



CITY COUNCIL  
Work Session, Tuesday, March 20, 2023 5:00 p.m.  
Council Chambers

- I. CALL TO ORDER
- II. ROLL CALL
- III. APPROVAL OF AGENDA
  
- IV. DISCUSSION ITEMS
  - A. Draft Spring House Park Master Plan
  - B. Golf Food and Beverage Options
  - C. Electric Underground
  - D. BDC Agreement Land Use
  
- V. COUNCIL COMMITTEE/EVENT UPDATES
- VI. ADJOURNMENT

# Memo

**To:** Pete E. Landrum, City Manager  
**From:** Jeff Moorman, P.E., Public Service Director/City Engineer  
**Subject:** Utility Regulation within City Right-of-Way  
**Date:** March 16, 2023



Attached to this memo is a proposed new section 96.34 and an amendment to section 96.99, with the proposed additions highlighted in yellow. The majority of these changes address issues related to the relocation of utilities to accommodate public improvements and to encourage utilities to cooperate in planning and construction of their facilities. However, proposed section 96.34 (C) would give the City Engineer the authority to require new utility lines to be installed entirely underground, or to only allow utility placement within certain portions of the Right-of-Way. The placement of utilities underground has significant impacts to installation costs paid by either the utility company, or the land developer requiring the utility service, and further discussion is recommended prior to implementation to better define corridors where this requirement might be desired.

Please contact this office if you have any questions regarding these draft changes.

## EXCAVATION AND CONSTRUCTION

### § 96.34 OBLIGATIONS OF PERMITTEES; CONDITIONS OF PERMITS.

(A) In addition to the other requirements set forth herein each permittee, shall:

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

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

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

(4) Upon reasonable written notice of and at the direction of the City Engineer, and at the permittee's sole cost, promptly remove or rearrange facilities as necessary, to facilitate any construction, repair or modification of any street, sidewalk, city utility or other public improvement, or as part of the City Engineer's determination that designated portions of its rights-of-way should accommodate only underground facilities or that facilities should occupy only one side of a street or other public way, or if an additional or subsequent City or other public use of rights-of-way is inconsistent with the then current uses of such permittee or for any other reasonable cause as determined by the City Engineer.

(5) Provide maps and other information relating to a permittee's facilities and operations within the rights-of-way and compliance with this chapter in such form, including digital or other form compatible with any city geographic information system, as the administrative regulations require. Said maps and information shall, at a minimum, locate, describe and identify all uses of, and "as built" structures and facilities of such permittee in, the rights-of-way;

(6) Perform all work, construction, maintenance or removal of structures and facilities within the right-of-way, including tree trimming, in accordance with good engineering and construction practice including any appropriate safety codes and use its best efforts to repair and replace any street, curb or other portion of the right-of-way, or facilities or structure located therein, to a condition to be determined by the City Engineer to be adequate under current standards and not less than materially equivalent to its condition prior to such work and to do so in a manner which minimizes any inconvenience to the public, the City and other permittees.

(7) Register with underground reporting services;

(8) Use its best efforts to cooperate with the City in any emergencies involving the rights-of-way, including the maintenance of a 24 hour emergency contact;

(9) Using distinct identification, identify all structures and facilities in the right-of-way; and

(10) Designate a single point of contact for all purposes hereunder, as well as comply with such other contact and notice protocols.

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

(C) Following the receipt of a right-of-way permit proposing the installation of new facilities or material modifications to existing facilities, every such permittee shall be required to apply for and obtain the City Engineer's approval for said installation. For the purposes of this section, **FACILITIES** shall mean, but not necessarily be limited to, poles, transformers, conductors, conduits, ducts, cables, pipes, wires, fibers, lines, mains, vaults, manholes, amplifiers, appliances, towers, antennae, wave guides, optic fiber, microwave, and laser beams. For the purposes of this section, **MATERIAL MODIFICATION** shall mean, but not necessarily be limited to, a material increase, decrease, alteration, or change to current facilities regarding: type of infrastructure, capacity, size, service, technology, or delivery methodology. Within 15 days of the receipt of a completed application for such new facilities installation or material modification, the City Engineer shall either: approve the new facilities installation or material modification as requested; deny the new facilities installation or material modification as requested; or conditionally approve the new facilities installation or material modification subject to the permittee's following certain amendments to the work as may be required by the City Engineer. When reviewing an application for new facility installation or material modification, the City Engineer shall take into consideration all applicable current and future right-of-way usage needs, the health and safety of the public, responsible land use planning requirements, economic development issues, aesthetics, and any other reasonable considerations as may be required by this chapter. When granting a conditional approval for new facilities installation or material modification that contains required amendments, the City Engineer may require the facilities, at the permittee's sole cost: be placed in certain specific locations of the right-of-way, meet certain technological or physical parameters, and/or be located entirely underground. A permittee may appeal the City Engineer's decision regarding the approval or denial of a request for new facilities installation or material modification of a permittee's facilities to the City Council.

