

# City of Philadelphia



(Bill No. 050065)

## AN ORDINANCE

Amending Chapter 9-300 of The Philadelphia Code, entitled “Communication,” and amending Title 11 of The Philadelphia Code, entitled “Streets,” and adding a new Chapter 11-700 to The Philadelphia Code, entitled “Right-of-Way Management,” all to provide for comprehensive management of the right-of-way, including the placement and maintenance of cables, pipes, conduit, poles, wires and associated equipment in or on the right-of-way, and including the establishment of requirements for the issuance and renewal of right-of-way use authorizations, standards and fees for the regulation of the use and occupancy of the right-of-way, and provision for enforcement of such provisions, all under certain terms and conditions.

*THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:*

**SECTION 1.** Title 11 of The Philadelphia Code is amended to read as follows:

### TITLE 11. STREETS.

#### CHAPTER 11-100. GENERAL PROVISIONS.

##### §11-101. Definitions.

In this Title, the following definitions apply:

\* \* \*

(3) *Facilities.* Shall have the meaning provided in Chapter 11-700.

(4) *Right-of-Way.* Shall have the meaning provided in Chapter 11-700, whether or not capitalized.

(5) *Underground wires.* Shall have the meaning provided in Chapter 11-700 for Underground Facilities.

[(3)] (6) \* \* \*

[(4)] (7) \* \* \*

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[(5)] (8) Street. A strip of land [including the entire] *or part thereof within the right-of-way*, whether dedicated or not, intended or used for vehicular and/or pedestrian traffic.

[(6)] (9) \* \* \*

\* \* \*

## §11-103. Facilities in the Right-of-Way.

(1) *No person shall own, construct, operate, maintain, or repair any Facilities in the Right-of-Way except in accordance with the provisions of Chapter 11-700. Except as provided otherwise in Chapter 11-700, the provisions of Chapters 11-500 and 11-600 shall not apply to the construction, operation, maintenance or repair of any Facilities in the Right-of-Way.*

## CHAPTER 11-200. OPENINGS AND EXCAVATIONS IN THE STREETS.

\* \* \*

## §11-202. Special Ordinances.

(1) No person shall open, break or occupy any street for the purpose of laying tracks or rails for passenger purposes, [or conducts, tubes or pipes for electrical purposes in connection therewith] except when authorized by special ordinance [and pursuant to the applicable provisions of Chapter 9-300]. *No person shall own, construct, operate, maintain, or repair any Facilities in the Right-of-Way in connection therewith except as authorized by and in accordance with Chapter 11-700 and the applicable provisions of Chapter 9-300.*

\* \* \*

## §11-204. Underground Wires.

(1) No person permitted under [special ordinance or agreement with the City to open, break, or tunnel] *Chapter 11-700 to construct underground wires in any street [for the purpose of laying, repairing, maintaining or removing underground wires, as defined in §9-303 (1)(b),] shall commence work thereon until he has obtained a permit as provided in [this Section] Chapter 11-700.*

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[(a)] The application for such permit must be accompanied by a general plan and specifications showing the location of the proposed work and, so far as practical, that of all structures under the street concerned.]

\* \* \*

[(3)] No permit shall be issued until the applicant files a bond in the amount of \$5000. in such form and with such surety as the Law Department may require, conditioned upon compliance with the terms of the permit and with all laws, ordinances and regulations governing the activity for which the permit is sought, including satisfactory restoration of pavement, and indemnifying the City for any liability which the City may incur by granting the permit.]

[(4)] (3) \* \* \*

[(5)] When a permit has been granted for the laying or construction of main lines of underground wires, permission may also be granted, when approved by the Department of Streets and the Department of Public Property, to lay or construct branch lines therefrom not extending beyond three squares direct from the main line. This privilege shall be subject to revocation by Council.]

[(6)] (4) \* \* \*

\* \* \*

## CHAPTER 11-700. RIGHT-OF-WAY MANAGEMENT.

### §11-701. General.

(1) *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, associated equipment, and other Facilities located above the surface of the ground, including their underground supports and foundations.

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

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(c) *Cable Franchise.* Shall have the meaning provided for the term “franchise” in the Cable Acts, 47 U.S.C. § 522(9).

(d) *Cable Franchise Agreement.* The agreement entered into by the City and a Cable Operator setting forth the terms and conditions of a Cable Franchise issued to the Cable Operator by the City.

(e) *Cable Operator.* Shall have the meaning provided in the Cable Acts, 47 U.S.C. § 522(5).

(f) *Cable Service.* Shall have the meaning provided in the Cable Acts, 47 U.S.C. § 522(6).

(g) *Cable System.* Shall have the meaning provided in the Cable Acts, 47 U.S.C. § 522(7).

(h) *City Agency.* Any department, board, commission, office, or agency of the City administration, including the Philadelphia Gas Works, but not including: concessionaires of the City; municipal, transportation, industrial development, housing, redevelopment, and other authorities and corporations established pursuant to the statutes of the Commonwealth; SEPTA; or the Philadelphia School District.

(i) *City Work.* All construction work performed by the City or any City Agency, 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.

