

City of Philadelphia



(Bill No. 230454)

AN ORDINANCE

Amending Chapter 11-700 of The Philadelphia Code, entitled “Right of Way Management,” by revising requirements for obtaining access to and permits for construction in the underground portion of the right-of-way and making technical changes; and amending Chapter 9-300, entitled “Communication,” by deleting provisions relating to poles and overhead wires; all under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. Chapter 11-700 of The Philadelphia Code is hereby amended to read as follows:

TITLE 11. STREETS

* * *

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.

* * *

[(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)] (j) * * *

[(l)] (k) * * *

[(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-Way in

City of Philadelphia

BILL NO. 230454 *continued*

Certified Copy

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.]

(l) *Department. The Department of Streets.*

[(n)] (m) * * *

[(o)] (n) End User Device. Any device erected in and affixed permanently to the Right-of-Way, including, but not limited to, [public] pay telephones *and kiosks*, that allow a Person using an End User Device to terminate or originate transmissions of voice or data.

[(p)] (o) Facility(ies). Conduit, pipes, cables, wires, lines, towers, optic fiber, antennae, poles, *End User Devices*, 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, *City Agencies*, [Public Utilities] *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)] (p) * * *

[(r)] (q) * * *

[(s)] (r) * * *

(s) *Guaranteed Pavement Information System ("GPIS"). The online permitting system developed and used by the Department in connection with the Department's street opening permit process and to exchange information between Facility owners and the City related to construction, projects and events which may affect City Rights-Of-Way.*

* * *

[(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).]

City of Philadelphia

BILL NO. 230454 *continued*

Certified Copy

[(v)] (u) * * *

[(w)] (v) * * *

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

[(y)] (x) * * *

[(z)] (y) * * *

[(aa)] (z) * * *

[(bb)] (aa) * * *

[(cc)] (bb) Public Utility 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.] *The Public Utility Commission of the Commonwealth of Pennsylvania.*

(cc) Registered User. Any Person or City Agency that is issued a ROW Registration by the City pursuant to this Chapter, or Persons holding existing franchises, authorizations pursuant to special ordinances of City Council, or other authorizations that are subject to the transitional provisions set forth in Section 11-701(4).

* * *

[(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. City's authorization allowing a Person to enter into the ROW which may take the form of a Right-of-Way Use License, Cable Franchise, or OVS Franchise issued pursuant to this Chapter.]

(ee) Right-of-Way Registration or ROW Registration. An authorization, issued pursuant to this Chapter, that grants an owner of an Underground Facility or Franchise access to the City's GPIS system and that acts as a City reference source for all authorized users of the Right-of-Way.

[(gg)] (ff) * * *

City of Philadelphia

BILL NO. 230454 *continued*

Certified Copy

[(hh)] (gg) * * *

[(ii)] (hh) * * *

(ii) *Street Closure Permit.* A permit issued by the Department authorizing the temporary (partial or full) closure of the Right-of-Way, including the roadway and/or footway, for the temporary placement of equipment necessary to perform work. These permits are also commonly known as “Street Occupancy” or “Lane Closure” permits.

(jj) *Street Opening Permit.* A permit required by the Philadelphia Code and/or the Department’s regulations and issued by the Department to open or excavate within the City Right-of-Way. Street Opening Permits, other than those issued for test borings and monitoring wells, are also commonly known as GPIS permits.

[(jj)] (kk) * * *

[(kk)] (ll) * * *

[(ll)] (mm) * * *

[(mm)] (nn) * * *

[(nn)] (oo) *Transfer of Interest.* As applied to a Right-of-Way [Use Authorization] *Registration* 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] *Registration* or such Facilities, including, but not limited to, actual control over the ROW [Use Authorization] *Registration*.

[(oo)] (pp) * * *

[(pp)] (qq) * * *

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

(a) ROW [Use Authorization.] *Registration.* [Except as otherwise provided in this Chapter, no Person shall own, construct, operate, maintain or repair] *Any Person or City Agency who owns, constructs, operates, maintains, relocates, removes, or repairs Underground 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.] *shall obtain a ROW Registration issued by the Department and comply with the*

City of Philadelphia

BILL NO. 230454 *continued*

Certified Copy

insurance, indemnity and security requirements of this Section. All ROW Registrations shall be made by application provided by the Department.

[(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.]

(b) Decisions of the [Commissioner] *Department* with respect to any application for a Right-of-Way [Use Authorization] *Registration* shall be appealable, within thirty (30) 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] *Registration*.

(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.] *Access to GPIS. The Department may require that any Person or City Agency obtain a ROW Registration and submit such additional information and documentation as the Department may require by regulation as a condition of obtaining access to GPIS.*

(d) Insurance, Indemnification and Security.

