

**CHAPTER 909: RIGHT-OF-WAY WORK PERMIT**

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**§ 909.01 PURPOSE.**

(A) The City of Lebanon, Ohio ("city") is concerned with the use of all rights-of-way in the city as such rights-of-way are valuable, and potentially limited resources which must be utilized to promote the public health, safety, and welfare of the city.

(B) Changes in the public utilities and telecommunication industries have increased the demand and need for access to rights-of-way and placement of facilities and structures therein.

(C) It is necessary to comprehensively plan and manage access to, and structures and facilities in, the rights-of-way to promote efficiency, discourage duplication of facilities in, lessen the public inconvenience of uncoordinated work in the rights-of-way, and promote the public health, safety, and welfare. Where it is in the best interest of the public health, safety, and welfare and aesthetics of the city, the city shall take steps to encourage locating facilities underground.

(Ord. 9351, passed 7-11-06)

## **§ 909.02 SCOPE.**

The provisions of this chapter shall apply to all users of the rights-of-way.

(Ord. 9351, passed 7-11-06)

## **§ 909.03 DEFINITIONS.**

For the purposes of this chapter, the following terms, phrases, words, and their derivations shall have the meanings as 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.

**CITY.** The City of Lebanon, Ohio.

**CITY ENGINEER.** The City Engineer of Lebanon, Ohio.

**CITY MANAGER.** The City Manager of Lebanon, Ohio.

**CONTRACTOR.** A person, partnership, corporation, or other legal entity who undertakes to construct, install, alter, move, remove, trim, demolish, repair, replace, excavate, or add to any improvements covered by this chapter, that requires work, workers, and/or equipment to be in the public right-of-way in the process of performing the above-named operations.

**DEPUTY CITY MANAGER.** The Deputy City Manager of Lebanon, Ohio, or designee.

**DEVELOPER.** The person, partnership, corporation, or other legal entity who is improving a parcel of land within the city and who is legally responsible to the city for the cost and quality of construction of improvements within a subdivision or as a condition of a building permit.

**DUCT or CONDUIT.** A single enclosed raceway for cables, fiber optics, or other wires, or a pipe or canal used to convey fluids or gases.

**EMERGENCY.** Any event which may threaten public health or safety, or that results in an interruption in the provision of services, including, but not limited to, damaged or leaking water or gas conduit system, damaged, plugged, or leaking sewer or storm drain conduit systems, damaged electrical and telecommunications facilities, in which advanced notice of needed repairs is impracticable under the circumstances.

**EXCAVATE.** To dig into or in any way remove or penetrate any part of a right-of-way.

**FACILITIES.** Includes, without limitation, any pipes, conduits, wires, cables, amplifiers, transformers, fiber optic lines, antennae, poles, street lights, ducts, fixtures and appurtenances and other like equipment used in connection with transmitting, receiving, distributing, offering, and providing utility and other services.

**FENCE.** Any artificially constructed barrier of wood, masonry, stone, wire, metal, plastic, or any other manufactured material or combination of materials erected to enclose, partition, beautify, mark, or screen areas of land.

**INFRASTRUCTURE.** Any public facility, system, or improvement, including, without limitation, water and sewer mains and appurtenances, storm drains and structures, streets, alleys, traffic signal poles and appurtenances, conduits, signs, landscape improvements, sidewalks, and public safety equipment.

**LANDSCAPING.** Materials, including, without limitation, grass, ground cover, shrubs, vines, hedges, or trees and non-living natural materials commonly used in landscape development, as well as attendant irrigation systems.

**PERMIT.** Any written authorization for use of the public rights-of-way granted in accordance with the terms of this chapter and the laws and policies of the city.

**PERMITTEE.** The holder of a valid permit issued pursuant to this chapter.

**PUBLIC RIGHT-OF-WAY** or **RIGHT-OF-WAY** or **PUBLIC WAY.** The surface of and the space above and below any public street, way, place, alley, sidewalk, easement, park, square, plaza, and city right-of-way dedicated to public use, except as otherwise required by local, state or federal law.

**SPECIFICATIONS.** Engineering regulations, construction specifications, and design standards adopted by the city.

**STRUCTURE.** Anything constructed or erected with a fixed location below, on, or above grade, including, without limitation, foundations, fences, retaining walls, awnings, balconies and canopies.

**SURPLUS DUCTS** or **SURPLUS CONDUITS.** Conduits or ducts other than those occupied by the permittee or any prior permittee, or unoccupied ducts held by permittee as emergency use spares, or other unoccupied ducts that the permittee reasonably expects to use within three years from the date of a request for use.

**WORK.** Any labor performed on, or any use or storage of equipment or materials, including but not limited to construction of streets and all related appurtenances, fixtures, improvements, sidewalks, driveway openings, bus shelters, street lights, and traffic signal devices within a right-of-way. It shall also mean excavation construction, maintenance, or repair of all underground structures such as pipes, conduits, ducts, tunnels, manholes, vaults, buried cable, wire, or any other structure located below surface, and installation of overhead poles, towers, or facilities attached to any above-ground structure used for any purpose within a right-of-way.

(Ord. 9351, passed 7-11-06)

#### **§ 909.04 ADMINISTRATION.**

The City Manager shall be the principal city official responsible for the administration of this chapter except as otherwise provided herein. The City Manager may delegate any or all of the duties hereunder to the Deputy City Manager or other designee.

