

CHAPTER 1026
Right-of-Way Management

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CROSS REFERENCES

- Public improvements - see S.U. & P.S. Ch. 1020
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- Curb cuts - see S.U. & P.S. Ch. 1028

1026.01 DEFINITIONS.

For purposes of this Chapter, the following terms, phrases, words, and their derivations have the meanings set forth herein:

- (a) **APPLICANT.** Any person applying for a right-of-way permit under this Chapter.
- (b) **APPROVED.** Approval by the City pursuant to this Chapter or any service agreement adopted hereunder.
- (c) **BEST EFFORTS.** The best reasonable efforts under the circumstances, taking into consideration, among other appropriate matters, safety, expedition, available technology and human resources and cost.

(d) CHAPTER. Chapter 1026 of the Code of Ordinances of the City of Fairlawn, Ohio, as amended from time to time, and any procedures adopted by the Director of Public Service or his/her designee hereunder.

(e) CITY. The City of Fairlawn, Ohio.

(f) COUNCIL. The legislative body of the City of Fairlawn, Ohio.

(g) DIRECTOR OF PUBLIC SERVICE. The Director of Public Service of the City of Fairlawn, Ohio, or his or her designee.

(h) ENVIRONMENTAL SERVICES COMMISSION. The Environmental Services Commission of the City of Fairlawn.

(i) FACILITIES means the plant, equipment and property, including, but not limited to, cables, fibers, wires, pipes, conduits, ducts, pedestals, antennas, electronics, poles, pipes, mains, plant, equipment and other appurtenances located under, on or above the surface of the ground within the public ways of the City and used or to be used to transmit, receive, distribute, provide or offer services, but also including private facilities.

(j) FORCE MAJEURE. A strike, act of God, act of public enemy, order of any kind of a government of the United States of America or of the State of Ohio or any of their departments, agencies or political subdivisions; riot, epidemic, landslides, lightning, earthquake, fire, tornado, storm, flood, civil disturbance, explosion, partial or entire failure of a utility or any other cause or event not reasonably within the control of the party disabled by such Force Majeure, but only to the extent such disabled party notifies the other party as soon as practicable regarding such Force Majeure and then for only so long as, and to the extent that, the Force Majeure prevents compliance or causes non-compliance with the provisions hereof.

(k) GENERAL RIGHT-OF-WAY PERMIT. Shall have the meaning set forth in § 1026.03(B)(1).

(l) PERMITTEE. Any person issued a right-of-way permit pursuant to this Chapter to use or occupy all or a portion of the rights-of-way in accordance with the provisions of this Chapter and said right-of-way permit.

(m) PERSON. Any natural person or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not-for-profit.

(n) PUBLIC PROPERTY. Any real property owned by the City or easements held or used by the City, other than a right-of-way.

(o) PUBLIC UTILITY. Any public utility as defined by Section 4905.03 of the Ohio Revised Code, except in divisions (B) and (I) of that section, which company also is a public utility as defined in section 4905.02 of the Ohio Revised Code; and includes any electric supplier as defined in section 4933.81 of the Ohio Revised Code that provides essential services to businesses, residents, and other customers in the City.

(p) RESIDENTIAL PURPOSES. Residential use of right-of-way for such uses as mailboxes, trees, landscaping, lawn sprinklers, decorative purposes or any curb cuts and driveways, and as may be further defined by Council or the Director of Public Service.

(q) RIGHT-OF-WAY. The surface of and the space above and below the paved or unpaved portions of any public street, public road, public highway, public freeway, public lane, public path, public bikepath, public way, public alley, public court, public sidewalk, public boulevard, public parkway, public drive and any other land dedicated to the City of Fairlawn or otherwise designated as a right-of-way to be held by the City of Fairlawn.

(r) RIGHT-OF-WAY PERMIT. The non-exclusive grant of authority to use or occupy all or a portion of City's rights-of-way granted pursuant to this Chapter.

(s) SERVICE. The offering of utilities or telecommunication services for a fee directly to the public, or to such classes of users as to be effectively available to the public, regardless of the facilities used.

(t) SERVICE AGREEMENT. A valid service agreement, franchise agreement or operating agreement issued by the City pursuant to the Fairlawn City Charter, the Fairlawn City Codified Ordinances, or any other ordinance or resolution of the Fairlawn City Council, and accepted by any person, pursuant to which such person may operate or provide utility, cable television, broadband, telecommunications, wireless communications, or other similar service to consumers within the City.

(u) SPECIAL RIGHT-OF-WAY PERMIT. Shall have the meaning set forth in § 1026.03(c)(2).

(v) UTILITY RIGHT-OF-WAY PERMIT. Shall have the meaning set forth in § 1026.03(c)(3).

