

**CHAPTER 1183**  
**RIGHTS-OF-WAY ORDINANCE**

**1183.01      SHORT TITLE.**

This Chapter shall be known and may be cited as the "Rights-of-way Ordinance."

**1183.02      DEFINITIONS.**

For the purposes of this Chapter, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

- (a) "Cable operator" has the same meaning as in section 2 of the "Cable Communications Policy Act of 1984," 96 Stat. 2779, 47 U.S.C.A. 522, as amended.
- (b) "City" means the entire City of Norwalk, Ohio as the same now or in the future may exist.
- (c) "Council" means the City Council of Norwalk, Ohio.
- (d) "Facilities" means the utility poles, wires, cables, lines, guys, anchors, manholes, vaults, pipes, conduits, ducts, pedestals, antenna, transformers, crossbars, repeaters, hubs, routers, and other equipment and related appurtenances owned, controlled or used by cable operators and utility service providers.
- (e) "Force majeure" means a strike, acts of God, acts of public enemies, riots, epidemics, landslides, lightening, earthquakes, fires, tornadoes, storms, floods, washouts, droughts, civil disturbances, explosions, partial or entire failure of utilities, orders of any kind of a government of the United States of America or of the State of Ohio or any of their departments, agencies, political subdivisions, or any other cause or event not reasonably within the control of the disabled party.
- (f) "Grantee" means a person to whom a rights-of-way construction permit is granted, and the grantee's agents, employees and contractors.
- (g) "Person" means an individual, firm, corporation, limited liability company, partnership, proprietorship, association, or legal entity or organization of any kind.
- (h) "Revocable use permit" means a permit issued pursuant to this chapter which grants permission, subject to revocation, to the grantee to continue to use or occupy a part of a rights-of-way for an encroachment onto the rights-of-way existing prior to the effective date of this chapter.
- (i) "Rights-of-way" means the surface, the air space above the surface, and the area below the surface, including the entire width, of any public streets, highway, roadways, avenues, lanes, alleys, courts, places, curbs, sidewalks,

rights-of-way, or other public ways in the City which have been or may hereafter be dedicated to or otherwise acquired by the City.

- (j) "Rights-of-way construction permit" means a permit issued pursuant to this chapter which authorizes the grantee to construct or place facilities in the rights- of-way subject to and in accordance with this chapter.
- (k) "Utility service provider" means a natural gas company, local exchange telephone company, interexchange telecommunications company, electric company, or any other person that occupies a public way to deliver natural gas, electric or telecommunications services.

### **1183.03 PURPOSE.**

The purpose of this Chapter is to manage and administer the impacts of utility service providers, cable operator and other person's use of the rights-of-way.

### **1183.04 CONSTRUCTION AND REPAIR OF FACILITIES.**

- (a) No utility service provider, cable operator, or person shall construct, install, or place facilities in the rights-of-way without prior consent of the City, which consent shall be set forth in a rights-of-way construction permit issued by the City as provided in Section 1183.07 of this Chapter.
- (b) A utility service provider, cable operator, or person seeking to repair, maintain, construct, install, or place facilities in the rights-of-way in a manner that requires cutting, breaking, opening, boring under, or altering street pavement, or digging, excavating, or performing any other work or activity which disturbs the existing surface or subsurface structure, composition, or soil compaction of the rights-of-way shall obtain, in addition to any permit required under paragraph (a) of this section, a street opening permit under Section 901.01 of the Codified Ordinances of the City.

### **1183.05 OBSTRUCTION OF THE RIGHTS-OF-WAY.**

- (a) No utility service provider, cable operator, or person shall obstruct or place obstructing materials in the rights-of-way without prior consent of the City, which consent shall be set forth in a permit issued by the Director of Public Works under this Chapter of the Codified Ordinances of the City; provided however, utility service providers and cable operators may place temporarily trucks, cones, pumps, ventilating equipment, trailers, guards, and other facilities in the rights-of-way in order to enter existing manholes and other underground structures to perform routine repair and maintenance of their facilities which repairs and maintenance do not require cutting, breaking, opening, boring under, or altering street pavement, or digging, excavating, or performing any other work or activity which disturbs or alters the existing surface, subsurface, structure, composition, or soil compaction of the rights-of-way. In no event shall the

rights-of-way be obstructed for more than twelve (12) hours in any twenty-four (24) hour period without prior consent of the City set forth in a permit issued by the Director of Public Works under this Chapter and in no event shall traffic be obstructed on more than one half of any public street at any one time.

