

Second Amended Ordinance No. 43 - 19

By: Troy Markham

An ordinance to amend Chapter 1028 in order to add provisions for Small Cell Facilities and other right-of-way considerations, and to adopt the Bexley Design Guidelines for Small Cell Facilities and Wireless Support Structures within the Right-of-Way

WHEREAS, the City of Bexley, Ohio (“City”) owns and controls the public Rights-of-Way within its corporate limits for the benefit of its citizens and taxpayers and in accordance with state and local laws;

WHEREAS, the State of Ohio, through the passage of Substitute House Bill 478, provided operators of small cell facilities with certain rights for location within City Rights-of-Way; and

WHEREAS, it is the policy of the City to

- (1) Promote the public health, safety, and welfare regarding access to and the occupancy or use of public Rights-of-Way, to protect public and private property, and to promote economic development in the City;
- (2) Promote the availability of a wide range of utility, communications, and other services to residents of the City, including the implementation of new technologies and innovative services;
- (3) Promote coordination and standardization of City management of the occupancy or use of public Rights-of-Way, to enable efficient placement and operation of structures, appurtenances, or facilities necessary for the delivery of public utility, communications, and cable services;
- (4) Support the installation and operation of wireless facilities in order to facilitate the deployment of advanced wireless service, while preserving the integrity of the City’s historic build environment; and
- (5) Establish fair terms and conditions for the use of public Rights-of-Way that do not unduly burden persons occupying or using public Rights-of-Way;

WHEREAS, to serve those purposes, the City must manage access to and the occupancy or use of public Rights-of-Way with regard to matters of local concern, and to receive cost recovery for the occupancy or use of public Rights-of-Way in accordance with law and prohibit persons from occupying or using public Rights-of-Way that would unreasonably compromise the public health, safety, and welfare or otherwise be unlawful; and

WHEREAS, substitute House Bill 478 provided cities with the authority to specify certain aspects of the placement of small cell facilities and wireless support structures in the public Rights-of-Way and to enact design guidelines regarding the location, concealment, design and appearance of small cell facilities and wireless support structures within the public right-of-way.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF BEXLEY, OHIO:

Section 1.

That the following chapters of the codified ordinances be amended as follows:

CHAPTER 1028

RIGHT OF WAY POLICY

- 1028.01 Definitions.
- 1028.02 Purpose and scope.
- 1028.03 Prohibitions.
- 1028.04 Application procedure for Right-of-Way Permits.
- 1028.05 Application appeal procedure for Right-of-Way Permits.
- 1028.06 Annual Right-of-Way Permit Occupancy Fees.
- 1028.07 Auditing.
- 1028.08 Criteria for granting Right-of-Way Permits.
- 1028.09 Obligations of Right-of-Way Permit holders.
- 1028.10 Construction and technical obligations.
- 1028.11 Joint planning and construction.
- 1028.12 City use of facilities.
- 1028.13 Adoption of regulations.
- 1028.14 Indemnity, bonding and insurance.
- 1028.15 Removal of facilities.
- 1028.16 Revocation.
- 1028.17 Preservation of rights.
- 1028.18 Temporary movement of facilities.
- 1028.19 Foreclosure and receivership.
- 1028.20 Nonenforcement and waivers by City.
- 1028.21 Captions and Headings.
- 1028.22 Severability.
- 1028.23 Small Cells Facilities and Wireless Support Structures.
- 1028.24 Historic Districts.
- 1028.25 General Provisions.
- 1028.99 Penalty.

1028.01 DEFINITIONS.

For the purpose of this chapter, the following terms, phrases, words and their derivations, regardless of whether or not the words and phrases are capitalized, have the meanings set forth herein. When not inconsistent with the context, words in the present tense include future tense, words in the plural number include the singular number and words in the singular number include the plural number. The words "shall" and "will" are mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

- (a) "ABANDONED" means the designation given to a facility, except for a small cell facility or wireless support structure in the Right-of-Way, when its operations or use are discontinued in a manner that is not in accordance with this chapter; or for a period exceeding ninety days or a total of one hundred eighty days in any three hundred sixty-five-day period, without notice of the discontinued operations or use given to the City and without the City's approval; and except for a period of discontinued operations or use that has been caused by acts of God. Small cell facilities or wireless support structures shall be deemed abandoned if the facilities or support structures are unused for a period of three hundred sixty-five days without the operator otherwise notifying the City and receiving the City's approval.
- (b) "ANTENNA" means communications equipment that transmits or receives radio frequency signals in the provision of Wireless Service.
- (c) "APPLICANT" means any person applying for a Permit hereunder, as the context requires.
- (d) "APPLICATION" means the process by which an Applicant submits a request to obtain a Permit hereunder, as the context requires.
- (e) "APPLICATION FEE" means the fee paid to the City for an Application for a Permit, as the context requires.
- (f) "APPROVED" means approval by the City pursuant to this chapter or any regulations adopted hereunder.
- (g) "BANKRUPTCY CODE" means the United States Bankruptcy Code of 1978, as amended including regulations promulgated by Title 11 of the United States Code.
- (h) "BEST EFFORTS" means the best reasonable efforts under the circumstances, taking into consideration, among other appropriate matters, safety, expeditious available technology and human resources and cost.
- (i) "CABLE FRANCHISE" has the same meaning as "franchise" in the Cable Communications Policy Act of 1984, 98 Stat. 2779, 47 U.S.C. 522.
- (j) "CABLE OPERATOR" has the same meaning as in the Cable Communications Policy Act of 1984, 98 Stat. 2779, 47 U.S.C. 522.

- (k) "CABLE SERVICE" has the same meaning as in the Cable Communications Policy Act of 1984, 98 Stat. 2779, 47 U.S.C. 522.
- (l) "CALENDAR YEAR" means from January 1, through December 31.
- (m) "CHAPTER" means Chapter 1028 of the Codified Ordinances of the City as amended from time to time, and any regulations adopted hereunder.
- (n) "CITY" means the City of Bexley, Ohio.
- (o) "CODE (or C.O.)" means the codified ordinances of the City of Bexley, Ohio.
- (p) "COLLOCATION OR COLLOCATE" means to install, mount, maintain, modify, operate, or replace Wireless Facilities on a Wireless Support Structure.
- (q) "CONSTRUCT" means, but is not limited to, digging, boring, tunneling, trenching, excavating, obstructing, installing wires, installing conduit, installing pipes, installing transmission lines, installing poles, installing signs or installing facilities, other than landscaping, ornamental plantings in, on, above, within, over, below, under or through any part of the Rights-of-Way. "Construct" shall also include the act of opening and/or cutting into the surface of any paved, unimproved, or improved surface that is any part of the Right-of-Way.
- (r) "CONSTRUCTION" means, but is not limited to, the act or process of digging, boring, tunneling, trenching, excavating, obstructing, installing wires, installing conduit, installing pipes, installing transmission lines, installing poles, installing signs or installing facilities, other than landscaping, ornamental plantings in, on, above, within, over, below, under or through any part of the Rights-of-Way. "Construction" shall also include the act of opening and/or cutting into the surface of any paved, unimproved or improved surface that is part of the Right-of-Way.
- (s) "COUNTY" means Franklin County, Ohio. County specifically excludes any and all contractors, agents or other persons acting on behalf of said county.
- (t) "COUNCIL" means the Bexley City Council.
- (u) "DECORATIVE POLE" means a pole, arch, or structure other than a street light pole placed in the Right-of-Way specifically designed and placed for aesthetic purposes and on which no appurtenances or attachments have been placed except for the following:
 - (1) electric lighting;
 - (2) specifically designed informational or directional signage; or
 - (3) temporary holiday or special event attachments.

- (v) "DESIGN GUIDELINES" means detailed guidelines and specifications promulgated by the City in accordance with ORC 4939 for the design and installation of Small Cell Facilities and Wireless Support Structures in the Right-of-Way.
- (w) "DIRECTOR" means the City Service Director.
- (x) "EMERGENCY" means a condition that poses a clear and immediate danger to life or health, or of a significant loss of property.
- (y) "FACILITY(IES)" means any tangible thing located in any Rights-of-Way within the City, and includes Wireless Facilities and Wireless Support Structures; but shall not include boulevard plantings, ornamental plantings or gardens planted or maintained in the Rights-of-Way between a Person's property and the street edge of pavement.
- (z) "FCC" means the Federal Communications Commission, or any successor thereto.
- (aa) "FERC" means the Federal Energy Regulatory Commission as created and amended in accordance with the Federal Power Act, 16 U.S.C. 792, or its statutory successor.
- (bb) "FORCE MAJEURE" means a strike; act of God; act of public enemy; order of any kind of a government of the United States of America or of the State of Ohio or any of their departments, agencies or political subdivisions; riot; epidemic; landslides; lightning; earthquake; fire; tornado; storm; flood; civil disturbance; explosion; partial or entire failure of a utility or any other cause or event not reasonably within the control of the party disabled by such Force Majeure, but only to the extent such disabled parties notifies the other party as soon as practicable regarding such Force Majeure and then for only so long as and to the extent that, the Force Majeure prevents compliance or causes non-compliance with the provisions hereof.
- (cc) "FULL" means that the Right-of-Way is unable to accommodate any additional Facilities as determined by the City Service Director in accordance with the principles of public health, safety, and welfare following a reasonable analysis taking into consideration all applicable Law, commonly accepted industry standards, and routine engineering practices.
- (dd) "HEIGHT" means the distance measured from the pre-existing grade level to the highest point on the structure, including the Small Cell Facility, even if said highest point is an Antenna or lightening protection device.
- (ee) "HISTORIC DISTRICT" means a building, property, or site, or group of buildings, properties, or sites that are either of the following:
 - (1) Listed in the national register for historic places or formally determined eligible for listing by the keeper of the national register, the individual who has been delegated the authority by the federal agency to list properties and determine their eligibility

for the national register, in accordance with section VI.D.1.a.i-v of the nationwide programmatic agreement codified at 47 C.F.R. part 1, Appendix C.

(2) A registered historic district as defined in ORC 149.311.

