

**CITY OF XENIA, OHIO
ORDINANCE 2022 – 46**

**ENACTING CHAPTER 1028, TITLED “RIGHTS-OF-WAY ADMINISTRATION,” OF THE
CITY’S STREETS, UTILITIES, AND PUBLIC SERVICES CODE**

WHEREAS, the management, regulation, and administration of a public way by a municipal corporation with regard to matters of local concern are presumed to be a valid exercise of the power of local self-government granted by Section 3 of Article XVIII of the Ohio Constitution;

WHEREAS, Chapter 4939 of the Ohio Revised Code authorizes municipal corporations to enact rules and regulations regarding the use and occupancy of the municipality’s rights-of-way; and

WHEREAS, this Council finds it to be in the best interests of the health, safety and welfare of the City and its citizens to enact rules and regulations regarding the use and occupancy of the City’s rights-of-way.

NOW, THEREFORE, THE CITY OF XENIA HEREBY ORDAINS, a majority of the members of Council present concurring, that:

Section 1. Chapter 1028, to be titled “Rights-of-Way Administration,” including Sections 1028.01 to 1028.23 and 1028.99, to be added to Part Ten – Streets, Utilities, and Public Services Code, Title Two – Streets and Sidewalk Areas, is hereby enacted, as shown in the attached Exhibit A.

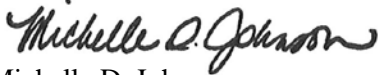
Section 2. It is found that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council that resulted in this formal action were in meetings open to the public in compliance with all legal requirements, including ORC 121.22.


Section 3. This Ordinance shall become effective on January 7, 2023.

Introduced: November 22, 2022

Adopted: December 8, 2022

Attest:


Michelle D. Johnson
City Clerk


Wesley E. Smith
President, Xenia City Council

CHAPTER 1028
Rights-Of-Way Administration

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<u>1028.11 Indemnity</u>	<u>1028.22 Indemnification and Liability</u>
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1028.01 DECLARATION OF FINDINGS AND PURPOSE; SCOPE; DEFINITIONS.

(a) Findings and Purpose.

- (1) The City of Xenia, 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.**
- (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.**
- (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. To the extent that anything in this Chapter conflicts with other sections of the Xenia City Code, then the provisions of this Chapter shall control.

(c) Definitions. For the purposes of this Chapter, 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.

- (1) "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 for a period exceeding ninety (90) consecutive days or a total of one hundred eighty (180) days in any three hundred sixty-five (365) day period, without notice of the discontinued operations or use given to the City by a 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.

- (2) "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 fifteen percent (15%) or more, joint venture 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 an affiliate shall in no event mean any limited partner or shareholder holding an interest of less than fifteen percent (15%) 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.
- (3) "Antenna" means communications equipment that transmits or receives radio frequency signals in the provision of wireless service.
- (4) "Applicant" means any person who seeks to obtain or renew a Certificate of Registration and/or Permit.
- (5) "Application" means the process by which an applicant submits a request to obtain Certificate of Registration or a Permit.
- (6) "Application Fee" means the fee paid to the City with an application for a Certificate of Registration pursuant to Section 1028.06(a) of this Chapter.
- (7) "Bankruptcy Code" means the United States Bankruptcy Code of 1978, as amended including regulations promulgated by Title 11 of the United States Code.
- (8) "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.
- (9) "Business Day" means any Monday, Tuesday, Wednesday, Thursday, or Friday excluding legal holidays observed by the City.
- (10) "Cable Franchise" means the same as "franchise" in the Cable Communications Policy Act of 1984, 98 Stat. 2779, 47 USC 522.
- (11) "Cable Operator" means the same as in the Cable Communications Policy Act of 1984, 98 Stat. 2779, 47 USC 522.
- (12) "Cable Service" means the same as in the Cable Communications Policy Act of 1984, 98 Stat. 2779, 47 USC 522.
- (13) "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.
- (14) "City" means the City of Xenia, Ohio.
- (15) "City Council" means the governing body of the City of Xenia, Ohio.
- (16) "City Manager" means the duly appointed City Manager of the City, or his or her designee.

- (17) “Code” means the Xenia City Code (“XCC”), also known as the Codified Ordinances of the City.
- (18) “Collocation” or “Co-location” means to install, mount, maintain, modify, operate, or replace wireless facilities on a wireless support structure.
- (19) “Construct” means, but shall 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 or improved surface that is any part of the right-of-way.
- (20) “Construction” means, but shall not be 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 right-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.
- (21) “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.
- (22) “Construction Cost” means the cost of installation, materials, engineering costs, and other incidental fees required for the construction, repair, or replacement of the real and/or personal property or facilities affected by construction in the rights-of-way.
- (23) “Construction Permit” means the Permit, as specified in Section 1028.16 of this Chapter which must be obtained before a person may construct in, locate in, occupy, maintain, move, or remove facilities from, in, or on a right-of-way.
- (24) “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.
- (25) “County” means Greene County, Ohio. County specifically excludes any and all contractors, agents, or other persons acting on behalf of such County.
- (26) “Credible” means worthy of being believed.
- (27) “Decorative Pole” means a pole, arch, or structure, other than a street light pole, placed in the right-of-way specifically designed and placed for aesthetic purposes and on which no appurtenances or attachments have been placed, except for the following: electric lighting means specifically designed informational or directional signage; or temporary holiday or special event attachments.
- (28) “Department of Public Service” means the City’s Department of Public Service.
- (29) “Design Guidelines” means detailed guidelines and specifications promulgated by the City in accordance with ORC Chapter 4939 for the design and installation of small cell facilities and wireless support structures in the right-of-way.
- (30) “Emergency” means a condition that poses a clear and immediate danger to life or health, or a significant loss of property.
- (31) “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.
- (32) “FCC” means the Federal Communications Commission, or any successor thereto.
- (33) “FERC” means the Federal Energy Regulatory Commission as created and amended in accordance with the Federal Power Act, 16 USC 792, or its statutory successor.

- (34) “Full” means unable to accommodate any additional facilities as determined by the Public Service Director following a reasonable analysis taking into consideration all applicable laws, commonly accepted industry standards, and routine engineering practices.
- (35) “Graffiti” means unauthorized writings, drawings, signs or other materials illegally scribbled, scratched, sprayed or posted on any surface.
- (36) “Height” means the distance measured from the pre-existing grade level to the highest point on the structure, including the small cell facilities, even if said highest point is an antenna or lightning protection device.
- (37) “Historic District” means a building, property, or site or group of buildings, properties, or sites that are either of the following:
A. Listed in the National Register of Historic Places or formally determined eligible for listing by the keeper of the National Register, who is 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 CFR Part 1, Appendix C.
B. A registered historic district, as defined in ORC 149.311.
- (38) “In” when used in conjunction with rights-of-way, means in, on, above, within, over, below, under or through a right-of-way.
- (39) “Inspector” means any person authorized by the Public Service Director to carry out inspections related to the provisions of this Chapter.
- (40) “Law(s)” means any local, state, or federal legislative, judicial, or administrative order, certificate, decision, statute, constitution, ordinance, resolution, regulation, rule, tariff, or other requirement in effect either at the time of execution of this Chapter or at any time during the location of, and/or while a Provider's facilities are located in, the public rights-of-way.
- (41) “Law Director” means the City’s duly appointed Director of Law of the City, or his or her designee.
- (42) “Micro Wireless Permit” means a Permit that must be obtained before a person can construct, modify, collocate, or replace a small cell facility or wireless support structure, as set forth in Section 1028.19 of this Chapter, in or on the rights-of-way.
- (43) “Minor Maintenance Permit” means a Permit, as specified Section 1028.18 of this Chapter, which must be obtained before a person can perform minor maintenance, as set forth in Section 1028.20 of this Chapter, in or on the rights-of-way.
- (44) “Ohio Manual of Uniform Traffic Control Devices (OMUTCD)” means the uniform system of traffic control devices promulgated by the Ohio Department of Transportation pursuant to ORC 4511.09.
- (45) “ORC” means the Revised Code of the State of Ohio.
- (46) “Ohio Utility Protection Service” means the utility protection service as defined and described in ORC 153.64 and/or ORC 3781.25 –3781.32 or any statutory successor(s) thereto.
- (47) “Operator” means a wireless service provider, cable operator, or a video service provider that operates a small cell facility and provides wireless service. For the 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 USC 153(20), as services that are fixed in nature or use unlicensed spectrum.
- (48) “Permit” means a Construction Permit, Micro Wireless Permit, or a Minor Maintenance Permit, unless otherwise specified.

