

**BY: Rick Shapiro**

**An Ordinance establishing the Right-of-Way Policy for the City of Bexley.**

**WHEREAS**, the City of Bexley, Ohio (the "City") is vitally concerned with the use of the various Right-of-Ways in the City because Right-of-Ways are a valuable and limited resource which must be utilized to promote the public health, safety, and welfare including the economic development of the City; and

**WHEREAS**, changes in the public utilities and communication industries have increased the demand and need for access to Right-of-Ways and placement of facilities and structures therein; and

**WHEREAS**, it is necessary to comprehensively plan and manage access to, and structures and facilities in, the Right-of-Ways to promote efficiency, discourage uneconomic duplication of facilities, lessen the public inconvenience of uncoordinated work in the Right-of-Ways, and promote public safety; and

**WHEREAS**, the City has rights under laws and Constitution of the State of Ohio, including Article 18, Sections 3 and 4, to regulate public and private entities which use the Right-of-Ways.

**NOW, THEREFORE**, be it ordained by the Council of the City of Bexley, Ohio.

**SECTION 1:**

That the Bexley City Codes should be and hereby are supplemented by the enactment of this ordinance.

## **Section 1.01 – Definitions**

For the purpose of this Ordinance, 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 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.

- A. "Administrative Fees" means the annual compensation required of a Right-of-Way Certificate Holder that is assessed to cover the reasonable allocation of the total costs to the City, including but not limited to the following: to research and formulate Right-of-Way statutes and policies, administer this Right of Way policy, plan for and coordinate joint development, oversee construction in the Right of Way, enforce compliance with this Ordinance, and recover other related costs and overheads.
- B. "Applicant" means any Person applying for a Right-of-Way Certificate hereunder.
- C. "Approved" means approval by the City pursuant to this Ordinance or any regulations adopted hereunder.
- D. "Best Efforts" means the best reasonable efforts under the circumstances, taking into consideration, among other appropriate matters, safety, expeditious available technology and human resources and cost.
- E. "Calendar Year" means from January 1, through December 31.
- F. "Certificate Holder" means any person issued a Right-of-Way Certificate pursuant to this Ordinance to use or occupy all or a portion of the Right-of-Ways in accordance with the provisions of this Ordinance and said Right-of-Way Certificate.
- G. "Chapter" means Chapter of the Codified Ordinances of the City as amended from time to time, and any Regulations adopted hereunder.
- H. "City" means the City of Bexley, Ohio.
- I. "Council" means the Bexley City Council.
- J. "Director" means the City Service Director.

- K. "Force Majeure" means a strike, act of God, act of public enemy, order of any kind of a government of the United States of America or of the State of Ohio or any of their departments, agencies or political subdivisions; riot, epidemic, landslides, lightening, earthquake, fire, tornado, storm, flood, civil disturbance, explosion, partial or entire failure of a utility or any other cause or event not reasonably within the control of the party disabled by such Force Majeure, but only to the extent such disabled parties notifies the other party as soon as practicable regarding such Force Majeure and then for only so long as and to the extent that, the Force Majeure prevents compliance or causes non-compliance with the provisions hereof.
- L. "Limited-Use Right-of-Way Certificate" shall have the meaning set forth in Section 1.03(G)(2).
- M. "Occupancy Fee" means the annual compensation required of a Right-of-Way Certificate Holder based on the amount of the Right of Way being utilized by the Certificate Holder. This fee will be based on the linear foot usage of the Certificate Holder.
- N. "Person" means any natural person or any association, firm, partnership, joint venture, corporation or other legally recognized entity, whether for-profit or not-for-profit, or legally recognized entity, or governmental entity.
- O. "Provider Agreement" means a valid public-service agreement, operating agreement, franchise agreement, or residential agreement issued by the City pursuant to the Bexley City Charter, the Bexley City Codes or Constitution and laws of Ohio or the United States and accepted by any Person, pursuant to which such Person may operate or provide utility, cable television, telephone, telecommunication or other such service.
- P. "Public Property" means any real property owned by the City or easements held or used by the City, other than a Right-of-Way.
- Q. "Public Service" means any church, Sunday school, parochial school, State certified school, college, hospital, library and other facilities of an educational, religious, charitable, philanthropic or nonprofit nature.

- R. "Public Service Right-of-Way Certificate" shall have the meaning set forth in Section 1.03(G)(4).
- S. "Regulation" means any rule adopted by the City Service Director pursuant to the authority of this Ordinance and the procedure set forth in section 1.10, to carry out its purpose and intent.
- T. "Residential Purposes" mean residential use of Right-of-Way for such uses as curb cuts and driveways, irrigation systems, invisible fence wiring and as may be further defined in any Regulations promulgated pursuant to Section 1.02,1.03
- U. "Residential Purpose Right-of-Way Certificate for Residential Purposes" shall have the meaning set forth in Section 1.03(G)(3).
- V. "Right-of-Way" means the surface of and the space above and below the paved or unpaved portions of any public street, public road, public highway, public freeway, public lane, public path, public bikepath, public way, public alley, public court, public sidewalk, public boulevard, public parkway, public drive and any other land dedicated or otherwise designated for the same now or hereafter held by the City which shall, within its proper use and meaning in the sole opinion of the City Service Director, entitle a Certificate Holder, in accordance with the terms hereof and of any Right-of-Way Certificate, to the use thereof for the purpose of installing or operating any poles, wires, cables, transformers, conductors, ducts, lines, mains, conduits, vaults, manholes, amplifiers, appliances, attachments, facilities as may be customarily pertinent to the provision of utilities, broadcast services, communications or other services as set forth in any Provider Agreement or any Right-of-Way Certificate. Right-of-Way shall not include private easements or public property, except to the extent the use or occupation of public property is specifically granted by City Council.
- W. "Right-of-Way Certificate" means the nonexclusive grant of authority to use or occupy all or a portion of the City's Right-of-Ways as determined by the specific type of Certificate granted pursuant to this Ordinance.
- X. "Utility" means a business enterprise supplying an essential public service, such as gas, electricity.
- Y. "Utility Right of Way Certificate" shall have the meaning set forth in Section 1.03(G)(1).