(j) *Combined Underground Facilities.* The aggregate of the pipes, conduit banks, conduits, and/or directly buried cables that a Licensee owns in an underground section of the ROW. For purposes of determining the linear feet of Combined Underground Facilities owned by a Licensee, all such Facilities located adjacent to each other in the same underground section of the ROW shall be considered a single Facility; for example, all conduits in a conduit bank shall be considered a single Facility, a conduit and the cable installed in the conduit shall be considered a single Facility, and multiple adjacent pipes shall be considered a single Facility.

(k) *Commissioner.* Collectively, the Streets Commissioner and designees.

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

(m) *Construction Permit.* Any permit issued pursuant to this Chapter or Chapters 9-300 or 11-200 for the construction or installation of Facilities in any Right-of-

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*Way in the City, including, but not limited to, permits for excavation; for installation of underground conduit, ducts, manholes, handholes, and/or appurtenances thereto, or any other type of Underground Facilities; for construction or erection of poles, pole extensions, overhead fiber optic cable, appurtenances thereto, or any other type of Aerial Facilities; for installing fiber optic or other cable(s) in already installed conduit or ducts; for maintenance and repair activities that involve such construction, installation, or erection; or otherwise for the installation or construction of Facilities in any Right-of-Way.*

(n) *Emergency Condition. A condition that, in the judgment of the Commissioner, (i) constitutes an imminent risk to the health, welfare, or safety of the public, or (ii) has caused or is likely to cause Facilities already installed to be unusable and result in loss of the services provided through the Facilities.*

(o) *End User Device. Any device erected in and affixed permanently to the Right-of-Way, including, but not limited to, public pay telephones, that permits end-users to terminate or originate transmissions of voice or data.*

(p) *Facility(ies). Conduit, pipes, cables, wires, lines, towers, optic fiber, antennae, poles, associated equipment and appurtenances, and any other facilities (exclusive of water and sewer pipes in Plumber's Ditches and End User Devices) located in the Right-of-Way and designed, constructed, and/or used, by Telecommunications Providers, Cable Service and OVS Service providers, Information Service Providers, Public Utilities, or other Persons for transmitting, transporting, or distributing communications, telecommunications, electricity, natural gas or manufactured gas, oil, gasoline, steam, water, waste water, or any other form of energy, signal or substance.*

(q) *Franchise. A Cable Franchise or OVS Franchise.*

(r) *Franchisee. Any Person that is issued a Cable Franchise or an OVS Franchise.*

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

(t) *Information Service. Shall have the meaning provided in the Communications Act, 47 U.S.C. § 153(20).*

(u) *Licensee. The recipient of a Right-of-Way Use License, Franchise, or other Right-of-Way Use Authorization that is issued by the City pursuant to this Chapter, and Persons holding existing franchises, authorizations pursuant to special ordinances, or other authorizations that are subject to the transitional provisions set forth in Section 11-701(6).*

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(v) *Open Video System or OVS.* Shall have the meaning provided in Title 47 of the Code of Federal Regulations, 47 C.F.R. § 76.1500 (a).

(w) *Open Video System Agreement or OVS Agreement.* The agreement entered into by the City and an OVS Operator setting forth the terms and conditions of an OVS Franchise issued to the OVS Operator by the City.

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

(y) *Open Video System Operator or OVS Operator.* Shall have the meaning provided in Title 47, Part 76 of the Code of Federal Regulations, 47 C.F.R. § 76.1500 (b).

(z) *Open Video System Service or OVS Service.* Video programming services, Cable Service, and other services similar to Cable Service that are provided over an Open Video System.

(aa) *Person.* Individual natural persons; corporations, companies, associations, joint stock companies, firms, partnerships, limited liability companies, and other entities; concessionaires of the City; municipal, transportation, industrial development, housing, redevelopment, and other authorities and corporations established pursuant to statute of the Commonwealth; the Philadelphia School District; and other government entities; provided, that Person does not include or apply to the City or to any City Agency.

(bb) *Plumber's Ditch.* A trench or other excavation made in the Right-of-Way for the purpose of maintaining, repairing, or replacing a water or sewer pipe used to connect a building or other structure with a water or sewer pipe located in the Right-of-Way in order to provide water or sewer service to the building or structure.

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

(dd) *Right-of-Way or 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, pedestrian and vehicle tunnels and passageways, concourses, viaducts, bridges, and skyways under the control of the City, and any unrestricted public or utility easements established, dedicated, platted, improved or devoted for Utility purposes; provided, that the following lands are not

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*included in the Right-of-Way: lands administered by the Division of Aviation of the Commerce Department; lands owned by the City that are not Streets; and lands, other than the following Streets, that are under the care and jurisdiction of the Fairmount Park Commission: Belmont Avenue, Bells Mill Road, Benjamin Franklin Parkway, Cobbs Creek Parkway, Cresheim Valley Drive, Haverford Avenue, Henry Avenue, Hunting Park Avenue, Kelly Drive, Lansdowne Avenue, Lincoln Drive, Montgomery Drive, Parkside Avenue, Rhawn Street, Roosevelt Boulevard, the Schuylkill Expressway, Southern Parkway, and West River Drive. The phrases “in the Right(s)-of-Way” and “in the right(s)-of-way” mean “in, on, over, along, above and/or under the Right(s)-of-Way” or “right(s)-of-way.”*