- (49) “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.
- (50) “Permit Fee” means money paid to the City for a permit to construct in the rights-of-way as required by this Chapter.
- (51) “Permittee” means any person to whom a Construction Permit, Micro Wireless Permit, and/or a Minor Maintenance Permit has been granted by the City and not revoked.
- (52) “Person” means any natural or corporate person, 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.
- (53) “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 providers operating pursuant to a valid VSA shall also be considered Providers.
- (54) “Public Service Director” means the duly appointed Director of the City’s Department of Public Service, or his or her designee.
- (55) “Public Utility” means a wireless service provider, as defined in ORC 4927.01(A)(20) or any company described in ORC 4905.03, except in ORC 4905.03(B) and (I), which company is also a “Public Utility” as defined in ORC 4905.02, and includes any electric supplier, as defined in ORC 4933.81.
- (56) “PUCO” means the Public Utilities Commission of Ohio, as defined in ORC 4901.02.
- (57) “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.
- (58) “Removal Bond” means a bond posted to ensure the availability of sufficient funds to remove a Provider's facilities upon abandonment, disuse, or discontinuance of a Provider's use or occupation of the rights-of-way.
- (59) “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.
- (60) “Right(s)-of-Way” means the surface and space in, on, above, within, over, below, under or through any real property in which the City has an interest in law or equity, whether held in fee, or other estate or interest, or as a trustee for the public including, but not limited to, any public street, boulevard, road, highway, freeway, lane, alley, court, sidewalk, parkway, river, tunnel, viaduct, bridge, conduit or any other place, area, or real property owned by or under the legal or equitable control of the City that, consistent with the purposes for which it was dedicated, may be used for the purposes of constructing, operating, repairing or replacing a system. Rights-of-way shall not include buildings, parks, or other public property or easements that have not been dedicated to compatible uses, except to the extent the use or occupation of such property is specifically granted in a Permit or by law.
- (61) “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.
- (62) “Rule(s) and Regulation(s)” means any rules or regulations adopted by the Public Service Director pursuant to Section 1028.09(e) of this Chapter.
- (63) “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 Public Service Director, constitutes a service.

- (64) “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 (6 cu. ft.) 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 (6 cu. ft.) in volume.
 - B. All other wireless equipment associated with the facility in cumulatively not more than twenty-eight cubic feet (28 cu. ft.) in volume. The calculation of equipment volume shall not include electric meters, concealment elements, telecommunication demarcation boxes, grounding equipment, power transfer switches and vertical cable runs for the connection of power and other services.
- (65) “State” means the State of Ohio.
- (66) “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 or otherwise modify or amend the specifics of a Permit application.
- (67) “System” means any system of conduit, ducts, cables, 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 service 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.
- (68) “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.
- (69) “Transfer” means the disposal by the Provider, directly or indirectly, by gift, assignment, voluntary sale, merger, consolidation, or otherwise, of fifty-one percent (51%) or more at one time of the ownership or controlling interest in the system, or fifty-one percent (51%) 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.
- (70) “Trenchless Technology” means, but shall 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 the rights-of-way as possible.
- (71) “Underground Facility(ies)” means all lines, cables, conduits, pipes, posts, tanks, vaults and any other facilities, which are located wholly or partially underneath the rights-of-way.
- (72) “Unused Facility(ies)” means facilities located in the rights-of-way which have remained unused for twelve (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 twelve (12) months, or that it has a potential purchaser or user of the facilities who will be actively using the facilities within the next

- twelve (12) months, or, that the availability of such facilities is required by the Provider to adequately and efficiently operate its system.
- (73) “Utility(ies)” means any water, sewer, gas, drainage, sprinkler, or culvert pipe and any electric power, telecommunications, signal communications, or cable television conduit, fiber, wire, cable, or an operator thereof.
- (74) “Utility Corridor(s)” means those specific areas of the rights-of-way designated as such by the Public Service Director pursuant to Section 1028.06(f)(1) of this Chapter.
- (75) “Video Service” means the same as "video service" in ORC 1332.21(J).
- (76) “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 ORC 1332.24(A)(1).
- (77) “Video Service Network” means the same as “video service network” in ORC 1332.21(L).
- (78) “Video Service Provider (or VSP)” means the same as “video service provider” in ORC 1332.21(M).
- (79) “Wireless Facility” means:
- A. Equipment at a fixed location that enables wireless communications between user equipment and a communications network, including all of the following:
 - (i) Equipment associated with wireless communications;
 - (ii) Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration.
 - B. The term includes small cell facilities.
 - C. The term does not include any of the following:
 - (i) The structure or improvements on, under, or within which the equipment is collocated;
 - (ii) Coaxial or fiber-optic cable that is between wireless support structures or utility poles or that is otherwise not immediately adjacent to or directly associated with a particular antenna. 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 ORC Chapter 4939.
- (80) “Wireless Service” means any service using licensed or unlicensed wireless spectrum, whether at a fixed location or mobile, provided to the public using wireless facilities.
- (81) “Wireless Support Structure” means a pole, such as a monopole, either guyed or self-supporting, street light pole, traffic signal pole, a fifteen-foot (15’) or taller sign pole, or utility pole capable of supporting small cell facilities. As used in this Chapter, “Wireless Support Structure” excludes any 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.
- (Ord. 2022-46. Adopted **/**/22)

1028.02 RIGHTS-OF-WAY ADMINISTRATION.

(a) Administration. The Public Service Director shall be the principal City official responsible for the administration of this Chapter, except as otherwise provided herein. The Public Service Director may delegate any and all the duties hereunder to the Assistant City Engineer 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 this Chapter. Any person owning, operating, or maintaining a system in the right-of-way without a Certificate of Registration, including persons operating under permit, license or franchise issued by the City prior to the effective date of this Chapter, shall apply for and obtain a Certificate of Registration from the City, unless exempted by subsection (d) of this section. Applications will consist of providing the application information set forth in Section 1028.06 of this Chapter and as reasonably required by the Public Service Director.

(c) No Construction Without a Certificate of Registration. Following the effective date of this Chapter, no person shall construct or perform any work on or in, or 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 1028.99 of this Chapter.

(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 obligation of the application fee required by Section 1028.06(a) and the registration maintenance fee required by Section 1028.08(a) of this Chapter:**
 - A. The County, cable operators for the purpose of providing only cable service and operating pursuant to a valid cable franchise;**
 - B. Video service providers for the purpose of providing only video service and operating pursuant to a valid video service authorization issued in accordance with ORC 1332.24;**
 - C. Small cell facility operators for the purpose of providing wireless service.**

(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 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 non-complying portion of such system; and/or prosecuting the violator.

(f) Future Uses. In allowing facilities to be placed in the rights-of-way, the City is not 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.
(Ord. 2022-46. Adopted **//22)**

1028.03 DISCONTINUANCE OF OPERATIONS; ABANDONED AND UNUSED FACILITIES.

(a) Discontinuance of Operations. A Provider who has discontinued or is discontinuing its operation of any system in the City shall:

- (1) Provide information satisfactory to the City that the Provider's obligations for its system in the rights-of-way under this Chapter and any other chapters in the Code or other laws have been lawfully assumed by another applicant and/or Provider; or**

- (2) 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 Public Service Director; or
- (3) Submit a written proposal for abandonment of facilities in place indicating why good engineering practice would support this type of solution. Such proposal must be approved by the Public Service Director; or
- (4) 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 there exists a reasonable justification for such removal; or
- (5) Submit to the City, within a reasonable amount of time, and in accordance with ORC 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:
 - A. Purchase the facilities; or
 - B. Unless a valid removal bond has already been posted pursuant to Section 1028.20(b) of this Chapter, 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.