- (b) No utility service provider, cable operator, or person shall place any object of any kind in the rights-of-way such that said object obstructs the vision of the motoring public or poses a hazard to City street cleaning, snow removal or other equipment.

**1183.06 APPLICATION FOR RIGHTS-OF-WAY CONSTRUCTION PERMIT.**

- (a) Any utility service provider, cable operator or person seeking to obtain a rights-of-way construction permit shall file an application with the Director of Public Works. The application shall be in such form as the Director of Public Works directs, but at a minimum shall be signed by such utility service provider, cable operator or person, or a duly authorized agent thereof; shall incorporate, directly or by reference, the terms of this Chapter; shall set forth the applicant's consent to and agreement to comply with the terms of the application, this Chapter, and the rights-of-way permit; and shall require the applicant to provide the following information:
  - (1) The name, address and telephone number of both applicant and its agent upon whom service can be made and notices provided;
  - (2) A statement as to the nature of the applicant's business, whether its operations and facilities are subject to regulation by the Public Utilities Commission of Ohio or federal regulatory agency, and whether it is certified or authorized by the Public Utilities Commission of Ohio to provide service in Ohio;
  - (3) Location of the proposed construction;
  - (4) Type of facility to be installed or constructed;
  - (5) Method of construction, installation, or placement to be used;
  - (6) Estimated time to complete construction;
  - (7) Whether street pavement will be cut, broken, opened, or bored under;
  - (8) Whether traffic will be obstructed and, if so the portion of the rights-of-way obstructed and the dates of the obstruction;
  - (9) Proposed means of restoring the rights-of-way;
  - (10) A statement describing how traffic flow will be maintained during the construction period; and
  - (11) A description of the purpose and use of the facilities constructed, installed, or placed in the rights-of-way (power with voltage, gas with maximum allowable operating pressure, etc.) and other pertinent details.

- (b) If the applicant is not certified or authorized by the Public Utilities Commission of Ohio to provide service in Ohio, applicant shall also submit such additional information as the Director of Public Works requests to determine the financial, technical and managerial expertise of the applicant to construct, operate and maintain facilities in the right-of-way.
- (c) Applicants shall also submit, as an attachment to their application, scale drawings showing completely the nature, location, construction materials and design of the facilities to be installed or constructed. Such drawings shall include:
  - (1) Street and/or road names;
  - (2) A north arrow;
  - (3) The offset, in feet and inches, from the centerline of the roadway to the proposed facilities to be constructed or installed;
  - (4) The rights-of-way limits;
  - (5) The pavement width;
  - (6) The distance from edge of pavement to the facilities being constructed, installed or placed;
  - (7) The distance from nearest major intersection, railroad crossing, and/or other physical features to the facilities being constructed, installed or placed;
  - (8) A description of the nature of the facilities and the materials to be used in their construction, including without limitation and where applicable, the number, size, dimensions, and composition of the pipes, conduits and ducts, poles and other supporting structures, manholes and vaults, cable and wire and other facilities;
  - (9) One or more typical cross sections as required to adequately display and demonstrate the proposed location of the facilities in the rights-of-way and in relation to the existing facilities of the City, cable operators, and other utility service providers, however, if only aerial facilities requiring no additional poles are to be constructed, placed or installed, then only aerial facilities need be shown on the permit drawing;
  - (10) The minimum vertical clearance above or below the pavement or the existing or finished grade; and
  - (11) The location, in relation to the facilities to be constructed, placed or installed, of all known, existing utilities in the rights-of-way.
- (d) If the applicant requests that it be permitted to self insure and/or bond as provided in Section 1183.20, then it shall also submit with its application a copy of its last audited annual report to shareholders or the Securities and Exchange Commission.
- (e) The Director of Public Works shall determine which drawings, if any, shall be certified by an engineer registered in the State of Ohio.