- (ff) "LAW" means any local, state or federal legislative, judicial or administrative order, certificate, decision, statute, constitution, ordinance, resolution, regulation, rule, tariff or other requirement in effect either at the time of execution of this chapter or at any time during the location of or while facilities are being located in the Rights-of-Way.
- (gg) "MAYOR" means the duly elected mayor of the City of Bexley, Ohio or his/her designee.
- (hh) "MICRO WIRELESS PERMIT" means a permit, which must be obtained before a person can construct, modify, collocate or replace a Small Cell Facility or Wireless Support Structure, as set forth in Section 1028.23 et seq., in or on the Rights-of-Way.
- (ii) "OCCUPANCY FEE" means the money paid by a Right-of-Way Permit holder to the City in order to maintain a Right-of-Way Permit and compensate the City for actual and direct costs incurred by the City in the management, administration and control of the rights-of-way of the City, and which are not reasonably recoverable by the City through Work Permit fees or other approved recovery mechanisms.
- (jj) "OCCUPY OR USE" means, with respect to a public Right-of-Way, to place a tangible thing in a public Right-of-Way for any purpose, including, but not limited to, constructing, repairing, positioning, maintaining, or operating 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.
- (kk) "OPEN VIDEO SERVICE" means any video programming services provided to any person through the use of rights-of-way, which person is certified by the FCC to operate an Open Video System pursuant to § 651 et seq. of the Telecommunications Act of 1996 (codified at 47 U.S.C. Title VI, Part V), regardless of the facilities used.
- (ll) "OPERATOR" means Wireless Service Provider, Cable Operator, or a Video Service Provider that operates a Small Cell Facility and provides Wireless Service. For purposes of this chapter, Operator includes a Wireless Service Provider, Cable Operator, or a Video Service Provider that provides information services as defined in the "Telecommunications Act of 1996," 110 Stat. 59, 47 U.S.C. 153(20), and services that are fixed in nature or use unlicensed spectrum.
- (mm) "ORC" means the Revised Code of the State of Ohio.
- (nn) "PERMIT" means a Right-of-Way Permit, Work Permit, or Micro Wireless Permit, as the context requires.
- (oo) "PERMIT FEE" means money paid to the City for a Permit, as the context requires.

- (pp) "PERMITTEE" means any Person to whom a Permit has been granted by the City and not revoked.
- (qq) "PERSON" means any natural person or any association, firm, partnership, joint venture, corporation or other legally recognized entity, whether for-profit or not-for-profit, or governmental entity.
- (rr) "PROVIDER" means a person who owns or operates a system and has a valid Right-of-Way Permit. The City, County, schools, information technology centers, small cell facility operators, and cable operators operating pursuant to a valid cable franchise, or video service provider operating pursuant to a valid video service authorization shall also be considered providers.
- (ss) "PUBLIC PROPERTY" means any real property owned by the City or easements held or used by the City, other than a Right-of-Way.
- (tt) "PUBLIC UTILITY" or "UTILITY" means a business enterprise supplying an essential public service, such as gas or electricity, and a Wireless Service Provider as defined in ORC 4927.01(A)(20) or any company described in ORC 4905.03, except in divisions (B) and (I) of that section, which company also is a Public Utility as defined in ORC 4905.02; and includes any electric supplier as defined in ORC 4933.81.
- (uu) "REGULATION" means any rule or regulation adopted by the City Service Director pursuant to the authority of this chapter and the procedure set forth in Section 1028.13, to carry out its purpose and intent.
- (vv) "RESTORATION" means the process and the resultant effects by which a right-of-way is returned to a condition at least as good as its condition immediately prior to the Construction, including, as applicable, appearance; dimensions; grade, quality, and size; and landscaping, including turf and soil. "Restoration" shall occur in accordance with this chapter, the City's design standards, and regulations as may be further enacted and amended by the City pursuant to Section 1028.13, and shall include the following:
- (1) Any areas temporarily patched during construction shall be cleaned of patching materials, including asphalt.
 - (2) With respect to brick curbs or gutters, bricks shall be removed and stored during construction in accordance with City standards.
 - (3) If grass is replaced by seeding, the seed shall be maintained by the permittee as directed by the City for a period of one year. In the event that restoration begins after October 15 of a calendar year, permittee shall reseed the affected area by April 30 of the following year calendar year and the one-year maintenance obligation shall run from that date, unless earlier completed by the permittee, in such instance the one-year maintenance obligation shall begin on the date of reseed completion.

- (4) With respect to trees removed, all permittees must comply with section 1028.09(d).
- (ww) "RIGHT-OF-WAY" means the surface of, and the space within, through on, across, above or below, the paved or unpaved portion of 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, public easement, and any other land dedicated or otherwise designated for a compatible public use, which, on or after July 2, 2002, is owned or controlled by the City. Right-of-Way excludes a private easement.
- (xx) "RIGHT-OF-WAY PERMIT" means the document issued to each provider and its unique system to grant the nonexclusive authority to occupy or use all or a portion of the rights-of-way within the City and outlines the terms of that occupancy or use of such rights-of-way.
- (yy) "SERVICE(S)" means the offering of any service or utility for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, or alternatively, the provision (for a fee or otherwise) of any service or utility between two or more points for a proprietary purpose to a class of users other than the general public that in the opinion of the Mayor constitutes a service.
- (zz) "SMALL CELL FACILITY" means a wireless facility that meets both of the following requirements:
- (1) Each Antenna is located inside an enclosure of not more than six cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an enclosure of not more than six cubic feet in volume.
 - (2) All other wireless equipment associated with the facility is cumulatively not more than twenty-eight cubic feet in volume. The calculation of equipment volume shall not include electric meters, concealment elements, telecommunications demarcation boxes, grounding equipment, power transfer switches, cut-off switches, and vertical cable runs for the connection of power and other services.
- (aaa) "STATE" means the State of Ohio.
- (bbb) "SYSTEM" means any system of conduit, cables, ducts, pipes, wires, lines, towers, antennas, wave guides, fiber optics, microwave, laser beams and any associated converters, equipment or facilities or utilities designed and constructed for the purpose of producing, receiving, amplifying, delivering or distributing services within the City. A system shall specifically include, but not necessarily be limited to: electric distribution and/or transmission systems, natural or artificial gas distribution and/or transmission systems, water distribution systems, storm water systems, sanitary sewer systems,

cable television systems, video service networks, telecommunications systems (whether voice, video, data, or other), fiber optic systems, and wireless communications systems.

- (ccc) "TOLL" means the pause or delay of the running of the required time period.
- (ddd) "UTILITY POLE" means a structure that is designed for, or used for the purpose of, carrying lines, cables, or wires for electric or telecommunications service. Utility Pole excludes street signs and decorative poles.
- (eee) "VIDEO SERVICE" means the same as "video service" as defined in ORC § 1332.21(J).
- (fff) "VIDEO SERVICE AUTHORIZATION (VSA)" means a "video service authorization" as issued to a video service provider by the Director of the Ohio Department of Commerce in accordance with ORC § 1332.24(A)(1).
- (ggg) "VIDEO SERVICE PROVIDER" means a person granted a video service authorization under sections 1332.21 to 1332.34 of the Ohio Revised Code.
- (hhh) "WIRELESS FACILITY" means
 - (1) equipment at a fixed location that enables wireless communications between user equipment and a communications network, including all of the following:
 - A. Equipment associated with wireless communications;
 - B. Radio transceivers, Antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of the technological configuration.
 - (2) The term includes Small Cell Facilities.
 - (3) The term does not include any of the following:
 - A. The structure or improvements on, under, or within which the equipment is Collocated;
 - B. Coaxial or fiber-optic cable that is between Wireless Support Structures or Utility Poles or that is otherwise not immediately adjacent to or directly associated with a particular Antenna.
- (iii) "WIRELESS SERVICE" means any services using licensed or unlicensed wireless spectrum, whether at a fixed location or mobile, provided to the public using Wireless Facilities.
- (jjj) "WIRELESS SERVICE PROVIDER" means a person who provides Wireless Service as defined in division ORC 4927.01(A)(19).

- (kkk) "WIRELESS SUPPORT STRUCTURE" means a pole, such as a monopole, either guyed or self-supporting, street light pole, traffic signal pole, a fifteen-foot or taller sign pole, or Utility Pole capable of supporting Small Cell Facilities. As used in this chapter, Wireless Support Structure excludes all of the following:
- (1) A Utility Pole or other facility owned or operated by a municipal electric utility;
 - (2) A Utility Pole or other facility used to supply traction power to public transit systems including railways, trams, streetcars, and trolleybuses.
- (lll) "WORK PERMIT" means the permit specified in Section 1028.10 et seq., which must be obtained before any Person may construct in, locate in, occupy, maintain, move or remove facilities from, in or on a right-of-way.

1028.02 PURPOSE AND SCOPE.

- (a) The City of Bexley, Ohio is concerned with the use of all Rights-of-Way in the City as such Rights-of-Way are valuable and limited resources.
- (b) Changes in the public utilities and communications industries have increased the demand and need for access to Rights-of-Way and placement of facilities and structures therein.
- (c) It is necessary to comprehensively plan and manage access to, and structures and facilities in, the Rights-of-Way and provide innovative and economic solutions to efficiently and economically utilize limited Rights-of-Way capacity.
- (d) The purpose of this chapter is to provide for the regulation of the use or occupation of all Rights-of-Way in the City of Bexley, the issuance of Permits to Persons for such use or occupancy, and to set forth the policies of the City related thereto.
- (e) The City has authority under the laws and Constitution of the State of Ohio, including, but not limited to Article 18 §§ 3, 4, and 7, to regulate the public and private entities that use the Right-of-Way.
- (f) A Right-of-Way Permit issued pursuant to this chapter does not take the place of any provider agreement, franchise, license or permit that law may additionally require. Each Right-of-Way Permit holder shall obtain any and all such additional State, Federal or City franchises, licenses or permits necessary to the operation and conduct of its business or its occupation or use of any Right-of-Way.
- (g) The City Service Director is hereby directed and empowered to enforce the provisions of this Chapter, except as otherwise provided herein.
- (h) The City's objectives regarding Rights-of-Way are:

- (1) To encourage the high-quality and reliable delivery of utility, communication, and other services to the City's residents and taxpayers at competitive prices;
- (2) To promote cooperation among the Right-of-Way Permit holders and the City in the occupation of Rights-of-Way, and to minimize public inconvenience and eliminate wasteful, unnecessary or unsightly duplication of facilities;
- (3) To minimize disruption to public property and ensure safe and efficient use of the City's rights-of-way;
- (4) To ensure reimbursement of all costs to the City for the private use and occupancy of public Rights -of-Way and property and the City administration regarding such activity within the public Rights-of-Way;
- (5) To assure that potential Right-of-Way Permit holders and existing Right-of-Way users have the financial, technical and managerial resources to comply with this chapter and the provisions of any Right-of-Way Permit issued hereunder;
- (6) To promote and require reasonable accommodation of all uses of Rights-of-Way; and, when all requests for Right-of-Way use cannot be accomplished, to give priority for use of Rights-of-Way, in the order indicated, from the highest to lowest, to the following users; provided, however, that the Service Director may reasonably require Right-of-Way Permit holders to cooperate to accommodate use by other Right-of-Way Permit holders, and provided further that the Director may alter these priorities when the Service Director reasonably determines a deviation herefrom to be in the public interest:
 - A. The City;
 - B. Another governmental entity with the City's concurrence or other governmental use required by law;
 - C. Right-of-Way Permit Holder.