(b) Abandoned and Unused Facilities. Facilities of a Provider who 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, abating the nuisance; or taking possession of the facilities and restoring them to a useable condition subject to the finding of the PUCO pursuant to the requirements of ORC 4905.20 and 4905.21; or requiring removal of the facilities by the Provider or by the Provider's surety. If the City determines to require 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 excavation 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 ORC 715.261.

(Ord. 2022-46. Adopted **/**/22)

1028.04 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 this Chapter. The right to occupy the right-of-way itself may not be subdivided or subleased; provided, however, that two or more Providers may collocate facilities in the same area of the rights-of-way so long as each such Provider complies with the provisions of this Chapter. Collocating 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 collocating 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 this Chapter. A Certificate of Registration does not excuse a Provider from complying with any provisions of this Chapter or other applicable laws.

(Ord. 2022-46. Adopted **/**/22)

1028.05 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 this Chapter 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.
(Ord. 2022-46. Adopted **//22)**

1028.06 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 Public Service Director, 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 thirty (30) calendar 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. The applicant shall keep all of the information required in this section current at all times, provided that the applicant or Provider shall notify the City of any changes to the information required by Section 1028.06(b)(2) within fifteen (15) calendar days following the date on which the applicant or Provider has knowledge of any such change and shall notify the City of any changes to other information required by this section within thirty (30) calendar 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, the following:

- (1) 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**
- (2) The name, street address and e-mail address, if applicable, and telephone and facsimile numbers of a system representative. The system representative shall be available 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.**
- (3) Certificate of Insurance: A certificate of insurance where required to be provided to meet the requirements of this section shall:**
 - A. Verify that an insurance policy has been issued to the applicant by an insurance company licensed to do business in the State of Ohio;**
 - B. 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: use and occupancy of the rights-of-way by the applicant, its officers, agents,**

- employees and contractors; and 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, explosion, environmental release, and collapse of property;
- C. Name the City, its elected officials, officers, employees, agents and volunteers as 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 coverages;
- D. Require that the City be notified thirty (30) calendar 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: "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 thirty (30) calendar days after receipt by the City, by registered mail, return receipt requested, of a written notice addressed to the City's Public Service Director of such intent to cancel, diminish, or not to renew." Within thirty (30) calendar days after receipt by the City of said notice, and in no event later than five (5) calendar days prior to said cancellation, the Provider (or applicant) shall obtain and furnish to the Public Service Director a certificate of insurance evidencing replacement insurance policies.
- (4) 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: One Million Dollars (\$1,000,000)
Annual aggregate: Three Million Dollars (\$3,000,000)
- (ii) Property damage each occurrence: One Million Dollars (\$1,000,000)
Annual aggregate: Three Million Dollars (\$3,000,000)
- (iii) Personal injury annual aggregate: Three Million Dollars (\$3,000,000)
- B. Completed operations and products liability shall be maintained for six (6) months after the termination of a Certificate of Registration.
- C. Property damage liability insurance shall include coverage for the following hazards: E - explosion, C - collapse, U - underground.
- (5) 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 Public Service Director. Coverage must be written on an occurrence basis, with the following limits of liability and provisions, or their equivalent:
- A. Bodily injury each occurrence: One Million Dollars (\$1,000,000.00)
Annual aggregate: Three Million Dollars (\$3,000,000.00)
- B. Property damage each occurrence: One Million Dollars (\$1,000,000.00)
Annual aggregate: Three Million Dollars (\$3,000,000.00)
- (6) Additional Insurance: The City reserves the right to require any other insurance coverage it deems necessary after review of any proposal submitted by applicant.
- (7) Self-insurance: Those applicants maintaining a book value in excess of Fifty Million Dollars (\$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 the following:

- A. Audited financial statements for the previous year;
 - 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 One Million Dollars (\$1,000,000.00) or proof of available excess umbrella liability coverage to satisfy all total current claim amounts above Fifty Million Dollars (\$50,000,000.00).
 - D. The Public Service Director may modify or waive these requirements if they are not necessary in determining the sufficiency of the self-insurance. The Public Service Director may request applicable and pertinent additional information if it is necessary in determining the sufficiency of the self-insurance.
- (8) The City's examination of, or failure to request or demand, any evidence of insurance in accordance with this Chapter, shall not constitute a waiver of any requirement of this section and the existence of any insurance shall not limit applicant's obligations under this Chapter.
 - (9) 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.
 - (10) If the person is a corporation, 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.
 - (11) 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 1028.05.
 - (12) 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 this Chapter and carry on applicant's proposed activities.

(c) Criteria For Issuance of a Certificate of Registration. In deciding whether to issue a Certificate of Registration, the City shall consider:

- (1) Whether the issuing of the Certificate of Registration will contribute to the health, safety, and welfare of the City and its citizens.
- (2) Whether issuing of the Certificate of Registration will be consistent with this Chapter.
- (3) 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;
- (4) Whether the applicant is delinquent on any taxes or other obligations owed to the City, County, and/or state;
- (5) Unless the applicant is otherwise exempted from such consideration by ORC 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; and
- (6) Any other applicable law.

(d) Grant or Denial of an Application for a Certificate of Registration.

- (1) The City, not later than sixty (60) calendar days after the date of filing by an applicant of a completed application, 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, 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 discretion of the Public Service Director, 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 laws 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 Public Service Director to be adequate under current standards and not less than materially equivalent to its condition prior to such work and to do so in a manner which minimizes any inconvenience to the public, the City and other Providers, all in accordance with all applicable provisions of this Chapter, any Rules and Regulations 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 Public Service Director. Any such activities, unless an emergency, shall only be performed following the prior written approval of the Public Service Director 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, all as may be required by the City. Pruning shall at a minimum meet or exceed the requirements of the most current version of the American National Standards Institute ANSI A300 Standard. Any additionally required horticultural and arboreal practices and guidelines, including required special consideration/protection of historical trees, shall be described in the Rules and Regulations adopted by pursuant to Section 1028.09(e) of this Chapter. 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 Public Service Director shall be provided notice of such emergency work being performed within two (2) 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 Public Service Director's written permission shall subject a person to the penalties of Section 1028.99 of this Chapter 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 twenty-one (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 thirty (30) calendar 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 Public Service Director; and
 - D. All marking should be clearly readable from the ground and include 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 be responsible to coordinate with all other Providers to ensure the orderly transfer of all lines or cables to the replacement utility pole, the removal of the existing utility pole, and the restoration of the rights-of-way within thirty (30) calendar days, weather permitting, after the replacement utility pole is installed. Upon request, the Public Service Director may grant the Provider additional time for good cause.
- (f) Establishment of Utility Corridors.
- (1) The Public Service Director 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 Public Service Director 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 Public Service Director 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 Public Service Director 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; laws precluding such undergrounding of facilities; and

hardship to the Provider. If a Provider is denied a requested waiver from the above requirements by the Public Service Director, the Provider may appeal the denial.

- (3) The Public Service Director 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 1028.06(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 relocate facilities underground within a certain area of the City, every Provider with facilities within the same area of the City shall concurrently relocate their facilities underground.**
 - C. The above requirements may be waived by the City 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; laws precluding such undergrounding of the facilities; and hardship to the Provider. If a Provider is denied a requested waiver from the above requirements by the Public Service Director, the Provider may appeal the denial.**

(g) Historic Districts.