(w) WIRELESS TELECOMMUNICATIONS FACILITIES. Shall have the meaning set forth in Chapter 1482 of the Fairlawn Codified Ordinances.

1026.02 PURPOSE AND SCOPE OF CHAPTER.

(a) The purpose of this Chapter is to provide for the regulation of the use or occupation of all rights-of-way in the City, the issuance of right-of-way permits to persons for such use or occupancy and to set forth the policies of the City related thereto.

(b) A right-of-way permit issued pursuant to this Chapter does not take the place of any service agreement, franchise, license, or permit, which may be additionally required by law. Each permittee shall obtain any and all such additional state, federal or city franchises, licenses or permits necessary to the operation and conduct of its business or the occupation or use of any right-of-way.

(c) The Mayor, the Director of Public Service and/or their designee are hereby directed and empowered to enforce the provisions of this Chapter.

(d) This Chapter seeks to advance the following objectives and policies of the City regarding the use and occupancy of public rights-of-way:

(1) Manage the public ways with regard to service providers and services;

(2) Establish clear local guidelines and time frames for the exercise of local authority with respect to the regulation of service providers using the City's public ways;

(3) Permit and manage reasonable access to the public ways of the City for utility, cable television, and telecommunications service purposes on a competitively neutral basis;

(4) Conserve the limited physical capacity of the public ways held in trust by the City;

(5) Assure that all persons that use or occupy the public right-of-way comply with the ordinances, rules and regulations of the City;

(6) Promote cooperation among telecommunications service providers and the City to minimize public inconvenience during ROW work and disruption of public property; and ensure safe and efficient use of the City's streets, rights-of-way, and easements;

(7) To protect the public health, safety and welfare and ensure that the right-of-way is not used in any manner that may be injurious to the public health, safety and welfare;

(8) To ensure that the use of the public right-of-way benefits the City, the residents and businesses of the City, and the entire community as a whole; and

(9) To ensure that applicants have the financial, technical and managerial resources to comply with this Chapter and the provisions of any right-of-way permit issued hereunder.

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

1026.03 RIGHT-OF-WAY PERMITS; TYPES OF PERMITS.

(a) Right-of-Way Permit. Except as otherwise provided herein, any person who desires to construct, reconstruct, install, operate, maintain or otherwise locate any structures or facilities in, under, over or across any public way of the City shall first obtain a right-of-way permit permitting the use and occupancy of such public ways pursuant to the requirements of this Section.

(b) Exceptions. Right-of-way permit shall not be required for:

(1) Standard residential mail boxes and newspaper boxes for a single-family residence, duplex or triplex; and

(2) Any existing facilities or structures that were constructed or installed in, under, or over any rights-of-way within the City prior

to October 1, 2016, unless the owner is seeking to abandon, change, modify, relocate, reconfigure, or remove any of their existing structures or facilities.

(c) Types of Permits. The following types of right-of-way permits are available:

(1) General right-of-way permit. A right-of-way permit granted to persons who desire and are granted authority to utilize rights-of-way generally, provided, however, that nothing in this Chapter or in any general right-of-way permit shall be construed to authorize the permittee to provide any utility, cable television, communications or other services for which the City may lawfully require a service agreement should the City determine to require the same; and

(2) Special right-of-way permit. A right-of-way permit granted to a person for a specific, limited use, including but not limited to residential purposes, of the rights-of-way or a specific portion thereof.

(3) Utility permit. A right-of-way permit granted to a public utility as defined by section 4905.03 of the Ohio Revised Code, except in divisions (B) and (I) of that section, which company also is a public utility as defined in section 4905.02 of the Ohio Revised Code; and includes any electric supplier as defined in section 4933.81 of the Ohio Revised Code that provides essential services to businesses, residents, and other customers in the City. A utility permittee may be granted a waiver of some or all of the requirements by this Chapter at the discretion of the Director of Public Service or his/her designee.

(d) Application for Right-of-Way Permit. Any person who is required to obtain a right-of-way permit pursuant to this section shall file an application with the City, which shall include the following information:

(1) The name, address, phone number, and e-mail address of the applicant, including all parent companies and affiliates, along with the name, address, phone number, and e-mail addresses of all agents, contractors, subcontractors, or other representatives who may perform any work in connection with the construction, installation, repair, maintenance, or relocation of the facilities.

(2) A description of the services that will be offered or provided by the applicant.

(3) A description of the transmission medium that will be used by the applicant to offer or provide such services.

(4) Preliminary engineering plans, specifications and a network map of the facilities located, or to be located, within the City, all in sufficient detail to identify:

(A) The location and route requested for the applicant's proposed facilities on a "to scale" drawing established using state plane coordinates and which includes all information listed herein.

