

MEMORANDUM
DEPARTMENT OF COMMUNITY DEVELOPMENT
City of Kent

Date: May 26, 2017

To: Dave Ruller, City Manager

From: Jennifer Barone, Development Engineer *JKB*

Re: Chapter 1161 – Supplementary Regulations

Copy: Tara Grimm, Clerk of Council
Jim Silver, Law Director
Melanie Baker, Service Director
Bridget Susel, Director of Community Development
James Bowling, City Engineer
Eric Fink, Assistant Law Director
file

I hereby respectfully request City Council agenda time on June 7, 2017 for Council to consider an amendments to the zoning code, Part 11 of the Kent Codified Ordinances (KCO), Section Chapter 1161 - Supplementary Regulations.

On May 2, 2017 the Kent Planning Commission held a public hearing and discussed proposed changes to KCO Section 1161.20 – Swimming Pools to modify the fence gap size to be a maximum four inches. The current criteria is three inches. The Ohio Revised Code (ORC3701-31-04(B)(6)(s)) and the industry standard is a four inch maximum gap. The three inch requirement results in pool fences having to be custom made. The Planning Commission voted 4-0 to recommend to City Council to amend this zoning code section.

A copy of the proposed amendment is attached. Since this is a text amendment and not an amendment to the Zoning Map, a newspaper advertisement for a City Council public hearing is required by Chapter 1111 of the Kent Zoning Code. The public hearing may be scheduled to be held prior to the June 7, 2017 Committee session. Please schedule this item for the Land Use Committee review by Kent City Council.

CHAPTER 1161
Supplementary Regulations

1161.01	Permitted Uses: Compliance
1161.02	Permitted Height Exceptions
1161.03	Front Yard Variances In Residential Districts
1161.04	Corner Lots
1161.05	Approval of Sewerage And Water Facilities
1161.06	Transition Areas
1161.07	Construction Previously Started
1161.08	Principal Buildings
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1161.22	Business Displays
1161.23	Effect of Annexation
1161.24	Usable Open Space
1161.25	Satellite Signal Reception Devices

1161.01 PERMITTED USES: COMPLIANCE

No building shall be erected, converted, enlarged, reconstructed or structurally altered, nor shall any building or land be used, arranged to be used, or designed to be used, in a manner which does not comply with all of the district provisions established by these regulations for the districts in which the building or land is located. Uses which are omitted from these regulations, not being specifically permitted, shall be considered prohibited until, by amendment, such uses are written into these regulations.

Determination of whether or not a use is specifically permitted, by virtue of being similar in character to a specified permitted use in the district, shall be made by the Planning Commission, based on the purpose of the district regulations and this Zoning Ordinance. The Planning Commission shall have no authority to determine whether or not a proposed use is similar in character to a conditionally permitted use in any zoning district.

No land shall be occupied or used, and no building hereafter erected, altered, or extended

shall be used or changed in use until a Zoning Permit has been issued by the Zoning Inspector and a Certificate of Occupancy has been issued by the Building Department stating that the building or proposed use thereof complies with the provisions of this Zoning Ordinance.

1161.02. PERMITTED HEIGHT EXCEPTIONS

(a) Except as specifically stated in other parts of these regulations, no building shall be erected, converted, enlarged, reconstructed or structurally altered to exceed the height limit hereinafter established for the district in which the building is located.

(b) Penthouse or roof structures for the housing of elevators, stairways, tanks, ventilating fans or similar equipment required to operate and maintain the building, and fire or parapet walls, skylights, towers, steeples, stage lofts and screens, flagpoles, chimneys, smokestacks, wireless masts, water tanks or similar structures may be erected above the district height limits stated herein according to the following regulations:

- (1) No such structure shall exceed the permitted height in the district by more than fifteen (15) feet.
- (2) No such structure shall have a total area greater than twenty-five (25) percent of the roof area of the building.
- (3) Such structure shall be incidental to the principal use of the building.

(c) Radio, television and wireless aerials or masts may be erected to any height.

(d) Public or semi-public buildings when permitted or conditionally permitted in a district may be erected to a height not to exceed forty-five (45) feet.

- (1) Churches and temples may be erected to a height not to exceed seventy-five (75) feet if the building is set back from each yard line at least one (1) foot for each one (1) foot of additional building height above the height limit otherwise provided in the district which the building is located.