(Ord. 9351, passed 7-11-06)

#### **§ 909.05 RIGHT-OF-WAY OCCUPANCY PERMIT.**

Prior to commencing any work in the public right-of-way, a permittee shall determine whether or not a right-of-way occupancy permit is required pursuant to Chapter 908. Any permits issued under this chapter do not take precedence over, or alleviate the requirement for obtaining a right-of-way occupancy permit as set forth in Chapter 908.

(Ord. 9351, passed 7-11-06) Penalty, see § 909.99

#### **§ 909.06 RIGHT-OF-WAY WORK PERMIT.**

(A) No person, except an employee or official of the city, or a person exempted by contract with the city, shall undertake or permit to be undertaken any work in the public rights-of-way without first obtaining a permit from the city as set forth in this chapter. Each permit obtained, along with associated documents, shall be maintained on the job site and available for inspection upon request by any officer or employee of the city. Refer to § 909.21(C) for emergency situations.

(B) *Permit transferability or assignability.* The applicant may subcontract the work to be performed under a permit, provided that the permittee shall be and remain responsible for the performance of the work under the permit and all insurance and financial security as required. Permits are transferable and assignable if the transferee or assignee posts all required security pursuant to this

chapter and agrees to be bound by all requirements of the permit and this chapter.

(C) *Developer ownership of public infrastructure.* The physical construction of public infrastructure in new developments (subdivisions) is the responsibility of the developer of the land. Ownership of that infrastructure remains with the developer of the land until acceptance by the city. Any developer of land where work is undertaken on infrastructure that is within a dedicated right-of-way, but prior to acceptance by the city, shall obtain a permit from the city. The city will not accept public infrastructure improvements where the work performed is not in accordance with applicable city specifications and applicable provisions of this chapter. Infrastructure constructed by a public utility, as that term is defined by R.C. § 4905.02, shall remain the property of such public utility. Public utility infrastructure shall also be known as public utility facilities and abandonment and attachment, including but not limited to relocation, permanent closure, and temporary closure, shall be governed by applicable local, state, and federal law, including R.C. Chapter 4909 and the Federal Telecommunications Act.

(D) Any person or utility found to be conducting any excavation activity within the public right-of-way without having first obtained the required permit(s) shall immediately cease all activity, exclusive of actions required to stabilize the area, and be required to obtain a permit before work may be restarted.

(Ord. 9351, passed 7-11-06) Penalty, see § 909.99

### **§ 909.07 PERMIT APPLICATION.**

(A) An applicant for a permit to allow construction, excavation, obstruction, or work in the public right-of-way under this section shall:

- (1) File a written application which shall include the following:
  - (a) The date of the application;
  - (b) The name and address of the applicant;
  - (c) The name and address of the developer, contractor or subcontractor who shall perform work in the public right-of-way;
  - (d) The exact location of the proposed construction, excavation or work activity;
  - (e) The type of existing public infrastructure (street pavement, curb and gutter, sidewalks, utilities) impacted by the work;
  - (f) The purpose of the proposed work;
  - (g) The dates for beginning and ending the proposed work;
  - (h) Proposed hours of work;
  - (i) Type of work proposed.
- (2) Attach copies of all permits or licenses, including required insurance, deposits, bonding, and warranties, required to do the proposed work, and to work in the public rights-of-way, if licenses or permits are required under the laws of the United States, State of Ohio, or the ordinances or regulations of the city. If relevant permits or licenses have been applied for but not yet received, provide a written statement so indicating.
- (3) Provide a reasonable plan of work showing protection of the subject property and adjacent properties. Plan should accommodate trenchless technology and joint use wherever applicable to reduce the negative impact on existing public infrastructure and rights-of-way.
- (4) Provide a reasonable plan for the protection of any existing landscaping.
- (5) Include with the application engineering construction drawings or site plans for the proposed work.
- (6) Include with the application a satisfactory traffic control and erosion protection plan for the proposed work.
- (7) Include a statement indicating any proposed joint use or ownership of the facility; any known existing facility or permit of the applicant at this location; any known existing facility of others with which the proposed installation might conflict; and the name, address and telephone number of a representative of the applicant available to review proposed locations at the site.
- (8) Applicant shall update any new information on permit applications within ten days after any material change occurs.

(9) Applicants may apply jointly for permits to work in public rights-of-way at the same time and place. Applicants who apply jointly for permits may share in the payment of the permit fee. Applicants must agree among themselves as to the portion each shall pay.

(B) Failure to provide the information provided above or any misrepresentation therein shall be cause for denial of the permit if not corrected or supplemented within a reasonable period from notice to the applicant of such deficiency.

(Ord. 9351, passed 7-11-06)

#### **§ 909.08 APPLICATION PERMIT AND ACCEPTANCE.**

(A) *Application preparation and submittal.* The applicant shall initially submit a right-of-way work permit application that shall set forth each item and calculation required by this chapter. The applicant must review the provisions of this chapter and prepare an application package that is responsive to each item and requirement herein. An application checklist is available at the office of the Deputy City Manager, which is intended as a guide, and may not be complete for unique circumstances. Questions regarding the sufficiency of the information proposed to be included on the application should be directed to the Deputy City Manager prior to submitting the application. Similarly, inquiries to the Deputy City Manager regarding the most recent plans for road improvements by the city or work in the right-of-way proposed by other persons are encouraged. No application shall be formally reviewed by the city without submittal of the initial application fee.