## **Section 1.02 -Purpose and Scope of Ordinance**

A. The purpose of this Ordinance is to provide for the regulation of the use or occupation of all Right-of-Ways in the City of Bexley, the issuance of Right-of-Way Certificates to Persons for such use or occupancy and to set forth the policies of the City related thereto.

B. A Right-of-Way Certificate issued pursuant to this Ordinance does not take the place of any Provider Agreement, franchise, and license or permit which law may additionally require. Each Certificate Holder shall obtain any and all such additional State, Federal or City franchises, licenses or permits necessary to the operation and conduct of its business or the occupation or use of any Right-of-Way.

C. The City Service Director is hereby directed and empowered to enforce the provisions of this Chapter.

D. The city's objectives regarding Right-of-Ways are:

1. To encourage the high-quality and reliable delivery of utility, communication, and other services to the City's residents and taxpayers at competitive prices;
2. To promote cooperation among the Certificate Holders and the City in the occupation of Right-of-Ways, to minimize public inconvenience and eliminate wasteful, unnecessary or unsightly duplication of facilities;
3. To minimize disruption to public property and ensure safe and efficient use of the City's right of ways;
4. To ensure reimbursement of all costs to the City for the private use of public Rights -of-Way and property and the City administering of activity within the public Right-of-Ways;
5. To assure that potential Right-of-Way Certificate Holders and existing Right-of-Way participants have the financial, technical and managerial resources to comply with this Ordinance and the provisions of any Right-of-Way Certificate issued hereunder.
6. To promote and require reasonable accommodations of all uses of Right-of-Ways; and when all requests for Right-of-Way use cannot be accomplished, to give priority for use of Right-of-Ways, in the order indicated, from the highest to lowest, to the following users:

Provided, however, that the Service Director may reasonably require Right-of-Way Certificate Holders to cooperate to accommodate use by other Certificate Holders, and provided further that the Director may alter these priorities when the Service Director reasonably determines a deviation here from to be in the public interest.

- (a) the City;
- (b) another governmental entity with the City's concurrence or other governmental use required by law;
- (c) Public Service Right-of-Way and Utility Certificate Holders;
- (d) Limited-Use Right-of-Way Certificate Holders;
- (e) Residential Purpose Right-of-Way Certificate Holder.

E. All Right-of-Way Certificates granted hereunder shall be non-exclusive and no property right of any nature shall be created by the granting of a Certificate under this Ordinance.

F. This Ordinance does not apply, and nothing herein should be construed to apply the provisions of this Ordinance, to structures or facilities owned and operated by the City or any City operations that occupy or use the Right-of-Ways. It is specifically contemplated, however, that all city Departments or Divisions that utilize the Rights-of -Way shall carry out their operations in a manner consistent with the policies set forth in this Ordinance, including participation and cooperation in all joint planning hereunder and identification of structures and facilities located in the Right-of-Ways.

### **Section 1.03 -Prohibition and Types of Certificates**

A. Unless permitted pursuant to this Ordinance, no Person shall use, occupy, construct, own or operate structures or facilities in, under or over any Right-of-Ways or any Public Property within the City unless such Person first obtains a Right-of-Way Certificate and conforms to the requirements set forth therein and in this Ordinance.

B Each Right-of-Way Certificate shall specify the use or uses for which such Certificates is granted and shall contain such other non-discriminatory terms and conditions as are appropriately specified by the City to provide for the public safety and welfare and as are set forth in the Regulations. **Any other or additional Right-of-Way use by such Certificate Holder shall require a separate or amended Certificate as determined by the City Service Director.**

- C. Any such Right-of-Way Certificate may also allow the use of specified Public Property for the uses set forth in the Right of Way Certificate and in this Ordinance.
- D. Right-of-Way Certificates granted hereunder may not, directly or indirectly, be transferred, assigned or disposed of by sale, lease, merger, consolidation or other act of the Certificate Holder, by operation of law or otherwise, without the prior consent of the City, which consent shall not be unreasonably withheld or delayed. Unless otherwise provided in a Certificate, the Certificate Holder shall reimburse the City for all direct and indirect fees, costs, and expenses reasonably incurred by the City in considering a request to transfer or assign a Certificate. Any transfer or assignment of a Certificate without prior approval of the City or pursuant to a Certificate shall be void and is cause for revocation of the Certificate.
- E. Right-of-Way Certificates or the rights of a Certificate Holder may not be leased without the prior express written approval of the City.
- G. The following types of Right-of Way Certificates are available:
1. Utility Right-of-Way Certificate—a Right-of-Way Certificate granted to a person who is either a Utility and/or has a Provider Agreement in which the Service provider is granted authority to have access to Right of Way.
  2. Limited-Use Right-of-Way Certificate—a Right-of-Way Certificate granted to a Person for a specific, limited use of the Right-of-Ways or a specific portion thereof.
  3. Residential Purpose Right-of-Way Certificate—a Right-of-Way Certificate granted to a Person for a specific, limited use of the Right-of-Ways or a specific portion thereof for residential purposes.
  4. Public Service Right-of-Way Certificate—a Right-of-Way Certificate granted to entities as defined by Section 1.01 (P) who desire and are granted authority to utilize Right-of-Ways in a limited manner provided, however, that nothing in this Ordinance or in any Public Service Right-of-Way Certificate shall be construed to authorize the Certificate Holder to provide any utility, cable television, communications or other services for which the City may lawfully require a provider agreement should the City determine to require the same.