1161.03. FRONT YARD VARIANCES IN RESIDENTIAL DISTRICTS

In any R District, the required depth of the front yard, on a lot where the new construction or alteration of a building is being considered, may be modified without a variance when the Zoning Inspector determines:

(a) That the average depth of at least two (2) existing front yards on lots within two hundred (200) feet of the lot in question and within the same block front is less than the least front yard depth prescribed in the applicable zoning district.

(b) The modified depth shall not be less than the average front yard depth of the lots identified in subsection (a) above.

(c) In any case the modified depth shall not be less than twenty (20) feet in any district and need not exceed one hundred (100) feet in any district.

1161.04. CORNER LOTS

Corner lots in all districts are required to have the minimum front yard requirements as indicated in that district, facing both streets.

1161.05. APPROVAL OF SEWERAGE AND WATER FACILITIES

In the event that central sanitary sewerage and central water facilities are not available the minimum lot size shall be one (1) acre for a single family dwelling and two (2) acres for a two family dwelling, unless a larger area is required by these regulations and/or the Health Commissioner. No zoning permit shall be issued without evidence that the Health Commissioner has approved the proposed sanitary sewerage facilities for the proposed use.

1161.06. TRANSITION AREAS

To secure the optimum effect of transition from a residential to a nonresidential district, the Planning Commission shall have the power to determine the need for and amount of: planting/landscaping materials, walls, walks, fences or any combination of these on any property line of land under consideration. The plans and specifications including density and height figures for the overall site development shall include the proposed arrangement of such plantings and structures.

1161.07. CONSTRUCTION PREVIOUSLY STARTED

Nothing contained in these regulations shall hinder the construction of a building or prohibit its use where construction has started before the effective date of these regulations provided that a zoning permit has been issued prior to the effective date of these regulations and provided that such construction shall be completed within two (2) years from the date of passage of these regulations.

1161.08. PRINCIPAL BUILDINGS

No more than one (1) dwelling shall be permitted on any lot unless otherwise specifically stated in these regulations, and every dwelling shall be located on a lot having the required frontage on a public or private street.

1161.09. SUBSTANDARD LOTS

(a) For the purposes of this Zoning Ordinance, a substandard lot shall be defined as follows:

- (1) Any lot not having the required minimum lot area of the zoning district which it is in but having a minimum lot area of at least five thousand (5,000) square feet; and
- (2) This lot is a lot of record as of the effective date of this Ordinance and amendments thereto, or is a lot for which a land contract has been issued as of the effective date of this Ordinance; or
- (3) This lot is a lot in an unrecorded allotment of which at least one-half (1/2) of such lots are of record as of the effective date of this Ordinance.

(b) Any lot which has been defined as substandard according to the criteria just identified, may be used for the purpose of erecting a single family dwelling. In place of the

dimensional requirements of the particular zoning district, the following minimum requirements shall apply:

- (1) Minimum side yard depth: Ten (10) percent of the width of the lot, but in no case less than five (5) feet.
- (2) Minimum rear yard depth: Twenty (20) percent of the depth of the lot, but in no case less than twenty (20) feet.
- (3) Minimum front yard depth: Same as district requirement.

1161.10. LOTS, YARDS AND OPEN SPACES

No space which, for the purpose of a building, has been counted or calculated as part of a side, rear or front yard or other open space required by these regulations may, by reason of change in ownership or otherwise, be counted to satisfy the yard or other open space requirement of, or for, any other building.

1161.11. PROJECTIONS INTO YARDS

Every part of a required yard shall be open and unobstructed to the sky, except for accessory buildings in a rear or side yard, and except for the ordinary projections of skylights, sills, beltcourses, cornices, and ornamental features projecting not more than one (1) foot. This requirement shall not prevent the construction of fences not more than six (6) feet in height except on that portion of a lot(s) within thirty (30) feet of the intersection of two (2) or more streets. Terraces, uncovered porches, patios, plat-forms and ornamental features which do not extend more than three (3) feet above the level of the ground (first) story may project into a required side or rear yard, provided these projections are at least two (2) feet from the adjacent lot line. The ordinary projections of chimneys or flues are permitted into the required side, rear and front yards. An open, unenclosed porch or paved terrace may project into the front yard not more than ten (10) feet.

1161.12. VISIBILITY OF CORNER LOTS

No obstruction to view more than two (2) feet in height shall be placed on any corner lot within a triangular area formed by the street right-of-way lines and a line connecting them at points thirty (30) feet from the intersection of the street lines, except that street trees are permitted which are pruned at least eight (8) feet above the established grade of the roadway so as not to obstruct or hinder a motorist's line of sight.

