ORDINANCE NO. 2018-114

AN ORDINANCE AMENDING CHAPTER 937 ENTITLED "USE OF PUBLIC WAYS BY SERVICE PROVIDERS", SPECIFICALLY SECTIONS 937.01, 937.02, 937.03, 937.04, 937.05, 937.06, 937.07, 937.08, 937.09 AND 937.10, AND DECLARING AN EMERGENCY.

WHEREAS, the City of Kent wishes to amend Chapter 937 (Use of Public Ways by Service Providers), specifically Sections 937.01, 937.02, 937.03, 937.04, 937.05, 937.06, 937.07, 937.08, 937.09 and 937.10; and

WHEREAS, these amendments are necessitated by Council's passage of Ordinance #2018-84 enacting Chapter 939 titled "Use of Public Ways for Small Cell Wireless Facilities and Wireless Support Structures"; and

WHEREAS, the City has provided the PUCO with the required forty-five (45) day notice prior to the adoption of these amendments.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Kent, Portage County, Ohio, at least three-fourths (3/4) of all members elected thereto:

SECTION 1. The Council hereby accepts the amendments to Chapter 937 (Use of Public Ways by Service Providers) specifically Sections 937.01, 937.02, 937.03, 937.04, 937.05, 937.06, 937.07, 937.08, 937.09 and 937.10 of the Kent Codified Ordinances as outlined in Exhibit "A", attached hereto and made a part hereof.

SECTION 2. That it is 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 this Council and that all deliberations of this Council, and of any of its committees that resulted in such formal action, were in meetings open to the public in compliance with all legal requirements of Section 121.22 of the Ohio Revised Code.

SECTION 3. That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety, and welfare of the residents of this City, for which reason and other reasons manifest to this Council this Ordinance is hereby declared to be an emergency measure and shall take effect and be in force immediately after passage.

PASSED: October 17, 2018

Date

Jerry T. Fiala
Mayor and President of Council

EFFECTIVE: October 17, 2018

Date

ATTEST:

Tara Grimm, MMC
Clerk of Council


(SEAL)

TARA GRIMM, MMC
CLERK OF COUNCIL
937.01 SCOPE OF CHAPTER; DEFINITIONS.

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

1. Manage Occupancy or Use of the Public Right-of-Way.
2. Encourage the provision of advanced, competitive utility and telecommunications services on the widest possible basis to the businesses, institutions and residents of the City.
3. Manage reasonable access to the Public Right-of-Way of the City for utility and telecommunications service purpose on a competitively neutral basis.
4. Conserve the limited physical capacity of the Public Right-of-Way held in trust by the City for the benefit of the public.
5. Assure that the City receives cost recovery for the Occupancy and Use of the Public Right-of-Way in accordance with law.
6. Assure that all Service Providers with Facilities in the Public Right-of-Way comply with the ordinances, rules and regulations of the City.
7. Assure that the City complies with the small cell wireless facility provisions of Chapter 4939, as amended by House Bill 478.
8. Assure that the City fairly and responsibly protects the public health, safety and welfare.
9. Enable the City to discharge its public trust consistent with rapidly evolving federal and State regulatory policies, industry competition and technological development.

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

1. Accessory Equipment means any equipment used in conjunction with a wireless facility or wireless support structure. This includes utility or transmission equipment, power storage, generation or control equipment, cables, wiring, and equipment cabinets.
2. Affiliate means a Person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with another Person.
3. Antenna means communications equipment that transmits or receives radiofrequency signals in the provision of wireless service, including associated accessory equipment.
4. Cable Operator means a Person providing or offering to provide Cable Service within the City.
7. Capital Improvement means an addition made to enhance the value or extend the useful life of an existing System or Facilities, including Construction, Reconstruction, Installation, Rehabilitation, Renovation, Improvement, Enlargement and Extension of Facilities, but not including ordinary or Routine Maintenance and repair.
8. City means the City of Kent, Ohio.
EXHIBIT "A"

City Manager means the City Manager, or his or her designee.

City Property means and includes all real property owned by the City, other than Public Streets and Public Easements as those terms are defined herein, and all property held in a proprietary capacity by the City, which are not subject to Public Right-of-Way consent and Permit requirements of this Chapter.

Construct, Constructing, Construction, etc. means installing, repairing, maintaining, operating, replacing or removing any Public or Private Facility, regardless of the methods employed.

Construction Permit or Permit means a permit issued pursuant to this Chapter and such other permits required by other sections of the Kent Codified Ordinances as apply.

Distributed Antenna System means a network or facility to which all of the following apply:

(i) It distributes radio frequency signals to provide wireless service;

(ii) It meets the height and size characteristics of a small cell facility;

(iii) It consists of all of the following:

(1) Remote antenna nodes deployed throughout a desired coverage area;

(2) A high capacity signal transport medium connected to a central hub site;

(3) Equipment located at the hub site to process or control the radio frequency signals through the antennas.

Emergency means an unforeseen occurrence or condition calling for immediate action including but not limited to emergency temporary repairs and subsequent follow-up permanent repairs relating to the emergency condition.

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

Excess Capacity means the volume or capacity in any existing or future duct, conduit, manhole, or other Facility in the Public Right-of-Way that is or will be available for use for additional Facilities, which are compatible with the existing use.

Facility, Facilities or System means, for the purpose of this Chapter, the plant, equipment and property, including but not limited to, cables, fibers, wires, pipes, conduits, ducts, pedestals, antennae, electronics, poles, pipes, mains, plant, equipment and other appurtenances located under, on or above the surface of the ground in the Public Right-of-Way of the City and used or to be used to transmit, receive, distribute, provide or offer Services but also including Private Facilities. Facility, Facilities, or System does not have the same meaning as “Facilities” as defined in Section 939.01(b)(7) of the Codified Ordinances.