## **Section 1.04 -Application Procedure for Certificates**

### **A. Public Service Right-of-Way Certificate**

An application for a Public Service Right-of-Way Certificate, or renewal thereof, shall be filed in such form and in such manner, as the Regulations require, along with an application fee. If the City Service Director determines that the application is in order and that the criteria set forth in Section 1.03 have been met, and that the application should be granted, the City Service Director shall, within fifteen (15) days of receipt of a completed application, conditionally grant or renew such a Right-of-Way Certificate subject to any appropriate terms and conditions or deny the same. The City Service Director's grant, renewal or denial shall be served upon the Applicant by mail. Such denial, grant or renewal shall become final unless modified or rejected by the City Council within thirty (30) days of issuance by the City Service Director, or unless appealed pursuant to Section 1.05. The term of such Public Service Right-of-Way Certificates shall be three (3) years from acceptance, unless the applicant requests a lesser term.

The City Service Director shall be entitled to the right to waive the Public Service Certificate application fee when in the best interest of the public.

### **B. Utility Right-of-Way Certificate**

Applications for a Utility Right of Way Certificate by a holder of a Provider Agreement shall be filed in such form and in such manner, as the regulations require, along with an application fee. Any person who holds a valid Provider Agreement may be granted a Right-of-Way Certificate. Such Utility Right of way Certificate shall be valid so long as the underlying Provider agreement is valid and the applicable provisions of the Right-of-Way Certificate and of this Ordinance are complied with; provided, however, that such Right-of-Way Certificate shall only entitle the Certificate Holder to utilize the Right-of-Ways, in accordance with this Ordinance, for purposes directly related to the provision of the specific services for which it has a Provider Agreement. Any other Right-of-Way use by such Certificate Holder shall require a separate or amended Right-of-Way Certificate as determined by the City Service Director and issued pursuant to Section 1.03(G).



C. **Limited-Use Right-of-Way Certificate**

An application for a Limited-Use Right-of-Way Certificate, or renewal thereof, shall be filed in such form and in such manner, as the Regulations require, along with an application fee. If the City Service Director determines that the application is in order and that the criteria set forth in Section 1.03 have been met, and that the application should be granted, the City Service Director shall, within fifteen (15) days of receipt of a completed application, conditionally grant or renew such a Right-of-Way Certificate subject to any appropriate terms and conditions or deny the same. The City Service Director's grant, renewal or denial shall be served upon the Applicant by mail. Such denial, grant or renewal shall become final unless modified or rejected by the City Council within thirty (30) days of issuance by the City Service Director, or unless appealed pursuant to Section 1.05. The term of such Limited-Use Right-of-Way Certificates shall be three (3) years from acceptance, unless the applicant requests a lesser term.

D. **Residential Purpose Right-of-Way Certificate**

An application for a Residential Purpose Right-of-Way Certificate, or renewal thereof, shall be filed in such form and in such manner, as the Regulations require, along with an application fee. If the City Service Director determines that the application is in order and that the criteria set forth in Section 1.03 have been met, and that the application should be granted, the City Service Director shall, within fifteen (15) days of receipt of a completed application, conditionally grant or renew such a Right-of-Way Certificate subject to any appropriate terms and conditions or deny the same. The City Service Director's grant, renewal or denial shall be served upon the Applicant by mail. Such denial, grant or renewal shall become final unless modified or rejected by the City Council within thirty (30) days of issuance by the City Service Director, or unless appealed pursuant to Section 1.05. A Residential Purpose Right-of-Way Certificate may be granted for an indeterminate term from acceptance, subject to conditions impose herein.

E. **Notification of Acceptance**

Any Right-of-Way Certificate Holder shall, within thirty (30) days of the initial granting of any Right-of-Way Certificate, pay a pro-rata portion of the fees base on date of application required by Section 1.06(A),(B) or (C).

## **Section 1.05 -Application Appeal Procedure for Certificates**

Any Applicant may appeal the failure of the City Service Director to grant a Right-of-Way Certificate, or to recommend that it be granted to the City Council. In order to perfect such appeal, the Applicant shall file, within ten (10) days of the City Service Director's determination or within thirty (30) days of filing the application if the City Service Director has taken no action, an appeal to the City Council. The City Council shall then review the matter and render a final determination after affording the applicant an opportunity to be heard either in person or in writing. The City Council's decision shall be final.

