

Ordinance No. 1141-2023

By Council Members Bishop and Griffin
(by departmental request)

AN EMERGENCY ORDINANCE

To amend various sections of the Codified Ordinances of Cleveland, Ohio, 1976, as amended by various sections; to repeal Sections 505.04, 505.05, 505.07 to 505.10, as amended by various ordinances; to supplement the codified ordinances by enacting new Sections 502.01 to 502.06, 503.014, 505.16, and 514.091, relating to sidewalks and right-of-way generally.

WHEREAS, this ordinance constitutes an emergency measure providing for the usual daily operation of a municipal department; now, therefore,

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF CLEVELAND:

Section 1. That the following sections of the Codified Ordinances of Cleveland, Ohio, 1976:

Section 411.011, as amended by Ordinance No. 979-2020, passed July 14, 2021,

Section 439.02, as amended by Ordinance No. 599-11, passed June 6, 2011,

Section 439.021, as amended by Ordinance No. 2393-02, passed February 3, 2003,

Section 503.01, as amended by Ordinance No. 1170-03, passed July 16, 2003,

Section 503.04, as amended by Ordinance No. 63410-A, passed September 22, 1924,

Section 503.99, as amended by Ordinance No. 1170-03, passed July 16, 2003,

Sections 505.01, 505.02, 505.03, and 505.06, as enacted by Ordinance No. 63410-A, passed September 22, 1924,

Section 505.11, as amended by Ordinance No. 1729-01, passed October 22, 2001,

Section 505.12, as amended by Ordinance No. 837-00, passed July 17, 2000,

Section 505.13, as amended by Ordinance No. 242-05, passed April 25, 2005,

Section 505.14, as amended by Ordinance No. 277-05, passed March 28, 2005,

Section 505.15, as amended by Ordinance No. 890-22, passed November 7, 2022,

Section 505.99, as enacted by Ordinance No. 63410-A, passed September 22, 1924,

Section 507.06, as amended by Ordinance No. 1170-03, passed July 16, 2003,

Section 507.15, as amended by Ordinance No. 1276-95, passed July 19, 1995,

Section 513.99, as amended by Ordinance No. 704-2023, passed July 12, 2023,

Sections 514.01 and 514.02, as enacted by Ordinance No. 884-10, passed August 18, 2010,

Section 514.04, as amended by Ordinance No. 243-11, passed May 9, 2011, and

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Sections 514.07 and 514.09, as enacted by Ordinance No. 884-10, passed August 18, 2010,
are amended to read as follows:

Section 411.011 Street Obstruction Permits

(a) No person shall place or cause to be placed any object or property so as to obstruct the public’s use of any highway, lane, road, street or alley without first obtaining a street obstruction permit and/or a street opening permit, if necessary, from the Director of Capital Projects.

(b) An application for a street obstruction permit shall contain the following information:

- (1) The name of the applicant;
- (2) The location of the proposed obstruction;
- (3) The purpose of the obstruction;
- (4) A description of the obstruction;
- (5) The proposed commencement date, time and estimated duration of the obstruction; and
- (6) A traffic maintenance plan.

(c) An application for a street obstruction permit for construction and rehabilitation projects regulated by Chapter 3115, shall contain the information required in division (b)(1) through (b)(5) above, and in addition shall include a traffic and pedestrian maintenance plan. Such plan shall be approved, subject to revision, by the Division of Engineering and Construction in consultation with the Division of Traffic Engineering, according to pedestrian safety criteria required by rules and regulations promulgated by the Directors of Capital Projects and Public Works based on Ohio Manual of Uniform Traffic Control Devices (OMUTCD) standards. In addition to the requirements of Chapter 3115, required criteria shall include the following:

- (1) A plan for safe alternative re-routing of pedestrians and wheelchair riders, if the applicant presents specific reasons that the existing sidewalk cannot stay open or abutting walkway cannot be maintained with safety measures during construction;
- (2) Pedestrians and wheelchair riders shall not be lead into conflict with vehicles, equipment, or operations moving through or around the work zone;
- (3) Temporary pedestrian access re-routes or detours must be continuous, unobstructed, and protected from construction;
- (4) Accessibility and compliance with the Americans with Disabilities Act (ADA);

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(5) If a temporary pedestrian access re-route must involve crossing the roadway, a plan to direct pedestrians and wheelchair riders with advance signing directing them to the nearest official crosswalk; and

(6) A plan to erect appropriate signage notifying pedestrians and wheelchair riders of work zones in compliance with rules and regulations and to post a copy of such permit at each approach to the work zone.

(d) The application shall be accompanied with the fee established from time to time by the Board of Control for the permit and any inspection costs related thereto and evidence of a public liability insurance policy issued by an insurer authorized to transact business in Ohio, in an amount not less than one million dollars (\$1,000,000.00), listing the City of Cleveland as an additional insured.

(e) The Director may deny or revoke a street obstruction permit whenever the Director finds:

(1) The applicant has previously violated the provisions of a street obstruction permit or has submitted materially false or incomplete information on any street obstruction permit application; or

(2) The obstruction would unreasonably interfere with another obstruction for which a permit has been issued; or

(3) The time, place or size of the obstruction would unreasonably interfere with public convenience and safe use of the street; or

(4) The obstruction would unreasonably interfere with the movement or service capability of emergency or service vehicles; or

(5) The obstruction would unreasonably interfere with a construction project.

(f) Whoever violates division (a) of this section shall be fined not less than two hundred dollars (\$200.00).

(g) This section shall not apply to any person that has been issued a permit under Chapter 3109 relating to encroachment permits. ~~the following Chapters of the Codified Ordinances:~~

~~(1) Chapter 131 relating to special events;~~

~~(2) Chapter 411 relating to parades;~~

~~(3) Chapter 503 relating to street openings and maintenance; or~~

~~(4) Chapter 3109 relating to encroachment permits.~~

Section 439.02 Permits for Overweight and/or Oversize Vehicles, Objects and Structures

(a) The Director of Capital Projects may issue permits, upon written application, to move vehicles, objects or structures that are in excess of the weight and/or size limitations specified in this chapter over any street, highway, bridge or culvert, other than a state route. The Director of Capital Projects shall issue each permit for a particular vehicle, object or structure to move over a specific route as requested by

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the applicant or as modified by the Director. Prior to submitting its written application, the applicant shall review all routes requested to ensure that all height clearances and weight allowances are met. prescribed by the Director.

(b) The Director of Capital Projects shall issue permits only for non-divisible loads, unless the Director determines that it would be in the best interests of the safety of the traveling public and the welfare of the transportation system to waive this restriction. As used in this section, “non-divisible” means that which cannot be reduced in size or weight, or which is impractical to divide, or which cannot be so adjusted as to be within the weight and size limitations specified in this chapter and RC 5577.01 to 5577.14.

