular respect shall not affect the validity and enforceability of any other provision of this AGREEMENT or of the same provision in any other respect.

Section 11.05. Captions. All captions used in this AGREEMENT are for convenience or reference only, do not form a substantive part of this AGREEMENT and shall not restrict or enlarge any substantive provision of this AGREEMENT.

Section 11.06. Notices. All notices and other communications required or permitted under this AGREEMENT shall be in writing and shall be mailed by regular U.S. mail, postage prepaid, or otherwise delivered by hand or by messenger, addressed (a) if to a MEMBER, to the DIRECTOR representing that MEMBER at such DIRECTOR'S address set forth on the last page of this AGREEMENT or at such other address as the MEMBER or DIRECTOR shall have furnished to the POOL in writing or (b) if to the POOL, at the POOL address set forth on the last page of this AGREEMENT

and addressed to the attention of the Secretary of the POOL or at such other address as the POOL shall have furnished to the MEMBERS in writing. Each such notice or other communication shall for all purposes of this AGREEMENT be treated as effective or having been given (a) when delivered, if delivered personally or (b) if sent by mail, when deposited in a regularly maintained receptacle for the deposit of the United States mail, addressed and mailed in compliance with this Section 11.06.

Notwithstanding the foregoing, the parties may elect to use alternative media for the purpose of providing such notices and communications, including, but not limited to, facsimile, computer or other such electronic means as are available, provided that any method used shall include a confirmation statement or receipt providing evidence that such transmission was received by the intended recipient.

Section 11.07. Entire Agreement. This AGREEMENT constitutes the entire agreement between the parties hereto in respect of the subject matter of this AGREEMENT, and this AGREEMENT supersedes all prior and contemporaneous agreements between the parties hereto in respect of the subject matter of this AGREEMENT.

Section 11.08. Pronouns; Gender. All pronouns and any variations thereof used in this AGREEMENT to refer to any person or persons shall be deemed to refer to the masculine, feminine, neuter, singular or plural, as the identity of the person or persons may require.

Section 11.09. Amendment. This AGREEMENT may be amended only by the written agreement of no less than two-thirds (2/3) of all MEMBERS. The POOL, through the BOARD, may require that MEMBERS provide written documentation satisfactory to the BOARD, in its sole judgment, that such MEMBER has the requisite capacity and authority, and has obtained all required approvals to vote on any matter contemplated by this Section 11.09.

Section 11.10. Other Instruments. The MEMBERS agree to execute such further instruments and to take such further action as may reasonably be necessary to carry out the intent of this AGREEMENT.

IN WITNESS WHEREOF, this AGREEMENT was executed on the _____ day of _____, 2018 by the undersigned duly authorized officer of the MEMBER indicated below:

ACCEPTED FOR THE CENTRAL
OHIO HEALTH CARE
CONSORTIUM:

By: _____
Title: _____

Address: _____

MEMBER:

By: _____
Title: _____

Address: _____

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