- (1) Unless otherwise required 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 collocation or installation of small cell facilities and/or wireless support structures in an area 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 any rules or regulations adopted or authorized by ordinance that 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 USC 332(c)(7), the requirements for facility modifications under 47 USC 1455(a), or the National Historic Preservation Act of 1966 (54 USC 300101 et seq.), and the regulations adopted to implement those laws.**
(Ord. 2022-46. Adopted **//22)**

1028.07 REPORTING REQUIREMENTS.

(a) Reporting Obligations of Providers. Each Provider shall at the time of initial application, using its best efforts, by January 1st of each following year, file a construction and major maintenance plan with the Public Service Director. Such construction and major maintenance plan shall be provided for all geographical areas requested by the Public Service Director, up to and including the entire geographical area of 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 Public Service Director 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 or major maintenance projects for the next calendar year; if none are scheduled or anticipated, then the plan shall so state.

(b) Mapping Data.

(1) 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 rights-of-way the Provider's system currently occupies and begin submitting to the City all information that currently exists and 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 ready (or readily converted to a readable form) by the City. Unless otherwise required by Section 1028.16(b), a Provider shall have up to one (1) 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 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 Public Service Director determines that the format currently being used by the Provider is not capable of being read by the City. Any time after the issuance of a Certificate of Registration, and upon the reasonable request of the Public Service Director, a Provider shall be required to provide 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, as required by the City. 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 sixty (60) calendar days of receipt of an invoice shall subject an applicant or Provider to revocation of its Certificate of Registration and the penalties of Section 1028.99 of this Chapter. Further, each Provider that has been issued a Certificate of Registration shall accurately inform the City on or before each subsequent January 1st of the number of miles (rounded up to the nearest mile) of rights-of-way the Provider's system then occupied as of the immediately previous December 1st.

(2) The Public Service Director 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 Section 1028.07(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 1028.23(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.

- (3) 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 ORC 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 ORC 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.
(Ord. 2022-46. Adopted **/**/22)

1028.08 COMPENSATION FOR CERTIFICATE OF REGISTRATION.

(a) Compensation. As compensation for the City's costs to administer this Chapter, manage, administer, and control the rights-of-way and for each Certificate of Registration issued, every Provider or any person operating a system shall pay to the City registration maintenance fees beginning January 1, 2023. 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 31st 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 this Chapter.
- (2) Providers and applicants, as required in Section 1028.07(b), shall accurately inform the City upon application for a Certificate of Registration and on or before each subsequent January 1st of the number of miles (rounded up to the nearest mile) of rights-of-way the Provider's system then occupied as of the immediately previous December 1st.
- (3) The City shall total the entire number of miles of rights-of-way reported as being used or occupied by all Providers.
- (4) The City shall divide the calculated costs referenced in Section 1028.08(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 1028.08(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 1028.08(a)(2) by the per-mile cost calculation referenced in Section 1028.08(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 1st mileage report. Registration maintenance fees shall be invoiced to Providers on or about February 1st of each calendar year and shall be due thirty (30) calendar days following receipt.**
- (7) Cable companies operating under non-exclusive cable franchises for the purposes of providing cable service and Video Services Providers operating under a VSA for the purpose of providing video 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 rights-of-way use in the City, shall have the mileage of the rights-of-way they use and/or occupy included in the calculations described in Section 1028.08 but shall not be required to contribute to the recovery of rights-of-way costs, as defined in this Chapter, with the exception of Permit costs.**
- (8) The City may by separate legislation enacted by City Council on or about January 31st of each year, in accordance with the results of Section 1028.08(a)(4), enact an initial and thereafter a new annual registration maintenance fee (per mile) by appropriately increasing or decreasing the previous year's registration maintenance fee (per mile). Revised registration maintenance fees shall be effective upon passage.**

(b) Timing. Registration maintenance fees shall be paid within thirty (30) calendar days of the City providing an invoice to a Provider. 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 (1) 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 this Chapter and shall not be considered an offset to, or in lieu of, the fees and charges listed in this Chapter. The registration maintenance fee is not in lieu of any tax, fee, or other assessment except as specifically provided in this Chapter 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 the date due, a monthly late charge of one percent (1%) of the unpaid balance shall be paid by the Provider 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.

(f) Costs of Publication. A Provider shall assume all actual and direct newspaper or other appropriate publication costs of up to One Thousand Dollars (\$1,000.00) associated with its Certificate of Registration that may be required by law or that may otherwise be required by its application for a Certificate of Registration or other Permit as provided for herein.
(Ord. 2022-46. Adopted **//22)**

1028.09 OVERSIGHT AND REGULATION.

(a) Reports. Upon reasonable request of the Public Service Director, 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 this Chapter 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 thirty (30) calendar 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 this Chapter, 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 thirty (30) calendar days.

(b) Confidentiality. All information submitted to the City that is considered confidential information, trade secret and/or proprietary information or information that upon public disclosure would be highly likely to place critical portions of the Provider's system in real danger of vandalism, sabotage or an act of terrorism, must be clearly marked as such when submitted. The City shall exercise all reasonable legal protections so as not to publicly disclose to any third party such proprietary 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 this Chapter shall be furnished at the sole expense of a Provider, except as otherwise provided in this Chapter.

(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, all documents, records, or other information which pertain to a Provider and its operation of a system or its obligations under this Chapter or and Rules and Regulations adopted pursuant hereto. 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; provided, however, that if such documents are located outside of the City, then a Provider shall pay the reasonable expenses incurred by the City's designated representatives in traveling to such location.

(e) Rules and Regulations. The Public Service Director may propose, and City Council may approve by resolution (and from time to time amend), Rules and Regulations regarding this Chapter, construction standards, and occupancy requirements of the rights-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 City shall provide written notice and a copy of the proposed language of such adoption or amendment, via U.S. regular mail, to each Provider who holds a then current Certificate of Registration. Each Provider shall then have thirty (30) calendar days following the date of the City's mailing to provide written comment regarding the proposed language to the City. At least forty-five

(45) calendar days but not more than sixty (60) calendar days following the date of the City's mailing, the City 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 City. The Public Service Director 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, for approval by the City Council.
(Ord. 2022-46. Adopted **/**/22)

1028.10 REGISTRATION TERM.

The term of each Certificate of Registration granted under this Chapter shall be valid from the date of issuance until such time as it is revoked, terminated, has lapsed, or is properly amended.
(Ord. 2022-46. Adopted **/**/22)

1028.11 INDEMNITY.

Each Certificate of Registration issued under this Chapter shall be under the conditions and contain provisions whereby Providers agree to defend, indemnify and hold the City and its agents, officers, elected officials, employees, volunteers, subcontractors and contractors harmless from and against all damages, costs, losses, or expenses: (a) for the repair, replacement, or restoration of City's 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 (b) from and against any and all claims, demands, suits, causes of action, and judgments for: (1) damage to or loss of the property of any person (including, but not limited to, such Provider, its agents, officers, employees and subcontractors, City's agents, officers, elected officials, employees, volunteers, contractors and third parties); and/or (2) death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including, but not limited to, the agents, officers and employees of such Provider, Provider's subcontractors, the City, and third parties), 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. In any event, all persons using or occupying the rights-of-way agree to defend, indemnify, and hold the City harmless as set forth above as a condition of their use or 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.
(Ord. 2022-46. Adopted **/**/22)

1028.12 CIVIL FORFEITURES.

In addition to any other penalties set forth in this Chapter, and the remedy of specific performance, which may be enforced in a court of competent jurisdiction, the Public Service Director may assess an additional penalty of civil forfeiture for failure to comply with any provision of this Chapter. Such penalty shall be a monetary sum, payable to the City, in the amount of Five Hundred Dollars (\$500.00) per twenty-four (24) hour day of violation and any subsequent portion of a day less than twenty-four (24) hours in length. Prior to assessing such penalty, the Public Service Director shall provide written notice to the Provider detailing the failure to comply with a specific provision of this Chapter. The notice shall indicate that the penalty shall be assessed in fifteen (15) calendar days subsequent to the date of receipt if compliance is not achieved. If a Provider desires to challenge the penalty, Provider shall request a hearing before the City Manager within ten (10) calendar days of service of the notice. The hearing shall be held within thirty (30) calendar days of the Provider's

request. If Provider requests such hearing before the City Manager, the penalty shall be temporarily suspended; however, if, after the hearing, the City Manager determines that Provider failed to comply with the specific provision of this Chapter referenced in the notice, the penalty shall be assessed starting with the fifteen (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 ORC Chapter 2506. The penalty shall continue to accrue during the appeal unless the Provider obtains a stay and posts a supersedes bond pursuant to ORC 2505.09 or the Provider comes into full compliance with this Chapter.
(Ord. 2022-46. Adopted **/**/22)