1161.13. DWELLING OTHER THAN A MAIN STRUCTURE

No residential structure shall be erected or converted upon a lot with another dwelling; except that a two-story garage with living quarters upon the second floor may be permitted provided such quarters are occupied by guests or a servant and his/her family employed by the family occupying the main structure.

1161.14. ACCESSORY BUILDINGS

An accessory building may be erected upon a lot on which a principal structure already exists. The use of the accessory building must be secondary and incidental to the principal use. An accessory building which is attached to the main building shall comply with all the requirements

of these regulations that are applicable to the principal building.

(a) Accessory Buildings Not Attached To The Main Structure: Accessory buildings detached from the main building shall not be located closer than fifteen (15) feet to the main building and not less than ten (10) feet from the side and rear property lines. One or more accessory buildings shall not occupy more than thirty (30) percent of a required rear yard. No accessory building shall be located less than sixty (60) feet from any street right-of-way line. Detached accessory buildings in residential zoning districts shall not exceed fifteen (15) feet in height.

(b) Substandard Lot Exception: On any sub-standard lot as defined in Section 1161.09(a) of this Ordinance, accessory buildings detached from the main building shall not be located closer than ten (10) feet to the main building and not less than five (5) feet from the side and rear property lines. One or more accessory buildings shall not occupy more than fifty (50) percent of a required rear yard. No accessory building shall be located less than forty-five (45) feet from any street right-of-way line. Detached accessory buildings in residential zoning districts shall not exceed fifteen (15) feet in height.

1161.15. TEMPORARY BUILDINGS

Temporary buildings for use incidental to construction work may be erected in any of the zoning districts. Such temporary building or buildings shall be removed upon completion or abandonment of the construction work.

1161.16. INCONSISTENCIES

In the event that any of the requirements or regulatory provisions of these regulations are found to be inconsistent one with another, the more restrictive or greater requirement shall be deemed in each case to be applicable.

1161.17. PROHIBITED USES

No use shall be permitted or authorized to be established which, when conducted in compliance with the provisions of these regulations, and any additional conditions and requirements prescribed, is or may become hazardous, noxious or offensive due to the emission of odor, dust, smoke, cinders, gas, fumes, noise, vibration, electrical interference, refuse matter or water-carried wastes.

(NOTE: For storage of hazardous wastes, see also Chapter 3734 of the Ohio Revised Code; for transportation and storage of nuclear wastes and by-products, see Chapter 4163 of the Ohio Revised Code.)

1161.18. OUTDOOR ADVERTISING SIGNS

Outdoor advertising signs shall be classified as a business use and are specifically prohibited from all residential districts. Outdoor advertising signs shall be erected subject to the provisions of Chapter 1165.

1161.19. COMPLIANCE WITH ALL APPLICABLE REGULATIONS

All structures shall comply with all applicable codes, standards and requirements as

adopted by City Council and as administered by the various City departments.

1161.20. SWIMMING POOLS

Public or private in-ground or above ground swimming, wading or other pools containing one and one-half (1 1/2) feet of water depth shall be considered as structures for the purpose of permits. The following restrictions shall apply to such structures as defined above:

- (a) No such structure shall be located within a front yard area.
- (b) No such structure shall be located closer than fifteen (15) feet to any side or rear property line.
- (c) Every such structure shall be completely surrounded by a wall or fence not less than four (4) feet in height; such fence shall not have holes, openings or gaps larger than ~~three (3)~~ four (4) inches in any dimension. All doors and gates shall be equipped with working locking devices so as to prevent unauthorized intrusion.
- (d) An accessory building may be located within or directly contiguous to such enclosure. Any such building which is not completely located within the confines of the enclosure must comply with any and all other applicable sections of this Ordinance.
- (e) Above-ground pools having vertical walls of at least four (4) feet above the surface grade shall be required to have fences and or gates only at points of access to the pool.

1161.21. FENCES, WALLS, HEDGES

(a) Fences, walls and hedges are permitted in any required yard, or along the edge of any yard provided that no fence, wall or hedge in a front yard area exceed four (4) feet in height. Fences, walls or hedges along side or rear property lines shall not exceed a height of six (6) feet above the grade. Informal plantings may be higher than six (6) feet.

(b) Any fence, wall, or hedge shall be well maintained and shall not be hazardous or disturbing to existing or future neighboring uses.

1161.22. BUSINESS DISPLAYS

In all commercial districts, all businesses, services and merchandise displays shall be conducted within a completely enclosed building except as otherwise provided in this Zoning Ordinance.