- (i) This chapter does not apply, and nothing herein should be construed to apply the provisions of this chapter, to structures or facilities owned and operated by the City or any City operations that occupy or use the Rights-of-Way. It is specifically contemplated, however, that all City Departments or Divisions that utilize the Rights-of-Way shall carry out their operations in a manner consistent with the policies set forth in this chapter, including participation and cooperation in all joint planning hereunder and identification of structures and facilities located in the Rights-of-Way.

1028.03 PROHIBITIONS.

- (a) With the exception of the City, each person who occupies or uses or seeks to occupy or use the rights-of-way within the City to operate a system located in the rights-of-way, or

who has, or seeks to have, a system located in any rights-of-way, shall apply for and obtain a Right-of-Way Permit pursuant to this chapter and conform to the requirements set forth therein and in this chapter.

- (b) The following entities are required to participate in the Right-of-Way Permit process, but shall be exempt from the financial obligations of the Application Fee and the Occupancy Fee: a county; cable operators for the purpose of providing only cable service and operating pursuant to a valid cable franchise; a video service provider for the purpose of providing only video service and operating pursuant to a valid video service authorization issued in accordance with ORC § 1332.24; a small cell facility operator for the purpose of providing wireless service; and any entity which possesses an existing and valid non-terminable, non-amendable, or non-revocable written privilege or authority previously granted by the City for the use or occupancy of the right-of-way, whereby such exemption shall be limited to a specific term and limited conditions or obligations as previously granted. In addition, cable operators shall be exempt from any requirement of the Right-of-Way Permit process that is in direct conflict with the requirements of, and/or specifically exempted by, a valid current and valid cable franchise with the city.
- (c) Each Right-of-Way Permit shall specify the use or uses for which such Permit is granted and shall contain such other non-discriminatory terms and conditions as are appropriately specified by the City to provide for the public safety and welfare and as are set forth in the Regulations. Any other or additional Right-of-Way use by such Right-of-Way Permit holder shall require a separate or amended Permit as determined by the City Service Director.
- (d) Right-of-Way Permits granted hereunder may not, directly or indirectly, be transferred, assigned or disposed of by sale, lease, merger, consolidation or other act of the Right-of-Way Permit holder, by operation of law or otherwise, without the prior consent of the City, which consent shall not be unreasonably withheld or delayed. Unless otherwise provided in a Permit, the Permittee shall reimburse the City for all direct and indirect fees, costs, and expenses reasonably incurred by the City in considering a request to transfer or assign a Permit. Any transfer or assignment of a Permit without prior approval of the City or pursuant to a Permit shall be void and is cause for revocation of the Permit.
- (e) A Right-of-Way Permit shall not convey equitable or legal title in the rights-of-way and no property right of any nature shall be created by the granting of a Permit under this chapter. A right-of-way permit is only the nonexclusive, limited right to occupy rights-of-way in the City, for the limited purposes and for the limited period stated in the right-of-way permit and in accordance with this chapter. The rights to occupy the right-of-way may not be subdivided or subleased; provided, however, that two or more providers may locate facilities in the same area of the rights-of-way so long as each such provider complies with the provisions of this article. A right-of-way permit does not excuse a

provider from obtaining appropriate access or pole attachment agreements before co-locating its facilities on facilities of others, including the City's facilities. A right-of-way permit does not prevent a provider from leasing space in or on the provider's system, so long as the sharing of facilities does not cause a violation of law, including the provisions of this article. A right-of-way permit does not excuse a provider from complying with any provisions of the Code or other applicable law.

- (f) No person shall use the rights-of-way to operate a system that has not been authorized by the City in accordance with the terms of this chapter and been issued a Right-of-Way Permit. Further, no person shall place or have placed any facilities in, on, above, within, over, below, under, or through the rights-of-way, unless allowed under this chapter or having been issued a Work Permit.

1028.04 APPLICATION PROCEDURE FOR RIGHT-OF-WAY PERMITS.

- (a) Applications for a Right-of-Way Permit shall be filed in such form and in such manner as the regulations require, along with an application fee.
- (b) To obtain a Right-of-Way Permit to construct, own, or maintain any system within the City, or to obtain a renewal of a Right-of-Way Permit issued pursuant to this chapter, an application must be filed with the City on the form adopted by the City Service Department. Except as described in Section 1028.03(b), for all applications the City shall collect an application fee.
- (c) If the City Service Director determines that the application is in order and that the criteria set forth in Section 1028.08 have been met, and that the application should be granted, the City Service Director shall, within fifteen (15) days of receipt of a completed application, conditionally grant or renew such a Right-of-Way Permit subject to any appropriate terms and conditions.
- (d) The City Service Director's grant, renewal or denial shall be served upon the Applicant by mail, e-mail, or electronically through the City's online permit system. Such denial, grant or renewal shall become final unless modified or rejected by the City Council within thirty (30) days of issuance by the City Service Director, or unless appealed pursuant to Section 1028.05.
- (e) The application fee for a Right-of-Way Permit shall be equal to all the actual and direct costs incurred by the City that are associated with receiving, reviewing, processing and granting (or denying) an application. At the time of its decision to either grant or deny an application the City shall calculate and assess all actual and direct costs involved in receiving, reviewing, processing and granting (or denying) the application and provide a written invoice to the applicant for the appropriate amount. The City shall require that the applicant remit all application fee amounts invoiced within thirty days of the City's decision to either grant or deny a Right-of-Way Permit application. Any applicant who fails to timely remit such invoiced application fee amounts shall be subject to the

penalties of this chapter, the imposition of any other legal or equitable remedies available to the City, and the immediate revocation of any Right-of-Way Permit having been issued.

- (f) In addition to a Right-of-Way Permit, providers shall obtain any and all regulatory approvals, permits, authorizations, or licenses necessary for the offering or provision of such services from the appropriate federal, state, and local authorities, and upon the City's reasonable request, shall provide copies of such documents to the City. Further, a Right-of-Way Permit issued pursuant to this chapter shall not entitle a provider to use, alter, convert to, or interfere with, the facilities, small cell facilities, wireless facilities, wireless support structures, easements, poles, conduits, lines, pipelines, wires, fiber, cable or any other real or personal property of any kind whatsoever under the management or control of the City.

1028.05 APPLICATION APPEAL PROCEDURE FOR RIGHT-OF-WAY PERMITS.

Any Applicant may appeal the failure of the City Service Director to grant a Right-of-Way Permit, or to recommend that it be granted to the City Council. In order to perfect such appeal, the Applicant shall file, within ten (10) days of the City Service Director's determination or within thirty (30) days of filing the application if the City Service Director has taken no action, an appeal to the City Council. The City Council shall then review the matter and render a final determination after affording the applicant an opportunity to be heard either in person or in writing. The City Council's decision shall be final.

1028.06 ANNUAL RIGHT-OF-WAY PERMIT OCCUPANCY FEES.

(a) Right-of-Way Permit Fees.

- (1) Annual Occupancy Fee. Right-of-Way Permit holders shall pay to the City an annual Occupancy Fee. The Occupancy Fee shall be determined and assessed to providers and other persons operating a system or otherwise using and occupying the rights-of-way in accordance with the following process and formula:
 - A. The City shall calculate all actual and incurred costs associated with rights-of-way management, administration and control for the previous calendar year that the City was not able to reasonably recover through Work Permit fees or other recovery mechanisms provided for in this chapter.
 - B. Providers and applicants shall accurately inform the City upon application for a Right-of-Way Permit and on or before the start of each calendar year of the number of miles (rounded up to the nearest mile) of right-of-way the provider's system then occupied or used in the City rights-of-way.
 - C. The City shall total the entire number of miles of right-of-way reported as being used or occupied by all providers.

- D. The City shall divide its actual and incurred costs associated with rights-of-way management, administration and control for the previous calendar year by the total number of miles of right-of-way reported as being used or occupied by all providers to arrive at a per-mile cost number.
- E. The City shall then multiple each provider's mileage calculation for the previous calendar year by the per-mile cost calculation. The product shall be a provider's then-current annual Occupancy Fee.
- F. The City shall require that the Right-of-Way Permit holder remit all Occupancy Fees within thirty days of the City's invoice of such fees. Any Right-of-Way Permit holder who fails to timely remit such invoiced occupancy fee amounts shall be subject to the penalties of this chapter, the imposition of any other legal or equitable remedies available to the City, and the immediate revocation of any Right-of-Way Permit having been issued.

1028.07 AUDITING.

Each Right-of-Way Permit holder shall maintain books, records, maps, documents and other evidence directly pertinent to its calculations of payments to the City in accordance with generally accepted accounting principles. The City Service Director, the City Finance Director or either's designated agents shall have reasonable access to any books, records, maps, documents and other evidence for inspection, copying and auditing to the extent necessary to assure that the payments hereunder are accurate and that all Right-of-Way Permit holders fully comply with the provisions of this chapter and their respective Right-of-Way Permits. All such documents shall be made available within the City or in such other place that the City may agree upon in writing in order to facilitate said inspection, examination, or audit.