*(ee) Right-of-Way Use Agreement or ROW Use Agreement. Written agreement required and entered into pursuant to this Chapter giving a Person the non-exclusive right to own, construct, operate and maintain Facilities in any Right-of-Way in the City.*

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

*(gg) SEPTA. The Southeastern Pennsylvania Transportation Authority.*

*(hh) Service(s). Any Telecommunications Service, Cable Service, OVS Service, service providing Video Programming, 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.*

*(ii) 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/or pedestrian traffic. The phrase “in the (a) Street(s)” means “in, on, over, along, above and/or under the (a) Street(s).”*

*(jj) Telecommunications. Shall have the meaning provided in the Communications Act, 47 U.S.C. § 153(43).*

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

*(ll) Telecommunications Provider. Includes every Person who provides Telecommunications Service over Telecommunications Facilities.*

*(mm) Telecommunications Service. Shall have the meaning provided in the Communications Act, 47 U.S.C. § 153(46).*

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(nn) *Transfer of Interest.* As applied to a Right-of-Way Use Authorization and/or the Facilities authorized thereby: the assignment, transfer, or other disposition, directly or indirectly, by sale, lease, merger, consolidation, or other act, by operation of law or otherwise, of any interest, in whole or in part, in the ROW Use Authorization or such Facilities, including, but not limited to, actual control over the ROW Use Authorization.

(oo) *Underground Facilities.* Facilities located under the surface of the ground or pavement, excluding the underground foundations or supports for Aerial Facilities.

(pp) *Video Programming.* Programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

(2) *Right-of-Way Use Authorization and Agreement Required.*

(a) *ROW Use Authorization.* Except as otherwise provided in this Chapter, no Person shall own, construct, operate, maintain, or repair 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 unless a Right-of-Way Use Authorization is first issued to the owner of such Facilities. The types of Right-of-Way Use Authorization are a Right-of-Way Use License, a Cable Franchise, and an Open Video System Franchise.

(b) *Authorization of Commissioner Required.* Any Right-of-Way Use License shall be authorized and issued only by the Commissioner, and shall not become effective unless or until so authorized and issued. Any Cable Franchise or Open Video System Franchise shall be authorized only by separate ordinance of City Council, and shall not become effective unless or until so authorized. In considering such an authorization, the Commissioner and, where applicable, Council shall consider whether the applicant has demonstrated:

(.1) *that it has no substantial history of non-compliance with applicable law and regulation relating to the management of, and the construction and maintenance of Facilities in, Streets and rights-of-way, wherever located;*

(.2) *that it possesses all licenses, permits, and authorizations required by the Federal Communications Commission, the PUC, the Commonwealth, 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;*

(.3) *in the case of a Franchise, that its Cable System or Open Video System is responsive to the needs and interests of the local community and has satisfied such further requirements of Council as are permissible under the Communications Act.*



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*Decisions of the Commissioner with respect to any application for a Right of Way Use Authorization shall be appealable, within thirty days, to the Board of License and Inspection Review. Nothing in this Chapter, however, shall create any obligation on the part of Council to grant any application or any entitlement in any applicant to any Right-of-Way Use Authorization.*

(c) *ROW Use Agreement. No ROW Use Authorization shall be effective, nor shall the applicant receive any rights, benefits, or privileges pursuant to the authorization, unless and until the applicant has executed a Right-of-Way Use Agreement, in form and content established by regulation.*

(d) *Insurance, Indemnification and Security.*

(.1) *Insurance. The Licensee shall furnish, at the Licensee's expense, insurance for general liability, property damage, bodily injury, and wrongful death, in form, amount and duration determined by the Commissioner by regulation, to cover a loss that may be incurred for construction, reconstruction, repair, relocation or installation of Facilities or other work in the ROW. The City shall be named as an additional insured as provided in subsection (.2). The Commissioner may accept a plan of self-insurance as a substitute for such insurance, if the Commissioner determines that such self-insurance adequately protects the City and the public.*

(.2) *Indemnification.*

(i) *Each Licensee shall fully indemnify and save harmless and, if requested, defend the City, its officers, agents and employees, of and from liability for damages or injury to the Right-of-Way or to Persons or property in a claim or suit seeking to impose liability on the City, its officers, agents or employees, arising out of an act or omission of a Person, agent, or employee engaged or employed in, about or upon the work by, at the instance of, or with the approval or consent of the Licensee, including, but not limited to, a failure of the Licensee or such Person, agent, or employee to comply with this Chapter, Chapter 9-300, Chapter 11-200, or any Construction Permit. The Licensee shall have the City named as an additional insured on the insurance required under subsection (.1) and any insurance the Licensee requires of such Person, agent, or employee. The coverage of the City as an additional insured shall be limited to the acts or omissions of the Licensee or such Person, agent, servant, or employee.*

(ii) *The indemnification required under subsection (i) shall not apply to any liability to the extent it is caused by the negligent or willful acts of the City, its officers, agents or employees; shall be solely for the benefit of the City, its officers, agents or employees; and is not intended to create any rights in any other Licensee or Person.*

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(.3) *Security.* In addition to the requirements of subsections (.1) and (.2), the Commissioner may require a Licensee to furnish security, in the form of a surety bond or an unconditional letter of credit where the Commissioner determines that additional security is necessary. If required by the Commissioner, the Licensee shall furnish security, as a condition of any Construction Permit and prior to commencing any work in the ROW, in an amount sufficient to ensure completion of the work in accordance with this Chapter, Chapters 9-300 and 11-200, and the Construction Permit(s); and shall maintain the security as long as it is performing any work in the ROW.

