101CHAPTER 1016
Use of Public Ways by Service Providers ~~and Cable Television Providers~~

EDITOR'S NOTE: This chapter, previously titled "Excavations," was repealed in its entirety and re-enacted under its present title by Ordinance 96-149, passed May 7, 1997.

1016.01 Purpose and intent; definitions.

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CROSS REFERENCES

Establishment and care of streets - see Ohio R.C. 715.19, 717.01, 723.01

Openings by the municipality - see Ohio R.C. 723.02

Damage from excavation - see Ohio R.C. 723.49 et seq.

Digging, excavating and piling earth on streets - see Ohio R.C. 5589.10

Community Television Advisory Committee - see ADM. Ch. 280

Obstruction and special uses of public ways - see TRAF. Ch. 412

Operation of vehicle in barricaded area - see TRAF. 432.24

Barricades and warning lights for obstructions in streets - see GEN. OFF. 660.12

Utilities generally - see S.U. & P.S. Ch. 1050

1016.01 PURPOSE AND INTENT; DEFINITIONS.

(a) The purpose and intent of this chapter is to:

(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) Establish certain policies applying to cable~~-~~, gas, fiber, sewer, water and other utility operators using the City's public ways.

(4) Promote competition in utility, cable television, gas, fiber, sewer, water, ~~and~~ telecommunications and other industries utilizing the public ways.

(5) Encourage the provision of advanced and competitive utility, cable television, and telecommunications services on the widest possible basis to the businesses, institutions and residents of the City.

(6) 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.

(7) Conserve the limited physical capacity of the public ways held in public trust by the City.

(8) Assure that the City's current and ongoing costs of granting and regulating private access to and use of the public ways are fully paid by the persons seeking such access and causing such costs.

(9) Reserve the right to secure fair and reasonable compensation to the City and the residents of the City, on a competitively neutral and nondiscriminatory basis, for permitting private use of the public ways.

(10) Assure that all service providers providing facilities or services within or through the City comply with the ordinances, rules and regulations of the City.

(11) Assure that the City can continue to fairly and responsibly protect the public health, safety and welfare.

(12) Enable the City to discharge its public trust consistent with rapidly evolving Federal and State regulatory policies, industry competition and technological development.

(13) Assure that the public ways and any property (public and private) are restored to their original or better condition within a reasonable time as before construction began.

(14) Assure that any utility project undertaken which impacts the public ways and/or property (public or private) is completed in a timely manner with quality workmanship.

(15) To clarify the City's intent to exercise its Home Rule authority to regulate utilities within its jurisdiction.

(b) For the purpose of this chapter, and the interpretation and enforcement hereof, the following words and phrases shall have the following meanings, unless the context of the sentence in which they are used shall indicate otherwise:

(1) "Affiliate" means a person who or which (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with another person.

(2) "Annual gross revenue" means all revenue, as determined in accordance with generally accepted accounting principles (including, without limitation, subscription,

equipment and advertising revenue), which is received directly or indirectly from the distribution of any service over a permit holder's facilities located within the City. Gross revenues do not include sales and use taxes, franchise fees and other governmental charges and fees collected by a permit holder.

(3) "Cable operator" means a person providing or offering to provide cable service within the City as that term is defined in the Cable Communications Policy Act of 1984, codified at 47 U.S.C. §532 et seq., as amended by the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996, as each might be further amended.

– (4) "City" means the City of Hudson.

(5) "City Manager" means the City Manager, or his or her designee.

(6) "City property" means and includes all real property owned by the City, other than public streets and public utility easements as those terms are defined herein, and all property held in a proprietary capacity by the City, which are not subject to public way permits and franchising as provided in this chapter.

(7) "Excavation" or "excavate" means to dig into or in any way remove or physically disturb or penetrate any part of the public way.

(8) "Excess capacity" means the volume or capacity in any existing or future duct, conduit, manhole or other facility within the public way that is or will be available for use for additional facilities.

(9) "Facilities" or "system" 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, valves, manholes, chambers, 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, and~~but~~ also including private facilities.

~~(9) "Maintenance Bond" means a type of surety bond that guarantees a utility owner (non City of Hudson) or its contractor to ensure proper and complete Construction and/or repair of a Facility and the affected Rights-of-Way pursuant to a Permit.~~

(~~10~~9) "Other ways" means the highways, streets, alleys, public utility easements or other rights-of-way within the City, but under the jurisdiction and control of a governmental entity other than the City.

(1~~1~~0) "Overhead facilities" means utility poles and wires, cables and other such equipment running between and on such poles, including the underground supports and foundations for such facilities.

(11~~2~~) "Permit holder" means a service provider who has received ~~approval of either~~ an ~~n outside or inside services use permit~~ Use Permit as defined in Section 1016.03(a), or a ~~c~~Construction ~~p~~Permit as defined in Section 1016.05(c).

(123) "Person" means and includes corporations, companies, associations, joint stock companies or associations, firms, partnerships, limited liability companies, trusts and individuals, and includes their lessors, trustees and receivers.

(134) "Private fFacility" means the plant, equipment and property, including, but not limited to, cables, fiber optics, wires, pipes, conduits, ducts, pedestals, antennas, electronics and other appurtenances used or to be used to transmit, receive, distribute or provide telecommunications, cable service, gas, water, sewer, orelectric or other services between or among private buildings or facilities where there is no offer of service to the public.

(145) "Public street" means any highway, street, alley or other public right-of-way under the jurisdiction and control of the City, which has been acquired, established, dedicated or devoted to street purposes.

(156) "Public utility easement" means any easement owned by the City and acquired, established, dedicated or devoted for public utility purposes.

(167) "Public way" means and includes all public streets and public utility easements, as those terms are defined herein, now or hereafter owned by the City, but only to the extent of the City's right, title, interest or authority to grant a permit or franchise to occupy and use such streets and easements for facilities, including cable service facilities.

(178) "PUCO" or "Public Utilities Commission of Ohio" means the State administrative agency, or its lawful successor, authorized to regulate and oversee certain service providers and services in the State of Ohio.

(189) "Reconstruct" means substantial physical change to all or a portion of a facility or system involving construction within the public streets, public utility easements or public ways.

(2019) "Service" means the offering of utilities, telecommunications, or other amenities utilizing the public way(s) or telecommunications 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.

(201) "Service provider" means and includes every person who or which, directly or indirectly, owns, controls, operates or manages plant, equipment or property within the City, used or to be used for the purpose of offering service within the City or outside of the City's boundaries.

(212) "State" means the State of Ohio.

(223) "Surplus space" means that portion of the usable space on a utility pole which has the necessary clearance from other pole users, as required by the orders and regulations of PUCO and other applicable State and local orders and regulations, to allow its use by a service provider for a pole attachment.

(234) "Underground facilities" means facilities located under the surface of the ground, excluding the underground foundations or supports for overhead facilities.