1161.23. EFFECT OF ANNEXATION

The zoning of all lands or property annexed by the City of Kent shall be established at the time of annexation. No land or property shall be annexed prior to the completion of a review and recommendation by the Planning Commission.

1161.24. USABLE OPEN SPACE

Wherever required by this Zoning Ordinance, usable open space shall be defined in Section

1109.01(g)(132). (Ord. 1992-02. Passed 1-15-92.)

1161.25. SATELLITE SIGNAL RECEPTION DEVICES

Satellite Signal Reception Devices (SSRD) shall be controlled as accessory uses to the principal uses in Chapter's 1125 through 1155 of this Ordinance. The following restrictions shall apply to these structures:

- (a) No SSRD shall be permitted in any front or side yard.
- (b) An SSRD placed in any rear yard shall maintain the following setbacks:
 - (1) The minimum setback from any side or rear property line shall be the same as the height of the structure from grade to top of structure. In no event shall the minimum setback permitted be less than five (5) feet from any side or rear property line.
- (c) A maximum of one SSRD may be erected on a single lot.
- (d) The permitted maximum height of an SSRD shall be as follows:
 - (1) In residential zoning districts the maximum height of an SSRD shall not exceed fifteen (15) feet from grade to top of structure for ground-mounted units; and the maximum height permitted in the district regulations for roof-mounted units.
 - (2) In all other districts, the maximum height of an SSRD shall be that as required by the individual zoning districts.
- (e) The installation of an SSRD shall comply with all applicable Building Codes, and shall be inspected for safety by the Building Inspector, with no fees to be charged to the property owner.

1161.26. LIMITED HOME BUSINESS

A Limited Home Business is a permitted use in any residential dwelling under the standards set forth in Section 1109.01(98.1). The Zoning Inspector shall review each application as it is submitted to the Community Development Department to determine whether the proposed use is consistent with Section 1109.01(98.1) of the Zoning Code. If all of the Standards are met, the Zoning Inspector will issue a letter of approval outlining the restrictions on the Limited Home Business. (Ord. 1996-55. Passed 8-14-96.)

1161.27 DRIVEWAYS

Driveways are governed by the following regulations:

- (a) Driveways may not exceed twenty-four (24) feet in width and must be of equal width from the traveled portion of the public or private road right of way to the terminus of the improved area.
- (b) In all residential zoning districts (R-1, R-2, R-3, R-3A and R-4), all driveways shall not exceed forty percent (40%) of the total required front yard on the lot.

- (c) An applicant may seek a variance from the City of Kent Board of Zoning Appeals to install or alter a driveway not in conformance with the KCO 1161.27(a) or (b).
- (d) An applicant may seek a zoning permit from the Community Development Department if the applicant is only seeking to expand the width of the driveway at the terminus only in order to service a multi-car garage.
- (e) An applicant may seek a zoning permit from the Community Development Department if the applicant is only seeking to install a “bump-out” or “turn-around” in the applicant’s driveway in R-1 and R-2 Districts. Applicants in R-3, R-3A and R-4 must appear before the BZA.
- (f) An applicant may seek a zoning permit from the Community Development Department if the applicant is only seeking to service a side entry garage.
- (g) The Community Development Department is not obliged to grant such a zoning permit and shall review application in accordance with any standards set forth by the Community Development Director. If an application is denied, the applicant may then seek a variance from the City of Kent Board of Zoning Appeals.

1161.28 TEMPORARY STRUCTURES

- (a) Prior to erecting a Temporary Structure that exceeds this length of time, the applicant may obtain a permit from the Community Development Director (or Zoning Official). The Director’s decision will be based upon the Temporary Structure’s impact upon the community and concerns regarding any potential safety hazards. A Temporary Structure (such as a tent or canopy) erected in the back yard of a residence that complies with all required setbacks and is not being used for any business purpose is not subject to the fourteen (14) day time limits.
- (b) At the discretion of the Building Official, any structure in place for more than sixty (60) days may be deemed a permanent structure, subject to all the rules and requirements of a permanent structure, including a site plan and permits.

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CITY OF KENT, OHIO

DEPARTMENT OF LAW

TO: DAVID RULLER, KENT CITY COUNCIL, MAYOR FIALA
FROM: JAMES R. SILVER *JRS*
DATE: APRIL 25, 2017
RE: REVISIONS TO PROPOSED CHAPTER 937

Please see attached proposed changes to Chapter 937 regarding the new wireless support structure and facility legislation passed by the State in amendment to ORC Chapter 4943 in SB 331.