## **Section 1.06 -Annual Certificate Fees**

### **A. Public Service Right-of-Way Certificate Fees**

#### **1. Annual Administration Fee:**

Public Service Right-of-Way Certificates shall be waived of any administration fee.

#### **2. Annual Occupancy Fee:**

Public Service Right-of-Way Certificates shall be waived of any occupancy fee.

### **B. Utility Right-of-Way Certificate Fees**

#### **1. Annual Administration Fee:**

Utility Right of Way Certificate Holders shall pay an administration fee for each calendar year. The fee shall be the total cost of the Right of Way Management program divided by the number of participants.

#### **2. Annual Occupancy Fee:**

In addition to the Annual Administration Fee, Utility Right of Way Certificate Holders shall pay an annual fee based on the linear footage of the Right of Way, which the Certificate Holders occupies in said calendar year.

The final payment each year shall be accompanied by a statement of an independent certified public accountant attesting the reasonableness of the methodology used for the estimation of the **linear footage** upon which the payment was based. Should the payment required by this Section ever be declared unlawful, void or otherwise unenforceable for any reason whatsoever, Utility Right-of-Way Certificate Holders shall pay the annual fee specified in Section 1.06(B)(1).

C. Limited-Use Right-of-Way Certificate Fees

1. Annual Administration Fee:

Limited-Use Right of Way Certificate Holders shall pay an administration fee for each calendar year. The fee shall be the total cost of the Right of Way Management program divided by the number of participants.

2. Annual Occupancy Fee:

In addition to the Annual Administration Fee, Limited-Use Right of Way Certificate Holders shall pay an annual fee based on the linear footage of the Right of Way, which the Certificate Holders occupy in said calendar year.

3. Annual Limited-Use Pass-Through Fee:

If the Limited Use Certificate Holders that occupy Bexley right-of-ways for the provision of services to those outside of the city and are not providing any services within the city, they shall pay a fee, based upon the linear foot of right-of way occupied.

The final payment each year shall be accompanied by a statement of an independent certified public accountant attesting the reasonableness of the methodology used for the estimation of the linear footage upon which the payment was based. Should the payment required by this Section ever be declared unlawful, void or otherwise unenforceable for any reason whatsoever, Utility Right-of-Way Certificate Holders shall pay the annual fee specified in Section 1.06 (B)(1).

D. Residential Purpose Right-of-Way Certificate Fees

1. Annual Administrative Fee:

There shall be no annual administrative fee for Residential Purpose Right of Way Certificate holders.

2. Annual Occupancy Fee:

There shall be no annual occupancy fee for Residential Purpose Right of Way Certificate holders.

E. All fees pursuant to this Ordinance shall be paid to the City of Bexley.

F. Provider agreements with Certificate Holders may specify facilities or services, or both, to be provided to the City in lieu of all or a portion of Right-of-Way Certificate fees.

G. Any fees that are currently paid to the City for use of the Right of Way shall be applied to the Certificate Holder Right-of-Way Certificate fees.

### **Section 1.07 -Auditing**

Each Right-of-Way Certificate Holder shall maintain books, records, maps, documents and other evidence directly pertinent to its calculations of payments to the City in accordance with generally accepted accounting principles. The City Service Director, the City Finance Director or either's designated agents shall have reasonable access to any books, records, maps, documents and other evidence for inspection, copying and auditing to the extent necessary to assure that the payments hereunder are accurate and that all Right-of-Way Certificate Holders fully comply with the provisions of this Ordinance and their respective Right-of-Way Certificates.

### **Section 1.08 -Criteria For Granting Certificates**

A. A Public Service Right-of-Way Certificate shall be granted to any Applicant holding a valid Public Service Agreement.

B. A Utility Right-of-Way Certificate shall be granted to an applicant holding a valid Utility Operating Agreement and who is a traditional monopoly provider of essential services as defined by the City Service Director.

C. A Limited-Use Right-of-Way Certificate shall be granted to any Applicant holding a valid Limited-Use Service Agreement.

D. A Public Service or Residential Purpose Certificate shall be granted to an Applicant upon the determination that:

1. The granting of the Right-of-Way Certificate will contribute to the public health, safety or welfare in the City;
2. The granting of the Right-of-Way Certificate will be consistent with the policy of the City as set forth in Section 1.02; and
3. The Applicant is not delinquent on any taxes or other obligations to the City, Franklin County, or the State of Ohio and has the requisite financial, technical and managerial ability to fulfill all its obligations hereunder.

E. The City Service Director or City Council may impose such conditions on the granting of a Certificate as deemed reasonably required to be consistent with the criteria set forth in this Section 1.08 and to promote the policy of the City set forth in Section 1.02.