Lane Obstruction means the blocking or diverting of vehicular and/or pedestrian traffic from a street or sidewalk for the purpose of Constructing, Excavating, installing, repairing, maintaining, operating, replacing or removing any Facility, including (A) the lifting or removing of manhole or handhole covers, and (B) the opening or accessing of at-grade or pole-mounted cabinets, pedestals, transformers, power supplies, amplifiers, splice enclosures, traps or other Facilities.

Micro Wireless Facility includes both a distributed antenna system and a small cell facility and related wireless facilities.

Micro Wireless Facility Operator means a public utility or cable operator that...
operates a micro wireless facility.

(216) New Service Orders means the physical connection from the Public Service Provider's existing Facilities on private property for the purpose of providing a new Service to a customer in the City, which is not a Capital Improvement.

(217) Occupancy or Use means, with respect to the Public Right-of-Way for any purpose, including, but not limited to, Constructing, repairing, positioning, maintenance or operating lines, poles, pipes, conduits, ducts, equipment or other structures, appurtenances or Facilities necessary for the delivery of public utility-like Services, including Service provided by a Cable Operator, or other services over Private Facilities in the Public Right-of-Way.

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

(219) Overhead Facilities means utility poles and wires, cables and other such equipment running between and on such poles, including the underground supports and foundation for such Facilities.

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

(221) Private Facility means the plant, equipment and property, including but not limited to, cables, fiber optics, wires, pipes, conduits, ducts, pedestals, antennae, electronics and other appurtenances used or to be used to transmit, receive, distribute or provide telecommunications or other services between or among private buildings or facilities where there is no offer of service to the public.

(222) Private Service Provider means any Person who, pursuant to the consent to Occupy or Use the Public Right-of-Way pursuant to Section 937.02 of this Chapter, directly or indirectly owns, controls, operates or manages Private Facilities within the City's Public Right-of-Way used or to be used for the purpose of transmitting, receiving, distributing or providing telecommunications or other services between or among private buildings or facilities where there is no offer of Service to the public; for purposes of this Chapter, Private Service Provider does not include Small Cell Provider.

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

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

(225) Public Service Provider means any Person that, pursuant to the consent to Occupy or Use the Public Right-of-Way pursuant to Section 937.02 of this Chapter, directly or indirectly owns, controls, operates or manages Facilities within the City's Public Right-of-Way, used or to be used for the purpose of offering Service to the public within the City or outside of the City's boundaries; for purposes of this Chapter, Public Service Provider does not include Small Cell Provider.

(226) Public Street means the paved and unpaved portion of any street, road, boulevard, drives, highway, freeway, parkway, lane court, alley or other Public Right-of-Way in...
which the City has an interest in law or equity and which has been acquired, established, dedicated or devoted to street purposes.

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

(33) Reconstruct, Reconstruction, etc. means physical change to twenty percent (20%) to one hundred percent (100%) of an existing Facility or System involving Construction in Public Streets, Utility Easements, or Public Right-of-Way.

(34) Routine Maintenance means repair, upkeep, replacement or restoration of existing Facilities located in the Public Right-of-Way that is not an Emergency and does not include Excavation of the Public Right-of-Way.

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

(36) Service Provider means any Public Service Provider and/or Private Service Provider, but does not include Small Cell Provider.

(37) Small Cell Provider has the same meaning as “Facilities Operator” as defined in Section 939.01(b)(8) of the Codified Ordinances.

(38) Small Cell Facilities or Small Cell Facility has the same meaning as “Facilities” as defined in Section 939.01(b)(7) of the Codified Ordinances.

(39) Small Cell Facility means a wireless facility where the 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 the exposed elements could fit within an enclosure of not more than six cubic feet in volume. 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 the other services. If the wireless facility were placed on a wireless support structure, the increased height would be not more than 10 feet or the overall resulting height would be not more than 50 feet.

(40) State means the State of Ohio.

(41) Surplus Space means that portion of the Usable Space on a utility pole or underground conduit which has the necessary clearance from other Public or Private Service Providers using the pole or conduit, as required by the orders and regulations of PUCO and other applicable State and local orders and regulations, to allow its use by an additional Public or Private Service Provider for a pole or underground attachment.

(42) Trenchless Technology means the use of directional boring, horizontal drilling and micro-tunneling and other techniques in the Construction of underground portions of Facilities that result in the least amount of disruption and damage to the Public Right-of-Way as possible.

(43) Underground Facilities means Facilities located under the surface of the ground, excluding the underground foundations or supports for Overhead Facilities.

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

(45) Utility Pole means a structure that is designed for, or used for the purpose of carrying lines, cables or wires for electric or telecommunications service.
(44) Wireless Facility means an antenna, accessory equipment, or other wireless device or equipment used to provide wireless service.

(45) Wireless Service means any services using licensed or unlicensed wireless spectrum, whether at a fixed location or mobile, provided using wireless facilities.

(46) Wireless Support Structure means a pole, such as a monopole, either guyed or self-supporting, light pole, traffic signal, sign pole, or utility pole capable of supporting wireless facilities. As per the Revised Code wireless support structure excludes utility pole or other facility owned or operated by municipal electric utility. (Ord. 2017 52. Passed 6-21-17.)
EXHIBIT "A"

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

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

(b) Initial Consent Presumed. 

(1) A Person with Facilities in the Public Right-of-Way on the effective date of this Chapter, and who either

A. Is subject to jurisdiction by the PUCO;
B. Has a valid franchise agreement with the City to provide Cable Services or other Services in the City;
C. Is any other Person who lawfully Occupies the Public Right-of-Way on the effective date of this Chapter shall be presumed to have initial consent of the City to Occupy or use the Public Right-of-Way.

(2) Initial presumed consent for Occupancy or Use of the Public Right-of-Way is limited to the location of the existing Service or Private Service Provider's Facilities.

(3) A public utility subject to the jurisdiction of the PUCO and in compliance with state and federal laws and regulations shall be exempt from a requirement to obtain consent for activities related to those authorized under its tariff issued by the State of Ohio and regulated by PUCO.

(4) A Public Utility operating under its tariff under the State of Ohio and within the services authorized by that tariff shall be exempt from this Section only for that public utility's tariff related activities.