(c) The Director of Capital Projects shall require each permittee to indemnify and save harmless the City of Cleveland with respect to the permittee’s activities under the permit. The Director shall further require that the permittee maintain at all times during the term of the permit automobile liability insurance to insure both the permittee, and the City of Cleveland as an additional insured with respect to permittee’s activities under the permit, with limits not less than the following:

Bodily injury coverage per person	\$375,000.00
Bodily injury coverage per occurrence	\$375,000.00
Property damage coverage per occurrence	\$375,000.00

In lieu thereof, a single limit policy of automobile liability insurance covering both personal injury and property damage in an amount not less than seven hundred fifty thousand dollars (\$750,000.00) may be substituted.

(d) The Director of Capital Projects may impose such additional requirements or conditions for the issuance of a permit under this section as the Director deems necessary for the safety and welfare of the citizens of the City of Cleveland and the traveling public, and to protect the integrity of the streets, highways, bridges and culverts in the City of Cleveland. Such additional requirements or conditions may include the keeping of a log of the number of moves made under the authority of a permit issued pursuant to this section.

(e) The Director of Capital Projects may issue such rules and regulations as the Director deems necessary to fulfill the purposes of this section and Section 439.021. Such rules and regulations shall take effect ten (10) days after publication in the City Record.

Section 439.021 Categories of Permits for Overweight and/or Oversize Moves; Permit Fees

(a) The Director of Capital Projects ~~Public Service~~ shall use the following categories for purposes of assessing fees for permits issued under Section 439.02:

- (1) Active Permit. An active permit shall be issued for a single movement over a designated route, and may allow for return to the place of origin over the same route with approval of the Director of Capital Projects ~~Public Service~~. An active permit shall be issued for a duration of not to exceed seventy-two (72) hours, except that a permit allowing the movement of a load in excess of one hundred twenty thousand (120,000) lbs. shall be for a duration of not to exceed five (5) days.
- (2) Continuing Permit. A continuing permit shall be issued for repeated movements of the same vehicle, including any approved load and axle

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spacing, over the same routing between the same two (2) locations. A continuing permit shall be issued for a period of not to exceed three hundred sixty-five (365) days.

(3) Construction Equipment Permit. A construction equipment permit shall be issued for repeated movements of the same vehicle to and from construction work sites. A construction equipment permit shall be for a vehicle, including trailer and/or equipment or machinery, which does not exceed twelve (12) feet in width, and which does not exceed the weight, length, and height limitations of this chapter and RC 5577.02 and 5577.05. A construction equipment permit shall be issued for a period of not to exceed three hundred sixty-five (365) days.

(4) Inactive Permit. An inactive permit shall be issued for repeated movements of the same vehicle, including the approved load and axle spacing. For an inactive permit, the route is not specified when the application is submitted. When a given route is subsequently submitted to and approved by the Director of Capital Projects ~~Public Service~~, the Director shall issue a validation number, which shall activate the permit for a duration of not to exceed seventy-two (72) hours. An inactive permit shall be issued either for a period of not to exceed ninety (90) days, or for a period of not to exceed three hundred sixty-five (365) days, the duration of which shall be in accordance with the amount paid by the applicant under the schedule of fees set forth in division (b) of this section.

(b) At the time of the application, the applicant shall pay a non-refundable fee in accordance with a fee schedule fixed from time to time by the Board of Control for permits issued under Section 439.02.

~~(b) The Director of Public Service shall charge the following fees for permits issued under Section 439.02:~~

Active permit—(single movement)	Fee
Active permit—(single movement)	Fee
Processing fee—72 hours or 5 days	\$15.00
Overweight surcharge	\$7.50
Overwidth surcharge (over 12 ft.)	\$7.50
Overheight surcharge (over 14 ft. 6 in.)	\$15.00
Return trip surcharge with authorization	\$7.50
Continuing Permit	Fee
Processing fee—365 days	\$20.00
Overweight surcharge	\$7.50
Overwidth surcharge (over 12 ft.)	\$7.50
Overheight surcharge (over 14 ft. 6 in.)	\$15.00
Construction Equipment Permit	Fee
(up to 12 ft. wide)	
Processing fee—365 days	\$15.00
Inactive Permit	Fee
Processing fee—365 days	\$15.00
Processing fee—90 days	\$7.50
Validation number charge (approval of routing) and return	\$7.50
Overweight surcharge	\$7.50
Overwidth surcharge (over 12 ft.)	\$7.50
Overheight surcharge (over 14 ft. 6 in.)	\$15.00

(c) In addition to the foregoing fees and charges, if a police escort is required by state law, or at any other time that the Director of ~~Public Service~~ Capital Projects and

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the Traffic Commissioner determine that a police escort is needed, the permittee shall also reimburse the City for the costs of the escort as determined by the Chief of Police

Section 503.01 Street Opening Permits; Right-of-Way Registration Contents;
Costs

(a) ~~Except as provided in division (g) of this section, no~~ No person, including a corporation, private utility or public utility, shall excavate make an excavation or opening or remove any pavement in any highway, lane, road, street or alley of the City, without first obtaining a street opening permit, except as provided in division (g) of this section, and holding a current Right-of-Way Certificate of Registration, except as provided in division (a)(2) of this section. Before a person, including a corporation, private utility or public utility may receive such a permit, such person shall file with the Director of Public Service an application on the form provided by the Director. This application shall set forth and include the location, kinds and extent of the pavement desired to be taken up and the number, purpose and size of openings or excavations which are desired or necessary. At the time of application, applicant shall pay a non-refundable fee in accordance with a fee schedule fixed from time to time by the Board of Control in order to recover the City's costs related to street opening.

(1) *Street Opening Permit.* The application for a street opening permit shall be in the form prescribed by the Director. This application shall state the name, address and phone number of the applicant, the location, kinds and extent of the pavement desired to be taken up and the number, purpose and size of excavations which are desired or necessary. The application shall also include a signed statement that the permittee shall hold harmless the City of Cleveland, its officers and employees and shall indemnify the City of Cleveland, its officers and employees for any claims or damage to property or injury to persons which may be occasioned by any activity carried on under the terms of the permit. At the time of application, the applicant shall pay a non-refundable fee in accordance with a fee schedule fixed from time to time by the Board of Control.

(2) *Right-of-Way Certificate of Registration.* The application for an annual Right-of-Way Certificate of Registration shall be in the form prescribed by the Director, shall state the name of the person, firm or corporation applying for registration and the name, address, and phone number of the place of business or places of business of the applicant, and shall include such additional information that the Director deems necessary. If the applicant is a firm, co-partnership, corporation, association or any combination, the application shall contain the names and addresses of all members or officers, together with a certified copy of the corporation minutes or other certified evidence that the application has been duly authorized. At the time of application, the applicant shall pay a non-refundable fee in accordance with a fee schedule fixed from time to time by the Board of Control. No Right-of-Way Certificate of Registration shall be required for officials or employees of a public utility or private utility.

(b) In the event the scope of the project is revised during the course of the work, the ~~Commissioner~~ Manager of Engineering and Construction may recalculate the street opening permit fee based on the actual size of the excavation in accordance with the fee schedule fixed by the Board of Control.