(245) "Usable space" means the total distance between the top of a utility pole and the lowest possible attachment point that provides the minimum allowable vertical clearance as specified in the orders and regulations of the PUCO.

(256) "Use permit" shall have the meaning given to it in Section 1016.03(a).

~~(267) "UTILITY(IES)Utility(ies)." Any water, sewer, gas, drainage, and any electric power, telecommunications, signal, communications, or cable television or video service or its facilities or the operator thereof.~~

(26) "Utility" means any entity which provides telecommunications, oil, gas, natural gas, electric, water, drainage, sewer services, and any other provider which utilizes public ways, easements, and/or other rights-of-way to provide goods or services through pipe, line, cable, or similar medium through and within the City of Hudson.

(27) "Contractor" means any person or entity that performs construction, maintenance, repair, or similar services.

(c) Pre-emption by State and Federal Law. Except as may be pre-empted by applicable State or Federal laws, rates, regulations and orders, this chapter shall apply and be controlling over each service provider engaged in the business of transmitting, supplying or furnishing of services originating, passing through or terminating in the City.

(d) Annual Registration ~~and Maintenance Bond~~. Except as otherwise provided herein, any and all service providers who desire to construct, install, operate, maintain or otherwise locate facilities in, under, over or across any public way of the City shall first register with the City on an annual basis, on a form provided by the City, pursuant to Section 1016.02 ~~and provide Maintenance Bond in the amount of $50,000 to the City~~. Further, any service provider who currently maintains any facility in, over or across any public way of the City at the time of the effective date of this chapter shall register with the City pursuant to Section 1016.02 within ninety days of the effective date of this chapter.

(e) Use ~~-~~ Permits~~.~~ Except as otherwise provided herein, any service provider who desires to construct, reconstruct, install, operate, maintain or otherwise locate facilities in, under, over or across any public way or easement of the City for the purpose of ~~either~~ providing service to persons ~~and areas outside the City or providing service to persons~~ or areas in the City, shall first obtain a Right of Way Permit if working in a public street, public property or City owned easement, ~~use permit~~ permitting the use of such public ways pursuant to Section 1016.03. Any service provider that does not obtain a Right-of-Way Permit shall be subject to penalties per section 1016.99.

(f) Private or Public Facilities. Persons who wish to use any public way of the City for private or public facilities shall first register pursuant to Section 1016.02 and obtain a ~~use~~ Use P~~p~~ermit and a construction permit (if applicable)~~.~~ The applicant shall comply with Section 1016.03(b) and, upon receiving a ~~use~~ Use P~~p~~ermit, shall comply with all provisions of Section 1016.05 (if applicable). For purposes of compensation to the City for use of the public way, a private facility shall be treated as a service provider which has obtained an outside services ~~use permit~~Use Permit.

(g) Cable Television Franchise. Any person who or which desires to construct, reconstruct, install, operate, maintain or locate facilities in any public way of the City for the purpose of providing cable service to persons in the City shall first obtain a cable television franchise from the City as provided in Section 1016.07.

Except as provided in subsection (h) hereof, all cable operators providing cable service within the City shall comply with the registration, ~~use permit~~Use Permit -and construction permit requirements of this chapter.

(h) Application to Existing Franchise Ordinances and Agreements. This chapter shall have no effect on any existing franchise ordinance or franchise agreement until:

(1) The expiration of said franchise ordinance or agreement; or

(2) An amendment is made to an unexpired franchise ordinance or franchise agreement, unless both parties agree to defer full compliance with this chapter.

(3) Any maintenance, repair, or other work shall abide by the restoration standards and be subject to the related penalties and procedures contained herein.

(i) Exemption for City-Owned or Operated Facilities. Nothing in this chapter shall be construed to apply the provisions of this chapter to facilities owned or operated by the City or any of its operations. The City may be exempt from any or all of these requirements, as determined for each project by the City Manager. The City Manager may exempt entities the City partners and/or contracts with from the requirements of this Chapter for specific projects they are partnered on.

(j) Application to Existing Code Provisions. This chapter shall not apply to projects that deal exclusively with the following subject matter: ~~as follows:~~

I. Stand Alone Culverts, Driveways and Sidewalks work shall apply to ~~of~~ Section 1012.04. ,

II. Stand Alone Lateral Lines for Sewer , Drain or Water work shall apply to Chapter 1044 and Sections.

III. Stand Alone Curb Cuts and Culver Work shall apply to 1428.07 and 1428.08

If a project requires work beyond the scope of the subject matter above, Chapter 1016 shall apply and its requirements must be complied with. ~~,,,of these Codified Ordinances, located in the City's public ways, including lateral lines of water, sanitary sewer and storm water drains; driveways and sidewalks; and street culverts and curb entrance cuts, downspout openings and downspout connections.~~

(Ord. 96-149. Passed 5-7-97.)

1016.02 ANNUAL REGISTRATION OF SERVICE PROVIDERS.

(a) Annual Registration Required. All service providers that offer or provide any service for a fee, either within the City or outside the City's corporate limits via facilities within the City, shall register each calendar year, on or before January 1, with the City, pursuant to this section, after filing an initial registration with the City prior to making application for a ~~use~~ Use ~~permit~~Permit. Further, any service provider who offers or provides service as described immediately above, at the time of the effective date of this chapter, shall register with the City pursuant to this section within ninety days of the effective date of this chapter. Registration forms will be provided by the City and shall require the following information:

(1) The identity, legal status and Federal tax identification number of the registrant, including any affiliates.

(2) The name, address and telephone number of the local officer, agent or employee responsible for the accuracy of the registration statement.

(3) A description of the registrant's existing or proposed facilities within the City.

(4) A description of the service that the registrant intends to offer or provide, or is currently offering or providing, to persons, firms, businesses or institutions within the City. Where a service is or will be provided by a nonaffiliated provider, the registrant shall identify that provider.

(5) If services include the provision of video programming, the registrant shall indicate the method of providing that service as one of the following: a radio-based system; common carriage; a cable system; or an open video system.

(6) Information sufficient to determine whether the transmission, origination or receipt of the services provided or to be provided by the registrant is taxable under City ordinances.

(7) Information sufficient to determine that the registrant has applied for and received any certificate of authority required by PUCO to provide services or facilities within the City.

(8) Information sufficient to determine that the registrant has applied for and received any construction permit, operating license, certification or other approval required by the Federal Communications Commission (FCC) to provide telecommunications or cable services or facilities within the City.

(9) A current "to scale" map or drawing that clearly locates all existing and proposed services or facilities, including horizontal and vertical information, facility type, size, depth and other such relevant information.

(10) A current rate list maintained by the service provider listing the service fees, unit prices, and all other charges the service provider charges within the City of Hudson and surrounding communities. The Service Provider shall provided an updated rate list to the City Manager if and when it alters any service fee(s), unit price(s), or any other charge(s) charged by the Service Provider within the City of Hudson.

(11) All current insurance information maintained by the Service Provider as required under this Chapter.

