

ORDINANCE NO. 17-3566

**AN ORDINANCE ESTABLISHING RIGHT-OF-WAY REGULATIONS FOR THE LOCATION AND RELOCATION OF PROVIDER FACILITIES IN THE VILLAGE OF SILVERTON, OHIO AND DECLARING AN EMERGENCY**

**WHEREAS:** The Ohio Revised Code § 4939.04(B) recognizes that “the management, regulation, and administration of a public way by a municipal corporation with regard to matters of local concern shall be presumed to be a valid exercise of the power of local self-government granted by Section 3 of Article XVIII of the Ohio Constitution”; and

**WHEREAS:** The Ohio Revised Code § 4939.03(C)(1) recognizes that “no person shall occupy or use a public way without first obtaining any requisite consent of the municipal corporation owning or controlling the public way”; and

**WHEREAS:** some utilities and video service providers may have valid Franchise Agreements and/or Easement Agreements recognizing their use and occupancy of the public right-of-way; and

**WHEREAS:** other utilities have presumed consent to the use of the public right-of-way by the enactment of O.R.C. § 4939.03 on July 2, 2002; however, O.R.C. § 4939.03(C)(6) recognizes that such presumed consent does not relieve the public utility nor cable operator (video service provider) of compliance with any law related to the ongoing occupancy or use of a public way; and

**WHEREAS:** the public policy of the state concerning the use of public ways enacted under O.R.C. § 4939.02 includes, in part to “Promote the public health, safety and welfare regarding access to and occupancy or use of public ways, to protect public and private property, and to promote economic development in the state”, and furthermore “Recognize(s) the authority of a municipal corporation to manage access to and occupancy or use of public ways to the extent necessary with regard to matters of local concern, and to receive cost recovery for the occupancy or use of public ways in accordance with law”; and

**WHEREAS:** O.R.C. § 4939.02(B) recognizes that the state policy concerning use of public ways “establishes fair terms and conditions for the use of public ways and does not unduly burden persons occupying or using public ways, or persons that benefit from the services provided by such occupants or users”; and

**WHEREAS:** in order to properly and non-discriminatorily exercise such local police power for the use and management of the public right-of-way, the administration has recommended, and Council concurs, that the following regulations be enacted:

**NOW THEREFORE, BE IT ORDAINED BY THE LEGISLATIVE AUTHORITY OF THE COUNCIL OF THE VILLAGE OF SILVERTON, OHIO:**

**SECTION I.** To add sections: "Section 53.05 'Location and Relocation of Provider Facilities' "and Section 53.051 "Public Right-of-Way Permit Required" of the Municipal Code of Ordinances, which are to be added to and amend the Municipal Code of Ordinances, read as follows:

53.05 LOCATION AND RELOCATION OF PROVIDER FACILITIES

*(A) Location of Facilities*

(1) The placement of new facilities and replacement of old facilities, either above ground or underground, shall be completed in conformity with applicable laws, including, but not limited to, the Municipal Code of Ordinances, and other applicable village regulations.

(2)The manager shall have the right to dictate the location, including both horizontal and vertical placement, of a new or relocated facility that is placed within the right-of-way.

(3)The manager shall have the power to prohibit or limit the placement of new or additional facilities within the right-of-way if the right-of-way is full. In making such decisions, the manager shall strive to the extent possible to accommodate all existing and potential users of the right-of-way, but shall be guided primarily by considerations of the public health, safety and welfare, the condition of the right-of-way, the time of year with respect to essential utilities, the protection of existing facilities, the protection of existing facilities in the right-of-way, future city, county, and state plans for public improvements, development projects which have been determined to be in the public interest, and nondiscriminatory and competitively neutral treatment among providers.

(4)Any new or relocated facility that is located in a designed underground district shall be located underground.

