

## **CODIFIED ORDINANCES OF WESTLAKE**

### **PART NINE - STREETS, UTILITIES AND PUBLIC SERVICES CODE**

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- Chap. 903. Construction of Driveway Drainage.
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**CHAPTER 901  
Street Excavations and Drilling**

<b>901.01</b>	<b>Drilling pipe line under street area.</b>	<b>901.04</b>	<b>Barricades and lights; restoration time limit.</b>
<b>901.02</b>	<b>Excavation permit; curb cut permit; inspection fee.</b>	<b>901.05</b>	<b>Refund or use of deposit.</b>
<b>901.03</b>	<b>Deposit and liability insurance required; exception.</b>	<b>901.99</b>	<b>Penalty.</b>

**CROSS REFERENCES**

- Excavations by public utilities - see CHTR. Art. XI, Sec. 5  
 Power to establish and care for streets - see Ohio R.C.  
     715.19, 717.01, 723.01  
 Opening by the City - see Ohio R.C. 723.02  
 Compulsory service connections - see Ohio R.C. 729.06,  
     743.23, 743.37  
 Digging, excavating and placing earth on streets - see Ohio  
     R.C. 5589.10  
 Driving on street posted as closed for repairs - see TRAF.  
     331.26  
 Dangerous or abandoned excavations; removing lanterns or  
     barricades - see GEN. OFF. 521.03  
 Subdivision street improvements - see PLAN. & PLAT. 1129.08  
 Excavation and curb cut fees - see BLDG. 1315.03

**901.01 DRILLING PIPE LINE UNDER STREET AREA.**

No pipe or pipeline of any kind shall be installed or constructed into or across a street of the City by any means or in any manner other than by drilling through the ground beneath such street, unless the Director of Engineering permits the excavation of the street area in conformity with this chapter.

(Ord. 1988-258. Passed 5-18-89.)

**901.02 EXCAVATION PERMIT; CURB CUT PERMIT; INSPECTION FEE.**

No person shall make or cause to be made any connection to any water line or storm or sanitary sewer within the City, involving excavation of any kind upon, through or under any portion of a street, road, sidewalk, tree lawn or other public property within the City, nor shall any person remove, cut or lower any street curb, unless a permit therefor has first been secured from the Director of Engineering. To cover the cost of inspection of such excavation, a fee not to exceed the City's costs shall be deducted from the deposit required in Section 901.03, except that in cases where aprons are being added to service existing development or existing drives are being widened, the following fee schedule will apply:

- (a) New Curb Cuts.  
Minimum fee ~~50.00~~  
Fee, per foot of curb 2.00
- (b) Curb Cut Widening.  
Minimum fee ~~25.00~~  
Fee, per foot of curb 2.00

(Ord. 1992-71. Passed 4-16-92.)

**901.03 DEPOSIT AND LIABILITY INSURANCE REQUIRED; EXCEPTION.**

No excavation permit shall be issued until:

- (a) The applicant has deposited with the Director of Engineering a deposit as determined by a schedule recommended by the Director and approved by Council, in cash as a guarantee that any such opening or excavation will be promptly and properly restored; the applicant agrees that any damage created to any road, street, sidewalk, tree lawn or other public property will be promptly and properly repaired in accordance with the Engineering Department standards. Additionally, the applicant agrees that so long as the excavation is permitted to exist, it shall be properly guarded by suitable lights, signs and barricades in accordance with provisions of the Ohio Manual of Uniform Traffic Control Devices; and
- (b) The applicant has deposited a policy of liability or indemnity insurance, issued by a company licensed to do business in the State, recognizing the City as an insured, in a total amount of not less than one hundred thousand dollars/three hundred thousand dollars (\$100,000/\$300,000) for any personal injury and fifty thousand dollars (\$50,000) for any property damage caused as a result or consequence of the making or existence of such opening or excavation or the condition of the road, street, sidewalk, tree lawn or other public property in which the same is or has been made. However, such policy shall not be required from any State public utility company operating in the City pursuant to a franchise wherein such company as a self-insurer agrees to indemnify the City against such personal injury and property damage.

(Ord. 1988-258. Passed 5-18-89.)

**901.04 BARRICADES AND LIGHTS; RESTORATION TIME LIMIT.**

In the event any excavation or opening is not barricaded and lighted at any time, the Police Department or the Director of Engineering may cause such barricading and lighting to be done. Any expense in connection therewith for time, labor or material shall be charged to the deposit provided for in Section 901.03 and the City shall be reimbursed therefor.

Every excavation or opening shall be repaired and the pavement or surface thereof restored to its previous condition within a period of one week from the commencement of such opening or excavation, unless the permittee has secured from the Director, in writing and for good and sufficient cause an extension of the permit issued. If such opening or excavation is not filled and completed within a period of one week, the Director may have such work performed and the cost thereof shall be charged to such deposit.

(Ord. 1988-258. Passed 5-18-89.)

**901.05 REFUND OR USE OF DEPOSIT.**

No portion of the deposit provided for in Section 901.03 shall be refunded until the Director of Engineering is satisfied that all work required under the provisions of this chapter has been properly done and all damages repaired. In the event any work has not been performed or any damage has not been repaired to the satisfaction of the Director, he may cause such work to be done at the expense of the City and charge such expense to such deposit.

(Ord. 1988-258. Passed 5-18-89.)

**901.99 PENALTY.**

Whoever violates any of the provisions of this chapter is guilty of a minor misdemeanor. Each day's violation shall constitute a separate offense.

(Ord. 1988-258. Passed 5-18-89.)



**CHAPTER 903**  
**Construction of Driveway Drainage**

<b>903.01 Compliance required.</b>	<b>903.04 Flow line and grade.</b>
<b>903.02 Drainage approval.</b>	<b>903.05 Oversize pipe.</b>
<b>903.03 Minimum pipe size and length; grade establishment.</b>	<b>903.99 Penalty.</b>

**CROSS REFERENCES**

Subdivision drainage - see PLAN. & PLAT. 1127.02(b), 1127.06(b), 1129.04  
 Curbs, gutters and driveways in subdivisions - see PLAN. & PLAT. 1129.08(b), (c)  
 Curb cut fees - see S.U. & P.S. 901.02  
 Drainage and sanitation - see BLDG. Ch. 1337  
 Topsoil removal affecting drainage - see BLDG. 1367.04  
 Access to construction sites - see BLDG. Ch. 1369

**903.01 COMPLIANCE REQUIRED.**

No person shall construct any driveway, private road or other form of access to existing roads or streets within the City, except in compliance with regulations set forth in this chapter. (Ord. 1988-259. Passed 2-2-89.)

**903.02 DRAINAGE APPROVAL.**

Whenever any driveway, private road or other form of access is constructed to connect to any existing road or street within the City, there shall be provided, as a part of such construction, suitable drainage facilities by means of corrugated metal, corrugated exterior/smooth wall interior plastic pipe, reinforced concrete pipe or as directed by the Director of Engineering. Such facilities shall be first approved by the Director of Engineering before the installation thereof. (Ord. 2005-2. Passed 1-6-05.)

**903.03 MINIMUM PIPE SIZE AND LENGTH; GRADE ESTABLISHMENT.**

Any roadside drainage pipe shall be a minimum size of ten inches in diameter and shall be installed in the existing road ditch along the approximate centerline thereof and in accordance with the Department of Engineering standards. No drainage pipe shall be less than a total length of sixteen feet. Prior to the start of any such installation, the property owner or his agent shall make a request for approval to the Director of Engineering with appropriate information to allow the Director to verify the proper grade and size for such drainage pipe. (Ord. 1988-259. Passed 2-2-89.)

**903.04 FLOW LINE AND GRADE.**

The flow line of any drainage facility shall correspond to the existing flow line of the ditch. The grade thereof shall be such as is determined by the Director of Engineering.  
(Ord. 1988-259. Passed 2-2-89.)

**903.05 OVERSIZE PIPE.**

The Director of Engineering is hereby authorized to require the installation of drainage facility pipe in excess of ten inches in diameter in any cases where in his judgment, such additional capacity is necessary in order to provide adequate and suitable drainage.  
(Ord. 1988-259. Passed 2-2-89.)

**903.99 PENALTY.**

Whoever violates any of the provisions of this chapter is guilty of a minor misdemeanor.  
(Ord. 1988-259. Passed 2-2-89.)



**CHAPTER 905**  
**Sidewalk Installation and Replacement**

<b>905.01</b> Permit required.	<b>905.07</b> Equitable remedy.
<b>905.02</b> Exceptions.	<b>905.08</b> Sidewalk inspection program.
<b>905.03</b> Circumstance under which permit may not be issued.	<b>905.09</b> Noncompliance with inspection notice.
<b>905.04</b> Establishment of grades and stakes.	<b>905.10</b> State Code provision for assessments.
<b>905.05</b> Construction specifications.	<b>905.99</b> Penalty.
<b>905.06</b> Permit issuance and fee; deposit.	

**CROSS REFERENCES**

Notice to construct or repair - see Ohio R.C. 729.03 et seq.

Parking on sidewalks - see TRAF. 351.03

Sidewalk obstructions; damage or injury - see GEN. OFF. 521.09

Cleaning and repairing - see GEN. OFF. 521.05

Unloading on sidewalks - see GEN. OFF. 521.09

Sidewalks in subdivisions - see PLAN. & PLAT. 1129.08(d)

**905.01 PERMIT REQUIRED.**

No person shall construct, install or replace a public sidewalk within or adjacent to the public right of way, street line or road easement line on which such person's property abuts unless they first obtain a permit therefor from the Director of Engineering. Such permit shall be granted subject to the terms and conditions set forth in this chapter. (Ord. 2001-5. Passed 3-1-01.)

**905.02 EXCEPTIONS.**

The provisions of this chapter shall not apply to any work done by, at the direction of, or pursuant to lawful order of the City pertaining to sidewalk improvements, to any work done under the provisions of Chapter 1129 of the Planning and Platting Code, or to any work done by a property owner entirely on their own property, not designed to be used by the general public for travel upon, within or adjacent to public rights of way. (Ord. 2001-5. Passed 3-1-01.)

**905.03 CIRCUMSTANCE UNDER WHICH PERMIT MAY NOT BE ISSUED.**

The Director of Engineering shall not issue a permit for the repair, replacement or installation of a sidewalk improvement after a date specified by Council if Council has elected to proceed with a public improvement pursuant to the provisions of Ohio R.C. Chapter 727, Ohio R.C. Chapter 729, other provisions of State law or other provisions of the Codified Ordinances of the City and has adopted appropriate legislation therefor. (Ord. 2001-5. Passed 3-1-01.)

**905.04 ESTABLISHMENT OF GRADES AND STAKES.**

Upon receipt of an application for a sidewalk permit, the Director of Engineering or his duly assigned representatives shall promptly visit the premises and inspect the site and verify the location, grades, site preparation and construction methods to be used and, if necessary, establish the required grades needed. (Ord. 2001-5. Passed 3-1-01.)

**905.05 CONSTRUCTION SPECIFICATIONS.**

The sidewalks constructed and installed pursuant to the provisions of this chapter shall in all respects be according to the provisions of Section 1129.08(d) of the Planning and Platting Code. (Ord. 2001-5. Passed 3-1-01.)

**905.06 PERMIT ISSUANCE AND FEE; DEPOSIT.**

(a) Following the approval of grades and locations, as provided in Section 905.04, the Director of Engineering shall issue a proper permit for the work applied for by the owner or authorizing agent.

The permit fee for new sidewalk construction shall be fifty dollars (\$50.00) per lot or parcel and shall be fifteen dollars (\$15.00) for removal and replacement of existing walks. The applicant shall pay such fee to the City prior to commencement of such work.

(b) The fee required by subsection (a) hereof shall be paid at the time the permit is issued and delivered to the applicant, irrespective of when the application for such permit is made. Sidewalk maintenance and repairs by the City shall not require a permit. (Ord. 2001-5. Passed 3-1-01.)

**905.07 EQUITABLE REMEDY.**

The Director of Engineering may order the removal or may summarily remove any sidewalk constructed or installed in violation of any of the provisions of this chapter. All work done hereunder shall be at the sole cost and expense of the applicant for a permit or the permittee. (Ord. 2001-5. Passed 3-1-01.)

**905.08 SIDEWALK INSPECTION PROGRAM.**

The City has determined that a regular and consistent sidewalk repair program should be in place for the general health and welfare of the community and this section shall establish the process and procedures for a permanent and systematic program for the inspection, repair, replacement or installation of sidewalks within the City. This program shall be permanent and shall not require annual reauthorization by ordinance or resolution other than by inclusion in the annual appropriation ordinance.

(a) The Director of Engineering shall divide the City, in a sidewalk repair map, into quadrants numbered 1 through 4. He shall cause an inspection to be made in each quadrant once every four years.

- (b) The Director of Engineering shall cause such sidewalks to be inspected after installation to determine that such sidewalks have been constructed in accordance with the applicable ordinances of the City.
- (c) The inspection shall include surface conditions, i.e., spalled or checked surface cracks, joint separation or a differential elevation in sidewalk sections. A differential elevation of sidewalk sections of one inch or less shall be deemed satisfactory and not require replacement or leveling.
- (d) Property owners or their agents shall be informed, in writing, of the repairs required to bring the sidewalks abutting the property into compliance.
- (e) Said repairs or replacement shall be made within forty-five days from the date of receipt of notice received by the property owner, unless extensions are granted by the Director of Engineering due to inclement weather or other unforeseen circumstance.
- (f) If notice is returned undelivered, a copy thereof shall be posted in a conspicuous place on the property to which it relates and a copy of such notice shall be published once in a newspaper of general circulation within the City. The notice published in a newspaper of general circulation may include multiple properties and multiple property owners and shall be effective notice to all such persons. Publication of individual notices to individual property owners or agents shall not be required. No person shall remove or deface a posted copy of such notice from the property without authorization of the Director of Engineering. Said repairs or replacement shall be made within forty-five days from the date of posting of notice on the property, unless extensions are granted by the Director of Engineering due to inclement weather or other unforeseen circumstance.
- (g) Any property owner may appeal the notice to repair by submitting their objections in writing to the Director of Engineering within fifteen days of the homeowner's receipt of the notice to repair or, if returned undelivered, within fifteen days of the City's posting of the notice to repair in a conspicuous place on the property to which it relates. The Director of Engineering shall determine the validity of those objections. No repair shall be required where the Director of Engineering so determines. All other repairs shall be made according to the decision of the Director of Engineering, whose determination shall be final.  
(Ord. 2001-5. Passed 3-1-01.)

**905.09 NONCOMPLIANCE WITH INSPECTION NOTICE.**

(a) If the property owner or agent fails to comply with the notice to repair, or fails to file an objection in accordance with Section 905.08(g), or fails to comply with the determination of the Director of Engineering under Section 905.08(g), the City shall cause the sidewalks to be reconstructed or repaired. All expenses and labor costs incurred shall be paid out of City funds, with a statement of charges and a proper description of the premises to be sent to the property owner for payment within forty-five days. In the event that the property owner or agent fails to pay within the time allotted, the Director of Finance shall be authorized without further ordinance, resolution or action of Council to enter a lien upon the tax duplicate against the lots or lands effected by the improvements and shall certify to the County Auditor for entry upon the tax duplicate such lien upon such lands from and after the date of entry to be collected as other taxes and returned to the City.

(b) In the event the City enters a lien upon the tax duplicate as provided in subsection (a) hereof, the Director of Finance shall certify to the County Auditor for recording such lien in the following manner:

- (1) In the event the work done in accordance with this section is a repair of existing sidewalks, including the replacement of certain sections thereof, the assessment amount shall be certified to the County Auditor for lien and assessment to be paid in ten semi-annual installments at an interest rate to be established by the Director of Finance in accordance with the projected cost of City funds for the period to be covered by the assessment but in no event shall the interest rate established be less than three percent (3%) or more than twelve percent (12%) per annum.
- (2) In the event the work done in accordance with this section is a replacement or new installation of an entire sidewalk, the assessment amount shall be certified to the County Auditor for lien and assessment to be paid in twenty semi-annual installments at an interest rate to be established by the Director of Finance in accordance with the projected cost of City funds for the period to be covered by the assessment but in no event shall the interest rate established be less than three percent (3%) or more than twelve percent (12%) per annum. (Ord. 2001-5. Passed 3-1-01.)

**905.10 STATE CODE PROVISION FOR ASSESSMENTS.**

The process and procedure for assessments set forth herein and above shall be in lieu of the process set forth in Chapter 727 and Chapter 729 and other sections of the Ohio Revised Code. However, Council may by ordinance or resolution determine to use the provisions of the Ohio Revised Code, including, but not limited to, Chapter 727 and Chapter 729 for the implementation of new public improvements or complete replacements of public improvements including sidewalks. (Ord. 2001-5. Passed 3-1-01.)

**905.99 PENALTY.**

Whoever violates any of the provisions of this chapter is guilty of a minor misdemeanor. Each day's violation shall constitute a separate offense. (Ord. 2001-5. Passed 3-1-01.)

**CHAPTER 907  
Drainage Ditches**

**907.01 Screening or planting permit;  
fee.**

**907.02 Storm drainage upgrade  
program.**

**907.03 Lot storm drainage relief  
program.**

**CROSS REFERENCES**

Driveway drainage - see S.U. & P.S. Ch. 903

Drainage and sanitation - see BLDG. Ch. 1337

Grading and drainage - see BLDG. Ch. 1363

**907.01 SCREENING OR PLANTING PERMIT; FEE.**

(a) Any resident or owner wishing to plant or establish any type of screening or planting within any area of their property which is subject to an easement granted to or in favor of the City for drainage purposes shall submit a plan for such screening or planting to the Director of Engineering. Such plan shall be drawn to scale and contain the following details:

- (1) The dimensions of the property subject to the easement;
- (2) The area of the easement;
- (3) The location of the proposed plantings within the easement area;
- (4) The types and kinds and size of the proposed plants within the easement area.

(b) The Director of Engineering shall review the plans and may request review of the plans by any other department of the City. The Director of Engineering after such review may approve or reject the plans in whole or in part and thereafter shall issue a permit for the plantings and/or screening as he approves. (Ord. 1994-132. Passed 6-2-94.)

(c) The fee for such permit shall be five dollars (\$5.00) payable to the City and delivered to the Director of Engineering. The Director of Engineering shall record said permits. The filing fee for recording the same shall be paid by the owner or resident to whom the permit is issued. (Ord. 1994-149. Passed 7-7-94.)

(d) Any person found responsible for placement of plantings of any type within an area of property subject to an easement to or in favor of the City for drainage purposes without a permit as described herein shall be fined not more than one hundred dollars (\$100.00) for each individual item planted.

(e) The City shall not be responsible to repair or replace any screening or planting placed within an area subject to an easement for drainage purposes whether planted or erected pursuant to this section or otherwise if the removal of the same is necessary by the City or its agent for the cleaning or reconstruction of the drainage ditch.  
(Ord. 1979-186. Passed 12-6-79.)

#### **907.02 STORM DRAINAGE UPGRADE PROGRAM.**

(a) A residential property owner of the City may contact the Department of Public Service should the property owner wish to have the front footage storm drainage ditch upgraded, subject to the approval of the Director of Engineering. The Director of Public Service shall schedule the order in which the upgrades are completed and his determination shall be final. The Director of Engineering may declare certain areas and/or individual properties of the City ineligible for this program.

(b) Upgrading of the front footage of the storm drainage ditch shall include the installation of a twelve inch in diameter plastic pipe and catch basin. A pipe greater than twelve inches in diameter may be installed if determined necessary by the Director of Engineering.

(c) The plastic pipe will be connected to the storm water outlet and all hookups for the residential structure. (Ord. 1998-103. Passed 4-16-98.)

(d) The costs to the property owner for such upgrading to be performed by the City or its agents as described in subsections (a) to (c) hereof shall be fifteen dollars (\$15.00) per lineal foot of lot frontage as determined by the Cuyahoga County Tax Map. No project may commence after January 1, 2014, unless Council authorizes the continuation of this program for up to an additional three years after consideration of the amount to charge property owners in light of changes in construction costs and the historical and projected net costs of the program to the City.  
(Ord. 2011-5. Passed 1-6-11.)

(e) Prior to the start of any individual upgrade, the property owner shall be notified of the total cost which he/she will be responsible for and a copy of such notice signed by the property owner and acknowledging his/her agreement to pay within the terms of this section must be received by the Director of Finance. Property owners must pay the costs as described in subsection (d) hereof in one lump sum within sixty days of receiving a notice of completion of the job from the City. Payments shall be made to the Finance Department.  
(Ord. 1998-103. Passed 4-16-98.)

(f) Should a property owner fail to pay the sums as set forth hereinabove and as agreed to by the property owner prior to the commencement of action under this section, the Director of Finance shall be authorized without further ordinance, resolution or action of Council to enter a lien upon the tax duplicate against the lots or lands effected by the improvements as set forth herein and shall certify to the County Auditor for recording such lien in the following manner:

- (1) The cost of the improvement shall be divided into eight semi-annual payments and paid with the tax payments collected on said schedule.

- (2) The Director of Finance shall add to the amount due interest at a rate corresponding to the cost of City funds as projected over the time period for the assessment, but in no event shall the interest rate be less than three percent (3%) per annum or more than twelve percent (12%) per annum. (Ord. 2001-4. Passed 3-1-01.)

(g) Whoever violates any provisions of this section shall be fined not more than five hundred dollars (\$500.00) per day and each day's violation shall constitute a separate offense. Nothing herein shall prevent the City from taking such other lawful action as is necessary to prevent or remedy a violation. (Ord. 1998-103. Passed 4-16-98.)

### **907.03 LOT STORM DRAINAGE RELIEF PROGRAM.**

(a) The Director of Engineering may identify lots within the City which are in need of storm drainage relief based on the following criteria:

- (1) The causes of storm drainage issues for which relief is desired are related to the original design and construction of the developments on the properties and not related to changes in the property and its topography by individual owners of lots of record since the original construction on the property;
- (2) That the storm drainage problem for which relief is desired cannot be attributed, based on engineering analysis, to actions by individual property owners as opposed to the original developer or the natural topography of the area for which relief is requested; (Ord. 2000-87. Passed 5-18-00.)
- (3) The benefit service area shall be a minimum of three parcels; (Ord. 2008-97. Passed 7-3-08.)
- (4) The cause of the lot drainage problem cannot be attributed to a single entity;
- (5) Any and all easements or rights of way from all affected property owners shall be made available at no cost to the City; and
- (6) That all affected property owners upon which the relief program is determined necessary by the City Engineer shall agree to the proposed remediation and the cost sharing as set forth in this section. (Ord. 2000-87. Passed 5-18-00.)

(b) The Mayor, based upon a determination by the Director of Engineering, shall have final approval of all such projects and shall schedule the order in which the work is completed by the City or its agents and his determination shall be final. Based upon findings by the Director of Engineering and other analysis as appropriate, the Mayor may declare certain areas and/or individual properties of the City ineligible for this program.

(c) The cost to the individual property owners for their assessment for the private property benefit for such relief as described above shall be fifteen dollars (\$15.00) per lineal foot of the installed improvement. All applications for such projects shall be filed no later than the close of business on December 31, 2009. (Ord. 2008-97. Passed 7-3-08.)

(d) Prior to the start of any work, the affected property owners shall be notified of the total cost for which they will be responsible and a copy of such notice signed by the property owners and acknowledging their agreement to pay within the terms of this section must be received by the Director of Finance. Property owners shall pay in three annual installments with interest on the unpaid amount due at the same rate or rates of interest as shall be borne by securities to be issued in anticipation of the collection of the total of the unpaid amount due, provided the property owner may pay the total amount due in cash within thirty days after receiving a notice of completion of the job.

(e) Should a property owner fail to pay as set forth herein, the City shall place said monies due as a lien on the property owner's tax duplicate.

(f) All affected property owners shall be required to sign a joint agreement with the City setting forth the terms and conditions contained in this section and further providing that the property owners shall be responsible for all future maintenance and repairs to the system after its installation. Such agreement shall be in a form so that, if the City elects to do so, it can be recorded on the records of the subject property with the County Recorder of Cuyahoga County.

(g) The application of this program to any particular parcel within the City shall not create a right in other property owners regarding a similar application. The number of applications that may be approved in any year during the term of this section shall be limited by the funds available as established in the annual budget by Council, the availability of City workers for construction of the project, the review of each application by the Director of Engineering, and the discretion of the Mayor in establishing the priority and scheduling of projects.  
(Ord. 2000-87. Passed 5-18-00; Ord. 2004-74. Passed 6-3-04.)



**TITLE THREE - Public Utilities**

- Chap. 911. Water.
- Chap. 913. Pretreatment.
- Chap. 915. Sewer Use Regulations; Rates and Charges.
- Chap. 917. Electricity.
- Chap. 919. Gas.
- Chap. 921. Cable Television Regulations.

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**CHAPTER 911  
Water**

- 911.01 Emergencies; sprinkling hours and prohibited uses.**
- 911.02 Proclamation of emergency; posting and publication.**
- 911.99 Penalty.**

**CROSS REFERENCES**

- Franchises for public utilities - see CHTR. Art. XI, Sec. 5
- Power to provide and regulate water system - see Ohio R.C. 715.08, 717.01, 743.01
- Water pollution - see Ohio R.C. 715.08, 743.24 et seq.
- Compulsory water connections - see Ohio R.C. 729.06, 743.23
- Tampering with fixtures; unauthorized connections - see Ohio R.C. 4933.22; GEN. OFF. 545.19.
- Excavations for connections to water lines - see S.U. & P.S. Ch. 901
- Subdivision water supply - see PLAN. & PLAT. 1129.06

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**911.01 EMERGENCIES; SPRINKLING HOURS AND PROHIBITED USES.**

During any period of emergency resulting from the shortage of water within the City, no person shall use any water from the public water system for the purpose of sprinkling lawns or any other similar type of sprinkling or land irrigation purposes, except between the hours of 10:00 p.m. and 8:00 a.m. During such emergency period no person shall draw or cause to be drawn any water from the public water system for the purpose of sale to any other person or for any purpose other than the necessary use or consumption of the consumer upon his own property and for use by himself or members of his immediate family.  
(Ord. 1952-114. Passed 8-7-52.)

**911.02 PROCLAMATION OF EMERGENCY; POSTING AND PUBLICATION.**

A period of emergency may be established by proclamation of the Mayor of Westlake or shall be considered to exist during any period when the use of water for sprinkling purposes shall have been prohibited by order from the Mayor of the City of Cleveland to the City of Westlake.

During any period of time when such proclamation is in effect, the prohibited uses of water set forth in Section 911.01 shall be unlawful and no such use thereof shall be made. Such proclamation shall become effective by posting it in the Municipal Building and a notice of such proclamation shall be printed in the next available edition of the newspaper used by the City for the purpose of publication of its ordinances and resolutions.

(Ord. 1952-114. Passed 8-7-52.)

**911.99 PENALTY.**

Whoever violates any of the provisions of this chapter is guilty of a minor misdemeanor. Each day's violation shall constitute a separate offense.

**CHAPTER 913**  
**Pretreatment**

<b>913.01</b>	<b>General provisions.</b>	<b>913.07</b>	<b>Records retention.</b>
<b>913.02</b>	<b>Definitions.</b>	<b>913.08</b>	<b>Removal credits; net/gross calculations.</b>
<b>913.03</b>	<b>Regulations.</b>	<b>913.09</b>	<b>Bypass.</b>
<b>913.04</b>	<b>Fees.</b>	<b>913.99</b>	<b>Penalty.</b>
<b>913.05</b>	<b>Administration.</b>		
<b>913.06</b>	<b>Enforcement.</b>		

**913.01 GENERAL PROVISIONS.**

(a) Purpose and Policy. This chapter sets forth uniform requirements for dischargers into the Rocky River wastewater collection and treatment systems irrespective of municipal corporation boundaries within the wastewater and collection system in accordance with Ohio R.C. 6111.032(B) and enables the City to protect public health in conformity with all applicable local, state and federal laws relating thereto.

(b) Objectives. The objectives of this chapter are:

- (1) To prevent the introduction of pollutants into the City wastewater system which will interfere with the normal operation of the system or contaminate the resulting municipal sludge.
- (2) To prevent the introduction of pollutants into the City wastewater system which do not receive adequate treatment in the Rocky River Wastewater Treatment Plant, and which will pass through the system into receiving waters or the atmosphere or otherwise be incompatible with the system.
- (3) To improve the opportunity to recycle and reclaim wastewater and sludge from the Rocky River WWTP.

This chapter provides for the regulation of discharges into the City wastewater system through enforcement of administrative regulations. This chapter does not provide for the recovery of operations, maintenance or replacement costs of the Rocky River WWTP. (Ord. 1991-220. Passed 12-19-91.)

**913.02 DEFINITIONS.**

As used in this chapter, the following terms shall have the following meanings:

- (a) "Act" means the Clean Water Act (33 U.S.C. 1251 et seq.), as amended.
- (b) "Bypass" means the intentional diversion of wastestreams from any portion of an industrial discharger's treatment facility.
- (c) "Categorical pretreatment standards" means National Pretreatment Standards specifying quantities or concentrations of pollutants or pollutant properties which may be discharged or introduced into the Rocky River WWTP by specific industrial dischargers.
- (d) "Discharger" or "industrial discharger" means a source of indirect discharge.
- (e) "General wastewater discharge orders" means orders issued to each significant or potentially significant industrial discharger by the City of Rocky River. These orders advise the discharger of the applicability of the pretreatment regulations and specific discharge limitations; establish the required monitoring frequency and parameters to be measured; and establish the frequency and schedule for submission of self-monitoring reports.
- (f) "Indirect discharge" means the discharge or the introduction of nondomestic pollutants from a source regulated under Section 307(b) or (c) of the Act, into the Rocky River WWTP.
- (g) "Industrial waste" means solid, liquid or gaseous waste resulting from any industrial, manufacturing, trade or business process or from the development, recovery or processing of natural resources.
- (h) "Interference" means a discharge which, alone or in conjunction with a discharge or discharges from other sources, both:
  - (1) Inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use or disposal; and
  - (2) Therefore is a cause of a violation of any requirement of the POTW's NPDES permit.
- (i) "May" means a discretionary condition.
- (j) "NPDES permit" means the National Pollutant Discharge Elimination System permit, the permit issued by the U.S. EPA or the State of Ohio EPA under the Clean Water Act regulating the discharge of water to navigable waters.
- (k) "New source" means any building, structure, facility or installation from which there is or may be a discharge of pollutants, the construction of which commenced after the publication of proposed pretreatment standards under Section 307(c) of the Act which will be applicable to such source if such standards are thereafter promulgated in accordance with that section, provided that:
  - (1) The building, structure, facility or installation is constructed at a site at which no other source is located; or
  - (2) The building, structure, facility or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or
  - (3) The production or wastewater generating processes of the building, structure, facility or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source should be considered.

- (l) "OM and R" means operation, maintenance and replacement.
- (m) "Other wastes" means decayed wood, sawdust, shavings, bark, lime, refuse, ashes, garbage, offal, oil, tar, chemicals and all other substances except sewage and industrial waste.
- (n) "Pass through" means a discharge which exits the POTW into waters of the United States in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of violation of any requirements of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation).
- (o) "Pollutant" means any substance discharged into the Rocky River WWTP or the tributary collection system which upon such exposure to or assimilation into any organism will cause adverse effects such as cancer, genetic mutations or physiological manifestations as defined in standards issued pursuant to Section 307(a) of the Act.
- (p) "Pretreatment" means the reduction of the amount of pollutants, the elimination of pollutants or the alteration of the nature of pollutant properties in wastewater to a less harmful state prior to or in lieu of discharging or otherwise introducing such pollutants into the Rocky River WWTP.
- (q) "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass.
- (r) "Sewage" means water-carried human wastes or a combination of water-carried wastes from residences, business buildings, institutions and industrial establishments, together with such ground, surface, storm or other waters as may be present.
- (s) "Sewer" means any pipe, conduit, ditch or other device used to collect and transport sewage or storm water from the generating source.
- (t) "Shall" means mandatory.
- (u) "Significant industrial user":
  - (1) Except as provided in subsection (u)(2) hereof the term "significant industrial user" includes:
    - A. All industrial users subject to Categorical Pretreatment Standards; and
    - B. Any other industrial user that: discharges an average of 25,000 gallons per day or more of process wastewater to the Rocky River WWTP; contributes a process wastestream which makes up five percent (5%) or more of the average dry weather hydraulic or organic capacity of the Rocky River WWTP; or has a reasonable potential, in the opinion of the Pretreatment Coordinator, to adversely affect the Rocky River WWTP's operation or for violating any Pretreatment Standard or Requirement.
  - (2) The Pretreatment Coordinator may at any time, on his/her own initiative or in response to a petition received from any industrial user, determine that a noncategorical industrial user is not a "significant industrial user" if the industrial user has no reasonable potential to adversely affect the Rocky River WWTP's operation or for violating and Pretreatment Standard or Requirement.