(c) In the event that a street opening permit is not issued or is revoked before an excavation has been made, the entire fee shall be refunded to the applicant, except for an amount fixed from time to time by the Board of Control to cover the city's cost of processing the application.

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(d) Prior to being issued a street opening permit, permittee shall submit a performance bond or have a current performance bond on file either:

(1) In the amount of the estimated cost of backfilling and restoring the excavation to be made by the permittee, as estimated by the ~~Commissioner~~ Manager of Engineering and Construction; or

(2) An umbrella bond in the amount of two hundred fifty thousand dollars (\$250,000.00). Any person providing an umbrella bond will be deemed to have met the performance bond requirements of this section for the duration of the performance bond.

(e) After the fee and deposit required by this section have been paid, the Director may issue the street opening permit applied for. The permit shall state the exact time the ~~opening or excavation~~ is to be made, the probable length of time required for the work to be done and the repair made, the character of the pavement, including its base, and the character of the work necessary for the satisfactory relaying of the pavement.

(f) ~~Permittee shall restore, or cause to restore, all~~ All excavations shall be restored by permittee according to regulations promulgated by the Director of Capital Projects Public Service. Any regulations promulgated by the Director shall be effective thirty (30) days after publication in the *City Record*.

(1) If the Director determines that the permittee has failed to make restorations according to the Director's regulations, the Director may, by written notice, order the permittee to make restorations according to the regulations. The permittee shall have thirty (30) calendar days from receipt of written notice to make the appropriate restorations.

(2) If the Director determines that the permittee has failed to make restorations after thirty (30) days from the permittee's receipt of notice, the Director may draw, from the permittee's performance bond, funds sufficient to make the restorations according to the Director's regulations or the Director may proceed to carry out the restoration in accordance with Section 503.015 of these Codified Ordinances.

(g) In an emergency, a person may make an excavation or opening or remove pavement in any highway, lane, road, street or alley of the City, provided that the person notifies the Director in writing of the emergency, including a description of the nature of the emergency, and applies for a street opening permit within seven (7) calendar days of making the opening. The appropriate street opening fee shall accompany the application. Any person failing to notify the Director as provided in this division (g) shall be charged the regular permit fee plus an additional fee of two hundred dollars (\$200.00) to cover the City's administrative costs of identifying and inspecting the street opening made without a permit. As used in this division (g), "emergency" means a condition that (i) poses a clear and immediate danger to life or health or of a significant loss of property; or (ii) requires immediate repair or replacement in order to restore service to a user.

(h) The street opening permit shall identify the time period in which the street opening must be closed. The ~~Commissioner~~ Manager of Engineering and Construction or his or her designee will determine this time period based upon the size and nature of the opening.

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(1) If the work is not started within the time designated in the street opening permit, the permit may be revoked by the Manager ~~Commissioner of Engineering and Construction~~.

(2) If the work has been started but not completed within the time designated in the street opening permit, the permit may be revoked by the ~~Commissioner~~ Manager of Engineering and Construction. If the permit is revoked, the Director may charge all accrued restoration charges to the permittee. Should the permittee fail to pay all accrued restoration charges within thirty (30) calendar days of receipt of notice, the Director may draw, from the permittee's performance bond, funds sufficient to restore the highway, lane, road, street, or alley according to the Director's regulations or the Director may proceed to carry out the restoration in accordance with Section 503.015 of these Codified Ordinances.

(3) ~~If a street opening permit is revoked by the Commissioner of Engineering and Construction, a new permit must be secured before any further work can proceed.~~

(3) The Manager, or the Manager's designee, may, at his or her discretion, issue a stop work order for any work being performed without a valid permit, or suspend a street opening permit for the following reasons:

A. The work unreasonably interferes with the performance of work by another party who received a City permit before the issuance of permittee's permit; or

B. The suspension of the work is necessary for the City to evaluate, prevent, or address a hazard or risk to the health, safety, and welfare of the public; or

C. The work performed, or the work being performed, is not within the scope of the work approved by the permit; or

D. The work is creating, or has created, unsafe work conditions; or

E. The permittee or his or her agent fails to abide by the provisions of these Codified Ordinances; or

F. The permittee or his or her agent has violated the conditions of or the rules and regulations governing the permit; or

G. The work performed, or the work being performed, fails to comply with the City's specifications and standards.

(4) A stop order suspending a permit issued under divisions (3)(C) through (G) above, shall state the reason(s) for suspension and the corrective measure(s) to be taken, the date by which the corrective measure(s) are to be completed, and such additional information as the Manager, or the Manager's designee, deems necessary.

(5) A permittee whose permit is suspended under division (3) above, may appeal the Manager's decision to the Board of Right-of-Way Appeals, in writing, within ten (10) days of the Manager's decision.

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(i) The Director may, at his or her discretion, revoke a street opening permit at any time under the authority of this chapter if the permittee fails to comply with the requirements contained in a stop order issued accordance with division (h)(4) above or any law, rule, or regulation relating to the performance of work in the public right-of-way or if permittee's, or its agent's, Right-of-Way Registration is revoked.

(j) The Director may, at his or her discretion, revoke a Right-of-Way Certificate of Registration under the authority of this chapter if the holder fails to comply with the terms of this chapter or any law, rule, or regulation. Additionally, the Director may, at his or her discretion, suspend or revoke a Right-of-Way Certificate of Registration for any of the following reasons:

(1) The holder is convicted of a misdemeanor involving moral turpitude or a felony during the renewal period of that Certificate of Registration;

(2) The holder obtained a Certificate of Registration by fraud, misrepresentation or deception;

(3) The holder engaged in fraud, misrepresentation or deception in the conduct of business;

(4) The holder no longer has a valid policy for the required insurance;

(5) The holder used its Certificate of Registration to obtain a permit for another;

(6) The holder repeatedly failed to secure permits, inspections, and approvals required under Chapter 503;

(7) The holder repeatedly installed work in an unworkmanlike manner as defined by the Construction Standards and Specifications of the City of Cleveland or not in conformity with permits issued by the City;

(8) The holder has received written notifications of violating Construction Standards and Specifications of the City of Cleveland and has failed remedy such violations; and

(9) There have been repeated incidents of returned checks for insufficient funds or stop payment without just cause.

(k) The Director shall give written notice, as appropriate, to a permittee of any street opening permit revoked under division (i) above and to a holder of a Right-of-Way Certificate of Registration suspended or revoked under division (j) above. Such notice shall state the reason(s) for the suspension or revocation, as appropriate, and shall further state that the action shall become final unless, within thirty (30) days of date of the notice, a written notice of appeal is filed with the Board of Right-of-Way Appeals.

(l) If a street opening permit is suspended under division (h), the permittee shall discontinue any work and shall not commence work until the Manager, or his or her designee, provides written notification lifting the suspension. If a street opening permit is revoked under divisions (h) or (i) above, a new permit shall be secured before any further work may proceed.