The proposed changes in the City's Code were brought about due to changes in the Ohio Revised Code. Our state legislators have pretty much removed control of "small cell towers" (under 50' in height) from local governments. Staff has tried to keep some control while remaining in compliance with the State code. We ask City Council to adopt the recommended changes to our code.

One of the changes made by the State was to allow a small cell tower operators to place their units on any City owned structure, be it a building, street signal pole, etc. This is passed on as an FYI of the further erosion of local government powers and control

CHAPTER 937

Use of Public Ways by Service Providers

937.01 Scope of Chapter; Definitions.	937.06 Notice of Work, Routine Maintenance and Emergency Work.
937.02 Consent to Occupy and Use the Public Right-of-Way.	937.07 Construction Permits and Standards.
937.03 Annual Registration of Service Providers.	937.08 Recovery of City Costs in Managing the Public Right-of-Way.
937.04 General Public Right-of-Way Use Regulations.	937.09 Cable Televisions Franchise.
937.05 Location, Relocation and Removal of Facilities.	937.10 Private Facilities in the Public Right-of-Way.
	937.11 Miscellaneous Provisions.
	937.99 Penalties and Other Remedies.

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 fairly and responsibly protects the public health, safety and welfare.
 - (8) 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 radio frequency 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.
 - (5) Cable Service means “cable service” as defined in the Cable Communications Policy Act of 1984, codified at 47 U.S.C. §532, et seq., as amended by the Cable Television Consumer Protection and Competition Act of 1992 and the Telecommunications Act of 1996, as each might be further amended.
 - (6) Cable System means “cable system” as defined in the Cable Communications Policy Act of 1984, codified at 47 U.S.C. §532, et seq., as amended by the Cable Television Consumer Protection and Competition Act of 1992 and the Telecommunications Act of 1996, as each might be further amended.
 - (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.
 - (9) City Manager means the City Manager, or his or her designee.
 - (10) 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.
 - (11) Construct, Constructing, Construction, etc. means installing, repairing, maintaining, operating, replacing or removing any Public or Private Facility, regardless of the methods employed.
 - (12) 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.
 - (13) 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.

- (14) 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.
- (15) 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.
- (16) 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.
- (17) Facility, Facilities or System means 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.
- (18) 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.
- (19) Micro Wireless Facility includes both a distributed antenna system and a small cell facility and related wireless facilities.
- (20) Micro Wireless Facility Operator means a public utility or cable operator that operates a micro wireless facility.
- (21) 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.
- (22) Occupancy or Use means, with respect to the Public Right-of-Way, to place a tangible thing in 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.

- (23) 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.
- (24) 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.
- (25) 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.
- (26) 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.
- (27) 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.
- (28) 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.
- (29) 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.
- (30) 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.
- (31) 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 to 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.
- (37) 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.
- (38) State means the State of Ohio.
- (39) 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.
- (40) Trenchless Technology means the use of directional boring, horizontal drilling and microtunneling 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.
- (41) Underground Facilities means Facilities located under the surface of the ground, excluding the underground foundations or supports for Overhead

Facilities.

- (42) 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.
- (43) 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.

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, and/or
 - (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.

- (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; or
 - (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.

- (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 must secure and maintain, at a minimum, the following liability insurance policies insuring both the Service 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 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 to comply with the codes, ordinances, rules, regulations or permits of the City, each Service 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 so long as any of the Service Provider's 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:
 - (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 act or default;
 - (B) providing a reasonable opportunity for the Service Provider to first remedy the existing or ongoing default or failure, if applicable;
 - (C) providing a reasonable opportunity for the Service 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 will be given an opportunity to review the act, default or failure described in the notice from the City Manager.**
- (2) Service 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.

937.03 ANNUAL REGISTRATION OF SERVICE PROVIDERS.

- (a) **Annual Registration Required.** All Service Providers with 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 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 that own or operate 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 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, 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 registration statement and available at all reasonable times to be notified in case of emergency.
 - (2) Evidence that the Service Provider is in compliance with the 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 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 shall update all required information as soon as it becomes available. Should the Service Provider fail to comply with this section in a timely manner, they shall not be permitted to

- occupy the City's Right-of-Way.
- (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 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 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' 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. 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 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 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 provided in Section 937.08.

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.
 - (5) 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.
- (6) 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 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 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(l) hereof. Transactions between Affiliated entities are not exempt from Section 937.04(l).

- (n) Revocation of Consent. Consent granted by the City to Occupy or Use Public Right-of-Way of the City maybe 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.
 - (4) Abandonment of Facilities in the Public Right-of-Way.
 - (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.