- (v) "Slugload" means any pollutant, including oxygen demanding pollutants (BOD, etc.) released in a single extraordinary discharge episode of such volume or strength as to cause interference to the Rocky River Wastewater Treatment Plant.
- (w) "Toxic pollutants" means those substances referred to in Section 307(a) of the Act as well as any other known potential substances capable of producing toxic effects.
- (x) "Upset" means an exceptional incident in which a discharger unintentionally and temporarily is in a state of noncompliance with the standards set forth in Section 307(a) of the Act hereto due to factors beyond the reasonable control of the discharger, and excluding noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance or careless or improper operation thereof.
- (y) "Wastewater" means industrial waste, or sewage or any other waste including that which may be combined with any groundwater, surface water or storm water, that may be discharged to the Rocky River WWTP.
- (z) "WWTP" means Wastewater Treatment Plant.  
(Ord. 1991-220. Passed 12-19-91.)

### **913.03 REGULATIONS.**

(a) General Discharge Prohibitions. No discharger shall contribute or cause to be discharged, directly or indirectly, any of the following described substances into the wastewater disposal system or otherwise to the facilities of the City:

- (1) Any liquids, solids or gases which by reason of their nature or quantity are, or may be, sufficient either alone or by interaction to cause fire or explosion or be injurious in any other way to the operation of the Rocky River WWTP. This includes, but is not limited to, wastestreams with a closed cup flashpoint of less than 140 degrees Fahrenheit or sixty degrees Centigrade using the method specified in 40 CFR 261.21.
- (2) Solid or viscous substances which will or may cause obstruction to the flow in a sewer or other interference with the operation of the wastewater system.
- (3) Any wastewater having a pH less than 6.5 or higher than 9.0 or having any other corrosive property capable of causing damage or hazard to structures, equipment or personnel of the system.
- (4) Any wastewater containing toxic pollutants in sufficient quantity, either singly or by interaction to injure or interfere with any wastewater treatment process, or constitute a hazard to humans or animals. This includes, but is not limited to, pollutants which result in the presence of toxic gases, vapors or fumes within the Rocky River WWTP in a quantity that may cause acute worker health and safety problems.
- (5) Any noxious or malodorous liquids, gases or solids, which either singly or by interaction, are capable of creating a public nuisance or hazard to life or are sufficient to prevent entry into the sewers for their maintenance and repair.

- (6) Any substance which may cause the Rocky River WWTP effluent or treatment residues, sludges or scums, to be unsuitable for reclamation and reuse or to interfere with the reclamation process. In no case shall a substance discharged to the Rocky River WWTP cause the Rocky River WWTP to be in noncompliance with sludge use or disposal criteria, guidelines or regulations developed under Section 405 of the Act; any criteria, guidelines or regulations affecting sludge use or disposal developed pursuant to the Solid Waste Disposal Act, the Clear Air Act, the Toxic Substances Control Act or state standards applicable to the sludge management method being used.
  - (7) Any substance which will cause the Rocky River WWTP to violate its NPDES permit.
  - (8) Any substance with objectionable color not removed in the treatment process, such as, but not limited to, dye wastes and vegetable tanning solutions.
  - (9) Any wastewater having a temperature which will inhibit biological activity in the Rocky River Wastewater Treatment Plant resulting in interference (not exceeding 104 degrees Fahrenheit at the Treatment Plant); but in no case, wastewater with a temperature at the introduction into the City's wastewater collection system which exceeds 150 degrees Fahrenheit.
  - (10) Any slugload, which means any pollutant, including oxygen demanding pollutants (BOD, etc.) released in a single extraordinary discharge episode of such volume or strength as to cause interference to the Rocky River WWTP.
  - (11) Any unpolluted water including, but not limited to noncontact cooling water.
  - (12) Any wastewater containing any radioactive wastes or isotopes of such half-life or concentration as exceed limits established by the City in compliance with applicable state regulations.
  - (13) Any wastewater which causes a hazard to human life or creates a public nuisance.
  - (14) Any wastewater containing petroleum oil, nonbiodegradable cutting oil or products of mineral oil origin in such quantities that can pass through or cause interference at the Rocky River WWTP.
- (b) Limitations on Wastewater Strength.
- (1) National Categorical Pretreatment Standards. National Categorical Pretreatment Standards as promulgated by the U.S. Environmental Protection Agency (EPA) pursuant to the Act shall be met by all dischargers of the regulated industrial categories. An application for modification of the National Categorical Pretreatment Standards may be considered by submittal to the U.S. EPA Regional Administrator by the City, when the Rocky River wastewater treatment system achieves consistent removal of the pollutants as defined by 40 CFR, 403.7.
  - (2) Right of Revision. The City reserves the right to amend this chapter to provide for more stringent limitations or requirements on discharges to the Rocky River WWTP where deemed necessary to comply with the objectives set forth in Section 913.01(b).

- (3) Dilution. No discharger shall increase the use of potable or process water in any way, nor mix separate waste streams for the purpose of diluting a discharge as a partial or complete substitute for adequate treatment to achieve compliance with the standards set forth in this chapter.
- (4) Calculation of Equivalent Mass and Concentration Limits for Categorical Standards. When the limits in a Categorical Pretreatment Standard are expressed only in terms of mass of pollutant per unit of production, the City may convert the limits to equivalent limitations expressed either as a mass of pollutant discharged per day or effluent concentration for purposes of calculating effluent limitations applicable to individual industrial dischargers following the methodology contained 40 CFR 403.6(c)(3) and (c)(4). Industrial dischargers shall be required to comply with the equivalent limitations in lieu of the promulgated categorical standards from which the equivalent limitations were derived.

(c) Accidental Discharges. Each discharger shall provide protection from accidental discharge of prohibited or regulated materials or substances established by this chapter. Where necessary, facilities to prevent accidental discharge of prohibited materials shall be provided and maintained at the discharger's cost and expense. Detailed plans showing facilities and operating procedures to provide this protection shall be submitted to the City for review, and shall be approved by the City before construction of the facility. No discharger who discharges to the Rocky River WWTP shall be permitted to introduce pollutants into the system until accidental discharge protection procedures have been approved by the City. Review and approval of such plans and operating procedures by the City shall not relieve the discharger from the responsibility to modify its facility as necessary to meet the requirements of this chapter.

Dischargers shall notify the City immediately upon the occurrence of a slugload or accidental discharge of substances prohibited by this chapter. The notification shall include location of discharge, date and time thereof, type of waste, concentration and volume and corrective actions. Any discharger who discharges a slugload of prohibitive materials shall be liable for any expense, loss or damage to the Rocky River WWTP, in addition to the amount of any fines imposed on the City on account thereof under state or federal law.

Signs shall be permanently posted in conspicuous places on the discharger's premises, advising employees whom to call in the event of a slugload or accidental discharge. Employers shall instruct all employees who may cause or discover such a discharge with respect to emergency notification procedure.

(d) No person shall access the sewer system or Rocky River WWTP for any activity including discharge of hauled septic or industrial wastes except at locations and at times as designated by the Pretreatment Coordinator. Any removal of manhole lids, or other access to the sewer system for the purpose of discharging wastes at times and/or locations other than those designated by the Pretreatment Coordinator, or without the express permission of the Pretreatment Coordinator, shall be considered a violation and shall be subject to enforcement action including fines and penalties allowed under this chapter.

(Ord. 1991-220. Passed 12-19-91.)



**913.04 FEES.**

(a) Purpose. It is the purpose of this chapter to provide for the payment of fees from the discharger's to the City's wastewater disposal system, to compensate the City for the cost of administration of the pretreatment program established herein.

(b) Charges and Fees. The City may adopt charges which may include the fee for the following:

- (1) Fees for monitoring, inspections and surveillance procedures.
- (2) Fees for filing appeals.
- (3) Fees for reviewing accidental discharge procedures and construction.  
(Ord. 1991-220. Passed 12-19-91.)

**913.05 ADMINISTRATION.**

(a) Wastewater Dischargers. No person shall discharge sewage, industrial wastes or other wastes to any sewer within the jurisdiction of the City, and/or to the Rocky River WWTP without having first complied with the terms of this chapter. New sources shall install and have in operating condition, and shall start up all pollution control equipment required to meet applicable pretreatment standards before beginning to discharge. Within the shortest feasible time, not to exceed ninety days, new sources shall meet all applicable pretreatment standards.

(b) Wastewater Discharge Data Disclosure.

- (1) General disclosure. All industrial dischargers proposing to connect to or to discharge sewage, industrial wastes and other wastes to the Rocky River WWTP shall comply with all terms of this chapter within ninety days after the effective date of this chapter.
- (2) Disclosure forms and baseline monitoring reports. Industrial dischargers shall complete and file with the City a disclosure declaration in the form prescribed by the City, and accompanied by the appropriate fee. Existing industrial dischargers shall file disclosure forms within thirty days after the effective date of this chapter, and proposed new dischargers shall file their disclosure forms at least ninety days prior to connecting to the Rocky River WWTP. Existing dischargers that become industrial dischargers subject to the Categorical Pretreatment Standards or new sources subject to Categorical Pretreatment Standards, shall complete and file a baseline monitoring report as required by 40 CFR 403.12(b), at least ninety days prior to commencement of discharge. In addition to the above disclosure requirements, the disclosure to be made by the discharger shall be made on written forms provided by the City and shall cover:
  - A. Disclosure of name, address and location of the discharger.
  - B. Disclosure of Standard Industrial Classification (SIC) number according to the Standard Industrial Classification Manual, Bureau of the Budget, 1972, as amended.

- C. Disclosure of wastewater constituents and characteristics including but not limited to those mentioned in this chapter, also referred in Section 307(a) of the Act and as defined by 40 CFR, 403.5 as appropriate, and determined by bonafide chemical and biological analysis. Sampling and analysis shall be performed in accordance with procedures established by the U.S. EPA and contained in 40 CFR Part 136, as amended.
- D. Disclosure of time and duration of discharges.
- E. Disclosure of average daily and instantaneous peak wastewater flow rates, in gallons per day, including daily, monthly and seasonal variations, if any. All flows shall be measured unless other verifiable techniques are approved by the City due to cost or nonfeasibility.
- F. Disclosure of site plans, floor plans, mechanical and plumbing plans and details to show all sewers, sewer connections, inspection manholes, sampling chambers and appurtenances by size, location and elevation.
- G. Description of activities, facilities and plant processes on the premises including all materials which are or may be discharged to the sewers or works for the City.
- H. Disclosure of the nature and concentration of any pollutants or materials prohibited by this chapter in the discharge, together with a statement regarding whether or not compliance is being achieved with this chapter on a consistent basis and if not, whether additional operation, maintenance and replacement activities and/or additional pretreatment is required for the discharger to comply with this chapter.
- I. Where additional pretreatment and/or operation, maintenance and replacement activities will be required to comply with this chapter, the discharger shall provide a declaration of the shortest schedule by which the discharger will provide such additional pretreatment and/or implementation of additional operational, maintenance and replacement activities.
  - 1. The schedule shall contain milestone dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the discharger to comply with the requirements of this chapter, including, but not limited to dates relating to hiring an engineer, hiring other appropriate personnel, completing preliminary plans, completing final plans, executing contracts for major components, commencing construction, completing construction and all other acts necessary to achieve compliance with this chapter.

2. Under no circumstances shall the City permit a time increment for any single step directed toward compliance which exceeds nine months.
  3. Not later than fourteen days following each milestone date in the schedule and the final date for compliance, the discharger shall submit a progress report to the City, including no less than a statement as to whether or not it had completed with the increment of progress represented by that milestone date, and if not, the date on which it expects to comply with this increment of progress, the reason for delay and the steps being taken by the discharger to return to the construction to the approved schedule. In no event shall more than nine months elapse between such progress reports to the City.
- J. Disclosure of each product produced by type, amount, process or processes and rate of production.
  - K. Disclosure of the type and amount of raw materials utilized (average and maximum per day).
  - L. All disclosure forms and the baseline monitoring report shall be signed as provided in subsection (c)(4) hereof and by a qualified engineer (licensed to practice in the State).
  - M. All sewers shall have an inspection and sampling manhole or structure with an opening of no less than twenty-four inches in diameter and an internal diameter of no less than thirty-six inches containing flow measuring, recording and sampling equipment as required by the City to assure compliance with this chapter.  
The City shall evaluate the complete disclosure form and data furnished by the discharger and may require additional information. Within thirty days after full evaluation and acceptance of the data furnished, the City shall notify the discharger of the City's acceptance thereof.
- (3) Standards modification. The City reserves the right to amend this chapter and the terms and conditions hereof in order to assure compliance by the City with applicable laws and regulations. Within nine months of the promulgation of a National Categorical Pretreatment Standard, this chapter shall be amended to require compliance by dischargers with such standards within the time frame prescribed by such standards. Where a discharger, subject to a National Categorical Pretreatment Standard, has not previously submitted a disclosure form as required by subsection (b)(2) hereof, the discharger shall file a disclosure form with the City within 180 days after the promulgation of the applicable National Categorical Pretreatment Standard by the U.S. EPA. In addition, any discharger operating on the basis of a previous filing of a disclosure statement, shall submit to the City within 180 days after the promulgation of an applicable National Categorical Pretreatment Standard, the additional information required by subsection (b)(2)H. and I. hereof. The discharger shall be informed of any proposed changes in the chapter at least thirty days prior to the effective date of change. Any changes or new conditions in the chapter shall include a reasonable time schedule for compliance.

(c) Reporting Requirements for Discharger.

(1) Compliance date report. Within ninety days following the date for final compliance by the discharger with applicable pretreatment standards set forth in this chapter or ninety days following commencement of the introduction of wastewater into the Rocky River WWTP by a new discharger, any discharger subject to this chapter shall submit to the City a report indicating the nature and concentration of all prohibited or regulated substances contained in its discharge, and the average and maximum daily flow in gallons. The report shall state whether the applicable pretreatment standards or requirements are being met on a consistent basis and, if not, what additional OM and R and/or pretreatment is necessary to bring the discharger into compliance with the applicable pretreatment standards or requirements. This statement shall be signed as provided in subsection (c)(4) hereof and by a qualified engineer (licensed to practice in the State). In addition to the above required information, for industrial dischargers subject to equivalent mass or concentration limits, this report shall contain a reasonable measure of such discharger's long-term production rate. For all other industrial dischargers subject to Categorical Pretreatment Standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall include the discharger's actual production during the appropriate sampling period.

(2) Periodic compliance reports.

A. Any discharger subject to general wastewater discharge orders, after the effective date of such orders, shall submit to the City according to the schedule included in the orders, a report indicating the nature and concentration of prohibited or regulated substances in the effluent which are limited by the pretreatment standards as set forth in the orders. This report shall be signed as provided in subsection (c)(4) hereof. In addition, this report shall include a record of all measured or estimated average and maximum daily flows during the reporting period reported in subsection (c)(1) hereof. Flows shall be reported on the basis of actual measurement, provided however, where cost or feasibility considerations justify, the City may accept reports of average and maximum flow estimated by verifiable techniques. The City, for good cause shown considering such factors as local high or low flow rates, holidays, budget cycles or other extenuating factors may authorize the submission of such reports on months other than those specified above.

- B. Reports of dischargers shall contain all results of sampling and analysis of the discharge, including the flow and the nature and concentration, or production and mass where required by the City. The frequency of monitoring by the discharger shall be as prescribed by the Pretreatment Coordinator and set forth in the general wastewater discharge orders. All analysis shall be performed in accordance with 40 CFR, Part 136 and amendments thereto. (Comment: Where 40 CFR, Part 136 does not include a sampling or analytical technique for the pollutant in question, sampling and analysis shall be performed in accordance with the procedures set forth in the EPA publication, Sampling and Analysis Procedures for Screening of Industrial Effluents for Priority Pollutants, April, 1977, and amendments thereto, or with any other sampling and analytical procedures approved by the Administrator of the U.S. EPA.)
- C. If sampling performed by an industrial discharger indicates a violation, the discharger shall notify the City within twenty-four hours of becoming aware of the violation. The discharger shall also repeat the sampling and analysis and submit the results of the repeat analysis to the City within thirty days after becoming aware of the violation, except the industrial discharger is not required to resample if:
1. The City performs sampling at the industrial discharger at a frequency of at least once per month, or
  2. The City performs sampling at the discharger between the time when the discharger performs its initial sampling and the time when the discharger receives the results of this sampling.
- (3) Notification of changed discharge. All industrial dischargers shall promptly notify the City in advance of any substantial change in the volume or character of pollutants in their discharge, including the listed or characteristic hazardous wastes for which the industrial user has submitted initial notification under 40 CFR 403.12(p).
- (4) Signatory requirements for industrial discharge reports. The reports required by subsections (b)(2), (c)(1) and (c)(2) hereof shall include the following certified statement:
- I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

In addition, such reports shall be signed as follows:

- A. By a responsible corporate officer, if the industrial discharger submitting the reports required by subsections (b)(2), (c)(1) and (c)(2) hereof is a corporation. For the purpose of this paragraph, a responsible corporate officer means:
  - 1. A president, secretary, treasurer or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or
  - 2. The manager of one or more manufacturing, production or operation facilities employing more than 250 persons or having gross annual sales or expenditures exceeding twenty-five million dollars (\$25,000,000) (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.
- B. By a general partner or proprietor if the industrial discharger submitting the reports required by subsections (b)(2), (c)(1) or (c)(2) hereof is a partnership or sole proprietorship respectively,
- C. By a duly authorized representative of the individual designated in subsection (c)(4)A. or B. hereof, if:
  - 1. The authorization is made in writing by the individual described in subsection (c)(4)A. or B. hereof;
  - 2. The authorization specifies either an individual or a position having responsibility for the overall operation of the facility for which the industrial discharge originates, such as the position of plant manager, operator of a well, or well field superintendent, or a position of equivalent responsibility, or having overall responsibility for environmental matters for the company and
  - 3. The written authorization is submitted to the City.
- D. If an authorization under subsection (c)(4)C. hereof is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, or overall responsibility for environmental matters for the company, a new authorization satisfying the requirements of subsection (c)(4)C. hereof shall be submitted to the City prior to or together with any reports to be signed by an authorized representative.

(d) Monitoring Facilities. Each discharger shall provide and operate at the discharger's own expense, a monitoring facility to allow inspection, sampling and flow measurement of each sewer discharge to the City. Each monitoring facility shall be situated on the discharger's premises, except where such location would be impractical or cause undue hardship on the discharger, the City may concur with the facility being constructed in the public street or sidewalk area providing that the facility is located so that it will not be obstructed by landscaping or parked vehicles.

There shall be ample room in or near such sampling facility to allow accurate sampling and preparation of samples for analysis. The facility, sampling and measuring equipment shall be maintained at all times in a safe and proper operating condition at the expense of the discharger.

All monitoring facilities shall be constructed and maintained in accordance with all applicable local construction standards and specifications. Construction shall be completed within 120 days of receipt of the permit by the discharger.

(e) Inspection and Sampling. The City may inspect the monitoring facilities of any discharger to determine compliance with the requirements of this chapter. The discharger shall allow the City or its representatives, upon presentation of credentials of identification, to enter upon the premises of the discharger at all reasonable hours, for the purposes of inspection, sampling or records examination. The City shall have the right to set up on the discharger's property such devices as are necessary to conduct sampling, inspection, compliance monitoring and/or metering operations.

(f) Confidential Information. Information and data furnished to the City with respect to the nature and frequency of discharge shall be available to the public or other governmental agency without restriction unless the discharger specifically requests and is able to demonstrate to the satisfaction of the City that the release of such information would divulge information, processes or methods of production entitled top protection as trade secrets or proprietary information of the discharger. When requested by a discharger furnishing a report, the portions of a report which may disclose trade secrets or secret processes shall not be made available for inspection to the public but shall be made available upon written request to governmental agencies for uses related to this chapter, the National Pollutant Discharge Elimination System (NPDES) permit and/or the pretreatment programs; provided, however, that such portions of a report shall be available for use by the State or any state agency in judicial review or enforcement proceedings involving the discharger furnishing the report. Wastewater constituents and characteristics shall not be recognized as confidential information.

Information accepted by the City as confidential shall not be transmitted to any governmental agency or the general public by the City until and unless a ten-day notification is given to the discharger.

(Ord. 1991-220. Passed 12-19-91.)

**913.06 ENFORCEMENT.**

(a) Compliance Orders. The City shall issue orders to any industrial discharger to comply with any portion of this chapter, including Categorical Pretreatment Standards, locally developed industrial discharge limits, other discharge limits and reporting requirements.

(b) Emergency Suspension of Service and Discharge Permits. The City may for good cause shown suspend the wastewater treatment service to a discharger when it appears to the City that an actual or threatened discharge presents or threatens to present an imminent or substantial danger to the health or welfare of persons, substantial danger to the environment, interferes with the operation of the Rocky River WWTP, or violates any pretreatment limits imposed by this chapter. Any discharger notified of the suspension of wastewater treatment service shall within a reasonable period of time, as determined by the City, cease all discharges. In the event of failure of the discharger to comply voluntarily with the suspension order within the specified time, the City shall commence judicial proceedings immediately thereafter to compel the discharger's compliance with such order. The City shall reinstate the wastewater treatment service and terminate judicial proceedings pending proof by the discharger of the elimination of the noncomplying discharge or conditions creating the threat of imminent or substantial danger as set forth above.

(c) Revocation of Treatment Services. The City may seek to terminate the wastewater treatment services to any discharger which fails to:

- (1) Factually report the wastewater constituents and characteristics of its discharge;
- (2) Report significant changes in wastewater constituents or characteristics;
- (3) Refuses reasonable access to the discharger's premises by representatives of the City for the purpose of inspection or monitoring; or
- (4) Violates the conditions of this chapter, or any final judicial order entered with respect thereto.

(d) Notification of Violation; Administrative Adjustment. Whenever the City finds that any discharger has engaged in conduct which justifies termination of wastewater treatment services, pursuant to subsection (b) hereof, the City shall serve or cause to be served upon such discharger, a written notice either personally or by certified or registered mail, return receipt requested, stating the nature of the alleged violation. Within thirty days of the date of receipt of this notice, the discharger shall respond personally or in writing to the City, advising of its position with respect to the allegations. Thereafter, the parties shall meet to ascertain the veracity of the allegations and where necessary, establish a plan for the satisfactory correction thereof.



(e) Show Cause Hearing. Where the violation of subsection (b) hereof is not corrected by timely compliance by means of administrative adjustment, the City may order any discharger which causes or allows conduct prohibited by subsection (b) hereof, to show cause before the City or its duly authorized representative, why the proposed service termination action should not be taken. A written notice shall be served on the discharger by personal service, certified or registered mail, return receipt requested, specifying the time and place of a hearing to be held by the City or its designee regarding the violation, the reasons why the enforcement action is to be taken, the proposed enforcement action, and directing the discharger to show cause before the City or its designee why the proposed enforcement action should not be taken. The notice of the hearing shall be served no less than ten days before the hearing. Service may be made on any agent, officer or authorized representative of a discharger. The proceedings at the hearing shall be considered by the City which shall then enter appropriate orders with respect to the alleged improper activities of the discharger. Appeal of such orders may be taken by the discharger in accordance with applicable local or state law.

(f) Judicial Proceedings. Following the entry of any order by the City with respect to the conduct of a discharger contrary to the provisions of subsection (b) hereof, the Attorney for the City may, following the authorization of such action by the City, commence an action for appropriate legal and/or equitable relief in the appropriate local court.

(g) Enforcement Actions; Annual Publication. At least annually, a list shall be published of all industrial users which at any time during the previous twelve months were in significant noncompliance with applicable pretreatment requirements. For the purposes of this provision, an industrial user is in significant noncompliance if its violations meet one or more of the following criteria:

- (1) Chronic violations of wastewater discharge limits, defined here as those in which sixty-six percent (66%) or more of all of the measurements taken during a six-month period exceed (by any magnitude) the daily maximum limit or the average limit for the same pollutant parameter;
- (2) Technical Review Criteria (TRC) violations, defined here as those in which thirty-three percent (33%) or more of all the measurements for each pollutant parameter taken during a six-month period equal or exceed the product of the daily maximum limit or the average limit multiplied by the applicable TRC (TRC = 1.4 for BOD, TSS, fats, oil and grease, and 1.2 for all other pollutants except pH);
- (3) Any other violation of a pretreatment effluent limit (daily maximum or longer term average) that the Pretreatment Coordinator determines has caused, alone or in combination with other dischargers, interference or pass through (including endangering the health of Rocky River WWTP personnel or the general public);

- (4) Any discharge of a pollutant that has caused imminent endangerment of human health, welfare or to the environment or has resulted in the Rocky River WWTP's exercise of emergency authority to halt or prevent such a discharge;
- (5) Failure to meet, within ninety days after the schedule date, a compliance schedule milestone contained in a wastewater discharge permit or enforcement order for starting construction, completing construction or attaining final compliance;
- (6) Failure to provide, within thirty days after the due date, required reports such as baseline monitoring reports, ninety-day compliance reports, periodic self-monitoring reports and reports on compliance with compliance schedules;
- (7) Failure to accurately report noncompliance;
- (8) Any other violation or group of violations which the Pretreatment Coordinator determines will or has adversely affected the operation or implementation of the City's pretreatment program.

(h) Right of Appeal. Any discharger or any interested party shall have the right to request in writing an interpretation or ruling by the City on any matter covered by this chapter and shall be entitled to a prompt written reply. In the event that such inquiry is by a discharger and deals with matters of performance or compliance with this chapter for which enforcement activity relating to an alleged violation is the subject, receipt of a discharger's request shall stay all enforcement proceedings pending receipt of the aforesaid written reply. Appeal of any final judicial order entered pursuant to this chapter may be taken in accordance with local and state law.

(i) Operating Upsets. Any discharger which experiences an upset in operations which places the discharger in a temporary state of noncompliance with this chapter shall inform the City thereof within twenty-four hours of first awareness of the commencement of the upset. Where such information is given orally, a written follow-up report thereof shall be filed by the discharger with the City within five days. The report shall address:

- (1) Description of the upset, the cause thereof and the upset's impact on a discharger's compliance status.
- (2) Duration of noncompliance; including exact dates and times of noncompliance, and if the noncompliance continues, the time by which compliance is reasonably expected to occur.
- (3) All steps taken or to be taken to reduce, eliminate and prevent recurrence of such an upset or other conditions of noncompliance.

A document and verified bona fide operation upset shall be an affirmative defense to any enforcement action brought by the City against a discharger for any noncompliance with the chapter which arises out of violations alleged to have occurred during the period of the upset. (Ord. 1991-220. Passed 12-19-91.)

**913.07 RECORDS RETENTION.**

All dischargers subject to this chapter shall retain and preserve for no less than three years, any records, books, documents, memoranda, reports, correspondence and any and all summaries thereof, relating monitoring, sampling and chemical analysis made by or in behalf of a discharger in connection with its discharge. All records which pertain to matters which are the subject of administrative adjustment or any other enforcement or litigation activities brought by the City pursuant hereto shall be retained and preserved by the discharger until all enforcement activities have concluded and all periods of limitation with respect to any and all appeals have expired. (Ord. 1991-220. Passed 12-19-91.)

**913.08 REMOVAL CREDITS; NET/GROSS CALCULATIONS.**

(a) Removal Credits. Where applicable, the City may elect to initiate a program of removal credits as part of this chapter to reflect the Rocky River WWTP's ability to remove pollutants in accordance with 40 CFR Part 403.7.

(b) Net/Gross Calculations. The City may elect to adjust Categorical Pretreatment Standards to reflect the presence of pollutants in the discharger's intake water, in accordance with 40 CFR Part 403.15. (Ord. 1991-220. Passed 12-19-91.)

**913.09 BYPASS.**

(a) Bypass Not Violating Applicable Pretreatment Standards or Requirements. An industrial discharger may allow any bypass to occur which does not cause pretreatment standards or requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provision of subsections (b) and (c) hereof.

(b) Notice.

- (1) If an industrial discharger knows in advance of the need for a bypass, it shall submit prior notice to the City, if possible at least ten days before the date of the bypass.
- (2) An industrial discharger shall submit oral notice of an unanticipated bypass that exceeds applicable pretreatment standards to the City within twenty-four hours from the time the industrial discharger becomes aware of the bypass. A written submission shall also be provided within five days of the time the industrial discharger becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times, and, if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate and prevent recurrence of the bypass. The City may waive the written report on a case-by-case basis if the oral report has been received within twenty-four hours.

(c) Prohibition of Bypass.

- (1) Bypass is prohibited, and the City may taken enforcement action against an industrial discharger for a bypass, unless:

- A. Bypass was unavoidable to prevent loss of life, personal injury or severe property damage;
  - B. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventative maintenance; and
  - C. The industrial discharger submitted notices as required under subsection (b) hereof.
- (2) The City may approve an anticipated bypass, after considering its adverse effects, if the City determines that it will meet the three conditions listed in subsection (c)(1) hereof.  
(Ord. 1991-220. Passed 12-19-91.)

### **913.99 PENALTY.**

(a) General Penalty.

- (1) Whenever any discharger who may have violated and/or who has neglected or failed to comply with any provision of this chapter and the regulations or rules of the City, or orders of any court of competent jurisdiction or orders issued pursuant to this chapter, the City may institute an appropriate action at law in equity to restrain the execution in violation of this chapter, and the violator shall be fined not more than one thousand dollars (\$1,000) per violation per day. Each day's violation constitutes a separate offense.
- (2) Any discharger who, with criminal intent or gross negligence, violates any provision of this chapter and the regulations or rules of the City, or orders of any court of competent jurisdiction or orders issued pursuant to this chapter, shall be guilty of a first degree misdemeanor and upon conviction thereof shall be fined not more than one thousand dollars (\$1,000) or be subject to imprisonment for not more than six months, or both.

(b) Recovery of Costs Incurred by the City. Any discharger violating any of the provisions of this chapter, or who discharges or causes a discharge producing a deposit or obstruction, or causes damage to or impairs the City's wastewater disposal system shall be liable to the City for any expense, loss or damage caused by such violation or discharge. The City shall bill the discharger for the costs incurred by the City for any cleaning, repair or replacement work caused by the violation or discharge. Refusal to pay the assessed costs shall constitute a violation of this chapter enforceable under the provisions of Section 913.06.

(c) Falsifying Information. Any person who knowingly makes any false statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained pursuant to this chapter or who falsifies, tampers with or knowingly renders inaccurate any monitoring device or method required under this chapter shall, upon conviction, be fined not more than one thousand dollars (\$1,000) or be subject to imprisonment for not more than six months or both.  
(Ord. 1991-220. Passed 12-19-91.)

APPENDIX A

TOXIC POLLUTANT LIST

(The Toxic Pollutant List contained in the Federal Environmental Protection Agency's Pretreatment Standards as contained in 40 CFR, Part 403, Appendix B as revised are hereby adopted and incorporated herein by reference).  
(Ord. 1991-220. Passed 12-19-91.)