(B) *Application review.*

(1) The Deputy City Manager shall commence review of a formal application for a right-of-way work permit only after it is determined that all required items are included in the application package. The applicant shall be notified in writing within ten working/business days whether the application package is complete and a formal review has commenced, or whether the application package is deficient in some manner. If deficient, the applicant shall arrange a meeting with the Deputy City Manager in order to remedy the deficiency.

(2) The Deputy City Manager shall complete a formal review of the application package within ten working/business days of the mailing of the notice to the applicant that a formal review shall commence.

(3) The Deputy City Manager shall consult with such persons as he or she deems appropriate during the course of the formal review. If additional or different information is determined to be necessary, the ten days of the formal review shall be extended by the period of time from the Deputy City Manager's request for the additional information until it is received by the Deputy City Manager from the applicant.

(C) *Permit.* Upon completion, and in conjunction with, the formal review, the Deputy City Manager may issue a tentative right-of-way work permit, a tentative right-of-way work permit with conditions, or a denial of the right-of-way work permit.

(1) Tentative permit is issued if the application is approved subject to receipt of a written acceptance and acknowledgment and payment of fees.

(2) Tentative permit with conditions is the same as a tentative permit but the Deputy City Manager has imposed additional conditions or requirements not set forth in the original application and will be issued upon the same terms and conditions as a tentative permit.

(3) Subject to applicable local, state, or federal law, denial of permit shall be issued if the right-of-way has reached capacity within the area in which the applicant proposes to perform work or if the application is not sufficient and has not been amended. This includes a denial because the applicant has not demonstrated sufficient willingness to cooperate with and share the right-of-way improvements therein with other users, present and future. The city may require the applicant to utilize existing or planned facilities within the right-of-way to minimize the impact on the public right-of-way.

(D) *Acceptance.* No applicant may proceed with any work in a right-of-way until a final permit is issued. A final permit shall be issued upon receipt of:

(1) Applicant's acceptance of the terms of the tentative permit, with or without conditions, if applicable, and an acknowledgment that it accepts and shall abide by all the applicable terms and conditions set forth in this chapter, and the specifications, locations, and details set forth in the application and any conditions imposed by the Deputy City Manager; and

(2) Payment of fees due as determined by the fee schedule in this chapter upon approval of the right-of-way permit.

(E) *Exemptions.* The following work shall be exempt from submittal of a right-of-way permit application:

(1) Replacement of existing curb, sidewalk, and drive approaches in the right-of-way. Inspection permit must be filed with the City Engineer.

(2) City-owned and managed utilities where work is being performed by the city or city contractor, including but not limited to water, sewer, electric and telecommunications.

(Ord. 9351, passed 7-11-06)

### **§ 909.09 MINOR MAINTENANCE PERMIT APPLICATIONS.**

(A) Application for a minor maintenance permit may be made to the Deputy City Manager in lieu of a right-of-way permit. Minor maintenance permits are applicable for activity in the public right-of-way that does not include commercial utility/service expansion and excavation. The Deputy City Manager shall determine whether or not the proposed work is categorized as minor maintenance. In addition to any information required by the Deputy City Manager, all minor maintenance permit applications shall contain, and will only be considered complete upon compliance with the following provisions:

(1) If applicable, credible evidence that the applicant has obtained a right-of-way occupancy permit, 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 right-of-way occupancy permit;

(2) Submission of a completed minor maintenance permit application in the form required by the Deputy City Manager;

(3) A statement that the applicant will employ protective measures and devices that, consistent with the *Ohio Manual of Uniform Traffic Control Devices*, will prevent injury or damage to persons or property and to minimize disruptions to the efficient movement of pedestrian and vehicular traffic.

(4) If the Deputy City Manager determines that the applicant has satisfied the requirements of this chapter and the minor maintenance permit process, the Deputy City Manager shall issue a minor maintenance permit subject to the provisions of this chapter.

(5) The city may impose reasonable conditions 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 ensure the structural integrity of the rights-of-way, to protect the property and safety of other users in the rights-of-way, and to minimize the disruption and inconvenience to the traveling public.

(6) The Deputy City Manager shall charge a \$25 fee for the issuance of the minor maintenance permit. The Deputy City Manager may revoke the minor maintenance permit as any other permit may be revoked under this chapter.

(Ord. 9351, passed 7-11-06)

### **§ 909.10 PERMIT FEE.**

Before a final right-of-way work permit is issued pursuant to this chapter, the applicant shall pay to the city a right-of-way work permit fee, which shall be determined by the fee schedule as set forth in § 909.26. Fees have been calculated as reasonably as possible based on the actual costs inherent in reviewing the right-of-way work permit application.

(Ord. 9351, passed 7-11-06)

### **§ 909.11 PERMIT CONDITIONS.**

(A) Unless otherwise specified in a franchise agreement between the permittee and the city, prior to granting of any permit, the permittee shall file with the city an insurance policy or certificate in a form satisfactory to the city with coverage as follows:

(1) The permittee shall carry and maintain in full effect at all times a commercial general liability policy, including broad form property damage, completed operations contractual liability, explosion hazard, collapse hazard, underground property damage hazard for limits not less than \$1,000,000 each occurrence for damages or bodily injury or death to one or more persons; and \$500,000 each occurrence for damage to or destruction of property. The insurance policy shall name the City of Lebanon as an additional insured.

Permittees who maintain a net book value in excess of \$10,000,000 may self-insure in lieu of providing policies of insurance.

