

First Reading January 18, 2022

Second Reading February 7, 2022

ORDINANCE 2022 - 01

**AN ORDINANCE TO AMEND CHAPTER 94,
ENTITLED UTILITIES OF THE
CODE OF THE TOWN OF OCEAN CITY, MARYLAND**

NOW, THEREFORE, BE IT ENACTED AND ORDAINED BY THE MAYOR AND CITY COUNCIL OF OCEAN CITY, THAT CHAPTER 94, ENTITLED UTILITIES, OF THE CODE OF THE TOWN OF OCEAN CITY, MARYLAND BE, AND IT IS HEREBY AMENDED BY AMENDING ARTICLE IV, UTILITY INSTALLATION, AS FOLLOWS:

CHAPTER 94 – UTILITIES

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ARTICLE IV. – UTILITY INSTALLATION

Sec. 94-81. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Communications Equipment means any and all equipment and installations of any kind owned by Utility or Utility's customers and under the control of Utility that are reasonably necessary and appropriate for the provision of Services including, but not limited to, any optical repeaters, converters, power amplifiers, radios, multiplexers, remote radioheads, antenna, aboveground and underground fiber optic and coaxial cable, conduit, wires, meters, pedestals, power switches, cabinets, enclosures, and control boxes, utility poles and supporting structures, whether new, existing or replacement structures, and whether referred to singly or collectively. This does not include Communications Equipment of an electric utility used solely in connection with the provision or management of electrical services or facilities. This definition does not preclude Communications Equipment attached to the strand between two utility poles.

Franchise means a legal authorization to do business and occupy public property, public rights-of-way, or public easements issued by the Mayor and City Council of Ocean City.

Services means any telecommunications service provided by means of the Communications Equipment installed by Utility in accordance with its Agreement, for which

Communications Equipment Utility holds a valid authorization issued by the State of Maryland, the Mayor and City Council of Ocean City, or (in the case of Wireless Telecommunications Facilities) the FCC; or the leasing, operation or maintenance of the same by Utility in accordance with its Utility Installation Agreement. Without limitation, the term Services does not include cable service, open video services or other video services, whether provided by Utility or its customers, absent a cable franchise from the Mayor and City Council of Ocean City.

Utility means electric, gas, phone, or Communications Equipment owned by a company authorized by the State of Maryland and/or the Mayor and City Council of Ocean City to install said equipment within the public rights-of-way or public easements.

Utility installation means the placement, replacement, or repair of any structures, equipment, or Communications Equipment within a public street, rights-of-way, or public easement of the Town of Ocean City that involves either:

- a) The disturbance of any pavement or sidewalk; or
- b) The placement of additional new structures or ground mounted equipment including poles, pedestals, transformers or Communications Equipment.

Utility installation does not mean the repair or replacement of existing ground mounted equipment if such Communications Equipment is already subject to a Utility Installation Agreement or Franchise, provided said repair or replacement does not disturb the pavement or sidewalk.

Utility installation does not mean the placement, replacement or repair of cables, wires or other equipment wholly installed above ground on existing poles if such Communications Equipment is already subject to a Utility Installation Agreement or Franchise.

Utility lines means the transmission facilities within the rights-of-way or public easement of certificated electric, gas, or telephone company as defined in the Annotated Code of Maryland, Public Utilities Article §1-101.

Utility Owner means the company that owns the utility equipment and the legally authorized employee or agent of the company authorized to act on behalf of said company.

Sec. 94-812. Application and agreement.

Any person or company proposing to install utility lines, Utility Installations or Communications Equipment within a public street, or other public rights-of-way, public easement, or on any public property or structure, must first apply for a permit and enter into a Utility Installation Agreement ("Agreement") on forms developed by the Department of Public Works. Any person or company proposing such an installation shall be either an electric company, gas company, or telephone company as defined in the Annotated Code of Maryland, Public Utilities Article §1-101 and authorized by the Maryland Public Service Commission to operate in the State of Maryland, the owner of a cable television franchise granted by the Mayor and City Council of Ocean City, or an entity that is authorized to do business in the State of Maryland and authorized by the Mayor and City Council of Ocean City to install Communications Equipment within the Town's rights-of-way or easements. Only utility companies that are Facility Owner-Members of Miss Utility of Delmarva will be approved to install underground equipment.

(Code 1999, § 94-81; Ord. No. 2017-15 , 10-2-2017)

Sec. 94-8283. General Requirements For Agreement.