1028.08 CRITERIA FOR GRANTING RIGHT-OF-WAY PERMITS.

- (a) In deciding whether to issue a Right-of-Way Permit, the City shall consider:
 - (1) Whether the granting of the Right-of-Way Permit will contribute to the public health, safety or welfare in the City;
 - (2) Whether the granting of the Right-of-Way Permit will be consistent with the policy of the City as set forth in Section 1028.02;
 - (3) Whether the applicant has submitted a complete application and has secured all other authorizations required by law in order to construct and operate a system in the manner proposed by the applicant;
 - (4) Whether the Applicant is delinquent on any taxes or other obligations to the City, Franklin County, or the State of Ohio; and

- (5) Whether the Applicant has the requisite financial, technical and managerial ability to fulfill all its obligations hereunder.
- (b) The City Service Director or City Council may impose such conditions on the granting of a Permit as deemed reasonably required to be consistent with the criteria set forth in this Section 1028.08 and to promote the policy of the City set forth in Section 1028.02.
- (c) The term of each Right-of-Way Permit granted under this chapter shall be valid from the date of issuance until such time as it is revoked, terminated, has lapsed or is properly amended.

1028.09 OBLIGATIONS OF RIGHT-OF-WAY PERMIT HOLDERS.

In addition to the other requirements set forth herein and in the Regulations, each Right-of-Way Permit holder shall:

- (a) Use its best efforts to cooperate with other Right-of-Way Permit holders and the City for the best, most efficient, most aesthetic and least obtrusive use of Rights-of-Way, consistent with public health, safety and welfare and to minimize traffic and other disruptions including street cuts;
- (b) Upon reasonable written notice, and at the direction of the City Service Director, promptly remove or rearrange its Facilities as necessary for public safety;
- (c) Perform all work, Construction, maintenance and/or removal of its Facilities within the Rights-of-Way in accordance with good engineering, construction and arboricultural practice (if applicable), including any appropriate state building codes, safety codes and Law and use Best Efforts to repair and replace any street, curb or other portion of the Rights-of-Way, or Facilities located therein, to a condition to be determined by the City Service Director to be adequate under current standards and not less than materially equivalent to its condition prior to such work and to do so in a manner which minimizes any inconvenience to the public, the City and other Right-of-Way Permit holders, and all in accordance with all applicable provisions of this Chapter, any Regulations and Design Guidelines the City may adopt and the Code;
- (d) Except in the event that a person maintains a valid and active Vegetation Management Program in accordance with the Ohio Administrative Code § 4901, be on notice that removal of trees, or the use of other vegetation management programs by all others within the Rights-of-Way of the City requires prior written approval by the City Service Director or his/her designee and compliance with applicable provisions of the Bexley Code. Any such activities, unless conducted pursuant to an Ohio Administrative Code approved Vegetation Management Plan or an Emergency, shall only be performed following the prior written approval of the City Service Director or his/her designee and must be performed in accordance with the then-most-current standard horticultural and arboricultural practices as promulgated by entities such as the National Arbor Day Foundation, the International Society of Arboriculture, and the Tree Care Industry, all as

may be required by the City. Pruning shall at a minimum meet or exceed the requirements of the most current version of the American National Standards Institute ANSI A300 standard. Any additionally required horticultural and arboricultural practices and guidelines shall be described in the Regulations adopted by the City Service Director pursuant to Section 1028.13. Emergency removal of trees may be performed in Rights-of-Way as described herein and in accordance with the Regulations, but the City Service Director shall be provided notice of such emergency work being performed within two business days of the start of the work. Any non-emergency tree removal or the use of non-Ohio Administrative Code approved vegetation management programs within the Rights-of-Way that is performed without the City Service Director or designee's written permission shall subject a person to the penalties of section 1028.99 and may further require that the tree or vegetation be replaced, at the sole expense of the responsible person, with a healthy tree or vegetation of like kind and quality;

- (e) Warrant that all worker facilities, conditions and procedures that are used during Construction, installation, operation and maintenance of the Right-of-Way Permit holder's Facilities within the Rights-of-Way shall comply with all applicable standards of the Federal Occupational Safety and Health Administration;
- (f) Remove all graffiti on any of the Right-of-Way Permit holder's Facilities located within the City Rights-of-Way within ten calendar days of notice using all reasonable efforts. Should the Right-of-Way Permit holder fail to do so, the City may take whatever action is necessary to remove the graffiti and invoice the Right-of-Way Permit holder for the cost thereof;
- (g) Cooperate with other Right-of-Way Permit holders in joint planning for the utilization of, construction in, and occupancy of any Rights-of-Way;
- (h) Designate a single point of contact for all purposes hereunder, as well as comply with such other contact and notice protocols;
- (i) Use its best efforts to cooperate with the City in any emergencies involving the Right-of-Way including the maintenance of a twenty-four-hour emergency contact number;
- (j) A Right-of-Way Permit holder that is replacing an existing Utility Pole shall be responsible to coordinate with all other Right-of-Way Permit holders to ensure the orderly transfer of all lines or cables to the replacement Utility Pole, the removal of the existing Utility Pole, and the restoration of the Rights-of-Way within thirty days, weather permitting, after the replacement Utility Pole is installed. Upon request, the City Service Director may grant the Right-of-Way Permit holder additional time for good cause.
- (k) No later than one (1) year after grant of the Right of Way Permit, the Right-of-Way Permit holder shall perform an initial inventory:

- (1) To identify and locate all of Right-of-Way Permit holder's existing structures (including "as built" structures and pole attachments above and in the Rights-of-Way) and facilities in the Rights-of-Way; and
- (2) Shall identify and describe all uses of such structures and facilities; and
- (3) Shall provide maps or other information that identifies their location and use in such form (including digital form) as required by the City.

1028.10 CONSTRUCTION AND TECHNICAL OBLIGATIONS.

- (a) Relevant Documents Required in Advance. The Right-of-Way Permit holder shall comply with the City's normal Work Permit processes prior to commencing any work in the Rights-of-Way, except for emergencies and as otherwise provided in this chapter. No work in the Rights-of-Way shall be commenced until such time as the City has issued any and all required Work Permits, the approval of which shall not be unreasonably withheld.
- (b) Work Permit Required in Advance.
 - (1) Except as otherwise provided in the Code or pursuant to other applicable law, all persons shall obtain a Work Permit from the Building Department prior to beginning the erection, installation or maintenance, including tree trimming, of any lines or equipment. Prior City approval shall not be required for emergency repairs or routine maintenance and repairs. Operations which require excavation in the Right-of-Way, blockage of any street or alley, or material disruption to any landscaping or structures and/or irrigation systems require a Work Permit.
 - (2) The repair or improvement of streets or other public places under or by virtue of a contract with the City shall be excluded from the requirements of this section 1028.10.
 - (3) Original Work Permits issued pursuant to this section shall be conspicuously displayed at all times at the indicated work site and shall be available for inspection by authorized City personnel.
 - (4) All applicants for a Work Permit shall file a written notice with the Building Department at least seven (7) days before working in or on the Right-of-Way, except in case of emergency as determined by the Director. In the event of emergency work in the Right-of-Way, the applicant shall apply for the permit on the next business day. To the extent applicable, all Right-of-Way Work Permit applications shall contain:
 - A. The Right-of-Way affected;
 - B. A description of any facilities to be installed, constructed, or maintained;

- C. Whether or not any street will be opened or otherwise need to be restricted, blocked, or closed;
 - D. An estimate of the amount of time needed to complete such work;
 - E. A description of the method of restoring the right-of-way and timetable for completion of restoration;
 - F. A statement verifying that other affected or potentially affected Right-of-Way Permit holders have been notified, and where applicable, the Ohio Utility Protection service;
 - G. The location, dimension and types of all trees within or adjacent to the rights-of-way along the route proposed by the applicant, together with a landscape plan for protecting, trimming, removing, replacing and restoring any trees or areas to be disturbed during construction.
- (c) The City does not guarantee the accuracy of any maps showing the horizontal or vertical location of existing substructures. In public Rights-of-Way, where necessary, the location shall be verified by excavation.
- (d) Mandatory Denial of Permit. Except in the case of an emergency, no Work Permit will be granted:
- (1) To any person who has not yet made an application or who is occupying any Right-of-Way without a valid Right-of-Way Permit, where required;
 - (2) To any person who has outstanding debt owed to the City;
 - (3) To any person as to whom there exists grounds for the revocation of a permit; or
 - (4) If, in the discretion of the City Service Director, the issuance of a permit for the particular date and/or time would cause a conflict or interfere with an exhibition, celebration, festival, or any other event. The City Service Director, in exercising this discretion, shall be guided by the safety and convenience of ordinary travel of the public over the rights-of-way, and by considerations relating to the public health, safety and welfare and the City's investment in the right-of-way.
- (e) Permissive Denial of Permit. The City Service Director may deny a Work Permit in order to protect the public health, safety and welfare, and the City's investment in the right-of-way; to prevent interference with the safety and convenience of ordinary travel over the rights-of-way; or when necessary to protect the rights-of-way and its users. In exercising his/her discretion, the City Service Director may consider factors, including but not limited to:
- (1) The extent to which rights-of-way space where the permit is sought is available;

- (2) The competing demands for the particular space in the rights-of-way;
 - (3) The availability of other locations in the rights-of-way or in other rights-of-way for the proposed facilities;
 - (4) The applicability of this chapter or other regulations of the rights-of-way that affect location of facilities in the rights-of-way;
 - (5) The degree of compliance of the provider with the terms and conditions of its Right-of-Way Permit, when applicable; this chapter; and other applicable ordinances and regulations;
 - (6) The degree of disruption to surrounding communities and businesses that will result from the use of that part of the rights-of-way;
 - (7) The condition and age of the rights-of-way, and whether and when it is scheduled for total or partial re-construction;
 - (8) The balancing of the costs of disruption to the public and damage to the rights-of-way, against the benefits to that part of the public served by the expansion into additional parts of the rights-of-way; and
 - (9) Whether such applicant or its agent has failed within the past three years to comply, or is presently not in full compliance with, the requirements of this chapter, or, if applicable, any other law.
- (f) The City may impose reasonable conditions upon the issuance of the Work Permit and the performance of the permittee thereunder in order to protect the City's investment in the right-of-way, protect the public health, safety and welfare, to insure the structural integrity of the rights-of-way, to protect the property and safety of other users of the rights-of-way, or to minimize the disruption and inconvenience to the traveling public.
- (g) **Least Disruptive Technology.** All construction and maintenance of facilities shall be accomplished in the manner resulting in the least amount of damage and disruption of the rights-of-way. Specifically, and unless otherwise required by the City Service Director, every permittee when performing underground construction shall utilize trenchless technology, including, but not limited to, the use of directional boring, horizontal drilling, microtunneling and other techniques in the Construction of underground portions of facilities which result in the least amount of disruption and damage to rights-of-way as possible. In addition, all cable, wire or fiber optic cable installed in the subsurface rights-of-way pursuant to this chapter may be required to be installed in conduit, and if so required, no cable, wire or fiber optic cable may be installed pursuant to this chapter using "direct bury" techniques.
- (h) **Location of Facilities.** The City shall have the power to prohibit or limit the placement of new or additional facilities within the rights-of-way if the right-of-way is full, as

determined in the sole discretion of the City. In making such decisions, the City shall strive to the extent possible to accommodate all existing and potential users of the rights-of-way, but shall be guided primarily by considerations of the public health, safety and welfare, the condition of the rights-of-way, the time of year with respect to essential utilities, the protection of existing facilities in the rights-of-way, future City and County plans for public improvements, development projects which have been determined to be in the public interest and nondiscriminatory and competitively neutral treatment among providers.