**CHAPTER 915**  
**Sewer Use Regulations; Rates and Charges**

<b>915.01</b>	<b>Definitions.</b>	<b>915.14</b>	<b>Collection and billing procedure.</b>
<b>915.02</b>	<b>Clear water connections.</b>	<b>915.15</b>	<b>Effective date.</b>
<b>915.03</b>	<b>Limitations of connections.</b>	<b>915.16</b>	<b>Charges a lien.</b>
<b>915.04</b>	<b>Sewer design and permits; plans; classes requiring submissions.</b>	<b>915.17</b>	<b>Liability for payment, lessor and lessee.</b>
<b>915.05</b>	<b>Photographing of sewers.</b>	<b>915.18</b>	<b>Annexation not a prerequisite for service.</b>
<b>915.06</b>	<b>Sanitary sewer discharge standards.</b>	<b>915.19</b>	<b>No free services.</b>
<b>915.07</b>	<b>NPDES permit limits.</b>	<b>915.20</b>	<b>Privies prohibited where sewers available.</b>
<b>915.08</b>	<b>Surcharge for industrial wastes.</b>	<b>915.21</b>	<b>Responsibility of property owners.</b>
<b>915.09</b>	<b>Inspection and enforcement.</b>	<b>915.22</b>	<b>Tap-in charges.</b>
<b>915.10</b>	<b>Test procedures for analysis of pollutants.</b>	<b>915.23</b>	<b>Limitations.</b>
<b>915.11</b>	<b>Industrial permits reporting.</b>	<b>915.24</b>	<b>Connection fees and assessment charges.</b>
<b>915.12</b>	<b>Appeal procedures.</b>	<b>915.99</b>	<b>Penalty.</b>
<b>915.13</b>	<b>Sewer rates and charges; Sewer Revenue Fund.</b>		

**CROSS REFERENCES**

Power to construct sewerage system - see Ohio R.C. 715.40  
717.01

Compulsory sewer connection - see Ohio R.C. 729.06

Management and control of sewerage system - see Ohio R.C. 729.50

Regulations to control house sewers and connections - see Ohio R.C. 729.51

Permit for street excavations - see S.U. & P.S. Ch. 901

Sanitary facilities in subdivisions - see PLAN. & PLAT. 1129.05

Plumbing fees - see BLDG. 1315.05

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**915.01 DEFINITIONS.**

For the purposes of this chapter, unless the context specifically indicates otherwise, the meaning of terms used in this chapter shall be as follows:

- (1) "Authorized person" means a person duly authorized by the Director of Engineering to act on his/her behalf in fulfilling the provisions of this chapter.
- (2) "BOD" means biochemical oxygen demand; the quantity of oxygen, expressed as milligrams per liter, utilized in the biochemical oxidation of organic matter for a five-day time period at twenty degrees centigrade, further explained in the current edition of "Standard Methods for Water and Wastewater Analysis", published by the American Public Health Association.
- (3) "Building drain" means that part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste and other drainage pipes inside the walls of the building and conveys it to the building sewers, beginning five feet outside the face of the building wall.
- (4) "Building sewer" means the extension from the building drain to the public sewer at the street right of way.
- (5) "COD" means chemical oxygen demand; the quantity of oxygen, expressed as milligrams per liter, used in the chemical oxidation of organic matter to carbon dioxide and water, further explained in "Standard Methods for Water and Wastewater Analysis."
- (6) "Combined sewer" means a sewer which is designed to carry sanitary sewage, industrial wastes and storm water.
- (7) "Debt service" means the bond retirement which is incurred in the payment of capital costs for the construction and/or capital improvement of wastewater collection and treatment facilities.
- (8) "Domestic sewage" means sanitary sewage which does not exceed normal wastewater concentrations.
- (9) "Garbage" means solid wastes from the domestic and commercial preparation, cooking and dispensing of food and from the handling, storage and sale of produce.
- (10) "Industrial wastes" means the liquid wastes from industrial manufacturing processes, trade or business, as distinct from domestic sewage.
- (11) "mg/l" means milligrams per liter.
- (12) "Nondomestic" means any wastes exceeding normal wastewater concentrations.
- (13) "Normal wastewater concentrations" means for the purposes of the extra strength surcharge system a five day biochemical oxygen demand of 250 milligrams per liter, suspended solids of 250 milligrams per liter, phosphorus of twenty milligrams per liter and oil and grease of fifty milligrams per liter.
- (14) "NPDES permit" means the National Pollutant Discharge Elimination System permit, issued by the U.S. EPA or the Ohio EPA under the Clean Water Act regulating the discharge of water to navigable waters.
- (15) "OM&R" means operation, maintenance and replacement.



- (16) "Operation and maintenance cost" means the costs which are incurred in providing for the operation and maintenance of wastewater collection treatment and sewer billing services. Debt service costs are not included in operation and maintenance costs.
- (17) "Person" means any individual, firm, company, association, society, corporation or group.
- (18) "pH" means the logarithm of the reciprocal of the weight of hydrogen ions in grams moles per liter of solution.
- (19) "Phosphorus" means compounds of orthophosphates, polyphosphates and organic phosphorus.
- (20) "ppm" means parts per million.
- (21) "Public sewer" means a sewer in which all owners of abutting properties have equal rights and which is controlled by public authority.
- (22) "Replacement charge" means expenditures for obtaining and installing equipment, accessories or appurtenances which are necessary during the useful life of the treatment works to maintain capacity and performance for which such works were designed and constructed.
- (23) "Sanitary sewage" means a combination of the liquid and water-carried wastes from the sanitary convenience of residences, business buildings, institutions and commercial and industrial establishments.
- (24) "Sanitary sewer" means a sewer which carries sanitary sewage and industrial wastes and to which storm, surface and ground waters are not intentionally admitted.
- (25) "Service connection" means any connection which provides sanitary service to a public sewer.
- (26) "Sewage treatment plant" means any arrangement of devices and structures used for treating sewage.
- (27) "Sewerage works" means all facilities for collecting, pumping, treating and disposing of sewage.
- (28) "Sewer" means a pipe or conduit for carrying sewage.
- (29) "Sewer service charge" means the fee levied on the sewer user to fund the operation, maintenance, replacement and bond retirement costs for providing wastewater collection and treatment services.
- (30) "Shall" is mandatory; "may" is permissive.
- (31) "Slug" means any discharge of water, sewage or industrial waste which in concentration of any given constituent or in quantity of flow exceeds for any period duration longer than fifteen minutes more than five times the average twenty-four hour concentration or flows during normal operation.
- (32) "Storm sewer" or "storm drain" means a sewer which carries storm, surface waters and drainage, but which excludes sanitary sewage and industrial wastes, other than unpolluted cooling water.
- (33) "Storm water" includes rain, surface and other water which is ordinarily discharged into public storm sewers in contrast to such other liquids and solids which are ordinarily discharged into public sanitary sewers.

- (34) "Street connection" means that portion of the building sewer located within the street right of way.
- (35) "Subsurface drainage" means any water collected by footer drains or other devices below the ground.
- (36) "Suspended solids" (SS) means solids that either float on the surface of, or are in suspension in, water, sewage or other liquids, and which are removable by laboratory filtering.
- (37) "User charge" means a charge levied on users of the wastewater collection and treatment facilities for the user's proportionate share of the cost of operation and maintenance, including replacement, of such facilities.
- (38) "User class" means a group of sewer users which have similar magnitude of wastewater flows and wastewater characteristics.
- (39) "Watercourse" means a channel in which a flow of water occurs, either continuously or intermittently.  
(Ord. 1984-158. Passed 10-18-84.)
- (40) "Residential user" means one who occupies premises for human habitation, including apartments, etc., but excluding hotels and motels.
- (41) "Industrial user" means a user which discharges a waste resulting from manufacturing activities involving the chemical or mechanical transformation of materials or substances into other products.
- (42) "Commercial user" means any discharges not meeting the definitions of residential or industrial.  
(Ord. 1985-11. Passed 1-17-85.)

#### **915.02 CLEAR WATER CONNECTIONS.**

(a) No person, firm or corporation shall discharge or cause to be discharged, either directly or indirectly, any storm water, surface water, ground water, roof runoff, subsurface drainage, cooling water or unpolluted industrial process waters to any sanitary sewer.

(b) Any connections made either before or after the effective date of this section shall be considered illegal and shall be subject to immediate removal by the owner of the premises so connected and at such owner's expense.

(c) The Director of Engineering or any employee of the City designated by him may enter upon any lot or parcel of land within the City and test any downspout on any building thereon to determine whether or not it discharges water into any sanitary sewer.

(d) Should the owner of an illegally connected premises fail to remove the connection within ninety days, the City shall cause the connections to be removed, charging the owner the full costs of such removal.

(e) Stormwater and all other unpolluted drainage shall be discharged into sewers which are specifically designed and designated as storm sewers or to a combined sewer or a natural outlet approved by the City.

(f) No person, firm or corporation or Municipality constructing a sanitary sewer, building or house connection, shall leave such sanitary sewer open, unsealed or incomplete in such a fashion as to permit storm, surface or subsurface water to enter the sewers.

(g) No person shall open, enter or allow to remain open, any manhole in any public sewer without a permit from the Director of Engineering.  
(Ord. 1984-158. Passed 10-18-84.)

### **915.03 LIMITATIONS OF CONNECTIONS.**

(a) No owner, agent, lessee, tenant or occupant of any lot or land located within the City shall connect his premises to a public sewer or make repairs or a removal thereof until a permit therefor has been obtained from the Director of Inspections who shall keep a record of all such permits issued by him and shall cause such connections to be inspected at the time they are made. The fees to be charged for such connection permits are to cover the cost of issuance and cost of inspection and are those set forth in Section 1315.05 of the Building Code.

(b) Application for a permit shall be made by a licensed sewer builder on the prescribed form and shall include intelligible plans and specifications of the work to be done, showing location and character. Any misrepresentation in a permit application shall constitute sufficient grounds for revocation of the applicant's license. Permits shall be kept on the job at all times while work is in progress.

(c) No sewer, or system of sewers, shall be constructed which connects either directly or indirectly to sanitary sewerage facilities controlled by the City until the owner of the sewer, or system of sewers, can demonstrate to the City that quality of the wastewater to be conveyed by this sewer can meet the requirements of this chapter.

(d) No permit shall be issued to connect a house sewer to a public sewer if the connection or any portion thereof is in, under or on a lot not owned by the person whose house is to be connected and if no recorded easement exists authorizing the connection on such lot.

(e) A separate and individual sewer connection shall be made to each building. No connection shall serve more than one building unless specific authority is given by the Director of Engineering.

(f) No permit to connect to or tap a public sewer shall be issued if the sewage to be discharged would, in the opinion of the Director of Engineering, overload any public sewer or downstream facilities including pump stations and/or treatment plants.

(g) When, in the opinion of the Director of Engineering, it is necessary to connect a building sewer to a public sewer at a point where no connection facility has been provided, application for the public sewer tap shall be submitted and a separate fee for each tap shall be paid by the applicant before the permit is issued for the construction of the building sewer.

(h) All tapping of public sewers shall be made by City employees, or by a licensed sewer contractor, in the presence and to the satisfaction of an inspector acting under the authority of the Director of Engineering. Sewer tappers shall be licensed by the City pursuant to the terms of Chapter 1321 of the Building Code.

(i) No person other than an authorized employee of the City shall in any way tamper with, remove or otherwise move or disturb any street manhole cover of a City sewer or sewer opening without first obtaining permission from the Director of Engineering.

(j) No person, firm or corporation shall discharge or cause to be discharged to any natural outlet or storm sewer any sanitary sewage or other polluted waters. Effluent from privately owned individual household disposal devices shall not be discharged to storm sewers.

(k) The Director of Engineering or any employee of the City designated by him may enter on any lot or parcel of land and open any test tee thereon to determine whether or not any sewer or sewer connection is blocked on the lot, parcel of land or in the public street in front of the same, and to determine whether the sewer connections are connected to the proper sewer. (Ord. 1984-158. Passed 10-18-84.)

#### **915.04 SEWER DESIGN AND PERMITS; PLANS; CLASSES REQUIRING SUBMISSIONS.**

(a) Plans for sanitary sewerage and storm sewerage improvements which are proposed for construction in the City to connect to or proposed to connect directly to any City-maintained sewer or district sewer, shall be prepared by a professional engineer licensed to practice in the State and shall be submitted to the Director of Engineering for approval. Such plans shall then be submitted to the Sanitation Committee of Council with easement, if any, for acceptance by the City prior to beginning of any construction. Plans for the following classes of improvements must be submitted:

- (1) Class A. Proposed public sanitary sewerage or storm sewerage, including lift stations, treatment plants, sanitary sewage or storm conveyance systems and any changes in existing structures or methods of treatment within the City or other lands outside the City connecting with any City-maintained system. A public sanitary sewerage system means a system serving dwellings, buildings, structures or sanitary sewerage improvements which are constructed on public lands, in public highways, dedicated roadways, streets or alleys or in easements granted or to be granted to the City.
- (2) Class B. Proposed sanitary sewerage or storm sewerage improvements, including treatment facilities of industrial or commercial establishments which discharge their wastes into a sanitary sewerage system or sewerage system operated and maintained by the City.

For the purposes of this chapter, an industrial establishment shall be one engaged in the manufacture of a product. A commercial establishment shall be one which is engaged in selling goods or services to either public or private clientele.

(b) Three satisfactory copies of detailed plans with profiles and specifications and three copies of all equipment manufacturers' catalog data, pump performance curves, etc., for all improvements provided for under subsection (a) hereof shall be submitted to the Director of Engineering for his approval and shall be accompanied by a report prepared by the design engineer, giving all pertinent data regarding the project.

(c) Any plans and specifications which are improperly prepared or accompanied by insufficient or inaccurate information may be rejected by the Director of Engineering stating reasons for rejection, whereupon revised plans and specifications or more sufficient data shall be submitted as required. No approval authorizing the construction of the improvements will be issued until satisfactory plans and data are submitted and approved by the Director.

(d) The submission for approval of plans and specifications for sanitary sewerage improvements by the City will not relieve the owner from requirements of the Ohio Environmental Protection Agency with reference to the approval of plans and specifications for certain improvements.

(e) The authorization to construct any sanitary sewer or storm sewer improvements shall be by letter to the owner from the Director of Engineering stating that permission to commence construction has been granted. Such letter shall not be sent until the approval of the Sanitation Committee of Council has been granted and necessary easements have been accepted by the City and where necessary, Ohio Environmental Protection Agency approval has been secured.

(f) No sanitary sewerage or storm sewerage construction included under the classifications of subsection (a) hereof shall be started until after the plans have been approved by the Director of Engineering, the Sanitation Committee of Council and where necessary by the Ohio Environmental Protection Agency, and authorization has been granted by the Director to proceed with construction as herein provided. The installation shall be in strict accordance with the approved detailed plans and specifications, shop drawings, etc.

(g) If any major change or modification is deemed necessary or desirable by the persons, firm or corporation having charge of the work, previous to or during the construction, such change or modification shall be incorporated in revised plans, which shall be submitted for approval in the same manner as required for original plans.

(h) No person shall make an excavation in any street, highway or road right of way until he has obtained a permit therefor pursuant to Section 901.02.

(i) All material and workmanship not covered by the standards in subsection (m) hereof shall conform in all respects to the requirements of the Standard Construction Details for the City which is available for public inspection in the Department of Engineering.

(j) Improvements as enumerated in this section shall be constructed under the direct supervision of the Director of Engineering or his duly authorized representative and all expenses to be incurred in connection with such supervision shall be paid to the City by the owner. The amount to be so paid to the City for such purpose will be estimated by the Director and shall be deposited with the City prior to the authorization for the construction work to commence. If the cost of such supervision exceeds such deposits, the owner shall pay the difference to the City. If a balance is left, it shall be refunded to the owner without interest.

(k) No construction work in connection with the improvements as enumerated in this section shall be done except in the presence of an inspector authorized by the Director of Engineering. Forty-eight hours notice of the intention to begin work shall be given to the Director to enable him to arrange to place an inspector on the work.

(l) If the Director of Engineering has proof or evidence that any sewer work is being improperly done, he may order all work stopped and the owner or his contractor shall thereupon stop and shall not resume construction until authorized in writing by the Director to do so after such work not approved has been corrected as directed.

(m) The design and construction of all sewers and all repairs to sewers, shall be in accordance with the Uniform Standards for Sewerage Improvements of the combined agencies of the City of Cleveland, Northeast Ohio Regional Sewer District, Cuyahoga County Sanitary Engineer and Cuyahoga County Municipal Engineer's Association.

- (1) All service connections, storm and sanitary sewers shall have a minimum of three feet of cover to the pavement subgrade within sites and a minimum of seven feet of cover in street sewers. Variation may be approved by the Director of Engineering.
- (2) All computation for sewer sizing including outline of drainage and subdrainage areas shall be furnished for approval of plans for tap-in or connection permits.
- (3) In a residence service connection for a storm sewer, pipes shall be a minimum of six inches in diameter.
- (4) Service connection sewers to all properties shall be provided in areas served by sewers.
- (5) All proposed improvements submittals shall be coordinated with abutting existing approved improvements.
- (6) Cleanouts in service connection sewers shall be provided at all deflections or bends of thirty degrees and over.
- (7) Where service connections are required to be drilled under existing street pavement, cast iron pipe shall be used and shall be American Standards Association thickness Class No. 22 with standard rubber slip-on joints, or Transite nonpressure sewer pipe or any other type of pipe may be used if approved by the Director.
- (8) Sewer easements shall be a minimum of twenty feet wide.

- (9) Radial sewer pipe alignment radius shall conform to manufacturer's recommended minimum radius for the pipe size involved. Variations may be approved by the Director.
- (10) A manhole shall be used for commercial or industrial service connection sewer tie-ins to the street sewer where no street sewer connection is available or if service connection sewer is too large for street sewer connection.
- (11) The individual residential service connections to sewer tie-ins to street sewers should not be into manholes, except at the end of a cul-de-sac.
- (12) Where service sewer "Y" braces were not initially provided in street sewers, and street sewer diameters are less than two and one-half times the diameter of proposed service connection sewers, a standard manhole shall be installed in lieu of "Y" saddles, except in the case of residential connections and as approved by the Director.
- (13) Street sewers with dead-end manholes shall be extended to a minimum of ten feet beyond the nearest property line in order to make the service connection.
- (14) Service connection sewers from wash racks, grease racks, loading docks, etc., and all types of commercial or industrial installations where grease, oil and all petroleum waste products are discarded shall be connected to appropriate grease separators and/or sand or oil traps before connecting to the sanitary sewer. Service connection sewers from commercial kitchens shall be connected to appropriate grease traps before connecting to the sanitary sewers.
- (15) Service connection sewers from swimming pools shall be connected to storm sewers in accordance with County Health Department requirements.
- (16) A City standard drop manhole shall be installed in sanitary sewers where the vertical distance between inverts is two and one-half feet or more.

(n) All laying of sewers for the building sewer portion of a service connection shall be at all times under the supervision of a sewer builder that is licensed with the City to do such work. The provisions of this chapter shall not prevent any licensed sewer builder from building sewers as part of any contract job being done under contract with the City. Any competent person, firm or corporation shall, on application to the Director of Inspections, be granted a sewer builder's license pursuant to the terms of Chapter 1321 of the Building Code.

(o) If any sewer builder neglects or refuses to do anything required by the provisions of this chapter within a reasonable time after being notified by the Director of Inspections to do so, the Director may cause such work to be done and charge the same to the sewer builder. Unless such charges are paid, the sewer builder's license shall be revoked forthwith with costs foreclosed against the license bond.

(p) Connections with sewer mains constructed under this chapter shall be subject to all the requirements of this chapter.

(q) Nothing in this section shall be deemed or construed to require the application for or the issuance of a permit for the purpose of removing stoppages in any house connection sewer, except when it is necessary to replace any part or all of the sewer connection or to excavate in any street or sidewalk or sewer easement in connection therewith.  
(Ord. 1984-158. Passed 10-18-84.)

#### **915.05 PHOTOGRAPHING OF SEWERS.**

(a) Photographs; Inspection Reports. Prior to final approval of any newly installed sewerage system and/or reconstructed sewer, the Director of Engineering is hereby directed to require that any and all contractors or developers cause photographs or videotapes to be made of such entire system or sewer, showing that the same has been constructed upon a sound engineering basis, that it is free of all accumulations of foreign and natural substances and is of sound workmanship and that the passage and flow of sanitary sewage is free and clear. At the discretion of the Director, if the sewers are large enough for a visual inspection in lieu of photographs, a visual inspection shall be made and a report of such inspection shall be submitted to the City as a permanent record.

(b) Engineer's Approval; Filing Photographs and Reports. If examination of such photographs or visual inspection reports satisfies the Director that such sewer is free and clear of all foreign substances and is of sound workmanship and that there is nothing present to prevent the free flow of sewage, he is hereby authorized to approve the same as a final inspection. The Director shall place all photographs and inspection reports in safekeeping for future reference by the City.

(c) Costs. The entire cost of all photographs and inspection reports shall be paid for by the contractor or developer. All photographs and inspection report shall remain the property of the City.  
(Ord. 1984-158. Passed 10-18-84.)

#### **915.06 SANITARY SEWER DISCHARGE STANDARDS.**

(a) Except as provided in subsection (c) hereof, no person shall place, throw or deposit or cause or permit to be placed, thrown or deposited in any public sewer, drain, catch basin, water closet or privy any dead animal, offal or garbage, fish, fruit, vegetable waste, or any other solid matter or material of any kind whatsoever, of such a nature or in such quantities as will, or will be likely to, clog or obstruct any public sewer, drain or catch basin, or which will or will be likely to interfere with or prevent the effective or efficient use of the operation of any of the same.

(b) No person shall cause or permit to be deposited or discharged into any public sewer, drain or catch basin, water or sewage, or liquid waste of any kind, containing chemicals, greases, oil, tar or other matter or material which would by reason of precipitation or settlement of such matter or materials be likely to clog or obstruct any of the same, or which by reason thereof will be likely to interfere with or prevent the effective or efficient use of any of same, or which will be likely to necessitate or require frequent repair, cleaning out or flushing of any sewer, drain or catch basin.



(c) Garbage resulting from the preparation of any food or drink prepared on premises where they are served or proposed to be served for consumption, properly ground to such fineness and by such methods as may be from time to time approved by the City, may be discharged into a public sewer by such methods as may be from time to time approved by the City.

(d) No person shall intentionally allow sanitary sewage to flow into a sanitary sewer of the City which flows into the Rocky River Sewage Treatment Plant, which does not meet the following requirements:

- (1) Shall have a temperature of not more than 150 degrees Fahrenheit;
- (2) Shall contain no gasoline, benzene, naphtha, fuel, oil or gases or other flammable or explosive liquid, solid or gas except as may be found in normal domestic sanitary sewage;
- (3) Shall contain no unground garbage;
- (4) Shall have a pH of more than 6.0 but less than 9.0;
- (5) Shall contain no toxic, poisonous, noxious or malodorous substances in sufficient quantities to cause a public nuisance, hazard to humans or animals or interference with any sewage treatment process;
- (6) Shall contain no cooling water;
- (7) Shall contain no more than ten milligrams per liter of the following gases: hydrogen sulfide, sulphur dioxide or nitrous oxide;
- (8) Shall contain no phenols in excess of 0.5 milligrams per liter by weight. These limits may be modified at the discretion of the City if the aggregate of contributions throughout the area of service create treatment difficulties, or produce a plan effluent discharge to receiving waters, which may be prohibitive.
- (9) Shall have no corrosive properties wither acid or alkaline capable of causing damage or hazard to structures, equipment and personnel of the Department of Sewers; (Ord. 1984-158. Passed 10-18-84.)
- (10) Shall not contain a toxic or poisonous substance of high chlorine demand in sufficient quantity to injure or interfere with any sewage treatment process, constitute a hazard to humans or animals, or create any hazard to the receiving waters or stormwater overflows or the effluent of the wastewater treatment plant. The following list is not intended to be a complete list of forbidden toxic materials. Additional restrictions may also be placed on other compounds when it is shown that the concentration of these materials at a treatment plant is sufficient to adversely affect any portion of the treatment process. The average concentration of toxic substances into the sewage system from any one establishment shall be the magnitude of the stated concentrations with peak concentrations not greater than twice this amount unless otherwise stated. However, where low downstream dilution might be expected, the requirements may be modified at the discretion of the City. The following list of toxic substances is to be used as a guide indicating limits of concentration not to be exceeded in the sanitary sewer to which discharges are made:

<u>Substance</u>	<u>Concentration (mg/l)</u>	<u>Expressed As</u>
Arsenic	0.5	As
Boron	1.0	B
Cadmium	0.1	Cd
Chromium (hexavalent)	0.37	Cr
Copper	2.1	Cu
Cyanide	0.1	HCN
Iron	15.0	Fe
Lead	0.5	Pb
Mercury	0.06	Mercury compounds
Nickel	1.59	N
Silver	0.5	Ag
Zinc	10.0	Zn

These limits may be modified as necessary to comply with Federal toxic waste discharge standards. (Ord. 2005-162. Passed 11-17-05.)

- (11) Any water or wastes containing the discharge of strong acid iron pickling wastes or concentrated plating solution whether neutralized or not.
- (12) Any long half-life (over 100 days) of toxic radioactive isotopes, without special permit from the City. The radioactive isotopes such as I131 and P32 used at hospitals are not prohibited, if properly diluted at the source and discharged in accordance with Atomic Energy Commission recommendations.
- (13) Any waters containing suspended solids of such character and quantity that unusual provisions, attention or expense is required to handle such materials at the wastewater treatment plant.
- (14) Any waste exerting excessive or unusual chlorine demand in such quantities as to constitute a load greater than twenty percent (20%) the normal average demand at the wastewater treatment plant.
- (15) Any waste or water containing excessive amounts of phosphorus so as to constitute a load greater than twenty percent (20%) the normal average load at the wastewater treatment plant.
- (16) Any waste which would cause the City to violate the pretreatment standards established by U.S. Environmental Protection Agency.

(e) Any wastes which are highly colored, or wastes which are of unusual volume, concentration of solids or composition, as for example in total suspended solids of inert nature, such as fuller's earth, or in total dissolved solids, such as sodium chloride, calcium chloride or sodium sulfate, or unusual in BOD, shall not be discharged into the sanitary sewer without special review by the City.

(f) Any water or wastes which by interaction with other water or wastes in the public sewer system releases obnoxious gases; develops color of undesirable intensity greater than twenty color units; forms suspended solids in objectionable concentration greater than 2500 mg/l; or creates any other conditions deleterious to structures and treatment processes, shall be subject to control or shall be debarred from the system as determined by the City.

(g) No person shall deposit cesspool effluent or any waste or sewage into any manhole.

(h) Every person is hereby expressly prohibited from introducing into the sewage system of the City any wastes which exceed the standards herein provided. Introduction of such wastes into the City sewage system in excess of such standards is hereby declared to be a public nuisance which can be abated by court action on the part of the City.

(i) If any waters or wastes are discharged or are proposed to be discharged to the public sewers, which waters contain the substances or possess the characteristics enumerated above, and which in the judgment of the City may have a deleterious effect upon the wastewater facilities, processes, equipment or receiving waters, or cause a violation of the NPDES permit, or which otherwise create a hazard to life or constitute a public nuisance, the City may:

- (1) Reject the wastes;
- (2) Require pretreatment to an acceptable condition for discharge to the public sewers;
- (3) Require control over the quantities and rates of discharge; and/or
- (4) Require payment to cover added cost of handling and treatment of such wastes consistent with the user charge system and to generate revenue in proportion to cost incurred.

(Ord. 1984-158. Passed 10-18-84.)

#### **915.07 NPDES PERMIT LIMITS.**

The Rocky River Wastewater Treatment Plant is operated under conditions set forth in its current NPDES permit issued by the Ohio Environmental Protection Agency. Required pretreatment of wastes will be in accordance with the NPDES permit conditions and Chapter 913, the Pretreatment Ordinance to be passed after completion of Pretreatment Studies.  
(Ord. 1984-158. Passed 10-18-84.)

#### **915.08 SURCHARGE FOR INDUSTRIAL WASTES.**

(a) Every person, firm or corporation whose premises are served by a sewer connection which discharges sanitary sewage, industrial wastes, water or other liquids, at concentrations greater than domestic sewage, either directly or indirectly into the sewerage system under the jurisdiction of the City, shall be charged and shall pay a sewerage surcharge in addition to the sewerage service charge for normal sewage.

(b) Through the collection and analysis of wastewater samples from the sewer user and a review of water consumption, the City of Rocky River shall calculate the extra-strength surcharge for these sewer users and transmit these charges to the Westlake Director of Finance. The Director of Finance shall add the amount of the extra-strength surcharge to the normal user charge for that sewer user. All extra-strength surcharge revenue which is collected within a given user class will be credited to that user class and not commingled among other user classes. The extra-strength surcharge revenue will be credited to its particular user class prior to calculating the user charge for the user class for the upcoming year.

(c) Constituents discharged to the system other than the constituents of normal sewage which will affect the biological treatment process in such a manner as to increase treatment costs or increase sewer maintenance cost shall be subject to a surcharge other than as described in this section. The amount of surcharge shall be determined by the Director of Engineering and Council.

(d) The Director may require a monthly report of the quantity and characteristics of any industrial waste discharged into a sanitary sewer.  
(Ord. 1984-158. Passed 10-18-84.)

#### **915.09 INSPECTION AND ENFORCEMENT.**

(a) In enforcing the provisions of this chapter, the Director of Engineering, or his duly authorized representative, bearing proper credentials and identification, may at any reasonable hour enter upon any premises. No person shall obstruct, hamper or interfere with him while performing these duties. The Director may enter such property to:

- (1) Determine the size, depth and location of any connection with a public sewer or public storm drain;
- (2) Determine the quantity and nature of industrial waste being discharged into any public sewer, public storm drain or watercourse;
- (3) Inspect, test and sample the discharge of any device used to prevent the discharge into any sewer, storm drain or watercourse of waste prohibited by this chapter;
- (4) Determine the location of roof, swimming pool and surface drains and whether they are connected to a street gutter, storm drain or sewer;
- (5) Determine the nature and quantity of flow in any open watercourse or storm drain;
- (6) Determine whether there is a violation of the provisions of this section; and
- (7) Exercise any other powers vested in him by this section.

(b) All work done shall be inspected by an authorized inspector representing the City upon notification of the sewer builder at least twelve hours before the work will be inspected. Any work covered previous to inspection shall be uncovered by the sewer builder and opportunity must be given to inspect the interior as well as the exterior of the pipe. The actual tapping of a connection into the sewer shall be done only in the presence of the inspector. No connection shall be covered until inspected and approved in writing. All materials and workmanship in the making of sewer service connections shall be in strict accordance with Standard Construction Details for the City governing such work, which are hereby made a part of this chapter.

(c) The Director of Engineering shall be the final judge of the quality of all materials and workmanship used in sewer service connections and shall have the right to inspect the same at all times. He shall have free access to all buildings and take samples of any wastes entering the sewers. The sole purpose of such inspection is to determine the quality of sewerage and the proper connection of discharge points to the proper outlet. The Director in any duty prescribed by the provisions of this chapter may act through properly authorized representatives.

(d) The City shall reserve the right to inspect any sewer contributing flow to the City collection system suspected of being in violation of this chapter. The inspection shall be made after proper notification to the potential violating entity. If the subject entity is determined to be in violation of proper maintenance, the cost of the inspection shall be borne by the violating entity. The City shall notify the subject entity that they are in violation of proper maintenance and shall further stipulate a reasonable time period for correcting the violation.

(e) The Director of Engineering may inspect, as often as he may deem necessary, every public sewer, sewage pumping plant, sewage or industrial waste treatment plant or facility, industrial connection sewer, interceptor, dilution basin, neutralization basin, or other similar appurtenance to ascertain whether the facilities are maintained and operated in accordance with the provisions of this chapter.

(f) The Director may require the installation of a manhole for the purpose of measuring the flow of sewage or for making periodic tests of the wastes from the sewer connection at the owner's expense.

(g) No person shall install, construct or place any permanent or temporary object or structure where it will interfere with ready and easy access to any pretreatment or treatment facility, sampling compartment, manhole, flow metering device or any instrumentality for which a permit is required by this section. Any obstruction shall be removed upon order of the Director by the person responsible for it and at no expense to the City.

(h) When the Director is satisfied that all work done under a permit issued pursuant to this chapter has been constructed according to and meets the requirements of this chapter and such other provisions of law as may be applicable, and that all fees have been paid, he shall, upon request thereof, issue to the permittee constructing such work a certificate of final inspection. The permit shall recite that the work covered by the permit has been constructed according to this section and is approved.

(i) When the Director is satisfied that all work done to rectify a violation is completed, he shall reserve the right to inspect the work to see that it conforms to the requirements of this chapter and other such provisions of law as may be applicable.

(j) All fees received by the City under this section shall be deposited in a sewer fund to be maintained by the Director of Finance.  
(Ord. 1984-158. Passed 10-18-84.)

**915.10 TEST PROCEDURES FOR ANALYSIS OF POLLUTANTS.**

All measurements, test and analysis shall be made in conformance with the latest edition of "Standard Methods for the Examination of Water and Wastewater" as published by the American Public Health Association and "Guidelines Establishing Test Procedures for the Analysis of Pollutants" (40 CFR 136).

(Ord. 1984-158. Passed 10-18-84.)

**915.11 INDUSTRIAL PERMITS REPORTING.**

The Director of Engineering may require periodic discharge reports from any industry as a condition of issuing a sewer permit under this chapter. Costs of any such testing and reporting shall be paid by the industry.