(i)(m) A permittee, in accepting and acting under a street opening permit, agrees to assume full responsibility for injury and damage to persons and property incurred because of any settlement of a restored area, and further agrees to pay all costs involved

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in reconditioning such areas. If any settlement in a restored area occurs within a period of one (1) year from date of completion of the permanent restoration, it shall be considered as conclusive evidence of defective backfilling. Any expense incurred by the City in correcting such settlement shall be paid by the permittee.

~~(j)~~(n) A permittee shall carry on the work authorized by the permit in such manner as to cause a minimum of interference with traffic. The permittee shall use a traffic control plan that meets the minimum requirements in the Ohio Manual of Uniform Traffic Control Devices, as amended, or is otherwise approved by the Director.

(o) For the purposes of this section, “excavation” shall have the same meaning as in division (a)(12) of Section 510.01 of these Codified Ordinances.

Section 503.04 ~~Location of Trees and Lamp Posts~~ and Trees in the Public Right-of-Way

(a) As used in this section, “public right-of-way” means any sidewalk, court, alley, street or other area dedicated or otherwise designated for public use and held by the City.

~~(b) All lamp posts and all shade or ornamental trees, hereafter placed in any of the streets of the City the public right-of-way shall comply with the requirements contained in Chapter 514, and may require an encroachment permit under Chapter 3109, as determined by the Manager of Engineering and Construction, of these Codified Ordinances. shall be placed within and not more than one (1) foot from the outer line of the sidewalk of such street; provided that the Director of Public Service may, at his or her discretion, permit the planting of a second row of shade trees on sidewalks of not less than twenty (20) feet in width. The second row of trees shall be at least twelve (12) feet from the line of the street.~~

(c) All shade or ornamental trees hereafter placed in the public right-of-way shall comply with the requirements contained in Section 509.13 of these Codified Ordinances.

Section 503.99 Penalty

(a) Whoever violates divisions (a) or (g) of Section 503.01 shall be guilty of a minor misdemeanor. Every violation is a separate offense and every day of violation constitutes a separate offense.

~~(b) Whoever violates Section 503.014 shall be guilty of a misdemeanor of the third degree and shall be fined not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00).~~

~~(b)(c) Every person, firm or corporation violating~~ Whoever violates Section 503.03 shall be fined not more than one hundred dollars (\$100.00). The existence of a single post, pole or other structure in the streets or sidewalks contrary to the provisions of Section 503.03 constitutes a separate offense. Each day that such post, pole or other structure is allowed to exist in the streets or sidewalks contrary to the provisions of Section 503.03 constitutes a separate offense.

~~(e)(d)~~ Whoever violates any provision of Sections 503.05 to or 503.07 shall be fined not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00) and imprisoned for not more than sixty (60) days or both. A separate offense shall be deemed committed each day during or on which an offense occurs or continues.

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~~(d)~~(e) Whoever violates Section 503.09 shall be fined not more than twenty-five dollars (\$25.00).

~~(e)~~(f) Every day a gas company neglects or fails to comply with the notice provided for in Section 503.11 it shall be fined ten dollars (\$10.00).

~~(f)~~(g) Whoever violates Section 503.12 shall be fined not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00) for the first offense. A subsequent offense by the same party in the same area of responsibility shall be fined not less than two hundred dollars (\$200.00) nor more than one thousand dollars (\$1,000.00). Any further offense by the same party in the same area of responsibility shall result in imprisonment for not less than three (3) nor more than ten (10) days.

Section 505.01 Sidewalk and Treelawn Defined; Width Requirements

All sidewalks shall be under the direction of the Director of Capital Projects. ~~Public Service~~. The space between the property line and the face of the curb line on each side of the paved roadway or curbed streets shall constitute the sidewalk. Upon unpaved streets, the sidewalk shall be the portion adjoining the property line on each side to the edge of the street, and shall have a width equal to one-fifth of the distance between property lines, but in no case shall the sidewalk be less than four (4) feet in width except in streets or alleys of sixteen (16) feet or less in width, where the sidewalk shall be the minimum required by the Professional Right-of-Way Accessibility Guidelines. ~~two and one-half (2 1/2) feet in width. The space from either the face of the curb or the edge of pavement to the front edge of the sidewalk shall constitute the treelawn. The treelawn shall consist of planted grass per City of Cleveland Construction Drawings or specifications, except as otherwise approved by the Manager of Engineering and Construction.~~

Section 505.02 Grading

(a) All sidewalks hereafter improved by placing walks with a permanent surfacing on any public highway or street within the City shall be so improved by constructing walks with stone flagging, ~~or concrete, or any other material approved by the Manager of Engineering and Construction or the Manager's designee~~ and in accordance with the City of Cleveland Construction Drawings or specifications prescribed by the Director of Capital Projects, Public Service, and shall be of the width set forth in Section 505.01 ~~prescribed by resolution of Council~~, or as directed by the Director ~~where no such resolution has been passed~~. The sidewalk shall be so laid that the top surface shall be properly roughened, so that the same shall be prevented from becoming slippery when covered with moisture. The roughened finish shall be of such character as in the judgment of the Director will effectually prevent at any time the slippery condition of such walks.

(b) Any grading necessary between the walks as laid, and the curb line, or between the walks and the edge of the sidewalk space as herein established, shall be done at the time of laying the walks, so as to leave the sidewalk space at the grade hereinafter described.

(c) The sidewalks as improved shall coincide with the line described as follows: beginning at the curb line with the established curb grade as determined by the Manager or the Manager's designee City Engineer; Thence extending to the street line at right angles to the curb line, with a rise in compliance with the current Professional Right-of-Way Accessibility Guidelines to the foot of three-eighths (3/8) of an inch to the

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~~foot~~; provided, that at street intersections, where the grade of the intersecting street prevents compliance with the above provisions, the walk shall be laid under the direction and to the acceptance of the ~~Commissioner~~ Manager or the Manager's designee of Engineering and Construction.

(d) The owner of land in front of which a permit to improve the sidewalk has been given may request the Manager to establish the grade or line on which the improvement is to be made.

Section 505.03 Changing Sidewalks; Curb Line and Grading; Notice of Noncompliance

(a) Any sidewalk heretofore laid shall not be raised or lowered without the approval of the ~~Commissioner~~ Manager of Engineering and Construction or the Manager's designee. All sidewalks hereafter laid shall be in accordance with the provisions of this chapter and under the supervision of the Manager. ~~Commissioner.~~

(b) No curb line or grade for curb shall be changed, except by the direction and the written consent of the Director of Capital Projects, Manager, or a designee. ~~Public Service or Commissioner.~~

(c) Any sidewalk laid on any public street or highway within the City in a manner inconsistent with the provisions of this chapter shall, upon the recommendation of the Director, be ordered relaid to the proper grade, ~~upon the failure of the property owner to make the change so ordered~~ within the time specified in the notice.