(~~10~~11~~1~~12) Such other information as the City Manager may reasonably require.

(b) Registration Fee. Each service provider shall pay an initial registration fee of ~~five~~one thousand ~~hundred~~ dollars ($1,~~5~~000.00). In each year thereafter, each service provider shall pay an annual registration fee of three hundred fifty dollars ($350.00).

(c) Purpose of Registration. The purpose of registration under this section is to:

(1) Provide the City with accurate and current information concerning the service providers who offer or provide services within the City, or that own or operate facilities within the City;

(2) Assist the City in monitoring the usage of the public ways in order to ensure that the public receives the maximum possible benefit from that use and that the use is consistent with the best management and care of the public ways;

(3) Assist the City in the collection and enforcement of any Municipal taxes, franchise fees, compliance fees or charges that may be due the City; and

(4) Assist the City in monitoring compliance with local, State and Federal laws.

(Ord. 96-149. Passed 5-7-97.)

1016.03 USE PERMITS~~.~~

(a) Permit Required. Any service provider who desires to construct, reconstruct, install, operate, maintain or otherwise locate facilities in, under, over or across any public way of the City will be required to obtain ~~one of the two u~~Use ~~p~~Permit~~s described below~~. Any service provider who is currently maintaining, operating, constructing, installing or otherwise locating facilities in, over or across any public way of the City at the time of the effective date of this chapter shall apply for the appropriate ~~use permit~~Use Permit within ninety days (90 days) of the effective date of this chapter. ~~The use permits are as follows:~~

(b) A Use Permit will be required for any service provider~~ing~~ who desires to work within a Public Way, Public Easement or Public property or other such location.

~~(1) An outside services use permit is required for the construction, reconstruction, installation, location, operation or maintenance of facilities whose sole purpose is to provide services to persons or areas outside the City.~~

~~(2) An inside services use permit is required for the construction, reconstruction, installation, location, operation or maintenance of facilities for the purpose of providing services to any person or area within the City.~~

(~~b~~c) Permit Application. Any person who is required to obtain a ~~u~~Use ~~p~~Permit pursuant to this section shall file an application with the City which shall include the following information:

(1) The identity of the applicant, including all affiliates of the applicant.

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

(3) A description of the services or facilities that the applicant will offer or make available to the City and other public, educational, and governmental institutions, if any.

(~~3~~4) A description of the transmission medium that will be used by the applicant to offer or provide such services.

(5) An accurate map showing the location of any existing facilities in the City that the applicant intends to use or lease, on a "to scale" drawing established using State Plane Coordinates.

(6) A description of the applicant's access and line extension policies.

(7) The area or areas of the City the applicant desires to serve and a schedule for build-out to the entire area addressed by the permit.

(~~4~~8) 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 (vertical and horizontal) 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(s), if any, for interconnection with the facilities of other service providers.

D. The specific trees (with diameter at breast height sizes), structures, improvements, facilities and obstructions, if any, that the applicant proposes to temporarily or permanently remove or relocate.

(~~5~~9) If the applicant is proposing to install overhead facilities, evidence that surplus space is available for locating its facilities on existing utility poles along the proposed route.

(10~~6~~) If the applicant is proposing an underground installation in existing ducts or conduits within the public ways, information in sufficient detail to identify:

A. The excess capacity currently available in such ducts or conduits before installation of the applicant's facilities; and

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

(11~~7~~) 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

(12~~8~~) A preliminary construction schedule and completion date.

(13~~9~~) 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.

(14~~0~~) Information in sufficient detail to establish the applicant's technical qualifications, experience and expertise regarding the facilities and services described in the application. Information should include, but is~~t~~ not limited to a list of the last five projects completed, description of work provided, dates of completion, address of work, owner contact name, phone number and email address.

(15~~1~~) 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.

(16~~2~~) All fees, deposits or charges required pursuant to Section 1016.06.

(17~~3~~) Such other and further information as may be required by the City Manager.

~~(c) Inside Services Use Permit; Additional Required Information. Any service provider wishing to obtain an inside services use permit must provide the following additional information in its permit application:~~

~~(1) An accurate map showing the location of any existing facilities in the City that the applicant intends to use or lease, on a "to scale" drawing established using State Plane Coordinates.~~

~~(2) A description of the services or facilities that the applicant will offer or make available to the City and other public, educational and governmental institutions.~~

~~(3) A description of the applicant's access and line extension policies.~~

~~(4) The area or areas of the City the applicant desires to serve and a schedule for build-out to the entire area addressed by the permit.~~

~~(5) All fees, deposits or charges required pursuant to Section 1016.06.~~

~~(6) Such other and further information as may be requested by the City Manager.~~

(~~d~~c) Determination by the City. Within 120 days after receiving a complete application under subsection~~s~~ (b) ~~and (c)~~ hereof, the City Manager shall issue a written determination granting or denying the application in whole or in part, applying the following standards:

(1) The financial and technical ability of the applicant.

(2) ~~The legal ability of the applicant~~The applicant's legal ability to perform the work and to do so in the intended location(s).

(3) The capacity of the public ways to accommodate the applicant's proposed facilities.

(4) The capacity of the public ways 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 public interest in minimizing the cost and disruption of construction within the public ways.

(7) The effect, if any, on public health, safety and welfare if the permit is issued.

(8) The availability of alternate routes and/or locations for the proposed facilities.

(9) Applicable Federal and State laws, regulations and policies.

(10) Such other factors as may demonstrate that the permission to use the public ways will serve the community interest.

If the application is denied, the written determination shall include the reasons for denial.

(e) Amendment of Permit.

(1) A new Use Permit shall be required of any Use Permit holder that desires:

A. To extend its facilities in the City's public ways;

B. To extend its designated service area under a Use Permit; or,

C. To locate its facilities in the public ways of the City in areas that are not included in a Use Permit previously issued under this chapter.

~~(1) A new outside services use permit shall be required of any outside services use permit holder that desires:~~

~~A. To extend its facilities in the City's public ways; or~~

~~B. To locate its facilities in public ways of the City in areas that are not included in a use permit previously issued under this chapter.~~

~~(2) A new inside services use permit shall be required of any inside services use permit holder that desires:~~

~~A. To extend its designated service area under an inside services use permit; or~~

~~B. To locate its facilities in public ways of the City that are not included in an inside services use permit previously issued under this chapter.~~

(~~3~~2) If ordered by the City to locate or relocate its facilities in public ways not included in a previously issued permit, the City shall issue a permit amendment consistent with the City's order without further application.

(Ord. 96-149. Passed 5-7-97.)

