

ORDINANCE NO. 20-05

AN ORDINANCE AMENDING SECTION 901 OF THE CITY OF DELAWARE CODIFIED ORDINANCES TO BRING THE RULES AND REGULATIONS INTO CONFORMANCE WITH THE CURRENT RIGHT OF WAY BEST MANAGEMENT PRACTICES.

WHEREAS, the City of Delaware regulates excavation, construction and utility maintenance work occurring within dedicated public right of way; and

WHEREAS, changes in personnel, division of responsibilities between departments within the city, and a need for more stringent regulation of work performed within the public right of way necessitate adjustments to the procedures employed in managing right of way activities; and

WHEREAS, Chapter 901 of the STREETS, UTILITIES AND PUBLIC SERVICES CODE shall be modified to account for the current best management practices in place.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Delaware, State of Ohio:

SECTION 1. That Chapter 901 is hereby amended to read as follows:  
(See Sections 901 attached hereto)

SECTION 2. This Council finds and determines that all formal actions of this Council and any of its committees concerning and relating to the passage of this Ordinance were taken in an open meeting of this Council, and that all deliberations of this Council and any of its committees that resulted in those formal actions were in meetings open to the public, all in compliance with the law including Section 121.22 of the Revised Code.

PASSED: March 9, 2020

YEAS 7 NAYS 0  
ABSTAIN 0

ATTEST: Elaine McCuskey  
CITY CLERK

Cathy K. Rigg  
MAYOR

## CHAPTER 901. - EXCAVATIONS<sup>11</sup>

### Footnotes:

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**Editor's note—** [Ord. 12-71, passed Oct. 29, 2012](#), repealed the former Ch. 901, §§ 901.01—901.16, 901.99, and enacted a new Ch. 901 as set out herein. The former Ch. 901 pertained to similar subject matter and derived from Ord. 04-195, passed Dec. 13, 2004.

**Cross reference—** Barricades and warning lights - see GEN. OFF. 521.03

**State Law reference—** Power to establish and care for streets - see Ohio R.C. 715.19, 717.01, 723.01; Openings by the Municipality - see Ohio R.C. 723.02; Excavation liability - see Ohio R.C. 723.49 et seq.; Changing established grade - see Ohio R.C. 727.07; Compulsory service connections - see Ohio R.C. 729.06, 743.23, 743.37; Digging, excavating and piling earth on streets - see Ohio R.C. 5589.10

901.01. - General provisions.

- (a) Authority. Any person or agency desiring to excavate within or to occupy public right of way for the purpose of constructing, servicing, or maintaining public or private infrastructure or property must first obtain a **RIGHT OF WAY** public-way permit.
- (b) Permit Activities. There are three types of activities covered by this permit:
  - (1) Excavation: For excavations within a roadway, alley, sidewalk or driveway, or the non-paved area within the right of way for any purpose whatsoever. A separate permit is required for each project submission.
  - (2) Occupancy: For partial or complete closure of any public street, alley or sidewalk with vehicles, equipment or materials for the purpose of providing maintenance, repair, or replacement to any privately owned utility, building or property at or above grade. A separate permit is required for each project submission.
  - (3) Blanket: At the sole discretion of the City, an approved **RIGHT OF WAY** public-way permit may be designated as a blanket permit and be available to applicants that routinely occupy the public right-of-way for the maintenance or repair to privately owned aerial utilities, installation of aerial service connections, or for tree trimming services, and that are able to perform such work with minimal disruption to traffic and without any excavation within the right-of-way. Blanket permits are issued for a period of one year, beginning January 1st, and require the submission of a ten-thousand-dollar bond (\$10,000.00), letter of credit, or other surety acceptable to the City Manager. In all cases, recipients of blanket permits are subject to the requirements of the Ohio Manual of Uniform Traffic Control Devices and are responsible for notifying the City of the schedule and location of all proposed activities. **ALL ROAD AND LANE CLOSURES SHALL BE DONE IN CONFORMANCE WITH THE CITY'S MAINTENANCE OF TRAFFIC AND PUBLIC NOTIFICATION REQUIREMENTS POLICY.**
- (c) Exemptions: **RIGHT OF WAY** Public-way permits as defined by this chapter, are not issued for the routine distribution or delivery of mail, newspapers, or services to businesses and residences such as landscaping service, furniture delivery, moving services; nor for construction activities associated with a new residential or commercial development project site, provided such activities are covered under a separately approved building permit or engineering plan; or for activities performed by the City, its contractors and agents.
- (d) Permit Application, Review and Approval: Permit applications shall be made to the City on approved forms and shall be subject to approval, approval with conditions, denial, or returned with a request for additional information and/or correction. No work may begin until a permit has been approved,