- (i) **Minimal Disturbance.** The Right-of-Way Permit holder's system and associated equipment erected by the provider within the City shall be so located as to cause minimum interference with the proper use of streets, alleys, sidewalks, and other rights-of-way and places, and to cause minimum interference with the rights and reasonable convenience of property owners who adjoin any of the said streets, alleys, sidewalks or other rights-of-way and places. No pole or other facility placed in any rights-of-way shall be placed in such a manner as to interfere with normal travel on such right-of-way.
- (j) As permitted by law and to protect the aesthetics of the City, Permittees shall locate, disguise, or screen its new or updated facilities in accordance with standards developed for the area in which the facility is located.
- (k) **Compliance of Technical Equipment and Workmanship.** Permittees shall construct, install, operate and maintain its Facilities and Systems in a manner that is consistent with all laws, ordinances, construction standards, and governmental requirements including, but not limited to, The National Electrical Safety Code (National Bureau of Standards); The National Electrical Code (National Bureau of Fire Underwriters); applicable FCC, FERC, or other Federal, State and local regulations; and standards as set forth in their Permit.
- (l) **General Workmanship.**
 - (1) Construction, installation, operation, and maintenance of permitted systems shall be performed in an orderly and workmanlike manner. When consistent with the safety codes and standards set forth in this chapter, all cables and wires shall be installed, where possible, parallel with electric and telephone lines. Multiple configurations shall be arranged in parallel and bundled with due respect for engineering considerations.
 - (2) All systems shall be designed, constructed, and maintained for 24-hours-a-day continuous operation.
- (m) **Subcontractors.** Each Permittee shall ensure that any subcontractor or other person performing any work or service in the Right-of-Way on behalf of said Permittee will comply with all applicable provisions of this chapter and its Work Permit and will identify the Permittee for whom such subcontractor is working. Said Permittee shall be

responsible and liable hereunder for all actions of any such subcontractor or others as if said Permittee had performed or failed to perform any such obligation.

- (n) Any contractor performing construction, installation, operation, maintenance, and repair of system equipment must be properly licensed under laws of the State of Ohio and all applicable local ordinances.
- (o) Work Done Without a Permit in Emergency Situations.
 - (1) Each provider shall, as soon as is practicable, immediately notify the City Service Director of any event regarding its facilities which it considers to be an emergency, as defined herein. The provider may proceed to take whatever actions are necessary in order to respond to the emergency. Within five business days, unless otherwise extended by the City Service Director, after the occurrence or discovery of the emergency (whichever is later), the provider shall apply for the necessary permits, pay the fees associated therewith and fulfill the rest of the requirements necessary to bring itself into compliance with this chapter for any and all actions taken in response to the emergency.
 - (2) In the event that the City becomes aware of an emergency regarding a provider's facilities, the City may use best efforts to contact the provider or the system representative of each provider affected, or potentially affected, by the emergency. In any event, the City may take whatever action it deems necessary in order to respond to the emergency, the cost of which shall be borne by the provider whose facilities caused the emergency.
 - (3) Except in the case of an emergency, any provider who constructs in, on, above, within, over, below or through a rights-of-way without a valid permit must subsequently obtain a permit, pay double the calculated fee for said permit, pay double all the other fees required by the code, reimburse the City for any and all costs it incurs as a result of the non-permitted construction, deposit with the City the fees necessary to correct any damage to the rights-of-way and comply with all of the requirements of this chapter. In addition to the fees, costs, and penalties described and imposed in this paragraph, the City retains any and all other rights, remedies, and/or causes of action available, either in law or equity, with respect to any provider who constructs without a valid permit.
- (p) Restoration of Right-of-Way. The permittee, and/or its subcontractors shall leave Rights-of-Way where such work is done in as good condition or repair as before such work was commenced and to the reasonable satisfaction of the City. In addition to its own work, the permittee must restore the general area of the work, and the surrounding areas, including trench backfill, paving, and its foundations in accordance with the Code and City regulations. The permittee and/or its subcontractors shall endeavor to complete, in a reasonably timely manner, all repairs and restoration to the Right-of-Way. If a permittee is unable to complete the restoration of the Rights-of-Way in a reasonably

timely manner, the permittee shall notify the City. All workmanship and materials used by the permittee and/or its subcontractors to repair the streets and roadways shall meet City specifications and be subject to the inspection and approval of the Service Director and shall be warranted for a period of one (1) year from the date of completion for any failure due to workmanship or quality of materials. During this one-year period, the permittee shall, upon notification from the City Service Department, correct all restoration work to the extent necessary using the method(s) required by the City Service Department.

(1) If the permittee fails to restore the rights-of-way in the manner and to the condition required by the City, or fails to satisfactorily and timely complete all repairs required by the City, or permittee has previously failed to restore a right-of-way in a satisfactory manner, the City, at its option, may revoke or terminate the permit and may perform such work. In the event that the City performs the repair and/or restoration work due to permittee's failure to do so, the permittee shall post a bond or provide letters of credit in an amount approximately equivalent to the estimated cost of the repair and pay to the City, within thirty days of billing, the balance of the restoration cost of restoring the rights-of-way and any other costs incurred by the City. Upon failure to pay, the City may call upon any bond or letter of credit posted by permittee and/or pursue any and all legal and equitable remedies.

(q) Updating Documentation of Right-of-Way Activity and Facility Updates. Right-of-Way Permit holders shall furnish the City "as built" drawings not later than one hundred twenty (120) days after construction of a system, system addition, system replacement or system alteration has been completed. Drawings shall show accurate location and ownership. Drawings shall be drawn to a scale of one inch (1") equals two hundred feet (200') using the standard format adopted by the City. The Right-of-Way Permit holder shall provide one (1) electronic copy, one (1) set of blue or black line "as built" drawings, and one (1) set of 11 x 17 copies to the Service Director.

(r) Underground Operations.

(1) In those areas of the City where telecommunications and electric services are provided by underground facilities, all new facilities of a Right-of-Way Permit holder shall be placed underground to the extent such placement is technically feasible and will not prohibit, or have the effect of prohibiting, provision of the service within the City. In all other areas, the Right-of-Way Permit holder, upon request by the City, shall use its best efforts to place facilities underground. However, the term "facilities" as used in the preceding sentence may not include equipment which is customarily placed on or above the ground in conjunction with underground transmission facilities (e.g. splice and terminal pedestals, equipment cabinets and transformers). Where not otherwise required to be placed underground by this chapter, the Right-of-Way Permit holder's system shall be located underground at the request of the adjacent property owner, provided that the placement of such

system shall be consistent with the Right-of-Way Permit holder's construction and operating standards and provided that the excess cost over the aerial location shall be borne by the property owner making the request if so requested by the Right-of-Way Permit holder. All cable to be installed under the roadway shall be installed in conduit. Unless otherwise permitted by law, in no circumstance shall a new pole be located in any area of the City where it is not replacing an existing pole without written approval of the Service Director, which approval shall not be unreasonably withheld.

- (2) Upon reasonable written notice of and at the direction of the City Service Director, and at the Right-of-Way Permit holder's sole cost, a Right-of-Way Permit holder shall promptly remove or rearrange facilities as necessary, such as for public safety, during any construction, repair or modification of any street, sidewalk, City utility or other public improvement; or as part of the City Service Director's determination that the designated portions of its Rights-of-Way should accommodate only underground facilities or that facilities should occupy only one side of a street or other right-of-way, unless otherwise required by Law; or if an additional or subsequent City or other public use of Rights-of-Way is inconsistent with the then-current uses of such Right-of-Way Permit holder; or for any other reasonable cause as determined by the City Service Director pursuant to Section 1028.17(b);
- (3) A Right-of-Way Permit holder shall register with underground reporting services as set forth in the Regulations.

(s) Street Cut Operations.

- (1) Specialized Work Permits are required for cutting and excavating City streets and alleys.
- (2) Under no circumstances will open cutting take place on any street, except where:
 - A. An emergency situation constitutes that an open cut is necessary;
 - B. Vital services to resident(s) or business(es) are needed or have been cut off and there is no reasonable alternative (such as jacking or boring) in supplying or restoring such service; or
 - C. The City Service Director determines that it is in the best interests of the City that such an open cut take place.

(t) Other Obligations.

- (1) Obtaining a Work Permit does not relieve permittee of its duty to obtain all other necessary permits, licenses, and authority and to pay all fees required by any other City, county, state, or federal laws.

- (2) Permittee shall comply with all requirements of all laws, including the Ohio Utility Protection Service as defined in ORC § 153.64 and/or § 3781.26 or a statutory successor thereto.
- (3) Permittee shall perform all work in conformance with all applicable laws, regulations, and standards, and is responsible for all work done in the rights-of-way pursuant to its permit, regardless of who performs the work.
- (4) No rights-of-way obstruction or excavation may be performed when seasonally prohibited or when conditions are unreasonable for such work, except in the case of an emergency as outlined in Section 1028.10(b).
- (5) Permittee shall not obstruct a right-of-way so as to interfere with the natural free and clear passage of water through the gutters or other waterways. The City Service Director may waive this requirement upon good cause shown.
- (6) Private vehicles, other than necessary construction vehicles, may not be parked within or adjacent to a permit area. The loading or unloading of trucks adjacent to a permit area is prohibited unless specifically authorized by the permit.