(B) The location of all overhead and underground public utility, utility, telecommunications, cable, water, sanitary sewer, storm water drainage and other facilities in the public way along the proposed route.

(C) The location, depth, and width of any concrete base or any anchor or other equipment for the proposed facilities or structures.

(D) The location(s), if any, for interconnection with the facilities of other service providers.

(E) The specific trees, structures, improvements, facilities and obstructions, if any, that the applicant proposes to temporarily or permanently remove or relocate.

(5) If the applicant is proposing an underground installation within new ducts or conduits to be constructed within the public ways:

(A) The location and depth proposed for the new ducts or conduits; and

(B) The excess capacity that will exist in such ducts or conduits after installation of the applicant's facilities.

(6) A preliminary construction schedule and completion date.

(7) Financial statements prepared in accordance with generally accepted accounting principles demonstrating the applicant's financial ability to construct, operate, maintain, relocate and remove the facilities.

(8) Information in sufficient detail to establish the applicant's technical qualifications, experience, and expertise regarding the facilities and services described in the application.

(9) Information to establish that the applicant has obtained all other governmental approvals and permits to construct and operate the facilities and to offer or provide the services.

(10) Such other and further information as may be required by the Director of Public Service or his/her designee.

(e) Right-of-way permit granted under this Chapter, and the rights of a permittee thereunder, shall not be transferable without the prior express written approval of the Director of Public Service or his/her designee upon a showing that the recipient has the financial, technical and managerial resources to comply with the obligations of this Chapter and its right-of-way permit. The Director of Public Service or his/her designee may adopt written procedures for the transfer of right-of-way permits.

(Ord. 2016-080. Passed 10-17-16.)

1026.04 APPLICATION PROCEDURE; APPEAL.

(a) Applications for a right-of-way permit shall comply with the requirements of Section 1026.03(d) of this Chapter and shall be on such form and submitted in such manner as the Director of Public Service, or his/her designee, requires. If the applicant is a government agency, then there shall be no application fee. All other applications shall pay an application fee of fifty dollars (\$50).

(b) Upon the filing of an application for a right-of-way permit under this Chapter, the Director of Public Service or his/her designee shall determine if the application is in order and shall, within 45 days of the receipt of a complete application, issue a written decision regarding such application. The decision shall grant or deny the application, subject to any appropriate terms and conditions, in accordance with the criteria set forth in Section 1026.05 of this Chapter. The Director of Public Service or his/her designee's written decision shall be served upon the applicant by regular U.S. mail, or by electronic mail if requested by the applicant.

(c) Unless otherwise specified in the written decision of the Director of Public Service or his/her designee, the term of any general right-of-way permit shall be for five years from acceptance, and the term of a special right-of-way permit shall be three years from acceptance. A special right-of-way permit for residential purposes may be granted for an indefinite term from acceptance, but may be canceled by the Director of Public Service or his/her designee with 60 days written notice.

(d) The Director of Public Service or his/her designee's written decision shall become final unless timely appealed pursuant to § 1026.04(e) of this Chapter.

(e) Any applicant may appeal the denials of a right-of-way permit or failure of the Director of Public Service or his/her designee to grant or deny a right-of-way permit to the Environmental Services Commission. In order to perfect such appeal, the applicant shall file a written appeal with the Environmental Services Commission, within ten days of the Director of Public Service or his/her designee's written decision or within 60 days of the filing of the application if the Director of Public Service or his/her designee has taken no action. The appeal shall be taken on the form prescribed by the City and shall be subject to a \$100 filing fee. The Environmental Services Commission shall then review the matter and render a final determination after affording the applicant an opportunity to be heard either in person or in writing. Except to the extent otherwise applicable by law, the Environmental Services Commission's decision shall be final.

(f) Any right-of-way permittee shall, within 30 days of the initial granting of any right-of-way permit hereunder, file a written acceptance of its permit in such form and in such manner as any procedures created by the Director of Public Service or his/her designee under this Chapter may require.

(Ord. 2016-080. Passed 10-17-16.)

1026.05 CRITERIA FOR GRANTING RIGHT-OF-WAY PERMITS.

(a) In deciding whether to grant a right-of-way permit, the Director of Public Service or his/her designee shall consider the following factors:

- (1) Whether the applicant is a public utility that provides essential services to the citizens of the City of Fairlawn;
- (2) Whether the proposed use or occupancy of the public right-of-way interferes with or harms any existing utilities or any other existing or proposed uses of the public right-of-way;
- (3) The capacity of the public right-of-way to accommodate the applicant's proposed facilities or structures;
- (4) The capacity of the public right-of-way to accommodate additional facilities if the permit is issued;
- (5) The damage or disruption, if any, of public or private facilities, structures, improvements, service, travel or landscaping if the permit is issued;
- (6) The availability of alternate routes and/or locations for the proposed facilities;