## **Section 1 .09 -Obligations of Certificate Holders**

In addition to the other requirements set forth herein and in the Regulation, each Certificate Holder, except Residential Purpose Certificate Holder shall:

- A. Use its Best Efforts to cooperate with other Certificate Holders and the City for the best, most efficient, most aesthetic and least obtrusive use of Right-of-Ways, consistent with Public Health, Safety and Welfare and to minimize traffic and other disruptions including street cuts;
- B. Cooperate with other Certificate Holders in joint planning with, utilization of, construction in and occupancy of any Right-of-Ways
- C. Designate a single point of contact for all purposes hereunder, as well as comply with such other contact and notice protocols.
- D. Use its Best Efforts to cooperate with the City in any emergencies involving the Right-of-Way including the maintenance of a twenty-four (24) hour emergency contact number;
- E. No later than one (1) year after grant of the Right of Way Certificate, The Certificate Holder shall perform an initial inventory a) to identify and locate all of Certificate Holder's existing structures (including "as built" structures and pole attachments above and in the Right-of-Ways) and facilities in the Right-of-Ways, and b) shall identify and describe all uses of such structures and facilities, and c) shall provide maps or other information that identifies their location and use in such form (including digital form) as required by the City. The Certificate Holder shall document all of the names, uses, services, structures, and facilities of the Permittee's sub-lessees, if any;

## **Section 1.10 -Construction and Technical Obligations**

- A. Relevant Documents Required in Advance

The Certificate Holder shall comply with the City's normal permitting process prior to commencing any work in the Right-of-Ways except for emergencies and as otherwise provided in this Ordinance. No work in the Right-of-Ways shall be commenced until such time as the City has issued any and all required documents. The City shall not unreasonably withhold the granting of any permission.

B. Right-of-Way Work Permit Required in Advance

1. All Certificate Holders shall obtain a Right-of-Way Work Permit from the Building Department prior to beginning the erection, installation or maintenance, including tree trimming, of any lines or equipment. Prior City approval shall not be required for Emergency repairs or routine maintenance and repairs. Operations which require excavation in the Right-of-Way, blockage of any street or alley, or material disruption to any landscaping or structures and/or irrigation systems require a Right-of-Way Work Certificate.

2. All applicants for Right-of-Way Work Permit shall file a written notice with the Building Department at least seven (7) days before working in or on the Right of Way, except in case of emergency as determined by the Director. In the event of emergency work in the Right-of-Way, the Certificate Holder shall apply for the permit on the next business day. To the extent applicable Right of Way work permits shall contain:

- a. the Right of Way affected;
- b. a description of any facilities to be installed, constructed, or maintained;
- c. whether or not any street will be opened or otherwise need to be restricted, blocked, or closed;
- d. an estimate of the amount of time needed to complete such work;
- e. a description of the method of restoring the right-of-way and timetable for completion of restoration;
- f. a statement verifying that other affected or potentially affected Certificate Holders have been notified, and where applicable, the Ohio Utility Protection service;
- g. the location, dimension and types of all trees within or adjacent to the publicways along the route proposed by the applicant, together with a landscape plan for protecting, trimming, removing, replacing and restoring any trees or areas to be disturbed during construction. (Note- **no tree removals are permitted without the approval of the Bexley Tree and Public Gardens Commission.**)

C. The City does not guarantee the accuracy of any maps showing the horizontal or vertical location of existing substructures. In public Right-of-Ways, where necessary, the location shall be verified by excavation.

**D. Minimal Disturbance**

The Certificate Holder's system and associated equipment erected by the Certificate Holder within the City shall be so located as to cause minimum interference with the proper use of streets, alleys, and other public ways and places, and to cause minimum interference with the rights and reasonable convenience of property owners who adjoin any of the said streets, alleys or other public ways and places. No pole or other fixtures placed in any public ways by the Certificate Holder shall be placed in such a manner as to interfere with normal travel on such public way.

**E.** To protect the aesthetics of the city, the Certificate Holder shall locate, disguise, or screen the Certificate Holder's new or updated facilities in accordance with standards developed for the area in which the facility is located.

**F. Compliance of Technical Equipment and Workmanship**

Certificate Holder shall construct, install, operate and maintain its system in a manner that is consistent with all laws, ordinances, construction standards, governmental requirements; shall comply with applicable National Electrical Safety Code (National Bureau of Standards); applicable National Electrical Code (National Bureau of Fire Underwriters); applicable FCC or other Federal, State and local regulations; and standards as set forth in their Certificate.

**G. General Workmanship**

1. Construction, installation, operation, and maintenance of permitted systems shall be performed in an orderly and workmanlike manner. When consistent with the safety codes and standards set forth in this Ordinance, all cables and wires shall be installed, where possible, parallel with electric and telephone lines. Multiple configurations shall be arranged in parallel and bundled with due respect for engineering considerations.

2. All systems shall be designed, constructed, and maintained for 24-hours-a-day continuous operation.

**H. Subcontractors**

1. Each Certificate Holder shall assure that any subcontractor or other person performing any work or service in the Right-of-Way on behalf of said Certificate Holder will comply with all applicable provisions of this Ordinance and its Right-of-Way Certificate and will identify the Certificate Holder for whom such subcontractor is working. Said Certificate

Holder shall be responsible and liable hereunder for all actions of any such subcontractor or others as if said Certificate Holder had performed or failed to perform any such obligation.

2. Any contractor performing construction, installation, operation, maintenance, and repair of system equipment must be properly licensed under laws of the State of Ohio, and all applicable local ordinances.

I. Restoration of Right-of-Way

The Certificate Holder, and/or its subcontractors shall leave Right-of-Ways where such work is done in as good condition or repair as they were before such work was commenced and to the reasonable satisfaction of the City. Such Right-of-Way Work Certificate shall be issued in writing and is subject to conditions that may be attached by the Service Director including, but not limited to, requirements concerning traffic control, safety, scheduling, notification of adjoining property owners, and restoration with hard surface, seed, sod or specific plant materials as directed by the City. The Certificate Holder and/or its subcontractors shall endeavor to complete, in a timely manner, repairs to the Right-of-Way. All workmanship and materials used by the Certificate Holder and/or its subcontractors to repair the streets and roadways shall meet city specifications and be subject to the inspection and approval of the Service Director and shall be warranted for a period of one (1) year from the date of completion for any failure due to workmanship or quality of materials.