(.1) Insurance. The [Licensee] *Registered User* shall furnish, at the [Licensee's] *Registered User'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

City of Philadelphia

BILL NO. 230454 *continued*

Certified Copy

a substitute for such insurance, if the Commissioner determines that such self-insurance adequately protects the City and the public.

(.2) Indemnification.

(a) Each [Licensee] *Registered User* 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] *Registered User*, including, but not limited to, a failure of the [Licensee] *Registered User* or such Person, agent, or employee to comply with this Chapter, Chapter 9-300, Chapter 11-200, or any [Construction Permit] *Street Closure Permit or Street Opening Permit required under this Chapter*. The [Licensee] *Registered User* shall have the City named as an additional insured on the insurance required under subsection (.1) and any insurance the [Licensee] *Registered User* 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 Registered User or such Person, agent, servant, or employee.

(b) The indemnification required under this subsection (i) shall not apply to any City department, 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] *Registered User* or Person.

* (.3) Security. In addition to the requirements of subsections (.1) and (.2), the Commissioner may require a [Licensee] *Registered User* to furnish security, in the form of a surety bond or an unconditional letter of credit *in an amount and form satisfactory to the Law Department* where the Commissioner determines that additional security is necessary. If required by the Commissioner, the [Licensee] *Registered User* shall furnish security, as a condition of any [Construction Permit] *Street Closure Permit or Street Opening Permit required under this Chapter* 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);] *Street Closure Permits or Street Opening Permits required under this Chapter* and shall maintain the security as long as it is performing any work in the ROW.

(.4) *Application to City Agencies. The insurance, indemnification and security required under this subsection shall not apply to any department, board, commission, office, or agency of the City, but shall apply to the Philadelphia Gas Works; concessionaires of the City; municipal, transportation, industrial development, housing, redevelopment, and other authorities and corporations established pursuant to the statutes of the Commonwealth; and the School District of Philadelphia.*

[(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

City of Philadelphia

BILL NO. 230454 *continued*

Certified Copy

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)] (3) Use Authorized. No ROW [Use Authorization] *Registration* 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;] *Registration*; 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 *the access granted by the ROW Registration*. [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)] (4) Transitional Provisions.

(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.]

City of Philadelphia

BILL NO. 230454 *continued*

Certified Copy

* * *

(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)](5) Owner's Consent. No ROW [Use Authorization] *Registration or Construction Permit* expressly or impliedly authorizes [a Licensee] *any Person or City Agency* 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.

(6) *Poles with overhead wire reporting requirement. The Department is authorized to promulgate regulations requiring owners of poles with overhead wires in the Right-of-Way to file an annual written report with the Department, on a form established by the Department, specifying the number, type and location of poles maintained and located in the City of Philadelphia.*

§ 11-702. [Right-of-Way Use License.] *Renewal of ROW Registration.*

[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 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.]

(1) *Application. A Person or City Agency desiring to renew a ROW Registration, other than a Cable Franchise or an OVS Franchise, shall file an application with the City for renewal of its Registration on a form established by the Department by regulation. The time for filing and application fee shall be established by the Department by regulation.*

(2) *Determination. Upon receiving a complete application for renewal of a ROW Registration, the Department shall make a determination accepting or denying the renewal*

City of Philadelphia

BILL NO. 230454 *continued*

Certified Copy

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 subject to such additional requirements as promulgated by regulation of the Department.

§ 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. *A Cable Franchise or Open Video System Franchise or any renewal thereof may be issued by the City only after it is authorized by separate ordinance of City Council, and shall not become effective unless or until so authorized. In considering such an authorization, the Council shall consider whether the applicant has demonstrated:*

(a) 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;

(b) 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;

(c) 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 consistent with the Cable Acts and the applicable regulations of the Federal Communications Commission for granting or renewing a Cable Franchise or Open Video System Franchise.

(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] *for ROW Registration, Street Closure Permits and Street Opening Permits, or otherwise required by law pursuant to this Chapter.*

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

City of Philadelphia

BILL NO. 230454 *continued*

Certified Copy

(a) [To the extent that the system is used to provide Cable Service, the] The OVS Franchisee shall pay to the City all fees required [of Franchisees under Section 11-706,] *for ROW Registration, Street Closure Permits and Street Opening Permits, or otherwise required by law pursuant to this Chapter*, 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, *and except as prohibited by the Cable Acts or regulations of the Federal Communications Commission*, Gross Revenue shall be defined to include all the revenues derived from the operation of *a Cable System or an Open Video System to provide Cable Services or OVS Services*; and, except as required otherwise by federal law, shall include the revenues of affiliated persons using the capacity of the Open Video System *or Cable System to provide Cable Service or OVS Service* 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.