1016.04 GENERAL PUBLIC WAY USE REGULATIONS.

(a) Nonexclusive Permit. No ~~u~~Use ~~p~~Permit ~~-~~granted under Section 1016.03 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 ~~use permit~~Use Permit granted under this section 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. An outside services use permit granted under Section 1016.03(a)(1) shall be limited to a grant to occupy the specific public ways and defined portions thereof. An inside services use permit granted under Section 1016.03(a)(2) shall be limited to the specific geographic area of the City to be served by the permit holder, and the specific public ways and defined portions thereof necessary to provide service to such areas.~~

(~~d~~c) Location of Facilities. All facilities shall be constructed, reconstructed, installed and located in accordance with the following terms and conditions:

(1) Facilities shall be installed within an existing underground duct or conduit whenever excess capacity exists within such facility.

(2) A permit holder with permission to install overhead facilities shall install its facilities on pole attachments to existing utility poles only, and then only if surplus space is available.

(3) Whenever any existing electric utilities, cable facilities, telecommunications facilities or other facilities are located underground within a public way of the City, a permit holder with permission to occupy the same public way must also locate its facilities underground.

(4) Whenever any new or existing electric utilities, other utilities, cable facilities, telecommunications facilities or other facilities are located or relocated underground within a public way of the City, a permit holder that currently occupies the same public way shall relocate its facilities underground within a reasonable period of time, which shall not

be later than the expiration date of the permit of the service provider initiating the location or relocation of such facilities underground. Absent extraordinary circumstances or undue hardship as determined by the City Manager, such relocation shall be made concurrently to minimize the disruption of the public ways and shall be carried out at the permit holder's expense.

(5) Except for overhead facilities as provided herein, no facilities shall be located above ground in a public way.

(6) The City reserves the right to require a permit holder to provide excess capacity in the public way at the time of construction, reconstruction, installation, location or relocation of facilities.

(e) Construction Permits. Prior to commencing any construction, reconstruction, installation, maintenance or repair of facilities or any excavation of the public ways, all ~~u~~Use ~~p~~Permit ~~-~~holders are required to obtain construction permits from the City Manager for facilities as required in Section 1016.05, provided that any service provider who began constructing, reconstructing, installing, maintaining or repairing facilities or any excavation of public ways prior to the effective date of this chapter shall have ninety days to apply for a construction permit.

(f) 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, easements, and right-of- ~~by~~ways by an ordinance of City Council.

~~(g) Service Within the City. An outside services use permit holder may be permitted to offer or provide services to persons or areas within the City upon submitting a new application for approval of an inside services use permit.~~

(h) Nondiscrimination. An ~~n~~ ~~inside services~~ Uuse ~~p~~Permit ~~-~~holder shall make its services available to any customer within the designated service area who shall request such service, without discrimination as to the terms, conditions, rates or charges for the permit holder's services, provided, however, that nothing in this section shall prohibit a permit holder from making any reasonable classifications among differently-situated customers.

(i) Service to the City; Schools; Libraries; Health Care Providers. An inside services ~~u~~Use ~~p~~Permi~~t~~ ~~-~~holder providing telecommunications or cable services shall make its telecommunications or cable services available to the City, schools, libraries and health care providers at its most favorable rate.

(j) Interference With the Public Ways. Except as otherwise provided by Chapter 1016, ~~No~~ no ~~u~~Use ~~p~~Permit~~-~~holder may locate or maintain its Facilities so as to unreasonably interfere 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 permit holder, temporarily or permanently, as determined by the City Manager, at the permit holder's expense.

(k) Damage to Property. No ~~use permit~~Use Permit holder, nor any person acting on the permit holder'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. Any damage to public or private property shall be restored, to the ~~S~~standards set by the City of Hudson and to its preconstruction condition or better.

(l) Notice of Work. Except as provided in subsection (m) hereof, no ~~u~~Use ~~p~~Permit holder, nor any person acting on the permit holder's behalf, shall commence any nonemergency work in or about the public ways of the City, or other ways, without ten (10) working days advance notice to the City and obtaining a construction permit pursuant to Section 1016.05.

(m) Repair or Emergency Work. In the event of the need for any unexpected repair or emergency work, a ~~u~~Use ~~p~~Permit-holder may commence such repair and emergency response work as required under the circumstances, provided the ~~use permit~~Use Permit holder 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. The permit holder shall apply for a construction permit within five days of commencing such repair or emergency work.

(n) Maintenance of Facilities. Each permit holder shall maintain its facilities in good and safe condition and in a manner that complies with all applicable Federal, State and local requirements.

(o) Relocation or Removal of Facilities. Within thirty days following written notice from the City, a ~~use permit~~Use Permit -holder shall, at its own expense, temporarily or permanently remove, relocate, change or alter the position of any facilities within the public ways whenever the City shall have determined that such removal, relocation, change or alteration is reasonably necessary for:

(1) The construction, reconstruction, repair, maintenance or installation of any City or other public improvement in or upon the public ways; or

(2) The operations of the City or other governmental entity in or upon the public ways.

(p) Removal of Unauthorized Facilities. Within thirty days following written notice from the City, any permit holder, service provider or other person that owns, controls or maintains any unauthorized system, facility or 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 (30) days have expired, the City may, at the City Manger's discretion, repair or remove the facilities or appurtenances from the public ways at the ~~other party's~~Permit Holder, Service Provider, and/or Contractor's expense. A system or facility is unauthorized and subject to removal in the following circumstances:

(1) Upon termination of the permit holder's ~~u~~Use ~~p~~Permit;

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

(3) If the system or facility was constructed, reconstructed, installed, operated, located or maintained without the prior grant of a ~~use permit~~Use Permit ;

(4) If the system or facility was constructed, reconstructed, installed, operated, located or maintained, or any excavation of a public way was performed, without prior issuance of a required construction permit, except as otherwise provided by this chapter; or

(5) If the system or facility was constructed, reconstructed, installed, operated, located or maintained, or any excavation of a public way was performed, at a location not permitted by the permit holder's ~~use~~ Use ~~p~~Permi~~t~~t or construction permit; provided that any Service Provider, Contractor, and/or Permit Holder~~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.

(q) 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.

(r) Damage to Permit Holder'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.

(s) Restoration of Public Ways, Other Ways ~~and~~, City Property, Easements, and/or Other Property.

(1) When a permit holder, or any person acting on its behalf, does any work in or affecting any public ways, other ways, ~~or~~ City property, easements, and/or other property (including private property), it shall, after the work is completed or stalled for over 14-days and at its own expense, promptly remove any obstructions therefrom and restore such ways or property, within ~~ten to thirty days~~14-days, ~~at the City Manager's discretion,~~ to as good a condition~~, per City of Hudson Engineering Standards,~~ as existed before the work was undertaken and in accordance with the City of Hudson's Engineering standards, unless otherwise directed by the City.

(2) If weather or other conditions do not permit the complete restoration required by this section, the permit holder shall notify the City Manager and temporarily restore the affected ways or property to standards promulgated by the City Manager. Such temporary restoration shall be at the permit holder's sole expense and the permit holder shall promptly undertake and complete the required permanent restoration when the weather, industry conditions, or other conditions no longer prevent such permanent restoration, as determined by the City Manager.