(Ord. 1984-158. Passed 10-18-84.)

**915.12 APPEAL PROCEDURES.**

Any person or entity receiving services under this chapter has the right to express grievances and/or appeal decisions to the Director of Public Service and Council. Additional appeal procedures may be available.

(Ord. 1984-158. Passed 10-18-84.)

**915.13 SEWER RATES AND CHARGES; SEWER REVENUE FUND.**

(a) It is hereby determined and declared to be necessary for the due protection of the public health, safety and welfare of the City and its residents to establish and collect the charges herein provided for the services of the sanitary sewer system upon all lots, lands and premises having a connection with the system. It is hereby further determined that the terms and provisions of this chapter including, but not limited to, the amount of such rates and charges, the user classifications established hereby and the billing and collection procedures provided for herein, are just and equitable and essential to provide for the proper operation and administration of the sanitary sewer system and the financing of the construction of the system.

(b) The funds received from the collection of the rates and charges hereinafter provided for shall be deposited as received with the Director of Finance who shall keep the same in a separate fund designated as the Sewer Revenue Fund. Subject to the provisions of any ordinance or indenture of mortgage authorizing the issuance of, and securing, mortgage revenue bonds for the system, moneys in the Fund shall be used for the payment of the cost and expense of operation, maintenance, repair and management of the sanitary sewer system. For payment of debt and other charges on bonds issued for improvements of and extensions to the system, payments to Rocky River and/or Cuyahoga County for sewage treatment charges and amortization of the capital costs incurred in the construction of the sewage treatment facilities. Any surplus in the Fund over and above the requirements hereinabove mentioned may be used for enlargements of any replacements to the system and parts thereof or for any other lawful purpose.

(c) For the purposes provided in subsection (b) hereof, there is hereby levied and charged upon each lot, parcel of land or premises having a connection with the sanitary sewer system or otherwise discharging sewage, industrial wastes, water or other liquids, either directly or indirectly into the system, sewer charges payable as hereinafter provided and in amounts to be determined as follows:

<u>User Class</u>	<u>Quarter Rates (effective 4-1-85)</u>	<u>Quarterly Rates (effective 4-1-86)</u>
Single-Family		
OM&R	\$ 21.25	\$ 24.30
Capital	<u>3.75</u>	<u>5.70</u>
Total	\$ 25.00	\$ 30.00
Two-Family		
OM&R	\$ 31.87	\$ 31.43
Capital	<u>5.63</u>	<u>7.37</u>
Total	\$ 37.50	\$ 38.80
Apartment Unit		
OM&R	\$ 15.30	\$ 9.10
Capital	<u>2.70</u>	<u>2.15</u>
Total	\$ 18.00	\$ 11.25
Commercial/Industrial		
OM&R	\$ 7.78	\$ 7.25
Capital	<u>1.37</u>	<u>1.70</u>
Total	\$ 9.15	\$ 8.95

Notes:

1. The Commercial/Industrial rate will be on a per MCF basis of water consumption, but not less than the single-family quarterly rate in effect at that time.
2. An MCF of water consumption shall be deemed to be 1,000 cubic feet of water.

(d) The proportionality of the above user charges will be reviewed at least every two years to insure sufficient revenue and to insure that each user pays its proportionate share of OM&R costs. Adjustments will be made with the changes in water consumption by user classes. The review will be the responsibility of the Mayor or official designated. Each user will receive annual notification of the rate and portion of sewer service charge attributable to OM&R costs of wastewater treatment service.

(e) For extra strength wastes, the following surcharges shall be assessed in accordance with Section 915.07.

BOD \$0.18/lb; SS \$0.13/lb; P \$0.54/lb; O/G \$0.08/lb

(f) The sewer charges established by this section shall commence when the building, structure or other facility is connected to the sanitary sewer system or as of a date six months following the date on which a sanitary sewer is available for making such connection, whichever date first occurs. Any OM&R surplus revenue which may be collected during a given year will be credited to the use class in which the surplus occurs for the purposes of calculating the following year's sewer charges. Surplus OM&R revenue will not be commingled among user classes. All revenue which may be collected through tap-in or connection charges will be used to retire debt service, and will not be applied to operation, maintenance and replacement costs of the wastewater treatment facility or sanitary sewer system.

(g) In the event the Director of Engineering is satisfied that a portion of the water from any source consumed upon any premises does not enter or is not capable of entering the sanitary sewer system, the owner or other interested party may at his expense install and maintain such separate metering devices, or provide such data in conformity with accepted engineering practices, as shall demonstrate to the satisfaction of the Director that portion of the water so consumed which is or is to be discharged into the system and such portion shall be the basis for measuring the sewer charge under this section.  
(Ord. 1985-87. Passed 7-18-85.)

#### **915.14 COLLECTION AND BILLING PROCEDURE.**

(a) The quarterly sewer charges levied at the rates established by this chapter shall be billed on the first day of March, June, September and December. The annual surcharge based on water consumption shall be included in the December billing and shall be based on the amount of water consumed on the premises during the last four quarterly billing periods of the Cleveland Water Department. All bills shall be payable within thirty days after billing. Sewer payments received after the 37th day shall be subject to a late charge of 16%. Payments which are due on a Saturday, Sunday, or on a City of Westlake legal holiday shall be paid on the next regular business day. The Director of Finance may waive a late charge based upon a showing of good cause.

(b) Sewer payments may be made on an annual basis with the June 30th billing cycle. Users who desire to utilize the annual payment method must pay their annual charge in full by July 31st of the year. Users paying annually in accordance with the above described procedure shall receive a \$5.00 discount off their annual sewer charges.

(c) Any premises making connection with the system and using the same after the first day of any quarter shall be charged a per diem pro rated amount, based upon the minimum quarterly charge, from the time such connection is made or such discharge into the system is begun until the commencement of the next following billing period. In calculating the annual surcharge based on water consumption for premises connected to the system, there shall also be a proration of the annual allowance of water consumption upon which the minimum quarterly rate for nonresidential users is based and a proration of the actual annual water consumption of such premises. (Ord. 2008-53. Passed 3-20-08.)

#### **915.15 EFFECTIVE DATE.**

The sewer charges established in Section 915.13 shall commence on July 16, 1970 except that charges for new connections shall commence when the building, structure or other facility is connected to the sanitary sewer system, or as of a date six months following the date on which a sanitary sewer was available for making such connection, whichever date first occurs.  
(Ord. 1984-158. Passed 10-18-84.)



**915.16 CHARGES A LIEN.**

Each sewer charge levied pursuant to this chapter, is hereby made a lien upon the premises charged therewith, and if the same is not paid within thirty days after it shall be due and payable, it shall be certified to the Auditor of the County, who shall place the same on the tax duplicate with the interest and penalties allowed by law, and the same shall be collected as other Municipal taxes are collected. The City shall also have the right, in event of nonpayment as aforesaid, to proceed to collect such delinquent charges in a civil action or to discontinue sewer service to such premises.

(Ord. 1984-158. Passed 10-18-84.)

**915.17 LIABILITY FOR PAYMENT, LESSOR AND LESSEE.**

In the case of leased lots, parcels of land or premises having a connection with the system, the lessor and lessee shall both be liable for the payment of the sewer charges herein provided and the City may proceed to collect such charges from either the lessor or the lessee or it may certify delinquent charges to the Auditor of the County as provided in Section 915.16.

(Ord. 1984-158. Passed 10-18-84.)

**915.18 ANNEXATION NOT A PREREQUISITE FOR SERVICE.**

Property receiving services under this chapter shall not require annexation as a prerequisite for receiving such services.

(Ord. 1984-158. Passed 10-18-84.)

**915.19 NO FREE SERVICES.**

Every person, firm or corporation whose premises are served by a sewer connection which discharges sanitary sewage, industrial wastes, water or other liquids, either directly or indirectly, into sewerage facilities under the jurisdiction of the City, will be charged for the use of such facilities and for the treatment of such sewage and wastes at the rates established by this chapter.

(Ord. 1984-158. Passed 10-18-84.)

**915.20 PRIVIES PROHIBITED WHERE SEWERS AVAILABLE.**

No owner, agent, lessee, tenant or occupant of any lot or land located in the City shall establish, construct, use, maintain or permit to remain a privy, septic tank, cesspool or other receptacle for sewage or excretion or a connection to a private sewer, ditch or other outlet, if the building on such lot or land is accessible to a public sewer constructed and used for the purpose of conveying sewage. When such public sewer is available or is hereafter made available, a connection to such public sewer shall be established and used by such owner, agent, lessee, tenant or occupant within six months from the time such public sewer is available for making such connection.

(Ord. 1984-158. Passed 10-18-84.)

**915.21 RESPONSIBILITY OF PROPERTY OWNERS.**

Where connection is to be made to other than a permanent sewer lying within street lines, property owners shall be required to sign an agreement, on forms provided for that purpose, that they will make no opposition to the construction of a permanent sewer, or to the tax assessed for same.

(Ord. 1984-158. Passed 10-18-84.)

**915.22 TAP-IN CHARGES.****(a) Tap-In Charges in Sanitary Sewer District No. 1.**

- (1) No person, corporation, public agency, partnership or association shall connect or cause to be connected, any building or other structure either directly or indirectly, with a sanitary sewer in Sanitary Sewer District No. 1 of the City for the purpose of discharging sanitary sewage or industrial waste therefrom without first receiving a permit for such purpose in a form prescribed by the Director of Engineering and without first paying a tap-in charge determined in accordance with the provisions of subsection (a)(2) hereof.
- (2) The Director shall not issue a permit for the purpose described in subsection (a)(1) hereof until the applicant for such permit has paid a tap-in charge to be determined in accordance with the following schedule:
  - A. In the case of property to be connected to a sewer installed by a builder or developer or by the City where an assessment equivalent to the cost of constructing an eight-inch sewer has been levied or will be made pursuant to appropriate proceedings therefor, and where the building or other structure to be so connected was assessed on the County Auditor's tax list as an improvement to real estate at the time the estimated tax evaluation assessment was prepared pursuant to Resolution 1969-6, no charge shall be made.
  - B. In the case of property to be connected to a sewer installed by a builder or developer or by the City where an assessment equivalent to the cost of constructing an eight-inch sewer has been levied or will be made pursuant to appropriate proceedings therefor and where the building or other structure to be so connected was not assessed on the County Auditor's tax list as an improvement to real estate at the time the estimated tax valuation assessment was prepared pursuant to Resolution No. 1969-6, the charge shall be:
    1. Single-family residence:
      - \$350.00 if obtained on or before December 31, 1974.
      - 375.00 if obtained during the years 1975 to February 28, 1977, inclusive.
      - 500.00 if obtained from March 1, 1977 to 1979, inclusive.
      - 625.00 if obtained during the years 1980 to 1983, inclusive.
      - 750.00 if obtained during the year 1984 or thereafter.
    2. Multiple-family residences, including apartments:

	<u>Efficiency or One- Bedroom Unit</u>	<u>Two-Bedroom Unit</u>	<u>Three or More Bedroom Unit</u>
If obtained on or before December 31, 1974	\$ 175.00	\$ 262.50	\$ 350.00
If obtained during the years 1975 to February 28, 1977, inclusive	187.50	281.25	375.00
If obtained from March 1, 1977 to 1979, inclusive	250.00	375.00	500.00
If obtained in the year 1980 to 1983, inclusive	270.00	400.00	535.00
If obtained in the year 1984 or thereafter	300.00	450.00	600.00

C. Nonresidential buildings, structures or other facilities shall pay a tap-in charge determined by the Director of Engineering in the following manner: The Director shall review the preliminary plans of the building, structure or other facility to be served by the connection, together with other pertinent information, and based upon accepted engineering practices determine the anticipated daily quantity of sewage to be discharged from such building, structure or other facility to the sanitary sewer system. The quantity so determined shall then be divided by the average daily quantity of sewage discharged from a single-family residence and the resulting quotient multiplied by the tap-in charge applicable at the time to a single-family residence shall be the tap-in charge for such building, structure or other facility.

- (3) The permits and charges herein provided for shall not be deemed to preclude the subsequent levy of assessments against benefited properties to provide funds for the construction of sanitary sewers required to provide local sewer service to such property.
- (4) In the event that the Director ascertains that any property has been connected directly or indirectly to a sanitary sewer in violation of the provisions of this chapter, the Director is hereby authorized to disconnect such property until such violation shall cease. The City shall be reimbursed by the violator for expenses incurred by the City in making such disconnection.
- (5) All charges collected pursuant to the provisions of this section shall be deposited in the Sewer Revenue Fund.

- (b) Connections and Tap-In Charges in Sanitary Sewer District No. 2.
- (1) No person, corporation, public agency, partnership or association shall connect, or cause to be connected any building or other structure either directly or indirectly with a sanitary sewer in Sanitary Sewer District No. 2 of the City for the purpose of discharging sanitary sewage or industrial waste therefrom without first receiving a permit for such purpose in a form prescribed by the Director of Engineering and without first paying a tap-in charge determined in accordance with the provisions of subsection (b)(2) hereof.
- (2) The Director of Engineering shall not issue a permit for the purpose described in subsection (b)(1) hereof until the applicant for such permit has paid a tap-in charge to be determined in accordance with the following schedule:
- A. In the case of property to be connected to a sewer installed by a builder or developer, or by the City where an assessment equivalent to the cost of constructing an eight-inch sewer has been levied or will be made pursuant to appropriate proceedings therefor, and where the building or other structure improvement to be so connected was assessed on the County Auditor's tax list as an improvement to real estate at the time the estimated assessments were prepared to pay the property owners' portion of the cost of the interceptor sanitary sewers, lift station and sewage pressure line to serve Sanitary Sewer District No. 2 pursuant to Resolution 1972-189, no charge shall be made.
- B. In the case of property to be connected to a sewer installed by a builder or developer, or by the City where an assessment equivalent to the cost of constructing an eight-inch sewer has been levied or will be made pursuant to appropriate proceedings therefor, and where the building or other structure to be so connected was not assessed on the County Auditor's tax list as an improvement to real estate at the time the estimated assessments were prepared to pay the property owners' portion of the cost of the interceptor sanitary sewers, lift station and sewage pressure line to serve Sanitary Sewer District No. 2 pursuant to Resolution 1972-189, the charge shall be:
1. Single-family residence:
    - \$350.00 if obtained on or before December 31, 1974.
    - 375.00 if obtained during the years 1975 to February 28, 1977, inclusive.
    - 500.00 if obtained from March 1, 1977 to 1979, inclusive.
    - 625.00 if obtained during the years 1980 to 1983, inclusive.
    - 750.00 if obtained during the year 1984 or thereafter.
  2. Multiple-family residences, including apartments:

	<u>Efficiency or One- Bedroom Unit</u>	<u>Two-Bedroom Unit</u>	<u>Three or More Bedroom Unit</u>
If obtained on or before December 31, 1974	\$ 175.00	\$ 262.50	\$ 350.00
If obtained during the years 1975 to February 28, 1977, inclusive	187.50	281.25	375.00
If obtained from March 1, 1977 to 1979, inclusive	250.00	375.00	500.00
If obtained in the year 1980 to 1983, inclusive	270.00	400.00	535.00
If obtained in the year 1984 or thereafter	300.00	450.00	600.00

- C. Nonresidential buildings, structures or other facilities shall pay a tap-in charge determined by the Director of Engineering in the following manner: The Director shall review the preliminary plans of the building, structure or other facility to be served by the connection, together with other pertinent information, and based upon accepted engineering practices determine the anticipated daily quantity of sewage to be discharged from such building, structure or other facility to the sanitary sewer system. The quantity so determined shall then be divided by the average daily quantity of sewage discharged from a single-family residence and the resulting quotient multiplied by the tap-in charge applicable at the time to a single-family residence shall be the tap-in charge for such building, structure or other facility.
- D. The tap-in charges hereby prescribed shall be in addition to the regular connection permit fee set forth in Section 1315.05 of the Building Code.
- (3) The permits and charges herein provided for shall not be deemed to preclude the subsequent levy of assessments against benefited properties to provide funds for the construction of sanitary sewers required to provide local sewer service to such property.
- (4) In the event that the Director Engineering ascertains that any property has been connected directly or indirectly to a sanitary sewer in violation of the provisions of this chapter, the Director is authorized to disconnect such property until such violation shall cease. The City shall be reimbursed by the violator for expenses incurred by the City in making such disconnection.
- (5) All charges collected pursuant to the provisions of this section shall be deposited in the Sewer Revenue Fund.  
(Ord. 1984-158. Passed 10-18-84.)

**915.23 LIMITATIONS.**

Nothing in this chapter shall prohibit the City from entering into any agreement with any person, firm, corporation or governmental agency for the furnishing of a service or performance of any act not specifically mentioned in this chapter, provided, however, that the same is authorized by State law.

(Ord. 1984-158. Passed 10-18-84.)

**915.24 CONNECTION FEES AND ASSESSMENT CHARGES.**

(a) Connection Fees. No person, corporation, public agency, partnership or association shall connect or cause to be connected any building or other structure either directly or indirectly with a sanitary sewer in any Sanitary Sewer District of the City for the purpose of discharging sanitary sewage or industrial waste therefrom without first paying the sum of one thousand dollars (\$1,000) for the cost of providing the sewer connection between the sewer main line in the street to the property owner's property line.

(b) Assessments. Each person, corporation, public agency, partnership or association connecting any building or other structure either directly or indirectly to a sanitary sewer in any Sanitary Sewer District in the City shall be charged an assessment for the construction of the sanitary sewer line installed by the City serving their real property an amount not to exceed thirty-five dollars (\$35.00) per benefited front foot of the real property to be served.

The assessments are to be calculated on a benefited front foot basis by the Department of Engineering for all lots served including corner lots, curved lots and irregularly shaped lots.

The City shall assume the normal costs as provided under pertinent sections of the Ohio Revised Code. The connection fees and the assessment rates established by this section shall apply to all sanitary sewer improvements described in Resolutions 1987-260 and 1988-223, excluding Pin Oak and Cottage Drive.

(Ord. 1998-67. Passed 3-5-98.)

**915.99 PENALTY.**

(a) Any entity in violation of this chapter who does not rectify the violation within a reasonable time period shall be penalized as provided in the State statute or as determined by the Director of Engineering and Council, and shall not be less than the damage incurred to the collection system or the treatment system. Each day shall constitute a separate violation subject to penalty.

(b) Whoever violates any of the provisions of this chapter for which no penalty is otherwise provided shall be fined not more than five hundred dollars (\$500.00) or imprisoned for six months or both.

(c) Whoever violates Section 915.22 shall be fined not more than twenty-five dollars (\$25.00) a day for any such violation. A separate violation shall be deemed committed on each day a violation occurs.

(Ord. 1984-158. Passed 10-18-84.)

**CHAPTER 917**  
Electricity

EDITOR'S NOTE: There are no sections in Chapter 917.  
This chapter has been established to provide a place for  
cross references and any future legislature.

**CROSS REFERENCES**

Franchises for public utilities - see CHTR. Art. XI, Sec. 5  
Power to regulate electricity equipment - see Ohio R.C.  
715.27  
Power to regulate rates - see Ohio R.C. 743.26, 743.28,  
4909.34 et seq.  
Contract for electricity - see Ohio R.C. 743.38, 4933.04  
Power to require permit for facility construction or  
location - see Ohio R.C. 4905.65  
Electric companies - see Ohio R.C. Ch. 4933  
Electrically charged fence - see GEN. OFF. 521.06  
Electric lines in subdivisions - see PLAN. & PLAT. 1129.07  
Compliance to National Electrical Code - see BLDG. Ch. 1305  
Electrical fees - see BLDG. 1315.06





**CHAPTER 919**  
Gas

EDITOR'S NOTE: There are no sections in Chapter 919. This chapter has been established to provide a place for cross references and any future legislation.

**CROSS REFERENCES**

Franchises for public utilities - see CHTR. Art. XI, Sec. 5  
Rate regulation - see Ohio R.C. 743.26, 743.28, 4909.34  
et seq.  
Gas contract and restrictions - see Ohio R.C. 743.33, 743.38  
Compulsory gas connections - see Ohio R.C. 743.37  
Power to require permit for facility construction or  
location - see Ohio R.C. 4905.65  
Gas companies - see Ohio R.C. Ch. 4933  
City consent for gas fixtures on public property - see  
Ohio R.C. 4933.01, 4933.03  
Unvented gas heaters - see GEN. OFF. 521.02  
Gas wells - see BUS. REG. Ch. 713  
Subdivision utility easements - see PLAN. & PLAT. 1127.06(a)  
Heating system fees - see BLDG. 1315.04



**CHAPTER 921**  
**Cable Television Regulations**

EDITOR'S NOTE: By Ordinance 2007-192, passed December 20, 2007, Council established a video service provider fee to be paid by any video service provider offering video service in the City. Chapter 921 was adopted by Ordinance 1997-58, passed May 15, 1997. Amendments to Ordinance 1997-58 will be indicated by legislative histories placed at the end of new or amended sections.

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| 921.01 | Intent.   | 921.18 | Trimming of trees.   |
| 921.02 | Definitions.  | 921.19 | Provision of cable to public facilities.   |
| 921.03 | Franchise to install and operate.   | 921.20 | Hold harmless.   |
| 921.04 | Franchise required.   | 921.21 | Insurance; construction completion bond; performance bond or letter of credit.       |
| 921.05 | Term of the franchise.  | 921.22 | Records required and grantor's right to inspect.                                     |
| 921.06 | Franchise territory.  | 921.23 | Annual reports.  |
| 921.07 | Federal, state and city jurisdiction.   | 921.24 | Public, educational or government (PEG) access channels and facilities; fee in lieu. |
| 921.08 | Franchise nontransferable.  | 921.25 | Institutional network; inter-connection with other government networks; fee in lieu. |
| 921.09 | (Reserved)  | 921.26 | Franchise violation.   |
| 921.10 | Geographical coverage; multiple dwelling units (MDUs).  | 921.27 | Force majeure; grantee's inability to perform.                                       |
| 921.11 | Initial franchise or renewal applications.  | 921.28 | Abandonment or removal of franchise property.  |
| 921.12 | Consideration of initial applications.  | 921.29 | Extended operation and continuity of services.                                       |
| 921.13 | Customer service standards for the cable television system.   | 921.30 | Receivership and foreclosure.  |
| 921.14 | Rate regulation; senior citizen discounts; promotions; broadcast basic service; guaranteed service calls. | 921.31 | Rights reserved to grantor.  |
| 921.15 | Franchise fee imposed upon grantee.   | 921.32 | Rights of individuals.   |
| 921.16 | Design and construction requirements; street and other public improvements.                               | 921.33 | Time limits strictly construed.  |
| 921.17 | Technical standards; tests.   | 921.34 | Delegation of authority.   |
|        |   | 921.35 | Conflicts.   |
|        |   | 921.36 | Severability.  |

**921.01 INTENT.**

(a) The City of Westlake, pursuant to applicable Federal and State law, is authorized to grant one or more nonexclusive Franchises to construct, own, operate, maintain and reconstruct cable television systems within the City limits.

(b) The City Council finds that the development of cable television systems has the potential of having great benefit and impact upon the residents of Westlake. Because of the complex and rapidly changing technology associated with cable television, the City Council further finds that the public convenience, safety and general welfare can best be served by establishing, to the extent permitted by State and Federal law, regulatory powers which should be vested in the City or such persons as the City shall designate. It is the intent of this chapter and subsequent amendments to provide for and specify the means to attain the best possible cable television service for the public and any Franchises issued pursuant to this chapter shall be deemed to include this finding as an integral part thereof.

**921.02 DEFINITIONS.**

For the purpose of this chapter, the following terms, phrases, words and their derivations shall have the meaning given herein. Words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. All capitalized terms used in the definition of any other term shall have the meaning as otherwise defined in this Section 921.02. The words "shall" and "will" are mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

- (a) "Basic Cable Service" means any service tier which includes the retransmission of local television broadcast signals. [See 47 U.S.C. §522(3).] "Expanded Basic" shall include all levels or tiers of Cable Service exclusive of premium, pay-per-view and a la carte services or as otherwise defined by Federal law or regulation.
- (b) "Cable Act" means the Cable Communications Policy Act of 1984, 47 U.S.C. §§521-611 (1982 & Supp. V 1987), as amended by the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, and the Telecommunications Act of 1996, and as the same may, from time to time, be amended.
- (c) "Cable Television System," "System," or "Cable System," unless defined otherwise by Federal law or FCC regulation, means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service to multiple Subscribers within a community, but such term does not include:
- (1) A facility that serves only to retransmit the television signals of one (1) or more television broadcast stations;
  - (2) A facility that serves Subscribers without using any public rights-of-way;
  - (3) A facility of a common carrier that is subject, in whole or in part, to the provisions of 47 U.S.C. §§201-226, except that such facility shall be considered a Cable System to the extent that such facility, whether on a common carrier basis or otherwise, is used in the transmission of video programming directly to Subscribers; or
  - (4) Any facilities of any electric utility used solely for operating its electric utility system. [See 47 U.S.C. §522(7).]

- (d) “Cable Service” means the following, unless otherwise defined by Federal law or FCC regulation:
- (1) The one-way transmission to Subscribers of video programming or other programming service; and
  - (2) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service. [See 47 U.S.C. §522(6).]
- (e) “Channel” or “Cable Channel” means a portion of the electromagnetic frequency spectrum that is used in a Cable System and which is capable of delivering a television Channel as defined by the Federal Communications Commission. [See 47 U.S.C. §522(4).]
- (f) “Council” means the City Council of the City of Westlake.
- (g) “Franchise” means an initial authorization, or renewal thereof, issued by the City, whether such authorization is designated as a Franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction and/or operation of a Cable System. [See 47 U.S.C. §522(g).]
- (h) “Franchise Agreement” means a Franchise granted pursuant to this chapter, containing the specific provisions of the Franchise granted, including references, specifications, requirements and other related matters.
- (i) “Franchise Fee” means any tax, fee or assessment of any kind imposed by the City or other governmental entity on a Grantee or cable Subscriber, or both, solely because of their status as such. The term “Franchise Fee” does not include:
- (1) Any tax, fee, or assessment of general applicability ( including any such tax, fee, or assessment imposed on both utilities and cable operators or their services but not including a tax, fee, or assessment which is unduly discriminatory against cable operators or cable Subscribers);
  - (2) Capital costs that are required by the Franchise Agreement to be incurred by the cable operator for Public, Educational, or Governmental (PEG) access facilities;
  - (3) Requirements or charges incidental to the awarding or enforcing of the Franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages; or
  - (4) Any fee imposed under Title 17 of the United States Code. [See 47 U.S.C. § 542(g).]; or
  - (5) Any fee paid by Grantee in lieu of services and/or equipment provided by the incumbent cable provider.
- (j) “Grantee” means any Person receiving a Franchise pursuant to this chapter and its agents, employees, officers, designees, or any lawful successor, transferee or assignee.
- (k) “Grantor” or “City” means the City of Westlake, as represented by the Council or any delegate acting within the scope of its jurisdiction.
- (l) “Gross Revenues,” unless defined otherwise in a Franchise Agreement, shall mean any and all compensation, in whatever form, exchange or otherwise derived from Cable Services within the confines of the City of Westlake, including, but not limited to, revenues from subscriber rates, pay cable, advertising, leased access channels, and installations, connection and reinstatement charges; provided, however, it does not include any taxes or fees collected on behalf of a local, state or Federal governmental unit and shall be net of bad debt, refunds to subscribers and copyright fees.

- (m) “Initial Service Area” means the area of City that will receive Cable Service initially, as set forth in any Franchise Agreement.
- (n) “Installation” means the connection of the System to Subscribers’ terminals, and the provision of Cable Service.
- (o) “Normal Business Hours” means those hours during which most similar businesses in the community are open to serve customers. In all cases, “Normal Business Hours” must include some evening hours at least one (1) night per week and/or some weekend hours.
- (p) “Normal Operating Conditions” means those service conditions that are within the control of Grantee. Those conditions that are not within the control of the Grantee include, but are not limited to, natural disaster, civil disturbances, power outages, telephone network outages, work stoppages, and severe or unusual weather conditions, and significant legislative or regulatory requirements. Those conditions which are ordinarily within the control of Grantee include, but are not limited to, special promotions, pay-per-view events, regular peak or seasonal demand periods, and maintenance or upgrade of the System.
- (q) “Notice” shall mean written notice to the address indicated in the Franchise Agreement.
- (r) “Opportunity to Cure” or “Opportunity to Correct” shall mean ten (10) calendar days unless some other time period is contained in this chapter, the Franchise Agreement, or is agreed to between Grantor and Grantee.
- (s) “Other programming service” means information that a Cable Operator makes available to all Subscribers generally. [See 47 U.S.C. §522(15).]
- (t) “Person” means any natural Person or any association, firm, individual, partnership, joint stock company, joint venture, trust, corporation, limited liability company or other legally recognized entity, private or public, whether for-profit or not-for-profit.
- (u) “Public, Educational or Government Access Facilities” or “PEG Access Facilities” means:
  - (1) Channel capacity designated for public, educational, or governmental use; and
  - (2) Facilities and equipment for the use of such Channel capacity.
- (v) “Reasonable” means neither extreme, excessive, arbitrary, capricious, oppressive nor confiscatory under the particular circumstances at issue.
- (w) “Section” means any Section, subsection, or provision of this chapter.
- (x) “Service Area” or “Franchise Area” means the entire geographic area within City as it is now constituted or may in the future be constituted, unless otherwise specified in the Franchise Agreement.
- (y) “Service Interruption” means the loss of picture or sound on one or more Cable Channels affecting at least ten percent (10%) of the Subscribers on the System.
- (z) “Standard Installation” means a cable connection consisting of not less than a one hundred fifty (150) feet drop from the existing distribution system connecting to an inside wall but shall not mean, MDU, commercial or inside “wall fish” installations, or buried installations, irrespective of distance, where adverse terrain (such as excessive rocky conditions) or other factors render extension of the System economically or technically more expensive or difficult than typically encountered by Grantee in its normal operations.

- (aa) "State" means the State of Ohio.
- (bb) "Street" means each of the following that have been dedicated to the public or are hereafter dedicated to the public and maintained under public authority or by others and located within the City limits: Streets, roadways, highways, avenues, lanes, alleys, sidewalks, easements, rights-of-way and similar public property and areas that Grantor shall permit to be included within the definition of Street from time to time.
- (cc) "Subscriber" means any Person who or which lawfully elects to subscribe to, for any purpose, Cable Service provided by Grantee by means of or in connection with the Cable System and who pays the charges therefor, except such Persons or entities authorized to receive Cable Service without charge as described in the Franchise Agreement.

#### **921.03 FRANCHISE TO INSTALL AND OPERATE.**

A Franchise granted by City under the provisions of this chapter shall encompass the following purposes:

- (a) To engage in business of providing Cable Service.
- (b) To erect, own, install, construct, repair, rebuild, reconstruct, replace, maintain and retain cable lines, related electronic equipment, supporting structures, appurtenances, and other property in connection with the operation of a Cable System in, on, over, under, upon, along and across Streets or other public places within the designated Service Area.
- (c) To maintain and operate said Franchise properties for the origination, reception, transmission, amplification, and distribution of television and radio signals for the delivery of Cable Service.
- (d) To set forth the obligations of a grantee under the Franchise Agreement.

#### **921.04 FRANCHISE REQUIRED.**

It shall be unlawful for any Person to construct, install or operate a Cable Television System in the City within any Street without a properly granted Franchise awarded pursuant to the provisions of this chapter.

#### **921.05 TERM OF THE FRANCHISE.**

(a) A Franchise granted hereunder shall be for a term established in the Franchise Agreement, commencing on the effective date of an ordinance or resolution authorizing the Franchise.

(b) A Franchise granted hereunder may be renewed upon application by Grantee pursuant to the provisions of applicable State and Federal Law and of this chapter.

#### **921.06 FRANCHISE TERRITORY.**

Any Franchise shall be valid within all the territorial limits of City, and within any area added to City during the term of this Franchise, unless otherwise specified in the Franchise Agreement.

**921.07 FEDERAL, STATE AND CITY JURISDICTION.**

(a) This chapter shall be construed in a manner consistent with all applicable Federal and State laws.

(b) In the event that the State or Federal government discontinues pre-emption in any area of cable communications over which it currently exercises jurisdiction in such manner as to expand rather than limit municipal regulatory authority, Grantor may, if it so elects, adopt rules and regulations in these areas to the extent permitted by law.