(3) *Application for ROW Use Authorization.* Application for a ROW Use Authorization, other than an application for a Cable Franchise or OVS Franchise, shall be made on a form, established by the Commissioner by regulation. Within a reasonable period of time after receiving a complete application hereunder, the Commissioner shall make a determination, based on the standards enumerated in subsection (2)(b), approving or denying the application in whole or in part. If the application is wholly or partly denied, the determination shall include the reasons for denial. The Commissioner shall establish by regulation a minimum application fee, the amount of which shall initially be Three Thousand Five Hundred Dollars (\$3,500) in the case of applications for Right-of-Way Use Licenses where the Licensee's Facilities will occupy, in the aggregate, more than two thousand (2,000) linear feet in the Right-of-Way, and Seven Hundred Dollars (\$700) where the Licensee's Facilities will occupy, in the aggregate, two thousand (2,000) or fewer linear feet in the Right-of-Way. The application fee will be paid at the time of application. The Commissioner shall review the application fees at least every three (3) years and make such increases or decreases, by regulation, as are appropriate based on the applicable costs of the City.

(4) *Use Authorized.* No ROW Use Authorization shall confer any exclusive right, privilege or license to occupy or use the Right-of-Way for any purpose; or mean or include any exclusive right or privilege of transacting and carrying on any business within the City; 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 other purposes as the City determines appropriate; or affect the City's right to itself construct, operate or maintain any type of Facilities or offer any type of Services in the Right-of-Way, with or without a ROW Use Authorization; or authorize, or excuse any entity 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 purposes and term provided in the authorization, the authorizing ordinance of Council, if required under this Chapter, and/or the Right-of-Way Use Agreement; or be construed as any warranty of title.

(5) *Transitional Provisions.*

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(a) *Persons already authorized to occupy the Right-of-Way.* Any Person holding a special ordinance, license, or other authorization from the City to own, construct, operate, and/or maintain Facilities in the Right-of-Way to provide Services, or Facilities for others, may continue to conduct those activities expressly authorized, and to own, construct, operate and/or maintain those specific Facilities and route(s) authorized for the purposes provided in the authorization until the earlier of (i) the conclusion of the present term of its existing authorization (but not any renewal or extension thereof) or (ii) one year after the effective date of this Chapter; provided, that in the case of a Franchise, such authorization shall continue until the expiration of the current term of the Franchise. Notwithstanding the foregoing, such Persons (with the exception of Franchisees) shall apply for a superseding ROW Use Authorization pursuant to this Chapter within one hundred and twenty (120) days after the effective date of the Chapter; and shall be subject to this Chapter to the extent permitted by law.

(b) *Pending applications.* Applications for an authorization to occupy or use the Right-of-Way that are pending on the effective date of this Chapter 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 Commissioner governing applications within thirty (30) days from the effective date of this Chapter.

(c) *Persons operating without a ROW Use Authorization.* The owner or operator 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 one hundred and twenty (120) days from the effective date of this Chapter to file its application(s) for a ROW Use Authorization. Any Person timely filing such an application shall not be subject to a penalty for failure to have such a ROW Use Authorization, as long as said application remains pending; provided, however, that 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 Code, or City ordinances or regulations, and nothing herein shall prevent the City from requiring removal of any facilities installed in violation of this Code or City ordinances or regulations.

(6) *Owner's Consent.* No ROW Use Authorization expressly or impliedly authorizes a Licensee 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.

## §11-702. Right-of-Way Use License.

No Person, other than a Franchisee, may own, construct, operate and/or maintain Facilities in the Right-of-Way unless a Right-of-Way Use License is first issued to the owner of such Facilities. Any Right-of-Way Use License shall conform to the requirements of this

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*Chapter. A Right-of-Way Use License shall be for a term of ten (10) years. A Right-of-Way Use License and the rights, benefits and permissions conferred thereby shall apply to the entire geographic area of the City. Application and other fees shall be paid in accordance with Sections 11-701(3) and 11-706.*

*§11-703. Cable Franchise; Open Video System Franchise.*

*(1) Franchise Required. 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 Open Video System, unless a Cable Franchise or OVS Franchise, whichever is applicable, is first issued by the City to the owner of such Cable System or Open Video System in accordance with this Chapter.*

*(2) Term of Franchise. Unless otherwise specified in a Cable Franchise or OVS Franchise, no Cable Franchise or OVS Franchise shall be issued for a period of more than fifteen (15) years.*