(5) A Small Cell Provider who has obtained a Small Cell Use Permit pursuant to Chapter 939 of the Codified Ordinances shall be exempt from a requirement to obtain consent for the Small Cell Facilities for which the Small Cell Use Permit was granted.

(c) Application for Consent to Occupy or Use Public Right-of-Way.

(1) The following Persons shall apply to the City for consent to Occupy or Use the Public Right-of-Way on a form provided by the City Manager; any Person who:

A. Does not currently have existing Facilities in the City's Public Right-of-Way and desires to Construct new Facilities or Private Facilities in the Public Right-of-Way;
B. Has existing Facilities or Private Facilities in the Public Right-of-Way on the effective date of this Chapter and does not have presumed initial consent under Section 937.02(b)(1) above;
C. Has initial presumed consent or City consent to Occupy or Use the Public Right-of-Way for an existing System, Facilities or Private Facilities, but is planning to expand services beyond those provided for in the tariff of a Public Utility issued by the State of Ohio.
D. Is building a new subdivision or project which will offer Public Right-of-Way to the City at some time in the future.

(2) The application shall include the following information with respect to the applicant's planned or existing Facilities in the Public Right-of-Way whether they are subsurface, surface, or aerial facilities as well as plans for any planned Capital Improvements for the following twelve (12) months:

A. The identity, legal status and federal tax identification number of the applicant, including all Affiliates of the applicant that will Use or Occupy the Public Right-of-Way or are in any way responsible for Services provided through the Facilities in the Public Right-of-Way.
B. The name, address and telephone number of the local officer, agent or employee responsible for the accuracy of the application and available at all reasonable times to be notified in case of emergency.

C. A description of the existing or proposed Facilities in the City's Right-of-Way, all in sufficient detail to identify: (i) the location and route of the applicant's or Service Provider's facilities or proposed facilities; (ii) the location of all existing, overhead or underground facilities in the Public Right-of-Way and the route or proposed route of the applicant's or Service Provider's Facilities or Proposed Facilities that is sufficient to show the impact of the applicant's Facilities on other existing Facilities; (iii) the location of all known overhead and underground Utility Easements.

D. A description of the type of transmission medium used, or to be used, by the applicant to provide such Services.

E. Engineering plans, specifications and a network map of the applicant's Facilities located, or to be located, in the City's Public Right-of-Way, all in sufficient detail to identify (where needed for security purposes, these items shall be kept by provider subject to inspection by qualified personnel):
   i. The location, route, and depth or height of the applicant's Facilities or proposed Facilities on a "to scale" drawing established using State Plane Coordinates and including all information requested in this section.
   ii. The location of all known overhead and underground public utility, utility, telecommunications, cable, water, sanitary sewer, storm water drainage and other existing Facilities in the Public Right-of-Way along the route or proposed route of the applicant's Facilities or proposed Facilities that is sufficient to show the impact of the applicant's Facilities on other existing Facilities.
   iii. The location of all known overhead and underground Utility Easements.

F. A preliminary Construction or installation schedule and completion date for all Capital Improvements planned for the twelve (12) month period following the date of application.

G. If the applicant is providing Services in the City:
   i. A description of the applicant's access and line extension policies.
   ii. The area or areas of the City in which the applicant is currently serving and a schedule for build-out of the entire area addressed by the Permit, if applicable. This section does not apply to Micro-wireless Facilities.

H. Evidence that the applicant has complied, or will comply, with indemnification, Insurance, Performance Bond and Construction Bond requirements of this Chapter.

I. Information sufficient to determine that the applicant has received any certificate of authority required by the PUCO to provide Services or Facilities in the City.

(3) The City shall grant or deny, in writing, a Person's application for consent to Occupy or Use the Public Right-of-Way within sixty (60) days of the date on which the Person files the complete application with the City.

   A. The City may withhold, deny or delay its consent to a Person's application to Occupy or Use the Public Right-of-Way based on the Person's failure to possess the financial, technical and managerial resources necessary to protect the public health, safety and welfare.

   B. If the City denies a Person's application to Occupy or Use the Public Right-of-Way, the City shall provide its reasons for denying the application, and shall provide any information that the Person may reasonably request necessary for the Person to obtain the City's consent to Occupy or Use the Public Right-of-Way.
EXHIBIT "A"

(4) The City's grant of consent for a Person to Occupy or Use the Public Right-of-Way shall be in the form of a Right-of-Way Occupancy Certificate which shall set forth the specific terms of the City's consent for such Person to Occupy or Use the Public Right-of-Way.

(5) Each Person submitting an application for Consent to Occupy or Use the Public Right-of-Way shall pay a fee equal to the fee necessary to obtain a new building permit in the City of Kent, OH.

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

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

(1) Comprehensive general liability insurance with limits not less than
   A. Five million dollars ($5,000,000) for bodily injury or death to each Person;
   B. Five million dollars ($5,000,000) for property damages resulting from any one accident; and
   C. Five million dollars ($5,000,000) for all other types of liability.

(2) Automobile liability for owned, non-owned and hired vehicles with a limit of three million dollars ($3,000,000) for each Person and three million dollars ($3,000,000) for each accident.

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

(4) Comprehensive form premises-operations, explosions and collapse hazard, underground hazard and products completed hazard with limits of not less than three million dollars ($3,000,000).

(5) The liability insurance policies required by this Section shall be maintained by the Service Provider throughout the period of time during which the Service Provider is Occupying or Using the Public Right-of-Way, or is engaged in the removal of its Facilities. Each such insurance policy shall contain the following endorsement:

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

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

(7) Upon written application to, and written approval by the City Manager, a Service Provider may be self-insured to provide all of the same coverages as listed in this Section; except that all coverages for Worker's Compensation shall be in...
compliance with State law. No approval for self-insurance shall be given until the City Manager has made a complete review of the Service Provider's or Small Cell Provider's financial ability to provide such self-insurance. As part of the review process, the City Manager may require, and the self-insurance applicant shall provide, any and all financial documents necessary to make a valid determination of the applicant's ability to meet the needs of this Chapter.

