

ORDINANCE NO. 05-17

CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER John Paldes ON THE 17<sup>th</sup> DAY OF April, 2017.

**AN ORDINANCE TO AMEND CHAPTER 1080,  
RIGHTS-OF-WAY ADMINISTRATION OF THE  
CENTERVILLE MUNICIPAL CODE.**

WHEREAS, the City had enacted regulations in the Centerville Municipal Code for the regulations for, use of and access to the public rights-of-way; and

WHEREAS, the City of Centerville periodically reviews the laws relating to public rights-of-way; and

WHEREAS, the City has determined that it be in the best interests of the City to promote the public health, safety, and welfare of the City to regulate the public rights-of-ways.

NOW THEREFORE, THE MUNICIPALITY OF CENTERVILLE HEREBY ORDAINS:

Section 1. That the following amendment to Section 1080.01 of the Centerville Municipal Code is hereby enacted as follows with new language to be added in *italics* and text to be deleted in ~~strikeout~~ as provided in Section 5.02 of the Centerville Charter:

**1080.01 DECLARATION OF FINDINGS AND PURPOSE; SCOPE;  
DEFINITIONS.**

(c) Definitions. For the purposes of this chapter, the following terms, phrases, words, and their derivations shall have the meanings as set forth herein. When not inconsistent with the context, words in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The words "shall" and "will" are mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning. References hereafter to "sections" are, unless otherwise specified, references to sections in this chapter. Defined terms remain defined terms whether or not capitalized.

(11) "Construct" means, but shall not be limited to, to dig, bore, tunnel, trench, excavate, obstruct, install wires, install conduit, install pipes, install transmission lines, install poles, install signs, or install facilities, other than landscaping or ornamental plantings, *as required by this Chapter or as requested by the City*, in, on, above, within, over, below, under, or through any part of the rights-of-way. Construct shall also include the act of opening and/or cutting into the surface of any paved or improved surface that is any part of the rights-of-way. Construct does not include minor maintenance.

(12) "Construction" means, but shall not be limited to, the act or process of digging, boring, tunneling, trenching, excavating, obstructing, installing wires, installing conduit, installing pipes, installing transmission lines, installing poles, installing signs, or installing facilities, other than landscaping or ornamental plantings, *as required by this Chapter or as requested by the City*, in, on, above, within, over, below, under, or through any part of the rights-of-way. Construction shall also include the act of opening and/or cutting into the surface of any paved or improved surface that is part of the rights-of-way. Construction does not include minor maintenance.

Section 2. That the following amendment to Section 1080.06 of the Centerville Municipal Code is hereby enacted as follows with new language to be added in *italics* and text to be deleted in ~~strikeout~~ as provided in Section 5.02 of the Centerville Charter:

#### **1080.06 CERTIFICATE OF REGISTRATION APPLICATIONS.**

(b) Application Information. The applicant shall keep all of the information required in this section current at all times, provided that applicant or provider shall notify the City of any changes to the information required by subsection (b)(2) hereof within fifteen days following the date on which the applicant or provider has knowledge of any such change and shall notify the City of any changes to other information required by this subsection within thirty days following the date on which the applicant or provider has knowledge of such change. The information provided to the City at the time of application shall include, but not be limited to:

- (1) Each applicant's name, legal status (i.e. partnership, corporation, etc.), street address, and telephone and facsimile numbers.
- (2) The name, street address, and telephone and facsimile numbers of a system representative. The system representative shall be available at all times. Current information regarding how to

contact the system representative in an emergency shall be provided at the time of application and shall be updated as necessary to assure accurate contact information is available to the City at all times.

- (3) A certificate of insurance provided to meet the requirements of this section shall:
  - A. Verify that an insurance policy has been issued to the applicant by an insurance company licensed to do business in the State of Ohio;
  - B. Verify that the applicant is insured on an occurrence basis against claims for personal injury, including death, as well as claims for property damage arising out of the use and occupancy of the rights-of-way by the applicant, its officers, agents, employees and contractors; and placement and use of facilities in the rights-of-way by the applicant, its officers, agents, employees and contractors, including, but not limited to, protection against liability arising from any and all operations, damage of underground facilities, explosion, environmental release, and collapse of property;
  - C. Name the City, its elected officials, officers, employees, agents and volunteers as additional insureds as to whom the comprehensive general liability and completed operation and products liability insurance required herein are in force and applicable and for whom defense will be provided as to all such coverages;
  - D. Require that the City be notified thirty days in advance of cancellation of, or coverage changes in, the policy. The liability insurance policies required by this section shall contain the following endorsement: "It is hereby understood and agreed that this policy may not be diminished in value, be canceled, nor the intention not to renew be stated, until thirty (30) days after receipt by the City, by registered mail, return receipt requested, of a written notice addressed to the City Manager or her/his designee of such intent to cancel, diminish, or not to renew." Within thirty days after receipt by the City of said notice, and in no event later than five days prior to said cancellation, the provider (or applicant) shall obtain and provide to the City Manager a certificate of insurance evidencing appropriate replacement insurance policies.
- (4) Satisfy the requirements for comprehensive liability coverage, automobile liability coverage and umbrella coverage as follows:

