

EMERGENCY ORDINANCE NO. 2018-16

AN ORDINANCE AMENDING AND SUPPLEMENTING CHAPTER 1020 OF THE CODIFIED ORDINANCES KNOWN AS THE COMPREHENSIVE RIGHTS-OF-WAY ORDINANCE AND DECLARING AN EMERGENCY.

WHEREAS, House Bill 478 modifies the law regarding wireless service and the placement of small cell wireless facilities in the public way effective August 1, 2018; and

WHEREAS, Council desires to amend and supplement Chapter 1020 to comply with House Bill 478 and include additional regulations and definitions related to wireless service and small cell wireless facilities.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MONROE, STATE OF OHIO, THAT:

SECTION 1: Section 1020.01 of Chapter 1020 is hereby amended and supplemented to read as follows:

“1020.01. - Declaration of findings and purpose, scope, definitions.

(a) *Findings and purpose.*

- (1) The City of Monroe, Ohio (the "City") is vitally concerned with the use of all rights-of-way in the City as such rights-of-way are a valuable and limited resource which must be utilized to promote the public health, safety, and welfare including the economic development of the City.
- (2) Changes in the public utilities and communication industries have increased the demand and need for access to rights-of-way and placement of facilities and structures therein.
- (3) It is necessary to comprehensively plan and manage access to, and structures and facilities in, the rights-of-way to promote efficiency, discourage uneconomic duplication of facilities, lessen the public inconvenience of uncoordinated work in the rights-of-way, and promote the public health, safety, and welfare.
- (4) The City has authority under the laws and Constitution of the State of Ohio, including but not limited to Article 18, Sections 3, 4 and 7, to regulate public and private entities which use the rights-of-way.

(b) *Scope.* The provisions of this chapter shall apply to all users of the rights-of-way as provided herein. To the extent that anything in this chapter 1020 conflicts with chapter 1022, then the provisions of this chapter 1020 shall control.

(c) *Definitions.* For the purposes of chapter 1020 the following terms, phrases, words, and their derivations have the meanings set forth herein. When not inconsistent with the context, words in the present tense include the 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. References hereafter to "sections" are, unless otherwise specified, references to sections in this chapter. Defined terms remain defined terms whether or not capitalized.

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 Section 1020.02(g)(1) and (2); or for a period exceeding ninety (90) consecutive days or a total of one hundred eighty (180) days in any 365-day period, without notice of the discontinued operations or use given to the City by the provider 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 (365) days without the operator otherwise notifying the City and receiving the City's approval.

Affiliate means each person who falls into one or more of the following categories: (a) each person having, directly or indirectly, a controlling interest in a provider, (b) each person in which a provider has, directly or indirectly a controlling interest, (c) each officer, director, general partner, limited partner or shareholder holding an interest of 15 percent or more, joint venturer or joint venture partner, of a provider, and (d) each person, directly or indirectly, controlling, controlled by, or under common control with the provider; provided that affiliate shall in no event mean any limited partner or shareholder holding an interest of less than 15 percent of such provider, or any creditor of such provider solely by virtue of its status as a creditor and which is not otherwise an affiliate by reason of owning a controlling interest in, being owned by, or being under common ownership, common management, or common control with, such provider.

Antenna means communications equipment that transmits or receives radio frequency signals in the provision of wireless service.

Applicant means any person who seeks to obtain a certificate of registration, micro wireless permit, and/or minor maintenance permit.

Application means the process and format by which an applicant submits a request to obtain a certificate of registration, minor maintenance permit, and/or a micro wireless permit.

Application fee means the fee paid to the City for application for a certificate of registration pursuant to section 1020.03(a).

Bankruptcy code means the United States Bankruptcy Code of 1978, as amended including regulations promulgated by Title 11 of the United States Code.

Best effort(s) means the best reasonable efforts under the circumstances, taking into consideration, among other appropriate matters, all applicable laws, regulations, safety, engineering and operational codes, available technology, human resources, and cost.

Cable franchise means the same as "franchise" in the Cable Communications Policy Act of 1984, 98 Stat. 2779, 47 U.S.C. 522.

Cable operator means the same as in the Cable Communications Policy Act of 1984, 98 Stat. 2779, 47 U.S.C. 522.

Cable service means the same as in the Cable Communications Policy Act of 1984, 98 Stat. 2779, 47 U.S.C. 522.

Certificate of registration means the document issued to each provider and its unique system to occupy the rights-of-way within the city that outlines the terms of that occupancy of the rights-of-way.

City means the City of Monroe, Ohio.

City Council means the governing body of the City of Monroe, Ohio.

City Manager means the duly appointed City Manager of the City of Monroe, Ohio.

Code or *C.O.* means the Codified Ordinances of Monroe, Ohio.

Collocation or collocate means to install, mount, maintain, modify, operate, or replace wireless facilities on a wireless support structure.

Confidential/proprietary information means all information that has been either identified or clearly marked as confidential/proprietary information by the provider prior to any submission. Information that is considered by a provider to be either trade secret, confidential and/or proprietary, or information that upon public disclosure would be highly likely to place critical portions of a provider's system in material danger of vandalism, sabotage, or an act of terrorism, all may be marked as confidential/proprietary information by a provider when submitted. Upon receipt of such clearly marked confidential/proprietary information from a provider, the City shall endeavor, in accordance with the requirements of O. R.C. Chapter 149 (the Ohio Public Records Act), to use all the same reasonable measures and exercise the same degree of care that the City uses to protect its own information of such a nature from disclosure to third parties. In the event that the City receives a request from a third party for disclosure of information a provider has clearly marked as confidential/proprietary information, then the City shall respond as required by O. R.C. Chapter 149, but will attempt to use all reasonable means to notify the provider as soon as possible.

Construct means, but not be 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.

Construction means, but 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 or improved surface that is part of the right-of-way.

Construction and major maintenance plan means a written plan including maps of the expected location, design, other related equipment and facilities of a provider which describes in

full the construction intended to be accomplished by the provider in the rights-of-way over the next calendar year.

Construction bond means a bond posted to ensure proper and complete construction and/or repair of a facility and the affected rights-of-way pursuant to a permit.

Construction permit means the permit specified in section 1020.15 et seq. which must be obtained before a person may construct in, locate in, occupy, maintain, move or remove facilities from, in or on the rights-of-way.

County means either Butler or Warren County, Ohio, or both. County specifically excludes any and all contractors, agents or other persons acting on behalf of said county.

Credible means worthy of being believed.

Decorative pole means a pole, arch, or structure other than a street light pole placed in the public way specifically designed and placed for aesthetic purposes and on which no appurtenances or attachments have been placed except for the following: (i) electric lighting; (ii) specifically designed informational or directional signage; or (iii) temporary holiday or special event attachments.

Design guidelines means detailed guidelines and specifications promulgated by the City in accordance with O.R.C. 4939 for the design and installation of small cell facilities and wireless support structures in the right-of-way.

Director of Public Works means the duly appointed Director of Public Works for the City of Monroe.

Emergency means a condition that poses a clear and immediate danger to life or health, or of a significant loss of property.

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.

FCC means the Federal Communications Commission, or any successor thereto.

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.

Finance Director means the duly appointed Finance Director of the City of Monroe, Ohio.

Full means unable to accommodate any additional facilities as determined by the Director of Public Works 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.

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 lightning protection device.

Historic District mean a building, property, or site, or group of buildings, properties, or sites that are either of the following:

(a) 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.

(b) A registered historic district as defined in O.R.C. 149.311.

In when used in conjunction with rights-of-way, means in, on, above, within, over, below, under or through a rights-of-way.

Inspector means any person authorized by the Director of Public Works to carry out inspections related to the provisions of this chapter 1020.

Law means any local, state and/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 chapter 1020 or at any time during the location of, and/or while a provider's facilities are located in the public rights-of-way.

Law Director means the duly appointed Law Director of Monroe, Ohio.

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 1020.07 et seq., in or on the rights-of-way.

Minor maintenance permit means a permit, which must be obtained before a person can perform minor maintenance, as set forth in section 1020.17, in or on the rights-of-way.

Occupy or use means, with respect to a right-of-way, to place a tangible thing in a 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.

Ohio Manual of Uniform Traffic Control Devices or *OMUTCD* means the uniform system of traffic control devices promulgated by the Ohio Department of Transportation pursuant to O. R.C. 4511.09.

O.R.C. means the Revised Code of the State of Ohio.

Ohio Utility Protection Service means the utility protection service as defined in O. R.C. 153.64 and/or 3781.26 or a statutory successor thereto.

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.

Operator means a 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, as services that are fixed in nature or use unlicensed spectrum.

Permit means a construction permit, minor maintenance permit, or a micro wireless permit, as the context requires.

Permit cost means all direct, incidental and indirect costs actually incurred or realized by the City for permit issuance, permit oversight and pavement degradation resulting from construction activity.

Permit fee means money paid to the City for a permit to construct and/or do minor maintenance in the rights-of-way and/or collocate small cell facilities and/or wireless support structures in the rights-of-way, as the context requires, as required by chapter 1020.

Permittee means any person to whom a construction permit, minor maintenance permit, and/or micro wireless permit has been granted by the City and not revoked.

Person means any natural person or corporate entity, business association, or other business entity including, but not limited to, a partnership, a sole proprietorship, a political subdivision, a public or private agency of any kind, a utility, a successor or assign of any of the foregoing, or any other legal entity.

Provider means a person who owns or operates a system and has a valid certificate of registration. The city, county, 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.

PUCO means the Public Utilities Commission of Ohio as defined in O.R.C. 4901.02.

Registration maintenance fee means the money paid to the City to maintain a certificate of registration and compensate the City for all actual 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 construction permit fees or other approved recovery mechanisms.

Removal bond means a bond posted to ensure the availability of sufficient funds to remove a provider's facilities upon abandonment or disuse, or discontinuance of a provider's use or occupation of the rights-of-way.

Restoration means the process and the resultant effects by which a right-of-way is returned to a condition as good as or better than its condition immediately prior to the construction. "Restoration" shall occur in accordance with the rules and regulations as may be enacted or amended from time to time.

Right(s)-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.

Right(s)-of-way cost means all direct, incidental and indirect costs borne by the City for the management and administration of the rights-of-way and this chapter.

Rule(s) and regulation(s) means any rules or regulations adopted by the Director of Public Works pursuant to section 1020.06(e).

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 City Manager constitutes a service.

Small Cell Facility means a wireless facility that meets both of the following requirements:

(a) 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.

(b) 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

State means the State of Ohio.

Supplementary application means any application made to construct on or in more of the rights-of-way than previously allowed, or to extend a permit that had already been issued.

System means any system of conduit, cables, ducts, pipes, wires, lines, towers, antennae wave guides, optic fiber, 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 sewer 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.

System representative means the specifically identified agent/employee of a provider who is authorized to direct field activities of that provider and serve as official notice agent for system-related information. Any such system representative shall be required to be available at all times to receive notice of and immediately direct response to system-related emergencies or situations.

Transfer means the disposal by the provider, directly or indirectly, by gift, assignment, voluntary sale, merger, consolidation or otherwise, of 51 percent or more at one time of the ownership or controlling interest in the system, or 51 percent cumulatively over the term of a

certificate of registration of such interests to a corporation, partnership, limited partnership, trust, or association or person or group of persons acting in concert.

Trenchless technology means, but not be 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.

Underground facility(ies) means all lines, cables, conduits, pipes, posts, tanks, vaults and any other facilities which are located wholly or partially underneath rights-of-way.

Unused facility(ies) means facilities located in the rights-of-way which have remained unused for 12 months and for which the provider is unable to provide the City with a credible plan detailing the procedure by which the provider intends to begin actively using such facilities within the next 12 months, or that it has a potential purchaser or user of the facilities who will be actively using the facilities within the next 12 months, or that the availability of such facilities is required by the provider to adequately and efficiently operate its system.

Utility(ies) means any water, sewer, gas, drainage, sprinkler or culvert pipe and any electric power, telecommunications, signal communications, cable television or video service provider conduit, fiber, wire, cable, or an operator thereof.

Utility corridor(s) means those specific areas of the rights-of-way designated as such by the Director of Public Works pursuant to section 1020.03(f)(1).

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

Video service means the same as "video service" in O.R.C. 1332.21(J).

Video service authorization or *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 O.R.C. 1332.24(A)(1).