1028.13 TERMINATION OF CERTIFICATE OF REGISTRATION.

(a) Notice of Default. The Public Service Director shall give written notice of default to a Provider if it is determined 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) Attempted to evade any provision or requirement 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) Failure to Cure. If a Provider fails to cure a default within thirty (30) calendar days after such notice is served by the City, then such default shall be a material breach and the City may exercise any remedies or rights it has at law or in equity to terminate the Provider's Certificate of Registration. If the Public Service Director 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 fifteen (15) calendar days to cure its breach.
- (2) If the Provider fails to cure within fifteen (15) calendar days, the Public Service Director may declare the Certificate of Registration terminated.
- (3) The Provider shall have ten (10) 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 Public Service Director. Otherwise, the City Manager shall affirm the decision of the Public Service Director to terminate. The determination of the City Manager shall be final.
(Ord. 2022-46. Adopted **/**/22)

1028.14 UNAUTHORIZED USE OF PUBLIC RIGHTS-OF-WAY.

(a) No Use without Certificate of Registration. No person shall use the rights-of-way to operate a system that has not been authorized by the City in accordance with the terms of this Chapter and been issued a Certificate of Registration.

(b) No Facilities without Certificate of Registration. No Provider shall place or have placed any facilities in, on, above, within, over, below, under, or through the rights-of-way, unless allowed under this Chapter or having been issued a Certificate of Registration.

(c) Unauthorized Use. 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 this Chapter continues shall constitute a distinct and separate offense.

(d) Violations. No person shall fail to comply with the provisions of this Chapter. Each and every failure to comply shall be deemed a distinct and separate offense. Each and every day any violation of this Chapter continues shall constitute a distinct and separate offense.

(e) Penalties. The violation of any provision of this Chapter shall be unlawful and a misdemeanor offense. The penalty for any violation of this Chapter shall be as provided in Section 1028.99.

(Ord. 2022-46. Adopted **//22)**

1028.15 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 reasonably 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 sixty (60) calendar days of actual receipt of the request and shall indicate its approval of the request or its determination that a public hearing is necessary. The City may conduct a public hearing on the request within thirty (30) calendar 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 fourteen (14) calendar days prior to the hearing by publishing notice thereof on the City's website, by printing it once in a newspaper of general circulation in the City, or by posting it in three (3) public places within 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. The City will make its decision in writing setting forth any conditions for assignment or transfer. Within one hundred twenty (120) calendar 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 ninety (90) calendar 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.
(Ord. 2022-46. Adopted **//22)**

1028.16 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 in this Chapter. This requirement shall be in addition to any requirement set forth in XCC Chapters 1020, 1022, and 1024.

- (1) A Construction Permit allows the permittee to construct in the part of the right-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) Unless otherwise specified, a Construction Permit is valid for six (6) months from the date of issuance for the area of rights-of-way specified in the 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. Makes 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 under this Chapter shall, when possible, be conspicuously displayed at all times at the indicated work site and 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 worksite, then, upon request, the original Construction Permit must be produced within twelve (12) business hours or the first earliest business hour, whichever is later. For purposes of this section, business hour shall mean the hours between 7:30 a.m. and 4:00 p.m. during a business day.**

(b) Construction Permit Applications. Application for a Construction Permit, unless an emergency, shall be made to the Public Service Director no less than five (5) business days prior to the requested start of construction. In addition to any information required by the Public Service Director, all Construction Permit applications shall contain, and will only be considered complete upon compliance with, the requirements of the following provisions:

- (1) 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**
- (2) Submission of a completed Construction Permit application in the form required by the Public Service Director, including, but not limited to, all required attachments, and scaled, dated drawings showing the location and area of the proposed project, number and location of street crossings, 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 comply with applicable technical codes, Rules and Regulations, and be certified as to being in such compliance by trained technical personnel acceptable to the Public Service Director. 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 Public Service Director 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
- (3)** 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
- (4)** If the applicant is proposing an aboveground installation on existing poles within the rights-of-way, the applicant shall provide credible information satisfactory to the City to sufficiently detail and identify:
- A.** The size and height of the existing poles; and
- B.** Based on the facilities currently on the existing poles, the excess capacity currently available on such poles before installation of applicant's facilities; and
- C.** Based on the facilities currently on the existing poles, the excess capacity for like or similar facilities that will exist on such poles after installation of applicant's facilities; and
- (5)** If the applicant proposes to install new poles within the rights-of-way, the applicant shall provide:
- A.** Credible evidence satisfactory to the City that there is no excess capacity on existing poles or in existing underground systems; and
- B.** 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
- C.** The location, size, height, color, and material of the proposed poles; and
- D.** Credible evidence satisfactory to the City that the applicant will adhere to all the applicable laws concerning the installation of new poles.
- (6)** If the 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:
- A.** Based on the existing facilities, the excess capacity for like or similar facilities currently available in such ducts or conduits before installation of the applicant's facilities; and
- B.** 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.
- (7)** If the 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:
- A.** The location, depth, size, and quantity of proposed new ducts or conduits; and
- B.** The excess capacity for like or similar equipment that will exist in such ducts or conduits after installation of the applicant's facilities.
- (8)** A preliminary construction schedule and completion date.

- (9) Payment of all money then due to the City for:**
- A. Permit fees;**
 - B. Any loss, damage, or expense suffered by the City as a result of the applicant's prior construction in the rights-of-way or any emergency actions taken by the City; and**
 - C. Any Certificate of Registration issued to the applicant/person whose facilities are being constructed; and**
 - D. Any other money due to the City from the applicant/person whose facilities are being constructed.**
- (10) 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 Section 1028.20 of this Chapter for the additional systems or any part of a system is required.**

(c) Issuance of Construction Permit; Conditions.

- (1) If the Public Service Director determines that the applicant has satisfied the requirements of this Chapter and the Construction Permit process, the Public Service Director shall issue a Construction Permit subject to the provisions of this Chapter.**
- (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 City's investment in the rights-of-way, 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, or to minimize the disruption and inconvenience to the traveling public.**

(d) Construction Permit Fees. The City shall collect a Construction Permit fee equal to the actual and direct cost incurred by the City that is associated with receiving, reviewing, processing, and granting (or denying) the Construction Permit and any oversight of the Construction Permit or the construction work associated therewith. Following completion of the construction work for which a Construction Permit has been granted (or at the time of the denial of a Construction Permit) the City shall calculate and assess all actual and direct costs involved in receiving, reviewing, processing, and granting (or denying) the Construction Permit and any oversight of the Construction Permit or construction work associated therewith and provide a written invoice to the applicant for the appropriate amount. The City shall require that the applicant remit all Construction Permit fee amounts invoiced within thirty (30) calendar days. Any applicant who fails to timely remit such invoiced Construction Permit 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 or Construction Permit having been issued.

- (1) The City may, in addition to these direct and actual costs listed in division (d), include in the Construction Permit fee the cost of the value of degradation and reduction in the useful life of the rights-of-way that will result from the Construction that has taken 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.**
- (2) Except as otherwise provided in division (d)(3), no future Construction Permits shall be issued to an applicant without payment of all outstanding Construction Permit fees within thirty (30) calendar days of original invoice. The City and County shall be exempt from payment of Construction Permit fees. 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 1028.13 and Section 1028.19(e) are not refundable.**
- (3) The Public Service 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 thirty (30) calendar days after the end of the quarter. The Public Service 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.

