

CITY OF LANCASTER

CHAPTER 263: RIGHT-OF-WAY MANAGEMENT

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Chapter 263 RIGHT-OF-WAY MANAGEMENT

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§263A DEFINITIONS

Terms used in this Chapter shall have the following meanings, whether or not the terms are capitalized. Unless otherwise expressly stated, terms not defined in this Chapter shall be construed consistent with Title 47 of the United States Code, and, if not defined therein, with their common and ordinary meaning.

(a) *Aerial Facilities.* Poles, wires, cables, equipment, and other Facilities located above the surface of the ground, including their underground supports and foundations. Such term does not include private driveways, newspaper vending machines, street banners, canopies or other minor obstructions located in the Rights-of-Way.

(b) *Affiliate.* A Person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with another Person.

(c) *Cable Act.* The Cable Communications Policy Act of 1984, as amended by the Cable Television Consumer Protection and Competition Act of 1992 and the Telecommunications Act of 1996, and as hereafter amended (47 U.S.C. §§ 521 *et seq.*, as hereafter amended).

(d) *Cable Franchise or Franchise.* Right-of-Way Use Authorization pursuant to this Chapter authorizing a Person to own, construct, operate and maintain a Cable System to provide Cable Service or an OVS system to provide OVS service within the City.

(e) *Cable Franchise Agreement.* Right-of-Way Use Agreement required pursuant to the Cable Act and the City Code for any Cable Franchise issued by the City.

(f) *Cable Operator.* A Person providing or offering to provide Cable Service over a Cable System within the City as that term is defined in the Cable Act.

(g) *Cable Franchise Fee.* A fee paid by a Cable Operator pursuant to a Cable Franchise Agreement for the Cable Operator's use of the City's Rights-of-Way. The fee is

calculated as a percentage of the Cable Operator's gross revenues from the operation of the Cable System to provide Cable Services in the City.

(h) *Cable Service.* The one-way transmission to subscribers of video programming or other programming service and subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

(i) *Cable System.* Facilities consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple subscribers within the City; but such term does not include (i) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (ii) a facility that serves subscribers without using any Right-of-Way; (iii) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, as amended, except that such facility shall be considered a cable system (other than for purposes of 47 U.S.C. § 541(c)) to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services; (iv) an open video system that complies with 47 U.S.C. § 573; or (v) any facilities of any electric utility used solely for operating its electric utility system. A reference to a Cable System refers to any part thereof. This definition of "Cable System" shall in no way be deemed to circumscribe or limit the valid authority of the City to regulate or authorize the Facilities and/or Services of any other Telecommunications Provider or other Person that owns, constructs, operates, or maintains Facilities in the Right-of-Way.

(j) *Certificate.* A Certificate of Public Convenience issued by the Pennsylvania Public Utility Commission to a public utility.

(k) *City.* The City of Lancaster, Pennsylvania.

(l) *City Code.* The Code of the City of Lancaster, Pennsylvania

(m) *City Property.* All real property now or hereafter owned by the City whether in fee ownership or other interest.

(n) *City Work.* All construction work performed by the City or any of its Departments, either with its own personnel or under contract, including repair, alteration, replacement, or maintenance of Facilities owned, operated, maintained, or controlled by the City or for which the City is responsible.

(o) *Communications Act.* The Communications Act of 1934, 47 U.S.C. §§ 151 *et seq.*, as amended and as hereafter amended.

(p) *Department.* The Department of Public Works of the City of Lancaster.

(q) *Director.* The Director of the Department of Public Works of the City of Lancaster. Except for the preparation and promulgation of Policies and Procedures, which is solely

the function of the Director, such term shall include the employees, agents and assignees of the Director.

(r) *Emergency.* A condition that (1) constitutes a clear and immediate danger to the health, welfare, or safety of the public, or (2) has caused or is likely to cause Facilities in the Rights-of-Way to be unusable and result in loss of the services provided.

(s) *Facility(ies).* Conduit, pipes, cables, wires, lines, towers, optic fiber, antennae, poles, associated equipment and appurtenances, and any other facilities located in the Right-of-Way and designed, constructed, and/or used, by Telecommunications Providers, Public Utilities, or other Persons for transmitting, transporting, or distributing communications, telecommunications, electricity, natural gas or manufactured gas, oil, gasoline, steam, or any other form of energy, signal or substance.

(t) *Franchise.* A Right-of-Way Use Authorization pursuant to this Chapter that authorizes a Person to own, construct, operate and maintain a Cable System to provide Cable Service or an OVS System to provide OVS Service within the City.

(u) *Franchisee.* A person that is issued a Franchise by the City.

(v) *Franchise Agreement.* A Cable Franchise Agreement or OVS Agreement.

(w) *Information Service.* The offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications (whether over a Cable System, Telecommunications System, Open Video System, or any other type of Facilities), and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a Telecommunications System or the management of a Telecommunications Service.

(x) *Non-PUC Regulated Entity or Entity.* Any corporation, company, association, joint stock company, firm, partnership, limited liability company, or other entity; municipal, industrial development, housing, redevelopment, and other authority or corporation established pursuant to statutes of the Commonwealth of Pennsylvania; and any individual not regulated as a Public Utility by the Public Utility Commission.