(3) A permit holder 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.

(4) Any person performing work which impacts any public ways, other ways City property, or easements must notify the City Manager prior to beginning work. If the work is performed in response to an emergency, the City Manager must be notified within 24-hours.

(5) If any Service Provider, Contractor, and/or Permit Holder fails to adequately restore any public ways, other ways, easements, City property, or other property to its original or better condition, the City shall notify the Service Provider, Contractor, and/or Permit Holder and demand that the property be restored within 14-days. The Service Provider, Contractor, and/or Permit Holder's may appeal this decision to the City Manager who may provide additional time to effectuate the repair based upon weather conditions, industrial considerations, and the City's ability to make the repair on the person's behalf. The City Manager's decision may subsequently be appealed to City Council within seven (7) days by submitting their notice of appeal to the Clerk of Council. Council will review the matter de novo and hold an evidentiary hearing. Failure to restore the afflicted property or appeal the notice may result in the actions, fees, and fines described herein and in Section 1016.99.

(6) The City may repair and/or restore any public ways, other ways, City property, easements, or other property to its original or better condition and assess fees against the Service Provider, Contractor, and/or Permit Holder to cover any and all costs incurred to undertake said repair and/or restoration. Repair/restoration fees may be deducted from the Permit Holder's Security Fund, applicable bond, or applicable surety. Unpaid fees shall incur interest at 1.5% per month or the prevailing industry standard (whichever is greater). The City of Hudson is entitled to collection fees and attorneys' fees for fees left unpaid after 6 months. The City of Hudson is entitled to treble damages in the event that a public utility refuses to abide by this Chapter.

(7) The City may order the Service Provider, Contractor, and/or Permit Holder to repair and/or restore any public ways, other ways or City property, easements, or other property to its original or better condition. Failure to comply with the order may result in the assessment of fines as found in Section 1016.99. Unpaid fines shall incur interest at 1.5% per month or the prevailing industry standard (whichever is greater). The City of Hudson is entitled to collection fees and attorneys fees for fines left unpaid after 6 months. The City of Hudson is entitled to treble damages in the event that a public utility refuses to abide by this Chapter.

(8) The City may repair and/or remove any utility which poses an imminent risk of harm. Costs of said repair and/or removal shall be charged to the Service Provider, Contractor, and/or Permit Holder as a fee for the actual cost of work performed by the City and/or its designee. Repair/restoration fees may be collected from the Permit Holder's Security Fund, applicable bond, or applicable surety. Any outstanding repair/restoration fees will be billed to the Service Provider, Contractor, and/or Permit Holder. Unpaid fees shall incur interest at 1.5% per month or the prevailing industry standard (whichever is

greater). The City of Hudson is entitled to collection fees and attorney's fees for fees left unpaid after 6 months. The City of Hudson is entitled to treble damages in the event that a public utility refuses to abide by this Chapter.

(9) Private property owners may provide notice to the City Manager, ~~Engineer~~Service Provider, Contractor, and/or Permit Holder that their property has not been restored to the same or better condition subject to City standards as before the utility work began. If neither the Service Provider, Contractor, nor Permit Holder responds within fourteen (14) days, the private property owner may repair the property on his or her own and institute a private cause of action against the ~~constractore~~Service Provider, Contractor, and/or Permit Holder ~~ontractor~~ to recover any costs associated with their repair and/or restoration.

(t) Facilities Maps. Each permit holder shall provide the City with an accurate map or maps 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. Each permit holder shall provide updated maps and digital information annually at the time of registration.

(u) Duty to Provide Information.

(1) Within ten days of a written request from the City Manager, each permit holder shall furnish the City with the following information:

A. Information sufficient to demonstrate that the permit holder has complied with all requirements of this chapter.

B. That all Municipal sales, message and/or utility taxes due the City in connection with the services and facilities provided by the permit holder have been properly collected and paid by the permit holder.

C. All books, records, maps and other documents, maintained by the permit holder with respect to its facilities within the public ways shall be made available for inspection by the City at reasonable times and intervals.

(v) Leased Capacity. A permit holder shall have the right, without prior City approval, to offer or provide capacity or bandwidth to its customers, provided that:

(1) The permit holder shall furnish the City with a copy of any such lease or agreement; and

(2) The customer or lessee has complied, to the extent applicable, with the requirements of this chapter.

(w) Permit Holder Insurance. As a condition of the ~~use permit~~Use Permit, a ~~use~~Use ~~permit~~Permit holder must secure and maintain the following liability insurance policies insuring both the permit holder and the City, and its elected and appointed officers, officials, agents and employees as additional insureds:

(1) Comprehensive general liability insurance with limits not less than:

A. Five million dollars ($5,000,000) for bodily injury or death to each person;

B. Five million dollars ($5,000,000) for property damage resulting from any one accident; and

C. Five million dollars ($5,000,000) for all other types of liability.

(2) Automobile liability for owned, non-owned and hired vehicles with a limit of three million dollars ($3,000,000) for each person and three million dollars ($3,000,000) for each accident.

(3) Worker's compensation within statutory limits and employer's liability insurance with limits of not less than one million dollars ($1,000,000).

(4) Comprehensive form premises-operations, explosions and collapse hazard, underground hazard and products completed hazard with limits of not less than three million dollars ($3,000,000).

(5) The liability insurance policies required by this subsection shall be maintained by the permit holder throughout the term of a ~~use permit~~Use Permit, and such other period of time during which the permit holder is operating without a permit hereunder, or is engaged in the removal of its facilities. Each such insurance policy shall contain the following endorsement:

A. "It is hereby understood and agreed that this policy may not be canceled nor the intention not to renew be stated until ninety days after receipt by the City, by registered mail, of a written notice addressed to the City Manager of such intent to cancel or not to renew."

(6) ~~—~~Within sixty days after receipt by the City of said notice, and in no event later than thirty days prior to said cancellation, the permit holder shall obtain and furnish to the City replacement insurance policies meeting the requirements of this subsection.

(x) General Indemnification. Each permit application shall include, to the extent permitted by law, the permit holder's express undertaking to defend, indemnify and hold the City and its officers, employees, agents and representatives harmless from and against any and all damages, losses and expenses, including reasonable attorney's fees and costs of suit or defense, arising out of, resulting from or alleged to arise out of or result from the negligent, careless or wrongful acts, omissions, failures to act or misconduct of the permit holder or its affiliates, officers, employees, agents, contractors or subcontractors in the construction, reconstruction, installation, operation, maintenance, repair or removal of its facilities, and in providing or offering services over the facilities or system, whether such acts or omissions are authorized, allowed or prohibited by this chapter or by a grant agreement made or entered into pursuant to this chapter.

(y) Performance and Construction Surety. Before a ~~use~~ Use ~~p~~Permit ~~granted~~ pursuant to this ~~chapter~~ Chapter is effective, and as necessary thereafter, the permit holder shall provide and deposit such monies, bonds, letters of credit or other instruments in form and substance acceptable to the City as may be required by this chapter.

