



Ohio Revised Code

Section 4939.05 Levy of public way fees by municipal corporation.

Effective: July 2, 2002

Legislation: Senate Bill 255 - 124th General Assembly

(A) A municipal corporation shall not require any nonmonetary compensation or free service, or levy any tax, for the right or privilege to occupy or use a public way, and shall not levy a public way fee except in accordance with this section.

(B)(1) A municipal corporation may levy different public way fees based upon the amount of public ways occupied or used, the type of utility service provided by a public utility, or any different treatment required by the public health, safety, and welfare.

(2) A municipal corporation may waive all or a portion of any public way fee for a governmental entity or a charitable organization.

(3) A municipal corporation shall not require any person, including a reseller, that does not occupy or use a public way owned or controlled by the municipal corporation to pay it a public way fee.

(4) A municipal corporation that charges a franchise fee or otherwise receives free service or other nonmonetary compensation as part of a franchise between a cable operator and the municipal corporation shall grant the cable operator, for the occupancy or use of the public way related to the provision of any services provided by the cable operator, a credit, offset, or deduction against any public way fee or like charge for all such payments and the retail value of the free service or other nonmonetary compensation.

(C) Public way fees levied by a municipal corporation shall be based only on costs that the municipal corporation both has actually incurred and can clearly demonstrate are or can be properly allocated and assigned to the occupancy or use of a public way. The costs shall be reasonably and competitively neutrally allocated among all persons occupying or using public ways owned or controlled by the municipal corporation, including, but not limited to, persons for which payments are waived as authorized by division (B) of this section or for which compensation is otherwise obtained. No public way fee shall include a return on or exceed the amount of costs reasonably



allocated by the municipal corporation to such occupant or user or pursuant to any reasonable classification of occupants or users.

(D) A municipal corporation that levies a public way fee shall establish and maintain a special fund for all such fees remitted to the municipal corporation and, with respect to that special fund, shall be subject to sections 5705.09, 5705.10, 5705.14, 5705.15, 5705.16, 5705.39, 5705.40, 5705.41, 5705.44, and 5705.45 of the Revised Code and any other applicable provision of Chapter 5705. of the Revised Code concerning the establishment or maintenance of a special fund.

(E) At least forty-five days prior to the date of enactment of a public way ordinance by a municipal corporation, the municipal corporation shall file with the public utilities commission a notice that the ordinance is being considered.