Video service network means the same as "video service network" in Ohio R.C. 1332.21(L).

Video service provider or *VSP* means the same as "video service provider" in Ohio R.C. 1332.21(M).

Wireless Facility means an antenna, accessory equipment, distributed antenna system, small cell facility, micro wireless facility, or other device or equipment used to provide wireless service, including such devices and equipment as provided for in O.R.C. 4939.

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.

Wireless Service Provider means a person who provides wireless service as defined in division (A)(19) of O.R.C. 4927.01.

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 is

capable of supporting small cell facilities. As used in this chapter, WIRELESS SUPPORT STRUCTURE excludes all of the following:

- (a) A utility pole or other facility owned or operated by a municipal electric utility;
- (b) A utility pole or other facility used to supply traction power to public transit systems including railways, trams, streetcars, and trolleybuses.

Working day means any Monday, Tuesday, Wednesday, Thursday, or Friday, but excluding legal holidays observed by the City.”

SECTION 2: Section 1020.02 of Chapter 1020 is hereby amended and supplemented to read as follows:

“1020.02. - Rights-of-way administration.

- (a) *Administration.* The City Manager shall be the principal City official responsible for the administration of chapter 1020, except as otherwise provided herein. The City Manager may delegate any or all of the duties hereunder to the Director of Public Works or other designee.
- (b) *Rights-of-way occupancy.* Each person who occupies, uses or seeks to occupy or use the rights-of-way 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 certificate of registration pursuant to chapter 1020. Any person owning, operating or maintaining a system in the rights-of-way without a certificate of registration, including persons operating under a permit, license or franchise issued by the City prior to the effective date of chapter 1020 shall apply for and obtain a certificate of registration from the City, unless exempted by section 1020.02(d). Application will consist of providing the information set forth in section 1020.03 and as reasonably required by the City Manager.
- (c) *No construction without a certificate of registration.* Following the effective date of chapter 1020, no person shall construct or perform any work on or in any rights-of-way, nor shall a provider use any system or any part thereof located on or in any rights-of-way without first obtaining a certificate of registration. Whoever violates this section is guilty of a misdemeanor of the fourth degree as provided for in section 1020.99.
- (d) *Exceptions.*
 - (1) The following entities are not obligated to obtain a certificate of registration: the City and resellers of services or persons that do not own any system or facilities in the rights-of-way.
 - (2) The following entities are required to participate in the certificate of registration process, but shall be exempt from the financial obligations of the application fee required by section 1020.03(a) and the registration maintenance fee required by section 1020.05(a): A county, cable operators for the purpose of providing only cable service and operating pursuant to a valid cable franchise; and video service provider for the purpose of providing only video service and operating pursuant to a valid video service authorization issued in accordance with O.R.C. 1332.24; and a small cell facility operator for the purpose of providing wireless service. In addition, cable operators shall be exempt from any requirement of the certificate of registration 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.

- (e) *Systems in place without a certificate of registration.* Any system or part of a system found in a rights-of-way for which a certificate of registration has not been obtained, or is not otherwise exempted under section 1020.02(d)(1), shall be deemed to be a nuisance and an unauthorized use of the rights-of-way. The City may exercise any remedies or rights it has at law or in equity, including, but not limited to abating the nuisance; taking possession of the facilities and/or noncomplying portion of such system; and/or prosecuting the violator.
- (f) *Future uses.* Subject to applicable law, in allowing providers and permittees to place facilities in the rights-of-way, the City shall not be liable for any damages caused thereby to any provider's facilities that are already in place or that shall be placed in the rights-of-way unless those damages arise out of the sole negligence, gross negligence, willful misconduct, or fraud of the City. No provider is entitled to rely on the provisions of this chapter as creating a special duty to any provider.
- (g) *Discontinuance of operations, abandoned and unused facilities.*
 - (1) A provider who has discontinued or is discontinuing its operations of any system in the City shall:
 - a. Provide information satisfactory to the City that the provider's obligations for its system in the rights-of-way under this section and any other sections in the code have been lawfully assumed by another applicant and/or provider; or
 - b. Submit a written proposal to re-use its facilities in a manner that promotes the City's goals of providing innovative and economic solutions to efficiently and economically utilize limited rights-of-way capacity. Such proposal must be approved by the Director of Public Works; or
 - c. Submit a written proposal for abandonment of facilities in place indicating why good engineering practice would support this type of solution. The Director of Public Works must approve said proposal; or
 - d. Completely remove all specifically identified portion(s) of its system in a manner acceptable to the City within a reasonable amount of time if the City believes that there exists a reasonable justification for such removal; or
 - e. Submit to the City within a reasonable amount of time and in accordance with O.R.C. 4905.20 and 4905.21, a proposal for transferring ownership of its facilities to the City. If a provider proceeds under this clause, the City may, at its option where lawful:
 - 1. Purchase the facilities; or
 - 2. Unless a valid removal bond has already been posted pursuant to section 1020.19(b), require the provider to post a bond in an amount sufficient to reimburse the City for reasonably anticipated costs to be incurred in removing the facilities.
 - (2) Facilities of a provider that fail to comply with this section and which remain unused facilities shall be deemed to be abandoned. Abandoned facilities 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:

- a. Abating the nuisance;
 - b. Taking possession of the facilities and restoring them to a useable condition subject to a finding of the PUCO pursuant to the requirements of O.R.C. 4905.20 and 4905.21; or
 - c. Requiring removal of the facilities by the provider or by the provider's surety.
- (3) If the City requires a provider to remove unused facilities in any rights-of-way, the City shall use reasonable efforts to direct that this removal occur in conjunction with other scheduled excavations of the rights-of-way. If the City abates the nuisance it may take all action necessary to recover its costs and to abate said nuisance, including but not limited to, those methods set forth in O.R.C. 715.261.
- (h) *Nature of issuance.* A certificate of registration shall not convey equitable or legal title in the rights-of-way. A certificate of registration 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 certificate of registration and in accordance with chapter 1020 of the code. 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 chapter 1020. Such providers may file a joint application for a construction permit. A certificate of registration does not excuse a provider from obtaining appropriate access or pole attachment agreements before locating its facilities on facilities of others, including the City's facilities. A certificate of registration 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 chapter 1020. A certificate of registration does not excuse a provider from complying with any provisions of the code or other applicable law.
- (i) *Other approvals, permits, and agreements.* In addition to a certificate of registration, 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 certificate of registration issued pursuant to chapter 1020 shall not entitle a provider to use, alter, convert to, or interfere with, the facilities, 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."

SECTION 3: Section 1020.03 of Chapter 1020 is hereby amended and supplemented to read as follows:

"1020.03. - Certificate of registration applications.

- (a) *Certificate of registration applications.* To obtain a certificate of registration to construct, own, or maintain any system within the City, or to obtain a renewal of a certificate of registration issued pursuant to this chapter, an application must be filed with the City on the form adopted by the Director of Public Works which is hereby incorporated by reference. For all applications the City shall collect an application fee. The application fee 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 30 days of its decision to either grant or deny a certificate of registration. 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 certificate of registration having been issued.

(b) *Information required for application to obtain a certificate of registration.*

(1) The applicant shall keep all of the information required in this section current at all times, provided further that applicant or provider shall notify the City of any changes to the information required by this section within 30 days following the date on which the applicant or provider has knowledge of such change. The information provided to the City at the time of application shall include, but not be limited to:

- a. Each applicant's name, legal status (i.e. partnership, corporation, etc.), street address and e-mail address, if applicable, and telephone and facsimile numbers; and
- b. The name, address and e-mail address, if applicable, and telephone and facsimile numbers of a system representative. The system representative shall be available to the City at all times. Current information regarding how to contact the system representative in an emergency shall be provided at the time of application and shall be updated as necessary to assure accurate contact information is available to the City at all times; and
- c. A certificate of insurance where required to be provided to meet the requirements of this section shall:
 1. Verify that an insurance company licensed to do business in the State of Ohio has issued an insurance policy to the applicant;
 2. Verify that the applicant is insured on an occurrence basis against claims for personal injury, including death, as well as claims for property damage arising out of the:
 - a. Use and occupancy of the rights-of-way by the applicant, its officers, agents, employees and contractors; and
 - b. Placement and use of facilities in the rights-of-way by the applicant, its officers, agents, employees and contractors, including, but not limited to, protection against liability arising from any and all operations, damage of underground facilities and collapse of property;
 3. Name the City, its elected officials, officers, employees, agents and volunteers as an additional insured as to whom the comprehensive general liability and completed operation and products liability insurance required herein are in force and applicable and for whom defense will be provided as to all such coverage, as is required within chapter 1020;

4. Require that the City be notified 30 days in advance of cancellation of, or coverage changes in, the policy. The liability insurance policies required by this section shall contain the following endorsement:
 - a) "It is hereby understood and agreed that this policy may not be diminished in value, canceled nor the intention not to renew be stated, until 30 days after receipt by the City, by registered mail, return receipt requested, of a written notice addressed to the City Manager or his or her designee of such intent to cancel, diminish or not to renew." Within 30 days after receipt by the City of said notice, and in no event later than five days prior to said cancellation, the provider (or applicant) shall obtain and furnish to the City Manager a certificate of insurance evidencing replacement insurance policies.
 5. Satisfy the requirements for comprehensive liability coverage, automobile liability coverage and umbrella coverage as follows:
 - a) *Comprehensive general liability insurance:* comprehensive general liability insurance to cover liability, bodily injury, and property damage must be maintained. Coverage must be written on an occurrence basis, with the following minimum limits of liability and provisions, or their equivalent:
 - (i) Bodily injury: Each occurrence, \$1,000,000.00; annual aggregate, \$3,000,000.00.
 - (ii) Property damage: Each occurrence, \$1,000,000.00; annual aggregate, \$3,000,000.00.
 - (iii) Personal injury: Annual aggregate, \$3,000,000.00.
 - (iv) Completed operations and products liability shall be maintained for six months after the termination of a certificate of registration.
 - (v) Property damage liability insurance shall include coverage for the following hazards: E—Explosion, C—Collapse, U—Underground.
 - b) *Comprehensive auto liability insurance:* Comprehensive auto liability insurance to cover owned, hired, and non-owned vehicles must be maintained. Applicant may maintain comprehensive auto liability insurance as part of applicant's comprehensive general liability insurance, however, said insurance is subject to approval by the City Manager or his or her designee. Coverage must be written on an occurrence basis, with the following limits of liability and provisions, or their equivalent:
 - (i) Bodily injury: Each occurrence, \$1,000,000.00; annual aggregate, \$3,000,000.00.
 - (ii) Property damage: Each occurrence, \$1,000,000.00; annual aggregate, \$3,000,000.00.
- (2) Additional insurance. The City reserves the right to require any other insurance coverage it deems necessary after review of any proposal submitted by applicant.

- (3) Self-insurance. Those applicants maintaining a book value in excess of \$50,000,000.00 may submit a statement requesting to self-insure. If approval to self-insure is granted, applicant shall assure the City that such self-insurance shall provide the City with no less than would have been afforded to the City by a third party insurer providing applicant with the types and amounts of coverage detailed in this section. This statement shall include:
 - a. Audited financial statements for the previous year; and
 - b. A description of the applicant's self-insurance program; and
 - c. A listing of any and all actions against or claims made against applicant for amounts over \$1,000,000.00 or proof of available excess umbrella liability coverage to satisfy all total current claim amounts above \$50,000,000.00; and
 - d. The City Manager may modify or waive these requirements if they are not necessary in determining the sufficiency of the self-insurance. The City Manager may request applicable and pertinent additional information if it is necessary in determining the sufficiency of the self-insurance.
 - (4) The City's examination of, or failure to request or demand, any evidence of insurance in accordance with chapter 1020 shall not constitute a waiver of any requirement of this section and the existence of any insurance shall not limit applicant's obligations under chapter 1020.
 - (5) Documentation that applicant or provider maintains standard workers' compensation coverage as required by law. Similarly, provider shall require any subcontractor to provide workers' compensation coverage in amounts required by law for all of the subcontractor's employees.
 - (6) If the person is a corporation, upon the specific request of the City, a copy of the certificate of incorporation (or its legal equivalent) as recorded and certified to by the secretary of state (or legal equivalent) in the state or country in which incorporated.
 - (7) A copy of the person's certificate of authority from the PUCO and/or the FCC and/or FERC, if the person is lawfully required to have or actually does possess such certificate from said commission(s) and any other approvals, permits, or agreements as set out in section 1020.02(i).
 - (8) Upon request of the City, a narrative (or if applicable PUCO/FCC/FERC application information) describing applicant's proposed activities in the City including credible information detailing applicant's financial, managerial, and technical ability to fulfill applicant's obligations under chapter 1020 and carry on applicant's proposed activities.
- (c) *Criteria for issuance of a certificate of registration.*
- (1) In deciding whether to issue a certificate of registration, the City shall consider:
 - a. Whether the issuing of the certificate of registration will contribute to the health, safety, and welfare of the City and its citizens.
 - b. Whether issuing of the certificate of registration will be consistent with chapter 1020.