(5) *Transfer of Interest. 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 an approved Franchise Agreement. No Transfer of Interest in the Registered User's Facilities shall take place without the prior written consent of the City. The City, in granting consent, and City Council, in approving such ordinance, shall consider whether the Transfer of Interest is consistent with the terms and requirements of applicable law and meets the requirements of Section 11-701(2) and regulations under that Section, and complies with all applicable requirements of the Cable Acts.*

(6) *A Cable Franchisee and an OVS Franchisee shall be required to obtain and maintain a Right of Way Registration pursuant to Section 11-701(2) and to pay the fees required thereof under Section 11-706.*

(7) *Renewal. 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.*

City of Philadelphia

BILL NO. 230454 *continued*

Certified Copy

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

[(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 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.

City of Philadelphia

BILL NO. 230454 *continued*

Certified Copy

(1) [Construction] Permits. [No person shall construct, install, operate, repair or maintain any Facilities or End-User Device in the Right-of-Way or block or close a roadway or sidewalk for 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 as expressly provided otherwise in this section, no Person or City Agency shall block or close a street or sidewalk for the purposes of constructing, installing, operating, maintaining, relocating, removing, repairing or replacing Facilities unless a Street Closure Permit has been obtained from the Department pursuant to standards adopted by the Department by regulation.*

(b) *Except as expressly provided otherwise in this section, no Person or City Agency shall open or break a street or sidewalk, or excavate within a City Right-of-Way, for the purposes of constructing, installing, operating, maintaining, relocating, removing, repairing or replacing Facilities unless a Street Opening Permit has been obtained from the Department pursuant to standards adopted by the Department by regulation.*

(c) *In the event of an Emergency Condition, a Person or City Agency may apply for such Street Closure Permits and Street Opening Permits within the time determined by the Commissioner by regulation.*

(d) *No Street Closure Permit or Street Opening Permit shall be issued to any Person or City Agency for the purposes of constructing, installing, operating, maintaining, relocating, removing, repairing or replacing Facilities unless:*

[(a)] (.1) [except with respect to an End User Device,] a ROW [Use Authorization] *Registration* has been issued to the owner of such Facilities, [and the owner has executed the required ROW Use Agreement] and *the Registered User* is otherwise in compliance with this Chapter;

[(b)] (.2) the Commissioner determines that the *Person or City Agency* is capable of properly constructing the proposed Facilities;

[(c)] (.3) 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)] (.4) the [application for the Construction Permit] *permit application* is accompanied by plans and specifications for the work in form and content determined by the Commissioner by regulation; *and*

City of Philadelphia

BILL NO. 230454 *continued*

Certified Copy

(.5) *the applicant is a Registered User and remits the proper fee(s) to the Department pursuant to Section 11-706.*

(e) *Issuance of Permit Number. The Department shall designate each Street Closure Permit and Street Opening Permit issued pursuant to this Chapter with a permit number.*

(2) Right to Inspect. The [Commissioner] *Department* may inspect any [Facilities and any Facilities] *Facility* construction or repair activity to determine compliance with the terms of this Chapter and other applicable laws and regulations *to the extent permitted by law.* [Licensees and] *Registered Users, Persons and City Agencies that are issued permits pursuant to this Chapter* are required to cooperate with all such inspections and to provide information requested by the [Commissioner] *Department* as part of the inspection.

(3) Damage to Facilities or the ROW. [A Licensee or City Agency] *Any Person or City Agency granted a permit pursuant to this Section, or otherwise performing construction in the Right-of-Way,* 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] *by other users of the Right-of-Way, or by any other Person or City Agency,* and shall promptly repair or reimburse the City for damage to the ROW, and *shall* promptly reimburse the owner of the damaged *property or* Facilities for damages thereto. Nothing in this 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 *and City Agency* issued a [Construction] *Street Closure Permit or Street Opening Permit pursuant to this Chapter* shall submit to the [Commissioner,] *Department,* 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,] *Department,* in consultation with *Registered Users* [Licensees] *and/or Franchisees* and through the establishment of such advisory committees to the [Commissioner] *Department* 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:

* * *

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

City of Philadelphia

BILL NO. 230454 *continued*

Certified Copy

* * *

(e) improve the efficiency of the process for issuing *permits* [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;] *Registered Users*;

* * *

§ 11-706. Right-of-Way [User] *Registration and Permit Fees*.

(1) [Annual Fee] *ROW Registration Fees*.

(a) Each [Licensee] *Registered User* that is not a Franchisee shall pay [an annual fee] a *ROW Registration 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 ongoing use and occupancy of the Right-of-Way to construct, install, operate and maintain Underground Facilities.]