(2) Workers' compensation insurance as required by state law.

(B) Whenever any person has filed with the city evidence of insurance as required, any additional or subsequent permit holder in the employ of said initial person may, at the discretion of the Deputy City Manager, be excused from depositing or filing any additional evidence of insurance if such employee is fully covered by the permittee's insurance policy.

(C) Each permittee shall construct, maintain, and operate its facilities in a manner which provides protection against injury or damage to persons or property.

(1) The permittee, for itself and its related entities, agents, employees, subcontractors, and the agents and employees of said subcontractors, shall save the city harmless, defend, and indemnify the city, its successors, assigns, officers, employees, agents, and appointed and elected officials from and against all liability or damage and all claims or demands whatsoever in nature unless caused by the negligent or intentional acts of the city, and reimburse the city for all its reasonable expenses, as incurred, arising out of the installation, maintenance, operation or any other work or activity in the public right-of-way by the permittee related to its use thereof.

(2) The terms of each contract awarded by the permittee for activities pursuant to a permit shall contain indemnity provisions whereby the contractor shall indemnify the city to the same extent as described above. Acceptance of a permit by a permittee shall constitute an acknowledgment of this duty and a representation that it shall be done. The city may request satisfactory proof this has been done.

(3) Following the receipt of written notification of any claim, the permittee shall have the obligation to defend the city with regard to all third party actions, damages and penalties arising in any way out of the exercise of any rights in the permit. If at any time however, the permittee refuses to defend, and the city elects to defend itself with regard to such matters, the permittee shall pay all reasonable expenses incurred by the city related to its defense.

(Ord. 9351, passed 7-11-06) Penalty, see § 909.99

## **§ 909.12 PERFORMANCE AND MAINTENANCE SECURITY.**

(A) Before any permit required by this chapter shall be issued to an applicant, the applicant shall file with the Deputy City Manager either a bond or letter of credit in favor of the city in an amount equal to the total cost of construction, including labor and materials. The bond or letter of credit shall be executed by the applicant as principal and by at least one surety upon whom service of process may be had in the state. The bond or letter of credit shall be conditioned upon the applicant fully complying with all provisions of city ordinances, rules and regulations, and upon payment of all judgments and costs rendered against the applicant for any material violation of city ordinances or state statutes that may be recovered against the applicant by any person for damages arising out of any negligent or wrongful acts of the applicant in the performance of work done pursuant to the permit. The city may bring an action on the bond or letter of credit or other security or assets of permittee on its own behalf or on behalf of any persons so aggrieved as beneficiary. The bond or letter of credit must be approved by the city's legal counsel as to form and as to the responsibility of the surety thereon prior to the issuance of the permit. However, the city may waive the requirements of any such bond or letter of credit or may permit the applicant to post a bond without surety thereon upon finding that the applicant has financial stability and assets to satisfy any claims intended to be protected against the security required by this section.

(B) A letter of responsibility will be accepted in lieu of a bond or letter of credit from any public utility having substantial pre-existing facilities in the rights-of-way which precedes the effective date of this chapter.

(C) The bond, letter of credit or letter of responsibility shall remain in force and effect for a minimum of three years after completion and probationary acceptance of the work. The city may accept alternative forms of security if the City determines that the alternative is substantially equivalent to or better than the bond, letter of credit or letter of responsibility.

(Ord. 9351, passed 7-11-06) Penalty, see § 909.99

## **§ 909.13 PRECONSTRUCTION MEETING, INSPECTIONS AND ACCEPTANCE.**

The Deputy City Manager shall coordinate all pre-construction meetings and inspections as determined to be necessary. The permittee must make a representative available to the city as required.

(Ord. 9351, passed 7-11-06) Penalty, see § 909.99



## **§ 909.14 PUBLIC SAFETY.**

The permittee shall maintain a safe work area, free of safety hazards. The city may make any repair necessary to eliminate any safety hazards not performed as directed. Any such work performed by the city shall be completed and billed to the permittee at standard rates as established by the city. The permittee shall pay all such charges within the prescribed time period, the city may, in addition to taking other collection remedies, obtain reimbursements through the maintenance bond guarantee. Furthermore, the permittee may be barred from performing any work in the public right-of-way, and under no circumstances will the city issue any further permits of any kind to said permittee, until all outstanding charges have been paid in full

(Ord. 9351, passed 7-11-06) Penalty, see § 909.99

## **§ 909.15 TIME OF COMPLETION.**

All work shall be substantially completed in the time period identified on the permit application. Any work not substantially completed during the time period approved on the permit shall be subject to denial. The permittee must apply in writing to the Deputy City Manager for a time extension on the permit conditions. Extensions will be granted if delay is caused by an Act of God or other circumstance outside of the reasonable control of the permittee.

(Ord. 9351, passed 7-11-06) Penalty, see § 909.99

## **§ 909.16 TRAFFIC CONTROL.**

(A) When it is necessary to obstruct traffic, a traffic control plan shall be submitted to the city prior to starting construction. No permit will be issued until the plan is approved by the Deputy City Manager. If a street closing is desired, the applicant will request the assistance and obtain the approval of the City Engineer. It shall be the responsibility of the permittee to notify and coordinate all work in the public way with police, fire, ambulance, other government entities, and transit organizations and to provide documentation of such to the City Engineer prior to issuance of a final permit. All traffic control measures shall be in accordance with the *Ohio Manual of Uniform Traffic Control*.