(Ord. 2022-46. Adopted **/**/22)

1028.17 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 Public Service Director. 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 Public Service Director, 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 1028.17(a)(1)A.- C. on the construction permittee's proposed system route maps and construction plans, along with the locations of the proposed facilities and all other topographic and cadastral information.
- 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 1028.17(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 re-designing the construction plans to eliminate the apparent conflict. Unless waived by the Public Service Director, a permittee shall not excavate more than a twelve-inch (12") hole in the rights-of-way to complete this task for each apparent conflict. Any surfaces damaged shall be immediately repaired by the permittee. A

minimum of two (2) business days' notice shall be provided to the City prior to performing these investigations.

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 Public Service Director 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 1028.17(a), the permittee shall submit, if necessary labeled in accordance with the requirements of Section 1028.09(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 Public Service Director 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 Public Service Director the permittee is qualified to complete the project itself; alternatively, utility engineering studies shall be performed by a firm specializing in utility engineering.

(d) Cost of Study. The permittee shall bear the cost of compliance with Section 1028.17(a) – (c).

(e) Construction Schedule. Unless otherwise provided for in this Chapter or in the Rules and Regulations, or unless the Public Service Director 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 not less than five (5) business days before commencing any work in or about the rights-of-way, and shall further notify the City not less than two (2) business days in advance of any excavation in the rights-of-way. This section shall apply to all situations with the exception of circumstances under Section 1028.19(d)(1)(A)(B) (emergency situations) and Section 1028.18 (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. Detailed plans and applicable specifications shall be submitted to the City for review and approval prior to construction of any facilities except those that are categorized as "minor maintenance" issues as per Section 1028.18 herein.

(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 the non-discriminatory and competitively neutral treatment of Providers.

- (3) Should it be determined by the City that any existing poles in the rights-of-way are full, then those poles may be replaced with bigger and/or taller poles in order to accommodate additional facilities or systems only after the construction permittee has made reasonable attempts to reach an acceptable solution without replacement with bigger and/or taller poles. This division (f)(3) shall not apply to replacement of any existing pole(s) with identically sized pole(s) which results from the destruction of or hazardous condition of the existing pole(s) as long as no new facilities or additional facilities are attached.**

(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, or microtunneling. In addition, all cable, wire, or fiber optic cable installed in the subsurface rights-of-way under this Chapter may be required to be installed in conduit, and if so required, no cable, wire or fiber optic cable may be installed under this Chapter using "direct bury" techniques.

(h) Special Exceptions. The City may grant a special exception to the requirements of Sections 1028.17(f) and 1028.17(g) if a permittee, upon application, demonstrates with written evidence that:

- (1) The execution will not create any threat to the City's investment or in the rights-of-way, 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 to 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 the law, the Public Service Director 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 or County;**
 - B. The City's investment in the rights-of-way.**
 - C. 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.**
 - D. 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 right-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 a vacated portion or excess portion in conformity with ORC 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 thirty (30) calendar days after the City's removal order is served upon Provider, or if a Provider fails to substantially complete such removal, including all associated repair of the rights-of-way of the City, within twelve (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 rights, 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. 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. 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.

(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 choose either to have the permittee restore the rights-of-way or the City may restore the rights-of-way itself.
- (3) If the City chooses to allow the permittee to restore the rights-of-way, permittee shall at the time of application for a Construction Permit 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, within twelve (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 twelve (12) months following its completion. During this twelve (12) month period, it shall, upon notification from the Public Service Director, correct all restoration work to the extent necessary using the method required by the Public Service Director. Weather permitting, said work shall be completed within five (5) calendar days of the receipt of the notice from the Public Service Director, unless otherwise extended by the Public Service Director.**
- (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 thirty (30) business days of billing, the 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 Public Service Director may reasonably apportion the restoration responsibility among the City, Providers, and/or other persons.**
- (1) 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 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 thirty (30) calendar 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 permittee and pursue any and all legal or equitable remedies.**
 - (2) 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.**

(m) Rights-of-Way Vacation. If the City sells or otherwise transfers a rights-of-way that 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 ORC 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 Public Service Director.

(o) Inspection.

- (1) When the construction under any Permit hereunder is completed, the permittee shall notify the Public Service Director.**
- (2) 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.**
- (3) 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 terms and conditions of the Permit and/or this Chapter. The City may inspect the work, however, the failure of the City to inspect the work does not alleviate the responsibility of the permittee to complete the work in accordance with the approved Permit and the requirements of this Chapter.**
- (4) 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 1028.23(d). An order may be appealed to the Public Service Director. The decision of the Public Service Director may be appealed to the City Manager, whose decision shall be final. If not appealed, within ten (10) calendar days after issuance of the order, the Provider shall present proof to the Public Service Director that the violation has been corrected. If such proof has not been presented within the required time, the Public Service Director may revoke the Permit pursuant to Section 1028.19(e).**

(p) Other Obligations. Obtaining a Construction Permit does not relieve the permittee of its duty to obtain all other necessary permits, licenses, and authority and to pay all fees, including on-site inspection fees, required by the City, or any other city, county, State, or federal laws.

- (1) A permittee shall comply with all requirements of all laws, including the Ohio Utility Protection Service.**
- (2) 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.**
- (3) No rights-of-way obstruction or excavation may be performed when seasonally prohibited or when conditions are unreasonable for such work, except in the case of an emergency, as outlined in Section 1028.10(d)(1).**
- (4) A permittee shall not obstruct a rights-of-way that the natural free and clear passage of water through the gutters or other waterways shall be interfered with. The Public Service Director may waive this requirement if it is technically or economically unreasonable in the circumstances.**
- (5) 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 this Chapter, a Provider shall locate its 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 right-of-way employed and facilities installed), all facilities to be installed by a Provider under the right-of-way shall be installed in conduit.
(Ord. 2022-46. Adopted **/**/22)

1028.18 RIGHT-OF-WAY MINOR MAINTENANCE PERMITS.

(a) Minor Maintenance Permit Requirements.

- (1) No person shall perform minor maintenance of facilities in the rights-of-way without first having obtained a Minor Maintenance Permit as set forth in this Chapter. Minor maintenance means:**
 - A. The routine repair or replacement of facilities with like facilities not involving construction and not requiring traffic control for more than two (2) hours at any one location; or**
 - B. 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**
 - C. 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 (8) contiguous hours; or**
 - D. Construction other than on thoroughfares and arterials that takes less than eight (8) contiguous hours to complete, does not impede traffic, and does not involve a pavement cut. The Public Service Director may adopt Rules and Regulations pursuant to Section 1028.09(E) that clarify the definition of minor maintenance and/or provide a process for a Provider to determine whether particular activity constitutes minor maintenance.**
- (2) A Minor Maintenance Permit allows the permittee to perform all minor maintenance in any part of the rights-of-way as required.**
- (3) A Minor Maintenance Permit is valid from the date of issuance until revoked by the Public Service Director.**
- (4) A Minor Maintenance Permit must be displayed or upon request produced within twelve (12) business hours.**
- (5) A Minor Maintenance Permit by itself shall under no circumstances provide a permittee with the ability to cut pavement without seeking additional authority from the Public Service Director.**

(b) Minor Maintenance Permit Applications. Application for a Minor Maintenance Permit shall be made to the Public Service Director. In addition to any information required by the Public Service Director, all 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 Minor Maintenance Permit on behalf of a party that has been issued a Certificate of Registration;**
- (2) Submission of a completed Minor Maintenance Permit application in the form required by the Public Service Director.**
- (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 Minor Maintenance Permits; Conditions.