**1183.07 ISSUANCE OF RIGHTS-OF-WAY CONSTRUCTION PERMITS.**

- (a) The Director of Public Works shall forward a complete copy of the application and associated information and drawings to the Safety/Service Director. If the Director of Public Works and Safety/Service Director determine that the application for the rights-of-way construction permit is complete and all required information and drawings have been provided, they shall review such information and drawings, and approve the application and issue the applicant a rights-of-way construction permit authorizing the construction, placement, or installation of the facilities in the rights-of-way upon their determinations that proposed construction, placement, or installation of the facilities is consistent with and meets the requirements of this Chapter and all applicable building and safety code requirements, and that the applicant possesses the financial, technical and managerial expertise to construct, operate and maintain facilities in the rights-of-way. If the applicant is certified or authorized by the Public Utilities Commission of Ohio to provide service in Ohio, applicant shall be presumed to have such expertise.
- (b) The Director of Public Works and Safety/Services Director shall approve or reject the application within thirty (30) days of applicant's filing a completed application setting forth all required information, drawings and exhibits.
- (c) The permit shall be signed by the Director of Public Works and the Safety/Service Director and by the grantee or grantee's duly authorized agent or representative and shall set forth the grantee's consent and agreement to the terms of the permit.
- (d) The permit shall be in the form required by the Director of Engineering Services, and shall include in its terms the provisions of this chapter which set out the duties and obligations of grantees hereunder.

**1183.08 RIGHTS-OF-WAY CONSTRUCTION PERMIT FEES.**

Upon grantee's acceptance of the rights-of-way construction permit, grantee shall pay to the City a rights-of-way construction permit fee in an amount which the Director of Public Works determines permits the City to recover the direct incremental costs incurred by the City in inspecting and reviewing the application and associated information and drawings, and in approving such permit.

**1183.09 LOCATION OF FACILITIES.**

- (a) Grantee shall construct, place and install its facilities as set forth in its application and so as to not interfere with travel and proper use of streets, alleys, and other public ways and places by the public and to not interfere with the rights and reasonable convenience of property owners who adjoin any of the said streets, alleys or other public ways and places. Grantee's

use of the rights-of-way shall be secondary to the use thereof by the traveling public (including pedestrians and other proper public uses). Damage to and repair of pedestals, vaults, manholes or other facilities of the grantee in the rights-of-way caused by street plowing, street cleaning and other activities carried out by the City to facilitate such travel and public use shall be the responsibility of the grantee and no claim may be made against the City in respect thereto.

- (b) In all sections of the City where the cables, wires, or other like facilities of public utilities are placed underground, grantee shall place its cables, wires or other like facilities underground.
- (c) Grantee shall construct, place and install its facilities so that cables, wires, poles and other facilities shall conform to the pattern of the existing public utility cables, wires, poles and other facilities and to minimize any damage, destruction or disturbance of the rights-of-way (including trees, shrubbery and improvements located thereon).
- (d) Grantee shall relocate, either overhead or underground, its cables, wires, poles or other facilities when the City determines that such relocation is necessary for public travel upon and use of the rights-of-way.
- (e) Grantee shall relocate, either overhead or underground, its cables, wires, poles or other facilities when the City determines that such relocation is necessary for any improvement to or expansion, construction or repair of public streets or highways or use of the rights-of-way.