(B) When necessary for public safety, the permittee shall employ flaggers, whose duties shall be to control traffic around or through the construction site. The use of flaggers may be required by the City Engineer.

(C) Traffic control devices, as defined by the *Ohio Manual on Uniform Traffic Control Devices*, must be used whenever it is necessary to close or alter a traffic lane or sidewalk. Traffic control devices are to be supplied by the permittee. If used at night, they must be reflectorized and must be illuminated or have barricade warning lights.

(D) Nighttime work area floodlighting shall not be allowed to spill out of the construction area in such a way as to disturb, annoy, or endanger the comfort, health or peace of others.

(E) The *Ohio Manual on Uniform Traffic Control Devices* or any successor publication thereto shall be used as a guide for all maintenance and construction signing. The permittee shall illustrate on the work plan the warning and control devices proposed for use. At the direction of the City Engineer, such warning and control devices shall be modified.

(F) The contractor shall be responsible for maintaining all work area signing and barricading during construction operations, as well as any signs and barricades that are needed to protect roadway users and pedestrians during non-work hours. During non-work hours, all construction work area signs that are not appropriate shall be removed, covered, or turned around so that they do not face traffic. Any deficiencies noted by the city shall be corrected immediately by the contractor. If the contractor is not available or cannot be found, the city may make such corrections and the contractor shall pay the actual costs incurred by the city. The permittee shall provide the Deputy City Manager with a 24-hour emergency contact name and phone number.

(Ord. 9351, passed 7-11-06) Penalty, see § 909.99

## **§ 909.17 GENERAL RIGHTS-OF-WAY USE AND CONSTRUCTION.**

(A) *Right-of-way meeting.* A permittee will make reasonable efforts to attend and participate in meetings of the city, of which the permittee is made aware, regarding right-of-way issues that may impact its facilities, including planning meetings to anticipate joint trenching and boring. Whenever passable and reasonably practicable to joint trench, share bores or cuts, and/or utilize existing facilities,



a permittee shall work with other providers, licensees, permittees, and franchisees so as to reduce as far as possible the number of right-of-way cuts within the city and the amount of pedestrian and vehicular traffic that is obstructed or impeded.

(B) *Minimal interference.* Work in the right-of-way, on other public property, near public property, or on or near private property shall be done in a manner that causes the least interference with the rights and reasonable convenience of property owners and residents. Permittee's facilities shall be constructed and maintained in such a manner as not to interfere with sewers, water pipes, electric, telecommunications, or any other property of the city, or with any other pipes, wires, conduits, pedestals, structures, or other facilities that may have been laid in the rights-of-way by or under the City's authority. The permittee's facilities shall be located, erected and maintained so as not to endanger or interfere with the lives of persons, or to interfere with new improvements the city may deem proper to make or to unnecessarily hinder or obstruct the free use of the rights-of-way or other public property.

(C) *Underground construction and use of poles.*

(1) When required by general ordinances, resolutions, regulations or rules of the city, or applicable state or federal law, permittee's facilities shall be placed or relocated underground at no cost to the city. The placement of public utilities facilities underground, as a first installation or as a relocation from above-ground, shall be subject to the cost recovery provisions set forth in § 908.06(A)(5). Placing facilities underground does not preclude the use of essential ground-mounted appurtenances.

(2) Where all facilities are installed underground at the time of permittee's construction, or when all such facilities are subsequently placed underground, all permittee facilities shall also be placed underground at no expense to the city. The recovery of such costs by a public utility placing utility facilities underground shall be subject to the cost recovery provisions set forth in § 908.06(A)(5). Related equipment, such as pedestals, must be placed in accordance with the city's applicable code requirements and rules.

(3) For above-ground facilities, the permittee shall utilize existing poles and conduit wherever possible. No permit shall be issued for the construction of new poles or towers in the rights-of-way without the determination of the Deputy City Manager that existing facilities are not available or suitable for the applicants needs and that the proposed new above-ground structures are compatible with existing facilities or uses within the immediate area.

(4) Should the city desire to place its own facilities in trenches or bores opened by the permittee, the permittee shall cooperate with the city in any construction by the permittee that involves trenching or boring, provided that the city has first notified the permittee in some manner that it is interested in sharing the trenches or bores in the area where the permittee's construction is occurring. The permittee shall allow the city to place its facilities in the permittee's trenches and bores, provided the city shares proportionally in the cost of the trenching or boring. Should the city desire to install ducts or conduits for the possible use of other entities, then the permittee shall allow the city to place these facilities in the permittee's trenches and bores, provided the city shares proportionally in the cost of trenching and boring. Additionally, should the city install ducts or conduits for their or others use, the permit application fee shall be waived for the permittee for that particular project. The city shall be responsible for maintaining its respective facilities buried in the permittee's trenches and bores under this division.

(D) *Use of conduits by the city.* Unless otherwise restricted by state and federal law, and in accordance with § 908.09, the city may install or affix and maintain its own facilities for city purposes in or upon any and all of permittee's ducts, conduits or equipment in the rights-of-way and other public places, at a charge to be negotiated between the parties, to the extent space is therein or thereon is reasonably available, and pursuant to all applicable ordinances and codes. For the purposes of this division, **CITY PURPOSES** includes but is not limited to the use of the structures and installations for City fire, police, traffic, water, electric, telecommunications, and/or signal systems.