J. Updating Documentation of Right of Way Activity and Facility Updates

Certificate Holder Shall furnish City "as built" drawings not later than one hundred twenty (120) days after construction of a system , system addition, system replacement or system alteration has been completed. Drawings shall show accurate location and ownership. Drawings shall be drawn to a scale of one inch (1") equals two hundred feet (200') using the standard format adopted by the City. Certificate Holder shall provide one (1) electronic copy, one (1) set of blue or black line "as built" drawings, and one (1) set of 11x17 copies to the Service Director.

K. Underground Operations

1. In those areas of the City where telephone and electric services are provided by underground facilities, all new facilities of a Certificate Holder shall be placed underground. In all other areas, the Certificate Holder, upon request by the City, shall use its Best Efforts to place facilities underground. However, the term "facilities" as used in the preceding sentence may not include equipment which is customarily placed on or above the ground in



conjunction with underground transmission facilities (e.g. splice and terminal pedestals, equipment cabinets and transformers.) Where not otherwise required to be placed underground by this Ordinance, the Certificate Holder's system shall be located underground at the request of the adjacent property owner, provided the placement of such system shall be consistent with the Certificate Holder's construction and operating standards and provided that the excess cost over the aerial location shall be borne by the property owner making the request if so requested by the Certificate Holder. All cable to be installed under the roadway shall be installed in conduit. In no circumstance shall a new pole be located in any area of the City where it is not replacing an existing pole without written approval of the Service Director, which approval shall not be unreasonably withheld.

2. Upon reasonable written notice of and at the direction of the City Service Director, and at the Certificate Holder's sole cost, a Certificate Holder shall promptly remove or rearrange facilities as necessary, such as during any construction, repair or modification of any street, sidewalk, City utility or other public improvement, or as part of the City Service Director's determination that the designated portions of its Right-of-Ways should accommodate only underground facilities or that facilities should occupy only one side of a street or other public way, or if an additional or subsequent City or other public use of Right-of-Ways is inconsistent with the then current uses of such Certificate Holder or for any other reasonable cause as determined by the City Service Director pursuant to Section 1.17(B);

3. A Certificate Holder shall register with underground reporting services as set forth in the Regulations;

L. Street Cut Operations

1. Specialized Right-of-Way Work permits are required for cutting and excavating city streets and alleys.

**Section 1.11 -Joint Planning And Construction**

In order to promote the purposes of this Ordinance and the policy set forth herein, the City Service Director shall adopt Regulations requiring and governing joint planning and construction for all Right-of-Way Certificate Holders except for Residential Purpose Right-of-Way Certificate Holders

### **Section 1.12 -City Use of Facilities**

- A. The City shall have the right to install and maintain, free of charge, upon any poles and within any underground pipes or conduits or other facilities of any Service, Public Service or Limited-Use Right-of-Way Certificate Holder, any facilities desired by the City unless (I) such installation and maintenance unreasonably and materially interferes with existing and future operations of the Certificate Holder, and (ii) such installation and maintenance would be unduly burdensome to such Certificate Holder.
- B. Neither the facilities utilized by the City nor the capacity or bandwidth thereon shall be leased, licensed or otherwise made available to third parties. The City's use and occupancy of a Certificate Holder's conduit shall be limited to the right to occupy a single inner duct in any given conduit and a single attachment to any given pole.
- C. The City's right to use and occupy a Certificate Holder's poles or conduit shall be subject to any and all reasonable terms and conditions the Certificate Holder requires of other third party users of its poles and conduit. The City shall pay the Certificate Holder the reasonable cost to make the poles or conduit ready for the City's use and occupancy. Nothing herein shall be construed to require a Certificate Holder to construct poles or conduits where none exist or to rearrange, modify or alter its facilities on a pole or conduit in order to provide space for City Facilities where space is not otherwise available.

### **Section 1.13 Adoption of Regulations**

- A. The City Service Director may promulgate Regulations, as the City Service Director deems appropriate from time to time, to carry out the express purposes and intent of this Ordinance.
- B. Such Regulations shall not materially increase the obligations of any Certificate Holder hereunder; provided, however, that neither the adoption of Regulations increasing fees pursuant to Section 1.06 nor requiring the placement of facilities in designated portions of the Right-of-Ways underground pursuant to Section 1.10(A)(4) shall be construed as materially increasing the obligations of a Certificate Holder.
- C. Any such regulation shall be on file in the service department.

## **Section 1.14 -Indemnity, Bonding, and Insurance**

A. To guarantee Right-of-Way restoration and removal of facilities, the Certificate Holder shall provide either a Performance Bond (or self-bonding by Certificate Holder having capitalization in excess of Fifty Million Dollars), an Irrevocable Letter of Credit, or a Certified Check to pay the cost of restoration of the Right-of-Way should the Certificate Holder fail to perform restoration required by this Ordinance or pay for the cost of removal or relocation of the system required by this Ordinance should the Certificate Holder fail to perform said removal or relocation.