(8) A Public Utility subject to jurisdiction of the PUCO and operating under its tariff that has established a self-insurance fund that complies with the laws and regulations of the State of Ohio shall satisfy this requirement by simply providing information to the City Manager relating to such self-insurance fund and the appropriate contact point for matters relating to that fund.

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

(g) Performance Bond or Security Fund. As a condition of consent to Occupy or Use the Public Right-of-Way, and to ensure the full and complete compliance with, and performance under, this Chapter, including any costs, expenses, damages or loss the City pays or incurs because of any failure attributable to the Service Provider or Small Cell Provider to comply with the codes, ordinances, rules, regulations or permits of the City, each Service Provider or Small Cell Provider shall, in the amount of Fifty thousand dollars ($50,000) or such lesser amount as the City Manager may determine to be necessary (i) establish a permanent security fund with the City Manager depositing the required amount in cash, an unconditional letter of credit, or other instrument acceptable to the City, or (ii) furnish and file with the City a Performance Bond running to the City in the required amount from a company licensed to do business in the State of Ohio; which Performance Bond or security fund shall be maintained at the sole expense of the Service Provider or Small Cell Provider so long as any of the Service Provider's Facilities or Small Cell Provider's Small Cell Facilities are located within the Public Right-of-Way, Easements or other City owned properties, of the City. This section does not apply to micro-wireless facilities.

(1) Before claims are made against the Performance Bond or any sums are withdrawn from the security fund, the City shall give written notice to the Service Provider or Small Cell Provider:

A. Describing the act, default or failure to be remedied, or the damages, cost or expenses which the City has incurred by reason of the Service Provider's or Small Cell Provider's act or default;

B. Providing a reasonable opportunity for the Service Provider or Small Cell Provider to first remedy the existing or ongoing default or failure, if applicable;

C. Providing a reasonable opportunity for the Service Provider or Small Cell Provider to pay any monies due the City before the City makes a claim against the Performance Bond or withdraws the amount from the security fund, if applicable;
D. That the Service Provider or Small Cell Provider will be given an opportunity to review the act, default or failure described in the notice from the City Manager.

(2) Service Providers or Small Cell Providers shall maintain the full value of the Performance Bond regardless of claims against the Performance Bond made by, or paid to, the City; or shall replenish the security fund within fourteen (14) days after written notice from the City that there is a deficiency in the amount of the fund, whichever is applicable.

(3) A Public Utility operating under a tariff issued by the State of Ohio and regulated by the PUCO and in compliance with PUCO regulations concerning insurance, shall be exempt from any provision regarding a performance bond or security fund for all tariff related activities.

(Ord. 2017-52. Passed 6-21-17.)
937.03 ANNUAL REGISTRATION OF SERVICE PROVIDERS.

(a) Annual Registration Required. All Service Providers and Small Cell Providers with consent or presumed consent to Occupy or Use the Public Right-of-Way as provided in Section 937.02 shall register with the City each calendar year between January 1 and January 31 on a form provided by the City Manager. Service Providers and Small Cell Providers who file initial registration after July, 2006 but before January 1, 2007, need not file an annual registration for calendar year 2007. Public Utilities operating under a tariff issued by the State of Ohio and regulated by the PUCO shall not be required to file a registration for tariff related activities other than filing a copy of their state tariff and their summary one year capital plan as set forth in the Ordinance.

(b) Purpose of Registration. The purpose of registration under this Section 937.03 is to:

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

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

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

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

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

1. Any material changes to the information the Service Provider or Small Cell Provider provided the City in the application for consent to Occupy or Use the Public Right-of-Way, including, but not limited to:
   A. The identity, legal status, and federal tax identification number of the Service Provider or Small Cell Provider, including any Affiliates.
   B. The name, address and telephone number of the local officer, agent or employee responsible for the accuracy of the Service Provider's or Small Cell Provider's registration statement and available at all reasonable times to be notified in case of emergency.

2. Evidence that the Service Provider or Small Cell Provider is in compliance with the applicable Insurance, Indemnity and Performance Bond requirements pursuant to Sections 937.02(e), (f) and (g) of this Chapter.

3. A description of, and a preliminary Construction or installation schedule and completion date for, any Capital Improvements the Service Provider or Small Cell Provider plans in the City's Public Right-of-Way for the twelve (12) months following the date of registration, including:
   A. As soon as available, a current "to scale" map or drawing that clearly locates all the proposed Capital Improvements, including horizontal and vertical information; Facility type, size, depth, and capacity; and other such relevant information. If a "to scale" map is not available, the registrant shall supply as much of the required information as is currently available, but in no event shall the description of the proposed Capital Improvement be less than by City quadrant and/or street name and Facility type. The Service Provider or Small Cell Provider shall update all required information as soon as it becomes available. Should the Service Provider or Small Cell Provider fail to comply with this section in a timely manner, they shall not be permitted to occupy the City's Right-of-Way.
EXHIBIT "A"

B. A general description of the Service that the Service Provider intends to offer or provide over the proposed Facilities within the City. Where a Service will be provided by a non-affiliated provider the Service Provider shall identify that provider.

C. Information sufficient to determine that the Service Provider or Small Cell Provider has applied for and received any certificate of authority required by PUCO to provide Services or Facilities within the City.

D. Information sufficient to determine that the Service Provider or Small Cell Provider has applied for and received any construction permit, operating license, certification, or other approvals required by the Federal Communications Commission to provide telecommunications or Cable Services or Facilities within the City.

(4) Such other information as the City Manager may reasonably require.

(d) Facilities Maps. The City shall have the right to access and review the Service Providers' and Small Cell Providers' maps and/or as-built plan showing the location of their facilities in the City's Right-of-Way upon ten (10) days' notice to the Service Providers or Small Cell Providers. Public Utilities operating under a tariff issued by the State of Ohio and regulated by the PUCO and for tariff related activities will only be required to assist the City in requesting design tickets and other information in accordance with OUPS and PUCO regulations. In emergency situations, access should be granted as soon as possible.