1028.11 JOINT PLANNING AND CONSTRUCTION.

In order to promote the purposes of this chapter and the policy set forth herein, when possible, each provider shall participate in joint planning, construction and advance notification of Rights-of-Way work, as may be required by the City. The City Service Director may adopt Regulations governing such joint planning and construction for all providers.

1028.12 CITY USE OF FACILITIES.

- (a) As part of City required standards, wherever rights-of-way are under construction, if deemed advisable and practicable by the City Service Director, the City may install all such facilities deemed necessary to accommodate future provider needs. Any such installed facilities shall be City property and may be conveyed to any person under such terms and conditions as are deemed advisable by the Mayor.

1028.13 ADOPTION OF REGULATIONS.

- (a) The City Service Director may promulgate Regulations, as the City Service Director deems appropriate from time to time, to carry out the express purposes and intent of this chapter.
- (b) Such Regulations shall not materially increase the obligations of any Permittee hereunder; provided, however, that neither the adoption of Regulations increasing fees pursuant to Section 1028.06 nor requiring the placement of facilities in designated portions of the Rights-of-Way underground pursuant to Section 1028.10(p) shall be construed as materially increasing the obligations of a Right-of-Way Permit holder.

- (a) Any such regulation shall be on file in the service department.

1028.14 INDEMNITY, BONDING AND INSURANCE.

- (a) To guarantee Right-of-Way restoration and removal of facilities, the Right-of-Way Permit holder shall provide either a Performance Bond (or self-bonding by Right-of-Way Permit holders having capitalization in excess of Fifty Million Dollars), an Irrevocable Letter of Credit, or a Certified Check to pay the cost of restoration of the Right-of-Way should the Right-of-Way Permit holder fail to perform restoration required by this chapter, or pay for the cost of removal or relocation of the system required by this chapter should the Right-of-Way Permit holder fail to perform said removal or relocation.
- (b) Each Permittee shall, as a condition of its Right-of-Way Permit, indemnify, protect and hold harmless the City from any claim, loss or damage arising in any way from the Permittee's occupation or use of the Right-of-Way, including but not limited to the construction, operation or maintenance of Permittee's facilities, and from any such Permittee's negligent or wrongful act or omission.
- (c) Any operator who owns or operates small cell facilities or wireless support structures in the rights-of-way shall indemnify, protect, defend, and hold the City and its elected officials, officers, employees, agents, and volunteers harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees to include reasonable attorney fees and costs of defense, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including personal or bodily injury or death, property damage or other harm for which recovery of damages is sought, to the extent that it is caused by the negligence of the operator who owns or operates small cell facilities and/or wireless service facilities in the right-of-way, and any agent, officer, director, representative, employee, affiliate, or subcontractor of the operator, or their respective officers, agents, employees, directors, or representatives while installing, repairing, or maintaining facilities in the right-of-way.
- (d) To the fullest extent permitted by law, all Permittees shall, at their sole cost and expense, fully indemnify, defend and hold harmless the City, its officers, public officials, boards and commissions, agents, and employees from and against any and all lawsuits, claims (including without limitation Worker's Compensation claims against the City or others, causes of actions, actions, liability, and judgments for injury or damages (including but not limited to expenses for reasonable legal fees and disbursements assumed by the City in connection therewith)):
 - (1) To persons or property, in any way arising out of or through the acts or omissions of Permittee, its subcontractors, agents or employees attributable to the occupation by the Permittee of the Right-of-Way; to which Permittee's negligence shall in any way contribute; and regardless of whether the City's negligence or the negligence of any

other party shall have contributed to such claim, cause of action, judgment, injury or damage.

- (2) Arising out of any claim for invasion of the right of privacy; for defamation of any person, firm or corporation; or the violation or infringement of any copyright, trademark, trade name, service mark or patent or any other right of any person, firm and corporation by the Permittee, but excluding claims arising out of or related to City programming.
 - (3) Arising out of Permittee's failure to comply with the provisions of any federal, state, or local statute, ordinance or regulation applicable to Permittee in its business hereunder.
- (e) The foregoing indemnification is conditioned upon the City:
- (1) Giving Permittee prompt notice of any claim or the commencement of any action, suit or proceeding for which indemnification is sought;
 - (2) Affording the Permittee the opportunity to participate in and fully control any compromise, settlement, or other resolution or disposition of any claim or proceeding subject to indemnification; and
 - (3) Fully cooperating in the defense of such claim and making available to the Permittee all pertinent information under the City's control.
- (f) The City shall have the right to employ separate counsel in any such action or proceeding and to participate in the investigation and defense thereof, and the Permittee shall pay the reasonable fees and expense of such separate counsel, if employed with the approval and consent of the Permittee, or if representation of both Permittee and the City by the same attorney would be inconsistent with accepted canons of professional ethics.
- (g) The City Does Not Accept Liability.
- (1) By reason of the acceptance of an application, the grant or issuance of a permit, the City does not assume any liability:
 - A. For injuries to persons, damage to property, or loss of service claims; or
 - B. For claims or penalties of any sort resulting from the installation, presence, maintenance, or operation of facilities.
- (h) Each Right-of-Way Permit holder, as a condition of its Permit, shall keep in force a policy or policies of liability insurance, having such terms and in such amounts as are set forth in the Regulations, covering its facilities and operations pursuant to its Right-of-Way Permit.

- (i) Each Right-of-Way Permit holder shall maintain insurance coverages (or self-insurance coverage by Right-of-Way Permit holders having capitalization in excess of Fifty Million Dollars).
- (1) General liability insurance. The Right-of-Way Permit holder shall maintain, and by its acceptance of any Permit granted hereunder specifically agrees that it will maintain throughout the term of the Permit, general liability insurance insuring the Right-of-Way Permit holder in the minimum of:
- A. \$1,000,000 per occurrence;
 - B. \$2,000,000 annual aggregate;
 - C. \$1,000,000 excess general liability per occurrence and annual aggregate. Such general liability insurance must be written on a comprehensive coverage form, including the following: premises/operations, explosion and collapse hazard, underground hazard, products/completed operations hazard, contractual insurance, broad form property damage, and personal injury.
- (2) Automobile liability insurance. The Right-of-Way Permit holder shall maintain, and by its acceptance of any Right-of-Way Permit granted hereunder specifically agrees that it will maintain throughout the term of the Permit, automobile liability insurance for owned, non-owned, or rented vehicles in the minimum amount of:
- A. \$1,000,000 per occurrence; and
 - B. \$1,000,000 excess automobile liability per occurrence.
- (3) Worker's Compensation and employer's liability insurance. The Right-of-Way Permit holder shall maintain and by its acceptance of any Permit granted hereunder specifically agrees that it will maintain throughout the term of the Franchise, Worker's Compensation and employer's liability, valid in the State of Ohio, in the minimum amount of:
- A. Statutory limit for Worker's Compensation;
 - B. \$1,000,000 for employer's liability per occurrence; and
 - C. \$1,000,000 excess employer liability.
- (j) The liability insurance policies required by this section shall be maintained by the Right-of-Way Permit holder throughout the term of the Right-of-Way Permit, and such other period of time during which the Right-of-Way Permit holder is operating without a Right-of-Way Permit hereunder, or is engaged in the removal of its facilities. Each such insurance policy shall contain the following endorsement: is hereby understood and

agreed that insurance policies may not be canceled nor the intention not to renew be stated until 90 days after receipt by the City, by registered mail, of a written notice addressed to the Director of such intent to cancel or not to renew. Within sixty (60) days after receipt by the City of said notice, and in no event later than thirty (30) days prior to said cancellation, the Right-of-Way Permit holder shall obtain and furnish to the City replacement insurance policies meeting the requirements of this Section.

1028.15 REMOVAL OF FACILITIES.

- (a) Any Right-of-Way Permit holder that intends to discontinue use of any facilities within the Rights-of-Way shall submit a written notice to the City Service Director describing the portion of the facilities to be discontinued and the date of discontinuance, which date shall not be less than thirty (30) days from the date on which the notice is submitted to the City Service Director. The Right-of-Way Permit holder shall not remove, destroy or permanently disable any such facilities after such notice without the written approval of the City Service Director. The Right-of-Way Permit holder shall remove and secure such facilities as set forth in the notice unless directed by the City Service Director to abandon such facilities in place.
- (b) Facilities of a provider that fail to comply with this section and which are abandoned are deemed to be a nuisance. The City may exercise any remedies or rights it has at law or in equity, including, but not limited to:
 - (1) Abating the nuisance and taking all action necessary to recover its costs and to abate said nuisance, including but not limited to, those methods set forth in ORC § 715.261;
 - (2) Taking possession of the facilities and restoring them to a useable condition subject to a finding of the PUCO pursuant to the requirements of ORC § 4905.20 and § 4905.21; or
 - (3) Requiring removal of the facilities by the provider or by the provider's surety.
- (c) Should any Right-of-Way Permit holder fail, after notice, to remove or rearrange facilities at the City Service Director's request as specified in Section 1028.10(p), or as necessary to prevent injury or damage to persons or property and minimize disruptions to the efficient movement of pedestrian and vehicular traffic, the City may, as its option and in addition to the imposition of any penalties or other remedies hereunder, undertake or cause to be undertaken, such necessary removal or rearrangement. The City shall have no liability for any damage caused by such removal or rearrangement and the Right-of-Way Permit holder shall be liable to the City for all costs incurred by the City in such removal or rearrangement.