(7) Whether the proposed use or occupancy of the public right-of-way is authorized by and/or complies with all applicable federal or state laws;

(8) Whether the proposed use or occupancy of the public right-of-way violates the requirements of this Chapter, including but not limited to any of the restrictions imposed by Section 1026.06 of this Chapter;

(9) Whether the proposed use or occupancy of the public right-of-way will have a positive or negative impact on traffic and or any of the adjacent or nearby properties in the area;

(10) Whether the proposed use of the right-of-way permit will contribute to the public health, safety or welfare in the City; and

(11) Whether the granting of the right-of-way permit will be consistent with the policy of the City as set forth in § 1026.02(d); and

(12) Except in the case of a public utility or except in the case of a cable operator that possesses a valid franchise or service agreement, whether the applicant possesses the financial, technical, and managerial resources necessary to comply with the requirements of this Chapter or to protect the public health, safety, and welfare.

(b) The Director of Public Service or his/her designee may impose such conditions on the granting of a permit as deemed reasonably required to be consistent with the criteria set forth in this section and to promote the policy of the City set forth in § 1026.02(d).

(Ord. 2016-080. Passed 10-17-16.)

1026.06 ADDITIONAL RESTRICTIONS ON STRUCTURES AND FACILITIES IN PUBLIC RIGHT-OF-WAY.

(a) No structures or facilities may be constructed, installed, or maintained in the public right-of-way within any residential zoning district in the City if it has a height that is 35 feet or greater.

(b) No structures or facilities may be constructed, installed, or maintained in the public right-of-way if such structure or facility uses or occupies the public right-of-way in such a manner that prevents, impedes, or interferes with the use of the public right-of-way by the City or any municipal utility of the City.

(c) All wireless telecommunications facilities shall comply with the requirements of Chapter 1482 of the Fairlawn Codified Ordinances, except that the requirements of Sections 1482.02(c), 1482.02(d), 1482.02(l), 1482.02(m), 1482.02(n), 1482.02(o), 1482.02(p), and 1482.05 shall not apply, and the minimum lot size and minimum yard requirements in Section 1482.03 shall not apply. If the proposed wireless telecommunications facility requires a building permit under state law or under any other section of the Fairlawn Codified Ordinances, such requirement shall not be waived.

(Ord. 2016-080. Passed 10-17-16.)

1026.07 GENERAL CONDITIONS FOR RIGHT-OF-WAY PERMITS.

(a) Nonexclusive Permit. No right-of-way permit granted under this Chapter shall confer any exclusive right, privilege, license or franchise to occupy or use the public ways of the City for delivery of services or any other purposes.

(b) Rights Permitted. No right-of-way permit granted under this Chapter shall convey any right, title or interest in the public ways, but shall be deemed a permit only to use and occupy the public ways for the limited purposes and term stated in the grant. Further, no permit shall be construed as any warranty of title.

(c) Public Way Route. Any right-of-way permit granted shall be limited to a grant to occupy the specific public ways and defined portions thereof.

(d) Compensation to the City. The City reserves the right in the future to require reasonable compensation from existing and future service providers for the use of its public ways by an ordinance of City Council.

(e) Street Excavation Permits. To the extent that Chapter 1024 of the Fairlawn Codified Ordinances applies to a permittee, such permittee shall obtain a street excavation permit from the City prior to commencing any construction, reconstruction, installation, maintenance, or repair of facilities, or any excavation of the public ways and shall otherwise comply with the requirements of Chapter

(f) Interference With Use of the Public Way. No permittee may locate or maintain its facilities in any manner that unreasonably interferes with the use of the public ways by the City, by the general public, or by other persons authorized to use or be present in or upon the public ways. All such facilities shall be moved by the permittee, temporarily or permanently, as determined by the Director of Public Service or his/her designee.

(g) Damage to Property. No permittee, nor any person acting on the permittee's behalf, shall take any action or permit any action to be done which may impair or damage any City property, public ways, other ways or other property located in, on or adjacent thereto.

(h) Repair or Emergency Work. In the event of the need for any unexpected repair or emergency work, a permittee may commence such repair and emergency response work as required under the circumstances, provided the permittee shall notify the City as promptly as possible before such repair or emergency work is commenced, or within twenty-four hours after commencing such repair or emergency work if advance notice is not practicable.

(i) Maintenance of Facilities. Each permittee shall maintain its facilities in good and safe condition and in a manner that complies with all applicable federal, state and local requirements.