- c. Whether applicant has submitted a complete application and has secured all certificates and other authorizations required by law in order to construct and operate a system in the manner proposed by the applicant.
 - d. Whether the applicant is delinquent on any taxes or other obligations owed to the City, county or State of Ohio.
 - e. Unless applicant is otherwise exempted from such consideration by O.R.C. 4939.03(C)(5), whether the applicant has the requisite financial, managerial, and technical ability to fulfill all its obligations under this chapter and the issuance of a certificate of registration.
 - f. Any other applicable law.
- (d) *Grant or denial of an application for a certificate of registration.*
- (1) The City, not later than 60 days after the date of filing by an applicant of a completed application for a certificate of registration, shall grant or deny the application.
 - (2) If an application for a certificate of registration is denied, the City shall provide to the applicant, in writing, the reasons for denying the application and such other information as the applicant may reasonably request to obtain consent.
- (e) *Obligations of a provider upon receipt of a certificate of registration.* In addition to the other requirements set forth herein, in the City's design guidelines, and in the rules and regulations each provider shall:
- (1) Use its best efforts to cooperate with other providers and users of the rights-of-way and the City for the best, most efficient, and least obtrusive use of rights-of-way, consistent with safety, and to minimize traffic and other disruptions including street cuts; and
 - (2) When possible, participate in joint planning, construction and advance notification of rights-of-way work, as may be required by the City; and
 - (3) Upon reasonable written notice, and at the direction of the Director of Public Works, promptly remove or rearrange facilities as necessary for public safety; and
 - (4) Perform all work, construction, maintenance or removal of 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 Director of Public Works 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 providers, all in accordance with all applicable provisions of this chapter, any rules and regulations and design guidelines the City may adopt and the code; and
 - (5) Construct, install, operate and maintain its facilities and system in a manner consistent with all applicable laws, ordinances, construction standards and governmental requirements including, but not limited to, The National Electric Safety Code, National Electric Code and applicable FCC, FERC, or other federal, state and/or local regulations; and

- (6) Be on notice that removal of trees or the use of vegetation management programs within the rights-of-way of the City require prior written approval by the City Manager or his or her designee. Any such activities, unless an emergency, shall only be performed following the prior written approval of the City Manager or his or her designee and must be performed in accordance with standard horticultural and arboreal practices as promulgated by entities such as the National Arbor Day Foundation, the International Society of Arboriculture, and the tree care industry association, all as may be required by the City. Pruning shall at a minimum meet or the requirements of the most current version of the American National Standards Institute ANSI A300 standard. Any additionally required horticultural and arboreal practices and guidelines shall be described in the rules and regulations adopted by pursuant to section 1020.06(e). Emergency removal of trees or the use of vegetation management programs within the rights-of-way of the City may be performed in rights-of-way as described herein and in accordance with the rules and regulations, but the City Manager 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 vegetation management programs within the rights-of-way that is performed without the City Manager or designee's written permission shall subject a person to the penalties of section 1020.99 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; and
- (7) Warrant that all worker facilities, conditions and procedures that are used during construction, installation, operation and maintenance of the provider's facilities within the rights-of-way shall comply with all applicable standards of the Federal Occupational Safety and Health Administration; and
- (8) Use its best efforts to cooperate with the City in any emergencies involving the rights-of-way; and
- (9) Provider shall, weather permitting, remove all graffiti within 21 calendar days of notice. Provider shall use all reasonable efforts to remove any and all graffiti on any of the provider's facilities located within the City rights-of-way. Should the provider fail to do so, the City may take whatever action is necessary to remove the graffiti and bill the provider for the cost thereof; and
- (10) Providers shall use all reasonable efforts to field identify their facilities in the rights-of-way whenever providers are notified by the City that the City has determined that such identification is reasonably necessary in order for the City to begin planning for the construction, paving, maintenance, repairing, relocating or in any way altering any street or area in the rights-of-way as defined in this chapter. The City shall notify the providers of the City's date to begin the process at least 60 days prior to the commencement of said activities. In field identifying facilities:
 - a. Providers shall identify all facilities that are within the affected rights-of-way using customary industry standards and distinct identification; and
 - b. Facilities will be so marked as to identify the provider responsible for said facilities; and

- c. Should any such marking interfere with the facilities function, create a safety problem or violate any safety code, alternative methods of marking the facilities may be approved by the Director of Public Works; and
 - d. All marking should be clearly readable from the ground and include only the provider's name, logo and identification numbering or tracking information. No advertising will be permitted.
- (11) A provider that is replacing an existing utility pole shall notify all other providers with attachments on the existing utility pole when such attachments may be transferred to the replacement pole. Within ninety (90) days of the date on which such notice is sent, all providers with attachments on the existing utility pole shall transfer their attachments to the replacement pole. Failure to transfer such attachments shall constitute an unauthorized use of the right-of-way pursuant to section 1020.11. At the expiration of the 90-day period provided herein in the preceding sentences, the provider responsible for the existing utility pole and replacement pole shall remove the existing utility pole and replacement pole shall remove the existing utility pole, and within ninety 90 days thereafter, complete restoration. Upon request, the Director of Public works may grant said provider additional time for good cause shown.
- (f) *Establishment of utility corridors.*
- (1) The Director of Public Works may assign specific corridors within the rights-of-way, or any particular segment thereof as may be necessary, for each type of facilities that are, or that the Director of Public Works expects, may someday be, located within the rights-of-way.
 - (2) Any provider whose facilities are in the rights-of-way and are in a position at variance with utility corridors established by the Director of Public Works shall at the time of the next construction of the area, excluding normal maintenance activities, move such facilities to their assigned position within the rights-of-way. Existing underground facilities located within a designated utility corridor shall not be required to relocate into adjacent or alternative portions of the rights-of-way unless they are in conflict with an actual or proposed public improvement project. The above requirements may be waived by the Director of Public Works for good cause shown including, but not limited to, consideration of such factors as: the remaining economic life of the facilities, public safety, customer service needs, law precluding such undergrounding of facilities, and hardship to the provider. If a provider is denied a requested waiver from the above requirements, the provider may appeal the denial of the Director of Public Works to the City Manager.
 - (3) The Director of Public Works shall make every good faith attempt to accommodate all existing and potential users of the rights-of-way as set forth in this chapter.
 - (4) Providers may enter into written agreements to use existing poles and conduits with the owners of same and shall use best efforts to install their facilities within the rights-of-way.
 - (5) No facility placed in any rights-of-way shall be placed in such a manner that interferes with normal travel on such rights-of-way.

(6) Unless otherwise stated in a certificate of registration, permit, or section 1020.04(f)(6)c., all facilities within the rights-of-way shall be constructed and located in accordance with the code and with the following provision:

- a. Whenever all existing facilities that have been traditionally located overhead are located underground in a certain area within the City, a provider who desires to place its facilities in the same area must also locate its facilities underground.
- b. Whenever a provider is required to locate or re-locate facilities underground within a certain area of the City, every provider with facilities within the same area of the City shall concurrently re-locate their facilities underground.
- c. The above requirements may be waived by the Director of Public Works for good cause shown including, but not limited to, consideration of such factors as: the remaining economic life of the facilities, public safety, customer service needs, law precluding such undergrounding of facilities, and hardship to the provider. If a provider is denied a requested waiver from the above requirements, the provider may appeal the denial of the Director of Public Works to the City Manager.

(g) *Historic Districts*

(1) 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.

(2) 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:

- a. Require reasonable, technically feasible, and nondiscriminatory design or concealment measures for the small cell facilities and wireless support structures.
- b. 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.
- c. 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 to minimize the impact to the area aesthetics.

(3) This section may not be construed to limit the City's authority to enforce local codes, administrative rules, or rules and 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.”

SECTION 4: Section 1020.04 of Chapter 1020 is hereby amended and supplemented to read as follows:

“1020.04. - Reporting requirements.

- (a) *Construction and major maintenance plan.* Each provider shall, at the time of initial application and by January 1 of each following year, file a construction and major maintenance plan with the Director of Public Works. Such construction and major maintenance plan shall be provided for all geographical areas requested by the Director of Public Works, up to and including the entire geographical area of the City. It shall be submitted using a format(s) mutually agreeable to the provider and the City and shall contain the information determined by the Director of Public Works to be necessary to facilitate the coordination and reduction in the frequency of construction in the rights-of-way. The construction and major maintenance plan shall include, but not be limited to, all currently scheduled and/or anticipated construction projects for the next calendar year, if none are scheduled or anticipated then the plan shall so state. The provider shall use its best efforts in supplying this information and shall update the construction and major maintenance plan on file with the Director of Public Works whenever there is a material change in scheduled and/or anticipated construction projects. In an effort to assist providers with the completion of their annual construction and major maintenance plan, the Director of Public Works, on or before November 1 of each year, will send each provider's system representative a descriptive narrative (and any mapping information reasonably available) for all the planned right-of-way improvements and/or scheduled maintenance that the City then currently intends to undertake during the next calendar year.
- (b) *Mapping data.* With the filing of its application for a certificate of registration, a provider shall be required to accurately inform the City of the number of miles (rounded up to the nearest mile) of right-of-way the provider's system then currently occupies and begin submitting to the City all information that currently exists and which can be provided regarding the location of its facilities in the right-of-way in hard copy or in the most advanced format (including, but not limited to, electronic and/or digital format) then currently being used by the provider that is then currently capable of technologically being read (or readily converted to a readable form) by the City. Unless otherwise required by Section 1020.15(b), a provider shall have up to one year from the date of the provider's initial filing of an application for a certificate of registration to completely submit all the mapping data for a provider's system in the entire geographical area of the City which it owns or over which it has control that are located in any rights-of-way of the City in the most advanced format (including, but not be limited to electronic and/or digital format) then currently being used by the provider that is then currently capable of technologically being read (or readily converted to a readable form) by the City. The mapping data is only required to be at the "Atlas" level of detail necessary for the City to reasonably determine the location of the provider's facilities in the rights-of-way. The provider shall supply the mapping data on paper if the Director of Public Works determines that the format currently being used by the provider is not capable of being read by the City. Anytime after the issuance of a certificate of registration, and upon the reasonable request of the Director of Public Works, a provider shall be required to provide to the City any additional location information for any facilities which it owns or over which it has control that are located in any rights-of-way of

the City required by the City. Unless otherwise required by law, any and all actual direct, incidental and indirect costs incurred by the City during the process of reviewing, inputting and/or converting a provider's mapping information to comport with the City's then current standard format (whether electronic or otherwise) shall be directly billed to, and must be timely remitted by, the provider. Failure to pay such mapping costs within 60 days of receipt of an invoice shall subject an applicant or provider to revocation of its certificate of registration and the penalties of Section 1020.99. Further, each provider that has been issued a certificate of registration shall accurately inform the City on or before each subsequent January 1 of the number of miles (rounded up to the nearest mile) of right-of-way the provider's system then occupied as of the immediately previous December 1. The Director of Public Works may, in the future, adopt additional specifications and further define or modify the mapping data requirements under this section for reasons including, but not limited to, changes in technology or the law regarding public disclosure of a provider's mapping information. When the City modifies and/or amends the mapping data requirements, the City shall use best efforts to avoid unreasonably increasing the burden to the providers that may be associated with satisfying the amended mapping requirements. When the mapping requirements of this division (b) are amended, each provider shall be served with a copy of the new specifications or modifications by regular U.S. Mail to the system representative identified in each certificate of registration and in accordance with section 1020.21(d); provided, however, that any failure of any provider to actually receive such notice shall not in any way affect the validity or enforceability of said specifications or modifications.