Whether included in an Agreement or not, the following terms shall apply:

- (a) *Applicant and authorized representative.* The Utility Owner shall complete the Agreement. The Utility Owner will designate an authorized representative to complete on the utility installation Agreement summary form (UA) and/or required permit application, and that representative shall act as the point of contact for the project. The authorized representative may be an employee working for the Utility Owner, or a general contractor that is hired by the Utility Owner. The authorized representative may not be a subcontractor to the general contractor.
- (b) *Responsible party.* The Utility Owner is responsible for all actions performed by the authorized representative on behalf of the Utility Owner.
- (c) *Purpose.* The Agreement-UA is required for the installation of all privately-owned utilities utility lines, utility installations, or Communications Equipment installations within Town of Ocean City streets, rights-of-way and public easements. The Agreement UA provides guidelines- requirements to ensure public safety, preserve the aesthetic character of the Town of Ocean City, ensure zoning consistency, and protection of existing underground utilities.
- (d) *Utility owner.* The Utility Owner, its authorized representative and contractor, shall will comply with the terms and conditions of the Agreement UA for installation of utilities, which include, but are not limited to, underground pipe, conduit, and wire, and all new or replacement above-ground Communications Equipment. Methods involved with underground installation include, but are not limited to, horizontal direction drilling, open cut, and coring. The Utility Owner is responsible for contractors and subcontractors hired to perform any work associated with this agreement the installation of utilities.
- (e) *Ocean City standards.* All work must comply with Town of Ocean City laws, regulations, requirements, construction standards and policies. The Mayor and City Council of Ocean City may, from time to time, establish by resolution, related regulations, requirements, standards and policies.
- (f) *ADAA.* All utility installations shall meet ADAA construction standards.
- (g) *Start of work.* The Utility Owner is not permitted to start work until the Agreement UA is approved by Ocean City the Town, and all necessary permits have been issued. A copy of the fully executed Agreement UA and approved plans must be kept on-site at all times during construction. Utility owners are requested required to provide 48 hours' notice to the Department of pPublic wWorks construction prior to mobilizing onto the project site.
- (h) *Timing of work.* Work will be started and completed during the off-season, between October 1 and April 30, or as approved otherwise. Site work will not be completed on Town of Ocean City holidays or on any Friday. Emergency work will be performed as

necessary outside of normal working times and will be coordinated through the ~~public works~~ Department of Public Works.

- (ih) *Work hours.* Standard work hours will be between the hours of 6:30 a.m. and 4:30 p.m., Monday through Thursday. ~~For information on the Ocean City's noise policy,~~ Work shall be performed in accordance with see chapter 30, article V, division 4, Mechanical and Construction Noise.
- (ji) *Project schedule.* Utility ~~O~~wner ~~will~~ shall provide a project schedule, including planned start date, project duration, milestones, and planned completion date.
- (kj) *Miss Utility.* Per state law, the contractor performing the work is responsible for contacting Miss Utility to locate existing utilities prior to excavation activities, and shall comply with said law. The ~~U~~tility ~~O~~wner and its contractor will shall read and be familiar with the Miss Utility Maryland & Washington, D.C. Damage Prevention Guide.
- (lk) *Damage to Ocean City infrastructure.* Utility ~~O~~wner is responsible for all costs associated with damage to ~~Ocean City~~ Town infrastructure as a result of the ~~U~~tility ~~O~~wner's actions. Costs include, but are not limited to, ~~Ocean City~~ Town staff involved in repairs and/or restoration, and contractors hired by ~~Ocean City~~ the Town to complete repairs and/or restoration work, and reasonable legal fees incurred by ~~Ocean City~~ the Town.
- (ml) *Relocation of utilities.* Utility ~~O~~wner will bear the expense of removing or adjusting their abandoned facilities, including Communications Equipment or the proposed installation, should it be required by the Town of Ocean City at any time in the future.
- (nm) *Private party.* The ~~U~~tility ~~O~~wner is not permitted to disturb private property as a result of ~~this~~ the Agreement ~~UA~~. Any utilities proposed to be installed on private property will be coordinated separately with private property owners.
- (on) *Benchmarks and survey markers.* Any benchmarks or survey markers disturbed as a result of ~~this~~ the Agreement ~~UA~~ will be replaced in-kind by the ~~U~~tility ~~O~~wner. This survey work will be performed by a professional land surveyor licensed in the state.
- (po) *Indemnification.* Utility ~~O~~wner agrees to indemnify, defend, and hold harmless, the Town of Ocean City and its officials, officers, employees, and agents from any and all liability, loss, cost, damage, and expense, including reasonable attorney's fees and court costs, resulting from, arising out of, or incurred by reason of any claims, actions, or suits based upon or alleging bodily injury, including death, or property damage arising out of or resulting from the operations concerning the installation of utilities, or actions in connection therewith, under ~~the this~~ the Agreement ~~UA~~, whether such operations be by the ~~U~~tility ~~O~~wner or by any contractor or subcontractor, or, agent, etc. ~~p~~Performing work for the ~~U~~tility ~~O~~wner under ~~theis~~ the Agreement ~~UA~~. The ~~U~~tility ~~O~~wner will be responsible to the Town of Ocean City for its acts and omissions and those of its contractors, subcontractors, agents, employees and other persons performing any services under ~~theis~~ the Agreement ~~UA~~.
- (qp) *Performance and maintenance bond.* The ~~U~~tility ~~O~~wner will provide a performance and maintenance bond of \$100,000.00. The bond will be to guarantee proper restoration and replacement of streets, rights-of-way and easements in accordance with ~~this~~ the Agreement ~~UA~~ and this Code. The bond will also cover any damages occurring within