- A. Comprehensive general liability insurance: Comprehensive general liability insurance to cover liability, bodily injury, and property damage must be maintained. Coverage must be written on an occurrence basis, with the following minimum limits of liability and provisions, or their equivalent:
1. Bodily injury:  
Each occurrence: ~~One~~ *Two* million dollars (\$~~1~~*2*,000,000)  
Annual aggregate: ~~Three~~ *Four* million dollars (\$~~3~~*4*,000,000)
  2. Property damage:  
Each occurrence: ~~One~~ *Two* million dollars (\$~~1~~*2*,000,000)  
Annual aggregate: ~~Three~~ *Four* million dollars (\$~~3~~*4*,000,000)
  3. Personal injury:  
Annual aggregate: ~~Three~~ *Four* million dollars (\$~~3~~*4*,000,000).
- B. Completed operations and products liability shall be maintained for six months after the termination of or expiration of a certificate of registration.
- C. Property damage liability insurance shall include coverage for the following hazards: E - explosion; C - collapse; U - underground.
- (5) Comprehensive auto liability insurance: Comprehensive auto liability insurance to cover owned, hired, and non-owned vehicles must be maintained. Applicant may maintain comprehensive auto liability insurance as part of applicant's comprehensive general liability insurance, however, said insurance is subject to approval by the City Manager or her or his designee. Coverage must be written on an occurrence basis, with the following limits of liability and provisions, or their equivalent:
- A. Bodily injury:  
Each occurrence: ~~One~~ *Two* million dollars (\$~~1~~*2*,000,000)  
Annual aggregate: ~~Three~~ *Four* million dollars (\$~~3~~*4*,000,000)
  - B. Property damage:  
Each occurrence: ~~One~~ *Two* million dollars (\$~~1~~*2*,000,000)  
Annual aggregate: ~~Three~~ *Four* million dollars (\$~~3~~*4*,000,000).

- (6) Additional insurance: The City reserves the right in unusual or unique circumstances to require any other insurance coverage it deems reasonably necessary after review of any proposal submitted by applicant.
- (7) Self-insurance: Those applicants maintaining at all times a book value in excess of twenty million dollars (\$20,000,000) may submit a statement requesting to self-insure. *Said request must be in writing and contain proof of applicants' book value.* If approval to self-insure is granted, applicant shall assure the City that such self-insurance shall provide the City with no less than would have been afforded to the City by a third party insurer providing applicant with the types and amounts of coverage detailed in this section. This statement shall include a description of the applicant's self- insurance program and may be required to include:
  - A. Audited financial statements for the previous year; and
  - B. A listing of any and all actions against or claims made against applicant for amounts over one million dollars (\$1,000,000) or proof of available excess umbrella liability coverage to satisfy all total current claim amounts above twenty million dollars (\$20,000,000).
- (8) City's examination of, or failure to request or demand, any evidence of insurance in accordance with this chapter, shall not constitute a waiver of any requirement of this section and the existence of any insurance shall not limit applicant's obligations under this chapter.
- (9) Documentation that applicant or provider maintains standard workers' compensation insurance as required by law. Similarly, provider shall require any subcontractor to provide workers' compensation insurance in amounts required by law for all of the subcontractor's employees.
- (10) If the person is a corporation, a copy of the certificate of incorporation (or its legal equivalent), as recorded and certified to by the secretary of state (or legal equivalent) in the state or country in which incorporated.
- (11) A copy of the person's certificate of authority (or other acceptable evidence of authority to operate) from the PUCO and/or the FCC and any other approvals, permits, or agreements as set out in Section 1080.05.
- (12) *Unless applicant is a Public utility as defined in Ohio R.C. Section 4939.01, upon ~~Upon~~ request of the City, a narrative (or if applicable PUCO/FCC application information) describing*

applicant's proposed activities in the City including credible information detailing applicant's financial, managerial, and technical ability to fulfill applicant's obligations under this chapter and carry on applicant's proposed activities.

- (c) Criteria For Issuance of a Certificate of Registration. In deciding whether to issue a certificate of registration, the City shall consider:
- (1) Whether the issuing of the certificate of registration will contribute to the health, safety, and welfare of the City and its citizens;
  - (2) Whether issuing of the certificate of registration will be consistent with this chapter;
  - (3) Whether applicant has submitted a complete application and has secured all certificates and other authorizations required by law in order to construct and operate a system in the manner proposed by the applicant;
  - (4) Whether the applicant is delinquent on any taxes or other obligations owed to the City or Montgomery or Greene Counties or State of Ohio;
  - (5) ~~Except for public utilities~~ *Public utilities as defined in Ohio R.C. Section 4939.01* subject to the jurisdiction of the PUCO or a cable operator possessing a valid franchise, whether the applicant has the requisite financial, managerial, and technical ability to fulfill all its obligations under this chapter and the issuance of a certificate of registration; and
  - (6) Any other applicable law.