- (c) *Exemption from disclosure.* A provider shall notify the City if the provider believes that any specific document or portion of a document being submitted to the City is exempt from the public records disclosure requirements of O.R.C. 149.43. The notification shall be in writing and indicate the specific document or portion of a document that the provider believes is exempt from disclosure. The notification shall include the legal basis for the claimed exemption, including the applicable statutory reference and any additional information necessary to make a determination of exemption for each specific document or portion of a document. If a public records request is made for documents submitted by a provider, the city will consider the written notification in making its own independent determination of whether a specific document or a portion of a document is exempt from the disclosure requirements of O.R.C. 149.43. To the extent permitted by law, the City will endeavor to use reasonable best efforts to notify the provider of the request prior to making the document available for inspection or copying.”

SECTION 5: Section 1020.05 of Chapter 1020.05 is hereby amended to read as follows:

“1020.05. - Compensation for certificate of registration.

- (a) *Compensation.* As compensation for the City's costs to administer chapter 1020, manage, administer and control the rights-of-way and maintain each certificate of registration issued, every provider or any person operating a system shall pay to the City registration maintenance fees beginning January 1, 2009. The registration maintenance 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:

- (1) The City by January 31 of each year 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 construction permit fees or other recovery mechanisms provided for in chapter 1020.
 - (2) Providers and applicants, as required in section 1020.04(b), shall accurately inform the City upon application for a certificate of registration and on or before each subsequent January 1 of the number of miles (rounded up to the nearest mile) of right-of-way the provider's system then occupied as of the immediately previous December 1.
 - (3) The City shall total the entire number of miles of right-of-way reported as being used or occupied by all providers.
 - (4) The City shall divide the calculated costs referenced in section 1020.05(a)(1) by the total number of miles of right-of-way reported as being used or occupied by all providers as referenced in section 1020.05(a)(3) to arrive at a per-mile cost number.
 - (5) The City shall then multiply each provider's mileage calculation as referenced in section 1020.05(a)(2) by the per-mile cost calculation referenced in section 1020.05(a)(4). The product shall be a provider's then current annual registration maintenance fee.
 - (6) The City shall perform its annual calculation of registration maintenance fees following receipt of the providers required January 1 mileage report. Registration maintenance fees shall be invoiced to providers on or about February 1 of each calendar year and shall be due 30 days following receipt.
 - (7) Cable companies operating under non-exclusive cable franchises for the purposes of providing cable service, video services provider operating under a VSA for the purpose of providing video services, and providers of open video system services, which compensate the City under other mechanisms in an amount equal to or greater than the annual registration maintenance fee that would normally be required for their right-of-way use in the City, shall have the mileage of the right-of-way they use and/or occupy included in the calculations described in this section 1020.05, but shall not be required to contribute to the recovery of rights-of-way costs as defined by chapter 1020 with the exception of permit costs.
 - (8) The City shall, by separate legislation enacted by Council on or about January 31 of each year, in accordance with the results of section 1020.05(a)(4), enact an initial and thereafter a new annual registration maintenance fee (per mile) by appropriately increasing or decreasing the previous years registration maintenance fee (per mile). Revised registration maintenance fees shall be effective upon passage.
- (b) *Timing.* Registration maintenance fees shall be paid in advance by January 1 of each calendar year. Registration maintenance fees shall be paid in full for the first year of the registration as a condition of the certificate of registration becoming effective. Fees may be prorated from the effective date of the certificate of registration to the end of the calendar year if less than one full year.
- (c) *Taxes and assessments.* To the extent taxes or other assessments are imposed by taxing authorities on the use of City property as a result of a provider's use or occupation of the rights-of-way, the provider shall be responsible for payment of such taxes. Such payments shall be in addition to any other fees payable pursuant to chapter 1020 and shall not be

considered an offset to, or in lieu of, the fees and charges listed in chapter 1020. The registration maintenance fee is not in lieu of any tax, fee, or other assessment except as specifically provided in chapter 1020, or as required by applicable law.

- (d) *Interest on late payments.* In the event that any registration maintenance fee is not paid to the City by January 31, the provider shall pay a monthly late charge of one percent of the unpaid balance for each month or any portion thereof for which payment is not made.
- (e) *No accord and satisfaction.* No acceptance by the City of any registration maintenance fee shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of such registration maintenance fee payment be construed as a release of any claim the City may have for additional sums payable.

SECTION 6: Section 1020.06 of Chapter 1020 is hereby amended and supplemented to read as follows:

1020.06. - Oversight and regulation.

- (a) *Reports.* Upon reasonable request of the City Manager, a provider shall provide the City with a list of any and all material communications, public reports, petitions, or other filings, either received from or submitted to any municipal, county, state or federal agency or official (and any response thereto submitted by or received by a provider), and any other information or report reasonably related to a provider's obligations under chapter 1020 which in any way materially effects the operation of the system or a provider's representations and warranties set forth herein, but not including tax returns or other filings which are confidential. Upon request, a provider shall promptly, but in no case later than 30 business days following the request, deliver to the City a complete copy of any item on said list. Upon the request of the City, a provider shall promptly submit to the City any information or report reasonably related to a provider's obligations under chapter 1020, its business and operations with respect to the system or its operation, in such form and containing such information as the City shall specify. Such information or report shall be accurate and complete and supplied within 30 days.
- (b) *Confidentiality.* All information submitted to the City that is considered confidential/proprietary information must be clearly marked as such when submitted. A provider, at any time after submitting information without confidential/proprietary information markings, may request and shall be provided the opportunity to, subsequently mark any provided information as confidential/proprietary information. The City shall exercise all reasonable legal protections so as not to publicly disclose to any third party such information unless required by law. The City shall, following receipt of a request for public disclosure of clearly marked trade secret and/or proprietary information submitted by a provider, 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.
- (c) *Provider's expense.* All reports and records required under chapter 1020 shall be furnished at the sole expense of a provider.
- (d) *Right of inspection and audit.* The City's designated representatives shall have the right to inspect, examine, or audit during normal business hours and upon reasonable notice to a provider under the circumstances; documents, records, or other information which pertain to

a provider's operation of a system within the City that are related to its obligations under chapter 1020. 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.

- (e) *Rules and regulations.* The Director of Public Works may propose and adopt (and from time to time amend) the rules and regulations regarding chapter 1020, design guidelines, and construction standards and occupancy requirements of the right-of-way. Such rules and regulations shall not materially increase the obligation of any provider hereunder, provided however that none of the following shall in any way be considered a material increase in obligation; the adoption of rules and regulations increasing fees; the requiring of the placement of facilities in designated portions of the rights-of-way (underground or otherwise); the overbuilding of facilities; or the requiring of joint-builds. Prior to the adoption or amendment of the rules and regulations, the Director of Public Works shall provide written notice and a copy of the proposed language of such adoption or amendment, via United States Regular Mail, to each provider who holds a then current certificate of registration. Each provider shall then have 30 days following the date of the City's mailing to provide written comment regarding the proposed language to the Director of Public Works. At least 45 days, but not more than 60 days following the date of the City's mailing, the Director of Public Works shall schedule and hold a meeting, to make available a forum at which all then current providers may address any questions, concerns and make reasonable suggestions regarding the proposed new rules and regulations to the Director of Public Works. The Director of Public Works shall, following said meeting and the review of the providers' comments and suggestions, adopt or amend the rules and regulations in a manner that best serves the City.”

SECTION 7: Chapter 1020 is hereby supplemented to read as follows:

“1020.07. - Small Cell Facilities and Wireless Support Structures

(a) *Collocation of small cell facilities.* In accordance with O.R.C. 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) *Application for non-small cell facilities.* The application procedures, permit fees, and auditing procedures outlined in this chapter 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) *Certificate of registration.* 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 certificate of registration for the system pursuant to this chapter.

(d) *Permit compliance.* All applications for the construction or modification of a small cell facility or wireless support structure shall comply with the construction permit and right-of-way minor maintenance permit requirements set forth in this chapter and any other applicable law.

(e) *Micro wireless permit.* In addition to the requirements in (c) and (d) of this section, 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 construction 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, within the time period for review required by law, 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 continue to follow the process in section 1020.07(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 time period for review required law, 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 at 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. 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 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 Public Works 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 Director of Public Works 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 the thresholds provided in the table below within any consecutive thirty-day period:

Population of City at the time that the small cell facility or wireless support structure request for consent is received:	Number of applications:
30,000 persons or less	15 applications or more
30,001 to 40,000 persons	20 applications or more

40,001 to 50,000 persons	25 applications or more
50,001 to 60,000 persons	30 applications or more
60,001 to 100,000 persons	60 applications or more

- b. For every additional fifteen (15) requests for consent that the City receives above the thresholds provided in the table above, 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) *Reimbursement.* 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 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 in accordance with O.R.C. 4939 and the City may remove the small cell facility or wireless support structure at the owner's expense.
- (h) *Location and design.* The Director of Public Works 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 section 1020.07(h) 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 of 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."

SECTION 8: Section 1020.07 of Chapter 1020 is hereby amended to read as follows:

"1020.08. - Registration term.

The term of each certificate of registration granted under chapter 1020 shall be valid from the date of issuance until such time as it is revoked, terminated, has lapsed or is properly amended."

SECTION 9: Section 1020.08 of Chapter 1020 is hereby amended to read as follows:

"1020.09. - Indemnity.

- (a) *Indemnity required.* Each certificate of registration issued pursuant to chapter 1020 shall contain provisions whereby providers agree to defend, indemnify and hold the City and its agents, officers, elected officials, employees, volunteers, and subcontractors harmless from and against all damages, costs, losses or expenses:
 - (1) For the repair, replacement, or restoration of City property, equipment, materials, structures and facilities which are damaged, destroyed or found to be defective as a result of such provider's acts or omissions; and
 - (2) From and against any and all claims, demands, suits, causes of action, and judgments:

- a. For damage to or loss of the property of any person, and/or the death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person;
 - b. Arising out of, incident to, concerning or resulting from the act or omissions of such provider, its agents, employees, and/or subcontractors, in the performance of activities pursuant to such certificate of registration, no matter how, or to whom, such loss may occur.
- (3) In any event, all persons using or occupying the rights-of-way agree to defend, indemnify and hold harmless the City as set forth above as a condition of their use and occupancy of the rights-of-way, but such requirement to defend, indemnify and hold harmless shall not extend to the negligence of the City or its agents, elected officials, officers, employees, volunteers and subcontractors, to the extent that the existence of such negligence shall be proven to exist.”

SECTION 10: Section 1020.09 of Chapter 1020 is hereby amended to read as follows:

“1020.10. - Civil forfeitures.

In addition to any other penalties set forth in this chapter 1020 and the remedy of specific performance, which may be enforced in a court of competent jurisdiction, the Director of Public Works may assess an additional penalty of civil forfeiture for failure to comply with any provision of chapter 1020. Such penalty shall be a monetary sum, payable to the City, in the amount of \$500.00 per 24 hour day of violation and any subsequent portion of a day less than 24 hours in length. Prior to assessing said penalty, the City will provide written notice to the provider detailing the failure to comply with a specific provision of chapter 1020. Such notice shall also indicate that said penalty shall be assessed in 15 calendar days subsequent to the date of receipt if compliance is not achieved. If a provider desires to challenge such penalty, provider must request a public hearing before the City Manager within ten days of service of the notice. Such public hearing shall be held within 30 days of the provider's request. If provider requests such hearing before the City Manager, such penalty shall be temporarily suspended. However, if, after the public hearing, the City Manager determines that provider failed to comply with the specific provision(s) of chapter 1020 referenced in the notice, such penalty shall be assessed starting with the 15 calendar days after receipt of the notice referenced in this section and continuing each day thereafter until compliance is achieved. The determination of the City Manager shall be final. The provider may file an administrative appeal pursuant to Ohio R.C. Chapter 2506. The penalty shall continue to accrue during the appeal unless the provider obtains a stay and posts a supersedeas bond pursuant to O.R.C. 2505.09 or the provider comes into full compliance with Chapter 1020.”

SECTION 11: Section 1020.10 of Chapter 1020 is hereby amended and supplemented to read as follows:

“1020.11. - Termination of certificate of registration.