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 Facility 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.

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.

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.

(b) Construction Permit Applications. Applications for permits to Construct, Reconstruct or install 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 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 above ground:
 - (A) evidence that Surplus Space is available for locating its Facilities

- on existing utility poles along the proposed route;
 - (B) the location and route of all Facilities to be located or installed on existing utility poles.
 - (3) If the applicant is proposing an underground installation of new 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.
 - (B) the Excess Capacity, if any, that will exist in such ducts or conduits after installation of the applicant's Facilities.
 - (4) If the applicant is proposing an underground installation of new 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.
 - (5) The location and route of all 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 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 of other Service Providers.
 - (8) The construction methods to be employed for protection of existing structures, fixtures and Facilities in or adjacent to the Public Right-of-Way.
 - (9) The structures, improvements, Facilities and obstructions, is any, that the applicant proposes to temporarily or permanently remove or relocate.
 - (10) The impact of Construction, Reconstruction, installation, maintenance or repair of 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 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 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 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 may modify the Construction Schedule at any time provided that notice is given to the City Manager. The Service 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 Constructing, Reconstructing, installing, maintaining or repairing Underground Facilities shall utilize Trenchless Technology, including, but not limited to, horizontal drilling, directional boring, and microtunneling, if technically and/or technologically feasible. In addition, all cable, wire or fiber optic cable 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 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 shall cause the location of such Facilities to be verified by a registered Ohio land surveyor. The Service 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.
- (n) Completion of Construction. The Service 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. Extensions are approved by the Director of Community Development.
- (o) 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.
- (p) Restoration of Improvements. Upon completion of any Construction work, the Service Provider shall promptly repair any and all Public Right-of-Way and

provide property improvements, fixtures, structures and 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 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.

(r) Construction and Completion Bond. Prior to issuance of a Construction Permit, the Service 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 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 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.

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.

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.

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.

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) [(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.

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.



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March 20, 2017 2:54 PM

Cities join forces to fight state law on wireless telephone antennas

By Jay Miller



Cities across the region are filing suit against a new state law that, the cities say, unconstitutionally, restricts their ability to regulate the next generation of wireless telephone antennas.

A lawsuit filed by the city of Cleveland on Monday, March 20, against the state of Ohio in Cuyahoga County Common Pleas court seeks to prevent the state from enforcing legislation passed at the end of December that would go into effect on Tuesday, March 21. A similar suit by 20 communities across the region was filed Friday, March 17, in Summit County Common Pleas Court.

"Our complaint challenges the constitutionality of S.B. 331," said Cleveland Mayor Frank Jackson at a news conference on Monday, referring to legislation passed in the waning days of the last legislative session.

"The Senate bill prevents the city from regulating the commercial installation of cell wireless equipment in our public right of way," Jackson said.

The cities believe the new law violates Ohio home rule rights, which grant municipalities the authority to adopt and enforce within their limits regulations that are not in conflict with what state law calls "general laws."

The cell tower rules were an amendment to S.B. 331, a bill introduced to regulate pet sales. Another amendment to the same bill prevents Cleveland and other cities from raising their minimum wage above the state minimum wage.

Cleveland's filing also challenges what Jackson called the "single subject rule," which says that legislation may contain no more than one subject, which must be clearly expressed in the title. That concept has not always been honored by the Ohio General Assembly.

Also at the news conference was Independence Mayor Anthony L. Togliatti. He said his community is one of 20, from five different Northeast Ohio counties, filing suit in a case in Summit County.

"In Independence, many of our business customers and residents chose to be in Independence based on the aesthetics of our community," he said. "To lose control of those aesthetics is very detrimental."

Togliatti said communities like his have committed to becoming more attractive by putting utilities underground in historic districts and in many subdivisions. He said that under this new law, cities can't deny a request to affix an antenna or put up a pole based on design, engineering or zoning consideration, even where no utility poles are currently allowed.

Jackson also pointed to the cost and administrative constraints the law imposes. It requires cities to approve or deny an application for new equipment, generally within 90 days of submission, and it caps application fees at \$250 per wireless attachment.

Jackson said Cleveland now charges \$750 to cover the cost of permitting and inspection.

Both lawsuits are headed for hearings in the weeks ahead.

In February, AT&T Ohio president Adam Grzybicki told Crain's the new micro cell technology is designed to meet the growing demand for high-speed wireless communications. Grzybicki said AT&T has seen a 250,000% increase in data traffic in Ohio since 2007.