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

(c) The [aggregate annual] *fees* to be paid by all[Licensees] *Registered Users* pursuant to subsections (a) and (b) shall [equal a total of four hundred eighty thousand dollars (\$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.] *be in amounts and at a frequency established by the Department through regulations to recover the cost of administering and maintaining the GPIS system.*

[(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,

City of Philadelphia

BILL NO. 230454 *continued*

Certified Copy

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 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.]

(2) Permit Fees. The Department is authorized to charge application and permit fees for permits provided for in this Chapter, which fees shall be established by the Department by regulation based on the costs incurred in connection with issuing, administering and enforcing Street Opening Permits and Street Closure Permits for Facilities and inspecting and supervising the use and occupancy of the Right-of-Way to construct, install, operate, maintain, relocate, remove, repair or replace Facilities in the Right-of-Way.

(3) Application to City Agencies. City Agencies shall be required to pay the [Street Degradation Fee and 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;] *ROW Registration fees and permit fees established by the Department under this Section, 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] *fine, to the extent permitted by law, 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

City of Philadelphia

BILL NO. 230454 *continued*

Certified Copy

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] *Department* that a Person is in violation of this Chapter or *the applicable requirements of 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.

(c) Denial of [Construction] Permits; Termination of ROW [Use Authorization] Registration.

(.1) The [Commissioner] *Department* may deny [Construction Permits] *Street Closure Permits and Street Opening Permits* to any Person determined, pursuant to subsection (b), to be in violation of this Chapter or *the applicable requirements of 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,] *ROW Registration*, 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,] *the permits required by this Chapter*, and in the case of Emergency Condition, construction of Facilities without obtaining [a permit] *such permits* 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] *Registered User* in any application to the City;

City of Philadelphia

BILL NO. 230454 *continued*

Certified Copy

(.d) *in the case of entities that are not regulated by the PUC*, 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] *Registered User*, unless the [Licensee] *Registered User* 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] *act or omission* that constitutes a danger to the public health, safety, and welfare.

(.3) Upon termination of a ROW [Use Authorization] *Registration*, whether by action of the City or otherwise, the [Licensee] *Registered User* shall cease using the Facilities authorized thereby. The City may, *to the extent permitted by law*, either take possession of the Facilities in the Right-of-Way, or require the [Licensee] *Registered User* or its surety to remove the Facilities and restore the Right-of-Way to a condition satisfactory to the Commissioner, or, if the [Licensee] *Registered User* 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 *Registered User*. The [Licensee's] *Registered User's* foregoing obligation to remove Facilities shall survive the termination of the [Licensee's] ROW Use Authorization and ROW Use Agreement] *Registered User's ROW Registration*. 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] *Registration* pursuant to this Chapter, the Person may be disqualified by the Commissioner from applying for or obtaining a ROW [Use Authorization] *Registration*.

* * *

(3) No Substitute for Other Required Permissions. No ROW [Use Authorization] *Registration*, [or Construction Permit] *Street Closure Permit or Street Opening Permit* issued pursuant to this Chapter 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;] *Registration*; or any permit, license, or authorization required to place [an End User Device] *a Facility* in the Right-of-Way.

(4) No Waiver. The City's failure to require a [Licensee] *Registered User* to comply with any provision of this Chapter shall not constitute a waiver of the City's right to require that

City of Philadelphia

BILL NO. 230454 *continued*

Certified Copy

[Licensee] *Registered User* or any other [Licensee] *Registered User* comply with this Chapter or other applicable law at any time.

* * *

SECTION 2. Chapter 9-300 of The Philadelphia Code is hereby amended by deleting Sections 9-301 (“Poles”) and 9-302 (“Overhead Wires”) in their entirety.

* * *

SECTION 3. The provisions of this Ordinance are severable and if any provision, sentence, clause, section or part thereof shall be illegal, invalid, unconstitutional or inapplicable to any person or circumstances, such illegality, invalidity, unconstitutionality or inapplicability shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of the Ordinance or their application to them or other persons or circumstances. It is hereby declared to be the legislative intent that this Ordinance would have been adopted if such illegal, invalid or unconstitutional provision, sentence, clause or part had not been included therein, and if the person or circumstance to which the ordinance or any part thereof if inapplicable had not specifically been exempted therefrom.

SECTION 4. Effective Date. This Ordinance shall be effective upon the adoption of implementing regulations by the Department of Streets.

City of Philadelphia

BILL NO. 230454 continued

Certified Copy

City of Philadelphia

BILL NO. 230454 continued

Certified Copy

CERTIFICATION: This is a true and correct copy of the original Bill, Passed by the City Council on June 22, 2023. The Bill was Signed by the Mayor on July 12, 2023.



Michael A. Decker
Chief Clerk of the City Council