- (a) *Default notice provided.* The City, through its Director of Public Works, shall give written notice of default to a provider if the City, in its sole discretion, determines that a provider has:

- (1) Violated any material provision or requirement of the issuance or acceptance of a certificate of registration or any law and failed to cure as may be required; or
 - (2) Evaded or attempted to evade any provision of the issuance of a certificate of registration or the acceptance of it; or
 - (3) Practiced any fraud or deceit upon City; or
 - (4) Made a material misrepresentation of fact in the application for a certificate of registration.
- (b) *Cure required.* If a provider fails to cure a default within 30 calendar days after such notice is served by the City then such default shall be a material default and City may exercise any remedies or rights it has at law or in equity to terminate the certificate of registration. If the Director of Public Works decides there is cause or reason to terminate, the following procedure shall be followed:
- (1) City shall serve a provider with a written notice of the reason or cause for proposed termination and shall allow a provider a minimum of 15 calendar days to cure its breach.
 - (2) If the provider fails to cure within 15 calendar days, the Director of Public Works may declare the certificate of registration terminated.
 - (3) The provider shall have ten calendar days to appeal the termination to the City Manager. All such appeals shall be in writing. If the City Manager determines there was not a breach, then the City Manager shall overturn the decision of the Director of Public Works. Otherwise, the City manager shall affirm the decision of the Director of Public Works to terminate. The determination of the City Manager shall be final.”

SECTION 12: Section 1020.11 of Chapter 1020 is hereby amended to read as follows:

“1020.12. - Unauthorized use of public rights-of-way.

- (a) *No use without authorization.* 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 chapter 1020 and been issued a certificate of registration.
- (b) *No use without certificate of registration.* 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 chapter 1020 or having been issued a certificate of registration.
- (c) *Unauthorized use a violation.* Each and every unauthorized use shall be deemed to be a violation and a distinct and separate offense. Each and every day any violation of chapter 1020 continues shall constitute a distinct and separate offense.
- (d) *Distinct and separate offense.* No person shall fail to comply with the provisions of chapter 1020. Each and every failure to comply shall be deemed a distinct and separate offense. Each and every day any violation of chapter 1020 continues shall constitute a distinct and separate offense.

- (e) *Penalty assessed.* The violation of any provision of chapter 1020 shall be unlawful and a misdemeanor offense. The penalty for any violation of chapter 1020 shall be as provided in section 1020.99.”

SECTION 13: Section 1020.12 of Chapter 1020 is hereby amended to read as follows:

“1020.13. - Rights of individuals.

- (a) *No discrimination.* A provider shall comply at all times with all applicable laws relating to nondiscrimination.
- (b) *Equal employment.* A provider shall adhere to the applicable equal employment opportunity laws.
- (c) *Privacy.* A provider shall adhere to subscriber privacy laws.

SECTION 14: Section 1020.13, PEG requirements for open video systems, of Chapter 1020 is hereby repealed in its entirety.

SECTION 15: Section 1020.14 of Chapter 1020 is hereby amended to read as follows:

“1020.14. - Assignment or transfer of ownership and renewal.

- (a) *Assignment or transfer approval required.* A certificate of registration shall not be assigned or transferred, either in whole or in part, other than to an affiliate, without the prior written consent of the City, which consent shall not be unreasonably withheld. Any assignment or transfer of certificate of registration, including an assignment or transfer by means of a fundamental corporate change, requires the written approval of the City.
- (b) *Procedure to request assignment or transfer approval.* The parties to the assignment or transfer of certificate of registration shall make a written request to the City for its consent in the form of the certificate of registration application. The City shall reply in writing within 60 days of actual receipt of the request and shall indicate its approval of the request or its determination that a public hearing is necessary. City may conduct a public hearing on the request within 30 days of such determination if it determines that a sale or transfer of the certificate of registration adversely affects the City.
- (c) *Notice and hearing.* Notice of a hearing shall be given 14 days prior to the hearing by publishing notice thereof once in a newspaper of general circulation in the City. The notice shall contain the date, time and place of the hearing and shall briefly state the substance of the action to be considered by City.
- (d) *Review by City.* The City will review the qualifications (including, but not limited to legal, technical and financial where appropriate) of the proposed assignee or transferee and terms of the existing certificate of registration. City will make its decision in writing setting forth any conditions for assignment or transfer. Within 120 days of actual receipt of the request for assignment or transfer, the City shall approve or deny such assignment or transfer request in writing.
- (e) *Fundamental corporate change.* For purposes of this section, fundamental corporate change means the sale or transfer of a controlling interest in the stock of a corporation or the sale or

transfer of all or a majority of a corporation's assets, merger (including a parent and its subsidiary corporation), consolidation or creation of a subsidiary corporation. For the purposes of this section, "fundamental partnership change" means the sale or transfer of all or a majority of a partnership's assets, change of a general partner in a limited partnership, change from a limited to a general partnership, incorporation of a partnership, or change in the control of a partnership.

- (f) *Certificate of registration and assignee/transferee replacement issuance required.* In no event shall a transfer or assignment of ownership or control be ultimately acceptable to the City without transferee or assignee requesting and being issued a replacement certificate of registration within 90 days of transfer or assignment.
- (g) *Not a transfer.* Notwithstanding anything to the contrary, no such consent or approval shall be required for a transfer or assignment to any person controlling, controlled by or under the same common control of the original holder of the certificate of registration.”

SECTION 16: Section 1020.15 of Chapter 1020 is hereby amended and supplemented to read as follows:

“1020.15. - Construction permits.

- (a) *Construction permit requirement.* Except as otherwise provided in the code, no person may construct in any rights-of-way without first having obtained a construction permit as set forth below. This requirement shall be in addition to any requirement set forth in chapter 1022 of the code.
 - (1) A construction permit allows the permittee to construct in that part of the rights-of-way described in such construction permit and to obstruct travel over the specified portion of the rights-of-way by placing facilities described therein, to the extent and for the duration specified therein.
 - (2) A construction permit is valid only for the dates and the area of rights-of-way specified in the construction permit.
 - (3) No permittee may construct in the rights-of-way beyond the date or dates specified in the construction permit unless such permittee:
 - a. Submits a supplementary application for another construction permit before the expiration of the initial construction permit; and
 - b. Is granted a new construction permit or construction permit extension.
 - (4) Original construction permits issued pursuant to section 1020.15 shall, when possible, be conspicuously displayed at all times at the indicated work site and shall be available for inspection by inspectors and authorized City personnel. If the original construction permit involves work conducted simultaneously at multiple locations, each location shall display a photocopy of the original construction permit. If the original construction permit is not conspicuously displayed at the indicated work site, then upon request, the original construction permit must be produced within 12 hours or the first earliest business hour, whichever is later. For purposes of this section, "business hour" shall mean the hours between 8:00 a.m. and 5:00 p.m. during a business day.

(b) *Construction permit applications.*

- (1) Application for a construction permit shall be made to the Director of Public Works.
- (2) All construction permit applications shall contain, and will be considered complete only upon compliance with the requirements of the following provisions:
 - a. Credible evidence that the applicant (where required) has been issued a certificate of registration or proof that the applicant has written authority to apply for a construction permit on behalf of a party that has been issued a certificate of registration; and
 - b. Submission of a completed construction permit application in the form required by the Director of Public Works, including, but not limited to, all required attachments and dated drawings showing the location and area of the proposed project, number and location of street cuts, and the location of all then known existing and proposed facilities of the applicant or provider within the proposed project area. All drawings, plans and specifications submitted with the application shall comply with applicable technical codes, rules and regulations, or design guidelines where applicable and be certified as to being in such compliance by trained technical personnel acceptable to the Director of Public Works. The mapping data is only required to be at the "Atlas" level of detail necessary for the City to reasonably determine the location of the provider's facilities in the rights-of-way. The City reserves the right, in circumstances that the Director of Public Works considers unique, complex or unusual, to request that certain submitted drawings, plans and specifications be accompanied by the certification of a registered licensed professional engineer; and
 - c. A City-approved traffic control plan demonstrating the protective measures and devices that will be employed, consistent with the OMUTCD, to prevent injury or damage to persons or property and to minimize disruptions to efficient pedestrian and vehicular traffic; and
 - d. If the applicant wants to install new facilities, if specifically requested by the Director of Public Works, evidence that there is no surplus space and evidence that the applicant has received an appropriate permit and is adhering to the City's rules and regulations; and
 - e. If applicant is proposing an above-ground installation on existing poles within the rights-of-way, the applicant shall provide credible information satisfactory to the City to sufficiently detail and identify:
 1. The size and height of the existing poles; and
 2. Based on the facilities currently on the existing poles and if specifically requested by the Director of Public Works, the excess capacity currently available on such poles before installation of applicant's facilities; and
 3. Based on the facilities currently on the existing poles and if specifically requested by the Director of Public Works, the excess capacity for like or similar facilities that will exist on such poles after installation of applicant's facilities; and

- f. If the applicant proposes to install new poles within the rights-of-way, the applicant shall provide:
 - 1. Credible evidence, if specifically requested by the Director of Public Works, satisfactory to the City that there is no excess capacity on existing poles or in existing underground systems; and
 - 2. Credible evidence to the City that it is not financially and/or technically practicable for the applicant to make an underground installation or locate its facilities on existing poles; and
 - 3. The location, size, height, color, and material of the proposed poles; and
 - 4. Credible evidence satisfactory to the City that the applicant will adhere to all the applicable laws concerning the installation of new poles.
- g. If applicant is proposing an underground installation in existing ducts or conduits within the rights-of-way, the applicant shall provide credible information satisfactory to the City to sufficiently detail and identify:
 - 1. Based on the existing facilities, the excess capacity for like or similar facilities currently available in such ducts or conduits before installation of applicant's facilities; and
 - 2. Based on existing facilities, the excess capacity for like or similar facilities that will exist in such ducts or conduits after installation of applicant's facilities.
- h. If applicant is proposing an underground installation within new ducts or conduits to be constructed within the rights-of-way, the applicant must provide credible information satisfactory to the City to sufficiently detail and identify:
 - 1. The location, depth, size, and quantity of proposed new ducts or conduits; and
 - 2. The excess capacity for like or similar equipment that will exist in such ducts or conduits after installation of applicant's facilities.
- i. A preliminary construction schedule and completion date; and
- j. Payment of all money due to the City for:
 - 1. Permit fees.
 - 2. Any loss, damage, or expense suffered by the City as a result of applicant's prior construction in the rights-of-way or any emergency actions taken by the City.
 - 3. Any certificate of registration issued to the applicant/person whose facilities are being constructed.
 - 4. Any other money due to the City from the applicant/person whose facilities are being constructed.
- k. When a construction permit is requested for purposes of installing additional systems or any part of a system, the posting of a construction bond and removal bond, acceptable to the City and subject to chapter 1020, for the additional systems or any part of a system is required.

- l. Upon request, the Director of Public Works may modify or waive the information requirements if they are not necessary in evaluating the construction permit application. The Director of Public Works may request applicable and pertinent additional information if it is necessary in evaluating the construction permit application.
- (c) *Issuance of permit; conditions.*
- (1) If the City determines that the applicant has satisfied the requirements of chapter 1020 and the construction permit process, the Director of Public Works shall issue a construction permit subject to the provisions of section 1020.15(c)(2).
 - (2) The City may impose reasonable conditions upon the issuance of the construction permit and the performance of the permittee thereunder in order to protect the public health, safety and welfare, to ensure the structural integrity of the rights-of-way, to protect the property and safety of other users of the rights-of-way, and to minimize the disruption and inconvenience to the traveling public.
- (d) *Construction permit fees.*
- (1) The City shall annually calculate construction permit fees and appropriately revise any prior year's construction permit fees based upon the formula and calculations described in section 1020.15(d). Construction permit fees shall remain in effect until the City's next annual modification of the construction permit fees.
 - (2) The City, on or about January 1 of each year, shall calculate all the actual and incurred construction permit issuance, inspection, oversight, enforcement and regulation costs for the previous calendar year including the value of the degradation and reduction in the useful life of the rights-of-way that will result from construction that takes place therein. "Degradation and the reduction in the useful life" for the purpose of this section means the accelerated depreciation of the rights-of-way caused by construction in or disturbance of the rights-of-way, resulting in the need to reconstruct or repair such rights-of-way earlier than would be required if the construction did not occur.
 - (3) The City, on or about January 1 of each year, shall total all the construction permit fee receipts received in accordance with the scheduled fees required by the prior year's construction permit fees for the previous calendar year.
 - (4) The City shall divide the calculated costs referenced in section 1020.15(d)(2) by the total construction permit fees received as referenced in Section 1020.15(d)(3) to arrive at a numerical factor representing the previous years cost versus receipts analysis.
 - (5) The City shall multiply the then currently codified construction permit fees by the numerical factor as referenced in section 1020.15(d)(4) to calculate revised permit fees for the new calendar year.
 - (6) The City shall act, on or about January 31 of each year, in accordance with the results of section 1020.15(d)(5), to codify new annual permit fees by separate legislation enacted by Council by appropriately increasing or decreasing the previous years permit fees. Revised permit fees shall be effective upon passage. Any permit requests pending on the date of any annual permit fee modification shall be subject to all new permit fees as modified.