(c) This chapter shall apply to all Franchises granted or renewed after the effective date of this chapter. It shall further apply to the extent permitted by applicable Federal or State law to all existing Franchises granted prior to the effective date of this chapter.

(d) Grantee's rights are subject to the police powers of City to adopt and enforce ordinances necessary to the health, safety and welfare of the public. Grantee shall comply with all applicable general laws and ordinances enacted, or hereafter enacted, by City pursuant to that power or by any other legally constituted governmental unit having lawful jurisdiction over the subject matter hereof provided such subsequently adopted ordinances do not materially adversely affect the rights granted Grantee under an existing Franchise Agreement.

(e) Grantee shall not be relieved of its obligation to comply with any of the provisions of this chapter or any Franchise granted pursuant to this chapter by reason of any failure of City to enforce prompt compliance.

(f) This chapter and any Franchise granted pursuant to this chapter shall be construed and enforced in accordance with the substantive laws of the State of Ohio.

**921.08 FRANCHISE NON-TRANSFERABLE.**

(a) Grantee shall not sell, transfer, lease, assign, sublet or dispose of, in whole or in part, either by forced or involuntary sale, or by ordinary sale, consolidation or otherwise, the Franchise and/or Cable System or any of the rights or privileges granted by the Franchise, without the prior consent of the Council which consent shall not be unreasonably denied or delayed and shall be denied only upon a good faith finding by City that the proposed transferee lacks the legal, technical or financial qualifications to perform its obligations under the Franchise Agreement, and then only upon such reasonable terms and conditions as Grantor may require. Any attempt to sell, transfer, lease, assign or otherwise dispose of the Franchise and/or Cable System without the consent of the Council shall be null and void. This provision shall not apply to sales of property or equipment in the normal course of business. No consent from City shall be required for a transfer in trust, mortgage, or other instrument of hypothecation, in whole or in part, to secure an indebtedness, or for a pro forma transfer to a corporation, partnership or other entity controlling, controlled by or under common control with Grantee.



(b) Subject to Section 921.08(a), the following events shall be deemed to be a sale, assignment or other transfer of the Franchise and/or Cable System requiring compliance with this Section:

- (1) The sale, assignment or other transfer of all or a majority of Grantee's assets; and
- (2) The sale, assignment or other transfer of capital stock or partnership, membership or other equity interests in Grantee by one or more of its existing shareholders, partners, members or other equity owners so as to create a new controlling interest in Grantee; and
- (3) The issuance of additional capital stock or partnership, membership or other equity interest by Grantee so as to create a new controlling interest in Grantee; and
- (4) The entry by Grantee into an agreement with respect to the management or operation of Grantee and/or the System.

The term "Controlling Interest" as used herein means majority equity ownership of Grantee.

(c) Except as otherwise provided below or unless waived by Grantor as provided under Section 921.31 herein, no Grantee may sell or otherwise transfer ownership in a Franchise and/or Cable System prior to the substantial completion of the initial design or initial construction of said System by Grantee. In the case of a sale of multiple Systems, if the terms of the sale require the buyer to subsequently transfer ownership of one or more such Systems to one or more third parties, such transfer shall be considered a part of the initial transaction. The above-described construction period shall not apply to:

- (1) Any transfer of ownership interest in any Franchise and/or Cable System which is not subject to Federal income tax liability;
- (2) Any sale required by operation of any law or any act of any agency, any State or political subdivision or City; or
- (3) Any sale, assignment, or transfer, to one or more purchasers, assignees, or transferees controlled by, controlling, or under common control with, the seller, assignor, or transferor or its affiliate.

(d) In the case of any sale or transfer of ownership of any Franchise and/or Cable System, City shall have one hundred twenty (120) days to act upon any request for approval of such sale or transfer that contains or is accompanied by such information as is required in accordance with Federal Communications Commission Regulations, the requirements of this chapter and such other reasonable information as City, in its sole discretion, may request. During the review period, Grantor may advise Grantee that a public hearing is deemed necessary to evaluate any potential adverse effect of the sale or transfer upon Grantee's subscribers. In such event, Grantee shall receive written notice of the hearing, and of the opportunity to participate fully in it, as far in advance as possible, and in no event less than fourteen (14) days prior to the start of the hearing. If City fails to render a final decision on the request within one hundred twenty (120) days from receipt by City of all required information, such request shall be deemed granted unless the requesting party and City agree to an extension of time. Such request to transfer may be conditioned upon the performance of additional requirements imposed upon Grantee by Grantor, and, unless the Franchise Agreement provides otherwise, the payment of a nonrefundable transfer fee of Five Thousand Dollars (\$5,000.00).

(e) Grantee shall notify Grantor in writing of any foreclosure or any other judicial sale of all or a substantial part of the Franchise property of Grantee or upon the termination of any lease or interest covering all or a substantial part of said Franchise property. Such notification shall be considered by Grantor as notice that a change in control or ownership of the Franchise has taken place and the provisions under this Section governing the consent of Grantor to such change in control or ownership shall apply.

(f) For the purpose of determining whether it shall consent to such change, transfer, or acquisition of control, Grantor may inquire into the qualifications of the prospective transferee or controlling party, and Grantee shall assist Grantor in any such inquiry. In seeking Grantor's consent to any change of ownership or control, Grantee shall have the responsibility of insuring that the transferee completes an FCC Form 394 or its successor, which application shall include the information required under State and Federal law, as well as the information required under subsections (a) through (g) of Section 921.11. The FCC Form or its successor, shall be submitted to Grantor not less than ninety (90) days prior to the date of transfer. The transferee shall be required to establish that it possesses the legal, technical and financial qualifications to operate and maintain the System and comply with all Franchise requirements for the remainder of the term of the Franchise. If, after considering the legal, financial, character and technical qualities of the applicant and determining that they are satisfactory, Grantor finds that such transfer is acceptable, Grantor shall transfer and assign the rights and obligations of such Franchise. The consent of the Grantor to such transfer shall not be unreasonably denied.

(g) The consent or approval of Grantor to transfer by Grantee shall not constitute a waiver or release of the rights of Grantor in or to its public rights-of-way or easements and any transfer shall by its own terms be expressly subject to the terms and conditions of this chapter and the Franchise Agreement. A sale, transfer or assignment of the Franchise may not be approved without the successor in interest becoming a signatory to the Franchise Agreement.

(h) Any financial institution having a pledge by Grantee or its assets for the advancement of money for the construction and/or operation of the Franchise shall have the right to notify Grantor that it or its designee satisfactory to Grantor shall take control of and operate the Cable Television System, in the event of a Grantee default in its financial obligations. Further, said financial institution shall also submit a plan for such operation within thirty (30) days of assuming such control that will insure continued service and compliance with all Franchise requirements during the term the financial institution exercises control over the System. The financial institution shall not exercise control over the System for a period exceeding one (1) year unless extended by Grantor in its discretion and during said period of time the financial institution shall have the right to petition Grantor to transfer the Franchise to another grantee.

#### **921.09 (RESERVED FOR FUTURE USE)**

#### **921.10 GEOGRAPHICAL COVERAGE; MULTIPLE DWELLING UNITS (MDUs).**

(a) Grantee shall design, construct and maintain the Cable Television System to have the capability to pass every dwelling unit, school, library, and municipal building in the Service Area, subject to any line extension requirements of the Franchise Agreement.

(b) After service has been offered for any part of the Service Area, Grantee shall provide Cable Service to any Subscriber requesting a Standard Installation within that part of the Service Area within seven (7) days from the date of request if no further construction is required or within thirty (30) days if construction is required, provided that Grantee is able to secure all rights-of-way necessary to extend service to such Subscriber on reasonable terms and conditions within such thirty (30) day period. For purposes of this Section, a request shall be deemed made on the date of signing a service agreement, receipt of funds by Grantee, receipt of a written request by Grantee or receipt by Grantee of a verified verbal request.

(c) Except as otherwise provided in the Franchise Agreement, Grantee shall provide such service:

- (1) With no line extension charge except as specifically authorized in the Franchise Agreement; and
- (2) At a non-discriminatory installation charge for a Standard Installation, with additional charges for non-standard installations computed according to a non-discriminatory methodology for such installations, adopted by Grantee.

(d) Grantee shall be required, in accordance with this chapter and applicable law, to provide service to individual units of a multiple dwelling unit or "MDU" with all services offered to other dwelling units within the Franchise Area, so long as the owner of the MDU consents in writing, if requested by Grantee, to the following:

- (1) To Grantee's providing of service to individual units of the MDU;
- (2) To reasonable conditions and times of installation, maintenance and inspection of the Cable System on the MDU premises;
- (3) To reasonable conditions promulgated by Grantee to protect Grantee's equipment and to encourage widespread use of the Cable System; and
- (4) To not demand payment from Grantee for permitting Grantee to provide service to the MDU and to not discriminate in rental charges, or otherwise, between tenants who receive Cable Service and those who do not.

#### **921.11 INITIAL FRANCHISE OR RENEWAL APPLICATIONS.**

(a) Any Person desiring an initial Franchise or renewal for a Cable Television System shall file an application with City. Unless a Franchise Agreement provides otherwise, a nonrefundable application fee of Two Thousand Dollars (\$2,000.00) shall accompany the application or renewal application. Such application fee shall not be deemed to be "Franchise Fees" within the meaning of Section 622 of the Cable Act (47 U.S.C. §542), and such payments shall not be deemed to be:

- (1) "Payments in kind" or any involuntary payments chargeable against the compensation to be paid to City by Grantee pursuant to Section 921.15 hereof and applicable provisions of a Franchise Agreement, or
- (2) Part of the compensation to be paid to City by Grantee pursuant to Section 921.15 hereof and applicable provisions of a Franchise Agreement. Franchise renewals shall be in accordance with applicable law including, but not necessarily limited to, the Cable Communications Policy Act of 1984, as amended. Grantor and Grantee, by mutual consent, may enter into renewal negotiations at any time during the term of the Franchise.

(b) An application for an initial Franchise or renewal for a Cable Television System shall contain, where applicable:

- (1) A Statement as to the proposed Franchise and Service Area.
- (2) Resume of prior history of applicant, including the legal, technical and financial expertise of applicant in the cable television field.
- (3) List of the partners, general and limited, of the applicant, if a partnership, or the percentage of stock owned or controlled by each shareholder (for those shareholders who own above 5% of shares in corporation), if a corporation.
- (4) The names and addresses of any parent or subsidiary of applicant or any other business entity owning or controlling applicant in whole or in part, or owned or controlled in whole or in part by applicant.
- (5) Current financial information sufficient to assure applicant's financial viability, verified by a CPA audit or otherwise certified, true, complete and correct by a legal officer of Grantee to the reasonable satisfaction of City.
- (6) Proposed construction schedule.
- (7) Any additional relevant information that City deems applicable.

#### **921.12 CONSIDERATION OF INITIAL APPLICATIONS.**

(a) Within sixty (60) days of receipt of any application for an initial Franchise, the Mayor shall prepare a report and make his recommendations respecting such application to the City Council.

(b) A public hearing shall be set prior to any initial Franchise grant, at a time and date approved by the Council within thirty (30) days of the preparation of the Mayor's report. Within thirty (30) days after close of the hearing, the Council shall make a decision based upon the evidence received at the hearing as to whether or not the Franchise should be granted and, if granted, the conditions of such grant. Council may grant one or more initial Franchises or may decline to grant any Franchise.

#### **921.13 CUSTOMER SERVICE STANDARDS FOR THE CABLE TELEVISION SYSTEM.**

(a) **Policy.**

- (1) The Grantee should be permitted the option and autonomy to first resolve citizen complaints without delay and interference from the Franchise Authority.
- (2) These Standards are intended to be of general application; however, the Grantee shall be relieved of any obligations hereunder if it is unable to perform due to a region-wide natural emergency or in the event of a force majeure condition affecting a significant portion of the Franchise Area. The Grantee is free to exceed these Standards to the benefit of its Customers and such shall be considered performance for the purposes of these Standards.

(b) **Customer Service.**

- (1) **Courtesy.** All employees of the Grantee shall be courteous, knowledgeable and helpful and shall provide effective and satisfactory service in all contacts with customers.
- (2) **Accessibility.**
  - A. The Grantee shall maintain a local business office in a convenient location with a telephone listing for the purpose of offering the following services to customers who come to the local business office; bill payment, faulty equipment exchange, processing of change of service requests and response to customers' inquiries. This local business office shall be open Monday through Friday (holidays excluded) from 8:00 a.m. to 6:00 p.m., and from 9:00 a.m. to 1:00 p.m. Saturday. The Grantee shall also provide full exchange of equipment at the customers' premises. The Grantee may provide an alternate means to address customer inquiries, exchange faulty equipment, process change of service requests and provide for bill payment other than by local business office, if the same is agreed upon by all parties in the Franchise Agreement.
  - B. The Grantee shall maintain local or toll free telephone access lines that shall be available twenty-four (24) hours a day, seven days a week for service/repair requests and billing inquiries.
    1. Trained Grantee representatives will be available to respond to customer phone inquiries during Normal Business Hours.
    2. After Normal Business Hours, the access line may be answered by a service or an automated response system, including answering machine. Inquiries received after Normal Business Hours must be responded to by a trained Grantee representative on the next business day.
  - C. The Grantee shall retain sufficient customer service representatives and telephone line capacity to ensure that telephone calls to service/repair and billing inquiry lines are answered under Normal Operating Conditions by a customer service representative within thirty (30) seconds or less, and that any transfers are made within thirty (30) seconds. These Standards shall be met no less than ninety percent (90%) of the time measured on a quarterly and annual basis.
  - D. Grantee will not be required to acquire equipment or perform surveys to measure compliance with telephone answering standards unless a pattern of complaints indicates a clear failure to comply. A pattern shall exist when Grantee has failed to meet standards for three (3) consecutive quarters.
  - E. The Grantee shall have dispatchers and technicians on call twenty-four (24) hours a day, seven (7) days a week, including legal holidays. No extra charge shall be made to the Subscriber for the availability of this service.
  - F. Under Normal Operating Conditions, the customer will receive a busy signal less than three percent (3%) of the time.

- (3) **Responsiveness.** Under Normal Operating Conditions, as defined herein, each of the standards in Sections A, B & C below shall be met no less than ninety-five percent (95%) of the time measured on a quarterly and annual basis.
- A. Guaranteed seven-day residential installation.
1. The Grantee shall complete all Standard Installations requested by customers within seven (7) business days after the order is placed, unless a later date for installation is requested. If the customer requests a nonstandard installation, or the Grantee determines that a nonstandard customer installation is required, the Grantee shall provide the customer in advance with a total installation cost estimate and an estimated date of completion.
  2. All underground cable drops from the pedestal to the home shall be buried at a depth of no less than eight inches (8"), and within no more than two (2) calendar weeks (weather permitting) from the initial installation, or at a time mutually agreed upon between the Grantee and the customer.
- B. Residential installation and service appointments.
1. Customers requesting installation of Cable Service or service to an existing installation may choose any of the following blocks of time for the installation appointment: 8:00 a.m. to 12:00 Noon; 12:00 Noon to 4:00 p.m.; 4:00 p.m. to 8:00 p.m.; or a four-hour block of time mutually agreed upon by the customer and the Grantee. The Grantee is not precluded from offering shorter blocks of time for installation appointments. The Grantee may not cancel any appointment with a customer after 5:00 p.m. on the day before the scheduled appointment, except for appointments scheduled within twelve (12) hours after the initial call.
  2. An operator may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.
  3. If a Grantee representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted and notified as soon as it is apparent that the appointment will be missed. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.
  4. The Grantee shall be deemed to have responded to a request for service under the provisions of this Section when a technician arrives within the agreed upon time and, if the customer is absent when the technician arrives, the technician leaves written notification of arrival and return time, and a copy of that notification is kept by the Grantee. In such circumstances, the Grantee shall attempt to contact the customer within forty-eight (48) hours.

- C. Residential service interruptions.
1. In the event of system outages (loss of reception on all channels) resulting from Grantee equipment failure affecting three (3) or more customers, the Grantee shall respond to such failure within two (2) hours after the 3rd customer call is received.
  2. All other service interruptions resulting from Grantee equipment failure shall be corrected by the Grantee by the end of the next calendar day.
  3. The Grantee shall keep an accurate and comprehensive file of any and all complaints regarding material technical, signal quality, construction, or customer service issues of the Cable System, in a manner consistent with the privacy rights of customers, and the Grantee's actions in response to those complaints. These files shall remain open to the Franchising Authority during normal business hours upon request.
  4. All Service outages and interruptions for any cause beyond the control of the Grantee shall be corrected within thirty-six (36) hours, after the conditions beyond its control have been corrected.
- D. TV reception.
1. The Grantee shall provide clear television reception that meets or exceeds technical standards established by the United States Federal Communications Commission ("FCC"). The Grantee shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Scheduled interruptions shall be preceded by notice and shall occur during periods of minimum use of the system, preferably between midnight and 6:00 a.m.
  2. If a customer experiences poor video or audio reception attributable to the Grantee's equipment, the Grantee shall repair the problem no later than the day following the customer call. If an appointment is necessary, customer may choose the same blocks of time described in subsection (b)(3)B. herein. At the customer's request, the Grantee shall repair the problem at a later time convenient to the customer.
- E. Treatment of property.
1. The Grantee shall keep trimming to a minimum; trees and shrubs or other landscaping that is damaged by the Grantee, any employee or agent during installation construction shall be restored to its prior condition or replaced. Trees and shrubs shall not be removed without the prior permission of the owner or legal tenant of the property on which they are located. This provision shall be in addition to, and shall not supersede, any requirements in any Franchise Agreement.

2. The Grantee shall, at its own cost and expense, and in a manner approved by the property owner, restore any property to as good condition as before the work causing such disturbance was initiated. The Grantee shall repair, replace or compensate a property owner for any damage resulting from the Grantee's installation, construction, service or repair activities.
  3. Except in the case of an emergency involving public safety or service interruption to a large number of Subscribers, the Grantee shall give reasonable notice to property owners or legal tenants prior to entering upon private premises, and the notice shall specify the work to be performed; provided that in the case of construction operations such notice shall be delivered or provided at least twenty-four (24) hours prior to entry. Nothing herein shall be construed as authorizing access or entry to private property, or any other property, where such right to access or entry is not otherwise provided by law. If damage is caused by any Grantee activity, the Grantee shall reimburse the property owner one hundred percent (100%) of the cost of the damage or replace the damaged property. For the installation of pedestals or other major construction or installation projects, property owners shall also be notified by mail at least one (1) week in advance. In the case of an emergency, the Grantee shall attempt to contact the property owner or legal tenant in person, and shall leave a door hanger notice in the event personal contact is not made.
  4. The Grantee personnel shall clean all areas surrounding any work site and ensure that all cable materials have been disposed of properly.
- (4) **Customer information.**
- A. Upon installation, and at any time the customer may request, the Grantee shall provide the following information in clear, concise written form:
    1. Products and services offered by the Grantee, including its channel lineup;
    2. The Grantee's complete range of service options and the prices for these services;
    3. Instruction on the use of cable TV service and on a standard VCR hookup;
    4. The Grantee's billing, collection and disconnection policies and procedures;
    5. Customer privacy requirements;
    6. All applicable complaint procedures and the telephone numbers and mailing address of the Grantee, and the Grantor to whom the complaints should be addressed;
    7. Use and availability of parental control/lock out device;
    8. Special services for customers with disabilities, if any; and
    9. Days, times of operation and locations of service centers, if applicable.



- B. Grantee shall provide Customers with written notification of any changes in rates, programming, services or Channel positions as soon as possible in writing. Advertisement in newspapers of general circulation within Westlake may also constitute the requisite notice. Notice must be given to Subscribers a minimum of thirty (30) days before the effective date of change, unless a later time frame is permitted by FCC rules. In addition, Grantee shall notify Subscribers thirty (30) days in advance of any significant changes in the other information required by the preceding paragraph. Notwithstanding the foregoing, Grantee shall not be required to provide prior notice of any rate change that is the result of regulatory fee, franchise fee, or any other fee, tax, assessment, or charge of any kind imposed by any Federal agency, State, or Grantor on the transaction between Grantee and the Subscriber.
  - C. Each Customer Service Representative (CSR), technician or employee of the Grantee in each contact with a customer shall state the estimated cost of the service, repair or installation orally prior to delivery of the service or before any work is performed, and shall provide the customer with an oral statement of the total charges before terminating the telephone call or before leaving the location at which the work was performed.
- (5) Customer privacy.
- A. The Grantee shall not monitor cable television signals to determine the individual viewing patterns or practices of any customer without the prior written consent from that customer, except as otherwise permitted by the applicable Franchise or law. Grantee is permitted to disclose such information if such disclosure is necessary to render or conduct a legitimate business activity related to Cable Service or other service provided by Grantee to its customers.
  - B. The Grantee shall not sell or otherwise make available customer lists or other personally identifiable customer information to unaffiliated third parties without prior written customer consent, except as otherwise permitted by the Franchise or applicable law. The Grantee is permitted to disclose such information if such disclosure is necessary to render, or conduct, a legitimate business activity related to a cable service or other service provided by the Grantee to its customers.
- (6) **Billing.**
- A. Bills will be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, basic and premium services charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits.
  - B. In case of a billing dispute, the Grantee must respond to a written complaint from a subscriber within thirty (30) days.

- C. Refunds - Refund checks will be issued promptly, but no later than either:
  - 1. The customer's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or
  - 2. The return of the equipment supplied by the Grantee if service is terminated.
- D. Credits - Credits for service will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.

(7) **Complaint procedures.**

- A. Any verbal, telephonic or written complaint relating to the quality or continuity of service shall be attended to within a normal service interval. In the event that such complaints are not responded to or service is not restored to the levels required by the FCC or by the terms of this chapter during said normal service interval, the Grantee may provide remuneration as determined by Subscriber requirements which may take the form of free installation, service credit or promotional items of comparable value, for the missed appointment. This provision shall not apply if such delay is occasioned because of an Act of God, strike, national emergency or any other circumstance beyond the control of Grantee. Similarly, this provision shall not apply to service requests or complaints pertaining to television set malfunction or other breakdown not related to the operation of the Cable Television System.
- B. The Grantee shall establish procedures for receiving, acting upon and resolving subscriber complaints. The Grantee shall furnish a notice of such procedures to each subscriber at the time of initial subscription to the system. In addition, the Grantee shall maintain a written record, printout, or "log," listing date and time of material customer complaints, such as technical, construction, signal quality or customer service complaints, identifying the subscriber, and describing the nature of the complaints and when and what action was taken by the Grantee in response thereto. Such records shall be kept for a period of three (3) years at Grantee's office reflecting the operations to date subject to applicable laws regarding Subscriber privacy and shall be available for inspection by Grantor during regular business hours.

(c) **Satisfaction Guaranteed.** Any customer who requests disconnection of Cable Service or any particular programming service previously ordered shall have disconnection effective on the day such request is made. The customer will not be charged thereafter for any service disconnected and, in the case of service for which the customer has prepaid, the customer shall promptly be provided a credit or sent a refund of the unused portion of the prepaid amount.

(d) **Safety.** The Grantee shall install and locate its facilities, Cable System and equipment in compliance with all federal, state, local and company safety standards, and in such a manner as shall not unduly interfere with or endanger persons or property. Whenever the Grantee receives notice that an unsafe condition exists with respect to its equipment, the Grantee shall investigate such condition immediately and shall take such measures as are necessary to remove or eliminate any unsafe condition.

**921.14 RATE REGULATION; SENIOR CITIZEN DISCOUNTS; PROMOTIONS; BROADCAST BASIC SERVICE; GUARANTEED SERVICE CALLS.**

(a) City reserves the right to regulate rates for Basic Cable Service and any other services offered over the Cable System, to the extent permitted by Federal or State law. Grantee shall be subject to the rate regulation provisions provided for herein, and those of the Federal Communications Commission (FCC) at 47 C.F.R., Part 76.900, Subpart N. City shall follow the rules relating to cable rate regulation promulgated by the FCC at 47 C.F.R., Part 76.900, Subpart N.

(b) Grantee shall offer a senior citizen discount to all eligible subscribers upon proof of age as specified in the Franchise Agreement. Such discount may be added into the rate regulation calculation as a requirement of the Franchise.

(c) Nothing herein shall prohibit Grantee from offering discounts or other promotions to other subscribers.

(d) Nothing herein shall prohibit the temporary reduction or waiving of rates or charges in conjunction with valid promotional campaigns.

(e) Grantee shall offer Broadcast Basic Service which will consist of, at a minimum, all local, over-the-air broadcast Channels and PEG Channels, and will not require a converter for cable-ready TVs and VCRs for such service. A program Channel guide will be provided by Grantee, the form of which shall be at Grantee's discretion, with all Expanded Basic Services.

(f) Grantee shall guarantee that installations and service calls will be performed during the time period agreed upon with the Subscriber or Subscriber remuneration will be provided. Remuneration may take the form of free installation, service credit or promotional items of comparable value.

**921.15 FRANCHISE FEE IMPOSED UPON GRANTEE.**

(a) Following the issuance and acceptance of a Franchise and as compensation for the benefits and privileges granted under the Franchise and in consideration of permission to use Grantor's Streets and rights-of-way, Grantee shall pay to Grantor a Franchise Fee upon Grantee's Annual Gross Revenues in the amount as set forth in the Franchise Agreement.

(b) Grantor, on an annual basis, shall be furnished a Statement within one hundred twenty (120) days of the close of the calendar year, certified by an officer of Grantee or audited by a Certified Public Accountant, reflecting and attesting to the total amounts of annual gross revenues and all payments, and computations for the previous calendar year. At any time and upon thirty (30) days prior written notice and no more than once per calendar year, Grantor shall have the right to conduct an independent audit of Grantee's records, in accordance with generally accepted accounting principles and if such audit indicates a Franchise Fee underpayment of five percent (5%) or more, Grantee shall assume all reasonable costs of such an audit.

(c) Except as otherwise provided by law, no acceptance of any payment by Grantor shall be construed as a release or as an accord and satisfaction of any claim Grantor may have for further or additional sums payable as a Franchise Fee under this chapter or any Franchise Agreement or for the performance of any other obligation of Grantee.

(d) In the event that any Franchise Fee payment or recomputed amount is not made on or before the dates specified in the Franchise Agreement, Grantee shall pay as additional compensation an interest charge, computed from such due date, at an annual rate equal to the prime lending rate plus one and one-half percent (1½ %) during the period for which payment was due.

(e) In the event any payment is not received within thirty (30) calendar days from its due date, Grantee shall further be assessed an additional amount of One Hundred Dollars (\$100.00) per day. Grantee's liability for such amount in such cases shall not be subject to but shall be in addition to the remedies set forth in Section 921.26 herein for Franchise violations and may be taken from the Performance Bond in accordance with Section 921.21 herein.

(f) Franchise Fee payments shall be made in accordance with the schedule indicated in the Franchise Agreement and shall be accompanied by a report in the form of the Franchise Fee Payment Worksheet attached to the Franchise Agreement as Exhibit "B."

(g) Grantor represents that it is its intention to be able to charge up to the maximum amount of Franchise Fees allowed by law which is presently set at five percent (5%). This maximum may be amended by mutual agreement between Grantor and Grantee during the term of the Franchise by any higher maximum amount that may be set by FCC regulations or the Cable Act as the same may be amended from time to time. Grantee shall implement the change within ninety (90) days of written notice of the same by Grantor.

(h) No term or condition in this chapter or the Franchise Agreement shall in any way modify or affect Grantee's obligation to pay Franchise Fees. Although the total sum of Franchise Fee payments and additional commitments set forth elsewhere in this chapter or the Franchise Agreement may total more than the maximum allowable percentage of Grantee's Gross Revenues in any 12 month period, Grantee agrees that the additional commitments are not Franchise Fees as defined under any Federal law, nor are they to be offset or credited against any Franchise Fee payments due to Grantor, nor do they represent an increase in Franchise Fees to be itemized as such on the Subscriber's bill.

(i) Payment of the Franchise Fee under this chapter or the Franchise Agreement shall not exempt Grantee from the payment of any other license fee, tax, levy, assessment or charge on the business, occupation, services, property or income of Grantee which is hereafter lawfully imposed on all entities engaged in the same business as Grantee.

**921.16 DESIGN AND CONSTRUCTION REQUIREMENTS; STREET AND OTHER****PUBLIC IMPROVEMENTS.**

(a) Construction. When feasible, as determined by Grantor's engineer, Grantee shall be treated similarly in regard to Section 921.16 as other utilities operating within the City.

- (1) Subject to applicable laws, regulations and ordinances of Grantor and the provisions of this Agreement, Grantee may perform all construction necessary for the operation of its Cable System. All construction and maintenance of any and all facilities within Streets incident to Grantee's Cable System shall, regardless of who performs the construction, be and remain Grantee's responsibility. Grantee shall apply for, and obtain, all generally applicable permits necessary for construction or installation of any facilities, and for excavating and laying any facilities, within the Streets. Grantee shall pay all applicable fees upon issuance of the requisite construction permits by Grantor to Grantee.
- (2) Prior to beginning any construction, Grantee shall provide Grantor with a construction schedule for work in the Streets. When Grantee's construction of facilities in the Streets is completed, Grantee shall provide Grantor with a map showing the location of the installed facility in the Streets, as built, in detail, excluding proprietary electronics. All as-builts shall be available at Grantee's local office for inspection.
- (3) Grantee may make excavations in Streets for any facility needed for the maintenance or extension of Grantee's Cable System. Prior to doing such work, Grantee shall apply for, and obtain, generally applicable permits from the Grantor, and give appropriate notices to any other Franchisees, licensees or permittee of the Grantor, or bureaus of the Grantor, or other units of government owning or maintaining pipes, wires, conduits or other facilities which may be affected by the proposed excavation.
- (4) In the event that emergency repairs are necessary, Grantee shall immediately notify the Grantor of the need for such repairs. Grantee may initiate such emergency repairs, and shall apply for appropriate permits within 48 hours after discovery of the emergency. Grantee shall comply with all applicable Grantor regulations relating to such excavations or construction, including the payment of permit or license fees.

(b) Location of Facilities.

- (1) Within seventy-two (72) business hours after any Grantor, Franchisee, licensee or permittee notifies Grantee of a proposed Street excavation, the Grantee shall, at Grantee's expense arrange to:
  - A. Mark on the surface all of its locatable underground facilities within the area of the proposed excavation;
  - B. Notify the excavator of any unlocatable underground facilities in the area of the proposed excavation; or
  - C. Notify the excavator that the Grantee does not have any underground facilities in the vicinity of the proposed excavation.
- (2) In the event that all surfaces were accurately marked for underground facilities as requested and Grantee's plant was cut for whatever reason, then the Grantor's franchisee, licensee, or permittee shall be required to notify the Grantee and pay for the repair of the Grantee's plant.

- (c) Restoration of Streets.
- (1) Whenever Grantee disturbs the surface of any Street for any propose, Grantee shall promptly restore the Street to at least its prior condition. When any opening is made by Grantee in a hard surface pavement in any Street, Grantee shall promptly refill the opening and restore the surface to a condition reasonably satisfactory to the Grantor.
  - (2) If Grantee excavates the surface of any Street, Grantee shall be responsible for restoration of the Street and its surface within the area affected by the excavation in accordance with applicable regulations of the City. The Grantor may, after providing notice and an opportunity to correct to Grantee, refill and/or repave any opening made by Grantee in the Street, and the expense thereof shall be paid by Grantee. The Grantor may, after providing notice and an opportunity to correct to Grantee, remove and/or repair any work done by Grantee which, in the determination of the Grantor, is inadequate. The cost thereof, including the costs of inspection and supervision, shall be paid by the Grantee. All excavations made by Grantee in the Streets shall be properly safeguarded for the prevention of accidents. All of Grantee's work under this Agreement, and this Section, in particular shall be done in strict compliance with all rules, regulations and ordinances of the Grantor.
- (d) Maintenance and Workmanship.
- (1) Grantee's Cable System shall be constructed and maintained in such manner as not to interfere with sewers, water pipes, or any other property of the Grantor, or with any other pipes, wires, conduits, pedestals, structures, or other facilities that may have been laid in the Streets by, or under, the Grantor authority.
  - (2) Grantee shall provide and use any equipment and appliances necessary to control and carry Grantee's signals so as to prevent injury to the Grantor's property or property belonging to any person. Grantee, at its own expense, shall repair, renew, change and improve its facilities as listed above in good repair, and safe and presentable condition.
- (e) Acquisition of Facilities. Upon Grantee's acquisition of cable related facilities in any Grantor Street, or upon the addition or annexation to the Grantor of any area in which Grantee owns or operates any cable related facility, the Grantee shall, at the Grantor's request, submit to the Grantor a statement describing all Grantee facilities involved, whether authorized by Franchise, permit, license or other prior right, and specifying the location of all such facilities to the extent the Grantee has possession of such information. Such facilities shall immediately be subject to the terms of this Franchise.