*(3) Compensation from Cable Franchisees. Except as expressly provided otherwise in an existing Franchise Agreement, each Cable Franchisee shall pay to the City the maximum cable franchise fees and other compensation permitted by law, and all fees required of Franchisees under Section 11-706.*

*(4) Compensation from OVS Franchisees. Every OVS Franchisee shall pay compensation to the City as follows:*

*(a) To the extent that the system is used to provide Cable Service, the OVS Franchisee shall pay to the City all fees required of Franchisees under Section 11-706, and a percentage of its Gross Revenue each month equal to the maximum gross revenue percentage paid by any Cable Franchisee in the City for the same month; provided, however, that if there is no Cable System operating in the City, on account of all Cable Systems having become Open Video Systems in accordance with applicable federal law, the percentage shall be equal to the maximum percentage that was required of any Cable Franchisee pursuant to this Section 11-703, subject to any limit that may be imposed by federal law. To the extent the OVS System is used for the provision of Telecommunications Service, and except as prohibited by law, the OVS Franchisee shall also pay the fees required in subsection 11-701(3) and all other fees required of Telecommunications Providers under the Code.*

*(b) For purposes of this Section 11-703, Gross Revenue shall be defined to include all the revenues derived from the operation of an Open Video System to provide Cable Services; and, except as required otherwise by federal law, shall include the revenues of affiliated persons using the capacity of the Open Video System to provide Cable Service*

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*to subscribers for a fee, to the extent the OVS franchisee does not otherwise pay a fee to the City on account of such revenues.*

*(c) Except as expressly provided otherwise in an existing OVS Agreement or in subsection (a) above, each OVS Franchisee shall pay to the City the maximum fees on its gross revenue and other compensation permitted by law, and all fees required of Franchisees under Section 11-706.*

*§11-704. Renewal and Transfer of ROW Use Authorization.*

*(1) Renewal of ROW Use Authorization*

*(a) Application. A Person desiring to renew a ROW Use Authorization, other than a Cable Franchise or an OVS Franchise, shall file an application with the City for renewal of its authorization on a form established by the Commissioner by regulation. The time for filing shall be established by the Commissioner by regulation.*

*(b) Determination. Within a reasonable period of time after receiving a complete application for renewal of a ROW Use License, the Commissioner shall make a determination accepting or denying the renewal application in whole or in part. 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, and shall be governed by the standards provided in subsection 11-701(2)(b). Any renewal of a Right-of-Way Use License shall be authorized only by the Commissioner, and shall not become effective unless and until so authorized. Any renewal of a Cable Franchise or OVS Franchise shall be governed by the Cable Acts and the applicable Franchise Agreement, shall be authorized only by separate ordinance of City Council, and shall not become effective unless and until so authorized; nor shall the renewal of any ROW Use Authorization be effective unless and until the applicant and the City have executed a Right-of-Way Use Agreement, in form and content established by the Commissioner by regulation. Such agreement shall be deemed to be incorporated in and made a part of the renewed ROW Use Authorization upon execution by both the applicant and the City.*

*(2) Transfer of Interest in Authorization. No Transfer of Interest in any ROW Use Authorization held by a Licensee subject to regulation by the PUC, or in the Facilities of such a Licensee, may take place unless the PUC has granted all required approvals. No Transfer of Interest in any Cable System or Open Video System may take place except as provided in the Cable Acts and the applicable Franchise Agreement(s), and shall require approval by ordinance of City Council unless expressly provided otherwise in a Franchise Agreement. No Transfer of Interest in any other ROW Use Authorization, or in the*

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*Licensee's Facilities, shall take place without the prior written consent of the Commissioner. The Commissioner, in granting consent, and Council, in approving such ordinance, shall consider whether the Transfer of Interest is consistent with the terms and requirements of the Licensee's ROW Use Authorization and applicable law and regulation, meets the standards provided in subsection 11-701(2)(b), and in the case of a Cable System or an Open Video System, complies with all requirements permitted by the Cable Acts.*

## *§11-705. Construction.*

*(1) Construction Permits. No Person shall construct, install, operate, repair or maintain any Facilities or End-User Device in the Right-of-Way without first obtaining a Construction Permit(s) therefor; provided, however, that, in the event of an Emergency Condition, a Person may apply for a Construction permit within the time determined by the Commissioner by regulation. No Construction Permit shall be issued to any Person for such purpose unless:*

*(a) except with respect to an End-User Device, a ROW Use Authorization has been issued to the owner of such Facilities, and the owner has executed the required ROW Use Agreement and is otherwise in compliance with this Chapter;*

*(b) the Commissioner determines that the Person is capable of properly constructing the proposed Facilities;*

*(c) the owner of such Facilities belongs to the Pennsylvania One Call System as provided in the Act of December 10, 1974, P.L. 852, No. 287, as amended, 73 P.S. §§ 176 et seq., and is in compliance with its requirements; and*

*(d) the application for the Construction Permit is accompanied by plans and specifications for the work in form and content determined by the Commissioner by regulation.*

*(2) Right to Inspect. The Commissioner may inspect any Facilities and any Facilities construction or repair activity to determine compliance with the terms of this Chapter and other applicable laws and regulations. Licensees are required to cooperate with all such inspections and to provide information requested by the Commissioner as part of the inspection.*