except for emergency repairs as defined in Section 901.05. Activities requiring the partial or complete closure of a public roadway or alley are subject to the additional maintenance of traffic requirements established in this chapter **AND SHALL NOT BE CONSIDERED APPROVED UNTIL ALL SUCH REQUIREMENTS HAVE BEEN SATISFIED.**

- (e) Permit Issuance: With the exception of a permit with blanket designation, permits shall be issued for a maximum period of 180 days. At the sole discretion of the City and upon request by the applicant, a permit may be extended beyond the 180-day period as may be required to complete the work.
- (f) ~~Advance Notification Requirements: The following advanced notification requirements regarding the commencement of certain permit activities shall apply to all work requiring excavation within the public right of way, or any work that requires the partial or full closure of the travel lane of any public street. Notification shall be made only after receipt of an approved permit, and by either direct communication with the City Inspector, or by submitting written notification directly to the City. Notifications must include the approved permit number, contractor name and telephone number and the proposed work schedule. Work commencing without appropriate notification may be subject to the City ordering the work to cease.~~
  - (1) ~~Minimum notification. A minimum 24 hour advance notification shall be made to the City for all projects requiring any excavation work whatsoever within the public right of way except for sidewalk and driveway approach work meeting the requirements of Section 901.06(a).~~
  - (2) ~~Lane closures. Prior to establishing a lane closure of any public roadway, a minimum of (3) working days advance notice shall be provided by contacting the City as indicated on the permit.~~
  - (3) ~~Full road closure. Prior to establishing implementing the complete closure of a street, a minimum of (5) working days advance notice shall be provided to the City to allow for proper notification of Safety and Emergency Forces, local industry and businesses and media as deemed necessary by the City.~~
- (g) Liability. The issuance of a Public Way Permit does not relieve the applicant from liability for any damage that might occur to the roadway, the public, or personal property while performing work authorized by the permit. The permit applicant is further responsible for making any and all repairs, deemed necessary by the City, to work performed that has failed within a period of one (1) year from the date the work was completed.
- (h) High Impact Areas. For purposes of this regulation, High Impact Areas are generally defined below and described as areas that may require the additional approval of other government agencies as well as special construction and restoration materials, specifications and procedures. Areas considered high impact generally include, but are not necessarily limited to US23, US36, US42, SR37, SR521 and the Downtown Streetscape Improvement Areas.

( [Ord. 12-71. Passed 10-29-12](#) )

#### 901.02. - Form of permit application.

The **RIGHT OF WAY** ~~Public Way~~ Permit application shall include sufficient detail to adequately describe the nature of work to be performed within the public right of way, project schedule, contractors involved, impacts to surrounding properties, and any other information necessary to fully describe the proposed activities. The permit application is subject to periodic modifications at the discretion of the City.

( [Ord. 12-71. Passed 10-29-12](#) )

#### 901.03. - Permit plans.

Whenever an excavation activity is to be performed within the right of way, the permit application shall be accompanied by detailed work plans. The plans shall be of suitable size, clarity and scale to

show the nature of the work to be performed. All existing public and private utilities within the proposed work area shall be shown on the plans, in as much as information is available from searching City and private utility records. All conflicts with any City facility shall be resolved to the satisfaction of the City.

( [Ord. 12-71. Passed 10-29-12](#) )

#### 901.04. - Restoration.

Whenever an applicant has been granted authority to excavate in the public right of way the applicant shall be required to return the right of way to essentially the same condition it was prior to the work and by such time as indicated in the approved permit for the work. The permanent restoration of any sidewalk, tree lawn, curb, street pavement, etc. shall occur no later than thirty (30) days after the completion of any utility repair or installation activity within the public right of way except in high impact areas as defined in Section 901.01(h), which requires pavement restoration be completed within seven (7) days. Construction activity completed November through April shall have all grading and seeding issues resolved no later than May 31st.