#### **§ 96.35 PERMIT REQUIRED FOR EXCAVATION AND CONSTRUCTION.**

(A) No person, firm, corporation, or political subdivision whether an abutting owner or tenant or otherwise, shall do or permit to be done by its agents, contractors, or employees, without first having obtained a permit from the City Engineer or his duly authorized representative to do any of the following acts:

(1) Make any excavations in any public right-of-way, street, sidewalk space, alley, lane or other public way or place.

(2) Remove, break, or make holes in any pavement of the streets, alleys, driveway aprons, sidewalk spaces or other public ways or places, or cut any curb.

(3) Construct, build, erect or place any article or structure in or upon a street, driveway apron, sidewalk, alley, lane, sidewalk space, public right-of-way or place.

(4) Make any improvement or change in the surface of any street, alley, lane, sidewalk space, or any other public right-of-way or place by grading, placing stone paving or laying sidewalks or curbing, or place or paint any sign or advertising matter on the surface of any such place.

(5) Construct, build or maintain any driveway apron over or through any gutter, curb, tree lawn or sidewalk.

(B) Except as provided for in § [96.35\(C\)](#) and § [96.35\(D\)](#), any person, firm, corporation or political subdivision that does or permits to be done any of the items in divisions (A)(1) through (A)(5) listed above without a valid permit from the City Engineer or his duly authorized representative shall:

(1) Pay for and obtain a permit for such work and otherwise comply with the provisions of this section.

(2) Comply with any stop work order issued by the City Engineer, correct any work that does not meet city specifications, and secure the work site in a manner which protects the public's health, safety, and well-being as determined by the City Engineer.

(3) Each day that work is performed without a valid permit shall constitute a separate violation under § [96.99\(C\)](#).

(C) The provisions of this section shall not apply as to require a permit for the following purposes:

(1) Work being performed by a contractor under direct contract to the city for improvements within the public right-of-way.

(2) For the repairing of sidewalks, driveway aprons, handicapped ramps, curb, gutters and for the improvement of streets or other public places under or by virtue of a contract with the city.

(3) Departments of the city performing work within the public right-of-way.

(D) In cases of emergency requiring immediate action to make repairs to gas, water, sanitary, electric, telephone, or other utilities where time does not permit the making of application and securing of a permit from the City Engineer or his duly authorized representative as herein otherwise required, the person, firm, corporation, or political subdivision required to perform such repairs may proceed. In such case, the person, firm, corporation, or political subdivision shall make application and secure a permit for such undertakings at the earliest possible time and shall in all other respects comply with the provisions of this section.

(E) All permit applications shall be submitted on the form provided by the city. The application shall contain the location, kind, estimated size of any opening or cut, the estimated time to complete the project, and shall include a copy of any plans or specification for the work.

(F) Any person, firm, corporation or political subdivision granted a permit shall be subject to the following obligations to the city in the exercise of the privilege hereby granted:

(1) All work shall comply with the standard drawings and specifications established by the City Engineer.

(2) A valid certificate of registration as required in § 96.36 must be obtained.

(3) Liability insurance as specified in § 96.36 must be maintained.

(G) Any permit granted by the City Engineer or his duly authorized representative may be revoked and terminated at any time when, in the City Engineer's opinion, the terms of this section are being violated, or when the continued exercise of the privilege constitutes a menace to the public safety or is an unreasonable use of the public streets or right of way. Such termination shall in no way relieve the contractor of previous corrective obligations incurred with the city.

(H) The City Manager shall review and approve a schedule of fees for permits and inspections on an annual basis.

(Ord. 20-31, passed 11-9-20)

### **§ 96.36 CERTIFICATE OF REGISTRATION.**

(A) The purpose of this section is to provide minimum qualification standards for any person, firm or corporation desiring to engage in the business of any construction or excavation on the public right-of-way in the city as described in § 96.35 through the requirement of a certificate of registration and the requirement of a permit.

(B) No person, firm, partnership, corporation, association or other legal entity, or any combination thereof shall undertake individually, or for another, or to engage for compensation in the construction or excavation of the public right-of-way within the City of Beavercreek, until such person, firm, partnership, corporation, association or other legal entity, or any combination thereof, has been duly registered by the city to perform such work.

(C) Any person, firm or corporation desiring to engage in the business of any construction or excavation on the public right-of-way must first obtain a permit to proceed with such construction or excavation. No permit shall be issued to or on behalf of such person, firm or corporation unless such person, firm or corporation first posts bond and furnishes evidence of satisfactory insurance as hereinafter described.

(D) Applicants for registration to engage in or work at the trades, businesses, or professions enumerated in this chapter shall make application for a registration at the Engineering Division on forms prescribed by the City Engineer.