*(3) Damage to Facilities or the ROW. A Licensee or City Agency shall be liable for damage that it, or a Person working for it, causes to the Right-of-Way or to any property or Facilities owned or used by the City, other Licensees, or other users of the Right-of-Way, and shall promptly repair or reimburse the City for damage to the ROW, and promptly reimburse the owner of the damaged Facilities for damages thereto. Nothing in this*

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*subsection (3) or elsewhere in this Chapter shall be construed as a waiver of the defenses, immunities, and limitations on damages available to the City pursuant to the Judicial Code at 42 Pa. C.S. § 8541 et seq.*

*(4) Facilities Maps. Each Person issued a Construction Permit shall submit to the Commissioner, after completion of the permitted construction, accurate maps depicting the nature, dimensions, and location in the ROW of the Facilities constructed.*

*(5) Program for the Coordination of Construction Activities. The Commissioner, in consultation with Licensees and through the establishment of such advisory committees to the Commissioner as the City may determine, shall develop a program for the coordination of construction activities in the ROW. The purposes of the program shall be to:*

*(a) minimize multiple Street openings, the resulting disruption of the ROW, and inconvenience to the public;*

*(b) ensure that construction in the ROW consistently meets a high industry standard of quality;*

*(c) coordinate the exchange and review of construction plans among Licensees and between Licensees and City Agencies, including the early identification and coordination of large construction projects planned by Licensees and City Agencies, and the early review of economic development plans affecting construction in the ROW;*

*(d) ensure the timely identification and resolution of conflicts between planned and existing Facilities in the ROW;*

*(e) improve the efficiency of the process for issuing Construction Permits and minimize the time required;*

*(f) identify opportunities for joint construction in the ROW by multiple Licensees, and by Licensees and City Agencies;*

*(g) develop traffic safety guidelines for construction and maintenance activities in the ROW;*

*(h) otherwise identify and implement measures to improve the efficiency and minimize the impact of construction in the ROW.*

*(6) Application to City Agencies. Subsection (1) shall apply to City Agencies but may be waived by the Commissioner for City Work if the Commissioner, upon application by an affected City Agency, determines that compliance will adversely affect the public health, safety or welfare.*

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## *§11-706 Right-of-Way User Fees.*

### *(1) Annual Fee.*

*(a) Each Licensee that is not a Franchisee shall pay an annual fee to the City to compensate the City for its costs incurred in connection with issuing Construction Permits for Underground Facilities and reviewing, inspecting and supervising the ongoing use and occupancy of the Right-of-Way to construct, install, operate or maintain Underground Facilities.*

*(b) Each Franchisee shall pay to the City, in addition to the compensation required under its Franchise, an annual fee to compensate the City for its costs incurred in connection with issuing Construction Permits for Underground Facilities.*

*(c) The aggregate annual fee to be paid by all Licensees pursuant to subsections (a) and (b) shall equal a total of \$480,000 in the first year following the first assessment date established by the Commissioner pursuant to subsection (d). Such total shall increase by five (5) per cent per year thereafter.*

*(d) On an assessment date to be determined by the Commissioner, the Commissioner shall determine the annual fee to be assessed of each Licensee by allocating the total amount of the fee provided in subsection (a) among all Licensees, based on the number of linear feet of Combined Underground Facilities the Licensee owned in the ROW on the assessment date and the number of linear feet of Combined Underground Facilities the Licensee received permits to construct in the ROW during the preceding twelve (12) month period. The method for determining each Licensee's annual fee shall be established by regulation. During the first two (2) years following the first assessment date established by the Commissioner, the annual fee shall be assessed for each calendar quarter and paid in advance on the first day of the quarter; thereafter it shall be assessed annually, and paid in advance on the first day of the year to which it applies. No more frequently than every three years, the Commissioner shall review and, if necessary, recalculate the fees provided in this subsection to reflect the City's actual costs incurred in connection with the activities described in subsection (a).*

*(2) Street Degradation Fee. After the issuance of a Construction Permit, the applicant shall pay a fee established by the Commissioner by regulation, to compensate the City for the reduction in the useful life of Streets caused by construction in the ROW. In the first and second years following the resurfacing or reconstruction of a Street, the fee shall be \$3.81 per square foot of Street surface excavated. In the third through fifteenth years following the resurfacing or reconstruction of a Street, the fee shall be \$1.00 per square foot of Street surface excavated. No Street Degradation Fee shall be charged for construction in Streets that have not been resurfaced or reconstructed for more than fifteen (15) years. No*



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*Street Degradation Fee shall be charged for construction required by and directly related to an Emergency Condition. No Street Degradation Fee shall be owed by a Franchisee whose compensation to the City required under its Franchise exceeds its fees due under this Section 11-706. No more frequently than every three years, the Commissioner shall review and, if necessary, recalculate the foregoing fees to reflect the City's actual costs incurred in connection with Street degradation caused by construction in the ROW.*