#### **1183.10 RESTORATION OF RIGHTS-OF-WAY.**

In case of damage, destruction or disturbance of any street, sidewalk, alley, public way, paved area, tree lawn or other portion of the rights-of-way (including trees, shrubbery, and improvements thereon) by grantee, grantee shall, without delay and at its own cost and expense and in a manner approved by the Director of Public Works, replace and restore such street, sidewalk, alley, public way, paved area, or portion of the rights-of-way (including trees, shrubbery, and improvements thereon) to its former state of usefulness, repair and condition, paved, seeded, mulched, replanted, or sodded in a manner and with the same type, quality, and condition of materials that will match those damaged, destroyed or disturbed and those of the adjacent property so that disturbed area is in as good a condition as before the work involving such disturbance was done. In the event grantee, after ten (10) days advance notice, fails or refuses to commence, pursue and complete such replacement and restoration work, the City shall have the authority, but not the obligation, to complete such restoration and to require grantee to pay to the City the cost of such restoration. In the event that the restoration of the disturbed area, or the area adjacent thereto, deteriorates at a faster rate than that which would have occurred had grantee not damaged, destroyed or disturbed the area, then in that event, grantee shall repair, replace, or restore such areas to their original condition prior to the disturbance. Any such deterioration occurring within the five (5) year period following the disturbance will be presumed to result from grantee's actions and disturbance of the area. Any trees in the disturbed area or the area adjacent thereto that die within said five (5) year period will be presumed to have died as a result of grantee's actions and disturbance of the area.

### **1183.11 RELOCATION OF FACILITIES.**

If the City shall elect to alter or change the grade of any street, sidewalk, alley or other public way, or to change the location of or engage in the construction, reconstruction, maintenance or repair of any public property, structure or facility, or to engage in any public improvement, and if as a result thereof it is deemed necessary by the City for grantee to move, relocate, change, alter or modify any of its facilities or structures in order to assure the public's unencumbered continued use of the rights-of-way for travel and other proper public uses, then in such event and upon reasonable written notice of not less than sixty (60) days, grantee at its sole cost shall promptly move, relocate, change, alter or modify its facilities. In the event grantee, after such notice, fails or refuses to commence, pursue and complete such relocation work within a reasonable time, the City shall have the authority, but not the obligation, to move, remove, relocate, change, alter, modify or abate such structures or facilities and to require grantee to pay to the City the cost of such relocation, alteration, or modification. In the event of an emergency which threatens the health or safety of the public requires the relocation, alteration, or removal of the facilities, the City will attempt to notify promptly the grantee and Grantee shall have the right to move, alter, or remove the facilities from the rights-of-way.

### **1183.12 TEMPORARY MOVEMENT OF FACILITIES.**

Grantee shall, on the request of any person holding a building moving permit issued by the City, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal or raising or lowering of wires shall be paid by the person requesting the same, and grantee shall have the authority to require such payment in advance. Grantee shall be given not less than ten (10) business days advance notice to arrange for such temporary wire changes.

### **1183.13 TREE TRIMMING.**

Subject to grantee's compliance with the requirements and restrictions of Chapter 943 of the Codified Ordinances of the City, grantee shall have the authority to trim trees upon and overhanging streets, alleys, sidewalks, and public ways and places of the City so as to prevent the branches of such trees from coming in contact with the wires, cables and equipment of the grantee, except that at the option of the City, such trimming may be done by it or under its supervision and direction at the expense of the grantee.

### **1183.14 JOINT PLANNING AND COOPERATION.**

- (a) Grantee shall cooperate with other grantees and the City for the best, safest, most efficient, most aesthetic and least obtrusive use of the rights-of-way, to minimize traffic and other disruptions including street cuts, and to achieve the most efficient utilization of, construction in and occupancy of the rights-of-way. Grantee shall not be required to divulge trade secrets

or other competitively sensitive confidential information the release of which would cause material injury to the grantee. Any confidential information of a grantee in the possession of the City will be treated as such, to the extent determined legally appropriate by the City's Law Director.

- (b) Grantee shall participate in all joint planning conferences called by the City to discuss construction projects and other matters impacting the rights-of-way. Such participation may be by telephone if suitable arrangements are made in advance.
- (c) Grantee shall cooperate with other grantees in utilization of, construction in and occupancy of private rights-of-way within the City, but only to the extent the same is consistent with the grant thereof, is not additionally burdensome to any property owner or unreasonably burdensome to the grantee; provided, however, that nothing in this section shall be construed to require expenditure of funds or rearrangement of facilities by a grantee without fair compensation.