B. Each Certificate Holder shall, as a condition of its Right-of-Way Certificate, indemnify, protect and hold harmless the City from any claim, loss or damage arising in any way from Certificate Holder's occupation or use of the Right-of-Way, including but not limited to the construction, operation or maintenance of Certificate Holder's facilities, and from any such Certificate Holder's negligent or wrongful act or omission.

C. Except for Residential Purposes Right-of-Way Certificate Holders each Certificate Holder, as a condition of its Certificate, shall keep in force a policy or policies of liability insurance, having such terms and in such amounts as are set forth in the Regulations, covering its facilities and operations pursuant to its Right-of-Way Certificate.

D. All Certificate Holders shall, at their sole cost and expense, fully indemnify, defend and hold harmless the City, its officers, public officials, boards and commissions, agents, and employees from and against any and all lawsuits, claims (including without limitation worker's compensation claims against the 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):

1. To persons or property, in any way arising out of or through the acts or omissions of Certificate Holder, its subcontractors, agents or employees attributable to the occupation by the Certificate Holder of the Right-of-Way, to which Certificate Holder'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.

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

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

E. The foregoing indemnification is conditioned upon the City:

1. Giving Certificate Holder prompt notice of any claim or the commencement of any action, suit or proceeding for which indemnification is sought;
2. Affording the Certificate Holder the opportunity to participate in and fully control any compromise, settlement, or other resolution or disposition of any claim or proceeding subject to indemnification; and
3. Fully cooperating in the defense of such claim and making available to the Certificate Holder all pertinent information under the City's control.

F. 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 Certificate Holder shall pay the reasonable fees and expense of such separate counsel, if employed with the approval and consent of the Certificate Holder, or if representation of both Certificate Holder and the City by the same attorney would be inconsistent with accepted canons of professional ethics.

G. Each Certificate Holder shall maintain insurance coverages (or self-insurance coverage by Certificate Holders having capitalization in excess of Fifty Million Dollars.

1. General Liability Insurance. The Certificate Holder shall maintain, and by its acceptance of any Certificate granted hereunder specifically agrees that it will maintain throughout the term of the Certificate, general liability insurance insuring the Certificate Holder in the minimum of:

- a. \$1,000,000 per occurrence;
- b. \$2,000,000 annual aggregate;
- c. \$1,000,000 excess general liability per occurrence and annual aggregate.

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

2. Automobile Liability Insurance. The Certificate Holder shall maintain, and by its

acceptance of any Certificate granted hereunder specifically agrees that it will maintain throughout the term of the Certificate, automobile liability insurance for owned, non-owned, or rented vehicles in the minimum amount of:

- a. \$1,000,000 per occurrence; and
- b. \$1,000,000 excess automobile liability per occurrence.

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

- a. Statutory limit for Worker's Compensation;
- b. \$1,000,000 for employer's liability per occurrence; and
- c. \$1,000,000 excess employer liability.

H. The liability insurance policies required by this section shall be maintained by the Certificate Holder throughout the term of the Certificate, and such other period of time during which the Certificate Holder is operating without a Certificate hereunder, 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 insurance policies may not be cancelled nor the intention not to renew be stated until 90 days after receipt by the City, by registered mail, of a written notice addressed to the Director of such intent to cancel or not to renew.

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 Certificate Holder shall obtain and furnish to the City replacement insurance policies meeting the requirements of this Section.

### **Section 1.15 -Removal of Facilities**

A. Any Right-of-Way Certificate Holder that intends to discontinue use of any facilities within the Right-of-Ways shall submit a written notice to the City Service Director describing the portion of the facilities to be discontinued and the date of discontinuance, which date shall not be less than thirty (30) days from the date on which the notice is submitted to the City Service Director. The Certificate Holder may not remove, destroy or permanently disable any such facilities after such notice without the written approval of the City Service Director. The Certificate Holder shall remove and secure such facilities as set forth in the notice unless directed by the City Service Director to abandon such facilities in place.

B. Upon such abandonment and acceptance by the City in writing, full title and ownership of such abandoned facilities shall pass to the City without the need to pay compensation to the Certificate Holder. The Certificate Holder shall, however, continue to be responsible for all taxes on such facilities or other liabilities associated therewith, until the date the same was accepted by the City.

C. Should any Certificate Holder fail, after notice, to remove or rearrange facilities at the City Service Director's request as specified in Section 1.10(K)(3), the City may, as its option and in addition to the imposition of any penalties or other remedies hereunder, undertake or cause to be undertaken, such necessary removal or rearrangement. The City shall have no liability for any damage caused by such removal or rearrangement and the Certificate Holder shall be liable to the City for all costs incurred by the City in such removal or rearrangement.

### **Section 1.16 -Revocation**

A. In addition to any other rights set out in this Ordinance, the City reserves the right to revoke, in accordance with the procedures set forth in 1.16(B), any Right-of-Way Certificate in the event such Certificate Holder violates any material provision of this Ordinance or its Right-of-Way Certificate.

B. The City Service Director shall give the Certificate Holder thirty(30) days prior written notice of an intent to revoke said Certificate Holder's Right-of-Way Certificate. Such notice shall state the reasons for such action. If the Certificate Holder cures the violation or other cause within the thirty (30) days notice period, or if the Certificate Holder initiates efforts satisfactory to the City Service Director to remedy the stated violation, the City Service Director may rescind said notice of revocation. If the Certificate Holder does not cure the stated violation or other cause or undertake effort satisfactory to the City Service Director to remedy the stated violation, the City Service Director may recommend said Certificate be revoked. After granting the Certificate Holder an opportunity to be heard in person or in writing, the City Council/designee may revoke the Right-of-Way Certificate. Unless otherwise required by law, the decision of the City Council/designee shall be final.