- (7) Except as provided in section 1020.15(d)(8), no construction permit shall be issued without payment of construction permit fees except to the City (exclusive of its enterprise fund agencies which shall be required to obtain construction permits) which shall be exempt. Construction permit fees that were paid for a permit that the City has revoked due to breach and in accordance with the terms of section 1020.10 or section 1020.18(e) are not refundable.
 - (8) The Finance Director may permit a provider to make quarterly payments of construction permit fees based upon the provider's financial condition and past payment history. The quarterly payment shall be due and payable within 30 days after the end of the quarter. The Finance Director may revoke this permission due to a change in financial condition, late payment, or other just cause.
- (e) *Joint applications.* Applicants are encouraged to submit joint applications for construction permits to work in the rights-of-way at the same place and time. Joint applicants shall have the ability to divide amongst themselves, in proportions the parties find appropriate, any applicable construction permit fees.”

SECTION 17: Section 1020.16 of Chapter 1020 is hereby amended and supplemented to read as follows:

“1020.16. - Construction, relocation and restoration.

(a) *Utility engineering study required.*

- (1) Prior to commencement of any initial construction, extension, or relocation of facilities in the rights-of-way, except for repair, maintenance or replacement with like facilities or relocations requested or caused by a third party (excluding the City) or another permittee, a permittee shall conduct a utility engineering study on the proposed route of construction expansion or relocation if requested by the Director of Public Works. Where such construction and/or relocation is requested or caused by a third party, every permittee located within the rights-of-way at issue or involved with the work shall use all best efforts to cooperate and assist any other permittee or person who is directed by the City to perform the required utility engineering study. A utility engineering study consists of, at minimum, completion of the following tasks:
 - a. Secure all available "as-built" plans, plats and other location data indicating the existence and approximate location of all facilities along the proposed construction route.
 - b. Visibly survey and record the location and dimensions of any facilities along the proposed construction route, including, but not limited to, manholes, valve boxes, utility boxes, posts and visible street cut repairs.
 - c. Determine and record the presence and precise location of all underground facilities the applicant or person on whose behalf the permit was applied for owns or controls in the rights-of-way along the proposed system route. Upon request of the Director of Public Works, a permittee shall also record and identify the general location of all other facilities in the rights-of-way along the proposed system route. For the purposes of this section, "general location" shall mean the alignment of

other facilities in the rights-of-way, but shall not necessarily mean the depth of other facilities in the rights-of-way.

- d. Plot and incorporate the data obtained from completion of the tasks described in section 1020.16(a)(1)a. through c. on the construction permittee's proposed system route maps and construction plans.
 - e. Where the proposed location of facilities and the location of existing underground facilities appear to conflict on the plans drafted in accordance with section 1020.16(a)(1)d., permittee has the option of either utilizing non-destructive digging methods, such as vacuum excavation, at the critical points identified to determine as precisely as possible, the horizontal, vertical and spatial position, composition, size and other specifications of the conflicting underground facilities, or redesigning the construction plans to eliminate the apparent conflict. Unless waived by the Director of Public Works, a permittee shall not excavate more than a three feet by three feet square hole in the rights-of-way to complete this task.
 - f. Based on all of the data collected upon completion of the tasks described in this section, adjust the proposed system design to avoid the need to relocate other underground facilities.
- (2) The Director of Public Works may modify the scope of the utility engineering study as necessary depending on the proposed construction plans.
- (b) *Copy to City.* Upon completion of the tasks described in section 1020.16(a), the construction permittee shall submit, if necessary labeled in accordance with the requirements of section 1020.06(b), the proposed system route maps and construction plans, with the results of the utility engineering study, in the most advanced format (including, but not be limited to electronic and/or digital format) then currently being used by the provider that is then currently capable of technologically being read (or readily converted to a readable form) by the City. The mapping data is only required to be at the "Atlas" level of detail necessary for the City to reasonably determine the location of the provider's facilities in the rights-of-way. The provider shall supply the mapping data on paper if the Director of Public Works determines that the format currently being used by the provider is not capable of being read by the City.
 - (c) *Qualified firm.* All utility engineering studies conducted pursuant to this section shall be performed by the permittee if in the discretion of the Director of Public Works the construction permittee is qualified to complete the project itself, alternatively utility engineering studies shall be performed by a firm specializing in utility engineering that is approved by the City.
 - (d) *Cost of study.* The permittee shall bear the cost of compliance with section 1020.16(a) through (c).
 - (e) *Construction schedule.* Unless otherwise provided for in chapter 1020 or in the rules and regulations, or unless the Director of Public Works waives any of the requirements of this section due to unique or unusual circumstances, a permittee shall be required to submit a written construction schedule to the City five working days before commencing any work in or about the rights-of-way, and shall further notify the City not less than one working day in advance of any excavation in the rights-of-way. This section shall apply to all situations with

the exception of circumstances under section 1020.18(d)(1) (emergency situations) and section 1020.17 (minor maintenance).

(f) *Location of facilities.*

- (1) The placement of new facilities and replacement of old facilities, either above ground or underground, shall be completed in conformity with applicable laws and the City's rules and regulations.
- (2) 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. 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.

(g) *Least disruptive technology.* All construction or maintenance of facilities shall be accomplished in the manner resulting in the least amount of damage and disruption of the rights-of-way. Specifically, every permittee when performing underground construction, if technically and/or technologically feasible and not economically unreasonable, shall utilize trenchless technology, including, but not limited to, horizontal drilling, directional boring, and microtunneling. In addition, all cable, wire or fiber optic cable installed in the subsurface rights-of-way pursuant to chapter 1020 may be required to be installed in conduit, and if so required, no cable, wire or fiber optic cable may be installed pursuant to chapter 1020 using "direct bury" techniques.

(h) *Special exceptions.* The City may grant a special exception to the requirements of section 1020.16(f) and 1020.16(g) if a permittee, upon application, demonstrates with written evidence that:

- (1) The exception will not create any threat to the public health, safety or welfare.
- (2) Permittee demonstrates that the increased economic burden and the potential adverse impact on the permittee's construction schedule resulting from the strict enforcement of the requirement actually or effectively inhibits the ability of the permittee to provide services in the City.
- (3) The permittee demonstrates that the requirement unreasonably discriminates against the permittee in favor of another person.
- (4) The requirements requested by the City herein create an unreasonable economic burden for the permittee that outweighs any potential benefit to the City.

(i) *Relocation of facilities.*

- (1) A provider shall as promptly as reasonably possible and at its own expense, permanently remove and relocate its facilities in the rights-of-way whenever the City finds it necessary to request such removal and relocation. In instances where the City requests removal and/or relocation, the City shall waive all applicable construction permit fees. Upon removal and/or relocation, the provider shall restore the rights-of-

way to the same or better condition it was in prior to said removal or relocation. If existing poles are required to be removed and/or relocated, then the existing poles will be replaced with poles of the same or similar size. In accordance with law, the Director of Public Works may request relocation and/or removal in order to prevent unreasonable interference by the provider's facilities with:

- a. A public improvement undertaken or approved by the City.
 - b. When the public health, safety, and welfare requires it, or when necessary to prevent interference with the safety and convenience of ordinary travel over the rights-of-way.
 - c. The sale, conveyance, vacation, or narrowing of all or any part of a right-of-way.
- (2) Notwithstanding the foregoing, a provider who has facilities in the rights-of-way subject to a vacation or narrowing that is not required for the purposes of the City, shall have a permanent easement in such vacated portion or excess portion in conformity with O.R.C. 723.041.
- (3) If, in the reasonable judgment of the City, a provider fails to commence removal and/or relocation of its facilities as designated by the City, within 30 days after the City's removal order, or if a provider fails to substantially complete such removal, including all associated repair of the rights-of-way of the City, within 12 months thereafter, then, to the extent not inconsistent with applicable law, the City shall have the right to:
- a. Declare that all rights, title and interest to the facilities belong to the City with all rights of ownership, including, but not limited to, the right to connect and use the facilities or to effect a transfer of all right, title and interest in the facilities to another person for operation; or
 - b. Authorize removal of the facilities installed by the provider in, on, over or under the rights-of-way of the City at provider's cost and expense, by another person; however, the City shall have no liability for any damage caused by such action and the provider shall be liable to the City for all reasonable costs incurred by the City in such action; and c. To the extent consistent with applicable law, any portion of the provider's facilities in, on, over or under the rights-of-way of the City designated by the City for removal and not timely removed by the provider shall belong to and become the property of the City without payment to the provider, and the provider shall execute and deliver such documents, as the City shall request, in form and substance acceptable to the City, to evidence such ownership by the City.
- (j) *Pre-excavation facilities location.*
- (1) Before the start date of any rights-of-way excavation, each provider who has facilities located in the area to be excavated shall, to the best of its ability, mark the horizontal and approximate vertical placement of all its facilities.
 - (2) All providers shall notify and work closely with the excavation contractor in an effort to establish the exact location of its facilities and the best procedure for excavation.
 - (3) In addition to any other requirements provided herein, all rights-of-way excavation shall be conducted in a manner that is consistent with the provisions of O.R.C. Sections 3781.25 through 3781.38.

(k) *Rights-of-way restoration.*

- (1) The work to be done under the permit, and the restoration of the rights-of-way as required herein, weather permitting, must be completed within the dates specified in the permit. 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 rules and regulations. If a permittee is unable to timely complete the restoration of rights-of-way due to unreasonable inclement weather conditions, the permittee shall complete the restoration of the rights-of-way as soon as weather conditions make it possible to do so and upon said completion notify the City.
- (2) In approving an application for a construction permit, the City may to have the permittee restore the rights-of-way or to the City may restore the rights-of-way itself at the permittee's cost if the permittee has in the past not abided by requirements of chapter 1020.
- (3) If the City allows a permittee to restore the rights-of-way, the permittee may at the time of application for a construction permit be required to post a construction bond in an amount determined by the City to be sufficient to cover the cost of restoring the rights-of-way to its approximate pre-excavation condition. If, 12 months after completion of the restoration of the rights-of-way, the City determines that the rights-of-way have been properly restored, the surety on the construction bond shall be released.
- (4) The permittee shall perform the work according to the standards and with the materials specified by the City. The City shall have the authority to prescribe the manner and extent of the restoration, and may do so in written procedures of general application or on a case-by-case basis. The City in exercising this authority shall be guided by the following standards and considerations: the number, size, depth and duration of the excavations, disruptions or damage to the rights-of-way; the traffic volume carried by the rights-of-way; the character of the neighborhood surrounding the rights-of-way; the pre-excavation condition of the rights-of-way; the remaining life expectancy of the rights-of-way affected by the excavation; whether the relative cost of the method of restoration to the permittee is in reasonable balance with the prevention of an accelerated depreciation of the rights-of-way that would otherwise result from the excavation, disturbance or damage to the rights-of-way; and the likelihood that the particular method of restoration would be effective in slowing the depreciation of the rights-of-way that would otherwise take place. Methods of restoration may include, but are not limited to, patching the affected area, replacement of the rights-of-way base at the affected area, and in the most severe cases; milling, overlay and/or street reconstruction of the entire area of the rights-of-way affected by the work.
- (5) By restoring the rights-of-way itself, the permittee guarantees its work and shall maintain it for 12 months following its completion. During this 12-month period, it shall, upon notification from the Director of Public Works, correct all restoration work to the extent necessary using the method required by the Director of Public Works. Weather permitting, said work shall be completed within five calendar days of the receipt of the notice from the Director of Public Works, unless otherwise extended by the Director of Public Works.