(y) *Open Video System or OVS.* Facilities consisting of a set of transmission paths and associated signal generation, reception, and control equipment that is designed to provide video programming services, Cable Service, and/or services similar to Cable Service to multiple subscribers within the City and which the Federal Communications Commission or its successor has certified as compliant with Part 76 of its rules, 47 C.F.R., Part 76.1500 *et seq.*, as amended from time to time; provided, that an Open Video System is not a system of Telecommunications Facilities and does not provide Telecommunications Service to the extent that it provides only video services; and provided further that an Open Video System means only those Facilities that are operated by a Person authorized to provide video services pursuant to Section 653 of the Communications Act of 1934, as amended, 47 U.S.C. § 573, where such Person is properly certificated to provide such services pursuant to applicable Federal Communications Commission regulations.

(z) *Open Video System Service or OVS Service.* Video programming services that are provided over an Open Video System.

(aa) *Permitee.* The recipient of a Right-of-Way Use Permit or Cable Franchise that is issued by the City pursuant to this Chapter, and Persons holding existing franchises, special ordinances, or other authorizations that are subject to the transitional provisions set forth in Section 263-4, including the City, its departments, agencies, and authorities.

(bb) *Person.* Corporations, companies, associations, joint stock companies, firms, partnerships, limited liability companies, and other entities; municipal, industrial development, housing, redevelopment, and other authorities and corporations established pursuant to statutes of the Commonwealth of Pennsylvania; and individuals.

(cc) *Policies and Procedures.* The written regulations, standards, operations and/or courses of action established by the City to implement the provisions of this Chapter. The preparation and promulgation of Policies and Procedures are solely the function of the City and not the employees, agents or assignees of the City.

(dd) *Public Utility Commission or PUC.* The State administrative agency, or lawful successor thereto, authorized to regulate and oversee Public Utilities and Telecommunications Providers and Telecommunications Services in the Commonwealth of Pennsylvania, to the extent provided by law.

(ee) *Public Utility or Utility.* Shall be defined as that term is defined in the Pennsylvania Public Utility Code as of the Effective Date of this Chapter, and as hereafter amended.

(ff) *PUC Regulated Utility.* Any entity which is operating as a Public Utility as defined under the Pennsylvania Public Utility Code, and is subject to regulation by the PUC, regardless of whether or not the entity has been issued a Certificate of Public Convenience by the Pennsylvania Public Utility Commission.

(gg) *Right-of-Way, Rights-of-Way or ROW.* The surface of and space above and below any real property in the City in which the City has a regulatory interest, or interest as a trustee for the public, as such interests now or hereafter exist, including, but not limited to, all Streets, highways, avenues, roads, alleys, sidewalks, tunnels, viaducts, bridges, skyways, or any other public place, area or property under the control of the City, and any unrestricted public or utility easements established, dedicated, platted, improved or devoted for Utility purposes but excluding lands other than Streets that are owned by the City. The phrase “in the Right(s)-of-Way” and means “in, on, over, along, above and/or under the Right(s)-of-Way.”

(hh) *Right-of-Way Use Authorization or ROW Use Authorization.* A license, Right-of-Way Use Permit, Cable Franchise, or OVS Franchise issued pursuant to this Chapter.

(ii) *Right-of-Way Use Permit or ROW Use Permit.* A Right-of-Way Use Permit issued pursuant to this Chapter.

(jj) *Service(s)*. Any Telecommunications Service, Cable Service, OVS Service, video programming service, Information Service, utility service (including, but not limited to, electric, gas, water, or steam service), or other form of service provided by means of Facilities located in the Right-of-Way.

(kk) *Street*. A strip of land or part thereof within the Right-of-Way, whether dedicated or not, that is intended or used for vehicular and pedestrian traffic. The phrase “in the (a) Street(s)” means “in, on, over, along, above and/or under the (a) Street(s).”

(ll) *Street Opening Permit*. A permit for excavation of a street for the construction or installation of Facilities in any Right-of-Way in the City.

(mm) *System*. Any Cable System, OVS System, Telecommunications System, or integral part thereof.

(nn) *Telecommunications*. The transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received.

(oo) *Telecommunications Facilities*. The plant, equipment and property within the City used to transmit, receive, distribute, provide or offer Telecommunications Service.

(pp) *Telecommunications Provider*. A Person who provides Telecommunications Service over Telecommunications Facilities.

(qq) *Telecommunications Service*. The offering of Telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the Facilities used.

(rr) *Telecommunications System*. A system that offers Telecommunications Service.

(ss) *Underground Facilities*. Utility and Telecommunications Facilities located under the surface of the ground, excluding the underground foundations or supports for Aerial Facilities.

§263B PUC-REGULATED UTILITIES

All Public Utilities regulated by the Public Utility Commission owning or operating Facilities in the City’s Rights-of-Way shall comply with the following requirements.

§263B-1 License

All Public Utilities shall be deemed to have a license from the City under this Ordinance to occupy the Rights-of-Way.

§263B-2 As-Built Maps

On or before March 1, 2014, each Public Utility shall submit to the Department two paper copies and one electronic copy of as-built map or maps and engineering specifications as set forth in the Policies and Procedures depicting and certifying the location of all its existing Facilities within the Right-of-Way. Such electronic and paper maps and engineering specifications shall be submitted in a format and include the information required by the City by in the Policies and Procedures. If the maps are not provided electronically in the required format, then the Utility shall reimburse the City for the cost of converting paper maps into electronic form or the cost of converting electronic maps in another format into the required format. Such maps are, and shall remain, confidential documents and are exempt from public disclosure under Pennsylvania's Right to Know Law, 65 Pa.C.S. §708; the Public Utility Confidential Security Information Disclosure Protection Act, 35 P.S. §§2141.1 – 2141.3; and the Public Utility Commission Regulations relating to Confidential Security Information, 52 Pa. Code §102.1 After submission of the as-built maps required under this Section, each Public Utility having facilities in the City Rights-of-Way shall update such maps as required under this Ordinance.