*(B)Least Disruptive Technology* All construction or maintenance of facilities shall be accomplished in the manner resulting in the least amount of damage and disruption of the right-of-way. Specifically, every permittee when performing underground construction, if required by the manager shall utilize trenchless technology, including but not limited to, horizontal drilling, directional boring, and microtunneling. When the above methods are used the permittee shall perform potholing to locate existing utilities prior to starting work. In addition, the manager or the manager's designee may require all cable, wire or fiber optic cable installed in the subsurface right-of-way pursuant to this chapter to be installed in conduit, and if so required, no cable, wire or fiber optic cable may be installed pursuant to this chapter using "direct bury" techniques.

*(C) Relocation of Facilities*

(1). Upon notice from the manager, a provider shall, at its own expense, temporarily or permanently remove, relocate, change or alter the position of any facilities in the right-of-way whenever the manager shall have determined that such removal, relocation, change or alteration is reasonably necessary for any one of the following reasons:

(a)The need to construct, repair, maintain, improve or use the right-of-way or public property; or

(b)The construction, reconstruction, repair, maintenance or installation of any public improvement in or on the right-of-way; or

(c)The public health, safety and welfare requires it.

(2)If a provider disputes a manager determination of provider responsibility for relocation costs under Section 53.05 (C), provider shall nonetheless coordinate and perform the relocation work in accordance with Section 53.05 (3) pending resolution of the cost dispute in the appropriate legal forum.

(3)Notwithstanding the foregoing, a provider who has facilities in the right-of-way subject to a vacation or narrowing that is not required for the purposes of the municipality, shall have a permanent easement in such vacated portion or excess portion in conformity with O.R.C. § 723.04.1.

**53.051 PUBLIC RIGHT-OF-WAY PERMIT REQUIRED.**

No person shall commence or continue with the construction, installation, maintenance, demolition or operation of facilities or other infrastructure improvements within the right-of-way in the city except as

provided by the ordinances of the city. All construction activity in the city right-of-way shall be in accordance with this chapter.

(A) Public right-of-way permits.

(1) No person or entity shall perform any construction, demolition, maintenance or installation of facilities, whether above-ground or underground, in the right-of-way without first obtaining a public right-of-way permit, except as provided herein. The permit shall be in the name of the person or entity who owns or will own the facilities to be constructed, maintained, repaired, or upgraded. The permit must be completed and signed by a representative of the owner of the facilities to be constructed.

(2) Emergency responses related to existing facilities may be undertaken without first obtaining a permit; however the city shall be notified in writing, on a form approved by the City Manager, within 24 hours of any construction related to an emergency response, including a reasonably detailed description of the work performed in the right-of-way and updated plans of any facilities that were moved or repaired.

(3) The phrase "construction, maintenance or installation of facilities" does not include the installation of facilities necessary to initiate service to a customer's property, or repair or maintenance of existing facilities unless such repair or maintenance requires the breaking or cutting of pavement; the closure of a nonresidential traffic lane; or excavation within the right-of-way or boring.

(4) This chapter shall also apply to all requests to replace or otherwise alter any sidewalk, curb or driveway apron located within the city right-of-way.

(B) The permit shall state the following:

(1) To whom it is issued.

(2) The location and right-of-way affected.

(3) A description of any facilities to be installed, constructed, or maintained.

(4) Whether or not any street will be opened or otherwise need to be restricted, blocked, or closed.

(5) An estimate of the amount of time needed to complete such work.

(6) A description and timetable of any remedial measures planned to close any street opening or repair any damage done to facilitate such work.

(7) A statement verifying that other affected or potentially affected permittees and franchisees have been notified.

(8) A statement that any consumers of any utility, cable television, communications, or other service that will be adversely affected by such work have been or will be notified in conformance with applicable rules and regulations of the Ohio Public Utilities Commission.

(C) The contents of the application requesting a public right-of-way permit shall include the following:

(1) The name, address and phone numbers of the contractor or subcontractor who will perform the actual construction, including the name and telephone number of an individual with the contractor who will be available at all times during construction. Such information shall be required prior to the commencement of any work.

(2) The proposed, approximate location and route of all facilities to be constructed or installed and the applicant's plan for right-of-way construction.