(j) Relocation or Removal of Facilities. Within thirty days following written notice from the City, a permittee shall, at its own expense, temporarily or permanently remove, relocate, change or alter the position of any facilities within the public ways whenever the Director of Public Service or his/her designee shall have determined that the designated portions of its rights-of-way should accommodate only underground facilities, or that facilities should occupy only one side of a street or other public way, or if an additional or subsequent City or other public use of rights-of-way is inconsistent with the then current uses of such permittee or for any other reasonable cause, as determined by the Director of Public Service or his/her designee.

(k) Removal of Unauthorized Facilities. Within thirty days following written notice from the City, any permittee, service provider or other person that owns, controls or maintains any unauthorized facilities, structures, or other related appurtenances within the public ways of the City shall, at its own expense, remove such facilities or appurtenances from the public ways of the City or shall arrange to sell said facilities or appurtenances to the City. After the thirty days have expired, the City may remove the facilities or appurtenances from the public ways at the other party's expense. A system or facility is unauthorized and subject to removal in the following circumstances:

(1) Upon termination of the permittee's right-of-way permit;

(2) Upon abandonment of a facility within the public ways of the City;

(3) If the facility or structure was constructed, reconstructed, installed, operated, located or maintained without the prior grant of a right-of-way permit;

(4) If the facility or structure was constructed, reconstructed, installed, operated, located or maintained, or any excavation of a public way was performed, without prior issuance of a required excavation permit; or

(5) If the facility or structure was constructed, reconstructed, installed, operated, located or maintained, or any excavation of a public way was performed, at a location not permitted by the permittee's right-of-way permit; provided that any service provider who constructed, reconstructed, installed, operated, located or maintained or began constructing, reconstructing, installing, locating, operating or maintaining the system or facility, or began any excavation of a public way, prior to the effective date of this Chapter, shall have ninety days from the effective date of this Chapter, to apply for the appropriate permit.

(l) Emergency Removal or Relocation of Facilities. The City retains the right and privilege to cut or move any facilities, or stop work on any construction, reconstruction, installation, operation or excavation, located within the public ways of the City, as the City may determine to be necessary, appropriate or useful in response to any need to protect the public health, safety or welfare.

(m) Damage to Permittee's Facilities. Unless directly and proximately caused by the willful, intentional or malicious acts of the City, the City shall not be liable for any damage to or loss of any Facility within the public ways of the City as a result of or in connection with any public works, public improvements, construction, excavation, grading, filling or work of any kind in the public ways by or on behalf of the City.

(n) Restoration of Public Ways, Other Ways and City Property.

(1) When a permittee, or any person acting on its behalf, does any work in or affecting any public ways, other ways or City property, it shall, after the work is completed and at its own expense, promptly remove any obstructions therefrom and restore all public ways, improvements, and other property to as good a condition as existed before the work was undertaken, unless otherwise directed by the Director of Public Service or his or her designee.

(2) All trees, landscaping and grounds removed, damaged or disturbed as a result of the construction, reconstruction, installation, maintenance, repair or replacement of facilities must be replaced or restored as nearly as may be practicable, to the condition existing prior to performance of work.

(3) If weather or other conditions do not permit the complete restoration required by this Section, the permittee shall temporarily restore the affected ways or property. Such temporary restoration shall be at the permittee's sole expense and the permittee shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration.

(o) As Built Drawings and Maps. Once the facility has been constructed or installed in the right-of-way, the permittee shall provide the City with an accurate as-built drawing or map(s) on a medium and in a format compatible with the City's computer system, both hardware and software, and certifying the location of all facilities within the public ways.

(Ord. 2016-080. Passed 10-17-16.)

1026.08 ADDITIONAL OBLIGATIONS OF PERMITTEES.

(a) In addition to the other requirements set forth in this Chapter and any other conditions imposed by the Director of Public Service or his/her designee, each permittee shall comply with the following obligations:

(1) Use its best efforts to cooperate with other permittees and the City for the best, most efficient, most aesthetic and least obtrusive use of rights-of-way, consistent with safety, and to minimize traffic and other disruptions including street cuts;

(2) Participate in such joint planning, construction and advance notification of right-of-way work, excepting such work performed in an emergency; provided the permittee uses its best efforts to contact the City at the earliest possible time after beginning such work, as may be required by this Chapter or any other provisions of the Fairlawn Codified Ordinances;

(3) Cooperate with other Permittees in utilization of, construction in and occupancy of private rights-of-way, but only to the extent the same is consistent with the grant thereof or is not additionally burdensome to any property owner;

(4) Perform all work, construction, maintenance or removal of structures and facilities within the right-of-way, including tree trimming, in accordance with good engineering and construction practice including any appropriate safety codes and in accordance with the administrative regulations and use its best efforts to repair and replace any street, curb or other portion of the right-of-way, or facilities or structure located therein, to a condition to be determined by the Director of Public Service or his/her designee 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 permittees, in accordance with the Fairlawn Codified Ordinances and other applicable law;

(5) Use its best efforts to cooperate with the City in any emergencies involving the rights-of-way in such manner, including providing the Director of Public Service or his/her designee with the name, address, telephone number, and e-mail address of a 24-hour emergency contact person; and

(6) Using distinct identification, identify the owner and contact information on the actual structures and/or facilities in the right-of-way.