§263B-3 Right to Inspect

The City may conduct inspections of the City Rights-of-Way in order to ensure that Utility Facilities located within such Rights-of-Way do not constitute a public safety hazard, and remain in compliance with the standards set forth by the Public Utility Commission. Such inspections shall be limited to establishing whether such Facilities meet relevant PUC standards, and comply with such City construction standards as relate to the opening and closing of City streets, curbs, and sidewalks, as provided under 15 Pa.C.S. § 1511(e). In the event that the City determines that any Facilities of a Utility are not in compliance with such standards, then the City may bring a complaint against such Utility before the Public Utility Commission, in accordance with established PUC procedures. The City may also elect, in its discretion, to notify the Utility of the existence of any non-compliant Facilities, in order to abate such violations without the need for the filing of a formal PUC complaint.

§263B-4 Construction in the Rights-of-Way

(1) *Street Opening Permits.* Except in the case of an Emergency, no Utility shall perform any street excavation in the Rights-of-Way without first obtaining a Street Opening Permit and paying a permit fee pursuant to Chapter 262, Article VI of the City Code. No Utility shall perform curb and sidewalk construction replacement or repair without first obtaining a Curb and Sidewalk Permit and paying a permit fee pursuant to Chapter 262, Article V of the City Code. The procurement of a Street Opening Permit shall only be necessary when the proposed street excavation and/or construction impacts City streets; it shall not apply to any construction or excavation activities on state roads.

(2) *Construction Standards.* Construction standards shall include those determined by the Public Utility Commission for the installation of Facilities in City rights-of-way, as well as such City construction standards as relate to the opening and closing of City streets, curbs, and sidewalks,

as provided under 15 Pa.C.S. § 1511(e). Compliance with construction requirements pursuant to PUC related standards shall remain within the sole and exclusive jurisdiction of the PUC. Compliance with construction requirements pursuant to City standards shall remain within the jurisdiction of the City. The City shall retain the right to file formal complaints pursuant to PUC related construction as set forth under § 263B-4.

(3) *Security.* Each Utility opening, closing, or excavating City streets, curbs, and sidewalks as provided under 15 Pa.C.S. §1511(e) in conjunction with the Utility's construction or maintenance activities in the ROW shall furnish to the City, at the Utility's expense, a letter of credit or other form of financial security, in such form and in the amount as required by the City consistent with the Policies and Procedures and regulations of the City to guarantee the proper closing and restoration of the City's streets, sidewalks, or ROW. The security shall be a continuing obligation until the completion of the construction or maintenance as confirmed in writing by the City.

(4) *Insurance.* The applicant shall maintain insurance, with a reputable insurance company authorized to do business in the Commonwealth of Pennsylvania, indemnifying the City from and against any and all claims for injury or damage to persons or property, both real and personal, caused by the construction requiring the opening or closing of City streets, sidewalks, or ROW in accordance with 15 Pa.C.S. § 1511(e). The amounts of such coverage shall be as determined by the City by regulation. The City shall be designated as an additional insured under each of the insurance policies. The Utility shall not cancel any required insurance policy without first obtaining alternative insurance in conformance with this section. Utilities undertaking work in the City rights-of-way shall provide the City with at least thirty (30) days advance written notice of any material changes or cancellation of any required insurance policy.

(5) *Recently Constructed Streets.* No Street Opening Permit shall be issued to cut any City street that was constructed, reconstructed or resurfaced fewer than three (3) years prior to application for a Street Opening Permit, unless the applicant agrees in writing to overlay or pave the surface of the street, from curb to curb and intersection to intersection, in accordance with applicable City standards. The City may grant an exception to this Section in the case of an Emergency. The applicant shall pay all street degradation fees and comply with all related requirements as prescribed in Chapter 262, Article VI of the City Code.

(6) *Relocation or Removal of Facilities.* Within sixty (60) days following written notice from the City, or such longer period as the City determines is reasonably necessary or such shorter period in the case of an Emergency, a Utility shall temporarily or permanently remove, relocate, change or alter the position of any Facilities within the Right-of-Way, excluding those underground, whenever the City, consistent with applicable PUC regulations, shall have determined that such removal, relocation, change or alteration is reasonably necessary under the following circumstances: the construction, repair, maintenance, or installation of any City or other public improvement in the Right-of-Way; the operations of the City or other governmental entity in the Right-of-Way; vacation of a Street or the release of a utility easement; or an Emergency as determined by the City. Utilities must relocate and remove Facilities consistent with the regulations and standards of the PUC.

(7) *Coordination of Construction Activities.* By March 1 of each year, or at such other time as the City and Utilities may agree, each Public Utility shall provide the Department with a schedule (including plans and projected start and finish dates for each project) of its planned construction activities for the following year which may affect the Rights-of-Way. The schedule shall depict all planned construction activities the Utility is planning to perform within the year.