1028.16 REVOCATION.

- (a) Permittees hold permits issued pursuant to this chapter as a privilege and not as a right. In addition to any other rights set out in this chapter, the City reserves the right to revoke, in accordance with the procedures set forth in subsection (b) hereof, any permit in the event such Right-of-Way Permit holder violates the terms and conditions of any law, ordinance, rule or regulations, or design guidelines, where applicable, or any provision or condition of the permit, including, but not limited to the following:
- (1) Any misrepresentation of fact in the application for the permit;
 - (2) The failure to maintain the required bonds and/ or insurance;
 - (3) The failure to complete construction in a timely manner; or
 - (4) The failure to correct a condition of an order issued.
- (b) The City Service Director shall give the Permittee thirty (30) days' prior written notice of his/her intent to revoke or place additional or revised conditions on said Permittee's Permit. Such notice shall state the reasons for such action. If the Permittee cures the violation or other cause within the thirty-day notice period, or if the Permittee initiates efforts satisfactory to the City Service Director to remedy the stated violation, the City Service Director may rescind said notice. If the Permittee does not cure the stated violation or other cause or undertake effort satisfactory to the City Service Director to remedy the stated violation, the City Service Director may recommend said Permit be revoked or revised. After granting the Permittee an opportunity to be heard in person or in writing, Council/ its designee may revoke the Permit. Unless otherwise required by law, the decision of the City Council/designee shall be final.
- (c) If a Permittee commits a second violation as outlined above, Permittee's permit will automatically be revoked and Permittee will not be allowed further permits for up to and including one full year from the date that the permit was revoked, except for emergency repairs.
- (d) Unless otherwise directed by the City Service Director, if a Permit is revoked, all facilities located in the Rights-of-Way pursuant to such Permit shall be removed at the sole expense of the Permittee. In addition, the permittee shall reimburse the City for the City's reasonable costs, including restoration costs and the costs of collection and reasonable attorneys' fees incurred in connection with such revocation.

1028.17 PRESERVATION OF RIGHTS.

- (a) Nothing in this chapter should be construed to grant any right or interest in any Right-of-Way other than that explicitly set forth herein or in a Right-of-Way Permit.
- (b) Nothing in this chapter shall be construed to prevent the City from constructing, maintaining, repairing or relocating any City utility, communications or other facilities;

vacating, grading, paving, maintaining, repairing, relocating or altering any street, Public Property or Right-of-Way; or constructing, maintaining, repairing or relocating any sidewalk, bike path or other public work or improvement. To the extent that such work requires temporary or permanent relocation or rearrangement of any facilities or structures of any Right-of-Way Permit holder, such relocating and rearranging shall be at the sole cost of the Right-of-Way Permit holder in such time and in such manner as set forth in the Regulations.

- (c) The City retains the right and privilege to cut or move any facilities located within the Rights-of-Way as the City may determine to be necessary, appropriate or useful in response to any public health or safety emergency.
- (d) Unless directly caused by willful, intentional or malicious acts by the City, the City shall not be liable for any damage to or loss of any facility within the Rights-of-Way as a result of or in connection with any public works, public improvements, construction, excavation, grading, filling, or work of any kind in the Rights-of-Way.

1028.18 TEMPORARY MOVEMENT OF FACILITIES.

In the event it is necessary to move or remove temporarily any of the Right-of-Way Permit holder's wires, cables, poles or other facilities placed pursuant to this chapter in order to lawfully move a large object, vehicle, building or other structure over the streets of the City, upon two (2) weeks written notice by the City Service Director to the Right-of-Way Permit holder, the Right-of-Way Permit holder shall, at the expense of the person requesting the temporary removal of such facilities, comply with the City Service Director's request.

1028.19 FORECLOSURE AND RECEIVERSHIP.

- (a) Upon the foreclosure or other judicial sale of the Right-of-Way Permit holder's facilities located within the Right-of-Way, the Right-of-Way Permit holder shall notify the City Service Director of such fact and its Right-of-Way Permit shall be deemed void and of no further force and effect.
- (b) The City shall have the right to revoke, pursuant to the provisions of Section 1028.16 any Right-of-Way Permit granted pursuant to this chapter, subject to any applicable provisions of law, including the Bankruptcy Act, one hundred and twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of the Right-of-Way Permit holder, whether in receivership, organization, bankruptcy or other action proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred and twenty (120) days, or unless:
 - (1) Within one hundred and twenty (120) days after his/her election or appointment, such receiver or trustee shall have fully complied with all the provisions of the relevant Right-of-Way Permit and of this chapter and remedied all defaults thereunder; and

- (2) Such receiver or trustee, within said one hundred and twenty (120) days, shall have executed an agreement, duly approved by the Court having jurisdiction in the premises, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of the relevant Right-of- Way Permit and this chapter.

1028.20 NONENFORCEMENT AND WAIVERS BY CITY.

The Right-of-Way Permit holder shall not be relieved of its obligation to comply with any of the provisions of its Right-of-Way Permit or this chapter by reason of any failure of the City to enforce prompt compliance.

1028.21 CAPTIONS AND HEADINGS.

The captions and headings in this chapter are for convenience and reference purposes only and shall not affect in any way the meaning of interpretation of this chapter.

1028.22 SEVERABILITY.

If this chapter or any material section thereof is determined by an appropriate government agency or judicial authority to be invalid or preempted by federal, state or local regulations or laws, all of the other provisions of the chapter shall remain in effect and the City shall have the right to modify such invalid or preempted section; provided, however that no such modification shall be materially inconsistent with the original intent of the invalid or preempted section and shall not impose upon Right-of-Way Permit holder total financial obligations in excess of those imposed upon Right-of-Way Permit holders under this chapter.

1028.23 SMALL CELL FACILITIES AND WIRELESS SUPPORT STRUCTURES.

- (a) Use of Rights of Way. In accordance with ORC 4939, this section establishes terms and conditions for the use of the Right-of-Way by an Operator to Collocate Small Cell Facilities and Construct, maintain, modify, operate, or replace Wireless Support Structures to distribute Wireless Service in the City.
- (b) Applicability. The application procedures, permit fees, and auditing procedures outlined in this chapter and the City's Design Guidelines shall be applicable to applications to establish Wireless Facilities. However, Wireless Facilities that are not Small Cell Facilities or Wireless Support Structures as defined in this chapter are not subject to this section.
- (c) Right-of-Way Permit Required. In accordance with this chapter, and unless otherwise prohibited by Law, each Person who occupies, uses, or seeks to Occupy or Use the Rights-of-Way to operate a Small Cell Facility or Wireless Support Structure in the Right-of-Way, or who has, or seeks to have, a Small Cell Facility or Wireless Support Structure located in any Right-of-Way, shall apply for and obtain a Right-of-Way Permit pursuant to this chapter.

- (d) **Work Permit Required.** All applications for the construction or modification of a Small Cell Facility or Wireless Support Structure shall comply with the Work Permit requirements set forth in this chapter and any other applicable Law.
- (e) **Micro Wireless Permit Submission.** In addition to the requirements in (c) and (d) of this Section 1028.23, a Micro Wireless Permit shall be submitted by any Person that seeks to Construct, modify, Collocate, or replace a Small Cell Facility or Wireless Support Structure in any Right-of-Way. The City's consent shall not be required for the replacement of a Small Cell Facility and/or Wireless Support Structure with a Small Cell Facility and/or Wireless Support Structure, respectively, that is consistent with the City's Design Guidelines and is substantially similar to the existing Small Cell Facility and/or Wireless Support Structure, or the same size or smaller than the existing Small Cell Facility and/or Wireless Support Structure and complies with the requirements for Work Permits as provided in this chapter.
 - (1) For processing a Micro Wireless Permit, the city may charge a fee for each Small Cell Facility and/or Wireless Support Structure in accordance with Law and as listed on the Micro Wireless Permit forms.
 - (2) The City shall grant or deny a Micro Wireless Permit in accordance with any required timelines under Law.
 - A. If the City fails to approve or deny a Micro Wireless Permit within the required time period, provided that the time period is not otherwise tolled in accordance with the provisions of this section, the Micro Wireless Permit shall be deemed granted upon the requesting entity notifying the City that the time period for granting or denying the request of consent has lapsed.
 - (3) Requests for consent that do not meet the requirements listed on the application or stated herein or in the City's Design Guidelines shall be deemed incomplete or shall otherwise be denied by the City.
 - A. If a Micro Wireless Permit is deemed incomplete, within thirty (30) days of receiving the application, the City shall provide written notice to the Applicant that clearly and specifically delineates all missing documents or required information.
 - (i) Once the Applicant submits the documents or information in response to the City's notice of incompleteness, the time period for review resumes and the City shall grant, deny, or deem the Micro Wireless Permit to be incomplete due to not providing the information identified in the original notice of incompleteness.
 - (ii) For a Micro Wireless Permit that is deemed incomplete for a second or subsequent time, the city shall notify the Applicant within ten (10) days and

continue to follow the process in Section 1028.23(e)(3)(A)(i) of this section until such time that a complete application is received from the Applicant. At such time, the City shall, within the required time period for review, grant or deny the Micro Wireless Permit.

- B. If a Micro Wireless Permit is denied, the City shall provide in writing its reasons for denying the request, supported by substantial, competent evidence, and such information that the Applicant may reasonably request to obtain consent.
 - (i) Except in the case of a Public Utility subject to the jurisdiction and recognized on the rolls of the public utilities commission or 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 City, 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.
- (4) The City shall permit a Person seeking to Construct, modify, Collocate, or replace more than one Small Cell Facility or more than one Wireless Support Structure within the Right-of-Way to file a consolidated application for consent.
- A. No more than thirty (30) Small Cell Facilities or thirty (30) Wireless Support Structures shall be proposed within a single application to receive a single Micro Wireless Permit for the Construction, modification, Collocation, or replacement of Small Cell Facilities or Wireless Support Structures in the Right-of-Way.
 - B. A single application may only address multiple Small Cell Facilities or Wireless Support Structures if they each involve substantially the same type of Small Cell Facility and/or substantially the same type of Wireless Support Structure.
 - C. If an applicant intends to submit five (5) or more Small Cell Facilities or Wireless Support Structures in a single application, a pre-application meeting that includes the applicant and the service department may be required by the City in order to help expedite the permitting process. This pre-application meeting may also include a site visit if so requested by the City.
 - D. The City Building Department may separately address applications for which incomplete information has been received or which are denied.
- (5) If the number of requests for consent is likely to result in difficulty processing applications within the time limits set forth in Law due to the lack of resources of the City, then the City may toll the time limits as follows:
- A. The time period for the City to grant or deny a Micro Wireless Permit may be tolled for up to twenty-one (21) days for the first fifteen (15) requests for

consent for Small Cell Facilities or Wireless Support Structures received by the City above an initial threshold of 15 applications.