(b) Each permittee shall assure that any subcontractor or other person performing any work or service in the right-of-way on behalf of said permittee will comply with all applicable provisions of this Chapter, all applicable provisions of Chapter 1024 of the Fairlawn Codified Ordinances, and the terms and conditions of its right-of-way permit. Each permittee will identify the permittee for whom such subcontractor is working. Said permittee shall be responsible and liable hereunder for all actions of any such subcontractor or others as if said permittee had performed or failed to perform any such obligation.

(c) Following the initial receipt of a right-of-way permit (general, special or utility) every permittee shall be required to apply for and obtain the Director of Public Service or his/her designee's approval for any new placement of facilities in the right-of-way or material modification to current facilities in the right-of-way.

(1) For the purposes of this section, MATERIAL MODIFICATION shall mean, but not necessarily be limited to, a material increase, decrease, alteration, or change to current facilities regarding: type of infrastructure, capacity, size, service, technology, or delivery methodology.

(2) The application for the Director of Public Service or his/her designee's approval shall be filed in such form and in such manner as any procedures created by the Director of Public Service or his/her designee under this Chapter require. Within 15 days of

the receipt of a completed application for such new facilities installation or material modification, the Director of Public Service or his/her designee shall either: approve the new facilities installation or material modification as requested; deny the new facilities installation or material modification as requested; or conditionally approve the new facilities installation or material modification subject to the permittee's following certain amendments to the work as may be required by the Director of Public Service or his/her designee.

(3) When reviewing an application for new facility installation or material modification, the Director of Public Service or his/her designee shall take into consideration all applicable current and future right-of-way usage needs, the health and safety of the public, responsible land use planning requirements, economic development issues, aesthetics, and any other reasonable considerations as may be required by this Chapter.

(4) When granting a conditional approval for new facilities installation or material modification that contains required amendments, the Director of Public Service or his/her designee may require the facilities, at the permittee's sole cost: be placed in certain specific locations of the right-of-way, meet certain technological or physical parameters, and/or be located entirely underground.

(5) A permittee may appeal the Director of Public Service or his/her designee's decision regarding the approval or denial of a request for new facilities installation or material modification of a permittee's facilities to the Environmental Services Commission in accordance with § 1026.04(e) of this Chapter.

(Ord. 2016-080. Passed 10-17-16.)

1026.09 CONSTRUCTION STANDARDS.

(a) Facilities shall be constructed, reconstructed, installed, operated, excavated and maintained in accordance with all applicable Federal, State and local codes, rules and regulations, including, but not limited to, the National Electrical Safety Code.

(b) Engineer's Certification. All permit applications shall be accompanied by the certification of a State of Ohio registered professional engineer that the drawings, plans and specifications submitted with the application comply with applicable technical codes, rules and regulations.

(c) Traffic Control Plan. All permit applications which involve work on, in, under, across or along any public ways shall be accompanied by a traffic control plan demonstrating the protective measures and devices that will be employed, consistent with the Ohio Department of Transportation's Uniform Manual of Traffic Control Devices, to prevent injury or damage to persons or property and to minimize disruptions to efficient pedestrian and vehicular traffic.

(d) Construction Schedule. The permittee shall submit a written construction schedule to the Director of Public Service or his/her designee no later than ten working days before commencing any work in or about the public ways. The permittee shall further notify the City and the Ohio Utility Protection Service (OUPS) not less than two working days (forty-eight hours) in advance of any excavation or other work in the public ways.

(e) Traffic Safety. A permittee or other person acting on its behalf shall use suitable barricades, flags, flagmen, lights, flares and other measures as necessary and in accordance with applicable State and local requirements for the safety of all members of the general public and to prevent injury or damage to any person, vehicle or property by reason of such work in or affecting such ways or property.

(f) Completion of Construction. The permittee shall promptly complete all construction activities so as to minimize disruption of the public ways and other public and private property. All construction work authorized by a permit within the public ways, including restoration, must be completed within 120 days of the date of issuance, unless otherwise directed by the Director of Public Service or his/her designee.

(g) Responsibility of Owner. The owner of the facilities to be constructed, reconstructed, installed, located, operated, maintained or repaired and, if different, the permittee, are responsible for performance of and compliance with all provisions of this section.

(Ord. 2016-080. Passed 10-17-16.)