(E) Forms and applications for all registrations and renewal shall be prepared, kept on file, and supplied as needed by the City Engineering Division. Each registration issued shall bear the signature of the City Engineer or the City Engineer's duly authorized representative. All applicants for registration under this section shall furnish the following information on the registration application:

- (1) Company name, address, phone number, and e-mail address.
- (2) A bond complying with the requirements of § [96.36\(H\)](#).
- (3) Proof of insurance complying with the requirements of § [96.36\(I\)](#).
- (4) No registration fee will be collected for a registration application.

(F) Such registration to be issued to such applicant or applicants shall expire on December 31, at midnight, of each year for which the same shall be issued.

(G) Any applicant's registration may be suspended, revoked or not renewed for any one or more of the following reasons:

- (1) Faulty or defective workmanship.
- (2) Failure to timely complete work or project.
- (3) Noncompliance with the provisions of the prevalent adopted code.

(4) For any other reason as determined by the City Engineer that constitutes good cause shown.

(H) The bond which must be filed before a permit may be issued pursuant to § [96.35](#) shall be in the penal sum of \$10,000, conditioned to the effect that such permittee in the building of concrete sidewalks, curbs, driveway approaches or other excavations or constructions in the public right-of-way shall:

- (1) Comply strictly with all the laws and ordinances applicable thereto;
- (2) Construct all such sidewalks, curbs and/or driveway approaches according to established grade and in accordance with specifications adopted by the city or a duly authorized agent thereof;
- (3) Remove all debris after the completion of the work covered by a contract;
- (4) Pay all damages which may accrue because of defective or inferior workmanship or materials in such work, or repair or replace the same, provided such defective conditions become evident within a period of one year after the completion of the construction;
- (5) Indemnify and save harmless the city and the property owner with whom he contracts, and both or either of them, from all claims, charges, losses, costs, damages, suits and actions of every kind against either or both, for or on account of any injury or damage to person or property, or both, because of, arising out of, or incident to the construction of the work in any such contract specified to be done; and

(6) Such bond shall be executed by sureties to the satisfaction of the Financial Administrative Services Director, and, if personal surety is offered he shall be entitled to require that each such surety make affidavit that he is the owner of real property in Greene County, Ohio, and worth over and above all exemptions, debts and other obligations, including all other obligations of guaranty or suretyship whether a surety or guarantor on bonds, on promissory notes, or other obligations, an amount equal to or in excess of the penal sum of such bond.

(I) In addition to furnishing bond referred to the preceding paragraph, the permittee shall furnish satisfactory evidence, before a permit is issued to him or her, that he or she has procured public liability and property damage insurance which shall protect him or her, his or her subcontractors and the city from all claims for damages for personal injuries, including accidental death, in the sum of \$100,000 for anyone person injured, with an aggregate of \$300,000 for any one accident and which shall protect them from claims for property damage in the sum of \$100,000 which claims may arise from his or her operations as a contractor and referred to above.

(J) The following shall be exempt from the requirements of this section:

(1) Any city department, or other governmental agency, doing work within the public right-of-way; and

(2) Any contractor that is working under a construction contract with the city.

(K) A property owner performing work within the right-of-way abutting that property owner's property may be exempted from obtaining a certificate of Registration at the discretion of the City Engineer.

(Ord. 20-31, passed 11-9-20)



**§ 96.99 PENALTY.**

(A) See § [130.99](#) for misdemeanor classifications.

(B) The first violation of § [96.21](#) shall constitute a minor misdemeanor punishable by a fine of not to exceed \$25. The second violation of § [96.21](#) by the same person, whether or not of the same particular requirement or based on the same facts as the first violation, shall also constitute a minor misdemeanor punishable by a fine of not to exceed \$25. The third and each subsequent violation of § [96.21](#) by the same person, whether or not of the same particular requirement or based on the same facts as any previous violation, shall constitute a minor misdemeanor punishable by a fine of not to exceed \$100, and the minimum fine shall be \$75, no portion of which may be suspended.

(Ord. 92-33, passed 10-13-92)

(C) Whoever violates any of the provisions of §§ [96.35](#) through [96.37](#) is guilty of a minor misdemeanor and subject to a maximum fine of \$100.

(Ord. 80-27, passed 4-14-80)

(D) Whoever violates § [96.10](#) is guilty of a minor misdemeanor. The owner of objects found in violation of this section and stored by the city may retrieve their property after paying a storage fee in the amount of \$10 for each object removed from the public right-of-way.

(Am. Ord. 06-32, passed 9-25-06; Am. Ord. 20-31, passed 11-9-20)

(E) Whoever violates § [96.34\(A\)\(4\)](#) by failing to timely comply with a notice by the City Engineer to remove or rearrange facilities shall pay a civil forfeiture penalty equal to any costs incurred by the City as a result of such failure, including but not limited to any penalties charged the City by its contractors occasioned thereby.