- (6) 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, the City, at its option, may do such work. In that event, the permittee shall pay to the City, within 30 days of invoicing, 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.
 - (7) If the work to be done under the permit is being done at the same location and the same period of time as work by the City and/ or another permittee(s), then the Director of Public Works may reasonably apportion the restoration responsibility among the City, providers and/or other persons.
- (l) *Damage to other facilities.*
- (1) In the case of an emergency, and if possible after reasonable efforts to contact the provider seeking a timely response, when the City performs work in the rights-of-way and finds it necessary, as may be allowed by law, to maintain, support, or move a provider's facilities to protect those facilities, the costs associated therewith will be billed to that provider and shall be paid within 30 days from the date of billing. Upon failure to pay, the City may pursue all legal and equitable remedies in the event a provider does not pay or the City may call upon any bond or letter of credit posted by the permittee and pursue any and all legal or equitable remedies. Each provider shall be responsible for the cost of repairing any damage to the facilities of another provider caused during the City's response to an emergency occasioned by that provider's facilities.
 - (2) Each provider shall be responsible for the cost of repairing any City-owned facilities in the rights-of-way which the provider or its facilities damage.
- (m) *Rights-of-way vacation.*
- (1) If the City sells or otherwise transfers a rights-of-way which contains the facilities of a provider, such sale or transfer shall be subject to any existing easements of record and any easements required pursuant to O.R.C. 723.041.
- (n) *Installation requirements.* The excavation, backfilling, restoration, and all other work performed in the rights-of-way shall be performed in conformance with all applicable laws, rules and regulations, other standards as may be promulgated by the Director of Public Works.
- (o) *Inspection.* When the construction under any permit hereunder is completed, the permittee shall notify the Director of Public Works.
- (1) The permittee shall make the construction site available to the inspector and to all others as authorized by law for inspection at all reasonable times during the execution and upon completion of the construction.
 - (2) At the time of inspection, the inspector may order the immediate cessation of any work which poses a serious threat to the life, health, safety or well-being of the public, violates any law or which violates the term and conditions of the permit and/or chapter 1020.

(3) The inspector may issue an order to the permittee for any work which does not conform to the permit and/or applicable standards, conditions or codes. The order shall state that failure to correct the violation will be cause for revocation of the permit. The order may be served on the permittee as provided in section 1020.21(d). An order may be appealed to the Director of Public Works. The decision of the Director of Public Works may be appealed to the City Manager, whose decision shall be final. If not appealed, within ten days after issuance of the order, the provider shall present proof to the Director of Public Works that the violation has been corrected. If such proof has not been presented within the required time, the Director of Public Works may revoke the permit pursuant to section 1020.18(e).

(p) *Other obligations.*

(1) Obtaining a construction 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 laws.

(2) Permittee shall comply with all requirements of all laws, including the Ohio Utility Protection Service.

(3) Permittee shall perform all work in conformance with all applicable laws 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 1020.18(d)(1).

(5) Permittee shall not obstruct a rights-of-way so that the natural free and clear passage of water through the gutters or other waterways shall be interfered with. The Director of Public Works may waive this requirement if it is technically or economically unreasonable in the circumstances.

(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.

(q) *Undergrounding required.* Any owner of property abutting upon a street or alley where service facilities are now located underground and where the service connection is at the property line, shall install or cause others to install underground any service delivery infrastructure from the property line to the buildings or other structures on such property to which such service is supplied. Where not otherwise required to be placed underground by chapter 1020, a provider shall locate facilities underground at the request of an adjacent property owner, provided that such placement of facilities underground is consistent with the provider's normal construction and operating standards and that the additional costs of such undergrounding over the normal aerial or above ground placement costs of identical facilities are borne directly by the property owner making the request. A provider, under any circumstance shall, upon the reasonable request of the City, always use best efforts to place facilities underground. Where technically possible and not economically unreasonable or unsafe (based upon the technology employed and facilities installed), all facilities to be installed by a provider under the right-of-way shall be installed in conduit.

SECTION 18: Section 1020.17 of Chapter 1020 is hereby amended to read as follows:

“1020.17. - Minor maintenance permit.

- (a) *Right-of-way minor maintenance permit requirement.* No person shall perform minor maintenance of facilities in the rights-of-way without first having obtained a right-of-way minor maintenance permit as set forth in this chapter. Minor maintenance means: (i) the routine repair or replacement of facilities with like facilities not involving construction and not requiring traffic control for more than two hours at any one location; or (ii) the routine repair or replacement of facilities with like facilities not involving construction and taking place on thoroughfares and arteries between the hours of 9:00 a.m. and 3:00 p.m.; or (iii) the routine repair or replacement of facilities with like facilities not involving construction on all rights-of-ways, other than thoroughfares and arterials, that does not impede traffic and is for a period of less than eight contiguous hours; or (iv) construction other than on thoroughfares and arterials that takes less than eight contiguous hours to complete, does not impede traffic and does not involve a pavement cut; or (v) minor and/or non-material vegetation management/tree pruning. The Director of Public Works may adopt rules and regulations pursuant to section 1020.06(e) that clarify the definition of minor maintenance and/or provide a process for a provider to determine whether particular activity constitutes minor maintenance.
- (1) A right-of-way minor maintenance permit allows the right-of-way minor maintenance permittee to perform all minor maintenance in any part of the rights-of-way as required.
 - (2) A right-of-way minor maintenance permit is valid from the date of issuance until revoked by the Director of Public Works.
 - (3) A right-of-way minor maintenance permit must be displayed or upon request produced within 12 business hours.
 - (4) A right-of-way minor maintenance permit by itself shall under no circumstances provide a permittee with the ability to cut pavement without seeking additional authority from the Director of Public Works.
- (b) *Right-of-way minor maintenance permit applications.* Application for a right-of-way minor maintenance permit shall be made to the Director of Public Works. In addition to any information required by the Director of Public Works, all right-of-way minor maintenance permit applications shall contain, and will only be considered complete upon compliance with the following provisions:
- (1) Credible evidence that the applicant has obtained a certificate of registration or proof that the applicant has written authority to apply for a right-of-way minor maintenance permit on behalf of a party that has been issued a certificate of registration.
 - (2) Submission of a completed right-of-way minor maintenance permit application in the form required by the Director of Public Works.
 - (3) A statement that the applicant will employ protective measures and devices that, consistent with the OMUTCD, will prevent injury or damage to persons or property and to minimize disruptions to the efficient movement of pedestrian and vehicular traffic.
- (c) *Issuance of right-of-way minor maintenance permits; conditions.*

- (1) If the Director of Public Works determines that the applicant has satisfied the requirements of this chapter and the right-of-way minor maintenance permit process, the Director of Public Works shall issue a right-of-way minor maintenance permit subject to the provisions of this chapter.
 - (2) The City may impose reasonable conditions, in addition to the rules and regulations enacted by the Director of Public Works, upon the issuance of the right-of-way minor maintenance permit and the performance of the right-of-way minor maintenance permittee thereunder in order to protect the public health, safety, and welfare, to ensure the structural integrity of the rights-of-way, to protect the property and safety of other users of the rights-of-way, and to minimize the disruption and inconvenience to the traveling public.
- (d) *Right-of-way minor maintenance permit fees.* The Director of Public Works shall not charge a fee for the issuance of the right-of-way minor maintenance permit but may revoke the right-of-way minor maintenance permit as any other permit may be revoked under this chapter.”

SECTION 19: Section 1020.18 of Chapter 1020 is hereby amended and supplemented to read as follows:

“1020.18. - Enforcement of permit obligation.

- (a) *Mandatory denial of permit.* Except in the case of an emergency, no permit will be granted:
- (1) To any person who has not yet made an application; or
 - (2) To any person who has outstanding debt owed to the City unless payment in full has been placed in an escrow account approved by the City Finance Director and the Law Director; or
 - (3) To any person as to whom there exists grounds for the revocation of a permit; or
 - (4) If, in the discretion of the Director of Public Works, 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 Director of Public Works, 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.
- (b) *Permissive denial of permit.* The Director of Public Works may deny a permit in order to protect the public health, safety and welfare, 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.
- (1) The Director of Public Works, in his or her discretion, may consider one or more of the following factors:
 - a. The extent to which rights-of-way space where the permit is sought is available; and/or
 - b. The competing demands for the particular space in the rights-of-way; and/or

- c. The availability of other locations in the rights-of-way or in other rights-of-way for the proposed facilities; and/or
 - d. The applicability of chapter 1020 or other regulations of the rights-of-way that affect location of facilities in the rights-of-way; and/or
 - e. The degree of compliance of the provider with the terms and conditions of its certificate of registration, chapter 1020, and other applicable ordinances and regulations; and/or
 - f. The degree of disruption to surrounding communities and businesses that will result from the use of that part of the rights-of-way; and/or
 - g. The condition and age of the rights-of-way, and whether and when it is scheduled for total or partial re-construction; and/or
 - h. 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/or
 - i. 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 chapter 1020 or, if applicable, any other law.
- (2) Under no circumstances will open cutting take place on a newly constructed street within 24 months after construction completion or a newly reconstructed street within 24 months of reconstruction completion, except where:
- a. An emergency situation requires that an open cut is necessary; and/or
 - 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 services; and/or
 - c. The Director of Public Works determines it is in the best interests of the City that such an open cut take place.
- (c) *Discretionary issuance of permit.*
- (1) Notwithstanding the provisions of section 1020.18(a)(1) and (2), the Director of Public Works may issue a permit in any case where the permit is necessary:
- a. To prevent substantial economic hardship to a customer of the permit applicant, if established by credible evidence satisfactory to the City; or
 - b. To allow such customer to materially improve its service; or
 - c. To allow a new economic development project to be granted a permit under this section.
- (2) To be granted a permit under this section, the permit applicant must not have had knowledge of the hardship, the plans for improvement of service, or the development project when it was required to submit its list of next year projects.
- (d) *Work done without a permit in emergency situations.*

- (1) Each provider shall, as soon as is practicable, immediately notify the Director of Public Works of any event regarding its facilities which it considers to be an emergency. 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 Director of Public Works, 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 chapter 1020 for any and all actions taken in response to the emergency. In the event that the City becomes aware of an emergency regarding a provider's facilities, the City shall 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.
- (2) Except in the case of an emergency, any provider who constructs in, on, above, within, over, below or through a right-of-way without a valid permit must subsequently obtain a permit, pay double the normal fee for said permit, pay double all the other fees required by the code, deposit with the City the fees necessary to correct any damage to the rights-of-way and comply with all of the requirements of chapter 1020.

(e) *Revocation of permits.*

- (1) Permittees hold permits issued pursuant to the code as a privilege and not as a right. The City reserves its right, as provided herein, to revoke any permit, without refunding any fees, in the event of a substantial breach of the terms and conditions of any law, ordinance, rule or regulation, or design guidelines where applicable, or any provision or condition of the permit. A substantial breach by permittee shall include, but shall not be limited to, the following:
 - a. The violation of any provision or condition of the permit; or
 - b. An evasion or attempt to evade any provision or condition of the permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the City or its citizens; or
 - c. Any material misrepresentation of fact in the application for a permit; or
 - d. The failure to maintain the required construction or removal bonds and/or insurance; or
 - e. The failure to obtain and/or maintain, when required, a certificate of registration; or
 - f. The failure to complete the construction in a timely manner; or
 - g. The failure to correct a condition of an order issued pursuant to section 1020.16(o)(3).
- (2) If the Director of Public Works determines that the permittee has committed a substantial breach of a term or condition of any law or any condition of the permit, the Director of Public Works shall serve a written demand upon the permittee to remedy such violation. The demand shall state that continued violations may be cause for revocation of the permit. Upon a substantial breach, as stated above, the Director of Public Works may place additional or revised conditions on the permit.

- (3) By the close of the second business day following receipt of notification of the breach, permittee shall contact the Director of Public Works with a plan, acceptable to the Director of Public Works, for its correction. Permittee's failure to so contact the Director of Public Works, or the permittee's failure to submit an acceptable plan, or permittee's failure to reasonably implement the approved plan, shall be cause for immediate revocation of the permit.
- (4) If a permittee commits a second substantial default as outlined above, permittee's permit will automatically be revoked and the permittee will not be allowed further permits for up to and including one full year, except for emergency repairs.
- (5) If a permit is revoked, the permittee shall also 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."