(d) No curb cut shall exist which does not lead to an area for parking on the abutting property. When the Director, Manager or a designee determines that a property owner is in violation of this division, he/she shall serve or cause to be served upon such owner a notice stating the violation and the time period to remedy the violation.

(e) The Director, Manager, or designee may require a property owner engaging in a construction or rehabilitation project regulated by Chapter 3115 of these Codified Orders to bring all sidewalks into compliance with the current City standards and specifications, including the establishment or re-establishment of the curbs, aprons and drive-walks.

(f) If a property owner fails to remedy a violation within the time period specified in an order issued under (c) or a notice issued under division (d) or (e) of this section, the Director or Manager may proceed to construct, or cause to be constructed, the necessary curb line or sidewalk improvements, as appropriate, at the owner's expense, plus assess a penalty of fifteen percent (15%) for failing to comply.

Section 505.06 Street Opening Permit Required; Nonconforming Work; Damage to Sidewalk Construction Permit; Deposit; Bond

(a) Each person, firm or corporation who engages in the work of laying, relaying or repairing sidewalks upon the City streets shall, before engaging in any such work or employment, obtain a Street Opening Permit under Section 503.01 of these Codified Ordinances and comply with the requirements contained therein.

(b) When the Director of Capital Projects, Manager of Engineering and Construction, or a designee determines that a person, firm, or corporation has performed work on the sidewalk without obtaining a permit required under this

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chapter, or has performed such work with or without the required permit(s) that is not in conformity with the City of Cleveland Standard Construction Drawings or requirements, he/she shall provide upon such party written notice stating the violation and the time period to remedy the violation.

(c) Any person, firm, or corporation who damages a sidewalk in carrying out a project, shall obtain a Street Opening Permit under Section 503.01 of these Codified Ordinances and shall restore the sidewalk to its original condition. When the Director, Manager, or a designee determines that a person, firm, or corporation has failed to restore a sidewalk, he/she shall provide upon such party written notice stating the violation and the time period to remedy the violation.

(d) If a person, firm, or corporation fails to remedy a violation within the time period specified in the notice issued under division (b) or (c) of this section, the Director or Manager may proceed, or cause to proceed, with the repair, removal or restoration of the sidewalk at the party's expense, plus assess a penalty of fifteen percent (15%) for failing to comply with the notice.

~~Each person, firm or corporation that engages in the work of laying, relaying or repairing sidewalks upon the City streets shall, before engaging in any such work or employment, make a cash deposit of twenty-five dollars (\$25.00). Interest at the current rate being received by the City on its deposits, will be allowed on January 1 and July 1 of each year on the cash deposit provided for herein, providing the same has been in the City Treasury for a period of six (6) months next preceeding the dates. Each person, firm or corporation shall give bond to the City of five hundred dollars (\$500.00) for each fifty thousand (50,000) square feet of sidewalk estimated to be laid, relaid or repaired, or for any fractional part thereof, on condition that the City shall be saved harmless from any loss or expenditure in any manner arising from the conduct of such persons, firm or corporation, in the work of laying, relaying or repairing sidewalks, and from any loss or damage which may arise by reason of any obstructions, excavations, barriers, guards or other objects or materials placed or deposited in the street during the progress of the work, or the expense of removing the same and cleaning the street or sidewalk, and from any loss or damage arising from any acts, negligence or default of such persons, firm or corporation, and conditioned further upon the sidewalks so laid, relaid or repaired remaining in good condition to the satisfaction of the Director of Public Service, for a full period of two (2) years from the year of the laying, relaying or repairing sidewalks, and conditioned upon such person, firm or corporation immediately upon the appearance of any defects, disintegration or fault in such sidewalks appearing and due to any acts, omissions or default of the one laying the same, being immediately repaired and restored to a good and proper condition to the satisfaction of the Director, as to such defects as may appear at any time within two (2) years of the year of laying, relaying or repairing of the sidewalks. The bond and deposit shall cover all of the foregoing matters which may arise or be occasioned at any time within two (2) years of the calendar year within which such work is done. Before any person, firm or corporation who is entitled to lay, relay or repair sidewalks, as herein provided, undertakes to do the work of such laying, relaying or repairing they shall procure from the Director a permit to do such work in the public streets of the City. The application for the permit shall specify the owner of the property in front of which the sidewalk is to be laid and the probable time of beginning and finishing the work of laying, relaying or repairing such sidewalks. A separate permit shall be required for each continuous stretch of sidewalk to be laid. The cash deposit, less any expense which may have been charged against the same by the City, shall be returned whenever the person, firm or corporation entitled to lay, relay or repair sidewalks and having made such deposit, in accordance with the provisions herein prescribed, has signified in writing to the Director the intention of no longer engaging in such work.~~

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Section 505.11 Duty to Repair Sidewalks, Curbs and Gutters; Duty to Maintain Certain Sidewalks; Liability

(a) No owner or occupant of abutting lots or lands shall fail to keep the sidewalks, curbs, and gutters in repair and free from snow, ice or any nuisance.

(b) In addition to the duty contained in division (a) of this section, no owner or occupant of abutting lots or lands which are used, in whole or in part, for the operation of a business, or which previously have been used for the operation of a business and are now vacant, shall maintain sidewalks with the characteristics contained in division (a) of Section 505.12. As used in this division, “business” means any enterprise, activity, profession or undertaking of any nature conducted for profit or ordinarily conducted for profit, whether by an individual, partnership, association, corporation or any other entity, but not including the rental of residential premises.

(c) An owner or occupant of abutting lots or lands who fails to comply with division (a) or, if applicable, division (b) of this section:

(1) Shall be liable in money damages to any person who, as a result of such owner’s or occupant’s failure to comply, sustains bodily injury or property damage while in the lawful use of the sidewalk (an “injured party”); and

(2) Shall be liable to and reimburse the City for all money paid by the City on any claim made or judgment obtained against the City by an injured party.

(d) When the Director of ~~Capital Projects~~ Public Service determines that an owner fails to keep the sidewalks, curbs, and gutters in repair because those sidewalks have one (1) or more of the characteristics set forth in division (a) of Section 505.12 the Director shall serve or cause to be served upon such owner a notice which states in detail the nature of the violation. The notice shall also contain an estimate of the cost to repair the sidewalk, curb, or gutter and shall notify the owner that he or she may submit payment of the estimated amount, which amount shall be the full amount unless there exists a properly authorized program subsidizing these repair costs, to the City by a certain date and enter into an agreement with the City to effectuate the repairs. Funds submitted as an estimated amount shall be deposited in ~~fund No. 10 SF 057~~ Fund No. 10 SF 058 and said funds are appropriated for ~~streets~~, sidewalks, curb or gutter repair purposes. Upon receipt of the estimated amount and the agreement, the City will construct or repair the sidewalk. If the actual cost of construction or repair is not equal to the estimated amount, the City will bill the owner for any additional cost or reimburse the owner from Fund No. ~~10 SF 057~~ 10 SF 058 for any amount paid to the City that exceeds the actual cost. The agreement required above shall contain such terms and provisions as determined by the Director of Law to protect and benefit the City. This notice is not a substitute for the notice described in division (b) of Section 505.12, but may be issued with that notice.