(3) The construction and installation methods and materials to be employed for the protection of existing structures, fixtures, and facilities within or adjacent to the right-of-way, and the dates and times work will occur, all of which (methods, dates, times, etc.) are subject to approval of the city.

(4) Three sets of engineering plans at a scale not to exceed one inch equals 100 feet unless otherwise approved by the city.

(5) Details of the location of all right-of-way and utility easements that the applicant plans to use.

(6) Details of all existing city utilities in relationship to applicant's proposed route.

(7) Details of what applicant proposes to install, such as pipe size, number of interducts, valves, etc.

(8) Details of plans to remove and replace asphalt or concrete in streets, driveways, alleys and sidewalks.

(9) Drawings of any bores, trenches, hand holes, manholes, switch gear, transformers, pedestals, etc. including depth.

(10) Complete legend of drawings submitted by applicant. Applicant may submit a standard legend for all permit applications, provided the applicant submits updated or revised versions of the standard details.

(11) Proof satisfying the insurance and indemnification requirements as provided for in this chapter.

(12) A traffic control plan.

(D) All construction and installation in the right-of-way shall be in accordance with the permit for the facilities. The city shall be provided access to the work and such further information as is reasonably required to ensure compliance with the permit.

(E) A copy of the construction permit and approved engineering plans shall be maintained at the construction site and made available for inspection by the city at all times when construction or installation work is occurring.

(F) All construction or installation work authorized by the permit must be completed in the time specified in the public right-of-way permit. If the work cannot be completed in the specified time periods, the applicant may request an extension from the city.

(G) A copy of any permit or approval issued by federal or state authorities for work in state rights-of-way located in the city shall be maintained at the construction site and made available for inspection by the city at all times when construction or installation work is occurring.

(H) A request for a permit, complete with all information required under this section, must be submitted at least five working days before the commencement of work proposed in the request, unless waived by the city.

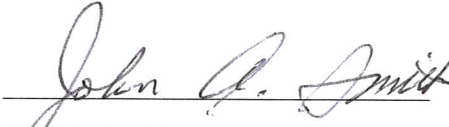
(I) The city may require a pre-construction meeting with the right-of-way applicant and the applicant's construction contractor.

(J) Requests for permits will be approved or disapproved by the city promptly after receiving a completed application and any requests for additional information.

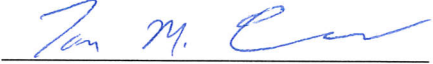
(K) Permits are not transferable to another applicant or another location.

**SECTION III.** This Ordinance is declared to be an emergency measure necessary for the immediate preservation of the peace, health, safety and general welfare of the citizens of the Village of Silverton and shall take effect and be in full force from and after its passage; the reason for the emergency being the need to immediately amend the right of way laws contained in the Code of Ordinances to provide for the relocation of facilities and payment for such re location to preserve the public peace, health, safety, and general welfare of the municipality.

*PASSED this 24<sup>th</sup> day of August, 2017.*

  
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John A. Smith, Mayor

ATTEST:

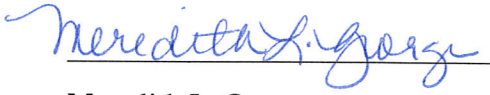
  
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Thomas M. Carroll, Village Manager

*Approved as to form:*

  
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Bryan E. Pacheco, Village Solicitor

CERTIFICATION:

I, Meredith L. George, Clerk of Council of the Village of Silverton, County of Hamilton, State of Ohio; do hereby certify that there is no newspaper published in said municipality and that publication of the foregoing Ordinance No. 17-3566 has been duly made by posting true copies in three (3) of the most public places in said municipality, as determined by Council as follows: 1) Parkview Lane at Railroad; 2) Silverton Municipal Building and 3) The Village of Silverton's Website. Said posting was for a period of fifteen days commencing August 28, 2017.

  
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Meredith L. George  
Clerk of Council of Silverton, Ohio