(E) *Common users.*

(1) Rights-of-way have a finite capacity for containing facilities. Whenever the city determines it is impracticable to permit construction of an additional underground conduit system by any other entity and unless otherwise prohibited by federal or state law or regulations, the city shall require a permittee to afford to such entity the right to use surplus ducts or conduits in common with permittee, pursuant to the terms and conditions of an agreement for use of surplus ducts or conduits entered into by permittee and the other entity. Nothing herein shall require permittee to enter into an agreement with such entity if, in permittee's reasonable determination, such an agreement would compromise the integrity of the permittee's facilities or if such entity refuses to assume liability for the occupancy at the negotiated price or price required by applicable local, state, or federal law. In such case, however, permittee shall provide a written explanation to the Deputy City Manager describing the nature and extent of the compromise of integrity of the facilities or refusal to assume liability, which shall be the basis for denying a permit to such other entity if no other alternative exists. Permittee shall cooperate and present evidence regarding the compromise of integrity on any appeal. In no instance shall the city take action against a permittee required to allow attachment by a new right-of-way occupant pursuant to local, state or federal law, where the city determines that occupancy should be denied. The city shall take action, as it deems appropriate, only against the new right-of-way occupant.

(2) If a permittee has permitted use of its conduit to another entity (common user) and thereafter determines that it, the permittee, needs to occupy such conduit for its own use, the permittee shall give its common user(s) 120 days notice, or such greater or lesser notice as may be required by local, state or federal law, of its need to occupy the conduit, and shall require that the common user choose one of the following alternatives:

(a) Pay revised conduit rent designed to recover the cost of retrofitting the conduit with space-saving technology sufficient to meet permittee's space needs, including the space needs of other common occupants;

(b) Pay revised conduit rent based on the cost of new conduit constructed to meet permittee's space needs, including the space needs of other common occupants;

(c) Vacate the needed ducts or conduit; or

(d) Construct and maintain sufficient new conduit to meet permittee's space needs and the needs of other common occupants. When two or more common users occupy a section of conduit facility, the last, most recent user to occupy the conduit facility shall be the first to vacate or construct new conduit. When conduit rent is revised because of retrofitting, space-saving technology or construction of new conduit, the cost causer shall bear the entire cost of the expansion or retrofit, but all common users shall bear the ongoing increased rental cost. All facilities shall meet any applicable local, state, and federal clearance and other safety requirements, be adequately grounded and anchored, and meet the provisions of contracts executed between permittee and the other common user. Permittee may, at its option, correct any attachment deficiencies and charge the common user for its costs. Each common user shall pay permittee for any fines, fees, damages or other costs the common user's attachments cause permittee to incur.

(Ord. 9351, passed 7-11-06) Penalty, see § 909.99

## **§ 909.18 JOINT PLANNING AND CONSTRUCTION.**

(A) Excavations in the city right-of-way disrupt and interfere with the public use of city streets and landscaping. The purpose of this section is to reduce this disruption, damage, and interference by promoting better coordination among permittees making excavations in the city right-of-way and between these permittees and the city. Better coordination will assist in minimizing the number of excavations being made wherever feasible, and will ensure the excavations in city rights-of-way are, to the maximum extent possible, performed before, rather than after the resurfacing of the streets by the city.

(B) Prior to applying for a permit, any person planning to excavate in the city right-of-way shall review the city's repaving plan on file with the City Engineer and shall coordinate, to the extent practicable, with the utility and street work shown on such plans to minimize damage to, and avoid undue disruption and interference with the public use of such rights-of-way.

(C) In performing location of facilities in the public right-of-way in preparation for construction under a permit, permittee shall compile all information obtained regarding its or any other facilities in the public rights-of-way related to a particular permit, and shall make that information available to the city in a written and verified format acceptable to the Deputy City Manager.

(Ord. 9351, passed 7-11-06) Penalty, see § 909.99

## **§ 909.19 MINIMIZING THE IMPACTS OF WORK IN THE RIGHTS-OF-WAY.**

(A) Each permittee shall conduct work in such a manner as to avoid unnecessary inconvenience and annoyance to the general public and occupants of neighboring property. In the performance of the work, the permittee shall take appropriate measures to reduce noise, dust, and unsightly debris.

(B) *Trash and construction materials.* Each permittee shall maintain the work site so that:

(1) Trash and construction materials are contained so that they are not blown off of the construction site.

(2) Trash is removed from a construction site often enough so that it does not become a health, fire, or safety hazard.

(3) Trash dumpsters and storage or construction trailers are not placed in the street without specific approval of the Deputy City Manager.

(C) *Deposit of dirt and material on roadways.* Each permittee shall utilize their best efforts to eliminate the tracking of mud or debris upon any street or sidewalk. Streets and sidewalks shall be cleaned of mud and debris at the end of each day. All equipment

and trucks tracking mud and debris into the right-of-way shall be cleaned of mud and debris at the end of the day or as directed by the City Engineer, or designee. If the permittee fails to do so, the city shall have the authority to perform the required work and bill the permittee for its expense.

(D) *Protection of trees and landscaping.* Each permittee shall protect trees, landscape, and landscape features as required by the city. All protective measures shall be provided at the expense of the permittee.