( [Ord. 12-71. Passed 10-29-12](#) )

#### 901.05. - Emergency repairs.

When a private utility owner or its contractor must **PARTIALLY OR FULLY BLOCK TRAVEL LANE(S) OF** ~~occupy~~ any street or public right of way in order to complete emergency repairs as further defined below, the same shall complete the work as deemed necessary and submit a **RIGHT OF WAY** ~~public way~~ permit and the associated fees, no later than the following working day. For the purpose of this section, emergency repairs shall be considered those activities which require immediate action to address imminent danger and risk to the public and/or surrounding properties, **OR WHERE THE IMMEDIATE RESTORATION OF CRITICAL UTILITY SERVICES IS NECESSARY.** ~~i.e. natural gas line leaks, water main breaks, downed power lines~~ **REQUIRING IMMEDIATE RESPONSE.** The owner or contractor making emergency repairs shall notify the City of Delaware Police Department at the commencement of repair activity regarding the schedule of work **AND** impact to traffic, **AND IS** ~~and to request City assistance in managing traffic issues.~~ The owner or contractor is responsible for furnishing, erecting and maintaining all required traffic signage, barricades, detours etc. as required by the Ohio Manual of Uniform Traffic Control Devices. **IF THE OWNER/CONTRACTOR IS UNABLE TO FURNISH REQUIRED TRAFFIC MAINTENANCE, THE CITY SHALL FURNISH AS DEEMED NECESSARY AND INVOICE THE ASSOCIATED COST TO THE UTILITY OWNER.**

( [Ord. 12-71. Passed 10-29-12](#) )

#### 901.06. - Inspections.

Inspection of work performed under all **RIGHT OF WAY** ~~public way~~ permits shall be completed by the City or an assigned agent. All excavation and paving activities within the public right-of-way, excluding sidewalk and driveway approach repairs, require a minimum 24-hour advance notification. Required inspections include:

- (a) Sidewalk, Driveway or Curb. Concrete forms inspection required before placement of concrete. The permittee **APPLICANT** shall call the Planning and Community Development **PUBLIC WORKS** Department by 9:00 a.m. to schedule a required inspection for that day. Specific **DATES AND** times are not guaranteed.
- (b) Utility Connections. Connections or repair to any public water line, sanitary or storm sewer requires inspection before backfill operation begins.



- (c) Backfill Compaction. Backfill installation shall be performed in accordance with City specifications and is subject to inspection and testing as directed by the City.
- (d) Final Inspection. A final inspection is required to verify conformance with permit requirements, including final grading and seeding.
- (e) It is the applicant's responsibility to schedule inspections. Failure to obtain an inspection may result in the required re-excavation and installation of the work area in the presence of proper inspection personnel. In addition, the failure of a contractor to properly notify the City of his work and to schedule inspections may result in the denial by the City of any future permit applications.

( [Ord. 12-71. Passed 10-29-12](#) )

901.07. - Maintenance of traffic.

**A MAINTENANCE OF TRAFFIC (MOT) PLAN SHALL BE PROVIDED WITH THE RIGHT OF WAY APPLICATION FOR ALL PARTIAL OR FULL CLOSURES OF A PUBLIC ROAD. ALL ROAD AND LANE CLOSURES SHALL BE DONE IN CONFORMANCE WITH THE CITY'S MAINTENANCE OF TRAFFIC AND PUBLIC NOTIFICATION REQUIREMENTS POLICY. A RIGHT OF WAY PERMIT REQUIRING AN APPROVED MOT PLAN IS NOT CONSIDERED APPROVED UNTIL THE ASSOCIATED MOT PLAN HAS BEEN SUBMITTED, REVIEWED AND APPROVED BY THE CITY. WHERE APPROVED BY THE CITY, A STANDARD OHIO MANUAL OF UNIFORM TRAFFIC CONTROL DEVICES (OMUTCD) TRAFFIC CONTROL CASE, OR AN OHIO DEPARTMENT OF TRANSPORTATION (ODOT) MAINTENANCE OF TRAFFIC STANDARD DRAWING MAY BE UTILIZED IF APPLICABLE TO THE PROJECT. HOWEVER, ALL ARTERIAL STREETS SHALL PROVIDE A CUSTOM MOT PLAN SPECIFIC TO THE PROJECT IN ACCORDANCE WITH OMUTCD REQUIREMENTS. FOR ALL FULL STREET CLOSURES, A SIGNED DETOUR MUST BE INCLUDED IN THE APPROVED MOT PLAN. WHERE THE TERM "ROAD CLOSURE" OR "CLOSURE" IS USED, IT SHALL REFER TO BOTH FULL ROAD CLOSURES AND PARTIAL ROAD CLOSURES. PARTIAL ROAD CLOSURES INCLUDE LANE CLOSURE AND SHOULDER CLOSURES.**