C. Unless otherwise directed by the City Service Director, if a Right-of-Way Certificate is revoked, all facilities located in the Right-of-Ways or located upon public property pursuant to such Certificate shall be removed at the sole expense of the Certificate Holder.

## **Section 1.17 -Preservation of Rights**

A. Nothing in this Ordinance should be construed to grant any right or interest in any Right-of-Way or Public Property other than that explicitly set forth herein or in a Right of Way Certificate.

B. Nothing in this Ordinance shall be construed to prevent the City from constructing, maintaining, repairing or relocating any City utility, communications or other facilities; vacating, grading, paving, maintaining, repairing, relocating or altering any street, Public Property or Right-of-Way; or constructing, maintaining, repairing or relocating any sidewalk, bikepath or other public work or improvement. To the extent that such work requires temporary or permanent relocation or rearrangement of any facilities or structures of any Certificate Holder, such relocating and rearranging shall be at the sole cost of the Certificate Holder in such time and in such manner as set forth in the Regulations.

C. The City retains the right and privilege to cut or move any facilities located within the Right-of-Ways as the City may determine to be necessary, appropriate or useful in response to any public health or safety emergency.

D. Unless directly caused by willful, intentional or malicious acts by the City, the City shall not be liable for any damage to or loss of any facility within the Right-of-Ways as a result of or in connection with any public works, public improvements, construction, excavation, grading, filling, or work of any kind in the Right-of-Ways.

## **Section 1.18 -Temporary Movement of Facilities**

In the event it is necessary to move or remove temporarily any of the Certificate Holder's wires, cables, poles or other facilities placed pursuant to this Ordinance, in order to lawfully move a large object, vehicle, building or other structure over the streets of the City, upon two (2) weeks written notice by the City Service Director to the Certificate Holder, the Certificate Holder shall, at the expense of the Person requesting the temporary removal of such facilities, comply with the City Service Director's request.

## **Section 1.19 -Foreclosure and Receivership**

A. Upon the foreclosure or other judicial sale of the Certificate Holder's facilities located within the Right-of-Way, the Certificate Holder shall notify the City Service Director of such fact and its Certificate shall be deemed void and of no further force and effect.

B. The City shall have the right to revoke, pursuant to the provisions of Section 1.14 any Right-of-Way Certificate granted pursuant to this Ordinance, subject to any applicable provisions of law, including the Bankruptcy Act, one hundred and twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of the Certificate Holder, whether in receivership, organization, bankruptcy or other action proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred and twenty (120) days, or unless:

1. Within one hundred and twenty (120) days after his election or appointment, such receiver or trustee shall have fully complied with all the provisions of the relevant Right-of-Way Certificate and of this Ordinance and remedied all defaults thereunder; and,
2. Such receiver or trustee, within said one hundred and twenty (120) days, shall have executed an agreement, duly approved by the Court having jurisdiction in the premises, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of the relevant Right-of-Way Certificate and this Ordinance.

## **Section 1.20 -Non-Enforcement and Waivers by City**

The Certificate Holder shall not be relieved of its obligation to comply with any of the provisions of its Right-of-Way Certificate or this Ordinance by reason of any failure of the City to enforce prompt compliance.

## **Section 1.21 -Captions**

The captions and headings in this Ordinance are for convenience and reference purposes only and shall not affect in any way the meaning of interpretation of this Ordinance.



## **Section 1.22 -Severability**

If this Agreement or any material Section thereof is determined by an appropriate government agency or judicial authority to be invalid or preempted by federal, state or local regulations or laws, all of the provisions of the Agreement shall remain in effect and the City shall have the right to modify such invalid or preempted Section; provided, however that no such modification shall be materially inconsistent with the original intent of the invalid or preempted Section and shall not impose upon Certificate Holder total financial obligations in excess of those imposed upon Certificate Holder under this Agreement.

## **Section 1.23-Penalties**

- A. Whoever violates or fails to comply with any of the provisions of this Ordinance for which no penalty is otherwise provided is guilty of a misdemeanor of the fourth degree and shall be fined not more than two hundred fifty (250) dollars or imprisoned not more than thirty (30) days, or both, for each offense. A separate offense shall be deemed committed each day during or on which a violation or noncompliance occurs or continues.
- B. The application of the penalty in subsection (A) hereof shall not be deemed to prevent the enforced correction of prohibited conditions or the application of any other equitable remedy.
- C. Any Certificate Holder may be excused for violations of this Ordinance and its Right-of-Way Certificate due to Force Majeure.

## **Section 2: Effective Date**

This Ordinance shall take effect and be in force from and after the earliest period allowed by law.

City of Bexley  
Right-of-Way Ordinance

NO. \_\_\_\_\_ 99

Passed: 1-11 <sup>2000</sup>~~,1999~~

Attest: Richard A. Levin  
Clerk of Council

Ann H. Pater  
President of Council

Approved 1/11, 1999

D. Madison  
David H. Madison  
Mayor

12/14/99 First reading  
12/28/99 Second reading  
1/11/00 Third reading Passed