(3) *Application to City Agencies. City Agencies shall be required to pay the Street Degradation Fee and an annual ROW management fee equal to the City's costs incurred in connection with issuing Construction Permits for Underground Facilities and reviewing, inspecting and supervising the ongoing use and occupancy of the Right-of-Way to construct, operate or maintain Underground Facilities as required under this Chapter or equivalent compensation; except that the Streets Department and the Department of Public Property shall not be required to pay a fee that compensates the Departments for their own costs of managing the Right-of-Way.*

*§11-707. Miscellaneous.*

(1) *Remedies.*

(a) *Penalties. Any Person in violation of any provision of this Chapter or Chapters 9-300 or 11-200 or Section 11-103, or any regulation adopted thereunder, shall be subject to a fine of not more than seven hundred dollars (\$700); provided, the Commissioner may by regulation establish lower maximum fines for any particular such violation, based on the severity and number of violations committed by a Person. A separate and distinct violation shall be deemed committed each day on which a violation occurs or continues. 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.*

(b) *Determination of Default. In the event a determination is made by the Commissioner that a Person is in violation of this Chapter or Chapters 9-300 or 11-200, a Right-of-Way Use Authorization, or a Right-of-Way Use Agreement, and the Commissioner determines that termination pursuant to subsection (c)(.2) is appropriate, such Person shall be provided written notice of the determination and the reasons therefor. Within the time provided in the notice, the Person in violation shall take and provide written evidence of corrective action, or submit to the Commissioner its reasons, with evidence, why the determination should be withdrawn. If it is finally determined after review of the Person's submissions that the Person is in violation, the Commissioner shall prescribe remedies as provided by this Section. The Person shall be given written notice of the final determination and the reasons therefor.*

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(c) *Denial of Construction Permits; Termination of ROW Use Authorization.*

(.1) *The Commissioner may deny Construction Permits to any Person determined, pursuant to subsection (b), to be in violation of this Chapter or Chapters 9-300 or 11-200, a Right-of-Way Use Authorization, or a Right-of-Way Use Agreement.*

(.2) *The Commissioner may terminate a Right-of-Way Use Authorization, other than a Franchise, termination of which shall be governed by the Cable Acts and the Franchise Agreement, if the violation(s) found under subsection (b) include:*

(A) *construction of Facilities in the ROW, except in the case of an Emergency Condition, without first obtaining a Construction Permit, and in the case of Emergency Condition, construction of Facilities without obtaining a permit within the time required by the Commissioner by regulation;*

(B) *in the case of entities that are not regulated by the PUC or subject to the Cable Acts, an unauthorized Transfer of Interest in the Licensee's ROW Use Authorization or the Facilities or System authorized thereby;*

(C) *willful misrepresentation by or on behalf of a Licensee in any application to the City;*

(D) *failure to relocate or remove any Facilities as required in Chapter 11-200;*

(E) *failure to pay taxes, compensation, fees or costs when and as due the City;*

(F) *insolvency or bankruptcy of the Licensee, unless the Licensee continues to operate as a debtor in possession pursuant to Chapter 11 of the United States Bankruptcy Code; or*

(G) *uncured breach of a ROW Use Authorization that constitutes a danger to the public health, safety, and welfare.*

(.3) *Upon termination of a ROW Use Authorization, whether by action of the City or otherwise, the Licensee shall cease using the Facilities authorized thereby. The City may either take possession of the Facilities in the Right-of-Way, or require the Licensee or its surety to remove the Facilities and restore the Right-of-Way to a condition satisfactory to the Commissioner, or, if the Licensee fails to remove the Facilities as required by the City, the City may remove the Facilities and restore the Right-of-Way at the expense of the Licensee. The Licensee's foregoing obligation to remove Facilities shall*

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*survive the termination of the Licensee's ROW Use Authorization and ROW Use Agreement. In the case of the termination of a Franchise, the City's rights and remedies shall be as determined by the Franchise Agreement and the Cable Acts.*

*(d) If a Person in violation of this Chapter does not hold a ROW Use Authorization pursuant to this Chapter, the Person may be disqualified by the Commissioner from applying for or obtaining a ROW Use Authorization.*

*(2) Determinations by the Commissioner under this Chapter and Chapters 11-200 and 9-300 and Section 11-103 shall be appealable, within thirty days, to the Board of License and Inspection Review.*

*(3) No Substitute for Other Required Permissions. No ROW Use Authorization or Construction 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 or private Persons to which access is not specifically permitted by the ROW Use Authorization; or any permit, license, or authorization required to place an End User Device in the Right-of-Way.*

*(4) No Waiver. The City's failure to require a Licensee to comply with any provision of this Chapter shall not constitute a waiver of the City's right to require that Licensee or any other Licensee comply with this Chapter or other applicable law at any time.*

*(5) Further Regulations. The Commissioner is authorized to establish regulations for the implementation of this Chapter, and Chapters 9-300 and 11-200.*

**SECTION 2.** Title 9 of The Philadelphia Code is amended to read as follows:

**TITLE 9. REGULATION OF BUSINESSES, TRADES AND PROFESSIONS.**

**CHAPTER 9-100. GENERAL PROVISIONS.**

\* \* \*

§9-105. Penalties.