SECTION 20: Section 1020.19 of Chapter 1020 is hereby amended to read as follows:

"1020.19. - Construction and removal bonds.

- (a) *Construction bond.* Prior to the commencement of any construction, a construction permittee, excluding the county, shall deposit with the Director of Public Works an irrevocable, unconditional letter of credit and/or surety bond in an amount determined by the Director of Public Works to be appropriate based upon fair and reasonable criteria. Unless a construction default, problem or deficiency involves an emergency or endangers the safety of the general public, the Director of Public Works shall serve written notice to the construction permittee detailing the construction default, problem or deficiency. If the Director of Public Works determines that correction or repair of the construction default, problem or deficiency has not occurred or has not been substantially initiated within ten calendar days after the date following service and notification and detailing the construction default, problem or deficiency, then the City may attach the letter of credit or surety bond. Upon attachment, written notice shall be served on the construction permittee by the Director of Public Works.
- (b) *Removal bond.* Upon issuance of a certificate of registration and continuously thereafter, and until 120 days after a provider's facilities have been removed from the rights-of-way, (unless the Director of Public Works notifies the provider that a reasonably longer period shall apply), a provider shall deposit with the Director of Public Works and maintain an irrevocable, unconditional letter of credit or surety bond in an amount equal to or greater than \$100,000.00, the Director of Public Works shall make all reasonable efforts to allow provider a period of five calendar days after serving, notification in writing to correct or repair any default, problem or deficiency prior to the Director of Public Works attachment of the letter of credit or surety bond regarding the removal of facilities. Upon attachment, written notice shall be provided to the provider by the Director of Public Works.
- (c) *Blanket bond.*
 - (1) In lieu of the construction bond required by section 1020.19(a) and the removal bond required by section 1020.19(b), provider may deposit with the Director of Public Works an irrevocable, unconditional letter of credit and/or surety bond in the amount of

\$5,000,000.00. Unless a construction default, problem or deficiency involves an emergency or endangers the safety of the general public, the Director of Public Works shall make all reasonable effort to allow permittee a period of five calendar days after sending notification in writing to correct or repair any default, problem or deficiency prior to Director of Public Works's attachment of the letter of credit or surety bond.

- (d) *Self bonding.* In lieu of the construction bond required by section 1020.19(a), the removal bond required by section 1020.19(b) and the blanket bond required by section 1020.19(c), those providers maintaining a book value in excess of \$50,000,000.00 may submit a statement to the Director of Public Works requesting to self-bond. If approval to self-bond is granted, a provider shall assure the City that such self-bonding shall provide the City with no less protection and security than would have been afforded to the City by a third party surety providing provider with the types and amounts of bonds detailed in the above named sections. This statement shall include:
- (1) Audited financial statements for the previous year; and
 - (2) A description of the applicant's self-bonding program;
 - (3) Other applicable and pertinent information as reasonably requested by the Director of Public Works.
- (e) *Purposes.*
- (1) The bonds required by this section, and any self-bonding to the extent it has been permitted, shall serve as security for:
 - a. The faithful performance by the permittee or provider of all terms, conditions and obligations of chapter 1020; and
 - b. Any expenditure, damage, or loss incurred by the City occasioned by the permittee or provider's violation of chapter 1020 or its failure to comply with all rules, regulations, orders, permits and other directives of the City issued pursuant to chapter 1020; and
 - c. The payment of all compensation due to the City, including permit fees; and
 - d. The payment of premiums (if any) for the liability insurance required pursuant to chapter 1020; and
 - e. The removal of facilities from the rights-of-way pursuant to chapter 1020; and
 - f. The payment to the City of any amounts for which the permittee or provider is liable that are not paid by it's insurance or other surety; and
 - g. The payment of any other amounts which become due to the City pursuant to chapter 1020 or the law.
- (f) *Form.* The bond documents required by this section and any replacement bond documents shall contain the following endorsement: "It is hereby understood and agreed that this bond may not be canceled or not renewed by the surety nor the intention to cancel or not to renew be stated by the surety until 90 days after completion of construction of the facilities and, notwithstanding the foregoing, shall in no case be canceled or not renewed by the surety

until at least 90 days' written notice to City of surety's intention to cancel or not renew this bond."

SECTION 21: Section 1020.20 of Chapter 1020 is hereby amended and supplemented to read as follows:

"1020.20. - Indemnification and liability.

(a) *City does not accept liability.*

- (1) By reason of the acceptance of an application, the grant of a permit or the issuance of a certificate of registration, 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.

(b) *Indemnification.*

- (1) By applying for and being issued a certificate of registration with the City a provider agrees, or by accepting a permit a permittee is required and agrees to protect, defend, indemnify, and hold harmless the City's agents, elected officials, officers, employees, volunteers and subcontractors from all costs, liabilities, claims, and suits for damages of any kind arising out of the construction, presence, installation, maintenance, repair or operation of its facilities, or out of any activity undertaken in or near a right-of-way, whether any act or omission complained of is authorized, allowed, or prohibited by a permit. Such requirement to defend, indemnify and hold harmless shall not extend to the negligence of the City or its agents, elected officials, officers, employees, volunteers and subcontractors, to the extent that the existence of such negligence shall be proven to exist. A provider or permittee shall not bring, nor cause to be brought, any action, suit or other proceeding claiming damages, or seeking any other relief against the City's agents, elected officials, officers, employees, volunteers, and subcontractors for any claim nor for any award arising out of the presence, installation, maintenance or operation of its facilities, or any activity undertaken in or near a right-of-way, whether the act or omission complained of is authorized, allowed or prohibited by a permit. This section is not, as to third parties, a waiver of any defense or immunity otherwise available to the provider, permittee or to the City; and the provider or permittee, in defending any action on behalf of the City, shall be entitled to assert in any action every defense or immunity that the City could assert in its own behalf. Any and all exercise of the above shall be consistent with, but not limited to, the following:
 - a. To the fullest extent permitted by law, all providers and permittees shall, at their sole cost and expense, fully indemnify, defend and hold harmless the City, its elected officials, agents, officers, employees, volunteers and subcontractors 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, costs and expenses assumed by the City in connection therewith); and

1. Persons or property, in any way arising out of or through the acts or omissions of provider or permittee, its subcontractors, agents or employees attributable to the occupation by the provider or permittee of the rights-of-way, to which provider's or 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; and
 2. Arising out of any claim for invasion of the right of privacy, for defamation of 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 provider, but excluding claims arising out of or related to the City's actions; and
 3. Arising out of provider or permittee's failure to comply with the provisions of law applicable to provider or permittee in its business hereunder.
- (2) The foregoing indemnification is conditioned upon the City:
- a. Giving provider or permittee prompt notice of any claim or the commencement of any action, suit or proceeding for which indemnification is sought; and
 - b. Affording the provider or permittee the opportunity to jointly participate in any compromise, settlement, or other resolution or disposition of any claim or proceeding subject to indemnification; and
 - c. Cooperate in the defense of such claim and making available to the provider or permittee all pertinent information under the City's control.
- (3) 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 provider or permittee shall pay all reasonable fees and expenses of such separate counsel if employed.”

SECTION 22: Section 1020.21 of Chapter 1020 is hereby amended and supplemented to read as follows:

“1020.21. - General provisions.

- (a) *Non-exclusive remedy.* The remedies provided in chapter 1020 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 public rights-of-way, including damages to the rights-of-way, whether caused by a violation of any of the provisions of chapter 1020 or other provisions of the code.
- (b) *Severability.* If any section, subsection, sentence, clause, phrase, or portion of chapter 1020 is for any reason held invalid or unconstitutional by any court or administrative agency of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof. 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 60 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 certificate of registration pursuant to chapter 1020, 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 of Monroe 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 certificate of registration, 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) *Method of service.* Any notice or order of the Director of Public Works or City Manager shall be deemed to be properly served if a copy thereof is:
 - (1) Delivered personally; or
 - (2) Successfully transmitted via facsimile transmission to the last known fax number of the person to be served; or
 - (3) Left at the usual place of business of the person to whom it is to be served upon and with someone who is 18 years of age or older; or
 - (4) Sent by certified, preposted U.S. mail to the last known address; or
 - (5) If the notice is attempted to be served by certified, preposted U.S. mail and then returned showing that the letter was not delivered, or the certified letter is not returned within 14 days after the date of mailing, then notice may be sent by regular, preposted, first-class U.S.; or
 - (6) If the notice is attempted to be served by regular, first class U.S. mail, postage prepaid, and the letter is then returned showing that the letter was not delivered, or is not returned within 14 days after the date of mailing, then notice shall be posted in a conspicuous place in or about the structure, building, premises or property affected by such notice.
- (e) *Applies to all providers.* Chapter 1020 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. In

particular, all persons shall comply with City zoning and other land use requirements pertaining to the placement and specifications of facilities, unless otherwise prohibited by law.

- (g) *Compliance.* No person shall be relieved of its obligation to comply with any of the provisions of chapter 1020 by reason of any failure of the City to enforce prompt compliance.
- (h) *Foreclosure and receivership.*
 - (1) Upon the filing of any voluntary or involuntary petition under the bankruptcy code by or against any provider and/or permittee, or any action for foreclosure or other judicial sale of the provider and/or permittee facilities located within the rights-of-way, the provider and/or permittee shall so notify the Director of Public Works within 14 calendar days thereof and the provider and/or permittee's certificate of registration or permit (as applicable) shall be deemed void and of no further force and effect.
 - (2) The City shall have the right to revoke, pursuant to the provisions of the code, any certificate of registration or permit granted pursuant to chapter 1020, subject to any applicable provisions of law, including the bankruptcy code, 120 days after the appointment of a receiver or trustee to take over and conduct the business of the provider and/or permittee, whether in receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said 120 days or unless:
 - a. Within 120 days after election or appointment, such receiver or trustee shall have fully complied with all the provisions of the relevant certificate of registration, any outstanding permit, chapter 1020, and remedied all defaults thereunder; and
 - b. Said receiver or trustee, within said 120 days, shall have executed an agreement, duly approved by a court having jurisdiction over the facilities, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of the relevant certificate of registration, permit and chapter 1020.
- (i) *Choice of law and forum.* This chapter 1020 and the terms and conditions of any certificate of registration or permit shall be construed and enforced in accordance with the substantive laws of the City, State of Ohio and United States, in that order. As a condition of the grant of any permit or issuance of any certificate of registration, unless otherwise required by law, all disputes shall be resolved in a court of competent jurisdiction for Butler County, Ohio.
- (j) *Force majeure.* In the event any person's performance of any of the terms, conditions or obligations required by chapter 1020 is prevented by a cause or event not within such person's control, such inability to perform shall be deemed excused and no penalties or sanctions shall be imposed as a result thereof. For the purpose of this section, causes or events not within the control of a provider shall include, without limitation, acts of God, strikes, sabotage, riots or civil disturbances, failure or loss of, explosions, acts of public enemies, and natural disasters such as floods, earthquakes, landslides, and fires.
- (k) *No warranty.* The City makes no representation or warranty regarding its right to authorize the construction of facilities on any particular rights-of-way. The burden and responsibility for making such determination shall be upon the person installing facilities in the rights-of-way.

- (l) *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 certificate of registration, 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 certificate of registration, 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 certificate of registration 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.
- (m) *Appeals.* All appeals provided for by this chapter and any notification to the City required by this chapter shall be in writing and sent via certified U.S. mail to the City Manager or Director of Public Works as specified in this chapter 1020.
- (n) *City facilities.* As part of City required standards wherever rights-of-way are under construction, if deemed advisable and practicable by the Director of Public Works, 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 City Manager.
- (o) *Section headings.* Section headings are for convenience only and shall not be used to interpret any portion of this chapter."

SECTION 23: This measure is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, welfare and safety and further for the reason that Council desires to comply with House Bill 478 at the earliest possible date. Therefore, this measure shall take effect and be in full force from and after its passage.

PASSED: August 14, 2018

ATTEST:



 Clerk of Council

APPROVED:



 Mayor

This legislation was enacted in an open meeting pursuant to the terms and provisions of the Sunshine Law, Section 121.22 of the Ohio Revised Code.

"I, the undersigned Clerk of Council of the city of Monroe, Ohio, hereby certify the foregoing (ordinance or resolution) was published as required by Section 7.16 of the Charter of the City of Monroe.



 Clerk of Council
 City of Monroe, Ohio