These new micro cells, he said, provide additional wireless capacity and coverage to dense urban areas and to locations that are difficult to cover, like sparsely populated areas, with existing towers and antennas. They are part of the movement to the next generation of cellular transmission, called 5G.

None of the wireless companies are parties to the litigation.

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Next Century Cities

Blog Post

Thursday, February 2nd, 2017

Small Cells—What You Need to Know

Small cells are a new, innovative way to deliver high quality wireless service and are the first sign of where wireless technology is going: smaller antennas that are closer to the user. They are also used to extend internet access to previously unserved or underserved areas. Deploying small cells is an [attractive option](#) for urban and rural areas, as they are often significantly [less expensive and less disruptive to install](#) than larger macro cell sites. Small cells will likely be the best option for continuing to improve wireless access in urban areas without installing the larger antennas that are often opposed by local residents, but that doesn't mean local governments should be prohibited from safeguarding installation. Ensuring local control over the public right of way is particularly important for Next Century Cities' members, as the deployment of small cells is expected to increase in the coming years.

“Small cells” is an umbrella term used to describe [picocells](#), [femtocells](#), [microcells](#), and other [radio wave technology](#). Small cell networks are made up of a system of units that are often attached to fiber-optics at key access points, and use licensed and unlicensed spectrum to provide wireless service. They are often used by service providers to fill in capacity and coverage gaps in a network, or to provide increased bandwidth to specific blocks or neighborhoods.

Small cell units are generally connected to a fiber optic network. Once connected, a single unit can provide service for upwards of 30 access points in high-density areas, and can extend service to access points anywhere from 10 meters to over a kilometer away. Small cell units are comparable to a suitcase in size, and are usually attached to structures in the public right of way, such as utility poles, traffic lights, and street lights. However, they are still large enough to create the potential for safety and aesthetic concerns.

Some cities, like Boston, MA and Lincoln, NE, have successfully negotiated with service providers to facilitate the installation of small cells through mutually beneficial agreements. Although Boston's municipal government does not own the utility poles, it does have other structures, such as street lights, to which small cells can be attached. City leaders used this to their advantage, and entered into a deployment agreement with Verizon whereby the city makes its property easily accessible to Verizon in exchange for an increased city role in the types of poles and equipment Verizon uses. For example, once Boston officials agree to Verizon's design for a specific type of pole, Verizon can submit a list of locations to install it instead of having to go

through block-by-block reviews and public hearings for every installation. The city benefits from the ability to review locations in historic districts more closely, Verizon benefits from the the ability to more easily deploy attachments, and citizens benefit by receiving improved services more quickly.

Lincoln, which owns all the streetlights and a fiber conduit system throughout the city, also entered into a mutually agreeable contract with Verizon. In exchange for a speedy and simplified deployment process, Verizon will replace the street light poles with new poles and assume future maintenance of those poles. Verizon will extend fiber from the city's conduit system to the poles for the city's use, and reserve space on the poles where Lincoln can attach equipment such as cameras, public Wi-Fi antennas, or smart traffic sensors. Both Boston and Lincoln will continue to benefit from these relationships through the pole rental fees Verizon will continue to pay them, and from the continued improvements to mobile wireless coverage.

Boston and Lincoln are just two examples of the many ways cities can partner with private service providers to ensure that small cells are being deployed in ways that benefit both the community and the provider. Crucially, the cities designed these arrangements so that other small cell providers could get similar terms for deployment – meaning consumers stand to benefit from enhanced competition as well.



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Small cell technology is large endeavor for state



February 12, 2017 UPDATED 11 HOURS AGO

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Government AT&T Economy, Business & Finance

By JAY MILLER

Ohio may be at the head of the pack for faster wireless telephone service in the months ahead, which is good news for people who stream video or businesses that have other high data demands.

However, getting there may upset a few neighborhood apple carts.

A bill whisked quietly through the state Legislature in December pre-empts much of the municipal control over where the next generation of small cell towers will go.

The move in Ohio is being led by AT&T Inc. AT&T Ohio president Adam Grzybicki said Ohio is one of the first states where the company is rolling out this latest equipment that will increase peak data speeds. The equipment, Grzybicki said, is necessary as wireless carriers move on to the next, fifth generation of wireless transmission, or 5G.

"This is an incredible opportunity to really position yourself as the first state to be talking about 5G technology on a really broad platform," Grzybicki said. "This isn't San Francisco or Silicon Valley, and it's not Manhattan. It's starting here. The fact that we are able to start deploying a lot of these services is a really big deal."