~~For work that requires partial or complete closure of a public street, the applicant shall submit a maintenance of traffic application and associated traffic control/detour plan with the permit application, permits identifying partial or full road closure require up to ten (10) working days to review. Work requiring lane restrictions or a road closures is subject to the additional advance notification requirements of Section 901.01(f). Maintenance of traffic applications and plans shall be reviewed by the Engineering, Public Works, Police, and Fire Departments. Traffic control devices shall be furnished, erected, maintained, and removed by the applicant, or designated representative, in accordance with guidelines published in the Ohio Department of Transportation Temporary Traffic Control Manual. Any specific condition attached to the approved permit by the City shall take precedence over both the manual and plan notes. All traffic control devices used for night work including barrels, cones, barricades etc., must be equipped with high intensity reflective film and amber flashing beacons.~~

( [Ord. 12-71. Passed 10-29-12](#) )

901.08. - Excavation in new pavement.

Excavating within pavement less than two years old shall not be permitted if alternate utility installation methods are available i.e. directional boring. In the event excavation in pavement is

necessary, the applicant may be subject to additional pavement repair requirements including but not limited to full width pavement replacement, heat welding, sealing, and restriping.

( [Ord. 12-71. Passed 10-29-12](#) )

901.09. - Failure to perform.

Failure of applicant to complete any of the required work specified on an approved permit, or within the allotted time frame or to City specification may result in the City revoking the permit, issuing a stop work order, and contracting out the remaining construction activities and repairs as required. The applicant will be responsible for all administrative, material and labor costs associated with the repair in addition to any fines as identified in Section 901.99.

( [Ord. 12-71. Passed 10-29-12](#) )

901.10. - Parking meters.

Whenever the permitted activities being performed restrict the use of City Parking Meters, the applicant requesting the permit shall be responsible for contacting the City Police Department and making appropriate arrangements for specified meters to be temporarily bagged or removed as necessary for the work.

( [Ord. 12-71. Passed 10-29-12](#) )

901.11. - Steel roadway plates.

The City requires that all applicants/contractors placing steel roadway plates on any public street or alley to notify the City Public Works Department upon placement. The contractor shall supply the name and telephone contact information of a designated 24-hour emergency contact person along with the location of each plate and the approximate number of days each plate shall be in place. All plates placed over excavations are to be held in place by the use of a minimum of four pins or by the placement of bituminous asphalt continuously or all four edges and must be marked with an orange construction barrels or safety cones at the adjacent edge of pavement.

( [Ord. 12-71. Passed 10-29-12](#) )

901.12. - Emergency contact.

Prior to the commencement of any activity within the public right of way, the applicant shall provide the City with the name and phone number of a designated 24-hour emergency contact. The contact shall be authorized and capable of addressing situations that develop involving the applicants work after normal working hours or on weekends.

( [Ord. 12-71. Passed 10-29-12](#) )

901.13. - Dumpsters/storage containers.

A public way permit is required for all dumpsters, large waste receptacles and storage containers placed within the public right of way. Permits may be issued to a property owner, contractor of the vendor who supplies the units. The vendor shall be responsible for providing a dumpster or container in compliance with current City regulations. When placed on a public street, each unit shall be protected by placement of orange reflectorized barrels or safety cones to alert motorists of the presence of the unit.