(z) Security Fund. Each permit holder shall establish a permanent security fund with the City by depositing the amount of fifty thousand dollars ($50,000) with the City in cash, an unconditional letter of credit, or other instrument acceptable to the City, which fund shall be maintained at the sole expense of the permit holder so long as any of the permit holder's facilities are located within the public ways of the City.

(1) The fund shall serve as security for the full and complete performance of this chapter, including any costs, expenses, damages or loss the City pays or incurs because of any failure attributable to the permit holder to comply with the codes, ordinances, rules, regulations or permits of the City.

(2) Before any sums are withdrawn from the security fund, the City shall give written notice to the permit holder:

A. Describing the act, default or failure to be remedied, or the damages, cost or expenses which the City has incurred by reason of the permit holder's act or default;

B. Providing a reasonable opportunity for the permit holder to first remedy the existing or ongoing default or failure, if applicable;

C. Providing a reasonable opportunity for the permit holder to pay any monies due the City before the City withdraws the amount thereof from the security fund, if applicable; and,

D. That the permit holder will be given an opportunity to review the act, default or failure described in the notice with the City Manager.

(3) Permit holders shall replenish the security fund within fourteen days after written notice from the City that there is a deficiency in the amount of the fund.

(4) Failure to ~~establist~~establish, maintain, and replenish as directed a security fund will be considered a violation of this chapter subject to the administrative penalties contained in Section 1016.99.

(aa) Performance Bond, Formerly Construction and Completion Bond. A construction bond written by a corporate surety acceptable to the City equal to at least ~~100~~ 110 percent (110%) of the estimated cost of any restoration required under C.O. 1016.04 (s) including but not limited to: constructing, reconstructing, installing or repairing the permit holder's facilities or excavation within the public ways of the City shall be deposited before construction is commenced.

(1) The construction bond shall remain in force until twenty-four ~~eighteen~~ months after substantial completion of the work, as determined by the City Manager, including restoration of public ways and other property affected by the construction.

(2) The construction bond shall guarantee, to the satisfaction of the City:

A. Timely completion of construction;

B. Construction in compliance with applicable plans, permits, technical codes and standards;

C. Proper location of the facilities as specified by the City;

D. Restoration of the public ways and other property affected by the construction;

E. The submission of record drawings, in both written and digital format, after completion of the work as required by this chapter; and

F. Timely payment and satisfaction of all claims, demands or liens for labor, material or services provided in connection with the work.

(3) The City Manager shall review the estimated cost and pre-approval prior to submittal and acceptance of this bond.

(bb) Coordination of Construction Activities. All permit holders are required to cooperate with the City, including its service and safety forces, and with each other. All construction, reconstruction, installation, excavation, locations, activities and schedules shall be coordinated, as ordered by the City Manager, to minimize public inconvenience, disruption or damages.

(cc) Assignment or Transfer of Permits. Ownership or control of a ~~u~~Use ~~p~~Permit ~~-~~may not, directly or indirectly, be transferred, assigned or disposed of by sale, lease, merger, consolidation or other act of the permit holder, by operation of law or otherwise, without the prior consent of the City Council as expressed by ordinance, which consent shall not be unreasonably withheld or delayed, as expressed by ordinance and then only on such reasonable conditions as may be prescribed therein.

(1) No grant shall be assigned or transferred in any manner within twelve months after the initial grant of the permit.

(2) Absent extraordinary and unforeseeable circumstances, no grant, system or integral part of a system shall be assigned or transferred before construction of the facilities has been completed.

(3) The permit holder and the proposed assignee or transferee of the grant shall provide and certify the following information to the City not less than 120 days prior to the proposed date of transfer:

A. Complete information setting forth the nature, terms and condition of the proposed transfer or assignment;

B. All information required of a ~~use~~ Use ~~permit applicant~~Permit applicant pursuant to Section 1016.03 with respect to the proposed transferee or assignee; and

C. Any other information reasonably required by the City Manager.

(4) Any transfer or assignment of a ~~use~~ Use ~~permit without p~~Permit without prior approval of the City under this subsection shall be void and is cause for revocation of the grant.

(dd) Transactions Affecting Control of Permit. Any transactions which singularly or collectively result in a change of ten percent or more of the ownership or working control of a ~~u~~Use ~~p~~Permit ~~-~~holder, of the ownership or working control of the permit holder or of a facility, or of control of the capacity or bandwidth of the permit holder's system, facilities or substantial parts thereof, shall be considered an assignment or transfer requiring City approval pursuant to subsection (cc) hereof. Transactions between affiliated entities are not exempt from City approval.

(ee) Revocation or Termination of Permit. An ~~u~~Use ~~p~~Permit granted by the City to use or occupy public ways of the City may be revoked for any one of the following reasons:

(1) Construction, reconstruction, installation, location, operation or excavation in the City or in the public ways of the City without a ~~use permit~~Use Permit.

(2) Construction, reconstruction, installation, location, operation or excavation at an unauthorized location.

(3) Construction, reconstruction, installation, location, operation or excavation in violation of City safety and/or construction requirements.

(4) Unauthorized substantial transfer of control of the permit holder.

(5) Misrepresentation or lack of candor by or on behalf of a permit holder in any permit application or registration required by the City.

(6) Abandonment of facilities in the public ways.

(7) Failure to relocate or remove facilities, or failure to restore public ways, as required in this chapter.

(8) Failure to pay taxes, compensation, fees or costs when and as due the City.

(9) Insolvency or bankruptcy of the permit holder.

(10) Violation of material provisions of this chapter.

(ff) Notice and Duty to Cure. In the event that the City Manager believes that grounds exist for revocation of an ~~u~~Use ~~p~~Permit, he or she shall give the permit holder written notice of the apparent violation or noncompliance, providing a short and concise statement of the nature and general facts of the violation or noncompliance, and providing the permit holder a reasonable period of time not exceeding thirty days to furnish evidence:

(1) That corrective action has been, or is being actively and expeditiously pursued, to remedy the violation or noncompliance;

(2) That rebuts the alleged violation or noncompliance; and/or

(3) That it would be in the public interest to impose some penalty or sanction less than revocation.

(gg) Hearing. In the event that a permit holder fails to provide evidence reasonably satisfactory to the City Manager as provided in subsection (ff) hereof, the City Manager shall refer the apparent violation or noncompliance to the ~~Utilities Committee of~~Hudson City Council. The ~~Utilities Committee~~ City Council shall provide the permit holder with notice and a reasonable opportunity to be heard concerning the matter.

(hh) Standards for Revocation or Lesser Sanctions. If persuaded that the permit holder has violated or failed to comply with material provisions of this chapter, the ~~Utilities Committee of~~ City Council shall determine whether to revoke a ~~use permit~~Use Permit~~.~~, or to establish some lesser sanction and cure, considering the nature, circumstances, extent and gravity of the violation as reflected by one or more of the following factors:

(1) Whether the misconduct was egregious.