**1183.15          ERECTION AND COMMON USE OF POLES AND DUCTS.**

- (a) Where utility poles, underground conduit or ducts or other wire-holding structures or facilities already exist and are reasonably available for use by the grantee, grantee shall use such poles, conduits, ducts, structures or facilities to install its cable, wires, and equipment. Where such poles, conduits, ducts, structures, or facilities are not reasonably available, the grantee shall have the right to construct, install, erect and maintain its own poles, conduits, ducts, structures or facilities at locations as it may find necessary for the proper construction, operation or maintenance thereof. Such poles, conduits, ducts, structures or facilities shall be identified and set out in the drawings submitted with grantee's application submitted under Section 1183.06 hereof and City approval of the grantee's application shall constitute its approval of the construction, installation and erection of those identified poles, conduits, ducts, structures and facilities. Grantee shall comply with such conditions as the City may impose in approving the application and granting any final authorization to so construct, install, locate and erect the poles, conduits, ducts, structures or facilities.
- (b) Grantee shall make available to other attaching parties any usable space on its poles or in its underground structures on the same terms and conditions as other grantees make space available on their poles or in their underground structures. Where the City or a public utility serving the City desires to make use of the conduit, ducts, poles or other wire-holding structures of the grantee, but agreement therefore cannot be reached, if the City Planning Commission determines that the use would enhance the public safety or convenience and would not unduly interfere with the grantee's operations, the Planning Commission may require the grantee to

permit such use on the same terms and conditions as other grantees make space available in their conduit or ducts or on their poles or structures.

**1183.16 SAFETY REQUIREMENTS.**

- (a) Grantee shall at all times employ ordinary care and shall construct, install, place, locate and maintain its facilities using commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public.
- (b) Grantee shall construct, install, place, locate and maintain its facilities in such manner that they will not interfere with any installations of the City or other grantees, and in accordance with good engineering practices and, where applicable, the requirements of the National Electrical Safety Code, the rules and regulations of the Public Utilities Commission of Ohio, the Federal Energy Regulatory Commission, and all applicable ordinances and regulations of the City affecting electrical and structural installations which may currently be in effect or changed by future ordinances, and all other applicable state or federal construction and safety requirements.
- (c) Grantee's facilities in, over, under, and upon the streets, sidewalks, alleys, and public ways or places of the city, wherever situated or located, shall at all times be kept and maintained in a safe, suitable, substantial condition, and in good order and repair.
- (d) Grantee shall at all times maintain a force of available employees or agents sufficient to provide safe, adequate, and prompt maintenance and repair of its facilities. Such employees or agents shall perform all work, construction, maintenance or removal of structures and facilities within the rights-of-way, including tree trimming, in accordance with good engineering, construction and safety practices, including any applicable safety codes.
- (e) Grantee shall register, or cause to be registered, its facilities with the Ohio Utility Protection Service or any successor thereto.
- (f) Grantee shall cooperate with the City in any emergencies involving the rights-of-way.
- (g) Grantee shall field identify, using distinct identification, its facilities constructed, installed, placed or located in the rights-of-way. Such identification shall be consistent with industry standards for such identification.
- (h) Grantee shall designate a single point of contact for reporting of emergencies and conditions affecting the safety of the public.

**1183.17 MAPS.**

Upon request of the City, grantee shall provide and maintain with the City a true and accurate map or set of maps showing the location of all grantee's facilities in the rights-of-way and other public places.

