

**FILE OF THE CITY CLERK**

**ADMINISTRATIVE ORDINANCE NO. \_\_\_\_\_, 2013**

**ADMINISTRATION BILL NO. 16 - 2013**

**INTRODUCED – DECEMBER 10, 2013**

**ADOPTED BY COUNCIL – DECEMBER 17, 2013**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LANCASTER, LANCASTER COUNTY, PENNSYLVANIA ADOPTING A NEW CHAPTER TO THE CODE OF THE CITY OF LANCASTER, CHAPTER 263-RIGHT OF WAY MANAGEMENT TO IMPLEMENT A COMPREHENSIVE PROGRAM FOR MANAGEMENT OF THE RIGHTS OF WAYS OF THE CITY, CONTAINING PROVISIONS INCLUDING, BUT NOT LIMITED TO: RIGHT OF WAY USE AUTHORIZATIONS, RIGHT OF WAY USE AGREEMENTS, THE ESTABLISHMENT OF A RIGHT OF WAY USE PERMIT PROCEDURE, PROVISIONS REGARDING TRANSITION FROM EXISTING CITY ORDINANCES TO THE RIGHT OF MANAGEMENT ORDINANCE, PROVISIONS REGARDING EXISTING CABLE FRANCHISES OR OPEN VIDEO SYSTEM FRANCHISES, RENEWAL AND TRANSFER OF RIGHT OF WAY USE PERMITS, REGULATIONS FOR CONSTRUCTION IN THE RIGHTS OF WAY, THE ESTABLISHMENT OF A RIGHT OF WAY MAINTENANCE FEE, ESTABLISHMENT OF PENALTIES AND REMEDIES, AND PROVISIONS REGARDING PROPRIETARY INFORMATION, LEASED FACILITIES, DUTIES TO PROVIDE INFORMATION, THE CITY'S RIGHT TO INSPECT RECORDS, WAIVERS, THE ABILITY OF THE DIRECTOR OF PUBLIC WORKS TO ESTABLISH FURTHER REGULATIONS, POLICE POWERS OF THE CITY, SEVERABILITY OF THE ORDINANCE AND THE EFFECTIVE DATE OF THE CODE PROVISIONS. THE ORDINANCE FURTHER PROVIDES FOR THE REPEAL OF INCONSISTENT ORDINANCES, THE SEVERABILITY OF THE ORDINANCE AND THAT THE ORDINANCE SHALL TAKE EFFECT IN ACCORDANCE WITH PENNSYLVANIA LAW.**

**WHEREAS**, the Mayor and City Council of the City of Lancaster are charged with the responsibility to maintain and manage the public Rights-of-Way of the City of Lancaster, including the obligation to construct, reconstruct, inspect, and maintain the Rights-of-Way in a manner that renders them serviceable and safe to the public; and

**WHEREAS**, the City Council finds that the maintenance and management of the public Rights-of-Way of the City is a continuing obligation of the City government, as the Rights-of-Way are a valuable component of the City infrastructure, and are integral to the sound operation

of the City, including its essential and emergency services, as well as to the flow of commerce of the City, and the necessary management of traffic into and through the City; and

**WHEREAS**, the City Council has delegated the proper management and maintenance of the public Rights-of-Way to its Department of Public Works, its Director and City Engineer; and

**WHEREAS**, Council finds that the public Rights-of-Way of the City are a valuable resource and asset, not only for City purposes, but also for the benefit of third-party users, who rely upon the Rights-of-Way of the City for the installation and maintenance of various facilities owned and operated by such third-parties to their economic benefit; and

**WHEREAS**, the City Council has determined that the myriad users of the public Rights-of-Way of the City of Lancaster derive great economic benefit and advantage by virtue of their use and occupancy of City Rights-of-Way; and

**WHEREAS**, Council has further determined that the management and maintenance of City Rights-of-Way, including the activities to ensure the safety of third-party facilities, represent a significant continuing operational and capital cost to the City, and by extension to the taxpayers, residents and business owners of the City; and

**WHEREAS**, Council finds that the costs of maintenance and management of the public Rights-of-Way with respect to third-party facilities of the City are significant, and capture a large portion of the operations of the City Public Works Department and City Engineer on a yearly basis; and

**WHEREAS**, Council is aware that the Pennsylvania General Assembly, by and through the Third Class City Code and the Home Rule Charter and Optional Plans Law, as well as the Courts of the Commonwealth have invested the City of Lancaster with broad police powers to regulate and maintain the public Rights-of-Way, and to recoup certain costs associated with such maintenance from those entities occupying the Rights-of-Way; and

**WHEREAS**, City has engaged in a lengthy review and study of the real costs which are associated with the management and maintenance of the public Rights-of-Way of the City of Lancaster with respect to third-party facilities, and has further determined that the City presently has no adequate means by which those costs can be charged to the users of City property; and

**WHEREAS**, the City has identified a need to recapture the third-party costs of Right-of-Way management and maintenance, since such costs are presently being born by the City and its taxpayers, where the third-party users of the public Rights-of-Way are contributing little to no funds toward maintenance of these assets; and

**WHEREAS**, City Council finds that the inequity created by the City's funding of all costs of Right-of-Way maintenance and management, to the benefit of a select cadre of private third-party users, is inherently unreasonable and represents a misapplication of precious City resources which might otherwise be spent on programs and projects which benefit all of the residents and property owners of the City; and

**WHEREAS**, the City desires to implement a comprehensive system of Right-of-Way maintenance, which same system shall assess the cost of City actions to maintain and manage facilities in the Rights-of-Way upon the actual users of such facilities; and

**WHEREAS**, Council finds that it will be in the manifest best interest of the City, its residents and taxpayers, to recoup the City's unreimbursed Right-of-Way maintenance and management costs;

NOW, THEREFORE, BE AND IT IS HEREBY ORDAINED AND ENACTED by the City Council of the City of Lancaster, Lancaster County, Pennsylvania, as follows:

**SECTION 1.** The document attached hereto and incorporated herein as Exhibit "A", entitled Chapter 263; Right of Way Management, be and hereby is adopted in its entirety to be included and made part of the Code of the City of Lancaster as Chapter 263.

**SECTION 2.** All ordinances or resolutions or parts of ordinances or resolutions insofar as they are inconsistent herewith are hereby repealed and rescinded, including, without limitation, Ordinance No. 2 - 2013.

**SECTION 3.** In the event any provision, section, sentence, clause or part of this Ordinance shall be held to be invalid, such invalidity shall not affect or impair any of the remaining provisions, sections, sentences, clauses or parts of this Ordinance; it being the intent of the City of Lancaster that the remainder of the Ordinance shall be and shall remain in full force and effect.

**SECTION 4.** This Ordinance shall become effective as provided by the laws of the Commonwealth of Pennsylvania.

DULY ORDAINED AND ENACTED this \_\_\_\_\_ day of December, 2013, by the Council of the City of Lancaster, Lancaster County, Pennsylvania, in lawful session duly assembled.

ATTEST:

CITY OF LANCASTER

\_\_\_\_\_  
Janet Spleen, City Clerk

By: \_\_\_\_\_  
J. Richard Gray, Mayor