(E) *Protection of paved surfaces from equipment damage.* Backhoe equipment outriggers shall be fitted with rubber pads whenever outriggers are placed on any paved surface. Tracked vehicles that will damage pavement surfaces are not permitted on paved surface unless specific precautions are taken to protect the surface. The permittee will be responsible for any damage caused to the pavement by the operation of such equipment and shall repair such surfaces. Failure to do so will result in the use of the applicant's performance/warranty guarantee by the city to repair any damage, and, possibly, the requirement of additional warranty(ies).

(F) *Protection of property.* Each permittee shall protect from injury any adjoining property by providing adequate support and taking other necessary measures. The permittee shall, at its own expense, shore up and protect all buildings, walls, fences or other property likely to be damaged during the work, and shall be responsible for all damage to public or private property resulting from failure to properly protect and carry out work in the public way.

(G) *Clean-up.* As the work progresses, all public rights-of-way and private property shall be thoroughly cleaned of all rubbish, excess dirt, rock, and other debris. All clean-up operations shall be done at the expense of the permittee.

(H) *Preservation of monuments.* A permittee shall not disturb any surface monuments, property marks, or survey hubs and points found on the line of work unless approval is obtained from the City Engineer. Any monuments, hubs, and points disturbed will be replaced by an Ohio Registered Land Surveyor at the permittee's expense.

(I) Each permittee shall make provisions for employee and construction vehicle parking so that neighborhood parking adjacent to a work site is not impacted.

(J) Each permittee shall maintain an adequate and safe unobstructed walkway around a construction site or blocked sidewalk.

(K) Each permittee shall provide necessary sanitary facilities for workers. The location of such facilities shall be approved by the city in the permit.

(Ord. 9351, passed 7-11-06) Penalty, see § 909.99

## **§ 909.20 STANDARDS FOR REPAIRS AND RESTORATION.**

(A) The permittee shall be fully responsible for the cost and actual performance of all work in the public way. The permittee shall do all work in conformance with any and all engineering regulations, construction specifications, and design standards adopted by the city. These standards shall apply to all work in the public way unless otherwise indicated in the permit.

(B) All restoration shall result in a work site condition equal to or better than that which existed prior to construction.

(C) Flowable fill backfill material shall be utilized as directed by the City Engineer or as agreed to in the street cut repair standard entered pursuant to § 908.06(A)(7).

(Ord. 9351, passed 7-11-06) Penalty, see § 909.99

## **§ 909.21 CONSTRUCTION AND RESTORATION STANDARDS FOR NEWLY CONSTRUCTED OR OVERLAYED STREETS.**

No person shall cause an open trench excavation or potholing of utilities in the pavement of any public right-of-way for a period of three years from the completion of construction or resurfacing of the street except in compliance with the provisions of this section.

(A) *Application.* Any application for a permit to excavate in a public right-of-way subject to the requirements of this section shall contain the following information:

(1) A detailed and dimensional engineering plan that identifies and accurately represents the city rights-of-way or property that will be impacted by the proposed excavation, as well as adjacent streets, and the method of construction.

- (2) The street width or alley width, including curb and gutter that will be impacted by the proposed excavation.
- (3) The location, width, length, and depth of the proposed excavation.
- (4) The total area of existing street or alley pavement in each individual city block that will be impacted by the proposed excavation.
- (5) A written statement addressing the criteria for approval.

(B) *Criteria for approval.* No permit for excavation in the right-of-way of new streets shall be approved unless the Deputy City Manager finds that all of the following criteria have been met:

- (1) Boring or jacking without disturbing the pavement is not practical due to physical characteristics of the street or alley or other utility conflicts.
- (2) Alternative utility alignments that do not involve excavating the street or alley are found to be impracticable.
- (3) The proposed excavation cannot reasonably be delayed until after the three-year deferment period has lapsed.

(C) *Exemptions for emergency operations.* Emergency maintenance operations shall be limited to circumstances involving the preservation of life, property, or the restoration of customer service. Persons with prior authorization from the city to perform emergency maintenance operations within the public rights-of-way shall be exempted from this section. Any person commencing operations under the laws of this section shall submit detailed engineering plans, construction methods and remediation plans no later than three working days after initiating the emergency maintenance operation or within such other time as is reasonably practical.

(D) *Exemptions for non-emergency operations.* A permittee may apply to the Deputy City Manager for an exemption under this section when the construction is necessary in the public interest or to provide a public service. By way of example, but not by limitation, an exemption could be requested in order to provide services to a part of the city where no service would be available without construction. If a non-emergency exemption is granted to disturb a public way within the three-year period, the Deputy City Manager may, in his or her sole discretion, impose additional restoration requirements, including but not necessarily limited to repaving of a larger area, such as an entire block in which the construction occurs.

(E) *Construction and restoration standards for newly constructed or overlaid streets and alleys.* The streets shall be restored and repaired in accordance with design and construction standards adopted by the city, including the street cut repair standard set forth by the right-of-way occupant and the city pursuant to § 908.06(A)(7).

(Ord. 9351, passed 7-11-06) Penalty, see § 909.99

## **§ 909.22 RELOCATION OF FACILITIES.**

(A) if at any time the city requests the permittee to relocate its facilities in order to allow the city to make any public use of rights-of-way, or if at any time it shall become necessary because of a change in the grade or for any other purpose by reason of the improving, repairing, constructing, or maintaining of any rights-of-way, or reason of traffic conditions, public safety or by reason of installation of any type of structure of public improvement the city or other public agency of special district, and any general program for the undergrounding of such facilities, to move or change the permittee's facilities within or adjacent to rights-of-way in any manner, either temporarily or permanently, the city shall notify the permittee at least 90 days in advance, except in the case of emergencies, of the city's intention to perform or have such work performed. The permittee shall thereupon, at no cost to the city, accomplish the necessary relocation, removal or change within a reasonable time from the date of the notification, but in no event later than three working days prior to the date the city intends to commence its work or immediately in the case of emergencies. For complex projects, the permittee may appeal to the Deputy City Manager for more than a 90-day advance notice from the city. In each instance the city shall permit cost recovery pursuant to § 908.06(A)(5).