Section 3. That the following amendment to Section 1080.16 of the Centerville Municipal Code is hereby enacted as follows with new language to be added in *italics* and text to be deleted in ~~strikeout~~ as provided in Section 5.02 of the Centerville Charter:

#### **1080.16 TRANSFER OF OWNERSHIP AND RENEWAL.**

(d) Review by City. *Except for Public utilities as defined in Ohio R.C. Section 4939.01,* City will review the legal, technical and financial qualifications of the transferee and terms of the existing certificate of registration. City will make its decision in writing setting forth any conditions for the transfer. Within thirty days of actual receipt of the request for the transfer or within thirty days after the public hearing, City shall approve or deny the transfer request in writing.

Section 4. That the following amendment to Section 1080.17 of the Centerville Municipal Code is hereby enacted as follows with new language to be added in *italics* and text to be deleted in ~~strikeout~~ as provided in Section 5.02 of the Centerville Charter:

## 1080.17 PERMIT TO DO WORK WITHIN RIGHT-OF-WAY.

(d) Right-of-Way Permit Application Fee.

*The applicant is subject to a permit application fee set forth in Section 1024.02.*

(e)(d)—Right-of-Way Construction Permit Fees. The Director of Public Works shall develop and maintain a schedule of permit fees based on fair and reasonable criteria. The Director of Public Works shall conduct a study of degradation to and reduction in the useful life of the rights-of-way resulting from construction. After such study is completed and after providing notice to providers with a valid certificate of registration, the Director of Public Works may include in the schedule of permit fees an amount sufficient to recover the degradation and reduction in the useful life of the rights-of-way that will result from the construction to take place thereon. "Degradation and the reduction in the useful life" for the purpose of this section means the accelerated depreciation of the rights-of-way caused by construction in or disturbance of the rights-of-way, resulting in the need to reconstruct or repair such rights-of-way earlier than would be required if the construction did not occur. No right-of-way construction permit shall be issued without payment of right-of-way construction permit fees except to the City, County, or RTA which shall be exempt. right-of-way construction permit fees that were paid for a permit that the City has revoked due to breach are not refundable.

(f)(e)—Joint Applications. Applicants are encouraged to make joint application for right- of-way construction permits to work in the rights-of-way at the same place and time. Joint applicants shall have the ability to divide amongst themselves, in proportions the parties find appropriate, any applicable right-of-way construction permit fees.

Section 5. That the following amendment to Section 1080.20 of the Centerville Municipal Code is hereby enacted as follows with new language to be added in *italics* and text to be deleted in ~~strikeout~~ as provided in Section 5.02 of the Centerville Charter:

## 1080.20 CONSTRUCTION AND REMOVAL BONDS.

(d) Self Bonding. In lieu of the construction bond required by subsection (a) hereof, the removal bond required by subsection (b) hereof and the blanket bond required by subsection (c) hereof, *only the County, City, or RTA* ~~those providers maintaining at all times a book value in excess of twenty million dollars (\$20,000,000)~~ may submit a statement to the Director of Public Works requesting to self-bond. ~~If approval to self bond is granted, a provider shall assure the City that such self-bonding shall provide the City with no less protection and security than would have been afforded to the City by a third party surety providing provider with~~

~~the types and amounts bonds detailed in the above named sections. This statement shall include a description of the applicant's self-bonding program and may also be required to include:~~

- ~~(1) Audited financial statements for the previous year; and,~~
- ~~(2) Other applicable and pertinent information as reasonably requested by the Director of Public Works.~~


Section 6. That the following amendment to Section 1080.22 of the Centerville Municipal Code is hereby enacted as follows with new language to be added in *italics* and text to be deleted in ~~strikeout~~ as provided in Section 5.02 of the Centerville Charter:

**1080.22 ESTABLISHMENT OF UTILITY CORRIDORS.**


(b) *As allowed by law, any* Any provider whose facilities are in the rights-of-way and are in a position at variance with utility corridors established by the Director of Public Works shall at the time of the next construction of the area, excluding normal maintenance activities, move such facilities to their assigned position within the rights-of-way. This requirement may be waived by the Director of Public Works for good cause shown including, but not limited to, consideration of such factors as: the remaining economic life of the facilities, public safety, customer service needs, and hardship to the provider.

Section 7. This ordinance shall be effective from and after the earliest date allowed by law.

PASSED THIS 17<sup>th</sup> day of April, 2017.

  
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Mayor of the City of  
Centerville, Ohio

ATTEST:

  
\_\_\_\_\_  
Clerk of Council  
City of Centerville, Ohio



CERTIFICATE

The undersigned, Clerk of Council of the City of Centerville, Ohio, hereby certifies the foregoing to be a true and correct copy of Ordinance No. 05-17, passed by the Council of the City of Centerville, Ohio on the 17<sup>th</sup> day of April, 2017.

Carin R. Andrews

Clerk of the Council

Approved as to form, consistency with the Charter  
and Constitutional Provisions.

Department of Law  
Scott A. Liberman  
Municipal Attorney