(8) *Damage to Facilities or Property.* A Utility, including any contractor working for a Utility, shall avoid damage to any Facilities and/or public or private property. If any Facilities and/or public or private property are damaged by the Utility, including any contractor working for the Utility, the Utility shall promptly repair and restore such property within ten (10) business days. The Utility shall utilize the Pennsylvania One Call System prior to any disturbance of the Rights-of-Way and shall adhere to all other requirements of the Pennsylvania Underground Utility Line Protection Act.

(9) *Facilities Maps.* Each Utility issued a Street Opening Permit shall submit to the City, not later than thirty (30) days after completion of the permitted construction (or any part thereof, if required by the City), two paper copies and one electronic copy of updated as-built map or maps and engineering specifications as set forth in the Policies and Procedures depicting and certifying the location of the new Facilities constructed or updated. Such documents shall be submitted in a format and include the information required by the City in the Policies and Procedures. If the maps are not provided electronically in the required format, then the Utility shall reimburse the City for the cost of converting paper maps into electronic form or the cost of converting electronic maps in another format into the required format. Such maps are exempt from public disclosure under Pennsylvania's Right to Know Law, 65 Pa.C.S. § 708; the Public Utility Confidential Security Information Disclosure Protection Act, 35 P.S. §§2141.1 – 2141.3; and the Public Utility Commission Regulations relating to Confidential Security Information, 52 Pa. Code §102.1.

(10) *Field Marking.* Each Utility shall field mark the locations of its underground facilities upon request by other Utilities or the City, consistent with the requirements of the Pennsylvania Underground Utility Line Protection Act and at no cost to the City.

§263B-5 Right-of-Way Maintenance Fee

(1) *Compensation for Right-of-Way Use.* Occupancy of City Rights-of-Way by any Utility is subject to the City's right to fix annually a fair and reasonable compensation, which shall be directly related to the City's actual Right-of-Way maintenance costs.

(2) *Annual Right-of-Way Maintenance Fee.* Each Utility with Facilities in the City's Rights-of-Way shall pay an annual fee to compensate the City for its costs incurred in connection with the ongoing use and occupancy of City Rights-of-Way. The Annual Right-of-Way Maintenance fee shall be determined by the City and authorized by resolution of City Council and shall be based on the City's actual ROW maintenance costs. The Annual Right-of-Way Maintenance fee shall be fixed on a per-linear foot basis for Underground Facilities and on a per-linear foot basis for Aerial Facilities. If subject to a Cable Franchise Agreement, the Utility shall

not be required to remit both a Cable Franchise Fee amount and an annual Right-of-Way Maintenance Fee to the City; such Utility shall pay the higher of the two (2) fees to the City.

§263C NON-PUC REGULATED ENTITIES

§263C-1 Right-of-Way Use Authorization Required

(1) *Right-of-Way Use Authorization.* Except as otherwise provided in this Chapter, no Non-PUC Regulated Entity shall own, construct, operate and/or maintain Facilities in any Right-of-Way of the City to provide or to enable others to provide Services to Persons or areas in the City or outside the City without a Right-of-Way Use Authorization. The types of Right-of-Way Use Authorization are a Right-of-Way Use Permit and a Cable Franchise. Public Utilities regulated by the PUC shall not be subject to this Section, and shall comply with Section 263B above.

(2) *Permit Required.* Pursuant to this Chapter, all Non-PUC Regulated Entities that own, construct and/or maintain Facilities in any public Right-of-Way shall obtain a Right-of-Way Use Permit. If any such Entity is subject to a Cable Franchise Agreement, the Permittee shall not be required to remit both a Cable Franchise Fee and an annual Right-of-Way Maintenance Fee to the City. Such Permittee shall pay the higher amount of the two (2) fees to the City.

§263C-2 Right-of-Way Use Permit

(1) *Permit Required; Term and Scope of Permit.* No Non-PUC Regulated Entity, other than a Franchisee, may own, construct, operate and/or maintain Facilities that occupy, the Right-of-Way without first obtaining a ROW Use Permit. Any ROW Use Permit shall be subject to such conditions as the City may from time to time establish and shall otherwise conform to the requirements of this Chapter and applicable law. A ROW Use Permit shall be for a term of five (5) years. A ROW Use Permit and the rights, benefits and permissions conferred thereby shall apply to the entire geographic area of the City.

(2) *Approval by City.* A ROW Use Permit shall be authorized only by the City and shall not become effective unless or until so authorized. In addition to the other requirements contained herein, the applicant shall demonstrate:

(a) That it has a history of compliance with applicable laws and regulations relating to the management, construction and maintenance of Facilities in Streets and Rights-of-Way, wherever located; and

(b) That it possesses all licenses, permits, authorizations, and other permissions required by the Federal Communications Commission, , the Commonwealth of Pennsylvania and the City as a condition of its using the Right-of-Way and furnishing the Services and operating the Facilities proposed by the applicant;

(43) *Insurance.* Each Permittee shall, at all times during the entire term of the Right-of-Way Use Permit, maintain and require its contractors and subcontractors to maintain insurance, with a reputable insurance company authorized to do business in the Commonwealth of Pennsylvania and which has an A.M. Best rating (or equivalent) no less than “A” indemnifying the City from and against any and all claims for injury or damage to persons or property, both real and personal, caused by the construction, installation, operation, maintenance or removal of Permittee’s System or Facilities in the Rights-of-Way. The amounts of such coverage shall be as determined by the City by regulation. The City shall be designated as an additional insured under each of the insurance policies required by this section. Permittee shall not cancel any required insurance policy without obtaining alternative insurance in conformance with this section. Permittee shall provide the City with at least thirty (30) days advance written notice of any material changes or cancellation of any required insurance policy.