1026.10 CITY USE OF FACILITIES.

The City shall have the right to install and maintain, free of charge, upon any poles and within any underground pipes or conduits or other facilities of any right-of-way permittee, any facilities desired by the City unless:

(a) Such installation and maintenance unreasonably and materially interferes with existing and future operations of the permittee; and

(b) Such installation and maintenance would be unduly burdensome to such permittee. Each permittee shall cooperate with the City in planning and designing its facilities, so as to accommodate the City's reasonably disclosed requirements.

(Ord. 2016-080. Passed 10-17-16.)

1026.11 ADOPTION OF ADDITIONAL PROCEDURES TO IMPLEMENT CHAPTER.

(a) In accordance with the provisions of this Chapter 1026, the Director of Public Service or his/her designee may promulgate additional procedures, as the Director of Public Service or his/her designee deems appropriate from time to time, to carry out the express purposes and intent of this Chapter, including additional procedures governing the application and permitting process.

(b) Such additional procedures shall not materially increase the obligations of any permittee hereunder; provided, however, that requiring the placement of facilities in designated portions of the rights-of-way underground pursuant, or requiring the overbuilding of facilities, shall not be construed as materially increasing the obligations of a permittee.

(Ord. 2016-080. Passed 10-17-16.)

1026.12 INDEMNITY; INSURANCE.

(a) Except for special right-of-way permittees for residential purposes, each permittee shall, as a condition of its right-of-way permit, indemnify, protect and hold harmless the City from any claim, loss or damage arising in any way from permittee's occupation or use of the right-of-way, including but not limited to the construction, operation or maintenance of permittee's facilities, and from any such permittee's negligent or wrongful act or omission.

(b) Except for special right-of-way permittees for residential purposes, each permittee, as a condition of its permit, shall keep in force a policy or policies of liability insurance, having such terms and in such amounts as may be determined by the Director of Public Service or his/her designee, to be sufficient to provide adequate coverage for its facilities and operations under its right-of-way permit. The City shall be named as an additional insured on such insurance policy or policies.

(Ord. 2016-080. Passed 10-17-16.)

1026.13 ABANDONMENT OF FACILITIES.

(a) Except for special right-of-way permittees for residential purposes, any right-of-way permittee (or any other person that has constructed, installed, or maintained any facilities or structures in the public right-of-way) shall be responsible for removing any such facilities or structures if such person abandons or discontinues use of such facilities and structures in accordance with this section.

(b) Except for special right-of-way permittees for residential purposes, any right-of-way permittee (or any person that has constructed or installed any facilities or structures within the public right-of-way) that intends to discontinue use of any facilities or structures within the rights-of-way shall submit a written notice to the Director of Public Service or his/her designee describing the portion of the facilities to be discontinued and the date of discontinuance, which date shall not be less than 30 days from the date such notice is submitted to the Director of Public Service or his/her designee. No person shall remove, destroy, or permanently disable any such facilities or structures without the written approval of the Director of Public Service or his/her designee. The permittee shall remove and secure such facilities as set forth in the notice unless directed by the Director of Public Service or his/her designee to abandon such facilities in place.

(c) Upon such abandonment and acceptance by the City in writing, full title and ownership of such abandoned facilities shall pass to the City without the need to pay compensation to the permittee. The permittee shall, however, continue to be responsible for all taxes on such facilities or other liabilities associated therewith, until the date the same was accepted by the City.

(d) Any permittee or person who is authorized or directed to remove or rearrange facilities or structures from the right-of-way under this Section shall comply with the requirement for excavations that are set forth in Section 1024 of the Fairlawn Codified Ordinances, including all requirements for restoration of the pavement and restoration of all other parts of the public right-of-way where the facilities or structures were removed or rearranged.

(e) Should any permittee or other person fail to remove or rearrange facilities at the Director of Public Service or his/her designee's request, the City may, at its option and in addition to the imposition of any penalties or other remedies hereunder, undertake or cause to be undertaken, such necessary removal or rearrangement. The City shall have no liability for any damage caused by such removal or rearrangement and the permittee shall be liable to the City for all costs incurred by the City in such removal or rearrangement.

(Ord. 2016-080. Passed 10-17-16.)

1026.14 REVOCATION.

(a) In addition to any other rights set out in this Chapter, the City shall have the right to revoke any right-of-way permit in the event such permittee violates any material provision of this Chapter or its right-of-way permit.

(b) The Director of Public Service or his/her designee shall give a permittee 30 days prior written notice of an intent to revoke said permittee's right-of-way permit. Such notice shall state the reasons for such action. If the permittee cures the violation or other cause within the 30 day notice period, or if the permittee initiates efforts satisfactory to the Director of Public Service or his/her designee to remedy the stated violation, the Director of Public Service or his/her designee may rescind said notice of revocation. If the permittee does not cure the stated violation or other cause or undertake efforts satisfactory to the Director of Public Service or his/her designee to remedy the stated violation, the Director of Public Service or his/her designee may revoke the permit.