**1183.18 INDEMNIFICATION.**

- (a) Grantee shall, at its sole cost and expense, fully defend, indemnify and hold harmless the City, its officers, boards, commissions, agents and employees, against and from any and all claims, demands, causes of actions, suits, proceedings, damages, liabilities, penalties and judgments of every kind arising out of or pertaining to the City's granting a rights-of-way construction permit to grantee and/or the construction, maintenance or operation of grantee's facilities, including but not limited to damages for injury or death, or damages to property, real or personal, and against all liabilities to others and against all loss, cost and expense, resulting or arising out of any of the same.
- (b) Grantee shall pay all expenses incurred by the City in defending itself with regard to the claims, causes of action, suits, proceedings, damages, liabilities, penalties and judgments mentioned in subsection (a) above. These expenses shall include but are not limited to all out-of-pocket expenses, such as attorney's fees, and shall also include the reasonable value of any services rendered by the City's Law Director or his assistants, or any employees of the City.
- (c) For the City to assert its rights to be defended, indemnified and held harmless, the City must:
  - (1) Notify grantee of any claim or legal proceeding which gives rise to such right;
  - (2) Afford grantee the opportunity to participate in any compromise, settlement, resolution or disposition of such claim or proceeding; and
  - (3) Cooperate in the defense of such claim and make available to grantee all such information under its control reasonably relating thereto.

**1183.19 NO RECOURSE.**

- (a) Except as expressly provided in this Chapter, grantee shall have no recourse whatsoever against the City for any loss, cost or expense, or damages arising out of the provisions or requirements of this chapter or the rights-of-way construction permit, or because of the enforcement thereof by the City, or for the failure of the City to have the authority to grant all or any part of the rights-of-way construction permit.
- (b) Grantee shall acknowledge, upon executing and accepting a rights-of-way construction permit, that it does so relying upon its own investigation and understanding of the power and authority of the City to grant such a permit.

- (c) Grantee shall further acknowledge, upon executing the rights-of-way construction permit, that it has carefully read the terms and conditions of this Chapter and the form of the rights-of-way construction permit, and grantee is willing to and does accept all of the risks of the meaning of the terms and conditions contained therein, and agrees that in the event of any ambiguity or in the event of any other dispute over the meaning thereof, the same shall be construed strictly against grantee and in favor of the City.

**1183.20 LIABILITY INSURANCE AND BONDS.**

- (a) Grantee shall maintain, throughout the period of construction and for so long as the facilities constructed, placed, installed or located occupy the rights-of-way or other public place, liability insurance insuring the City and the grantee with regard to all damages of the type mentioned in Section 1183.18 above, or otherwise, in the following minimum amounts, (which insurance or the limits of same however, shall not serve to limit the grantee's obligations or duties to indemnify and save the City harmless as provided herein, particularly in Section 1183.18 hereof):
  - (1) Three million dollars (\$3,000,000) for bodily injury or death to any one person;
  - (2) Five million dollars (\$5,000,000) for bodily injury or death resulting from any one accident or occurrence;
  - (3) Five hundred thousand dollars (\$500,000) for property damage to any single property; and
  - (4) Five million dollars (\$5,000,000) for excess liability or umbrella coverage.
- (b) Grantee shall furnish to the City certificates of insurance evidencing grantee's compliance with this section. All insurance required by this Chapter shall be and remain in full force and effect for the entire term of this Chapter. Such insurance, if canceled for any reason, shall immediately be put back in force subject to the terms and requirements specified herein.
- (c) Any insurance policy obtained by the grantee to comply with this section must be approved by the City's Law Director, which approval shall not be unreasonably withheld, and a certificate of insurance and a duplicate copy of said insurance policy, along with written evidence of payment of required premiums, shall be filed and maintained with the City Finance Department during the term required by this Chapter. Such insurance may be changed from time to time to reflect changing liability limits as may be reasonably requested by the City, but not below the minimum established herein. Grantee shall immediately notify the City in writing of any litigation that may develop that would affect the insurance required herein.