(B) Upon the permittee's failure to accomplish such work, the city or other public agencies or special district may perform such work at the permittee's expense and the permittee shall reimburse the city or other agency within 30 days after receipt of a written invoice. The city shall comply with the requirements of R.C. §§ 4905.20 and 4905.21 and R.C. Chapter 4939. Following relocation, all affected property shall be restored to the condition which existed prior to construction at the permittee's expense.

(C) Notwithstanding the requirements of this section, a permittee may request additional time to complete a relocation project. The Deputy City Manager shall grant a reasonable extension if the extension will not adversely affect the city's project.

(Ord. 9351, passed 7-11-06) Penalty, see § 909.99

## **§ 909.23 ABANDONMENT AND REMOVAL OF FACILITIES; NOTICE.**

Any permittee that intends to discontinue use of any facilities within the public rights-of-way shall notify the Deputy City Manager in writing of the intent to discontinue use. Such notice shall describe the facilities for which the use is to be discontinued, a date of discontinuance of use, which date shall not be less than 60 days from the date such notice is submitted to the Deputy City Manager and the method of removal and restoration. The permittee may not remove, destroy or permanently disable any such facilities during said 60-day period without written approval of the Deputy City Manager. After 60 days from the date of such notice, the permittee shall remove and dispose of such facilities, or abandon in place, as set forth in the notice, as the same may be modified by the Deputy City Manager, and shall complete such removal and disposal within six months, unless additional time is requested from and approved by the Deputy City Manager.

(Ord. 9351, passed 7-11-06) Penalty, see § 909.99

## **§ 909.24 REVOCATION OF PERMITS AND STOP WORK ORDERS.**

(A) Any permit may be revoked or suspended by the Deputy City Manager, after written notice to the permittee for:

(1) Violation of any material condition of the permit or of any material provision of this chapter.

(2) Violation of any material provision of any other ordinance of the city or state law relating to the work performed under this chapter.

(3) Existence of any condition or performance of any act relating to the work performed under this chapter which the city determines constitutes or causes a condition endangering life or damage to property.

(B) *Stop work orders.* A stop work order may be issued by the Deputy City Manager to any person or persons doing or causing any work to be done in the public way for:

(1) Working without a permit, except for routine maintenance or emergency repairs to existing facilities as provided for in this chapter.

(2) Failure to acquire a valid right-of-way occupancy permit.

(3) Doing work in violation of any provisions of this chapter, or any other ordinance of the city, or state law relating to the work.

(4) Performing any act which the city determines constitutes or causes a condition that either endangers life or property.

(5) A suspension or revocation by the Deputy City Manager, and a stop work order, shall take effect immediately upon notice to the person performing the work in the public way, or to the permittee's last known address.

(6) Any suspension or revocation or stop work order may be appealed by the permittee to the City Manager by filing a written notice of appeal within 30 days of the action.

(Ord. 9351, passed 7-11-06)

## **§ 909.25 APPEALS PROCEDURE.**

Any decision rendered by the Deputy City Manager pursuant to this chapter may be appealed in writing within 30 days by the applicant or permittee to the City Manager. Within 15 days of written notification of appeal, the City Manager shall consider all evidence in context of this chapter and, after deliberation, may approve, reverse or modify the decision of the Deputy City Manager. Within 15 days of the decision of the City Manager, an applicant may appeal the decision of the City Manager to the City Council.

(Ord. 9351, passed 7-11-06)

## **§ 909.26 FEE SCHEDULE.**

(A) *Review costs.* **REVIEW COSTS** mean those administrative and consultation costs associated with the review of the application, as well as permitting, inspections, and general inquiries related to public right-of-way intrusion.

(B) *Right-of-way work permit fees; review costs.* A fee for the review of all applications, excluding minor maintenance permits shall be \$100. The fee to review minor maintenance permits shall be \$25.

(C) *Exemptions.* The following work in the public right-of-way will be exempt from the review fee:

- (1) Replacement of existing individual property utility service such as water, sewer, electric, gas, and telecommunications.
- (2) Placement or removal of trees, mailboxes, and other minor landscaping in the public right-of-way.
- (3) Replacement of existing curb and gutter, and/or sidewalks in the public right-of-way.

(Ord. 9351, passed 7-11-06)

### **§ 909.99 PENALTY.**

Each day any violation continues shall be deemed a separate offense. For failure to comply with any other provision of this chapter, the penalty shall be a civil forfeiture, payable to the City of Lebanon, in the amount up to \$500 per day for each day of violation. In addition, for failure to timely comply with a notice by the Deputy City Manager to remove or rearrange facilities pursuant to this chapter and Chapter 908, an additional civil forfeiture equal to any costs incurred by the city as a result of such failure, including but not limited to penalties or liquidated damages charged the city by its contractors occasioned thereby, shall be imposed.

(Ord. 9351, passed 7-11-06)