- (1) If the Public Service Director determines that the applicant has satisfied the requirements of this Chapter and the Minor Maintenance Permit process, the Public Service Director shall issue a 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 Public Service Director, upon the issuance of the Minor Maintenance Permit and the performance of the minor maintenance permittee thereunder in order to protect the public health, safety and welfare, to insure the structural integrity of the rights-of-way, to protect the property and safety of other users of the rights-of-way, to protect the City's investment in the right-of-way, or to minimize the disruption and inconvenience to the traveling public.**

(d) Minor Maintenance Permit Fees. The Public Service Director shall not charge a fee for the issuance of the Minor Maintenance Permit but may revoke the Minor Maintenance Permit as any other Permit may be revoked under this Chapter.
(Ord. 2022-46. Adopted **//22)**

1028.19 ENFORCEMENT OF PERMIT OBLIGATION.

(a) Mandatory Denial of Permit. Except in the case of an emergency, no Construction Permit or Minor Maintenance Permit will be granted:

- (1) To any person who has not yet made an application; or**
- (2) To any person or their agent who has outstanding debt owed to the City unless payment in full has been placed in an escrow account approved by the Public Service Director and the Law Director; or**
- (3) To any person or their agent as to whom there exists grounds for the revocation of a Permit; or**
- (4) If, in the discretion of the Public Service Director, the issuance of a Permit for the particular date and/or time would cause a conflict or interfere with an exhibition, celebration, festival, or any other event. The Public Service Director, in exercising this discretion, shall be guided by the safety and convenience of ordinary travel of the public over the rights-of-way, considerations relating to the public health, safety, and welfare and/or the City's investment in the rights-of-way.**

(b) Permissive Denial. The Public Service Director may deny a Permit in order to protect the public health, safety, and welfare and/or the City's investment in the right-of-way, to prevent interference with the safety and convenience of ordinary travel over the rights-of-way, or when necessary to protect the rights-of-way and its users. The Public Service Director, in his/her discretion, may consider one or more of the following factors: the extent to which rights-of-way space where the Permit is sought is available; the competing demands for the particular space in the rights-

of-way; the availability of other locations in the rights-of-way or in other rights-of-way for the proposed Facilities; the applicability of this Chapter or other regulations of the Rights-of-way that affect location of facilities in the rights-of-way; the degree of compliance of the Provider with the terms and conditions of its Certificate of Registration, this Chapter, and other applicable ordinances and regulations; the degree of disruption to surrounding communities and businesses that will result from the use of that part of the rights-of-way; the condition and age of the rights-of-way and whether and when it is scheduled for total or partial reconstruction; 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 whether such applicant or its agent has failed within the past three (3) years to comply, or is presently not in full compliance, with the requirements of this Chapter or, if applicable, any other laws. Under no circumstances will open cutting take place on any street except where an absolute emergency situation constitutes that an open cut is necessary; and/or 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 the Public Service Director determines it is in the best interest of the City that such an open cut take place.

(c) Discretionary Issuance of Permit.

- (1) Notwithstanding the provisions of Sections 1028.19(a)(1) and 1028.19(a)(2), the Public Service Director 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;**
 - 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.

- (1) Emergency Situations:**
 - A. Each Provider shall, as soon as is practicable, immediately notify the Public Service Director 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 (5) business days, unless otherwise extended by the Public Service Director, after the occurrence or discovery of the emergency (whichever is later), the Provider shall apply for the necessary Permits, pay the fees associated therewith and fulfill the rest of the requirements necessary to bring itself into compliance with this Chapter for any and all actions taken in response to the emergency.**
 - B. 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 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) Non-Emergency Situations: 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 shall subsequently obtain a Permit, pay double the calculated 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 this Chapter.

(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 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 1028.19(o).**
 - (2) If the Public Service Director determines that the permittee has committed a substantial breach of a term or condition of any law or any condition of the Permit, the Public Service Director 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 Public Service Director may place additional or revised conditions on the Permit.**
 - (3) By the close of the next business day following receipt of notification of the breach, permittee shall contact the Public Service Director with a plan, acceptable to the Public Service Director, for its correction. Permittee's failure to so contact the Public Service Director, 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 breach/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 (1) 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.**
- (Ord. 2022-46. Adopted **/**/22)**

1028.20 CONSTRUCTION AND REMOVAL BONDS.

(a) Construction Bond. Prior to the commencement of any construction, a construction permittee, excluding the County or City, shall deposit with the Public Service Director an irrevocable, unconditional letter of credit and/or surety bond in an amount determined by the Public Service Director 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 Public Service Director shall serve written notice to the construction permittee detailing the construction default, problem, or deficiency. If the Public Service Director determines that correction or repair of the construction default, problem or deficiency has not occurred or has not been substantially initiated within ten (10) 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 Public Service Director.

(b) Removal Bond. Upon issuance of a Certificate of Registration, and continuously thereafter, and until one hundred twenty (120) calendar days after a Provider's facilities have been removed from the rights-of-way (unless the Public Service Director notifies the Provider that a reasonably longer period shall apply), the Provider shall deposit with the Public Service Director and maintain an irrevocable, unconditional letter of credit or surety bond in an amount equal to or greater than One Hundred Thousand Dollars (\$100,000.00). The Public Service Director shall make all reasonable effort to allow the Provider a period of five (5) calendar days after serving notification in writing to correct or repair any default, problem, or deficiency prior to the Public Service Director's 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 Public Service Director.

(c) Blanket Bond. In lieu of the construction bond required by Section 1028.20(a) and the removal bond required by Section 1020.20(b), the Provider may deposit with the Public Service Director an irrevocable, unconditional letter of credit and/or surety bond in the amount of Five Million Dollars (\$5,000,000.00). Unless a construction default, problem or deficiency involves an emergency or endangers the safety of the general public, the Public Service Director shall make all reasonable effort to allow permittee a period of five (5) calendar days after sending notification in writing to correct or repair any default, problem, or deficiency prior to the Public Service Director's attachment of the letter of credit or surety bond.

(d) Self-Bonding. In lieu of the construction bond required by Section 1020.20(a), the removal bond required by Section 1020.20(b), and the blanket bond required by Section 1020.20(c), those Providers maintaining a book value in excess of Fifty Million Dollars (\$50,000,000.00) may submit a statement to the Public Service Director 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 the 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; and**
- (3) Other applicable and pertinent information as reasonably requested by the Public Service Director.**

(e) Purposes. The bonds required by this section, and any self-bonding to the extent it has been permitted, shall serve as security for:

- (1) The faithful performance by the permittee or Provider of all terms, conditions and obligations of this Chapter;**
- (2) Any expenditure, damage, or loss incurred by the City occasioned by the permittee or Provider's violation of this Chapter or its failure to comply with all rules, regulations, orders, Permits and other directives of the City issued pursuant to this Chapter;**
- (3) The payment of all compensation due to the City, including Permit fees;**
- (4) The payment of premiums (if any) for the liability insurance required pursuant to this Chapter;**
- (5) The removal of facilities from the rights-of-way pursuant to this Chapter;**
- (6) The payment to the City of any amounts for which the permittee or Provider is liable that are not paid by its insurance or other surety; and**

(7) The payment of any other amounts which become due to the City pursuant to this Chapter or other laws.

(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 ninety (90) calendar 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 ninety (90) calendar days' written notice to City of surety's intention to cancel or not renew this bond."

(Ord. 2022-46. Adopted **/**/22)

1028.21 SMALL CELL FACILITIES AND WIRELESS SYSTEM SUPPORT STRUCTURES

(a) Authority. In accordance with ORC Chapter 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 provide wireless service in the City.

(b) Applicability. The application procedures, permit fees, and auditing procedures outlined in this Chapter shall be applicable to applications to establish wireless facilities; provided, 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 Required. In accordance with this Chapter, and unless otherwise prohibited by law, each person who occupies, uses, or seeks to occupy or use the rights-of-way to operate a small cell facility or wireless support structure in the right-of-way, or who has, or seeks to have, a small cell facility or wireless support structure located in any right-of-way, shall apply for and obtain a Certificate of Registration for the system pursuant to this Chapter.

(d) Construction and Minor Maintenance Permits. All applications for the construction or modification of a small cell facility or wireless support structure shall comply with the Construction Permit and 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, an application for 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 of Two Hundred Fifty Dollars (\$250.00) for each small cell facility and/or wireless support structure. The City may adjust this charge ten percent (10%) every five (5) years, rounded to the nearest Five Dollars (\$5.00).

(2) The City shall grant or deny a Micro Wireless Permit in accordance with any required timelines under law. 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.