- (d) Upon acceptance of the rights-of-way construction permit, grantee shall deposit with the City a surety bond in the amount of fifty thousand dollars (\$50,000) in a form reasonably acceptable to the City's Law Director; provided, however, that the Mayor, in her/his sole discretion, may waive or reduce the amount of the bond. The performance bond shall be available to insure the faithful performance by grantee of all provisions of the rights-of-way construction permit. The performance bond shall be maintained at fifty thousand dollars (\$50,000) during the entire term of this chapter, regardless of withdrawals which may be made under this section. The performance bond shall be conditioned upon and insure the faithful performance of grantee of all terms and conditions of the rights-of-way construction permit and the payment by grantee of any claim, liens, costs, expenses and taxes due the City which arise by reason of the construction, repair or maintenance of grantees' facilities in the rights-of-way or other public place. The rights reserved to the City with respect to the performance bond are in addition to all other rights the City may have under this chapter or any law. The company providing such bond must be licensed to do business in the State of Ohio. In the event of a default by grantee in any of its obligations under the rights-of-way construction permit which default is not cured within ten (10) days after notice by the City to grantee of such default (or such longer time as it is necessary to cure, so long as grantee commences to cure within ten (10) days and diligently pursues cure), the City may levy on the performance bond upon notifying grantee of the amount of such charge. Grantee may contest in good faith any dispute with respect to any levy by the City on the performance bond. The rights reserved to the City with respect to the performance bond are in addition to all other rights of the city, at law or in equity. The performance bond provided hereunder shall contain the following endorsement: **"It is hereby understood and agreed that this bond may not be canceled without thirty (30) days advance written notice to the City of Norwalk, Ohio."**
- (e) Upon written request of the grantee, and approval of the Director of Public Works, grantees who maintain a net book value in excess of fifty million dollars (\$50,000,000) may self-insure and self-bond in lieu of maintaining and providing the policies of insurance and bonds described above. Such grantees shall provide to the Director of Public Works such certificates or other documents attesting to such book value, insurance and bonding as the Director of Public Works may reasonably request.

#### **1183.21 WRITTEN NOTICE.**

All notices or demands required to be given under the rights-of-way construction permit or this Chapter shall be deemed to be given when delivered personally or upon the date actually received as evidenced by certified mail, return receipt requested. All notices to the City shall be addressed as follows:

CITY OF NORWALK, OHIO  
Director of Public Works  
38 Whittlesey Avenue  
Norwalk, Ohio 44857

All notices to the grantee may be made and shall be effect upon delivery to the party named in the rights-of-way construction permit or the party's successor.

**1183.22 SEVERABILITY.**

If any term, condition or section of this Chapter or a rights-of-way construction permit or the application thereof to any person or circumstance shall, to any extent, be held to be invalid or unenforceable, the remainder hereof and the application of such term, condition or section to persons or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this Chapter and all the terms, conditions and sections hereof shall, in all other respects, continue to be effective and to be complied with.

**1183.23 EFFECTIVE DATE.**

This Chapter shall become effective at the earliest date allowed by law.

**1183.24 REMOVAL OF FACILITIES.**

- (a) Grantees that intend to discontinue use of and abandon facilities constructed, placed, installed or located in the rights-of-way shall submit a written notice to the Director of Public Works describing the portion of the facilities to be discontinued and abandoned, the plan for removing or securing the same, and the proposed date of abandonment, which date shall not be less than sixty (60) days from the date such notice is submitted to the Director of Public Works. Grantees shall not abandon facilities without such notice. Grantee shall remove or secure such facilities if and as required by the written direction of the Director of Public Works so long as such direction is issued no more than sixty (60) days from the date the notice of discontinuance or abandonment of facilities is submitted to the Director of Public Works.
- (b) Should any grantee fail, after notice, to remove or secure the abandoned facilities, the City may, at its option and in addition to the imposition of any penalties or other remedies hereunder, undertake or cause to be undertaken any reasonable action necessary to remove or secure the abandoned facilities. The City shall have no liability for any damage

caused by such action and grantee shall be liable to the City for all reasonable costs incurred by the City in taking such action.