(4) *Indemnification.* Each Permittee shall, at its sole cost and expense, indemnify, defend and hold harmless the City, its elected and appointed officials, employees and agents, at all times against any and all claims for personal injury, including death, and property damage arising in whole or in part from, caused by or connected with any act or omission of the Permittee, its officers, agents, employees or contractors arising out of, but not limited to, the construction, installation, operation, maintenance or removal of Permittee’s System or Facilities in the Rights-of-Way. Each Permittee shall defend any actions or proceedings against the City in which it is claimed that personal injury, including death, or property damage was caused by the Permit Holder’s construction, installation, operation, maintenance or removal of Permittee’s System or Facilities in the Rights-of-Way. The obligation to indemnify, hold harmless and defend shall include, but not be limited to, the obligation to pay judgments, injuries, liabilities, damages, reasonable attorneys’ fees, reasonable expert fees, court costs and all other costs of indemnification.

(5) *Application for Right-of-Way Use Permit.* Application for a ROW Use Permit shall be in such form and shall include such information as the City determines by regulation. Within a reasonable period of time not to exceed sixty (60) days after receiving a complete application hereunder, the City shall make a determination approving or denying the application. Determinations to grant or deny an application shall be made on a non-discriminatory and competitively neutral basis. If the application is denied, the determination shall include the reasons for denial. The application fee, which shall be paid at the time of the filing of the application, shall be as fixed from time to time by Resolution of City Council. The application fee shall be sufficient to reimburse the City for the actual costs of City staff time and other resources that are required and may be adjusted by resolution of City Council.

(6) *Renewal of Right-of-Way Use Permit.* A Person desiring to renew a ROW Use Permit prior to the expiration of the Permit shall file an application with the City for renewal of its authorization, which shall include the information and documents required for an initial application and other material information required by the City by regulation.

The City shall make a determination accepting or denying the renewal application. If the renewal application is denied, the determination shall include the reasons for non-renewal.

Determinations to grant or deny a renewal application shall be made on a non-discriminatory and competitively neutral basis. The City shall not unreasonably delay or deny the issuance of a renewal Permit.

(7) *As-Built Maps.* As the City controls and maintains the Rights-of-Way for the benefit of its citizens, it is the responsibility of the City to ensure that such Rights-of-Way meet the highest possible public safety standards. As such, the City needs to be informed regarding the placement of all facilities within the Rights-of-Way, including those positioned aerially and underground. Each Person applying for a ROW Use Permit shall submit to the Department two paper copies and one electronic copy of as-built map or maps and engineering specifications as set forth in the Policies and Procedures depicting and certifying the location of all its existing Facilities within the Right-of-Way. Such electronic and paper maps and engineering specifications shall be submitted in a format and include the information required by the City by in the Policies and Procedures, and shall be submitted with the application. If the maps are not provided electronically in the required format, then the Person shall reimburse the City for the cost of converting paper maps into electronic form or the cost of converting electronic maps in another format into the required format. Such maps are, and shall remain, confidential documents and are exempt from public disclosure under Pennsylvania's Right to Know Law, 65 Pa.C.S. § 708. After submission of the as-built maps required under this Section, each Permittee having facilities in the City rights-of-way shall update such maps as required under this Ordinance

(8) *Right to Inspect.* The Department shall have the right to inspect all of the Facilities of the Permittee, including Aerial Facilities and Underground Facilities, to ensure health and safety with respect to such Facilities, other Facilities, the Rights-of-Way and any other public or private property, and to determine compliance with the terms of this Chapter and other applicable laws and regulations. Permittees are required to cooperate with all such inspections and to provide information requested by the City as part of the inspection.

(9) *Use Authorized.* No ROW Use Permit shall confer any exclusive right or privilege to occupy or use the Right-of-Way for any purpose; or explicitly or impliedly preclude or affect the City's right to authorize use of the Right-of-Way by other Persons to own, construct, operate, maintain, and/or provide the same or different Facilities or Services, or for any other purposes as the City determines appropriate; or affect the City's right to construct, operate or maintain any type of Facilities itself or offer any type of Services in the Right-of-Way; or authorize, or excuse any Person from securing such further easements, leases, permits or other approvals as may be required by applicable law or regulation to occupy and use the Right-of-Way; or convey any right, title or interest in any Right-of-Way greater or other than an agreement only to use and occupy the Right-of-Way for the limited purposes and terms provided in the ROW Use Permit ; or be construed as any warranty of title.

(10) *Owner's Consent.* No ROW Use Permit expressly or impliedly authorizes a Permittee to provide any Services to, or install any Facilities on, any private property without the owner's consent, or to use publicly or privately owned poles, ducts or conduits without a separate agreement with the owners thereof for such use.

(11) *Substantially Similar Terms.* ROW Use Permits and renewals entered into after the effective date of this Chapter shall contain substantially similar terms which, taken as a whole upon consideration of all of its material terms and upon consideration of the nature of the Services to be authorized and other relevant characteristics of applicants, do not provide substantially more or less favorable terms and conditions than those required of other Permittees.