(f) **Reservation of Grantor Streets Rights.** Nothing in this Franchise shall prevent the Grantor or public utilities owned, maintained and/or operated by public entities other than the Grantor from constructing sewers; grading, paving, repairing and/or altering any Street; laying down, repairing or removing water mains; or constructing or establishing any other public work or improvement. All such work shall be done, insofar as practicable, so as not to obstruct, injure or prevent the use and operation of Grantee's Cable System. However, if any of the Grantee's System interferes with the construction or repair of any Street or public improvement, including construction, repair or removal of a sewer or water main, such portion of the Grantee's System shall be removed or replaced in the manner the Grantor shall reasonably direct, and Grantor shall in no event be liable for any damage to any portion of Grantee's Cable System. Any and all such removal or replacement shall be at the expense of the Grantee. Should Grantee fail to remove, adjust or relocate its facilities by the date established by the Grantor's written notice to Grantee, the Grantor may effect such removal, adjustment or relocation, and the reasonable expense thereof shall be paid by Grantee, including all reasonable costs and expenses incurred by the Grantor due to Grantee's delay.

(g) **Street Vacation.** If any Street or portion thereof used by Grantee is vacated by the Grantor during the term of this Franchise, unless the Grantor specifically reserves to Grantee the right to continue its installation in the vacated Street, Grantee shall, without delay or expense to the Grantor, remove or discontinue its use of its facilities in such Street, and restore, repair or reconstruct the Street where removal has occurred, and replace the Street in the condition found. In the event of failure, neglect or refusal of Grantee, after a time period to be negotiated by the Grantor and Grantee, to restore, repair or reconstruct such Street, the Grantor may do such work or cause it to be done, and the cost thereof may be collected by Grantor from the Performance Bond pursuant to Section 921.21 hereof.

(h) **Discontinuing Use of Facilities.** Whenever Grantee intends to discontinue using any facility within the Streets, Grantee shall submit for the Grantor's approval a complete description of the facility and the date on which the Grantee intends to discontinue using the facility. Grantee may remove the facility or request that the Grantor permit it to remain in place. Notwithstanding the Grantee's request that any such facility remain in place, the Grantor may require the Grantee to remove the facility from above the Street or modify the facility to protect the public, health, welfare, safety, and convenience, or otherwise serve, the public interest. The Grantor may require the Grantee to perform a combination of modification and removal of any such above-ground facility. Grantee shall complete such removal or modification in accordance with a schedule set by the Grantor. Until such time as Grantee removes or modifies the facility as directed by the Grantor, or until the rights to and responsibility for the facility are accepted by another person having authority to construct and maintain such facility, Grantee shall be responsible for all necessary repairs and relocations of the facility, as well as maintenance of the Street in the same manner and degree as if the facility were in active use, and Grantee shall retain all liability for such facility.

(i) **Hazardous Substances.**

(1) Grantee shall comply with all applicable state and federal laws, statutes, regulations, National Electric Safety Code and orders concerning hazardous substances relating to Grantee's Cable System in the Streets.

- (2) Grantee shall maintain and inspect its Cable System located in the Streets. Upon reasonable notice to the Grantee, the Grantor may inspect Grantee's facilities in the Streets to determine if any release of hazardous substances has occurred, or may occur, from or related to Grantee's Cable System. In removing or modifying Grantee's facilities as provided in this Franchise, Grantee shall also remove all residue of hazardous substances related thereto.
- (3) Grantee agrees to forever indemnify the Grantor against any claims, costs, and expenses, of any kind, whether direct or indirect, incurred by the Grantor arising out of release of hazardous substances caused by Grantee's Cable System in the Streets.

(j) **Undergrounding of Cable.** Existing facilities of the Grantee and existing portions of the Grantee's Cable System shall be placed underground at the Grantee's expense when all other utilities, including cable television providers, in the same rights-of-way place their facilities underground or when required of all utilities, including cable television providers, and persons by general ordinances of the Grantor or applicable State or federal law.

(k) **Construction Codes.** Grantee shall strictly adhere to all building and zoning codes currently or hereafter in effect. Grantee shall arrange its lines, cables, and other appurtenances, on both public and private property, in such a manner as to avoid causing unreasonable interference with the use of said public or private property by any person. In the event of such interference, the Grantor may require the removal or relocation of the Grantees lines, cables, and other appurtenances from the property in question.

- (1) **Construction and Use of Poles.**
  - (1) Whenever feasible, the construction, maintenance, and use of Grantee's Cable System shall comply with the standards of materials in engineering and all other provisions of a pole user agreement for use of poles, entered into by and between other pole users and the Grantee. In the event Grantee cannot obtain the necessary poles and allied facilities pursuant to the provisions of such an agreement, and only in such event, then it shall be lawful for the Grantee to make all needed excavations in the Streets for the purpose of placing, erecting, laying, maintaining, repairing, and removing poles, conduits, supports for wires and conductors, and any other facility needed for the maintenance or extension of Grantee's Cable System. All poles of the Grantee shall be erected between the curb and the sidewalk unless otherwise designated by the proper Grantor authorities, and each pole shall be set whenever practicable at an extension lot fine. The Grantor shall have the right to require the Grantee to change location of any Grantee owned pole, conduit, structure or other facility within the Streets when in the opinion of the Grantor the public convenience requires such change, and the expense thereof shall be paid by the Grantee.
  - (2) Nothing herein shall exempt the Grantee from compliance with all Charter and ordinance provisions relating to such excavations or construction of from any provision requiring payment of permit or license fees pertaining thereto.



(m) **System Design.** The Grantee's Cable System shall comply with the design and service requirements and schedules to be contained in the Franchise Agreement, the attached Exhibits to the Franchise Agreement, and all applicable laws and regulations. All Grantee's construction shall be subject to the Grantor's supervision and control, including, without limitation, location of facilities, placement of poles, and installation of underground facilities. Grantee shall submit construction drawings and specifications for approval on all projects.

(n) **Geographical Coverage.** The Grantee shall design and construct its Cable System in such manner as to have the capability to connect and provide Cable Service to every single-family dwelling unit, multiple family dwelling unit, school, library and municipal agency within the Franchise area provided that any other cable provider is required to do the same.

(o) **System Upgrade Schedule.**

- (1) The Grantee shall comply with the requirements of the System upgrade schedule, if any, to be contained in an Exhibit to the Franchise Agreement.
- (2) No less than thirty (30) days prior to the start of construction in the Franchise Area, the Grantee shall meet all applicable design and construction standards of the Grantor and shall provide a detailed construction progress schedule and as built maps. In addition, the Grantee shall update this information upon request by Grantor on quarterly basis, by submitting a copy of its normal internal progress reports, showing specifically whether schedules are being met and the reasons for any delay.

(p) **Installation of New Cable System Underground.** All new or upgrade Cable System facilities shall be installed underground where existing undergrounded utility facilities exist, but may be installed on existing utility poles where aerial facilities currently exist. In areas where no poles exist, Grantee shall place its facilities underground, and Grantee shall move existing facilities underground whenever all other utilities, including cable television, are installed underground.

(q) **Prewiring.** Any law of the Grantor which requires prewiring of subdivisions or other developments for electrical and telephone service shall be construed to include wiring for Cable Systems.

(r) **Undergrounding of Multiple-Dwelling Units.** In cases of single site multiple-dwelling units, the Grantee shall minimize the number of individual aerial drop cables by installing multiple drop cables underground between the pole and dwelling unit where determined to be technologically and economically feasible in agreement with the owners and/or owner's association of the multiple-dwelling units. This section shall apply only to newly constructed buildings or unwired existing buildings. Grantee shall be required to install drop cables underground only if all other utilities, including cable television, are required to do the same at the time of installation.

(s) **Rights-of-Way Occupancy.**

- (1) With respect to aerial facilities, the Grantee shall utilize existing poles, conduits and other facilities whenever possible and economically feasible, and may not construct or install any new, different or additional poles, conduits or other facilities on public property until the written approval of the Grantor is obtained.

- (2) The Grantee shall:
  - A. Locate and install all transmission lines, equipment and structures so as to cause minimum interference with the rights and reasonable convenience of property owners;
  - B. Keep and maintain all transmission lines, equipment and structures in a safe, adequate and substantial condition, and in good order and repair;
  - C. Employ professional care and install and maintain methods and devices for preventing failures and accidents that are likely to cause damage, injuries or nuisances to the public;
  - D. Use suitable barricades, flags, lights, flares or other devices as necessary for the safety of all members of the public;
  - E. Place any poles or other fixtures in any public right-of-way in such manner as not to interfere with the usual travel of the right-of-way or cause unsafe conditions of any sort; and
  - F. Comply with all local and state laws, rules and regulations pertaining to traffic control.
- (3) The Grantee may not make paving cuts or curb cuts unless absolutely necessary, and only after written permission and a Street cut permit has been obtained from the Grantor under such conditions as the Grantor shall in its reasonable discretion determine.
- (4) The Grantor may reasonably require conduit for underground cable in areas specified by the Grantor, said conduit to be provided at Grantee's sole expense.
- (5) Before beginning any excavation or other construction activity on a public right-of-way or easement which crosses or abuts any private property, the Grantee shall clearly mark and delineate with flags, stakes or nonpolluting water-soluble spray paint the boundaries of that public right-of-way or easement where it abuts or crosses the private property.
- (6) In case of disturbance of any Street, sidewalk, alley, easements, public way, grassed or paved area, or any public or private property, the Grantee shall, at its own cost and expense and in a manner approved by the Grantor, replace and restore such Street, sidewalk, alley, easement, public way, grassed or paved area or any other public or private property in as good condition as before the work causing such disturbance was performed.
- (7) Grantee shall locate, mark and map any of its installed cable or Cable System for the Grantor at no expense to Grantor. The cable shall be installed so that it can be detected by the use of standard locating devices.

(t) Completion of Work by Grantor. On failure of the Grantee to commence, pursue or complete any work required by law or by the provisions of the Agreement (other than completion of construction or rebuild of the Cable System which shall be governed by Section 921.26) or any applicable permit to be done in any public right-of-way or public utilities easement, within the time prescribed and to the reasonable satisfaction of the Grantor, the Grantor may, after written notice to Grantee and an opportunity to cure cause the work to be done. The Grantee shall pay to the Grantor the reasonable costs of the work in the itemized amount reported by the Grantor to the Grantee within thirty (30) days after receipt of the itemized report.

(u) Removal of Facilities. On receipt of written notice, the Grantee at its own expense shall:

- (1) Protect, support, temporarily disconnect, relocate or remove any of its property as necessary because of traffic conditions, public safety, Street vacation or Street grade, separation or realignment, installation of sewers, drains, water pipes, power line, signal line, transportation facilities, tracks, or any other type of structure or improvements; and
- (2) Nothing described in this Section shall be considered a taking of the property of the Grantee and the Grantee is not entitled to additional compensation because of these actions.
- (3) The Grantee shall, on the request of any person, holding a building moving permit issued by the Grantor, temporarily raise or lower its wires to permit the moving of the building or buildings. The Grantee may require reasonable advance payment for any such permittee prior to raising or lowering its wires.

(v) Stop Work.

- (1) On notice from the Grantor that any work is being prosecuted contrary to the provisions of this Agreement. or in an unsafe or dangerous manner as determined by the Grantor, or in violation of the terms of any applicable permit, laws, regulations, ordinances, or standards, the work may immediately be stopped by the Grantor.
- (2) The stop work order shall be:
  - A. In writing;
  - B. Given to the individual doing the work, or posted on the work site; and
  - C. Sent to the Grantee by overnight delivery at the address given herein; and shall:
  - D. Indicate the nature of the alleged violation or unsafe condition; and
  - E. Establish conditions under which work may be resume

(w) Grantee's Contractors. Grantee's contractors shall be licensed and bonded in accordance with Grantor's ordinances, regulations and requirements of all contractors working in the public rights-of-way. Any action or omission of a contractor of the Grantee which violates any provision of this Agreement shall be considered an action or omission of the Grantee for the purposes of this Agreement.

(x) Private Property. Except in the case of an emergency involving public safety or service interruption to a large number of Subscribers, the Grantee shall give reasonable notice to the property owners or legal tenants prior to entering upon any private premises, and said notice shall specify the work to be performed; provided that in the case of construction operations, such notice shall be delivered or provided, when possible, prior to entry. If any damage is caused by any Grantee activity or omission, the Grantee shall reimburse the property owner the reasonable cost of the damage or replace or repair the damaged property. For installation of pedestals or other major construction or installation projects, property owners shall also be notified by mail at least one week in advance. In the case of an emergency (as defined above), Grantee shall attempt to contact the property owner or legal tenant in person, and shall leave a door hanger notice in the event personal contact is not made. Nothing herein shall be construed as authorizing access or entry to private property of any other property where such right to access or entry is not otherwise provided by law.

- (y) Burial Standards.
  - (1) Depths. The Grantee shall comply with the following burial depth standards unless local ordinances or National Electric Code standards require a deeper minimum depth:
    - Cable drops from the pedestal shall be buried at a minimum depth of eight inches (8").
    - Feeder lines shall be buried at a minimum depth of eighteen to twenty-four inches (18"-24").
    - Trunk lines shall be buried at a minimum depth of eighteen to twenty-four inches (18"-24").
    - Fiber optic cable shall be buried at a minimum depth of eighteen to twenty-four inches (18"-24").
  - (2) Timeliness. Temporary cable drops installed by the Grantee to residences shall be buried according to these standards within two calendar weeks of initial installation. When freezing surface or other adverse weather conditions prevent Grantee from achieving such timetable, Grantee shall apprise the subscriber of the circumstances and the estimated time of burial in writing, and shall provide the subscriber, in writing, with Grantee's telephone number and instructions as to how and when to call the Grantee to request burial of the line if the revised schedule is not met.
  
- (z) National Standards. Grantor shall have the option of adopting any national standards for the installation of optic fiber hereafter promulgated or established.
  
- (aa) Construction Standards.
  - (1) Grantee shall comply with all applicable Grantor construction codes, including, without limitation, the Uniform Building Code, the Uniform Fire Code, and Uniform Mechanical Code, and the Electronic Industries Association Standard for Physical Location and Protection of Below-Ground Fiber Optic Cable Plant, zoning ordinances and permit procedures. Grantor may charge reasonable permit fees consistent with existing laws for upgrade construction of cable plant. To move the upgrade construction process along Grantor agrees to process all application, reviews, authorizations or consent pertaining to permits, zoning issues, authorizations and consents in a period not to exceed thirty (30) days from written application or request to Grantor. If Grantor fails to do so within said period, said request, application, authorization or consent shall be deemed approved.
  - (2) All construction practices shall be in accordance with all applicable sections of federal and state Occupational Safety and Health Acts and any amendments thereto as well as all state and local codes and standards where applicable.
  - (3) All installation of electronic equipment shall be of a permanent nature, durable and installed in accordance with the provisions of the National Electrical Code as amended, and all applicable state and local codes.

- (4) Antenna supporting structures (towers) shall be designed for the proper loading as specified in the Electronics Industries Association's R.S. 222-A specifications, as they may be amended from time to time. Antenna supporting structures (towers) shall be painted, lighted, erected and maintained in accordance with all applicable rules and regulations of the Federal Aviation Administration and all other applicable state and local codes or regulations.
- (5) Neither Grantee's plant and equipment, nor any work Grantee performs, shall endanger or interfere in any manner beyond reasonable requirements given the work the Grantee is performing, with the rights of any property owner, or hinder or obstruct pedestrian or vehicular traffic.
- (6) The Grantee shall at all times employ professional care and shall install and maintain in use methods and devices to prevent failures and accidents which risk damage, injury or nuisance to the public.

(bb) New Residential Developments. In new residential developments in which all the electric power and telephone utilities are underground, the following procedure shall apply with respect to access to and utilization of underground easements:

- (1) The developer shall be responsible for contacting and surveying all Franchised Grantees to ascertain which operators desire (or, pursuant to the terms and provisions of this chapter and any Franchise Agreement, may be required) to provide Cable Service to that development. The developer may establish a reasonable deadline to receive Grantee responses. The final development map shall indicate the Grantees that have agreed to serve the development.
- (2) If one (1) or two (2) Grantees wish to provide service, they shall be accommodated in the joint utilities trench on a nondiscriminatory shared basis. If fewer than two (2) operators indicate interest, the developer shall provide conduit to accommodate two (2) sets of cable television cables and dedicate to the City any initially unoccupied conduit. The developer shall be entitled to recover the cost of such initially unoccupied conduit in the event that Grantor subsequently leases or sells occupancy or use rights to any Grantee.
- (3) The developer shall provide at least ten (10) working days notice of the date that utility trenches will be open to the Grantees that have agreed to serve the development. When the trenches are open, Grantees shall have two (2) working days to begin the Installation of their cables, and five (5) working days after beginning Installation to complete Installation.
- (4) The final development map shall not be approved until the developer submits evidence that:
  - A. It has notified each Grantee that underground utility trenches are to open as of an estimated date, and that each Grantee will be allowed access to such trenches, including trenches from proposed Streets to individual homes or home sites, on specified nondiscriminatory terms and conditions; and

- B. It has received a written notification from each Grantee that the Grantee intends to install its facilities during the open trench period on the specified terms and conditions, or such other terms and conditions as are mutually agreeable to the developer and Grantee, or has received no reply from a Grantee within ten (10) days after its notification to such Grantee, in which case, the Grantee will be deemed to have waived its opportunity to install its facilities during the open trench period.
- (5) Sharing the joint utilities trench shall be subject to compliance with State regulatory agency and utility standards. If such compliance is not possible, the developer shall provide a separate trench for the cable television cables, with the entire cost shared among the participating Grantees. With the concurrence of the developer, the affected utilities and the Grantees, alternative Installation procedures, such as the use of deeper trenches, may be utilized, subject to applicable law.
  - (6) Any Grantee wishing to serve an area where the trenches have been Closed shall be responsible for its own trenching or other burial operation and associated costs and shall repair all property to the condition which existed prior to such trenching or burial.
  - (7) In the event that more than one Franchise is awarded, the City reserves the right to require clustering of pedestals with other utilities or Franchisees to the extent technically feasible.

(cc) Street Improvements. Grantor shall give Grantee no less than forty-five (45) days advance notice (or notice as soon as possible in cases of emergency) of Street improvements or other activity which could affect the Cable System, including but not limited to Street or public rights-of-way excavation; construction repair; grading; traffic conditions; installation of sewers; drains or water pipes; power or signal lines; tracks; or vacation or improvement of public works.

- (1) All such public works shall be done, insofar as possible, in such a manner as not to obstruct, injure, or prevent the free use and operation of the poles, wires, conduits, conductors, pipes or appurtenances of the Cable System. Nothing contained herein shall relieve any person or entity from liability arising out of the failure to exercise reasonable care to avoid interfering with Cable System facilities while performing the public works.
- (2) If any equipment of Grantee shall interfere with public works, then, upon receipt of the 45-day notice, that part of the equipment of Grantee which interferes shall be removed or replaced by the Grantee in such manner as shall be directed by Grantor so that the same shall not interfere with the public works as reasonably determined by Grantor, and Grantee shall bear the reasonable expense of such removal or replacement.

#### **921.17 TECHNICAL STANDARDS; TESTS.**

(a) The Grantee shall construct, install, operate and maintain its System in a manner consistent with all applicable laws, ordinances, construction standards, governmental requirements, Federal Communications Commission technical standards, and any standards set forth in its Franchise Agreement. Grantee may comply with subsections (h)(2) and (3), (i) and (j) herein or, if not, shall comply with any FCC regulations dealing with the same subject matter.

(b) Repeated and verified failure to maintain specified technical standards shall constitute a material Franchise violation.

(c) All construction practices shall be in accordance with all applicable Sections of the Occupational Safety and Health Act of 1970, as amended, as well as all other applicable local, State and federal laws and regulations.

(d) All Installation of electronic equipment shall be installed in accordance with the provisions of the National Electrical and Safety Code and National Electrical Code, as they may from time to time be amended.

(e) Antennae and their supporting structures (towers) shall be painted, lighted, erected and maintained in accordance with all applicable rules and regulations of the Federal Aviation Administration and all other applicable local, State and federal laws and regulations.

(f) All of Grantee's plant and equipment located within the Franchise area, including, but not limited to, the antenna site, head end and distribution System, towers, house connections, structures, poles, wire, coaxial cable, fixtures and appurtenances shall be installed, located, erected, constructed, reconstructed, replaced, removed, repaired, maintained and operated in accordance with good engineering practices, performed by experienced maintenance and construction personnel so as not to endanger or interfere with improvements that the City may deem appropriate to make or to interfere in any manner with the rights of any property owner, or to unnecessarily hinder or obstruct pedestrian or vehicular traffic.

(g) Grantee shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices preventing failures and accidents which are likely to cause damage, injury or nuisance to the public.

(h) Grantee shall, at Grantee's expense, perform the following tests on its Cable System:

- (1) All tests required by the FCC;
- (2) All other tests as otherwise specified in this chapter or the Franchise Agreement; and
- (3) All other tests reasonably necessary to determine compliance with technical standards adopted by the FCC at any time during the term of this Franchise.

Grantee shall maintain written records of all results of its Cable System tests, performed by or for the Grantee. Such test results shall be made available to Grantor upon request within two (2) weeks.

(i) The Grantee shall submit to Grantor, upon written request, within sixty (60) days after the activation of the new System a detailed test plan describing the methods and schedules for testing the Cable System on an ongoing basis to determine compliance with the provisions of the FCC technical standards. The tests may be witnessed by representatives of the Grantor, and written test reports shall be submitted to the Grantor upon written request. Grantee shall provide Grantor with sixty (60) days notice of all required FCC annual proof of performance tests. In the event of any such FCC test failures, FCC procedures shall apply.

(j) At any time after commencement of service to Subscribers, the Grantor may require where reasonable, additional tests, full or partial repeat tests, different test procedures or tests involving a specific Subscriber's terminal. Requests for such additional tests will be made on the basis of complaints received or other evidence indicating any unresolved controversy or noncompliance, and such tests shall be limited to the particular matter in controversy. The Grantor shall endeavor to so arrange its request for such special tests so as to minimize hardship or inconvenience to Grantee or the Subscriber. Failure to perform such properly requested additional tests within thirty (30) days shall constitute a material breach of this Agreement.

#### **921.18 TRIMMING OF TREES.**

(a) Grantee shall have the authority to trim trees, in accordance with all applicable utility restrictions, ordinance and easement restrictions, Upon and hanging over Streets, alleys, sidewalks, and public places of the City so as to prevent the branches of such trees from coming in contact with the wires and cables of Grantee at its sole cost. City representatives shall have authority to supervise and approve all trimming of trees conducted by Grantee.

(b) Except in emergencies, Grantee may not prune at a point below 30 feet above sidewalk grade until one week after written notice has been given to the owner or occupant of the premises abutting the Street in or over which the tree is growing. For purposes of this section, emergencies exist when it is necessary to prune to protect the public from imminent danger of immediate interruption of cable signal. The owner or occupant shall have one week from the receipt of Grantee's notice to arrange for an outside contractor to prune the tree at his or her own expense. If the owner or occupant fails to do so, Grantee may prune such tree at its own expense.

#### **921.19 PROVISION OF CABLE TO PUBLIC FACILITIES.**

Grantee shall provide one (1) free Standard Installation and free monthly expanded basic service exclusive of premium or pay-per-view and a la carte services, to the locations to be listed in an exhibit to the Franchise Agreement as well as newly constructed public facilities during the term of the Franchise.

#### **921.20 HOLD HARMLESS.**

(a) Grantee, under any Franchise operated pursuant to this chapter, shall agree to indemnify, hold harmless, release and defend the City, its officers, boards, commissions, committees of Council, employees and contractors from and against any and all lawsuits, claims, causes of action, actions, liability, demands, damages, disability, losses, expenses, including reasonable attorneys' fees and costs or liabilities of any nature that may be asserted by any Person resulting or in any manner arising from the action or inaction of the Grantee, its subcontractors, employees, and agents, in constructing, operating, maintaining, repairing or removing the System, in carrying on Grantee's business or operations in the City or in exercising or failing to exercise any right or privilege granted by the Franchise. This indemnity shall apply, without limitation, to any action or cause of action for invasion of privacy, defamation, antitrust, errors and omissions, theft, fire, violation or infringement of any copyright, trademark, trade names, service mark or patent, or any other right of any Person, firm or corporation, whether or not any act or omission complained of is authorized, allowed or prohibited by this chapter or any Franchise Agreement, but shall not include any claim or action arising out of the actions or omissions of City officers, employees or agents or related to any City programming or other access programming for which the Grantee is not legally responsible.



(b) The City shall promptly notify Grantee of any claims subject to indemnification by Grantee and shall cooperate with all reasonable requests by Grantee for information, documents, testimony or other assistance appropriate to a resolution of such claims. Grantee shall have full responsibility for and control of any action or understanding directed at the resolution of such claims.

**921.21 INSURANCE; CONSTRUCTION COMPLETION BOND; PERFORMANCE BOND OR LETTER OF CREDIT.**

(a) Grantee shall provide insurance as specified in the Franchise Agreement.

(b) With respect to the initial construction of the Cable System, or any significant project to upgrade or rebuild more than fifty percent (50%) of the Cable System, Grantee shall provide to Grantor a construction performance and construction completion bond (hereinafter referred to as the "Construction Completion Bond") with a surety reasonably approved by the Grantor's Law Director, in an amount equal to ten percent (10%) of the applicable estimated construction cost. Such amount, however, shall not exceed two hundred thousand dollars (\$200,000.00). With respect to initial construction of the Cable System or the upgrade or rebuild project, when regular subscriber service is available to seventy-five percent (75 %) of occupied dwelling units, amount of the bond shall be reduced by fifty percent (50%) of the original amount. On the one-year anniversary of the initial construction of the Cable System or the upgrade or rebuild project, as the case may be, the bond may be canceled.

(c) Within sixty (60) days of the ordinance adopting the Franchise Agreement, Grantee shall deposit with Grantor a surety bond or letter of credit in the amount of fifty thousand dollars (\$50,000) in a form reasonably acceptable to the Law Director of Grantor (hereinafter referred to as the "Performance Bond"). The Performance Bond shall be available to insure the faithful performance by Grantee of provisions of this chapter and the Franchise Agreement, other than with respect to construction, upgrading, or rebuilding projects covered herein, but including the obligation to remove the above ground portion of the Cable System upon revocation or termination of the Franchise as set forth herein. The Performance Bond shall be maintained at \$50,000 during the entire term of the Franchise Agreement, regardless of withdrawals which may be made under this section. In the event of a default by Grantee in any of its obligations under the Agreement, or the chapter other than completion of construction, which default is not cured within thirty (30) days after Notice by Grantor to Grantee of such default (or such longer time as is necessary to cure, so long as Grantee commences to cure within thirty (30) days and diligently pursues cure), Grantor may levy on the Performance Bond upon notifying Grantee of the amount of such charge. Grantor may also levy upon the Performance Bond for sums due for penalties under Sections 921.15(e) and 921.22(g) herein. The rights reserved to Grantor with respect to the Performance Bond are in addition to all other rights of Grantor, at law or in equity.

**921.22 RECORDS REQUIRED AND GRANTOR'S RIGHT TO INSPECT.**

(a) Grantee shall at all times maintain and make available to Grantor for inspection upon written request within twenty (20) consecutive days:

(1) A full, current, and complete set of plans, records and "as-built" maps showing the location of the Cable Television System installed or in use in the City, exclusive of Subscriber service drops and equipment provided in Subscribers' homes, to be updated periodically as warranted; (Grantee shall furnish two (2) complete sets of as built maps to Grantor applicable to the Franchise area upon completion of the same which shall be available for public inspection during normal business hours at an office of Grantor.)

- (2) A list of Grantee's services, rates and Channel lineups;
- (3) Subject to applicable law regarding Subscriber privacy, all Subscriber records and information; provided, however, that nothing shall prohibit Grantee from destroying certain Subscriber records in the ordinary course of business in accordance with Grantee's document management program;
- (4) A statistical compilation of service calls provided by appropriate Grantee category including a description of the problem, the action taken and whether the matter has been resolved; and other material Subscriber billing complaints. Nothing herein shall require Grantee to maintain statistics regarding Subscriber inquiries or questions concerning the Grantee's billing practices, programming or policies or procedures; and
- (5) An accurate and comprehensive file of any and all material complaints regarding the Cable System in a manner consistent with the privacy rights of Subscribers and the Grantee's actions in response to those complaints. Complaints shall not include routine billing inquiries, disagreements with Grantee's policies or practices or inquiries regarding individual programs or program services carried or not carried by Grantee's Cable System.

(b) Grantee shall also make available to Grantor, upon written request, the following information:

- (1) A revenue statement, certified by any officer of the Grantee;
- (2) A summary of the previous year's activities in development of the Cable System, including, but not limited to, services begun or discontinued during the reporting year, Channel changes, the number of Subscribers added or terminated for each class of service, all construction activity and total homes passed.
- (3) A list of Grantee's operating managers, officers, members of its boards of directors, and other principals of the Grantee;
- (4) A list of stockholders or other equity investors holding five percent (5%) or more of the voting interest in the Grantee and its parent, subsidiary and affiliated corporations and other entities, if any, unless the parent is a public corporation whose annual reports are publicly available, in which case a copy of the annual report shall be submitted; and
- (5) An executive summary which shall include information concerning customer complaints for the proceeding twelve (12) months. Such reports shall be maintained by category. Complaints shall not include routine billing inquiries or disagreements with Grantee's policies or practices or inquiries regarding individual programs or program services carried or not carried by Grantee's Cable System.

Grantee shall make available to Grantor upon written request the records described in subsections (1), (3), and (4) no more than one time per year. Records described in subsection (2) and (5) shall be made available to Grantor within thirty (30) days of the date of the request.

(c) Upon at least five (5) business days written notice, and during Normal Business Hours, or, in case of emergency, upon demand [provided the information is readily available and if not readily available, within two (2) weeks time], Grantee shall permit examination by any duly authorized representative of the Grantor, of any and all Franchise property and facilities, together with any appurtenant property and facilities of Grantee situated within or without the City, and any and all records relating to the Franchise, provided they are necessary to enable the Grantor to carry out its regulatory responsibilities under local, State and federal law, this chapter and the Franchise Agreement. Such records include, all books, records, maps, plans, revenue statements, service complaint logs, performance test results, records of requests for service, and other like materials of Grantee. Grantee shall have the right to be present at any such examination.

(d) If any of the records described in this chapter or the Franchise Agreement, or any documents provided to or made available to Grantor by Grantee, are proprietary in nature or must be kept confidential by State, federal or local law, upon written request by Grantee, such information requested or obtained during an inspection shall be marked and treated as confidential, making it available only to those Persons who must have access to perform their duties on behalf of the Grantor, including but not limited to the Mayor's Office, Department of Finance and the Law Department. To the extent that any Federal requirement for privacy applies to the information to be submitted, said law shall control.

(e) Copies of all petitions, applications, communications and reports submitted by Grantee, or on behalf of or relating to Grantee, to the Federal Communications Commission, Securities and Exchange Commission, or any other federal or State regulatory commission or agency having jurisdiction with respect to any matters affecting the Cable System authorized pursuant to this chapter and any Franchise shall be made available to the Grantor upon written request within two (2) weeks. Copies of responses from the regulatory agencies to Grantee shall likewise be furnished to the City upon request within two (2) weeks. Upon written request by Grantor, Grantee shall make available to Grantor copies of all pleadings, applications, notifications, communications and documents of any kind, submitted by the Grantee or its parent corporation(s) to, as well as copies of all decisions, correspondence to and from Grantee or its parent corporation(s) and actions by, any federal, state or local courts, other regulatory agencies and other government bodies relating to the operations of Grantees Cable System within the Franchise Area. Grantee shall submit such documents to the Grantor no later than thirty (30) days after written request.

(f) One (1) copy of all reports and records mentioned in this chapter or in the Franchise Agreement shall be made available upon written request to the Grantor within the time limits mentioned therein. All reports and records required under this chapter or the Franchise Agreement shall be furnished at the sole expense of Grantee, except as otherwise provided in this chapter or the Franchise Agreement.