The name and contact information of the unit owner shall be visible on the side of each unit. This regulation does not apply to waste containers placed on private property for routine waste collection service.

( [Ord. 12-71. Passed 10-29-12](#) )

901.14. - Special duty **LAW ENFORCEMENT** ~~police~~ officers.

The applicant shall be responsible for requesting, scheduling, and paying for the cost of the services of **A LAW ENFORCEMENT OFFICER (LEO) UNIFORMED** ~~Special Duty Police Officers~~ as **REQUIRED BY THE MAINTENANCE OF TRAFFIC AND PUBLIC NOTIFICATION POLICY AND AS** determined necessary by the City. Applicants shall be notified prior to permit approval to discuss the requirement of special duty officers. ~~Special duty officers shall be required at all times when working within signalized street intersections.~~ The City will determine the number of officers required. City of Delaware Officers are to be utilized when available and may be requested by contacting the Delaware Police Department. **LEO'S FROM OTHER JURISDICTIONS SHALL BE USED ONLY AFTER THE DELAWARE CITY POLICE DEPARTMENT DETERMINES THAT IT CANNOT PROVIDE THE OFFICER(S) AND APPROVES THE USE OF AN LEO FROM ANOTHER JURISDICTION.**

( [Ord. 12-71. Passed 10-29-12](#) )

901.15. - ~~Fees and deposits.~~ **PERMIT AND INSPECTION FEES**

**ALL PERMIT APPLICANTS SHALL BE REQUIRED TO PAY REVIEW AND INSPECTION FEES AS ESTABLISHED IN 197.02 OF THE ADMINISTRATIVE CODE.**

~~All permit applicants shall be required to pay certain fees as set forth in this section to cover the administrative costs of issuing permits and performing inspections. The fees are listed on the current Public Way Permit and Inspection Fees Schedule.~~

~~(a) — Permit Fees: Permit fees shall be charged for the following permit activities and are due at the time an approved permit is picked up.~~

- ~~• Excavation within the public right of way.~~
- ~~• Occupancy of a public street, alley or any part of the public right of way.~~
- ~~• Dumpsters/storage containers placed on a public street or within the right of way.~~
- ~~• Sidewalk/driveway: No fees charged for individual sidewalk or driveway permits.~~
- ~~• Blanket permit designation for work meeting the criteria of Section 901.01(b)(3).~~

~~(b) — Inspection Fees: Applicants are responsible for paying inspection fees for the following activities at the time an approved permit is picked up.~~

- ~~• Excavation within a paved roadway in which more extensive inspection coverage may be deemed necessary depending on the severity of the excavation size, depth and location.~~
- ~~• Excavation outside pavement limits but within the public right of way.~~

- (c) ~~Additional Inspection Fees: If, in the opinion of the City, additional inspections are necessary in the form of a stand-by construction inspector being assigned to monitor the associated construction activity, the applicant shall be notified prior to approval of the permit application to discuss the inspection requirements. The applicant shall be responsible to pay for the cost of such stand-by inspection services at the current City hourly rate for construction inspection services and shall be invoiced for the total stand-by construction inspection fees once it has been determined that the work has been completed in a satisfactory manner.~~
- (d) ~~Pavement Repair Deposit: A pavement repair deposit, separate from other required permit and inspection fees, may be required at the discretion of the City. These funds are utilized to cover any cost incurred by the City to modify a pavement repair that was improperly installed or otherwise constructed.~~

( [Ord. 12-71. Passed 10-29-12](#) )

**Cross reference—** Fee Schedule, § 197.02.

901.16. - Right to decline.

The City of Delaware reserves the right to decline additional permit requests by applicants that are in violation of the requirements of any provision of this chapter. No permit shall be issued until the violations are corrected to the satisfaction of the City.

( [Ord. 12-71. Passed 10-29-12](#) )

901.99. - Penalty.

Whoever violates any provision of this section shall be deemed guilty of a minor misdemeanor and fined one hundred dollars (\$100.00). Any such violation shall be considered a separate offense for each successive day continued, in accordance with this section.

( [Ord. 12-71. Passed 10-29-12](#) )