263C-3 Transitional Provisions

(1) *Persons Already Authorized to Use the Right-of-Way.* Any Non-PUC Regulated Entity holding a permit or other authorization from the City to own, construct, operate, and/or maintain Facilities in the Right-of-Way to provide Services may continue to conduct those activities expressly authorized until the earlier of the following: (i) the conclusion of the present term of its existing authorization or (ii) 180 days after the Effective Date of this Chapter; provided, that in the case of a Cable Franchise, such authorization shall continue until the expiration of the current term of the Cable Franchise. Notwithstanding the foregoing, such Persons (with the exception of Cable Franchisees) shall apply for a superseding ROW Use Permit pursuant to this Chapter within ninety (90) days after the Effective Date of the Chapter and shall be subject to the terms and conditions of this Chapter.

(2) *Pending Applications.* Applications for an authorization to occupy or use the Right-of-Way that are pending on the effective date of this ordinance shall be subject to this Chapter. A Person with a pending application shall submit additional information to comply with the requirements of this Chapter and applicable regulations of the City governing applications within thirty (30) days from the effective date of this Chapter.

(3) *Operating Without Right-of-Way Use Authorization.* Any Non-PUC Regulated Entity that owns or operates of any Facilities currently located in the Right-of-Way, the construction, operation, or maintenance of which is not currently authorized, but is required to be authorized under this Chapter, shall have ninety (90) days from the Effective Date of this Chapter to file one or more applications for a ROW Use Authorization. Any Entity timely filing such an application shall not be subject to penalties for failure to hold such a ROW Use Authorization, provided said application remains pending. Nothing herein shall relieve any Person of any liability for its failure to obtain any permit or other authorization required under other provisions of this Chapter, or City ordinances or regulations, and nothing herein shall prevent the City from requiring removal of any Facilities installed in violation of this Chapter or City ordinances or regulations.

§263C-4 Cable Franchise or Open Video System Franchise

(1) *Franchise Required*

(a) No Person may own, construct, operate or maintain a Cable System or Open Video System within the City, provide Cable Service over a Cable System, or provide OVS Service over an OVS without a Cable Franchise or OVS Franchise, whichever is applicable, issued by the City.

(b) To the extent permitted by law, Facilities used to provide Telecommunications Service, Information Service or any form of services similar to Cable Service or OVS Service, that are also used to provide Cable Service or OVS Service, shall be subject to this Chapter and shall also require a Right-Way-Use Permit pursuant to this Chapter.

(2) *Effect of Authorization*

(a) A Cable Franchise or an OVS Franchise shall not confer any authority to provide any form or type of Telecommunications Service or Information Service in addition to the Cable Service or OVS Service authorized by the Franchise. To the extent permitted by law, a separate Right-of-Way Use Permit pursuant to this Chapter, in addition to the Cable Franchise or OVS Franchise, shall be required before any Franchisee is permitted to use Facilities in the Right-of-Way to furnish any form or type of Telecommunications Service or Information Service.

(b) In the event of a conflict between the provisions of this Chapter and a Cable Franchise Agreement or OVS Agreement in effect on the Effective Date of this Chapter, the provisions of the Cable Franchise Agreement or OVS Agreement shall govern.

§263C-5 Alteration or Modification of Existing Facilities

(1) *Alteration or Modification of Existing Facilities.* The Permittee must notify the City upon alteration or modification of existing facilities within the rights-of-way. The Permittee must additionally provide an updated Facilities Map if facilities have been removed from, or added to, the Rights-of-Way.

(2) *Change in Information.* If there are any changes in information provided in the original permit application, the permit holder has an obligation to notify the City within sixty (60) days of such changes.

§263C-6 Construction in the Rights-of-Way

(1) *Street Opening Permits.* Except in the case of an Emergency, no Non-PUC Regulated Entity shall perform any street excavation in the Rights-of-Way without first obtaining a Street Opening Permit and paying a permit fee pursuant to Chapter 262, Article VI of the City Code. No person shall perform curb and sidewalk construction replacement or repair without first obtaining a Curb and Sidewalk Permit and paying a permit fee pursuant to Chapter 262, Article V of the City Code. The procurement of a Street Opening Permit shall only be necessary when the proposed street excavation and/or construction affects City streets; it shall not apply to any construction or excavation activities on state roads.

(2) *Construction Standards.*

(a) All construction, installation, maintenance, and operation of Facilities in the ROW by Non-PUC Regulated Entities shall conform to the requirements of the following publications, as from time to time amended: the Pennsylvania Department of Transportation

Publication Form 408, the City of Lancaster Curb and Sidewalk Regulations, National Electrical Code, and the National Electrical Safety Code (collectively, the “City of Lancaster ROW Construction Standards”). In the event of conflict between the ROW Construction Standards and this Section, this Section shall govern as of the effective date of this Chapter.

(1) *Security.* Each Non-PUC Regulated Entity performing construction in the ROW shall furnish to the City, at the Person’s expense, a letter of credit or other form of financial security, in such form and in the amount as required by the City consistent with the Policies and Procedures and regulations of the City. The security shall be a continuing obligation until the completion of the construction as confirmed in writing by the City.

(2) *Right to Inspect Facilities.* The City may inspect the construction or installation of the Facilities of any Non-PUC Regulated Entity, including both Aerial and Underground Facilities, and any construction or repair activity to ensure health and safety with respect to such Facilities, other Facilities, the Rights-of-Way and any other public or private property, and determine compliance with the terms of this Chapter and other applicable laws and regulations. Entities are required to cooperate with all such inspections and to provide information requested by the City as part of the inspection.