Section 505.12 Failure to Maintain Certain Sidewalks

(a) Sidewalks having the following characteristics are determined to be in need of maintenance:

(1) Any block having multiple cracks or any single crack larger than one-fourth (1/4) inch wide;

(2) Adjoining sections of block, or portion thereof, whose edges differ vertically by one-half (1/2) inch or more;

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(3) Any block with a transverse slope in excess of two percent (2%) or the current Professional Right-of-Way Accessibility Guidelines (PROWAG) three-eighths (3/8) inch plus or minus one-eighth (1/8) inch per horizontal foot toward the street;

(4) Any block with a reverse slope (a slope away from the street);

(5) Any block with a depression or depressions that impound water to a depth of one-quarter (1/4) inch or more;

(6) Any block with disintegrated or deteriorated areas or missing pieces or missing particles of aggregate;

(7) Any adjoining blocks the expansion or control joints of which are separated by one-half (1/2) inch or more;

(8) Any frontage along the public right-of-way that does not have a sidewalk or has a sidewalk that is non-compliant with this section;

(89) Any block which the Director of Capital Projects or his designee ~~Public Service~~ determines to be hazardous or non-compliant, regardless of whether it has any of the characteristics set forth in paragraphs (1) through (7) of this division.;

(10) Any curb that is missing, broken, deteriorated, or has a reveal of less than 4" or per the City of Cleveland Standard Construction Drawings or specifications or as directed by the Manager of Engineering and Construction.

(b) When the Director of Capital Projects, Manager, or a designee ~~Public Service~~ determines that an owner is in violation of the provisions of division (b) of Section 505.11 because the sidewalk or sidewalks abutting said owner's property have one (1) or more of the characteristics set forth in division (a) of this section, ~~said director~~ he/she shall serve or cause to be served upon such owner a notice which states in detail the nature of the violation. The notice shall further provide that within thirty (30) days after service of the notice, the recipient thereof shall:

(1) Remedy the violation;

(2) Appeal the ~~Director's~~ determination to the Board of Right-of-Way Appeals under Chapter 502 of these Codified Ordinances ~~Sidewalk Appeals~~; or

(3) Submit payment and enter into an agreement pursuant to division (d) of Section 505.11.

The notice shall clearly indicate to the recipient that if the recipient fails to take one (1) of the three (3) steps listed in this division within thirty (30) days after service of the notice, the recipient may be found guilty of a fourth degree misdemeanor.

~~(e) If an appeal is filed after service of the notice provided for in division (b) of this section, the Board of Sidewalk Appeals shall have the authority to modify, alter or revoke any such notice as to the amount or type of work required or the time in which it must be completed, consistent with City ordinances and specifications regarding sidewalk maintenance. The Board shall also have the authority to waive strict compliance with such requirements where such compliance would cause undue hardship, provided such waiver will not cause or continue a public nuisance or an unsafe~~

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condition. The Board shall issue an order setting forth its findings and indicating the period of time within which the owner must comply therewith.

~~(d) — If the Board of Sidewalk Appeals issues an order pursuant to division (c) of this section, the property owner to whom the order applies may appeal such order to the Board of Zoning Appeals established pursuant to Charter Section 76-6. Written notice of such appeal shall be filed with the Board within ten (10) days after the making of such order. Within ten (10) days after the filing of such notice, the Board shall proceed to hear such appeal, at which hearing all parties interested shall be afforded an opportunity to be heard. The Board shall approve, modify or annul the order from which the appeal has been perfected, and the decision of the Board shall be final with respect to all parties thereto.~~

~~(e) — Notwithstanding any other provision contained in this section, any notice served pursuant to division (b) of this section between November 15 of one (1) year and February 1 of the succeeding year to an owner of a parcel of land which is located within the Central Business District shall provide that the violation shall be remedied or the Director's determination appealed within thirty (30) days of the end of that period. Any order issued pursuant to division (c) of this section and any decision of the Board of Zoning appeals pursuant to division (d) of this section shall take into consideration the provisions of Section 505.05.~~

~~(f)(c) Any owner who violates the provisions of division (b) of this section or fails to comply with or appeal an order of the Board of Right-of-Way Appeals Sidewalk Appeals issued pursuant to division (c) of this section Section 502.04 of these Codified Ordinances within the period set forth in said order or fails to comply with the decision of the Board of Zoning Appeals issued pursuant to Section 502.05 of these Codified Ordinances Sidewalk Appeals pursuant to division (d) of this section shall be guilty of a misdemeanor of the fourth degree. Each day during which noncompliance or a violation continues shall constitute a separate offense. Provided that the fine set forth herein shall not, with respect to any one (1) service of notice, exceed three (3) times the cost of the sidewalk maintenance required in such notice, as estimated by the Director of Capital Projects Public Service. The fine set forth herein is mandatory and shall not be suspended by the court, in whole or in part. All fines collected for violations of this section, or an amount equal to the fines collected, shall be deposited to Fund No. 10 SF 058 and said funds are appropriated for streets, sidewalks, curb or gutter repair purposes, credited to the Neighborhood Sidewalk Assessment Fund, and such monies are hereby appropriated for the purposes for which the fund was created.~~

Section 505.13 Failure to Construct or Repair Sidewalks, Curbs and Gutters; City May Perform Work

(a) Every person owning any parcel of land abutting upon any sidewalk, curb or gutter within the City shall construct or repair such sidewalk, curb or gutter within fifteen (15) days after the service of notice to construct or repair required by Charter Section 164.

(b) If the abutting property owner does not perform such necessary construction or repair after receipt of notice, the Director of Capital Projects Public Service may proceed to carry out construction or repair pursuant to the provisions of Charter Section 165.

(c) If the Director of Public Service causes any such sidewalk, curb or gutter to be so constructed or repaired, said director shall report all expense of construction or repair plus a penalty of fifteen percent (15%) of the expense for failure to comply with division (a) of this section to the Director of Finance, who shall report such expense and

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penalty to Council. The fifteen percent (15%) penalty shall thereupon be assessed against the abutting property in the same manner as all other expenses or penalties arising out of the construction or repair of the sidewalk, curb or gutter.

Section 505.14 ~~50/50 Hazardous Non-Complaint~~ Sidewalk Repair Program

(a) The Director of ~~Capital Projects~~ Public Service may create a program for the City to repair, install, or re-install sidewalks on residential property, or commercial property that meet the criteria established in the Rules and Regulations promulgated under the authority of division (e) of this section in the right-of-way that are designated determined by the Department of Public Service Office of Capital Projects as being to be non-compliant with current City of Cleveland Standard Construction Drawings, specifications or ordinances, in an unsafe or dangerous condition, when the City receives voluntary payment of fifty percent (50%) of the estimated shared costs of repair the work from the owner of the property on which the sidewalk is located. Shared costs shall include, but not be limited to, any cost the City or its contractor incurs, such as the cost of paving or removing and/or repairing the sidewalk and curbs, adjustment of castings, reseeding lawns, or grinding tree roots, except that shared costs shall not include costs incurred in removing a full tree, grinding or pruning tree roots, adjusting or reconstructing castings, adjusting valve boxes, and reseeding lawns.