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

(f) Registration Fee. Each Service Provider, except as provided in Section 937.09, shall pay an annual registration fee as determined by the City Manager to reimburse the City for its administrative costs related to maintaining annual registration and as provider in Section 937.08.

(Ord. 2017-52. Passed 6-21-17.)

937.04 GENERAL PUBLIC RIGHT-OF-WAY USE REGULATIONS.

(a) Public Right-Of-Way Route. Consent granted to a Service Provider to Occupy or Use the Public Right-of-Way under Section 937.02 shall be limited to a grant to Occupy or Use the specific Public Right-of-Way and defined portions thereof.

(b) Nonexclusive Consent to Occupy the Public Right-of-Way. No consent granted under Section 937.02 shall confer any exclusive right, privilege, license or franchise to Occupy or Use the Public Right-of-Way of the City for delivery of Services or any other purposes.

(c) Rights Permitted. No consent granted under Section 937.02 shall convey any right, title or interest in the Public Right-of-Way, but shall be deemed a consent only to Occupy or Use the Public Right-of-Way for the limited purposes granted by the consent. Further, no consent shall be construed as any warranty of title. This Section shall not affect the right to occupy the Public Right-of-Way granted to Public Utilities in connection with the tariff issued by the State of Ohio and regulated by the PUCO, said consent to occupy the Public Right-of-Way having been granted to such Public Utility by the State of Ohio, subject to only local regulation of matters of local concern.

(d) Nondiscrimination. A Public Service Provider providing Service to the public in the City shall make its Services available to any customer within the designated service area who shall request such Service, without discrimination as to the terms, conditions, rates or charges for the Public Service Provider's Services; provided, however, that nothing in this Section 937.05
shall prohibit a Public Service Provider from making any reasonable classifications among differently situated customers.

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

(f) Safety Procedures. A Service Provider or other Person acting on its behalf shall use suitable barricades, flags, flagmen, lights, flares and other measures as necessary and in accordance with applicable State and local requirements. A Maintenance of Traffic Plan needs to be submitted, and approved by the City, prior to commencing work.

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

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

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

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

2. If weather or other conditions do not permit the complete restoration required by this Section, the Service Provider shall temporarily restore the affected ways or property. Such temporary restoration shall be at the Service Provider's sole expense and the Service Provider shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration.

(j) Duty to Provide Information.

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

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

(k) Leased Capacity. A Service Provider shall have the right, without prior City approval, to offer or provide capacity or bandwidth to its customers, provided:

1. The Service Provider shall furnish the City with a copy of any such lease or agreement.

2. The customer or lessee has complied, to the extent applicable, with the requirements of this Chapter.

3. The service does not interfere with the City of Kent's public safety communications equipment and transmissions, and complies with all Federal Communication Commission regulations.

(l) Assignments or Transfers of Consent. Consent to Occupy or Use the Public Right-of-Way may be, except as to Public Utilities operating under a tariff issued by the State of
EXHIBIT "A"

Ohio and regulated by the PUCO, directly or indirectly, transferred, assigned or disposed of by sale, lease, merger, consolidation or other act of the Service Provider, by operation of law or otherwise, without consent of the City, so long as:

1. The City is notified or the proposed transfer on or before the date of transfer; and
2. The transferee shall fully comply with this Chapter within sixty (60) days of the transfer, including, but not limited to:
   A. All information required by the application for consent to Occupy or Use the Public Right-of-Way pursuant to Section 937.02, and/or Registration required by Section 937.03 of this Chapter; and
   B. Any other information reasonably required by the City Manager.

(m) Transactions Affecting Control of Consent. Except as to any Public Utilities operating under a tariff by the State of Ohio and regulated by the PUCO, any transactions that singularly or collectively result in a change of twenty-five percent (25%) or more of the ownership or ultimate working control of a Service Provider, of the ownership or working control of the Service Provider's Facility, or of control of the capacity or bandwidth of the Service Provider's System, Facilities or substantial parts thereof, shall be considered an assignment or transfer pursuant to Section 937.04(1) hereof. Transactions between Affiliated entities are not exempt from Section 937.04(1).

(n) Revocation of Consent. Consent granted by the City to Occupy or Use Public Right-of-Way of the City may be revoked, except as to Public Utilities operating under a tariff by the State of Ohio and regulated by the PUCO, for any one of the following reasons:

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

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

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

(p) If a micro-wireless facility is placed on a wireless support structure as defined by the Ohio Revised Code the increased height would be not more than ten (10) feet or the overall resulting height would be not more than fifty (50) feet.
(q) In addition, general regulations that protect the health, safety and welfare of the residents and visitors of Kent, apply to work performed in the City's Right-of-Way, and to any structures and poles located within the City's Right-of-Way.

(Ord. 2017-52—Passed 6-21-17.)
937.05 LOCATION, RELOCATION AND REMOVAL OF FACILITIES.

(a) Location of Facilities. All Facilities shall be Constructed, Reconstructed, installed and located in accordance with the following terms and conditions:
   
   (1) Whenever possible, according to acceptable engineering standards and consistent with Federal and State law regarding safety and other operations, Facilities shall be installed within an existing compatible underground duct or conduit whenever Excess Capacity exists within such Facility.
   
   (2) A Service Provider and a Public Utility operating under a tariff issued by the State of Ohio and regulated by the PUCO with permission to install Overhead Facilities shall install their Facilities on pole attachments to existing utility poles only, and then only if surplus space is available.
   
   (3) Whenever any existing electric, cable, telecommunications or other similar Facilities are located underground in a Public Right-of-Way of the City, a Service Provider with permission to Occupy the same Public Right-of-Way with electric, cable, telecommunications or other similar Facilities, must also locate the Facilities underground.
   