(3) *Recently Constructed Streets.* No Street Opening Permit shall be issued to cut any City street that was constructed, reconstructed or resurfaced fewer than three (3) years prior to application for a Street Opening Permit, unless the applicant agrees in writing to overlay or pave the surface of the street, from curb to curb and intersection to intersection, to the satisfaction of the Department. The City may grant an exception to this Section in the case of an Emergency. The applicant shall pay all street degradation fees and comply with all related requirements as prescribed in Chapter 262, Article VI of the City Code.

(4) *Relocation or Removal of Facilities.* Within sixty (60) days following written notice from the City, or such longer period as the City determines is reasonably necessary or such shorter period in the case of an Emergency, a Permittee shall temporarily or permanently remove, relocate, change or alter the position of any Facilities within the Right-of-Way, excluding those underground, whenever the Department, consistent with applicable PUC regulations, shall have determined that such removal, relocation, change or alteration is reasonably necessary under the following circumstances: the construction, repair, maintenance, or installation of any City or other public improvement in the Right-of-Way; the operations of the City or other governmental entity in the Right-of-Way; vacation of a Street or the release of a utility easement, or; an Emergency as determined by the City.

(5) *Coordination of Construction Activities.* By March 1 of each year, or at such other time as the City and Permittees may agree, each Right-of-Way Use Permittee shall provide the Department with a schedule (including plans and projected start and finish dates for each project) of its planned construction activities for the following year which may affect the Rights-of-Way. The schedule shall depict all planned construction activities the Permittee is committed to perform within the year.

(6) *Damage to Facilities or Property.* A Permittee, including any contractor working for Permittee, shall avoid damage to any Facilities and/or public or private property. If any Facilities and/or public or private property are damaged by Permittee, including any contractor working for Permittee, Permittee shall promptly repair and restore such property within ten (10) business days. Permittee shall utilize the Pennsylvania One Call System prior to any disturbance of the Rights-of-Way and shall adhere to all other requirements of the Pennsylvania Underground Utility Line Protection Act.

(7) *Facilities Maps.* Each Non-PUC Regulated Entity issued a Street Opening Permit shall submit to the City, not later than thirty (30) days after completion of the permitted construction (or any part thereof, if required by the City) two paper copies and one electronic copy of as-built map or maps and engineering specifications as set forth in the Policies and Procedures depicting and certifying the location of the Facilities constructed. Such engineering specifications and electronic and paper maps shall be submitted in a format and include the information required by the City in the Policies and Procedures. If the maps are not provided electronically in the required format, then the Person shall reimburse the City for the cost of converting paper maps into electronic form or the cost of converting electronic maps in another format into the required format. Such maps are exempt from public disclosure under Pennsylvania's Right to Know Law, 65 Pa.C.S. § 708.

(8) *Field Marking.* Each Permittee shall field mark the locations of its underground facilities upon request by other Permittees, Public Utilities or the City, consistent with the requirements of the Pennsylvania Underground Utility Line Protection Act and at no cost to the City.

§263C-7 Right-of-Way Maintenance Fee

(1) *Compensation for Right-of-Way Use.* Every ROW Use Permit is subject to the City's right to fix annually fair and reasonable compensation, which compensation

(a) shall be directly related to the City's actual Right-of-Way maintenance costs including, but not limited to, the cost to the City of administration and performance of all inspection, permitting, enforcement, and other ROW management activities.

(2) *Annual Right-of-Way Maintenance Fee.* Each Permittee that is not a Franchisee, including City ROW Permittees, shall pay an annual fee to the City to compensate the City for its costs incurred in connection with the ongoing use and occupancy of the Right-of-Way. The Annual Right-of-Way Maintenance fee shall be determined by the City and authorized by resolution of City Council and shall be based on the City's actual ROW maintenance costs. The Annual Right-of-Way Maintenance fee shall be fixed on a per-linear foot basis for Underground Facilities and on a per-linear foot basis for Aerial Facilities. If subject to a Cable Franchise Agreement, the Permittee shall not be required to remit both a Cable Franchise Fee amount and an annual Right-of-Way Maintenance Fee to the City; such Permittee shall pay the higher of the two (2) fees to the City.

§263D REMEDIES

§263D-1 Penalties

(a) *PUC Regulated Utilities.* In the event a public utility is found by the City to have violated a PUC regulation, standard, or order, then the City may bring a complaint against such public utility before the Public Utility Commission for violation of such regulation, standard, or order. The City may also notify the Utility of the existence of any suspected violation of PUC standards, regulations or order in order to obtain compliance by the Utility.

In the event a public utility is found to have violated any other provision of this Chapter that is not within the exclusive jurisdiction of the PUC, then such public utility shall be subject, upon conviction thereof, to a fine not exceeding three hundred dollars (\$300), for each and every offense, together with attorneys' fees and costs, and in default of the payment thereof, imprisonment for not more than ninety (90) days. A separate and distinct violation shall be deemed to be committed each day on which a violation occurs or continues to occur. In addition to an action to enforce any penalty imposed by this Chapter and any other remedy at law or in equity under this Title, the City may apply to a Court of Common Pleas for an injunction or other appropriate relief at law or in equity to enforce compliance with or restrain violation of any provision of this Chapter which is not subject to the exclusive jurisdiction of the PUC.