(b) The Director shall run the sidewalk repair program in any year that funds are appropriated for the program.

(c) The program shall be ~~available to any property owner whose residential sidewalks are determined by the Director of Public Service to be in an unsafe or dangerous condition~~, on a first-come, first- served basis, to the extent funds are available.

(d) The Director shall not authorize a contractor to perform sidewalk the repairs, re-installation, or re-establishment on a property until the owner, or another private person or entity on the owner's behalf, has paid his or her fifty percent (50%) share based on the Director's written of the work estimate.

(e) ~~After the repair is completed, the Commissioner of Licenses and Assessments shall bill the owner of the property for his or her fifty percent (50%) portion of actual costs that exceed the Director's estimate. The Commissioner of Licenses and Assessments shall issue a refund to the owner of the property for his or her fifty percent (50%) portion of actual costs that are below the Director's estimate. Any refunds must be paid on or before March 31 of the year following completion of the work.~~

~~(f)~~(e) ~~That the~~ The Director of ~~Public Service~~ is authorized to promulgate rules for the program. The rules shall take effect upon publication in the City Record.

Section 505.15 Easements Acceptance and Release for Tree Preservation

(a) The Director of ~~Mayor's Office of Capital Projects~~ shall have the authority to accept on behalf of the City, a grant of an easement and any required appurtenances from any person, firm, corporation or political subdivision for the purpose of installing and maintaining sidewalks of conventional or non-conventional sidewalk installation, while preserving a tree in the right-of- way that would otherwise be removed. Such grant shall be an easement across the property owner's frontage. The Director of ~~Mayor's Office of Capital Projects~~ is further authorized to release on behalf of the City an easement acquired pursuant to this section no longer needed for the purposes for which

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it was acquired, and no sooner than five (5) years following the completion date of the sidewalk installation. All such easements and releases of easements must be approved by the Director of Law and filed with the County Recorder at the City's expense. The Director is further authorized to execute on behalf of the City all documents necessary to accept such easement and appurtenance rights.

(b) If for any reason, the tree dies or is removed in the future, the property owner may construct the sidewalk within the right-of-way and remove the sidewalk from the easement at the property owner's cost. Such property owner may request the release of the sidewalk easement at the City's expense.

Section 505.99 Penalty

(a) ~~Any person, firm or corporation neglecting~~ Whoever fails to comply with division (a) any of the provisions of Section 505.06, or engaging in such work without a permit, shall be fined not more than fifty dollars (\$50.00) for each ~~offense or violation~~ and the further sum of five dollars (\$5.00) for each day the violation is continued.

(b) Whoever fails to comply with division (c) of Section 505.06 shall be fined not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00) for each violation and the further sum of fifty dollars (\$50.00) for each day the violation is continued.

Section 507.06 Sidewalk Obstruction Permits

(a) No person shall place or cause to be placed any object or property so as to obstruct the public's use of any sidewalk without first obtaining a sidewalk obstruction permit from the Director of ~~Public Service~~ Capital Projects.

(b) An application for a sidewalk obstruction permit shall contain the following information:

- (1) The name of the applicant;
- (2) The location of the proposed obstruction;
- (3) The purpose of the obstruction;
- (4) The proposed commencement date, time and estimated duration of the obstruction; and
- (5) A pedestrian maintenance traffic plan.

(c) Upon the approval of the ~~The application, the applicant shall pay a non-refundable fee shall be accompanied with the fee~~ established from time to time by the Board of Control for the permit and any inspection costs associated therewith and provide evidence of a public liability insurance policy issued by an insurer authorized to transact business in Ohio, in an amount not less than one million dollars (\$1,000,000.00), listing the City of Cleveland as an additional insured.

(d) The Director may deny or revoke a sidewalk obstruction permit whenever the Director finds:

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- (1) The applicant has previously violated the provisions of a sidewalk obstruction permit or has submitted materially false or incomplete information on any sidewalk obstruction permit application; or
 - (2) The obstruction would unreasonably interfere with another obstruction for which a permit has been issued; or
 - (3) The time, place or size of the obstruction would unreasonably interfere with public convenience and safe use of the sidewalk;
 - (4) The obstruction would unreasonably interfere with the movement or service capability of emergency or service vehicles; or
 - (5) The obstruction would unreasonably interfere with a construction project.
- (e) Whoever violates division (a) of this section shall be fined ~~not less than~~ one hundred dollars (\$100.00) for each day the offense occurs or continues.
- (f) This section shall not apply to any person that has been issued a permit under the following Chapters of the Codified Ordinances:
- ~~(1) Chapter 133 relating to special events;~~
 - ~~(2) Chapter 411 relating to parades;~~
 - ~~(3)~~(1) Chapter 508 relating to sidewalk occupancy for vendors in the Central Business District;
 - ~~(4)~~(2) Chapter 513 relating to outdoor restaurants;
 - ~~(5)~~(3) Chapter 670B relating to pay telephones;
 - ~~(6)~~(4) Chapter 675 relating to peddlers and produce dealers;
 - ~~(7)~~(5) Chapter 680 relating to newspaper boxes; or
 - ~~(8)~~(6) Chapter 3109 relating to encroachment permits.

Section 507.15 Outdoor Retail Sales in Proximity to Public Sidewalks

- (a) Purpose. The regulations of this section are established to prevent obstructions on public sidewalks in areas characterized by high volumes of pedestrian traffic and the congregation of pedestrians on sidewalks, which obstructions would be caused by the congregation of customers purchasing products sold from a building’s windows, doors or other openings.
- (b) Permit Requirement. Within the Flats Oxbow Business Revitalization District, as that district is shown on the building zone maps of the City of Cleveland, no business activity shall be conducted in which retail sales are made ~~through~~ through a building’s windows, doors or other openings, directly to customers in an outdoor location, if such building opening is located less than ten (10) feet from a public sidewalk, except pursuant to a permit issued by the Director of Capital Projects. ~~Public Service.~~

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(c) Permit Issuance Criteria. Such permit shall be issued if the subject sidewalk is greater than ten (10) feet in width, and if the building opening is set back a minimum of twenty (20) feet from the outer edge of the curb. Furthermore, the Director of ~~Capital Projects~~ Public Service shall evaluate pedestrian and vehicular traffic patterns to determine if the use would block, obstruct or restrict the free passage of pedestrians or vehicles in the lawful use of the sidewalks or streets and may consider the proximity and location of existing street furniture, including but not limited to sign posts, lamp posts, parking meters, bus shelters, benches, phone booths and newspaper vending devices; and the presence of bus stops, loading zones and taxi stands.