   (4) Except for Overhead Facilities as provided herein, other than a Public Utility operating under a tariff issued by the State of Ohio and regulated by the PUCO, no Facilities shall be located above ground in a Public Right-of-Way without the express written permission of the City Manager.
   
   (5) Except for Overhead Facilities as provider herein, no Facilities shall be located above ground in a Public Right-of-Way, subject to the above items.
   
   (6) The City reserves the right to require a Service Provider to provide Excess Capacity in the Public Right-of-Way at the time of Construction, Reconstruction, installation, location or relocation of Facilities.

   (7) Micro wireless facilities as described in ORC Section 4939.01 may be attached to utility poles and wireless support structures owned by the City of Kent. There shall be an annual fee of $200.00 due the City for each such attachment. Said fees shall be due and payable at the time of attachment to the City structures and in each succeeding January thereafter in which the attachment remains affixed.

(b) Excess Capacity. To reduce Excavation in the Public Right-of-Way, it is the City's goal to encourage Service Providers to share occupancy of underground conduit as well as to construct, whenever possible, excess conduit capacity for occupancy of future Facilities in the Public Right-of-Way when it does not increase the costs to the Service Provider installing the line. Therefore, if a Service Provider is constructing underground conduit in the Public Right-of-Way for its own Facilities, and the City and the Provider reasonably determine such construction is in an area in which other Service Providers would likely construct Facilities in the future, the City may ask the Service Provider to review the feasibility at constructing the conduit in the Public Right-of-Way with Excess Capacity.

(c) City Owned Conduit. If the City owns or leases conduit in the path of a Service Provider's proposed Facilities, and provided it is technologically feasible for the Service Provider's Facilities to Occupy the conduit owned or leased by the City and easier for the Service Provider than installing their own conduit, the Service Provider may Occupy the conduit owned or leased by the City in order to reduce the necessity to Excavate the Public Right-of-Way. The Service Provider shall pay to the City a fee for such occupancy which shall be the cost the Service Provider would have expended to construct its own conduit, as certified by the Service
Provider's engineer and approved by the City Engineer. The City and the Service Provider may agree to amortize the fee through annual payments to the City.

(d) Relocation or Removal of Facilities. Within one hundred twenty (120) days following written notice from the City, a Service Provider shall, at its own expense, temporarily or permanently remove, relocate, change or alter the position of any Facilities in the Public Right-of-Way whenever the City shall have determined that such removal, relocation, change or alteration is reasonably necessary for:

(1) The Construction, Reconstruction, repair, maintenance or installation of any City or other public improvement in or upon a Public Right-of-Way, easement, or other City owned properties.
(2) The operations of the City or other governmental entity in or upon a Public Right-of-Way, easement, or other City owned properties.
(3) With regard to the expense of such removal of a relocation, the standard for reimbursement to the Service Provider for such expense shall be in accordance with State law and regulations of the PUCO.

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

(1) Upon revocation of the Service Provider's consent to Occupy or Use the Public Right-of-Way;
(2) Upon abandonment of a Facility in the Public Right-of-Way of the City;
(3) If the System or Facility was Constructed, Reconstructed, installed, operated, located or maintained without the consent to do so, except as otherwise provided by this Chapter;
(4) If the System or Facility was Constructed, Reconstructed, installed, operated, located or maintained, or any Excavation of a Public Right-of-Way was performed, without prior issuance of a required Construction Permit, except as otherwise provided by this Chapter;
(5) If the System or Facility was Constructed, Reconstructed, installed, operated, located or maintained, or any Excavation of a Public Right-of-Way was performed, at a location not permitted pursuant to the City's consent to Occupy or Use the Public Right-of-Way or Construction Permit;
(6) If the Service Provider fails to comply with the Registration requirements of Section 937.03 of this Chapter;
(7) The removal is approved by the Ohio PUCO.

(Ord. 2017-52. Passed 6-21-17.)
937.06 NOTICE OF WORK, ROUTINE MAINTENANCE AND EMERGENCY WORK.

(a) Notice of Work. Except in case of Emergency, as provided in Section 937.06(c), or for Routine Maintenance as provided in Section 937.06(b) and new service orders as provided in 937.06, no Service Provider, nor any Person acting on the Service Provider's behalf, shall commence any work in the Public Right-of-Way of the City or Other Ways without twenty-four (24) hours advance notice to the City, obtaining a Construction Permit pursuant to Section 937.07, if required, and obtaining consent to Occupy or Use the Public Right-of-Way pursuant to Section 937.02, if required.

(b) Routine Maintenance and New Service Orders.

(1) A Service Provider is required to obtain a permit or notify the City prior to commencing any Routine Maintenance or New Service Orders.

(2) For Routine Maintenance and New Service Orders that require the Service Provider to cause a Lane Obstruction in a Public Street for more than eight (8) hours, the Service Provider shall contact the Community Development Department to coordinate traffic flow in the area of the service being conducted.

(c) Emergency Work. In the event of the need for any unexpected repair or Emergency work, a Service Provider may commence such Emergency response work as required under the circumstances, provided that for Emergency work that requires Excavation of a Public Right-of-Way or Lane Obstruction or closing of a Public Street, the Service Provider shall notify the City as promptly as possible before commencing such Emergency work, or as soon as possible thereafter if advance notice is not practicable. When notice is required, the Service Provider shall notify by e-mail, telephone or fax, the Chief of Police and the Community Development Department during regular business hours, or the Police Department Dispatchers at all other times.

(Ord. 2017-52.—Passed 6-21-17.)
937.07 CONSTRUCTION PERMIT AND STANDARDS.

(a) Construction Permit.

1. No Construction Permit is required for Routine Maintenance and New Service Order that do not include Excavation in a Public Right-of-Way.