**1183.25      REVOCATION.**

- (a) In addition to any other rights set out herein, the City reserves the right to revoke grantee's rights-of-way construction permit in the event grantee violates any material provision of this Chapter or its rights-of-way construction permit.
- (b) The Director of Public Works shall give grantee thirty (30) days prior written notice of intent to revoke grantee's rights-of-way construction permit. Such notice shall state the reasons for such action. If grantee cures the violation or other cause within the thirty (30) day notice period, or if grantee initiates efforts satisfactory to the Director of Public Works to remedy the stated violation, the Director of Public Works shall rescind said notice of revocation. If grantee does not cure the stated violation or other cause or undertake efforts satisfactory to the Director of Public Works to remedy the stated violation, the Director of Public Works may recommend that grantee's rights-of-way permit be revoked. After granting grantee an opportunity to be heard in writing, the Mayor may revoke the rights-of-way construction permit. Unless otherwise required by law, the decision of the Mayor shall be final.

**1183.26      RESERVATION OF RIGHTS.**

- (a) Nothing in this Chapter or any rights-of-way construction permit should be construed so as to grant any right or interest in any rights-of-way or public property or place. No approval by the City and no location of any pipe, conduit, duct, pole or structure of grantee in the rights-of-way shall be or give rise to any vested interest or property right in the rights-of-way and such pipe, conduit, duct, pole or structure shall be removed or modified by grantee at its own expense whenever the Director of Public Works determines that the public's health, safety or welfare would be enhanced thereby.
- (b) Nothing in this Chapter or any rights-of-way construction permit shall be construed to prevent the City from constructing, maintaining, repairing or relocating any City utility, including street lighting, communications or like facilities; grading, paving, maintaining, repairing, relocating or altering any street, public property or rights-of-way; or constructing, maintaining, relocating, or repairing any sidewalk or other public work or improvement.

**1183.27 NON-ENFORCEMENT AND WAIVERS BY CITY.**

Grantee shall not be relieved of its obligation to comply with any of the provisions of its rights-of-way construction permit or this Chapter by reason of any failure of the City to enforce or require prompt compliance.

**1183.28 CAPTIONS.**

Captions contained in this Chapter are for convenience, only, and shall not limit the applicability of any section herein or bestow additional rights on any party other than those contained in this Chapter.

**1183.29 APPLICATION TO CITY.**

The City's construction, installation, or placement of facilities or structures in the rights-of-way shall not be subject to this Chapter.

**1183.30 PLACEMENT OF OBJECTS IN RIGHTS-OF-WAY**

- (a) Subject to the provisions of section 1183.30(b), in addition to the prohibitions set forth in section 1183.05, and except as otherwise provided in this Chapter, no person, utility service provider, or cable operator shall place any object, thing or structure including but not limited to rocks, landscaping, stones, bricks, wood, pipes, or sprinklers, on or under the surface of any rights-of-way.
- (b) Owners of objects, things or structures located on or under the surface of any rights-of-way as of the effective date of this chapter may maintain such object, thing or structure on or under the surface of the rights-of-way provided that, within thirty (30) days of the effective date of this chapter, such owner obtains from the Director of Public Works a revocable use permit for such object, thing or structure. The permission granted pursuant to such revocable use permit shall as set forth in the permit. The revocable use permit may be revoked at the direction of the Director of Public Works. In the event any such permit is revoked, the owner of the object, thing or structure subject to the permit shall forthwith cause the same to be removed from the rights-of-way at the owner's expense.
- (c) This section shall not apply to the placement within the rights-of-way of receptacles for the deposit of United States Mail service provided that (1) such receptacles are in conformity with all regulations of the United States Postal Service regarding such receptacles; (2) do not constitute a hazard to the motoring public or to City owned equipment such as snow plows and street cleaners; (3) do not obstruct the vision of the motoring public; and (4) are not placed within that portion of the rights-of-way utilized for vehicular traffic.

**1183.99 PENALTY.**

Any failure to comply with any provision of this Chapter shall be subject to a civil forfeiture, payable to the City, in the amount of five hundred dollars (\$500.00) per day of each day of violation. In addition, any failure to timely comply with a notice by the Director of Public Works to move, remove, or rearrange facilities pursuant Section 1183.09 and Section 1183.11, shall be subject to an additional civil forfeiture equal to any costs incurred by the City as a result of such failure, including but not limited to any penalties or liquidated damages charged the City by its contractors occasioned thereby, shall be imposed.