To that, Strongsville law director Neal M. Jamison said, "Lucky us."

Jamison said the city will prepare legislation to regulate and administer applications for the new cell devices. The new city regulations, though, will have to be consistent with the new state cell antenna law, a part of SB 331 signed by Gov. John Kasich as the legislative session was coming to an end in December.

The cell tower rules were a late, end-of-session amendment to a bill introduced to regulate pet sales. Another amendment to the same bill prevents Cleveland and other cities from raising their minimum wage above the state minimum wage. All of the bill's provisions become effective on March 21.

The legislation was pushed by the wireless industry, particularly AT&T. It's aimed at expediting the rollout of what are called "micro wireless" antennas that the carriers want to attach to light poles and traffic signals or on poles built in the public right of way. It requires cities to approve or deny an application for new equipment, generally within 90 days of submission, and it caps application fees at \$250 per wireless attachment.

The antennas also could be erected on private property.

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These new micro cells, he said, provide additional wireless capacity and coverage to dense urban areas and to locations that are difficult to cover, like sparsely populated areas, with existing towers and antennas.

Grzybicki added that the benefits go beyond smart phone users being able to download movies or cat videos faster. With the added cells will come additional underground fiber that businesses need for their increasing data needs.

"Young, growing businesses already are on tablets and other devices to conduct their business," he said. "These new services will allow those devices to move data three or four times more quickly, making the businesses more efficient."

The cell tower amendment at first took more authority away from cities and included language that the Ohio Municipal League said would have given cities little control over placement of the towers.

The original language, according to a league analysis, would have given the carriers the right to attach their towers "to any structure capable of supporting it."

In a Nov. 28, 2016, letter to state legislative leaders, Cleveland Mayor Frank Jackson expressed opposition to the original legislative language. The letter stated that the proposed measure was "too broad and prevents local municipalities from having a say in rates, zoning and maintenance issues as it relates to wireless infrastructure."

The final bill limits somewhat the structures that the small cell antennas can be attached to, excluding water towers and power lines, and allows cities to reject applications when it sees health, safety, aesthetic and historic preservation concerns.

A Cleveland media spokesman did not provide an updated response by Crain's deadline last Friday, Feb. 10.

Analyzing the legislation that passed the Legislature in a December blog post, William Hanna, a public law attorney with the Cleveland firm of Walter & Haverfield, wrote that the revised legislation signed by Kasich "significantly impacts a municipality's ability to regulate the placement, construction, modification, and maintenance of 'small cell' wireless facilities in the public right of way," meaning along public streets.

That means a cellular phone company can attach small-cell wireless equipment to existing light poles, traffic signals or sign poles in the right of way and can construct a new pole or modify an existing pole that has wireless equipment.

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These new antennas, Gryzbicki said, would add between a foot to 18 feet on an existing pole.

A community also may not apply zoning restrictions nor exclude equipment placement of equipment from residential areas or even require that equipment be a specific distance from a residence or other structure.

Hanna, who did not respond to an email seeking comment, also argued that the new law "offends principles of (local) home rule."

Strongsville law director Jamison was more circumspect.



still have the right to enact some regulations for (the wireless companies) to comply with."

But he said Strongsville and other cities will have to figure out how this will affect areas that have been designed to be pole-free, with underground utilities.

Asked about the concerns of communities or neighborhoods with underground utilities, AT&T Ohio spokeswoman Holly Hollingsworth responded with an emailed statement.

"AT&T's first priority when working with any municipality on small cell deployment is to work in a collaborative manner so citizens and businesses can benefit from additional telecom infrastructure," the statement read.

"If there are no existing utility poles as an option for small cell deployment, AT&T would evaluate the use of municipal light poles and traffic poles in the public right of way in discussions with municipal leaders on a case-by-case basis and could also work with the private owners of structures outside the public right of way (e.g., parking structures) for small cell deployment," according to the statement.

Roger Geiger, Ohio executive director for NFIB, the national small business advocate, in a letter sent to the finance committee of the Ohio House of Representatives while the committee was crafting the small-cell language, said, "(W)e are supportive of the addition of language that eliminates obstacles to expanding small cell technology in Ohio. These small cells will ensure Ohio keeps pace with evolving mobile communication technology and provides businesses tools that make connecting with employees and customers simpler and more efficient."

Steve Van Dinter, spokesman for Verizon Ohio, AT&T's chief competitor in Ohio, said he was unaware of the new legislation but that his company continues to roll out small cell equipment for its 4G service.

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