2. No Person shall commence or continue with the Construction, Reconstruction, installation, maintenance or repair of Facilities or Excavation in the Public Right-of-Way without obtaining a Construction Permit from the Community Development Director or his/her designee as provided in the Section 937.07, including but not limited to the following circumstances:

   A. The extension of a Service Provider's Facility in the Public Right-of-Way, easement or other City owned properties, in an area of the City not currently serviced by that Service Provider. This does not include New Service Orders unless a Public Right-of-Way will be Excavated;

   B. The relocation or replacement of more than two hundred (200) lineal feet of a Service Provider's existing Facilities in the Public Right-of-Way;

   C. Any Reconstruction or replacement of Facilities requiring more than one (1) working day to complete work in the Public Right-of-Way;

   D. Any Construction, Reconstruction, installation, maintenance, repair or New Service Orders in the Public Right-of-Way requiring more than one (1) working day to complete; or

   E. Any Construction, Reconstruction, installation, maintenance, repair or New Service Order requiring the Excavation of a Public Street.

3. No Construction Permit shall be issued for the Construction, Reconstruction, installation, maintenance or repair of Facilities, or Excavation, in the Public Right-of-Way unless the Service Provider has obtained consent from, and filed a current registration statement with, the City pursuant to Section 937.02 and Section 937.03, respectively, of this Chapter or the Small Cell Provider has obtained consent from, and filed a current registration statement with, the City pursuant to Chapter 939 of the Codified ordinances.

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

1. That the Facilities or Small Cell Facilities will be Constructed, Reconstructed, installed, maintained or repaired, or the Public Right-of-Way Excavated, in accordance with all applicable codes, rules and regulations.

2. If the applicant is proposing to Construct, Reconstruct, install, maintain, repair or locate Facilities or Small Cell Facilities above ground:

   A. Evidence that Surplus Space is available for locating its Facilities or Small Cell Facilities on existing utility poles along the proposed route;

   B. the location and route of all Facilities or Small Cell Facilities to be located or installed on existing utility poles.

3. If the applicant is proposing an underground installation of new Facilities or Small Cell Facilities in existing ducts, pipes or conduits in the Public Right-of-Way, information in sufficient detail to identify:

   A. The Excess Capacity currently available in such ducts or conduits before the installation of the applicant's Facilities or Small Cell Facilities;

   B. The Excess Capacity, if any, that will exist in such ducts or conduits after installation of the applicant's Facilities or Small Cell Facilities.
(4) If the applicant is proposing an underground installation of new Facilities or Small Cell Facilities in new ducts or conduits to be Constructed in the Public Right-of-Way:
   A. The location and depth proposed for the new ducts or conduits; and
   B. The Excess Capacity that will exist in such ducts or conduits after installation of the applicant's Facilities or Small Cell Facilities.

(5) The location and route of all Facilities and Small Cell Facilities to be located under the surface of the ground, including the line and grade proposed for the burial at all points along the route which are in the Public Right-of-Way. Included with the installation shall be magnetic and fluorescent tape placed at a minimum of one foot to a maximum of two (2) feet above the entire Facility or Small Cell Facilities as installed for the purpose of locating the Facility during future Construction activities. The tape shall be marked with the tape of Facility installed as approved by the City.

(6) The location of all existing underground utilities, conduits, ducts, pipes, mains and installations that are in the Public Right-of-Way along the underground route proposed by the applicant.

(7) The location(s), if any, for interconnection with the Facilities or Small Cell Facilities of other Service Providers.

(8) The construction methods to be employed for protection of existing structures, fixtures, Facilities and Small Cell Facilities in or adjacent to the Public Right-of-Way.

(9) The structures, improvements, Facilities and obstructions, is-and Small Cell Facilities, if any, that the applicant proposes to temporarily or permanently remove or relocate.

(10) The impact of Construction, Reconstruction, installation, maintenance or repair of Facilities or Small Cell Facilities on trees in or adjacent to the Public Right-of-Way along the route proposed by the applicant, together with a landscape plan for protecting, trimming, removing, replacing and restoring any trees or areas disturbed during Construction.

(11) Information to establish that the applicant has obtained all other governmental approvals and permits to Construct and operate the Facilities and to offer or provide the Services.

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

(d) Traffic Control Plan. All Permit applications which involve a Lane Obstruction or work on, in, under, across or along any Public Right-of-Way shall be presented to the Chief of Police of the City and coordinated to maintain possible traffic control consistent with State law and the ODOT Uniform Manual of Traffic Control Devices.

(e) Issuance of Permit. Within thirty (30) days after submission of all plans and documents required of the applicant, the City Manager, if satisfied that the applications, plans and documents comply with all requirements of this Chapter, shall issue a Construction Permit authorizing the Construction, Reconstruction, installation, maintenance or repair of the Facilities or Small Cell Facilities, or Excavation in the Public Right-of-Way, subject to such further conditions, restrictions or regulations affecting the time, place and manner of performing the work as the City Manager may deem necessary or appropriate. Such thirty (30) day period shall begin after all submissions are deemed by the City Manager to be in accordance with the requirements of, including information submitted in the form required by, this Chapter.

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

(g) **Construction Schedule.** The Service **Provider or Small Cell Provider** may modify the Construction Schedule at any time provided that notice is given to the City Manager. The Service **Provider or Small Cell Provider** shall further notify the Ohio Utility Protection Services (OUPS) in advance of any excavation or work in the Public Right-of-Way.

(h) **Least Disruptive Technology.** All Facilities shall be Constructed, Reconstructed, installed, maintained or repaired in the manner resulting in the least amount of damage and disruption of the Public Right-of-Way. Unless otherwise authorized by the City Manager for good cause, Service Providers and **Small Cell Providers** Constructing, Reconstructing, installing, maintaining or repairing Underground Facilities or **Underground Small Cell Facilities** shall utilize Trenchless Technology, including, but not limited to, horizontal drilling, directional boring, and micro-tunneling, if technically and/or technologically feasible. In addition, all cable, wire or fiber optic cable Facilities and **Small Cell Facilities** to be installed underground shall be installed in conduit, without using 'direct bury' techniques.

(i) **Micro Wireless Facility** includes small cell facilities and distributed antenna systems in which 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.