- B. For every additional fifteen (15) requests for consent that the City receives, the City may toll the time period to grant or deny its consent for up to fifteen (15) additional days.
 - C. In no instance shall the city toll the time period for any Small Cell Facility or Wireless Support Structure Micro Wireless Permit by more than ninety (90) consecutive days.
 - D. Upon request by the Applicant, the City shall provide written notice of the time limit for a Small Cell Facility or Wireless Support Structure Micro Wireless Permit.
- (f) Annual Charge. The total annual charge to reimburse the City for Collocation of a Small Cell Facility by an Operator to a Wireless Support Structure owned by the City and located in the Right-of-Way shall be in accordance with Law.
- (g) Term. The City's approval term of a Collocation to a Wireless Support Structure shall be for a period of not less than ten (10) years, with a presumption of renewal for successive five-year terms, unless otherwise terminated or not renewed for cause or by mutual agreement between the Operator and the City.
- (1) An Operator may remove its Small Cell Facilities at any time subject to applicable Right-of-Way Permit and Work Permit requirements and may stop paying annual charges or fees established by Law.
 - (2) In the event that use of a Small Cell Facility or Wireless Support Structure is discontinued, the owner shall submit written notice to the City to discontinue use and the date when the use shall be discontinued. If the Small Cell Facility or Wireless Support Structure is not removed within three hundred sixty-five (365) days of discontinued use, the Small Cell Facility or Wireless Support Structure shall be considered Abandoned and the City may remove the Small Cell Facility or Wireless Support Structure at the owner's expense.
- (h) Design Guidelines. The City of Bexley Building Department is authorized to establish, implement and amend, from time to time, Design Guidelines regarding, among other things: (1) the location of any ground-mounted Small Cell Facilities; (2) the location of a Small Cell Facility on a Wireless Support Structure; (3) the appearance and concealment of Small Cell Facilities, including those relating to materials used for arranging, screening or landscaping; and (4) the design and appearance of a Wireless Support Structure, including any Height requirements adopted by the City.
- (1) The City, as opposed to the Construction of a new Wireless Support Structure in the Right-of-Way, shall prefer locating Small Cell Facilities on existing Wireless Support

structures without increasing the Height of the Wireless Support Structure by more than five (5) feet, including the Antenna and any associated shroud or concealment material.

- (2) The City shall permit, consistent with Law and for the purpose of providing Wireless Service, Collocation of a Small Cell Facility by an Operator to a Wireless Support Structure owned by the City and located in the Right-of-Way, provided that the Operator comply with the Design Guidelines under (h) of Section 1028.23 and any reasonable terms and conditions for such Collocation that are adopted by the City and consistent with the Design Guidelines and this chapter.
 - A. The City may condition approval of the Collocation on replacement or modification of the Wireless Support Structure at the Operator's cost if the City determines that replacement or modification is necessary for compliance with its construction or safety standards.
 - B. A replacement or modification of the Wireless Support Structure shall conform to the applicable Design Guidelines and the City's applicable specifications for the type of structure being replaced.
 - C. The City may retain ownership of a replacement Wireless Support Structure.
 - D. The City may require removal and relocation of a Small Cell Facility or Wireless Support Structure, at the Permittee's sole expense, in order to accommodate Construction of a public improvement project by the City.
- (3) The City may propose an alternate location to the proposed location of a new Wireless Support Structure that is within one hundred (100) feet of the proposed location or within a distance that is equivalent to the width of the Right-of-Way in or on which the new Wireless Support Structure is proposed, whichever is greater, which the Operator shall use if it has the right to use the alternate location on reasonable terms and conditions and the alternate location does not impose technical limits or additional costs. In the event that the Operator determines the alternate location imposes technical limits or additional costs, the Operator must provide satisfactory material support, in writing, by a third-party professional with an appropriate expertise in small cell telecommunications infrastructure engineering and costing, as to the technical limits and/or additional costs imposed by the proposed alternate site.

1028.24 HISTORIC DISTRICTS.

- (a) Except as otherwise provided by Law, the City shall have the authority to prohibit the use or occupation of the Right-of-Way by a Provider if the Right-of-Way for which the Provider seeks use and occupancy lies within a Historic District.

- (b) As a condition for approval for the co-location or installation of Small Cell Facilities and/or Wireless Support Structures in an area of the City designated as a Historic District, the City may:
- (1) Require reasonable, technically feasible, and nondiscriminatory design or concealment measures for the Small Cell Facilities and Wireless Support Structures.
 - (2) Request that a provider comply with the design and aesthetic standards of the Historic District or a residential district, as provided for in the City's Design Guidelines.
 - (3) Request that a provider explore the feasibility of using certain camouflage measures to improve the aesthetics of the Small Cell Facilities and Wireless Support Structures in order to minimize the impact to the area aesthetics.
- (c) This section may not be construed to limit the City's authority to enforce local codes, administrative rules, or Regulations adopted by ordinance, which are applicable to a historic area designated by the State or City and historic preservation zoning regulations consistent with the preservation of local zoning authority under 47 U.S.C. Section 332(c)(7), the requirements for facility modifications under 47 U.S.C. Section 1455(a), or the National Historic Preservation Act of 1966 (54 U.S.C. Section 300101 et seq.), and the regulations adopted to implement those laws.

1028.25 GENERAL PROVISIONS.

- (a) Non-exclusive Remedy. The remedies provided in this chapter are not exclusive or in lieu of other rights and remedies that the City may have at law or in equity. The City is hereby authorized at any time to seek legal and equitable relief for actual or threatened injury to the rights-of-way, including but not limited to damages to the rights-of-way, whether caused by a violation of any of the provisions of this chapter or other provisions of the City Code.
- (b) Revocability. If a regulatory body or a court of competent jurisdiction should determine by a final, non-appealable order that any permit, right or any portions of this section are illegal or unenforceable, then any such permit or right granted or deemed to exist hereunder shall be considered as a revocable permit with a mutual right in either party to terminate without cause upon giving thirty days written notice to the other. The requirements and conditions of such a revocable permit shall be the same requirements and conditions as set forth in the permit, right or registration, respectively, except for conditions relating to the term of the permit and the right of termination. If a permit or right shall be considered a revocable permit as provided herein, the permittee must acknowledge the authority of the City to issue such revocable permit and the power to revoke it.

- (c) **Reservation of Regulatory and Police Powers.** The City, by the granting of a permit or by issuing a Right-of-Way Permit pursuant to this chapter, does not surrender or to any extent lose, waive, impair, or lessen the lawful powers and rights, which it has now or may be hereafter vested in the City under the Constitution and laws of the United States, State of Ohio and under the Charter of the City to regulate the use of the rights-of-way. The permittee by its acceptance of a permit, or provider by applying for and being issued a Right-of-Way Permit, is deemed to acknowledge that all lawful powers and rights, regulatory power, or police power, or otherwise as now are or the same as may be from time to time vested in or reserved to the City, shall be in full force and effect and subject to the exercise thereof by the City at any time. A permittee or provider is deemed to acknowledge that its rights are subject to the regulatory and police powers of the City to adopt and enforce general ordinances necessary to the safety and welfare of the public and is deemed to agree to comply with all applicable general laws and ordinances enacted by the City pursuant to such powers.
- (d) **Requests for Information.** In the event that the City receives a request from a third party for the disclosure of information a provider has clearly marked as "confidential/proprietary information," then the City shall respond in accordance with ORC Chapter 149 et seq. However, the City shall endeavor to use reasonable best efforts to timely place the provider's system representative on notice that such a request for public disclosure has been made, at which point it will be the provider's sole and exclusive responsibility to take whatever steps it deems necessary to protect such documents from disclosure.
- (e) **Applies to All Providers.** This chapter shall apply to all providers and all permittees unless expressly exempted.
- (f) **Police Powers.** All persons' rights are subject to the police powers of the City to adopt and enforce ordinances necessary to the health, safety and welfare of the public. All persons shall comply with all applicable laws enacted by the City pursuant to its police powers. As applicable pursuant to law, all persons shall comply with City zoning and other land use requirements pertaining to the placement and specifications of facilities.
- (g) **Compliance.** No person shall be relieved of its obligation to comply with any of the provisions of this chapter by reason of any failure of the City to enforce prompt compliance.
- (h) **Continuing Obligation and Holdover.** In the event a provider or permittee continues to operate all or any part of the facilities after the termination, lapse, or revocation of a Right-of-Way Permit, such provider or permittee shall continue to comply with all applicable provisions of this chapter and other laws throughout the period of such continued operation, provided that any such continued operation shall in no way be construed as a renewal or other extension of the Right-of-Way Permit, nor as a limitation on the remedies, if any, available to the City as a result of such continued operation after the term, including, but not limited to, damages and restitution. Any

conflict between the issuance of a Right-of-Way Permit or of a permit and any other present or future lawful exercise of the City's regulatory or police powers shall be resolved in favor of the latter.

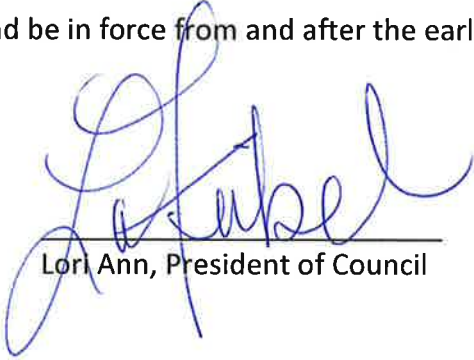
1028.101 PENALTY.

- (a) Whoever violates or fails to comply with any of the provisions of this chapter for which no penalty is otherwise provided is guilty of a misdemeanor of the fourth degree and shall be fined not more than two hundred fifty dollars (\$250.00) or imprisoned not more than thirty (30) days, or both, for each offense. A separate offense shall be deemed committed each day during or on which a violation or noncompliance occurs or continues.
- (b) The application of the penalty in subsection (a) hereof shall not be deemed to prevent the enforced correction of prohibited conditions or the application of any other equitable remedy.
- (c) Any Right-of-Way Permit holder may be excused for violations of this chapter and its Right- of-Way Permit due to Force Majeure.

Section 2.

That this ordinance shall go into effect and be in force from and after the earliest period allowed by law.

Passed: Jan. 26, 2021



Lori Ann, President of Council

Attest:



William Harvey, Clerk of Council

Approved: January 26, 2021



Mayor Ben Kessler

First Reading:

Second Reading

Third Reading:

Passed: January 26, 2021