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(1) Except as otherwise provided in Chapters 9-600, 9-702, 9-800, 9-900, 9-1000, 9-1100, 9-1200 and 9-1600, [and] Sections 9-604, 9-622 and 9-623 of this Title, and Section 11- 707(1) of Title 11, any person who violates any provision of this Title or any regulation adopted hereunder shall, in addition to any other penalty indicated in this Title, pay a fine of no less than one hundred fifty (150) dollars nor more than three hundred (300) dollars.

\* \* \*

## CHAPTER 9-300. COMMUNICATION.

### §9-301. Poles.

(1) Prohibited Conduct. No person shall erect or maintain any communication or other electrical transmission pole except as authorized by [special ordinance] *Right-of-Way Use Authorization pursuant to Chapter 11-700* and in accordance with this Section and Chapter 11-700.

\* \* \*

#### (4) Maintenance of Poles.

\* \* \*

(b) Every pole shall be labeled [in oil paint] with the name or initials of its owner and an identifying number.

\* \* \*

### §9-302. Overhead Wires.

\* \* \*

#### (2) Definitions. In this Section, the following definitions apply:

(a) Overhead wires. Any *Aerial Facilities as defined in Chapter 11-700* [telegraph lines, telephone lines, electric light and power wires, electrical conductors or cables suspended in any way above ground].

(3) Prohibited Conduct. No overhead wires shall be erected or maintained except as authorized by [special ordinance] *Right-of-Way Use Authorization pursuant to Chapter 11-700, in the case of overhead wires that are Facilities as there defined, and in accordance with this Section and Chapter 11-700.*

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(4) Permits. No person shall erect or maintain any overhead wire unless he has obtained a permit *as provided in Chapter 11-700* from the Department of [Licenses and Inspections] *Streets*.

(a) No permit shall be issued unless: \* \* \*

(.2) the plan has been approved by [the Department of Public Property and] the Department of Streets;

(.3) the applicant pays the fee specified in [§9-302(4)(b)] §9-302(5).

\* \* \*

§9-303. Underground Wires.

(1) Definitions. In this Section the following definitions apply:

[(a) Sound Reproduction Licensee. Any person to whom a special ordinance grants the privilege of using or maintaining underground wires for connecting buildings occupied by the customer of such person with the central station of such person and for transmitting music and advertising to such customers by a system of sound reproduction;]

[(b)] (a) Underground Wires. *Shall have the meaning provided for Underground Facilities in Chapter 11-700.* [Any telegraph lines, telephone lines, electric light and power wires, electrical conductors, ducts, conduits, cables or pneumatic tubes laid or constructed beneath the streets of the City;]

(2) General Provisions.

(a) No person shall construct, use or maintain any underground wire *in the Right-of-Way, as defined in Chapter 11-700*, except as authorized by *and in accordance with Chapter 11-700 and the applicable provisions of this Chapter* [special ordinance and in accordance with the provisions of this Section].

\* \* \*

(c) The construction and maintenance of underground wire shall be under the supervision of the Department of *Streets* [Public Property], which shall have free access to them for inspection or making connections for the use by the City.

\* \* \*

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[(f) No privilege to construct, maintain or use underground wires shall be assigned, transferred to or participated in by any one other than the person to whom the privilege is granted.]

[(g)] *(f)* Any person to whom the privilege of constructing or maintaining underground wires has been granted shall be liable for injury or damages to *Underground Facilities* [gas mains, water mains, pipes or sewers] caused by the opening of street or the construction or maintenance of the underground wires.

[(h) Any privilege granted by special ordinance to construct, maintain or use underground wires shall include the authority to use, occupy or operate the underground wires of the Bell Telephone Company of Pennsylvania or any other corporation lawfully using electrical current for telegraph, telephone or signal purposes, upon the terms and conditions agreed upon between the holder of such privilege and the Bell Telephone Company of Pennsylvania or such other corporation.]

[(i) The violation of any provision of this Section, or of the special ordinance granting the privilege to act under this Section, shall be remedied within 10 days after written notice of the violation or such longer time as the Department of Public Property provides. The failure to comply with the notice within the time specified shall result in forfeiture of the privileges granted, and the Department of Public Property shall disconnect the underground wires from the buildings where attached or remove them from the streets, at the expense of the person holding the privilege.]

[(3) Sound Reproduction Licensee.]

[(a) No sound reproduction licensee shall convey or disseminate any news, data or information with respect to horse or dog racing or gambling, or any similar matter or event, and the privileges granted to a sound reproduction licensee shall not include the right to furnish services to ballrooms, dance halls or private functions conducted in hotels, banquet halls or theaters.]

[(b) The privileges granted by special ordinance to any sound reproduction licensee shall at all times be exercised and maintained subject to the regulations of the Department of Public Property, and may at any time be revoked by special ordinance.]

\* \* \*

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**Explanation:**

[Brackets] indicate matter deleted.  
*Italics* indicate new matter added.

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CERTIFICATION: This is a true and correct copy of the original Bill, Passed by the City Council on April 7, 2005. The Bill was Signed by the Mayor on April 20, 2005.



Patricia Rafferty  
Chief Clerk of the City Council