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

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

(l) **Survey of Underground Facilities.** If the Construction Permit specifies the location of Facilities by depth, line, grade, proximity to other Facilities or other standard, the Service **Provider or Small Cell Provider** shall cause the location of such Facilities to be verified by a registered Ohio land surveyor. The Service Provider or **Small Cell Provider** shall relocate any Facilities that are not located in compliance with Permit requirements.

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

(n) **Completion of Construction.** The Service **Provider or Small Cell Provider** shall promptly complete all Construction activities so as to minimize disruption of the Public Right-of-Way and other public and private property. All Construction work authorized by a Permit in the Public Right-of-Way, including restoration, must be completed within one hundred twenty (120) days of the date of issuance for Facilities and within one hundred eighty (180) days for **Small Cell Facilities**. Extensions are may be approved by the Director of Community Development.
(en) Record Drawings. Within sixty (60) days after completion of Construction, the Service Provider shall furnish the City with two (2) complete sets of plans, drawn to scale and certified to the City as accurately depicting the location of all Facilities Constructed pursuant to the Permit. At such time, the Service Provider shall submit the Record Drawings in a digital format compatible with the City’s current computer software. Public Utilities operating under a tariff issued by the State of Ohio and regulated by the PUCO shall be exempt from this provision for all matters, as they are required to file with the State of Ohio, and the OUPS System. Such Public Utilities shall provide notice to the City that such records are available from OUPS upon completion of a project.

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

(q) Landscape Restoration.

(1) All trees, landscaping and grounds removed, damaged or disturbed as a result of the Construction, Reconstruction, installation, maintenance, repair or replacement of Facilities or Small Cell Facilities must be replaced or restored as nearly as may be practicable, to the condition existing prior to performance of work.

(2) All restoration work within the Public Right-of-Way shall be done in accordance with landscape plans approved by the City Manager or his/her designee.

(qf) Construction and Completion Bond. Prior to issuance of a Construction Permit, the Service Provider or Small Cell Provider shall provide a Construction Bond written by a corporate surety acceptable to the City equal to at least one hundred ten percent (110%) of the estimated cost of Constructing, Reconstructing, installing or repairing the Service Provider’s Facilities or Small Cell Facilities or Excavation in the Public Right-of-Way of the City or such lesser amount as the City Manager may determine to adequately protect the City’s interest, shall be deposited before Construction is commenced.

(1) The Construction Bond shall remain in force until eighteen (18) months after substantial completion of the work, as determined by the City Manager, including restoration of Public Right-of-Way and other property affected by the Construction.

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

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

(4) Public Utilities operating under a tariff issued by the State of Ohio and regulated by the PUCO shall be exempt from any Construction Bond Requirements and shall be only required
to notify the City of the appropriate contact person for claims regarding Construction Activities in accordance with their self-insurance program as established pursuant to State law and Regulations. All Public way fees and costs recoveries provided for hereunder shall be consistent with Ohio Revised Code Section 4939.05, PUCO Regulations and decisions of the PUCO which require such costs to be prorated over all users of the Right-of-Way including users that are governmental entities, including but not limited to, the City itself.

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

(Ord. 2017-52.--Passed 6-21-17.)
937.08 RECOVERY OF CITY COSTS IN MANAGING THE PUBLIC RIGHT-OF-WAY.

(a) Purpose. It is the purpose of this Section 937.08 to provide for the recovery of all direct and indirect costs and expenses actually incurred by the City and associated with a Public or Private Service Provider's Occupancy or Use of the Public Right-of-Way and related to the enforcement and administration of this Chapter. All fees related to the Occupancy or Use of the Public Right-of-Way shall be assessed in a manner to be determined by the City Manager and shall comply with the requirements of O.R.C. 4939.05.

(b) Regulatory Fees and Compensation Not a Tax. Except as required by the Ohio Revised Code, specifically O.R.C. 4939.05 and decisions of the Public Utilities Commission of Ohio, the regulatory fees and costs provided for in this Chapter are separate from, and additional to, any and all federal, State, local and City taxes as may be levied, imposed or due from a Service Provider, its customers or subscribers, or on account of the lease, sale, delivery or transmission of Services. (Ord. 2017-52—Passed 6-21-17.)

937.09 CABLE TELEVISION FRANCHISE.

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

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

(c) Cable Television Franchise Expiration.

(1) In the event a franchise expires by its terms, the franchise shall be automatically renewed on a month-to-month basis until the parties enter into a renewal franchise or until terminated by either party in accordance with law.

(2) At the expiration of the franchise or upon revocation of the franchise, the City may, in lawful manner and upon the payment of fair market value, determined on the basis of the Cable System as valued as a going concern exclusive of any value attributable to the franchise itself, lawfully obtain, purchase, condemn, acquire, takeover and hold the Cable System.

(d) Cable System Capacity. No Cable Operator shall provide Service other than Cable Service without obtaining consent from the City, pursuant to Section 937.02 of this Chapter, which consent shall not be unreasonably withheld.

(Ord. 2017-52—Passed 6-21-17.)
937.10 PRIVATE FACILITIES IN THE PUBLIC RIGHT-OF-WAY.

(a) Private Facilities. Persons who wish to use the Public Right-of-Way of the City for Private Facilities shall obtain a consent from the City pursuant to Section 937.02, register pursuant to Section 937.03, obtain a Construction Permit (if applicable) pursuant to Section 937.07 and comply with all provisions of this Chapter.

(Ord. 2017-52—Passed 6-21-17.)
937.11 MISCELLANEOUS PROVISIONS.

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

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

(c) Application to Existing Code Provisions. Insert any existing City Code provisions to which this Chapter should not apply.

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

(e) It is within the City Manager's reasonable discretion to waive a portion of this Chapter or such requirements, in the City Manager's judgment, that are not necessary or appropriate to protect the City's interests and the purposes and intent of this Chapter.

(Ord. 2017-52—Passed 6-21-17.)
937.99 PENALTIES AND OTHER REMEDIES.

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

(Ord. 2017-52—Passed 6-21-17.)