Nothing in this Section shall be construed to permit the City to commence or attempt to commence prosecution of any PUC Regulated Utility for a violation of any regulation, standard or order of the PUC.

(b) *Non-PUC Regulated Entities.* Any entity not regulated by the PUC that is found by the City to have violated any provision of this Chapter shall be subject, upon conviction thereof, to a fine not exceeding three hundred dollars (\$300), for each and every offense, together with attorneys' fees and costs, and in default of the payment thereof, imprisonment for not more than ninety (90) days. A separate and distinct violation shall be deemed to be committed each day on which a violation occurs or continues to occur. In addition to an action to enforce any penalty imposed by this Chapter and any other remedy at law or in equity under this Title, the City may apply to a Court of Common Pleas for an injunction or other appropriate relief at law or in equity to enforce compliance with or restrain violation of any provision of this Chapter.

§263D-2 Determination of Violation.

In the event a determination is made that a Person has violated any provision of this Chapter or Right-of-Way Use Permit , such Person shall be provided written notice of the determination and the reasons therefore. Except in the case of an Emergency, the Person shall have thirty (30) days to cure the violation. If the nature of the violation is such that it cannot be fully cured within such time period, the City may, in its reasonable judgment, extend the time period to cure provided the Person has commenced to cure and is diligently pursuing its efforts to cure. If the violation has not been cured within the time allowed, the City may take any and all actions authorized by this Chapter and/or Pennsylvania law and regulations.

§263E MISCELLANEOUS

§263E-1 Proprietary Information.

If a Person considers information it is obligated to provide to the City under this Chapter to be a business or trade secret or otherwise proprietary or confidential in nature, and desires to protect the information from disclosure, then the Person shall mark such information as proprietary and confidential. Subject to the requirements of the Right to Know Act of 2009, 65 P.S. § 67.101 *et seq.*, as amended, and other applicable law, the City shall exercise reasonable good faith efforts to protect such proprietary and confidential information that is so marked from disclosure. The City shall provide notice to the Person in the following circumstances: (i) if the City receives a request for disclosure of such proprietary and confidential information and the City Solicitor determines that the information is or may be subject to disclosure under applicable law; or (ii) if the City Solicitor determines that the information should be disclosed in relation to its enforcement of this Chapter or the exercise of its police or regulatory powers. In the event the Person does not obtain a protective order barring disclosure of the information from a court of competent jurisdiction within thirty (30) days following receipt of the City's notice, then the City may disclose the information without further notice to the Person.

§263E-2 Leased Facilities

Subject to the provisions of this Chapter and with prior written approval of the City, a Non-PUC Regulated Entity shall have the right to furnish any Facilities for which it has the applicable authorization to own, construct, operate and/or maintain in the Right-of-Way to another Person for the latter's use in constructing or operating its own Facilities in the Right-of-Way, provided that:

(a) The Entity furnishing its Facilities to another shall first deliver to the City notice that there is a fully signed and executed lease, rental agreement, or other agreement with such other Person pursuant to which the Facilities are to be furnished; and

(b) The Person to which the Facilities are furnished shall comply with all of the requirements of this Chapter and other applicable Policies and Procedures.

§263E-3 Duty to Provide Information.

Within ten (10) days of a written request from the City, each Permittee shall furnish the City with information sufficient to demonstrate the following: that the Permittee has complied with all requirements of this Chapter; that all fees and taxes due the City in connection with the services and facilities provided by the Permittee have been properly paid by the Permittee; and any other information reasonably related to the Permittee's obligations pursuant to this Chapter.

§263E-4 Right to Inspect Records.

The City shall have the right, upon thirty (30) days written notice and during normal business hours, to inspect all documents, records, maps and other pertinent information maintained by the Permittee with that relate directly to the terms and conditions of this Chapter.

§263E-5 No Substitute for Other Required Permissions.

No ROW Use Authorization or ROW Use Permit includes, means, or is in whole or part a substitute for any other permit or authorization required by the laws and regulations of the City for the privilege of transacting and carrying on a business within the City; or any permit or agreement for occupying any other property of the City.

§263E-6 No Waiver

The failure of the City to insist on timely performance or compliance by any Permittee holding a Right-of-Way Use Authorization shall not constitute a waiver of the City’s right to later insist on timely performance or compliance by that Permittee or any other Permittee holding such a Right-of-Way Use Authorization. The failure of the City to enforce any provision of this Chapter on any occasion shall not operate as a waiver or estoppel of its right to enforce any provision of this Chapter on any other occasion, nor shall the failure to enforce any prior ordinance or City Charter provision affecting the Right-of-Way, any Facilities, or any user or occupant of the Right-of-Way act as a waiver or estoppel against enforcement of this Chapter or any other provision of applicable law.

§263E-7 Policies and Procedures.

The City is authorized to establish such written Policies and Procedures consistent with this Chapter as the City deems necessary for the implementation of this Chapter.

§263E-8 Police Powers.

The City, by granting any permit or taking any other action pursuant to this Chapter, does not waive, reduce, lessen or impair the lawful police powers vested in the City under applicable federal, state and local laws and regulations.

§263E-9 Severability.

If any section, subsection, sentence, clause, phrase or word of this Ordinance is for any reason held illegal or invalid by any court of competent jurisdiction, such provision shall be deemed a separate, distinct and independent provision, and such holding shall not render the remainder of this Chapter invalid.

§263E-10 Effective Date.

This Chapter shall become effective as provided by law.

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