(g) The failure of Grantee to report or make information available upon written request as specified and within the time limits stated in this chapter or the Franchise Agreement shall following notice and an opportunity to cure shall subject Grantee to a penalty of fifty dollars (\$50.00) per day. Grantee's liability to Grantor for such amount in such cases shall not be subject to but in addition to the remedies of Section 921.26 herein for Franchise violations.

**921.23 ANNUAL REPORTS.**

Grantee shall submit a written end of the year report to Grantor with respect to the preceding calendar year within one hundred twenty (120) days of the end of that year containing a summary of the previous year's activities in the development of the Cable System, including, but not limited to, services begun or discontinued during the reporting year and improvements to the System.

**921.24 PUBLIC, EDUCATIONAL, OR GOVERNMENT (PEG) ACCESS CHANNELS AND FACILITIES; FEE IN LIEU.**

(a) Following completion of the System upgrade/rebuild, unless otherwise provided in a Franchise Agreement, Grantee shall make available to each of its Subscribers who receive at least Basic Cable Service, reception of at least three (3) Public, Educational, and Government (PEG) Access Channels to be allocated among non-commercial public, educational, and government usage as determined by Grantor. The Channels designated for access shall be provided by Grantee as a part of the Basic Cable Service. The access Channels shall be made available by Grantee for use by the City and its citizens in accordance with the rules and procedures established by the City or any lawfully designated person, group, organization or agency authorized by the City for that purpose.

(b) To the extent that any access Channel is not being used for the provision of public, educational or governmental access purposes, Grantee shall be permitted to use such Channel(s) for the provision of other services subject to any reasonable rules established by the City regarding such use. Grantee's permitted use of any access Channel made pursuant to this section shall cease within ninety (90) days of Grantee's receipt of notice from City that such Channel will again be used for public, educational or governmental access.

(c) Notwithstanding the above, Grantee may accommodate a request from the City for additional access capacity made pursuant to Section 921.24(b) by combining more than one access use on a Channel provided that:

- (1) It is technically and economically feasible for Grantee to do so;
- (2) The scheduling needs of all users of the Channel can be reasonably accommodated; and
- (3) The access entity which requires use of the alternate Channel must be able to access the alternate Channel from the site where it normally originates playback of its programs and may not be required to transport tapes to a remote site for playback.

(d) However, Grantee shall provide an additional PEG Channel for non-commercial public, educational, or government broadcasts in the event that the three (3) PEG channels provided under this Section are then fully utilized. In no event shall Grantee be required to provide in excess of one additional access Channel and only after the Cable System offers at least 150 channels. As used in this section "fully utilized" mean utilized for original, nonduplicative programming not less than eight (8) hours per day, five (5) days per week, for a period of ten (10) consecutive weeks. The additional PEG Channel provided under this Section shall be reviewed annually by Grantee. Upon such annual review, the additional PEG Channel will continue to be made available to Grantor to the extent that the PEG Channels provided under this Agreement (including the additional PEG Channel(s)) are at least seventy percent (70%) fully utilized. To the extent that such capacity requirement is not met, the additional PEG Channel shall be terminated subject to reactivation at the request of Grantor upon demonstration by Grantor that the three original and any other additional PEG Channels provided under this Section are fully utilized, and to the annual review provided herein.

(e) The Grantee shall provide free cable transmission facilities and free modulation equipment to introduce programming onto these transmission facilities by linking the below listed origination points with the head end, or through hubs to the head end, for distribution to all Subscribers generally and for distribution to discrete audiences via scrambled signals and decoders at the origination points for such Channels. The Grantee is responsible for all head end equipment essential to playback of programming, including operation and maintenance and studio and equipment acceptable to Grantor for PEG access use, and all equipment necessary to perform those functions.

(f) In lieu of providing the equipment and facilities described in paragraph (e) above, Grantee shall pay a fee as specified in the Franchise Agreement not to exceed one percent (1%) of adjusted Gross Revenues (Gross Revenues above net of Franchise Fee) to be placed by Grantor in a special fund for such PEG access purposes.

(g) The Grantor shall be responsible for the operation of Access Facilities and equipment. In this regard Grantor may delegate from time to time its responsibilities to others who then shall assume the responsibility of Grantor in accordance with the Grantor's delegation. The Grantor will develop reasonable rules regarding use of Access Facilities and equipment and determine the needs of the City for public, educational and governmental access services. In this regard, the Grantor shall regularly coordinate with Grantee for the purpose of developing and maintaining reasonable Access Facilities.

(h) Costs of providing said facilities shall not be a credit against payment of the Franchise Fee imposed under the Franchise Agreement.  
(Ord. 1997-58. Passed 5-15-97.)

(i) The Mayor may waive the requirements of subsections (e) and (f) herein for any Cable Provider. (Ord. 1997-225. Passed 11-6-97.)

#### **921.25 INSTITUTIONAL NETWORK; INTERCONNECTION WITH OTHER GOVERNMENT NETWORKS; FEE IN LIEU.**

(a) Grantee shall, at its cost, make available at identified locations inside exterior walls of the public facilities to be set forth in an exhibit to the Franchise Agreement ("Sites"); two (2) fibers, in each case with not less than fifty (50) feet of additional fiber extending inside the facility ("Institutional Network"). Use of the fibers provided by Grantee pursuant to this Section will be limited to video and data transmissions between and among the facilities described in this Section. Grantee shall provide all interior and exterior wiring necessary for Grantor to utilize the Institutional Network at its cost. There shall be no cost to Grantor or the other designated sites for the use and maintenance of the Institutional Network. In addition to City, Grantee may provide telecommunications services to residential and other non-residential Subscribers on such terms and at such rates as Grantee may in its discretion determine.

(b) If Grantor or any of the sites have presently existing networks, service on these networks will not be unreasonably interrupted during the build of the new System.

(c) A Franchise Agreement may provide that in lieu of providing an Institutional Network, a Grantee shall pay to the City at least fifty percent (50%) of the costs incurred by the competing Grantee providing an Institutional Network to City.

**921.26 FRANCHISE VIOLATION.**

(a) If the Grantor believes that the Grantee has failed to perform any material obligation under this Agreement or has failed to perform in a timely manner, the Grantor may make written demand on the Grantee that it remedy the alleged failure. Grantor may order the Grantee to correct or remedy the failure or breach within the time and in the manner and on the reasonable terms and conditions that the Grantor may establish. If Grantor is pursuing an alleged failure by Grantee to perform hereunder, Grantor shall follow any procedures set forth in the Agreement or this chapter. Any demand that Grantee remedy an alleged failure shall be made in writing.

(b) Penalties may be assessed by Grantor for purposes including and not limited to, the following:

- (1) Failure of Grantee to pay Grantor sums due under the terms of the Franchise.
- (2) Reimbursement of costs borne by the Grantor to collect Franchise violations not corrected by Grantee, after thirty (30) days written notice.
- (3) Monetary remedies, penalties, or damages assessed against Grantee due to default or breach of material Franchise requirements.

(c) Upon notice and agreement of the Grantor and the Grantee, an informal meeting may be held at any time to review any alleged failure.

(d) If Grantee fails to perform in a timely manner any material obligation required by this chapter or a Franchise Agreement granted hereunder, following notice from Grantor and a reasonable Opportunity to Cure such nonperformance, Grantor may act to remedy such violation in accordance with the following procedures:

Grantor shall notify Grantee of any alleged material violation in writing by Personal delivery or registered or certified mail, and demand correction within a reasonable time, which shall not be less than ten (10) days in the case of the failure of the Grantee to pay any sum or other amount due the Grantor under this chapter or the Grantee's Franchise and thirty (30) days in all other cases or a greater amount of time for those alleged failures which Grantor and Grantee agree cannot be reasonably remedied within thirty (30) days. If Grantee fails either to correct the violation within the time prescribed or to commence correction of the violation within the time prescribed and thereafter diligently pursue correction of such violation, the Grantor shall then give written notice of not less than twenty (20) days of a public hearing to be held before the Council. Said notice shall specify the violations alleged to have occurred. At the public hearing, the Council shall hear and consider relevant evidence and thereafter render findings and its decision. In the event that the Council finds that a material violation exists and that Grantee has not corrected the same in a satisfactory manner or has not diligently commenced correction of such violation after notice thereof from Grantor and is not diligently proceeding to fully remedy such violation, the Council may revoke the Franchise or impose any other penalty permitted by the chapter or Franchise Agreement and any other legal or equitable remedy available under the Franchise Agreement or applicable law.

(e) The Grantor may assess, after providing written notice to Grantee and allowing 30 days or such other amount of time as is agreed between Grantee and Grantor to cure, against the Grantee monetary damages up to five hundred dollars (\$500.00) per calendar day or per incident for material System upgrade/construction delays, and up to two hundred dollars (\$200.00) per calendar day or per incident for any other material breaches; provided that all violations of a similar nature occurring at the same time shall be considered as one (1) incident. The Grantor may have recourse to the performance bond for payment of such damages, including the fifty dollar (\$50.00) per day penalty for failure to respond to Grantor's request for information due Grantor within the time limits as specified in this chapter or the Franchise Agreement pursuant to Section 921.22(g) and the \$100.00 per day amounts for failure to timely pay the Franchise Fee pursuant to Section 921.15(e), which shall not be subject to but in addition to the remedies set forth in this Section. The assessment of any monetary damages shall constitute a waiver by the Grantor of any other right or remedy it may have under the Franchise or applicable law including its right to recover from the Grantee any additional damages, losses, costs and expenses, including attorney's and/or consultant fees that are incurred by the Grantor by reason of the breach of the Franchise Agreement that resulted in the assessment of such monetary damages.

(f) In addition to revocation in accordance with other provisions of the Franchise Agreement, Grantor may revoke the Franchise Agreement and rescind all rights and privileges associated with the Franchise Agreement in the following circumstances, each of which represents a material breach of the Franchise Agreement:

- (1) If, after following the procedures set forth in Section 921.26(d), the Grantee fails to perform any of its material obligations under the Franchise Agreement or under any ordinances, documents or other terms and provisions entered into by and between the Grantor and the Grantee;
- (2) If, after following the procedures set forth in Section 921.26(d), there is a pattern of material noncompliance with the Grantor's material consumer service standards;
- (3) If the Grantor willfully and deliberately fails for more than twenty-four (24) hours to provide continuous and uninterrupted Cable Service for the entire Franchise area other than as a result of force majeure as defined under Section 921.27 herein;
- (4) If the Grantee practices any fraud or deceit upon Grantor or any Subscriber;  
or
- (5) If the Grantee becomes insolvent, or if there is an order for relief in favor of the Grantee in a bankruptcy proceeding.

Written notice of intent to consider revocation under this subsection shall be served on the Grantee at least thirty (30) days prior to the date of revocation. The Grantor shall hear any persons interested in the revocation and within ninety (90) days after the hearing shall determine whether to revoke the Franchise and declare that the Franchise is revoked and the performance bond forfeited; or upon a determination that the breach at issue is capable of being cured by the Grantee, direct the Grantee to take appropriate remedial action within the time and in the manner and under the terms and conditions that the Grantor determines are reasonable under the circumstances. Nothing herein shall constitute a waiver of Grantee's right to appeal a decision of Grantor under this Section to a court of competent jurisdiction.

**921.27 FORCE MAJEURE; GRANTEE'S INABILITY TO PERFORM.**

In the event Grantee's performance of any of the terms, conditions or obligations required by this chapter or a Franchise granted hereunder is prevented by a cause or event not within Grantee's control, such inability to perform shall be deemed excused and no penalties or sanctions shall be imposed as a result thereof. For the purpose of this Section, causes or events not within the control of Grantee shall include without limitation acts of God, strikes, sabotage, riots or civil disturbances, restraints imposed by order of a governmental agency or court, failure or loss of utilities, explosions, acts of public enemies, and natural disasters such as floods, earthquakes, landslides, and fires. In the event that any such delay in performance or failure to perform affects only part of Grantee's capacity to perform, Grantee shall perform to the maximum extent it is able to do so and shall take all steps within its power to correct such cause(s). In correcting such cause(s), Grantee shall take all reasonable steps to do so in as expeditious a manner as possible. Grantee shall notify Grantor in writing of the occurrence of an event covered by this Section within five (5) business days of the date upon which Grantee learns of its occurrence.

**921.28 ABANDONMENT OR REMOVAL OF FRANCHISE PROPERTY.**

(a) In the event that the use of any property of Grantee within the Franchise Area or a portion thereof is discontinued for a continuous period of twelve (12) months, Grantee shall be deemed to have abandoned that Franchise property.

(b) Grantor, upon such terms as Grantor may impose, may give Grantee permission to abandon, without removing, any System facility or equipment laid, directly constructed, operated or maintained under the Franchise. Unless such permission is granted or unless otherwise provided in this chapter, the Grantee shall remove all abandoned above-ground facilities and equipment upon receipt of written notice from Grantor and shall restore any affected Street to its former state at the time such facilities and equipment were installed, so as not to impair its usefulness. In removing its plant, structures and equipment, Grantee shall refill, at its own expense, any excavation that shall be made by it and shall leave all public ways and places in as good condition as that prevailing prior to such removal without materially interfering with any electrical or telephone cable or other utility wires, poles or attachments. Grantor shall have the right to inspect and approve the condition of the public ways, public places, cables, wires, attachments and poles prior to and after removal. The liability, indemnity and insurance provisions of this chapter and any performance bond provided in the Franchise shall continue in full force and effect during the period of removal and until full compliance by Grantee with the terms and conditions of this Section.

(c) Upon abandonment of any Franchise property in place, the Grantee, if required by the Grantor, shall submit to Grantor an instrument, satisfactory in form to the Grantor, transferring to the Grantor the ownership of the Franchise property abandoned.

(d) At the expiration of the term for which the Franchise is granted, or upon its revocation or earlier expiration, as provided for herein, in any such case without renewal, extension or transfer, the Grantor shall have the right to require Grantee to remove, at its own expense, all above-ground portions of the Cable Television System from all Streets and public ways within the City within a reasonable period of time, which shall not be less than one hundred eighty (180) days. The indemnification and insurance provisions and the performance bond shall remain in full force and effect during the period of removal.



(e) If the Grantee fails to complete any removal required by this Section, or any other work required by law within the time limits set by Grantor after the date of written notice and to the satisfaction of the Grantor, the Grantor may cause the work to be done and:

- (1) The Grantee shall reimburse the Grantor for the reasonable costs incurred within thirty (30) days after receipt of an itemized list of the costs; or
- (2) The Grantor may recover the costs through the performance bond provided by the Grantee.

The Grantor may also seek legal and equitable relief to enforce the provisions of this Section.

(f) Notwithstanding anything to the contrary set forth in this chapter, the Grantee may abandon any underground Franchise property in place so long as it does not materially interfere with the use of the Street or public rights-of-way in which such property is located or with the use thereof by any public utility or other cable Franchisee.

#### **921.29 EXTENDED OPERATION AND CONTINUITY OF SERVICES.**

Upon either expiration without renewal or revocation of the Franchise, the Grantor shall have the discretion to permit and/or require Grantee to continue to operate the Cable Television System for an extended period of time not to exceed six (6) months from the date of such expiration or revocation, unless extended by mutual agreement of Grantor and Grantee. During such extension, Grantee shall continue to operate the System under the terms and conditions of this chapter and the Franchise and to provide the regular Subscriber service and any and all of the services that may be provided at that time.

#### **921.30 RECEIVERSHIP AND FORECLOSURE.**

(a) Subject to applicable bankruptcy law, a Franchise granted hereunder shall, at the option of Grantor, cease and terminate one hundred twenty (120) days after appointment of a receiver or receivers, or trustee or trustees, to take over and conduct the business of Grantee, whether in a receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless:

- (1) Such receivers or trustees shall have, within one hundred (120) days after their election or appointment, fully complied with all the terms and provisions of this chapter and the Franchise granted pursuant hereto, and the receivership or trustees within said one hundred twenty (120) days shall have remedied all the faults under the Franchise or provided a plan for the remedy of such faults which is satisfactory to the Grantor;
- (2) Such receivers or trustees shall, within said one hundred twenty (120) days, execute an agreement duly approved by the court having jurisdiction in the premises, whereby such receivers or trustees assume and agree to be bound by each and every term, provision and limitation of the Franchise granted.

(b) In the case of a foreclosure or other involuntary or judicial sale of the Franchise property, or any material part thereof, Grantor may serve notice of termination upon Grantee and the successful bidder at such sale, in which event the Franchise granted and all rights and privileges of the Grantee hereunder shall cease and terminate thirty (30) days after service of such notice, unless:

- (1) Grantor shall have approved the transfer of the Franchise, as and in the manner that this chapter provides; and
- (2) Such successful bidder shall have covenanted and agreed with Grantor to assume and be bound by all terms and conditions of the Franchise.

#### **921.31 RIGHTS RESERVED TO GRANTOR.**

(a) In addition to any rights specifically reserved to the Grantor by this chapter, the Grantor reserves to itself every right and power which is required to be reserved by a provision of any ordinance or under the Franchise.

(b) The Grantor shall have the right to waive any obligation of Grantee under the Franchise or any provision of the Franchise, except those required by federal or State regulation, if the Grantor determines:

- (1) That it is in the public interest to do so, and
- (2) That the enforcement of such provision will impose an undue hardship on the Grantee or the Subscribers.

To be effective, such waiver shall be evidenced by a statement in writing signed by the Mayor. Waiver of any provision in one instance shall not be deemed a waiver of such provision subsequent to such instance nor be deemed a waiver of any other provision of the Franchise unless the statement so recites.

#### **921.32 RIGHTS OF INDIVIDUALS.**

(a) Grantee shall not deny service, deny access, or otherwise discriminate against potential or existing Subscribers on the basis of race, color, religion, national origin, age, disability, gender or sexual preference. Grantee shall comply at all times with all other applicable federal, State and local laws and regulations relating to nondiscrimination.

(b) Grantee shall adhere to the applicable equal employment opportunity requirements of Federal, State and local regulations.

(c) Neither Grantee, nor any Person, agency, or entity shall, without the Subscriber's consent, tap or arrange for the tapping, of any cable line, signal input device, or Subscriber outlet or receiver for any purpose except routine maintenance of the System, detection of unauthorized service, polling with audience participation, or audience viewing surveys to support advertising research regarding viewers where individual viewing behavior cannot be identified.

(d) In the conduct of providing its services or in pursuit of any collateral commercial enterprise resulting therefrom, Grantee shall take reasonable steps to prevent the invasion of a Subscriber's right of privacy as defined in the Cable Act or other personal rights through the use of the System as such rights are delineated or defined by applicable law. Grantee shall not, without lawful court order or other applicable valid legal authority, utilize the System's interactive two-way equipment or capability for unauthorized personal surveillance of any Subscriber.

(e) Grantee shall not sell or otherwise make available to unaffiliated third parties (including Grantor) lists of the names and addresses of Subscribers, or any list which identifies, by name, Subscriber's viewing habits, or personalized data pertaining to a Subscriber's use of any of Franchisee's services without the express written consent of the Subscriber to which the personalized data pertains. For the purposes of this subsection, "personalized data" shall mean the name and address of an individual Subscriber directly associated with data obtained on his or her use of specific services provided by or through Grantee. Nothing herein shall be construed to prevent, as a normal incident of commercial enterprise, the sale or availability of "non-personalized" or "aggregated data" which is not "personalized data" as defined herein.

(f) No cable line, wire amplifier, converter, or other piece of equipment owned by Grantee shall be installed by Grantee in the Subscriber's premises, other than in appropriate easements, without first securing any required consent. If a Subscriber requests service, permission to install upon Subscriber's property shall be presumed. Where a property owner or his/her predecessor has granted an easement, including a public utility easement or a servitude to another, and the servitude by its terms contemplates a use such as Grantee's intended use, Grantee shall not be required to obtain the written permission of the owner for the Installation of cable television equipment.

#### **921.33 TIME LIMITS STRICTLY CONSTRUED.**

Whenever this Agreement sets forth a time for any material act to be performed by the Grantee, such time shall be deemed to be of the essence, and any failure of the Grantee to perform within the allotted time may be considered, and sufficient grounds for the Grantor to invoke any relevant penalty provision of this Agreement in accordance with the provisions of Section 921.26 herein or Sections 921.15(e) or 921.22(g) as applicable.

#### **921.34 DELEGATION OF AUTHORITY.**

(a) The Grantor shall be vested, to the extent permitted by law, with the power and right to regulate reasonably the exercise of the privileges permitted by this Agreement in the public interest, or to delegate that power and right, or any part thereof, to any agent, City officer or employee or created board, authority or commission; provided, however, that the creation of any such board, commission or authority, or the delegation of such authority to any City employee or agent, shall not relieve the Grantor, acting through its City Council, of its ultimate authority and responsibility as Grantor hereunder and that all final determinations required hereunder to be made by the Grantor shall be made by the City Council as provided by law.

(b) Grantee shall not be relieved of its obligations to comply, promptly and completely, with any provision of this Franchise by any failure of the Grantor to promptly enforce compliance with this Franchise.

#### **921.35 CONFLICTS.**

In the event of a conflict between any provision of this chapter and Franchise Agreement entered into pursuant to it, the provisions of this chapter shall control, except as may be specifically otherwise provided in the Franchise Agreement.

**921.36 SEVERABILITY.**

If any provision of this chapter or any Franchise Agreement executed subject to it is held by any court or by any federal, State or county agency of competent jurisdiction to be invalid as conflicting with any federal or State law, rule or regulation now or hereafter in effect, or is held by such court or agency to be modified in any way in order to conform to the requirements of any such law, rule or regulation, such provision shall be considered a separate, distinct, and independent part of this chapter, and such holding shall not affect the validity and enforceability of all other provisions hereof, all of which shall remain in full force and effect for the term of any Franchise Agreement, or renewal or renewals thereof. In the event of such determination by a court of competent jurisdiction, the Grantor or Grantee shall have the option to amend the parts of the Franchise Agreement related to the affected sections. In the event that such law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed, so that the provision hereof which had been held invalid or modified is no longer in conflict with such law, rule or regulation, said provision shall thereupon return to full force and effect and shall thereafter be binding on Grantor and Grantee, provided that Grantor shall give Grantee sixty (60) days written notice of such change before requiring compliance with said provision or such longer period of time as may be reasonably required for Grantee to comply with such provision.

**TITLE FIVE - Other Public Services**

- Chap. 941. City Parks.
- Chap. 943. Community House.
- Chap. 944. Tri-City Park.
- Chap. 945. Recreation Center.
- Chap. 947. Cemeteries.
- Chap. 949. Trees, Weeds and Grass.
- Chap. 951. Garbage and Rubbish Collection.
- Chap. 953. Municipal Swimming Pool.
- Chap. 955. Humus/Wood Chip Sales.
- Chap. 957. Ambulance and Paramedic Fees.

**CHAPTER 941  
City Parks**

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|---|-----------------------------------|
| <b>941.01 Rules and regulations.</b>          | <b>941.04 Posting of rules.</b>   |
| <b>941.02 Hours; exception by permit.</b>     | <b>941.05 Violation of rules.</b> |
| <b>941.03 Baseball and recreational area.</b> | <b>941.99 Penalty.</b>            |

**CROSS REFERENCES**


- Municipal parks - see Ohio R.C. 755.01 et seq.
- Power to regulate vehicle speed in parks - see Ohio R.C. 4511.07
- Recreation Commission - see ADM. Ch. 151
- Animals at large - see GEN. OFF. 505.01
- Selling in parks - see GEN. OFF. 521.08




**941.01 RULES AND REGULATIONS.**

The following rules and regulations are hereby established for the purpose of controlling the use of Clague Memorial Park, and other City parks and their facilities within the City as may be applicable, and governing the conduct of members of the public within the Park:

- (a) No alcoholic beverage of any kind, type or description shall be brought within the Park or consumed upon Park premises, except as may be in compliance with a permit issued by the Ohio Department of Liquor Control.
- (b) Vehicles, while within the Park, shall be parked only in areas established and designated as parking areas and at no other place or location.

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- (c) No person shall operate a vehicle upon any roadway, drive or other portion of Park property at a speed in excess of ten miles per hour.
  - (d) No vehicle shall be operated on, over or upon any portion of Park property other than roadways, drives, parking areas or other portions of Park property which have been established and designated as available for the use of vehicles.
  - (e) In leaving the Park property, no operator of a vehicle shall drive such vehicle into or upon any public street without first bringing such vehicle to a complete stop and determining that entrance upon the public street can be made with safety.
  - (f) Stop signs for the purpose of controlling vehicle traffic shall be erected within the Park at each point where any Park road or driveway connects to a public road.
  - (g) No person shall willfully, intentionally or negligently destroy or damage any portion of the Park or any public property, signs, structures or equipment located therein.
  - (h) No person shall take or remove any ornamental trees or bushes from the grounds within the Park or from their location therein.
  - (i) All rubbish, bottles, boxes or other similar items shall be deposited in containers provided for that purpose within the Park.
  - (j) No camping shall be permitted or carried on at any place within the Park, except on special permit granted by Council in specific instances to bona fide and established organizations carrying on such programs primarily for young persons for the purpose of fostering and encouraging healthful outdoor sports and exercise. Such permit shall state the terms and conditions of such camping activities.
  - (k) No person shall engage in archery or shoot any bow or arrow or similar implement within the confines of the Park nor shall any arrow or similar article be so discharged as to come to rest at any point within the Park.
  - (l) No swimming shall be permitted in any of the lakes, streams or other bodies of water located within the Park, except within the confines of the Westlake Swimming Pool.
  - (m) No person shall wear any bathing suit, bathing trunks or other similar bathing attire within the Park or appear in the Park while clad in such articles of apparel except during the periods of time when the Swimming Pool is in operation.
  - (n) No person shall play or practice at the game of golf within the Park.
  - (o) No person shall fly or otherwise manipulate or operate any mechanical airplane or similar device within the Park.
  - (p) No person shall fish within any of the lakes or streams or other bodies of water within the Park except between the hours of 8:00 a.m. and 11:30 p.m.

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- (q) Campfires or cooking fires shall be permitted only in such areas as may be designated, established and posted for such purpose. No such fire shall at any time be left unattended and such fire shall be completely extinguished before the person using the same shall leave the area.
  - (r) All dogs brought into the Park shall be at all times kept confined either in the vehicle of the owner or harborer of such dog or upon an adequate leash and shall at all times be kept under the control of the person bringing the same within the Park.
  - (s) No person shall appear within the Park except while clad in proper clothing and no person shall appear within the Park clad in such manner as to cause or permit the lewd or indecent exposure of any portion of his body.  
(Ord. 1982-151. Passed 12-16-82.)
  - (t) No boating or canoeing shall be permitted in any lake or pond within any City park unless the activity is permitted as part of a City Recreation Program.  
(Ord. 2002-4. Passed 2-21-02.)

#### **941.02 HOURS; EXCEPTION BY PERMIT.**

No person other than an employee of the City shall be allowed to remain within the limits of Clague Memorial Park and any other City park between the hours of one-half hour after sunset or 9:00 p.m., whichever is later, and 5:00 a.m. However, the provisions of this section shall not apply to a person holding a permit for the use of the Community House located in Clague Memorial Park or any person involved in any events sponsored by, directed by or under the control of the Recreation Commission. All persons occupying the Community House or any portion of the Park pursuant to such a permit or in an activity controlled by the Recreation Commission shall leave the Park on or before the time stated in the permit or within fifteen minutes after the conclusion of the activity under the control of the Recreation Commission.  
(Ord. 1982-151. Passed 12-16-82.)

#### **941.03 BASEBALL AND RECREATIONAL AREA.**

That portion of Clague Memorial Park which lies east of the existing creek running through the Park in a generally northerly and southerly direction shall be used only for purposes of baseball or similar sports activities and for such recreational purposes as may be approved by Council.  
(Ord. 1982-151. Passed 12-16-82.)

#### **941.04 POSTING OF RULES.**

The rules herein established or the substantial substance of them shall be posted as signs at such locations within Clague Memorial Park and any other City park as shall be determined by the Park Committee of Council.  
(Ord. 1982-151. Passed 12-16-82.)

#### **941.05 VIOLATIONS OF RULES.**

Whoever violates any of such rules or regulations or fails or refuses to comply therewith shall be subject to immediate ejection and removal from the property of the Park by any duly authorized police officer or Park policeman.  
(Ord. 1982-151. Passed 12-16-82.)

**941.99 PENALTY.**

Whoever violates any provision of Section 941.02 is guilty of a minor misdemeanor and shall be fined not more than one hundred dollars (\$100.00). Whoever violates any other provision of this chapter shall be fined not less than twenty-five dollars (\$25.00), nor more than fifty dollars (\$50.00).

(Ord. 1982-151. Passed 12-16-82.)



**CHAPTER 943**  
**Community House**

<b>943.01 Rules and regulations established.</b>	<b>943.04 Permit cancellations; rebates.</b>
<b>943.02 Definitions.</b>	<b>943.05 Prohibited conduct; hours.</b>
<b>943.03 Permit application; damage bond; giving false information.</b>	<b>943.06 Rental fees.</b>
	<b>943.99 Penalty.</b>

**CROSS REFERENCES**

Power to permit use of public buildings - see Ohio R.C. 721.23  
 Disturbing the peace; disorderly conduct - see GEN. OFF. 509.03  
 Property destruction - see GEN. OFF. Ch. 541  
 Clague Park - see S.U. & P.S. Ch. 941

**943.01 RULES AND REGULATIONS ESTABLISHED.**

The following rules and regulations are hereby established for the use and occupancy of the Community House situated in Clague Memorial Park.  
 (Ord. 1965-16. Passed 3-18-65.)

**943.02 DEFINITIONS.**

(a) "Resident organizations" means all organizations, clubs, associations or groups of persons the majority of whose members are residents of the City of Westlake.

(b) "Nonresident organizations" means all organizations, clubs, associations or groups of persons the majority of whose members are not residents of the City of Westlake.  
 (Ord. 1965-16. Passed 3-18-65.)

**943.03 PERMIT APPLICATION; DAMAGE BOND; GIVING FALSE INFORMATION.**

(a) Every person, resident organization or nonresident organization desiring to use and occupy the Community House situated in Clague Memorial Park ("Clague Cabin") shall complete an application and submit it to the Recreation Director of the City for a permit for such use and occupancy. Such application shall indicate the date on which the Community House is desired, the name of the organization desiring the use thereof and whether or not such organization is a resident or nonresident organization. The person in such organization who shall be responsible for the proper use of the Community House and who will reimburse the City for any damage to the Community House or the equipment therein during the use of the Community House, shall execute an indemnification agreement with respect thereto, which indemnity agreement shall comprise a part of such application. A property damage bond shall be posted with the Director of Recreation in the amount as determined under Section 943.06 herein. The application may request additional information from the applicant which is determined necessary by the Director for the adequate protection of the City.  
 (Ord. 2003-223. Passed 11-20-03.)

(b) No applicant for such permit shall knowingly submit false information or statement in the permit application.

(c) The permit issued pursuant to the provisions hereof entitled the permittee to the exclusive use of the Community House during the time specified in the permit therefor, but such permit shall not be deemed to grant exclusive use of other facilities of Clague Park. (Ord. 1965-16. Passed 3-18-65.)

**943.04 PERMIT CANCELLATIONS; REBATES.**

Upon ascertaining that information submitted on the permit application is false or untrue, the City shall cancel the permit, if issued, and retain the amount paid to the Director of Recreation a liquidated damages. The permit issued pursuant to the aforesaid application may not be cancelled by the permittee except for good cause. The Director shall be the sole judge as to whether or not the permittee has disclosed or shown good cause for such cancellation and his decision with respect thereto shall be final. In the event the permit is cancelled, at the request of the permittee, the City shall not refund any of the funds paid to the Director unless the City is able to rent the Community House for the time for which such permit was issued. In such event the City will refund only ninety percent of the funds paid to the Director. (Ord. 1965-16. Passed 3-18-65.)

**943.05 PROHIBITED CONDUCT; HOURS.**

(a) Rowdyism, rude, noisy, rough, disorderly or boisterous conduct, and the use of alcoholic beverages in or about the Community House are prohibited and shall be cause for cancellation of the permit.

(b) Furniture and equipment contained in the Community House shall not be removed therefrom.

(c) The Community House shall not be used or occupied between the hours of 12:00 midnight and 6:00 a.m. (Ord. 1965-16. Passed 3-18-65.)

**943.06 RENTAL FEES.**

(a) Reasonable fees and charges for use of the Community House shall be fixed by the Recreation Commission with Council's approval as established in Section 151.07(d). The Mayor or his designee shall have the flexibility and authority to modify the fee structure established to address special events or circumstances on a case by case basis. All modifications shall be in keeping with the spirit and intent of the established fees.