(c) Any permittee may appeal the revocation of a permit of the Director of Public Service or his/her designee to grant a right-of-way permit to the Fairlawn Environmental Services Commission under Section 1026.04(e). In order to perfect such appeal, the applicant shall file, within ten days of the Director of Public Service or his/her designee's determination, an appeal to the Environmental Services Commission. The Environmental Services Commission shall then review the matter and render a final determination after affording the applicant an opportunity to be heard either in person or in writing. Except to the extent otherwise applicable by law, the Environmental Services Commission's decision shall be final.

(d) Unless otherwise permitted by the Director of Public Service or his/her designee, if a right-of-way permit is revoked, all facilities located in the rights-of-way or located upon public property pursuant to such permit shall be removed at the sole expense of the permittee.

(Ord. 2016-080. Passed 10-17-16.)

1026.15 RESERVATION OF RIGHTS.

(a) Nothing in this Chapter should be construed so as to grant any right or interest in any right-of-way or public property other than that explicitly set forth herein or in a permit.

(b) Nothing in this Chapter shall be construed to prevent the City from constructing, maintaining, repairing or relocating any utility, communications or like facilities; grading, paving, maintaining, repairing, relocating or altering any street, public property or right-of-way; or constructing, maintaining, relocating, or repairing any sidewalk, bikepath or other public work or improvement. To the extent that such work requires temporary or permanent relocation or rearrangement of any facilities or structures of any permittee, such relocating or rearrangement shall be accomplished at the sole cost of the permittee in such time and in such manner as directed by the Director Public Service.

(Ord. 2016-080. Passed 10-17-16.)

1026.16 TEMPORARY MOVEMENT OF FACILITIES.

In the event it is necessary to move or remove temporarily any of the permittee's wires, cables, poles, or other facilities placed pursuant to this Chapter, in order to lawfully move a large object, vehicle, building or other structure over the streets of the City, upon two weeks written notice by the Director of Public Service or his/her designee to the permittee, the permittee shall, at the expense of the person requesting the temporary removal of such facilities, comply with the Director of Public Service or his/her designee's request.

(Ord. 2016-080. Passed 10-17-16.)

1026.17 FORECLOSURE AND RECEIVERSHIP.

(a) Upon the foreclosure or other judicial sale of the permittee's facilities located within the right-of-way, the permittee shall notify the Director of Public Service or his/her designee of such fact and its permit shall be deemed void and of no further force and effect.

(b) The City shall have the right to revoke, pursuant to the provisions of § 1026.14, any right-of-way permit granted pursuant to this Chapter, subject to any applicable provisions of law, including the Bankruptcy Act, 120 days after the appointment of a receiver or trustee to take over and conduct the business of the permittee, whether in receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said 120 days, or unless:

(1) Within 120 days after his election or appointment, such receiver or trustee shall have fully complied with all the provisions of the relevant right-of-way permit and of this Chapter and remedied all defaults thereunder; and

(2) Such receiver or trustee, within said 120 days, shall have executed an agreement, duly approved by the Court having jurisdiction in the premises, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of the relevant right-of-way permit and this Chapter.

(Ord. 2016-080. Passed 10-17-16.)

1026.18 NON-ENFORCEMENT AND WAIVERS BY CITY.

The permittee shall not be relieved of its obligation to comply with any of the provisions of its right-of-way permit or this Chapter by reason of any failure of the City or to enforce prompt compliance.

(Ord. 2016-080. Passed 10-17-16.)

1026.19 CAPTIONS.

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

(Ord. 2016-080. Passed 10-17-16.)

1026.99 PENALTY.

(a) 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.

(1) Any person or permittee violating this Chapter or failing to pay when due any forfeiture imposed pursuant to § 1026.99(a)(2) shall be guilty of a misdemeanor of the fourth degree. Each day such violation continues shall be deemed a separate offense.

(2) For failure to comply with any other provision of this Chapter, the penalty shall be a civil forfeiture, payable to the City, in the amount of \$500 per day for each day of violation. In addition, for failure to timely comply with a notice by the Director of Public Service or his/her designee to remove or rearrange facilities under this Chapter, an additional civil forfeiture equal to any costs incurred by the City as a result of such failure, including but not limited to any penalties charged the City by its contractors occasioned thereby, shall be imposed.

(b) Any permittee may be excused for violations of this Chapter and its right-of-way permit due to Force Majeure.

(Ord. 2016-080. Passed 10-17-16.)