(2) Whether substantial harm resulted.

(3) Whether the violation was intentional.

(4) Whether there is a history of prior violations of the same or other requirements.

(5) Whether there is a history of overall compliance.

(6) Whether the violation was voluntarily disclosed, admitted or cured.

The ~~Utilities Committee's~~City Council's decision shall be final.

(ii) Revocation of a Use Permit, the standards, and the procedures described herein shall not preempt nor otherwise alter the duties, standards, procedures, nor penalties for any violation of this Chapter including those found in C.O. 1016.04 and 1016.99.

(Ord. 96-149. Passed 5-7-97.)

1016.05 CONSTRUCTION STANDARDS.

(a) In General. No person shall commence or continue with the construction, reconstruction, installation, maintenance or repair of facilities or excavations within the public ways except as provided in this section.

(b) Construction Codes. 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 City of Hudson Engineering Standards, Ohio Department of Transportation and National Electrical Safety Code. Where a conflict exists between standards, the City Manager will determine the applicable repair method and extent.

(c) Construction Permits. Also known as a Right-of-Way permit. Except as provided in Section 1016.04(m) of this chapter, no person shall construct, reconstruct, install, maintain or repair any facilities, or excavate, within the public ways, without first obtaining a construction permit therefor, provided, however, that:

(1) No permit shall be issued for the construction, reconstruction, installation, maintenance or repair of facilities, or excavation, within the public ways, unless the service provider has filed a registration statement with the City pursuant to Section 1016.02 of this chapter.

(2) No permit shall be issued for the construction, reconstruction, installation, maintenance or repair of facilities, or excavation, in the public ways unless the service provider has applied for and received an ~~u~~Use ~~permit pursuantp~~Permit pursuant to Section 1016.03 of this chapter.

(3) No permit shall be issued for the construction, reconstruction, installation, maintenance or repair of facilities, or excavation, without payment of the construction permit fee established in Section 1016.06(d) of this chapter.

(d) Applications. Applications for permits to construct, reconstruct, install, maintain or repair facilities, or excavate, shall be submitted upon forms to be provided by the City and shall be accompanied by drawings, plans and specifications in sufficient detail to demonstrate:

(1) That the facilities will be constructed, reconstructed, installed, repaired or maintained, or the public way excavated, in accordance with all applicable codes, rules and regulations.

(2) The location and route of all facilities to be located or installed on existing utility poles.

(3) The location and route of all facilities to be located under the surface of the ground, including the line and grade proposed for the burial at all points along the route which are within the public ways. Included with the installation shall be magnetic and fluorescent tape placed at a minimum of one foot to a maximum of two feet above the entire facility as installed for the purpose of locating the facility during future construction activities. The tape shall be marked with the type of facility installed as approved by the City.

(4) The location of all existing underground utilities, conduits, ducts, pipes, mains and installations which are within the public ways along the underground route proposed by the applicant.

(5) The location of all other facilities to be constructed, reconstructed, installed or located within the City, but not within the public ways.

(6) The construction methods to be employed for protection of existing structures, fixtures and facilities within or adjacent to the public ways.

(7) The location, dimension and types of all trees within or adjacent to the public ways along the route proposed by the applicant, together with a landscape plan for protecting, trimming, removing, replacing and restoring any trees or areas to be disturbed during construction.

(e) 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.

(f) 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 (latest edition), ~~latest edition,~~ to prevent injury or damage to persons or property and to minimize disruptions to efficient pedestrian and vehicular traffic.

(g) Issuance of Permit. Within forty-five days after submission of all plans and documents required of the applicant and payment of the permit fees required by this chapter, the City Manager, if satisfied that the application, plans and documents comply with all requirements of this chapter, shall issue a permit authorizing the construction, reconstruction, installation, maintenance or repair of the facilities, or excavation in the public ways, subject to such further conditions, restrictions or regulations affecting the time, place and manner of performing the work as the City Manager may deem necessary or appropriate. Such forty-five day period shall begin after all submissions are deemed by the City Manager to be in accordance with the requirements of this chapter, including information submitted in the form required by this chapter.

(h) Construction Schedule. The permit holder shall submit a written construction schedule to the City Manager ten working days before commencing any work in or about the public ways. The permit holder shall further notify the City Manager 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.

(i) Compliance With Permit. All construction practices and activities shall be in accordance with the construction permit and approved final plans and specifications for the facilities. The City Manager shall be provided access to the work and such further information as he or she may require to ensure compliance with such requirements. Field changes may be approved by the City Manager if such changes are determined to be necessary due to site conditions or other changed circumstances.

(j) Display of Permit. The permit holder shall maintain a copy of the construction permit and approved plans at the construction site, which shall be displayed and made available for inspection by the City Manager at all times when construction work is occurring.

(k) Survey of Underground Facilities. If the construction permit specifies the location of facilities by depth, line, grade, proximity to other facilities or other standard, the permit holder shall cause the location of such facilities in relation to the right-of-way and/or public easement to be verified by a registered Ohio land surveyor. The permit holder shall relocate any facilities which are not located in compliance with permit requirements.

(l) Noncomplying Work. Upon order of the City Manager, all work which does not comply with the permit, the approved plans and specifications for the work, or the requirements of this chapter, shall immediately cease and shall be immediately removed and/or corrected by the permit holder, and/or removed by the City at the Service Provider,

Contractor, and/or Permit Holder's expense, and/or repaired by the City at the Service Provider, Contractor, and/or Permit Holder's expense. ~~.~~ Funds may be withdrawn from the Permit Holder's Security Fund, applicable bond, or applicable surety along with any applicable bond to cover the City's cost to repair, restore, or remove any noncomplying work. Any Service Provider, Contractor, and/or Permit Holder's may be penalized or administratively fined as provided for in Section 1016.99.

(m) Completion of Construction. The permit holder 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~~as provided by Section 1016.04.

(n) Record Drawings. Within sixty days after completion of construction, the permit holder shall furnish the City with two complete sets of plans, drawn to scale and certified to the City as accurately depicting the location of all facilities constructed pursuant to the permit. At such time, the permit holder shall submit the record drawings in a digital format compatible with the City's current computer software.

(o) Restoration of Improvements. Upon completion of any construction work, the permit holder shall promptly repair any and all public ways, easements, public property, private property and provide property improvements, fixtures, structures and facilities which were damaged during the course of construction, restoring them to their ~~originalor~~original or better condition they existed in prior ~~to construction~~to construction subject to City standards. ~~the same as nearly as practicable to their condition before the start of construction. As directed by the City Manager.~~ Failure to repair or restore the above will result in penalties and/or methods described in Sections 1016.04 and 1016.99.

(p) Landscape Restoration.

(1) 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~~ to their original or better condition subject to City standards. ~~nearly as may be practicable, to the condition existing prior to performance of work. As approved by the City Manager.~~ Failure to do so will result in penalties and/or methods described in Sections 1016.04 and 1016.99.