(b) The Director of Recreation shall, by March 1, 2005 and yearly thereafter, prepare and submit a report to the Recreation Commission and Council summarizing the number, type and financial impact of the fee modifications granted during the previous calendar year. Such report may also include suggested changes in the basic fee schedules. (Ord. 2003-223. Passed 11-20-03.)

**943.99 PENALTY.**

Whoever violates Section 943.03(b) is guilty of a minor misdemeanor.

**CHAPTER 944  
Tri-City Park**

**944.01 Rules and regulations.                      944.99 Penalty.**

**CROSS REFERENCES**

Recreation Commission - see ADM. Ch. 151

Vandalism - see GEN. OFF. Ch. 541

**944.01 RULES AND REGULATIONS.**

The following rules and regulations for the Tri-City Park are hereby established, encompassing the following:

- (a) Hours. Tri-City Park shall be open from sunrise until 10:00 p.m.
- (b) Motor Vehicles.
  - (1) Motor vehicles shall be operated on vehicular roadways and shall obey all traffic control devices. Where no such roadway exists, all four-wheel vehicles will park in designated marked areas and all two- and three-wheel motor vehicles, motorized bicycles, all-purpose vehicles, mini-bikes, all-terrain bikes and snowmobiles will park in such designated marked areas as posted. No such vehicle shall park in areas where prohibited by posted "No Parking" signs, or by order of law enforcement officers and/or Public Safety-Service Directors.
  - (2) No motor vehicle shall be operated on any grassy areas or in any wooded areas; nor be operated off any such roadways; nor shall any operator be in physical control of any motor vehicle off of the roadway or designated parking areas.
  - (3) No motor vehicle shall be parked after 10:00 p.m. at the Tri-City Park.
- (c) Animals.
  - (1) Dogs or any domestic animals must be on a leash and shall not run at large in Tri-City Park.
  - (2) Dogs and other domestic animals are prohibited from children's playground area.
  - (3) The owner or person in charge of any dog or domestic animal which defecates on park property shall remove all feces and dispose of same in a sanitary manner.

- (d) Alcohol. The possession or consumption of any intoxicating liquor or beer is prohibited.
- (e) Golf. Golf, the practice of golf and the swinging of golf clubs are prohibited in the park.
- (f) Enforcement. Law enforcement officers or other duly appointed officials of the cities of Westlake, Rocky River and Fairview Park shall enforce the provisions of this section.  
(Ord. 1986-34. Passed 4-3-86.)

**944.99 PENALTY.**

- (a) Whoever violates any provision of this chapter is guilty of a minor misdemeanor.
- (b) Parking tickets may be waived by payment of ten dollars (\$10.00) within forty-eight hours and twelve dollars (\$12.00) after that time.  
(Ord. 1979-116. Passed 6-7-79.)

**CHAPTER 945**  
**Recreation Center**

**945.01 Use of alcoholic beverages.**

CROSS REFERENCES

Liquor control - see GEN. OFF. Ch. 529

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**945.01 USE OF ALCOHOLIC BEVERAGES.**

The following rules are hereby established for the purpose of controlling the use of alcoholic beverages at the Recreation Center:

- (a) All individuals, corporations or groups desiring to serve alcoholic beverages at functions held at the Westlake Recreation Center shall make application to the Director of Recreation and comply with the following requirements:
  - (1) Two off-duty Westlake Police Officers shall be hired for the duration of the function as security guards. The applicant shall make arrangements to hire said security guards and pay said security guards directly.
  - (2) The applicant shall obtain a one million dollar (\$1,000,000) liquor liability policy or a one million dollar (\$1,000,000) host policy. The City shall be named as an additional insured and a certificate of insurance shall be submitted with the application prior to the event date.
  - (3) The applicant shall obtain a permit from the Ohio Department of Liquor Control and be in compliance with such permit.
- (b) The Director of Recreation or his designee shall determine the areas in the Recreation Center where functions serving alcoholic beverages may be held.
- (c) The Mayor or his designee has the authority to deny an application to serve alcoholic beverages in order to protect the health and safety of the users of the Recreation Center.
- (d) The Mayor or his designee may waive or modify the requirements set forth in subsections (a)(1) and (2) hereof, upon good cause and at his/her sole discretion. (Ord. 1998-260. Passed 12-3-98.)



**CHAPTER 947**  
Cemeteries

EDITOR'S NOTE: Ohio R.C. 759.11 provides that the Director of Public Service may make bylaws and regulations not inconsistent with City ordinances and the Constitution and laws of the State of Ohio for the management and protection of the burial grounds and cemeteries under his control and for the burial of the dead therein. Such bylaws and regulations shall have the same validity as City ordinances. The Director of Public Service, pursuant to Ohio R.C. 759.09, shall take possession and charge and have the entire management, control and regulation of public burial grounds and cemeteries located in or belonging to the City, subject to its ordinances. The Director shall determine the size and price of cemetery lots, the terms of payment therefor and shall give to each purchaser a receipt showing the amount paid and a pertinent description of the lot sold, as provided by Ohio R.C. 759.13.

**947.01 Authority of Service Director.      947.02 Investment Fund and Maintenance Fund.**

**CROSS REFERENCES**

Burial may be prohibited - see Ohio R.C. 759.05  
 Management and control - see Ohio R.C. 759.09  
 Union cemeteries - see Ohio R.C. 759.27 et seq.  
 Burial permits - see Ohio R.C. 3705.24 et seq.  
 Burial of indigent persons - see Ohio R.C. 5113.15

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**947.01 AUTHORITY OF SERVICE DIRECTOR.**

All the administrative functions and duties concerning cemeteries within the City shall be performed by the Director of Public Service pursuant to Ohio R.C. Chapter 759. (Ord. 1964-99. Passed 9-17-64.)

**947.02 INVESTMENT FUND AND MAINTENANCE FUND.**

(a) There is hereby created a fund for the permanent maintenance and upkeep of the Municipal cemeteries, which fund shall be designated the "Cemetery Maintenance Fund." The Fund shall contain moneys appropriated by Council from the General Fund and interest earned and accumulated from the Cemetery Investment Fund.

(b) There is hereby created a fund for moneys received from the sale of Municipal cemetery lots, which fund shall be designated the Cemetery Investment Fund. The Fund shall contain deposits received from the sale of lots in the Municipal cemeteries together with other funds and other moneys accepted in accordance with Ohio R.C. 759.12. The Director of Finance is hereby authorized to invest such funds and keep them invested in accordance with Ohio R.C. 759.15.

(Ord. 1978-4. Passed 1-5-78.)



**CHAPTER 949**  
**Trees, Weeds and Grass**

- |               |  |               |   |
|---------------|--|---------------|---|
| <b>949.01</b> | <b>Definitions.</b>  | <b>949.12</b> | <b>Noninterference with Service Director.</b>                   |
| <b>949.02</b> | <b>Control of trees invested in Service Director.</b>              | <b>949.13</b> | <b>Trimming and removal of trees, shrubbery.</b>                |
| <b>949.03</b> | <b>Permit required; contents.</b>                                  | <b>949.14</b> | <b>Tree disease inspection; notice; removal; cost recovery.</b> |
| <b>949.04</b> | <b>Placing deleterious substances near trees prohibited.</b>       | <b>949.15</b> | <b>State or federal disease examination.</b>                    |
| <b>949.05</b> | <b>Placing stone or concrete on ground adjacent to tree trunk.</b> | <b>949.16</b> | <b>Removal of weeds and grass by owner occupant; notice.</b>    |
| <b>949.06</b> | <b>Care of trees during building operation.</b>                    | <b>949.17</b> | <b>Enforcement by Service Director; work by City.</b>           |
| <b>949.07</b> | <b>Moving of trees; deposit or bond required.</b>                  | <b>949.18</b> | <b>Assessment of costs.</b>                                     |
| <b>949.08</b> | <b>Trimming of trees on public place.</b>                          | <b>949.19</b> | <b>Tree surgeon's license.</b>                                  |
| <b>949.09</b> | <b>Trimming of trees on private property.</b>                      | <b>949.20</b> | <b>Notice of repeat offenders.</b>                              |
| <b>949.10</b> | <b>Certain trees prohibited.</b>                                   | <b>949.99</b> | <b>Penalty.</b>   |
| <b>949.11</b> | <b>Preservation and removal of trees on public property.</b>       |               |   |

**CROSS REFERENCES**

- Destruction of trees - see GEN. OFF. 541.06  
 Damage or removal of park trees - see S.U. & P.S. 941.01  
 Tree regulations - see PLAN. & PLAT. Ch. 1137

**949.01 DEFINITIONS.**

As used in this chapter:

- (a) "Public place" means any public street, highway, park or any other property owned or held by the City within the boundaries of the City.
- (b) "Tree" means any tree.
- (c) "Arboriculture" or "tree preservation" means and includes the treating, spraying, pruning, maintaining and any other care or work intended for the strengthening of trees, and the removal and prevention of tree pests, blights and diseases of any and all kinds.  
(Ord. 1960-34. Passed 6-16-60.)

**949.02 CONTROL OF TREES INVESTED IN SERVICE DIRECTOR.**

The Director of Public Service is hereby given full jurisdiction, authority, control, supervision and direction of all trees which now or which may hereafter exist upon any public place in the City, and over all trees which exist upon any private property in the City when, in his opinion, such trees constitute a menace to the City. The Director is also given full jurisdiction, authority and control in connection with the issuing of permits hereinafter provided for. In the exercise of any or all of the powers granted herein, the Director shall have the authority, as he may determine, to delegate all or such part of his powers and duties with respect to supervision and control of trees to his subordinates and assistants in the employ of the City. (Ord. 1960-34. Passed 6-16-60.)

**949.03 PERMIT REQUIRED; CONTENTS.**

No person shall plant, remove, destroy, cut, prune, fertilize, treat, break, climb, injure or spray any tree existing on any public place in the City or authorize or procure any person to do so or remove or tamper with any device placed for the protection of any such tree or attach any rope, wire, chain, sign or other device to such tree or authorize or cause the same to be done, without having first obtained a written permit from the Director of Public Service to do so.

- (a) Such permit for the planting of any tree to be located on any public place in the City shall designate the species of tree to be planted, the required spacing and required minimum planting size, as specified in the Master Street Tree Plan for the City.
- (b) A five dollar (\$5.00) permit fee per tree shall be paid when requesting a permit to plant a tree in any public place in the City.
- (c) Funds generated from the fee as stated in subsection (a) above will be placed in a special fund to be used for replacing damaged, dying or dead trees on tree lawns previously sanctioned by permit.
- (d) If a permit was not obtained for the planting of an existing tree, replacement or removal shall be at the tree owner's expense.
- (e) Trees planted without a permit, dead, diseased or hazardous trees or those prohibited by Section 949.10, may be removed by the Urban Forestry Manager. Before removal, the property owner shall be notified in writing that said tree is in violation of Section 949.03. The property owner shall have fifteen days to remove said tree. After the expiration of the fifteen days, the City may enter upon the premises and remove the tree.

(Ord. 1994-37. Passed 6-2-94; Ord. 2003-167. Passed 7-17-03.)

**949.04 PLACING DELETERIOUS SUBSTANCES NEAR TREES PROHIBITED.**

No person shall permit any natural or artificial gas, salt, brine, water, oil or liquid dye or any other substances deleterious to trees, to come in contact with the soil surrounding the roots of any tree upon any public place in the City in such a manner as to kill, injure, deface, destroy or affect the growth of such tree. (Ord. 1960-34. Passed 6-16-60.)

**949.05 PLACING STONE OR CONCRETE ON GROUND ADJACENT TO TREE TRUNK.**

No person shall place or maintain upon the ground in any public place any stone, concrete, brick or other impervious material or substance in such a manner as may obstruct the free access of air and water to the roots of any tree upon any public place in the City, without first having obtained a written permit from the Director of Public Service. Unless otherwise provided for, there shall be maintained about the base of the trunk of each tree at least nine square feet of open ground for a tree three inches in diameter, and for every two inches of increase of such diameter, there shall be an increase of at least one square foot of open ground.

(Ord. 1960-34. Passed 6-16-60.)

**949.06 CARE OF TREES DURING BUILDING OPERATION.**

No person in charge of or responsible for the erection, alteration or removal of any building or structure in the City shall permit any tree upon any public place in the vicinity of such operation to stand without a good and sufficient guard or protection as shall prevent injury, damage or defacement to such tree arising out of, in connection with or by reason of such operation. The quality of guard or protection shall be determined by the Director of Public Service.

(Ord. 1960-34. Passed 6-16-60.)

**949.07 MOVING OF TREES; DEPOSIT OR BOND REQUIRED.**

All moving of trees upon any public place in the City made necessary by the moving of a building or structure or any other private enterprise shall be done under the supervision of and by written permit from the Director of Public Service and at the expense of the applicant or person seeking the removal of such tree. As one of the conditions to obtaining such permit, the applicant shall deposit with the City such sum in cash as the Director may determine and specify to cover all of the cost of moving and replacing such tree, if the conditions of such permission require the replacement thereof. However, in lieu of such cash deposit the Director may, in his discretion, accept a good and sufficient bond in like amount conditioned upon the payment of all the cost of such moving and replacing.

(Ord. 1960-34. Passed 6-16-60.)

**949.08 TRIMMING OF TREES ON PUBLIC PLACE.**

The Director of Public Service is hereby directed to keep all trees standing upon any public place in the City trimmed so that the branches of such trees projecting over any public sidewalk, private driveway or into any public street beyond the curb line shall not conflict with the public welfare.

(Ord. 1960-34. Passed 6-16-60.)

**949.09 TRIMMING OF TREES ON PRIVATE PROPERTY.**

All trees standing upon private property in the City which have branches projecting into public highways or public places shall, under the supervision of the Director of Public Service, be kept trimmed by the owner or occupant of such private property to such an extent that the lowest branches of such trees shall not come within nine feet of the ground where they overhang any public sidewalk, public place or public highway.

(Ord. 1960-34. Passed 6-16-60.)

**949.10 CERTAIN TREES PROHIBITED.**

No silver maple, poplar, box elder, basswood, willow or honey locust shall be permitted upon any tree lawn in the City and the Director of Public Service is hereby authorized and directed to cause all such trees as are now existing to be removed as practicability allows.

Any silver maple, honey locust, poplar, basswood, box elder or willow upon private property in the City in such close proximity to any public place in the City as will permit the roots of such tree to penetrate through or under the surface of any public place in the City, is hereby declared to be a public nuisance, and shall be abated, as practicability allows, by the Director.

(Ord. 1960-34. Passed 6-16-60.)

**949.11 PRESERVATION AND REMOVAL OF TREES ON PUBLIC PROPERTY.**

The Director of Public Service shall have the right and duty to trim any tree existing on any place in the City so as to insure the public safety or to preserve the function or beauty of such public place. He shall further have the right to remove any such tree or any part thereof which is in an unsafe condition or which by reason of its location or nature is injurious or detrimental to other public improvements in the City, or is infected with any injury, fungus, insect or other pest or disease which cannot otherwise be controlled.

(Ord. 1960-34. Passed 6-16-60.)

**949.12 NONINTERFERENCE WITH SERVICE DIRECTOR.**

No person shall interfere with the Director of Public Service or his subordinates or assistants while the Director or his assistants are engaged in the carrying out of the provisions of this chapter or the doing of any of the work ordered by the Director to be done hereunder.

(Ord. 1960-34. Passed 6-16-60.)

**949.13 TRIMMING AND REMOVAL OF TREES, SHRUBBERY.**

(a) The owner of every lot or parcel of land upon which a tree, plant or shrubbery stands with any part thereof upon or overhanging a public street or sidewalk, shall conform to the regulations provided herein; otherwise, the City shall cause such trees to be trimmed or cut down and removed in accordance with such regulations, and assess the cost thereof against the owner of such lot or parcel of land, in addition to the penalty provided in subsection (b) hereof.

- (1) The owner shall trim or cause to be trimmed the tree, plant or shrubbery so that a clear height as required by Section 949.09 is maintained between the lowest branches of the same and the street or sidewalk.
- (2) The owner shall trim or remove, as the case may require, every dead, decayed or broken tree, plant or shrubbery, or part thereof, so that the same shall not fall to the street or sidewalk.
- (3) The owner shall cut down and remove any tree, plant or shrubbery, or any part thereof, as may be necessary to provide a clear and unobstructed view of traffic from all directions at any street intersection, or to abate any nuisance necessary to protect life, limb or property of persons, drivers of vehicles or pedestrians using the street or sidewalk.

(1958 Code Sec. 575.01)

(b) Whoever violates this section is guilty of a minor misdemeanor. A separate offense shall be deemed committed each day during or on which a violation occurs or continu

**949.14 TREE DISEASE INSPECTION; NOTICE; REMOVAL; COST RECOVERY.**

The Director of Public Service and the Urban Forestry Manager are hereby authorized to inspect any tree within the City reported or supposed to be infected with Dutch elm disease, the virus disease phloem necrosis (commonly known as elm blight), or oak wilt. If upon such inspection, the Director or the Urban Forestry Manager determines that such tree is infected with a contagious disease, he shall, if the tree is in any public street, ground or place within the City, immediately remove same in such manner as to prevent as fully as possible the spread of such disease. If such tree is located on private property, and so located that it may by the means of spreading disease to trees upon any other properties, the Director or the Urban Forestry Manager shall immediately serve written notice upon the owner of such property that such tree is so infected and that the same shall be removed and disposed of under the supervision of and in the manner as directed by the Director and/or the Urban Forestry Manager within five days of the service of such notice. If such owner cannot be found, a copy of the notice shall be posted upon the infected tree. If the tree is not removed and disposed of within five days after the service or posting of the notice, the Director or the Urban Forestry Manager shall cause the tree to be so removed and disposed of. The cost of the removal and disposal shall be reported to Council and to the owner of the property if he can be found. If the cost is not paid within thirty days of such report, the owner of the property shall be liable to the City for the cost of such removal and disposal, to be recovered in a civil action before any court having jurisdiction and/or to be placed upon the owner's tax duplicate by appropriate action of Council.  
(Ord. 1993-143. Passed 7-15-93; Ord. 2003-167. Passed 7-17-03.)

**949.15 STATE OR FEDERAL DISEASE EXAMINATION.**

If, after inspection of any tree, it is impossible to determine with certainty the existence of either of the diseases referred to in Section 949.14, then specimens from the tree shall be forwarded for complete examination, diagnosis and report to either the Ohio Agricultural Research and Development Center at Wooster, Ohio, or the United States Department of Agriculture Station at Beltsville, Maryland. The action of the Director of Public Service under this chapter shall await and be determined by the report received from such examination and diagnosis.  
(Ord. 1955-112. Passed 8-18-55.)

**949.16 REMOVAL OF WEEDS AND GRASS BY OWNER OR OCCUPANT; NOTICE.**

(a) The owner, occupant or person having the charge or management of any lot or parcel of land situated within the City, whether the same is improved or unimproved, vacant or occupied, within five days written notice to do so served upon him in conformity with Ohio R.C. 731.52, shall cut or destroy or cause to be cut or destroyed any noxious or poisonous weeds or vines growing upon any such lot or parcel of land, and prevent the same from blooming, going to seed or exceeding a height of eighteen inches. The owner or occupant, as described above, shall also cut or remove or cause to be cut or removed any grass in lawns, or other ground cover, growing upon any such lot or parcel of land that grows in excess of six inches in height, as set forth in Chapter 1381.07(b)(1)B.  
(Ord. 2001-142. Passed 9-6-01.)

(b) The term "noxious weeds", as used in this section, includes all Russian, Canadian or common thistle, wild lettuce, wild mustard, wild parsley, ragweed, milkweed and ironweed.  
(Ord. 3087. Passed 10-1-42.)

(c) Whoever violates any of the provisions of this section is guilty of a minor misdemeanor. A separate offense shall be deemed committed each day during or on which a violation occurs or continues.

**949.17 ENFORCEMENT BY SERVICE DIRECTOR; WORK BY CITY.**

In the event the owner does not trim or remove any tree, plant or shrubbery, or any part thereof, or any weeds, in accordance with the provisions of this chapter, the Director of Public Service is hereby authorized and it shall be his duty to enforce the provisions of this chapter, to cause such tree, plant or shrubbery, or part thereof, to be trimmed or removed, and to cut and remove all weeds.

(1958 Code Sec. 575.05)

**949.18 ASSESSMENT OF COSTS.**

Whenever any tree, plant, or shrubbery, or part thereof, or any weeds or grass is growing in any street, public place or upon private property contiguous to a street, sidewalk, or public place, and is trimmed or removed by the City, then, after the work is done, the City shall give five days notice by regular mail to the owner of such lot or parcel of land, at his last known address, to pay the cost of trimming or removal. The notice shall be accompanied by a statement of the amount of cost incurred. The Finance Director shall thereafter assess the cost of such abatement to the property owner and take all necessary steps to assure payment of such cost. If the same is not paid within thirty (30) days of the mailing of such notice, then the Finance Director shall be authorized and directed to levy the assessment, and certify the total cost of such abatement to the Clerk of Council. The Clerk of Council is hereby authorized and directed to certify the total cost of such abatement as provided by the Director of Finance, together with a proper description of the lands, to the County Auditor who shall place the costs upon the tax duplicate. The cost of such abatement shall be a lien upon the lands described from and after the date of entry. The cost so assessed shall be collected by the County Auditor as other taxes and returned to the City in accordance with the procedures established by the County Auditor. Such remedy is in addition to the penalties provided in Sections 949.13(b) and 949.16.

(Ord. 2001-142. Passed 9-6-01.)

**949.19 TREE SURGEON'S LICENSE.**

(a) No person shall solicit or engage in any kind of forestry or tree surgery work, for hire within the City without first obtaining from the Director of Inspections, a written license to do such work in accordance with Chapter 1321 of the Building Code.

In addition to the requirements of Chapter 1321, the license shall be issued upon the presentation of evidence satisfactory to the Director of Inspections and the Urban Forestry Manager that the applicant is qualified and has the experience and training to engage in forestry and tree surgery work for hire.

(b) Tree surgeons who have been licensed to do forestry or tree surgery work within the City shall, upon completion of such work, remove, grind and chip all branches, twigs, limbs or other debris that is not used or designated as cordwood by the owner or the person for whom the work is being furnished.

(c) The Director of Inspections is authorized to revoke a license at any time upon proof satisfactory to him that the licensee is violating any of the provisions of this section or is engaged in practicing fraud upon any person for whom he is performing forestry or tree surgery for hire within the City. (Ord. 1994-193. Passed 9-15-94; Ord. 2003-167. Passed 7-17-03.)

(d) Whoever violates or fails to comply with any of the provisions of this section is guilty of a minor misdemeanor. A separate offense shall be deemed committed each day during or on which a violation or noncompliance occurs or continues.  
(Ord. 1994-193. Passed 9-15-94.)

**949.20 NOTICE OF REPEAT OFFENDERS.**

In the event of a second citation for a violation of any provision of this chapter within six (6) calendar months of a previous citation, the notice requirement under this chapter shall be twenty-four (24) hours of correction, as opposed to the five (5) days required under Section 949.18. (Ord. 2001-142. Passed 9-6-01.)

**949.99 PENALTY.**

Whoever violates any of the provisions of this chapter for which no other penalty is provided is guilty of a misdemeanor of the fourth degree. Each day's continued violation shall constitute a separate offense.





**CHAPTER 951**  
**Garbage and Rubbish Collection**

**951.01 Hours of collection and transportation.**

**951.02 Rules and regulations.**

**951.99 Penalty.**

**CROSS REFERENCES**

Collection and disposal - see Ohio R.C. 715.43, 717.01

Disposal and transportation upon public ways - see Ohio R.C. 3767.20 et seq.

Loads dropping, leaking or shifting - see TRAF. 339.06

Deposit of garbage or refuse - see GEN. OFF. 521.04

**951.01 HOURS OF COLLECTION AND TRANSPORTATION.**

No person owning or driving a vehicle hauling solid waste shall cause the collection, transportation or transfer of such waste other than between the hours of 7:30 a.m. and 7:00 p.m. No collection, transportation or transfer shall occur on Saturdays after 4:00 p.m. or on Sundays. Application for exceptions to this provision may be made to the Director of Public Service, on a form provided by the Director. Such exceptions shall be granted only where the applicant is able to demonstrate circumstances of great practical difficulty in the collection and transportation of solid waste in areas where there is heavy daytime vehicular and pedestrian traffic and a concentration of commercial activity.  
(Ord. 2002-116. Passed 9-5-02.)

**951.02 RULES AND REGULATIONS.**

The Director of Public Service may adopt rules and regulations regarding the collection of garbage and rubbish as he deems necessary, which shall be in written form and kept on file in the Department of Public Service.  
(Ord. 2002-116. Passed 9-5-02.)

**951.99 PENALTY.**

(a) Whoever violates any provision of this chapter for which no other penalty is provided shall be fined one hundred dollars (\$100.00). Each day's violation shall constitute a separate offense.

(b) Whoever violates any provision of Section 951.01 shall be fined two hundred fifty dollars (\$250.00) for the first offense, five hundred dollars (\$500.00) for the second offense and one thousand dollars (\$1,000.00) for the third and all subsequent offenses within a one year period. Each day's violation shall constitute a separate offense.  
(Ord. 2002-116. Passed 9-5-02.)

**CHAPTER 953**  
**Municipal Swimming Pool**

**953.01 Pool Manager.**

CROSS REFERENCES  
Swimming pools - see BLDG. Ch. 1365

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**953.01 POOL MANAGER.**

(a) The Mayor is hereby authorized to hire a Pool Manager for the Municipal Swimming Pool.

(b) The Pool Manager is a part-time seasonal position, exempt from the classified service under civil service and shall serve at the pleasure of the Mayor.

(c) The Pool Manager shall:

- (1) Be responsible for the operation of the pool and all functions pertaining to its management;
- (2) Prepare preseason plans for pool opening, including:
  - A. Operating schedules and cost estimates.
  - B. Equipment and supply procurement.
  - C. Manning and personnel.
  - D. Preparations of pool and service facilities;
- (3) Interview applicants for pool staff and auxiliary personnel and make recommendations to the Mayor regarding hiring;
- (4) Prepare publicity releases in connection with pool activities;
- (5) Maintain records of personnel;
- (6) Maintain records required by state and local health and safety authorities;
- (7) Maintain financial records connected with pool operations as prescribed by Council;
- (8) Supervise activities of staff personnel;
- (9) Schedule personnel and assign duties;
- (10) Evaluate employee performance; evaluate guards for water skills; discipline employees to the point of discharge;

- (11) Maintain and promote good public relations, handle inquiries and problems arising from pool operations; interpret and apply administrative policies;
- (12) Assist in formulating policies, preparing operating budgets and planning;
- (13) Report to the Mayor and Council regarding pool operations, programs and progress;
- (14) Conduct staff meetings and in-service training programs;
- (15) Be responsible for closing the pool at the end of the season;
- (16) Keep current with new trends and techniques in pool operations and evaluate their application to the Municipal Swimming Pool;
- (17) Do such other and further duties as directed by the Mayor.  
(Ord. 1972-97. Passed 5-18-72.)

**CHAPTER 955  
Humus/Wood Chip Sales**

**955.01 Authority.****955.02 Fee schedule.****955.01 AUTHORITY.**

The Director of Public Service is hereby authorized to provide for sale the products generated by the City of Westlake Composting Facility in accordance with the fee schedule established herein and shall have the authority to limit the quantity sold to any one account per month or per season based on products available on site.  
(Ord. 2008-66. Passed 4-3-08.)

**955.02 FEE SCHEDULE.**

The fee schedule for the sale of products generated by the City of Westlake Composting Facility shall be as follows:

**LEAF HUMUS/WOOD CHIPS**

<u>Pick-up at Compost Site</u>	<u>Delivered - Bay Village - Westlake - Residents Only</u>	
<u>Quantity</u>	<u>Leaf Humus</u>	<u>Delivery Fee</u>
1 - bushel	\$ 1.00	N/A
1 - 30 gallon container	2.00	N/A
100 cubic yards or less	10.00/yard	\$20.00 per load per stop
101 cubic yards or greater	7.00/yard screened 5.00/yard unscreened	N/A
<u>Quantity</u>	<u>Wood Chips</u>	<u>Delivery Fee</u>
Per cubic yard	7.00	\$20.00 per load per stop

(Ord. 2008-66. Passed 4-3-08.)



**CHAPTER 957**  
**Ambulance and Paramedic Fees**

**957.01** Establishment of fee.  
**957.02** Creation of Fund.

**957.03** Collection/delinquent accounts.  
**947.04** Definitions.

**957.01 ESTABLISHMENT OF FEE.**

Each person and/or applicable third party receiving services by the City's emergency medical service for basic life support, advanced life support, Level I and II, and transport to a medical facility by the City shall be charged a utilization fee as determined by the Mayor on an annual basis and approved by Council during the yearly budgetary process. A current fee schedule shall be kept on file with the Fire Chief and the Director of Finance.  
(Ord. 2006-177. Passed 5-3-07.)

**957.02 CREATION OF FUND.**

The revenues derived from the collection for emergency medical services billed either by the City or a collection service shall be placed into the EMS Revenue Fund or other fund which may be established by Council and said revenues shall be used solely for the purchase or maintenance of emergency medical equipment and supplies, purchase of emergency Fire/EMS vehicles, Fire/EMS training, or other uses which facilitate or are related to the delivery of emergency Fire/EMS services including administrative costs.  
(Ord. 2006-177. Passed 5-3-07.)

**957.03 COLLECTION/DELINQUENT ACCOUNTS.**

- (a) Insurance information shall be provided to EMS personnel at the time of service.
- (b) The Director of Finance shall be responsible for collection and billing procedures.
  - (1) The City shall waive all co-payments and/or deductibles otherwise owed by residents, City employees or income tax payers employed within the City who have medical insurance, Medicare or Medicare HMO coverage as a source of health insurance. The Director of Finance may waive the fee or any part thereof for residents who are otherwise unable to pay and have no other source for the payment thereof. In these cases, the taxes paid to the City in the form of income tax/real property tax will be considered as full payment of the co-pay, deductible or non-insured transport.

- (2) The Director of Finance may waive the fee or any part thereof if it is determined the non-resident person receiving the emergency medical service is indigent. Persons seeking a waiver based on indigency shall have the responsibility to show proof of income. Indigent persons being billed shall have a household income below the poverty level as defined by the U.S. Department of Labor. Household income as used herein means all income received by all persons in his/her household for the past twelve months. Income shall include but not be limited to: all wages, Social Security benefits, veterans' benefits, interest, State unemployment benefits, alimony, Workers' Compensation benefits, strike benefits, public assistance benefits and relief payments.

(c) The City may engage private contractors to collect all EMS fees on behalf of the Director of Finance.

(d) The fees herein shall be in addition to any other charges payable for such service, including but not limited to, any tax levied, all or part of which pays any portion of the cost of EMS services, and/or any charges for services rendered by others.

(e) When Emergency Medical Services are provided by the City of Westlake personnel to persons outside the City limits pursuant to a mutual aid agreement or understanding with another municipality, the City shall bill such person in accordance with the practices of the requesting municipality. When Emergency Medical Services are provided within the City of Westlake by personnel of another municipality pursuant to a mutual aid understanding or agreement, such person shall be billed in accordance with this section.  
(Ord. 2006-177. Passed 5-3-07.)

#### **957.04 DEFINITIONS.**

As used in this section, the following words shall have the meaning respectfully ascribed to them:

- (a) "Basic Life Support" shall mean any pre-hospital non-invasive intervention by personnel certified at the level of EMT-Basic as described in Ohio R.C. Chapter 4765. Such interventions include, but are not limited to, non-invasive methods of airway control, oxygen administration, bleeding control, splinting of fractures, treatment of shock, patient assessment and recording vital signs.
- (b) "Advanced Life Support Level I and Level II" shall mean any pre-hospital intervention by personnel certified at the level of EMT-Paramedic as described in Ohio R.C. Chapter 4765. Such interventions include but are not limited to cardiac monitoring and interpretation of cardiac rhythms, external cardiac pacing, cardioversion, endotracheal intubation, intravenous cannulation, intraosseous infusion, emergency needle thoracotomy, and administration of medications.
- (c) "Transport" means to carry or convey a person by publicly owned and/or operated motor vehicle being used in response to a call for emergency medical assistance from one location to another.  
(Ord. 2006-177. Passed 5-3-07.)