

Record of Ordinances

Ordinance No.: 2008-_____

Passed: _____, 2008

ORDINANCE FOR RIGHT OF WAY CONTROL

WHEREAS Ohio Revised Code Section 4939 provides definitions and authorization for municipalities to enact a right of way control ordinance and to establish fees for use of right of ways; and,

WHEREAS the Village of West Lafayette, Ohio has determined that control of occupancy or use within the municipal right of ways is in the public interest;

NOW THEREFORE BE IT ORDAINED by the Council of the Village of West Lafayette, State of Ohio as follows:

SECTION I. As used in ordinance # _____

(A) "Cable operator," "cable service," and franchise" have the same meanings as in the "Cable Communications Policy Act of 1984," 98 Stat. 2779, 47 U.S.C.A. 522.

(B) "Occupy or use" means, with respect to a public way, to place a tangible thing in a public way for any purpose, including, but not limited to, constructing, repairing, positioning, maintaining, or operation lines, poles, pipes, conduits, ducts, equipment, or other structures, appurtenances, or facilities necessary for the delivery of public utility services or any services provided by a cable operator.

(C) "Person" means any natural person, corporation, or partnership and also includes any governmental entity.

(D) "Public utility" means any company described in section 4905.03 of the Revised Code except in divisions (A)(3) and (10) of that section, which company also is a public utility as defined in section 4905.02 of the Revised Code; and includes any electric supplier as defined in section 4933.81 of the Revised Code.

(E) "Public way" means the surface of, and the space within, through, on, across, above, or below, any public street, public road, public highway, public freeway, public lane, public path, public alley, public court, public sidewalk, public boulevard, public parkway, public drive, and any other land dedicated or otherwise designated for a compatible public use, which, on or after the effective

date of this section, is owned or controlled by a municipal corporation. "Public way" excludes a private easement.

(F) "Public way fee" means a fee levied to recover the costs incurred by a municipal corporation and associated with the occupancy or use of a public way.

SECTION II. Prohibited conduct concerning public ways are as follows:

(A) No person shall occupy or use a public way except in accordance with law.

(B) In occupying or using a public way, no person shall unreasonably compromise the public health, safety, and welfare.

(C)(1) No person shall occupy or use a public way without first obtaining any requisite consent of the municipal corporation owning or controlling the public way.

(2) Except as otherwise provided in division (C)(5) of this section, a municipal corporation, not later than sixty days after the date of filing by a person of a completed request for consent, shall grant or deny its consent. A request form will be prepared by and available from the Public Administrator during his regular working hours.

(3) The Village of West Lafayette shall not unreasonably withhold or deny consent.

(4) If a request by a person for consent is denied, the Village of West Lafayette shall provide to the person in writing its reasons for denying the request and such information as the person may reasonably request to obtain consent.

(5) Except in the case of a public utility subject to the jurisdiction and recognized on the rolls of the public utilities commission or of a cable operator possessing a valid franchise awarded pursuant to the "Cable Communications Policy Act of 1984," 98 Stat. 2779, 47 U.S.C.a. 541, the Village of West Lafayette for good cause shown, may withhold, deny, or delay its consent to any person based upon the person's failure to possess the financial, technical, and managerial resources necessary to protect the public health, safety, and welfare.

(6) Initial consent for occupancy or use of a public way shall be conclusively presumed for all lines, poles, pipes, conduits, ducts, equipment, or other appurtenances, structures, or facilities of a public utility or cable operator that, on the effective date of this section, lawfully so occupy or use a public way. However, such presumed consent does not relieve the public utility or cable operator of compliance with any law related to the ongoing occupancy or use of a public way.

(7) Whenever such access is available occupancy and use shall be restricted to alleys in the rear of all lots.

SECTION III. The Village of West Lafayette, Ohio shall provide public utilities or cable operator with open, comparable, non-discriminatory, and competitively neutral access to its public ways subject to Section 2 (C)(7) herein.

SECTION IV. The authorization for this legislation is pursuant to Ohio Revised Code Section 4939 and Section 3 of Article XVIII of the Ohio Constitution.

SECTION V. The Village of West Lafayette, Ohio will charge a public way fee to recover costs incurred by the Village of West Lafayette and associated with occupancy or use of the public way in the amount of Two Hundred Fifty and 00/100 (\$250.00) Dollars per street or alley and the person granted the right to use the public way shall restore all right of ways to no less condition that existed prior to commencement of its occupancy or use at its expense. The public way shall not be blocked to public usage any longer than is reasonably required.

SECTION VI. The Village of West Lafayette, Ohio will create a special fund for deposit of public way fees as per Ohio Revised Code Section 5705.09, 5705.10, 5705.14, 5705.15, 5705.16, 5705.39, 5705.40, 5705.44, and 5705.45.

SECTION VII. At least forty-five (45) days prior to enactment of this ordinance the Public Administrator is authorized and directed to notify the Public Utilities Commission of Ohio that the ordinance is being considered by the Village of West Lafayette as per Ohio Revised Code, Section 4939.05 (E).

SECTION VIII. In the event the public utility does not accept the fees levied against it pursuant to this ordinance the public utility may file an appeal with the Public Utilities Commission of Ohio pursuant to Ohio Revised Code Section 4939.06 (A) (B) and (C).

SECTION IX. This ordinance shall be known as Section 412.05, Code of Ordinances for the Village of West Lafayette, Ohio..

SECTION X. That this Ordinance shall be and is hereby declared to be an emergency measure necessary to preserve the health, welfare, and safety of the citizens of the Village of West Lafayette, Ohio, and shall take effect immediately upon passage by Council.

PASSED IN COUNCIL THIS _____ day of _____, 2008

Jack L. Patterson, Mayor

ATTEST:

Lisa Derr, Fiscal Officer

APPROVED AS TO FORM:

William M. Owens, Solicitor for the Village of West Lafayette, Ohio