(2) All restoration work within the public ways shall be done in accordance with landscape plans approved by the City Manager.

(q) Construction Surety. Prior to issuance of a construction permit, the permit holder shall provide a construction bond, as provided in Section 1016.04(aa).

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

(Ord. 96-149. Passed 5-7-97.)

1016.06 FEES AND COMPENSATION.

(a) Purpose. It is the purpose of this section to provide for the payment and recovery of all direct and indirect costs and expenses of the City related to the enforcement and administration of this chapter.

(b) Use ~~Permit Fee~~Permit Fee.

(1) Any applicant for a ~~u~~Use ~~p~~Permit pursuant to Section 1016.03 of this chapter shall pay a ~~fee~~ deposit of ~~five hundred dollars~~one thousand dollars ($~~500.00~~1,000.00).

(2) An applicant whose ~~u~~Use ~~permit application~~pPermit application has been withdrawn, abandoned or denied shall, within sixty days of its written request for a ~~use~~ Use ~~p~~Permit~~-~~ fee refund, be refunded the balance of its deposit under this section, less:

A. ~~Fifty dollars ($50.00)~~50% of the feeAdministrative costs of processing the application; and

B. All ascertainable costs and expenses incurred by the City in connection with the application including but not limited to any: engineer review fees, supervision fees, legal review fees, other employee hourly rates, etc~~.~~

(c) Other City Costs. All permit holders shall, within thirty days after written demand therefor, reimburse the City for all direct and indirect costs and expenses incurred by the City in connection with the management of the public ways not otherwise specified in this chapter, including transfer of a ~~use permit~~Use Permit.

(d) Construction Permit Fee.

(1) Prior to the issuance of a construction permit, the permit holder shall pay a permit ~~fee~~ deposit equal to ~~five hundred~~ one-thousand dollars ($~~500.00~~1,000.00), or such other amount determined by a schedule of fees adopted by the City Manager.

(2) The City Manager shall appoint a project representative to oversee all sites covered by the construction permit during the course of the construction, reconstruction, installation, maintenance, repair or excavation, the cost of which shall be paid by the permit holder. The estimated cost of construction oversight shall be based on the current hourly rate~~, presently thirty dollars ($30.00) per hour~~ of the assigned overseer, and shall be deposited with the City prior to commencing the construction, reconstruction, installation, maintenance, repair or excavation, provided, however, that in the event the cost of construction oversight exceeds the amount on deposit at any time, the City shall have the right to demand a sum of money to bring the deposit equal to the actual cost of construction oversight within ten days of written notice to the permit holder. Failure to comply with the written demand to bring the construction oversight deposit current shall be cause to stop all work upon the construction, reconstruction, installation, maintenance, repair or excavation until such demand is complied with. The City may require additional construction oversight at its sole discretion.

(e) City Revision of Fees. The City reserves the right to make reasonable revisions, at its sole discretion, to the fees and compensation required pursuant to Sections 1016.02(b) and 1016.04(f) and this section.

(f) Cable Fees. In addition to the fees set forth in this chapter, cable television franchisees shall be subject to the franchise fees, payments and costs provided in a cable television franchise as required by Section 1016.07 of this chapter.

(g) Regulatory Fees and Compensation Not a Tax. The regulatory fees and costs provided for in this section, and any compensation charged and paid for the public ways provided for in this section, are separate from, and additional to, any and all Federal, State, local and City taxes as may be levied, imposed or due from a service provider, its customers or subscribers, or on account of the lease, sale, delivery or transmission of services.

(Ord. 96-149. Passed 5-7-97.)

1016.07 CABLE TELEVISION FRANCHISE.

(a) Compliance With Chapter Required. Except as provided in Section 1016.01(h), all cable operators providing cable service within the City shall comply with the registration, ~~use permit~~Use Permit- and construction permit requirements of this chapter.

(b) Cable Television Franchise Required. No cable operator shall provide cable service within the City without first securing from the City a nonexclusive franchise.

(c) Cable Television Franchise Expiration.

(1) In the event a franchise expires by its terms, the franchise shall be automatically renewed on a month-to-month basis until terminated by either party in accordance with law.

(2) At the expiration of the franchise or upon revocation of the franchise, the City may, in a lawful manner and upon the payment of fair market value, determined on the basis of the cable system as valued as a going concern exclusive of any value attributable to the franchise itself, lawfully obtain, purchase, condemn, acquire, take over and hold the cable system.

(d) Cable System Capacity. No cable operator shall build its system beyond the capacity necessary to provide cable television or institutional network service without obtaining express permission from the City and securing a use ~~permit hereunder~~permit hereunder. The City's permission shall not be unreasonably withheld.

(Ord. 96-149. Passed 5-7-97.)

1016.99 PENALTIES; EQUITABLE REMEDIES.

(a) Penalties. Any person found guilty of violating, disobeying, omitting, neglecting or refusing to comply with any of the provisions of this chapter shall be fined administratively ~~not less than one hundred dollars ($100.00) nor more than five hundred dollars ($500.00)~~ for each offense. A separate and distinct offense shall be deemed committed each day during or on which a violation occurs or continues. A person will be fined $100.00 for their first offense, $250.00 for their second offense, and $500.00 for their third and any subsequent offense.

(b) City's Right to Repair. The City may repair and/or restore any public ways, other ways, City property, landscaping, or surrounding property which is not repaired or restored as described in this Chapter. The Service Provider, Contractor, and/or Permit Holder responsible for the damage and/or injury shall bear the cost of the City's repair and/or restoration in the form of fees. Fees shall initially be drawn from the Permit Holder's Security Fund, applicable bond, and applicable surety. Any unpaid fees shall incur interest at 1.5% per month or the prevailing industry standard interest rate (whichever is greater). The City shall be entitled to reasonable collection and attorney fees. The City shall be entitled to treble damages in the event that a public utility refuses to cooperate with the City to restore the property and/or refuses to pay any fees charged by the City to repair or restore the subject property after six months.

(c) Private Right to Repair. A property owner may repair and/or restore any of their property damaged by a utility which was not restored to the same or similar condition as it existed in prior to any utility work. The property owner shall notify the utility owner or contractor of any defects and provide them 30-days to perform the work. The City Engineer may extend the deadline to effectuate a repair based upon weather, the season, and industry standards. If the matter remains unresolved, the property owner may repair or restore their property and charge the responsible party the cost of the any repair or restoration. The responsible party shall be liable to the property owner for any collection costs and attorney fees. The property owner shall be entitled to treble damages in the event that a public utility refuses to cooperate with the City to restore the property and/or refuses to pay any fees charged by the City to repair or restore the subject property after six months.

(b) Other Remedies. Nothing in this chapter shall be construed as limiting any judicial remedies that the City may have, at law or in equity, for enforcement of this chapter.

(Ord. 96-149. Passed 5-7-97.)