two years following completion of construction that are a result of actions of the Utility Owner. The bond will be provided in standard ~~A/A~~ AIA format. At the direction of the Director of Public Works, the bond may be increased if full performance costs are estimated to exceed \$100,000.00.

- (r) *Certificate of liability insurance.* Utility Owner shall submit a certificate of liability insurance in the amount of ~~\$24,000,000.00~~ aggregate and \$1,000,000 for each occurrence, naming the ~~Town of Ocean City and~~ the Mayor and City Council of Ocean City, and its officials, officers, employees, and agents, as a certificate holder and also as an additional insured on a primary and noncontributing basis.
- (s) *Emergency situations.* In the event of an emergency situation, Utility Owner and its contractor will take appropriate action to protect the public and will advise the Department of Public Works ~~construction~~ of the emergency. Utility Owner will still be required to submit the UA Agreement within two business days of the emergency.
- (t) *Validity.* The UA Agreement is valid for six months after the approval date.
- (u) *Project completion.* The project will be considered complete when all of the items noted in approval requirements in this Agreement UA have been satisfactorily provided to the Town Ocean City. The Town Ocean City will note this date on the cover page of the Agreement UA.

(Code 1999, § 94-82; Ord. No. 2017-15 , 10-2-2017)

Sec. 94-~~83~~84. Technical and construction requirements.

The ~~D~~epartment of ~~p~~ublic ~~W~~orks shall provide details for technical and construction requirements, with which each ~~applicant~~ Utility Owner and its contractor must be in compliance. Additionally, Communications Equipment for the provision of personal wireless service shall comply with the "Distributed Antenna System ("DAS") and Small Wireless Facility Requirements" approved by the Mayor and City Council of Ocean City on February 7, 2022 and amended from time to time.

(Code 1999, § 94-83; Ord. No. 2017-15 , 10-2-2017)

Sec. 94-8485. Permit fee.

The Mayor and Council shall, from time to time, establish a utility installation permit fee by resolution.

(Code 1999, § 94-84; Ord. No. 2017-15 , 10-2-2017)

Sec. 94-~~85~~86. Violations and penalties.

Any person or company found to be in violation of this article, shall, upon conviction, be guilty of a misdemeanor and subject to a sentence of up to thirty (30) days' imprisonment and/or a fine of up to \$1,000.00.

(Code 1999, § 94-85; Ord. No. 2017-15 , 10-2-2017)

State law reference(s)—Penalties for ordinance violations, Ann. Code of Md., Local Government article, § 6-101, et seq.

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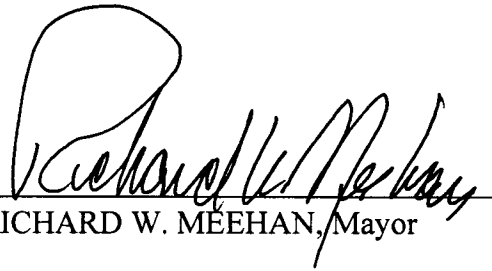
INTRODUCED at a meeting of the City Council of Ocean City, Maryland held on January 19, 2022.

ADOPTED AND PASSED, by the required vote of the elected membership of the City Council and approved by the Mayor at its meeting held on February 7, 2022.

ATTEST:




DIANA L. CHAVIS, Clerk

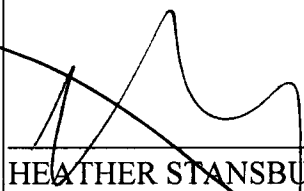
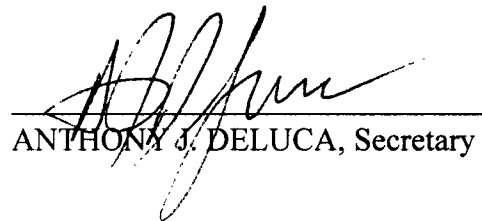


RICHARD W. MEEHAN, Mayor

Approved as to form:



MATTHEW M. JAMES, President


HEATHER STANSBURY
Ayres, Jenkins, Gordy & Almand, P.A.
Office of City Solicitor

ANTHONY J. DELUCA, Secretary