(f) Application Process. Requests that do not meet the requirements listed on the Micro Wireless Permit Application or stated herein or in the City's Design Guidelines shall be deemed incomplete or shall otherwise be denied by the City.

- (1) If a Micro Wireless Permit is deemed incomplete, the City shall provide written notice to the applicant not later than thirty (30) calendar days after receiving the application that clearly and specifically delineates all missing documents or required information.
- (2) Once the applicant submits the documents or information in response to the City's notice of incompleteness, the time period for review shall resume and the City shall grant, deny, or deem the Micro Wireless Permit to be incomplete due to not providing the information identified in the original notice of incompleteness.
- (3) For a Micro Wireless Permit that is deemed incomplete for a second or subsequent time, the City shall notify the applicant not later than ten (10) days after receiving the supplementary application that the supplementary application did not provide the information identified in the original notice of incompleteness.
- (4) The City shall continue to follow the process in this Section 1028.19(f) until such time that a complete Application is received from the Applicant.
- (5) If a Micro Wireless Permit is denied, the City shall provide, in writing, its reasons for denying the request, supported by substantial, competent evidence, and such information that the applicant may reasonably request to obtain consent.
- (6) Except in the case of a public utility subject to the jurisdiction and recognized on the rolls of the PUCO or a cable operator possessing a valid cable franchise awarded pursuant to the "Cable Communications Policy Act of 1984," 98 Stat. 2779, 47 USC 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.

(g) Application for Multiple Facilities or Support Structures. 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.

- (1) 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.
- (2) 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.
- (3) The Director of Public Service may separately address Applications for which incomplete information has been received or which are denied.

(h) Tolling of Time Limits. 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:

- (1) 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 (30) calendar day period:

<u>Population of City at the time that the Small Cell Facility or Wireless Support Structure request for consent is received:</u>	<u>Number of Applications:</u>
<u>30,000 persons or less</u>	<u>15 applications or more</u>
<u>30,001 to 40,000 persons</u>	<u>20 applications or more</u>
<u>40,001 to 50,000 persons</u>	<u>25 applications or more</u>
<u>50,001 to 60,000 persons</u>	<u>30 applications or more</u>
<u>60,001 to 100,000 persons</u>	<u>60 applications or more</u>

- (2) For every additional fifteen (15) requests that the City receives above the thresholds provided in the table in division (h)(1), above, the City may toll the time period for those requests for up to fifteen (15) calendar days in addition to the time period provided in this section.
- (3) 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.
- (4) 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.

(i) Annual Fee for Collocation on City Structure. The total annual charge to reimburse the City for the 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 Two Hundred Dollars (\$200.00) per small cell facility. The City may adjust this charge ten percent (10%) every five (5) years, rounded to the nearest Five Dollars (\$5.00).

(j) Permit Approval Term for Collocation. 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 (5) 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) If 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. The owner shall promptly remove the small cell facility or wireless support structure once its use has been discontinued.
- (3) If a small cell facility or wireless support structure is abandoned, the City may remove the small cell facility or wireless support structure at the owner's expense.

(k) Design Guidelines. The Public Service Director is authorized to establish, implement, and amend, from time to time, Design Guidelines regarding, among other things: the location of any ground-mounted small cell facilities; the location of a small cell facility on a wireless support structure; the appearance and concealment of small cell facilities, including those relating to materials used for arranging, screening, or landscaping; and 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 co-locating small cell facilities on existing wireless support structures without increasing the height of the wireless support structure by more than five feet (5'), including the antenna and any associated shroud or concealment material.
- (2) The City shall allow, 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 City's Design Guidelines 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 feet (100') of the proposed location or within a distance that is equivalent to the width of the right-of-way in or on which the new Wireless Support Structure is proposed, whichever is greater, which the Operator shall use if it has the right to use the alternate location on reasonable terms and conditions and the alternate location does not impose technical limits or additional costs.**
(Ord. 2022-46. Adopted **//22)**

1028.22 INDEMNIFICATION AND LIABILITY.

(a) City Does Not Accept Liability. 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:

- (1) For injuries to persons, damage to property, or loss of service claims; or**
- (2) For claims or penalties of any sort resulting from the installation, presence, maintenance, or operation of facilities.**

(b) Indemnification. By applying for and being issued a Certificate of Registration with the City, a Provider is required, or by accepting a Permit, a permittee is required to 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 on a rights-of-way, whether any act or omission complained of is authorized, allowed, or prohibited by a Permit. 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 on its own behalf. Any and all exercise of the above shall be consistent with, but not limited to, the following:

- (1) 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 agents, elected officials, 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 and disbursements assumed by the City in connection therewith:

- A. To 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 permittee's or Provider'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.
 - B. 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 or permittee, but excluding claims arising out of or related to the City's actions.
 - C. Arising out of Provider's or permittee's failure to comply with the provisions of any 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;
 - B. Affording the Provider or permittee the opportunity to 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.
(Ord. 2022-46. Adopted **/**/22)

1028.23 GENERAL PROVISIONS.

(a) Non-Exclusive Remedy. The remedies provided in this Chapter are not exclusive or in lieu of other rights and remedies that the City may have at law or in equity. The City is hereby authorized at any time to seek legal and equitable relief for actual or threatened injury to the rights-of-way, including damages to the rights-of-way, whether caused by a violation of any of the provisions of this Chapter or other provisions of applicable law.

(b) Severability. If any section, division, subsection, sentence, clause, phrase, or portion of this Chapter 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 Chapter 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 sixty (60) calendar 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 under this Chapter, does not surrender or to any extent lose, waive, impair, or lessen the lawful powers and rights, which it has now or may be hereafter vested in the City under the Constitution and laws of the United States, State of Ohio, and under the Charter of the City of Xenia 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 Public Service Director 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 eighteen (18) years of age or older; or**
- (4) Sent by certified, prepaid U.S. mail to the last known address; or**
- (5) If the notice is attempted to be served by certified, prepaid U.S. mail and then returned showing that the letter was not delivered, or the certified letter is not returned within fourteen (14) calendar days after the date of mailing, then notice may be sent by regular, prepaid, first-class U.S. mail; 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 fourteen (14) calendar 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. This Chapter shall apply to all Providers and all permittees unless expressly exempted.

(f) Police Powers. All persons' rights are subject to the police powers of the City to adopt and enforce ordinances necessary to the health, safety, and welfare of the public. All persons shall comply with all applicable laws enacted by the City pursuant to its police powers. In particular, all persons shall comply with City zoning and other land use requirements pertaining to the placement and specifications of facilities.

(g) Compliance. No person shall be relieved of its obligation to comply with any of the provisions of this Chapter by reason of any failure of the City to enforce prompt compliance.

(h) 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 Public Service Director within fourteen (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 this Chapter, subject to any applicable provisions of law, including the Bankruptcy Code, one hundred twenty (120) calendar 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 one hundred twenty (120) calendar days or unless:

A. Within one hundred twenty (120) calendar 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, this Chapter, and remedied all defaults thereunder; and

B. Said receiver or trustee, within said one hundred twenty (120) calendar 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 this Chapter.

(i) Choice of Law and Forum. This Chapter 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, and United States, in that order. As a condition of the grant of any Permit or issuance of any Certificate of Registration all disputes shall be resolved in a court of competent jurisdiction in Greene County, Ohio.

(j) Force Majeure. In the event any person's performance of any of the terms, conditions, or obligations required by this Chapter 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 Public Service Director as specified in this Chapter.

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

(o) Chapter Headings. Chapter headings are for convenience only and shall not be used to interpret any portion of this Chapter.

(Ord. 2022-46. Adopted **//22)**

1028.99 PENALTIES.

In addition to any other penalties set forth in this Chapter and the remedy of specific performance which may be enforced in a court of competent jurisdiction, the following penalties shall apply: any person violating the provisions of this Chapter shall be guilty of a misdemeanor of the fourth (4th) degree. Each day such violation continued shall be deemed a separate offense.

(Ord. 2022-46. Adopted **//22)**