(d) Permit Issuance. No business activity regulated under division (b) of this section shall operate or be established or conducted ~~on or after November 1, 1995,~~ without a valid permit issued by the Director of ~~Capital Projects~~ Public Service to the owner of the business or the building from which the activity is conducted. Such permit shall be revocable by the Director of ~~Public Service~~ if there is a change in the circumstances upon which issuance of the permit was based, including a change in pedestrian and vehicular traffic patterns, street furniture and bus stops, loading zones or taxi stands that causes free passage to be blocked, obstructed or restricted.

(e) Permit Application. An application for a permit shall be submitted to the Director of ~~Capital Projects~~ Public Service on forms provided by the Director. For any application submitted pursuant to the regulations of this section, the Director shall either approve or disapprove the application within ninety (90) days of receipt of a complete application. Each application shall be accompanied by a site plan, drawn to scale and displaying dimensions, which shows the building wall, any openings and sales area in relation to the sidewalk, curb and street.

(f) Appeals. Any applicant who has been denied a permit pursuant to the regulations of this section may appeal the denial to the Board of ~~Sidewalk Right-of-Way~~ Appeals. The Board may approve such application if it determines that no significant obstruction to pedestrian travel will result from the subject activity. In making this determination, the Board shall consider, among other factors, the scale of the retail sales activity, the level of pedestrian traffic on the sidewalk, and the configuration of the sales area in relation to the sidewalk and existing street furniture, bus stops, loading zones and taxi stands.

(g) Permit Fee. At the time of application submission, the applicant shall pay a fee in accordance with a fee schedule fixed from time to time by the Board of Control, which shall be refunded if the application is not approved.

Section 513.99 Penalty

(a) Whoever violates any provision of this chapter shall be guilty of a misdemeanor of the third degree. Each day during which noncompliance or a violation continues shall constitute a separate offense.

(b) The Administration Manager for the Office of Capital Projects, or his or her designee, is authorized to assess a civil penalty of one hundred dollars (\$100.00) for each day during which noncompliance or a violation continues. A civil penalty imposed under this division may be appealed to the Board of ~~Sidewalk Right-of-Way~~ Appeals. Notice of appeal shall be in writing and shall be filed with the Board within ten (10) business days from the date of the notice of the civil penalty.

(c) The authority to assess civil penalties under division (b) of this section does not limit or affect any criminal offense, or the authority of the Director to suspend

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or revoke a license under Section 513.08, or any other means of enforcement of this chapter provided for in these Codified Ordinances.

Section 514.01 Definitions

When used in this chapter, the following words shall have the following meanings:

- (a) “Director” means the Director of Capital Projects Public Service, or the Director’s designee.
- (b) “Permit” means a temporary public right-of- way occupancy permit authorized under this chapter.
- (c) “Permittee” means the person authorized to occupy an area of the public right-of-way.
- (d) “Right-of-way” means any sidewalk, court, alley, street or other area dedicated or otherwise designated for public use and held by the City.
- (e) “Streetscape amenities” means any item placed within the public right-of-way, including but not limited to: banners, benches, planters, public art, directional signs, bicycle racks, trash containers, railings, decorative fencing, curbing, pavers, planting beds, planting bed irrigation, hanging baskets, special district signage, and seasonal decorations.
- (f) “Unobstructed walk” means a clear, continuous paved surface free of tree grates, elevator grates and all vertical obstructions.

Section 514.02 Temporary Public Right-of-Way Occupancy Permits

Notwithstanding any codified ordinance to the contrary, the Director of ~~Public Service~~ is authorized to issue temporary public right-of-way occupancy permits revocable at the will of Council authorizing the placement of various streetscape amenities at permitted locations on sidewalks, courts, alleys, streets or other public rights-of-way in the City, subject to the provisions of this chapter. A separate street opening permit may also be required as determined by the Manager of Engineering and Construction, or the Manager’s designee. A separate encroachment permit for such items shall not be required.

No owner or operator of a business establishment shall occupy any portion of a public sidewalk, court, alley, street or other public right-of-way with streetscape amenities without first obtaining a permit under this chapter. Any business owner or operator occupying any portion of a public sidewalk, court, alley, street or other public right-of-way without a permit as required by this chapter shall be subject to the fines and penalties set forth in this chapter.

Section 514.04 Permit Fee, Issuance and Duration

- (a) Upon approval of an An application for a permit, the applicant shall pay a non-refundable shall be accompanied by a fee in accordance with a fee schedule fixed from time to time by the Board of Control of one hundred and fifty dollars (\$150.00), plus ten dollars (\$10.00) for each individual amenity for which a permit is desired.

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(b) On approval of the application by the Director of Capital Projects, the Director of the City Planning Commission, the Secretary of the Landmarks Commission, and any other Director that the Director of Capital Projects deems applicable, the payment of the fee described in division (a) above, and in compliance with the Council notification provision described below, the Director of Capital Projects shall issue a permit under this chapter.

(c) No permit shall be issued until the members of Council of the wards affected have been provided with written notice by the Director of Capital Projects and until the expiration of thirty (30) days from the date of this notice, unless the period of thirty (30) days is expressly waived by the Council members in writing.

(d) Permits for banners and seasonal decorations shall be valid for not more than a twelve (12) month period; permits for all other streetscape amenities shall be valid for no more than a sixty (60) month period. ~~No permit shall extend beyond March 31st of any year.~~ Permits may be renewed, on a form provided by the Director, provided all the requirements of this chapter are met, and no changes have been made from the previous approved application. The permit renewal fee shall be in accordance with a fee schedule fixed from time to time by the Board of Control ~~one hundred dollars (\$100.00), plus ten dollars (\$10.00)~~ for each individual amenity. If there are changes to the application, a new application must be made under this application, ~~and the appropriate permit fee shall accompany the application.~~

Section 514.07 Requirements and Conditions of Permit

(a) Permittees and their agents shall comply with all of the requirements of this chapter and any applicable state law, while engaged in business at permitted locations.

(b) Permittees and their agents shall be responsible for maintaining all amenities and associated equipment in good repair, free of corrosion and in a safe, sound, and nonhazardous condition.

(c) Permittees and their agents shall be responsible for keeping the general area around the permitted location free of litter. Permittees and their agents shall maintain at least four (4) ~~six (6)~~ feet of unobstructed walk as required by the Director of ~~Public Service~~, which shall be free of snow at all times, as required by Section 507.13.

(d) No permit shall be transferable in any manner.

(e) A permit is valid only when used at the location designated in the permit.

Section 514.09 Removal of Streetscape Amenities

Any streetscape amenity placed in a public sidewalk, court, alley, street, or other public right-of- way without a permit issued or with a permit that has expired under this section may be seized and removed. Before the seizure and removal, the property owner or operator of the business establishment fronting on the public right-of-way shall be notified and given two (2) days in which to remedy the violation. If the property owner or operator of the business establishment fails to remedy the violation, the City may seize and remove the associated amenity.

Notwithstanding any other provisions of this chapter, the City may seize any amenity items and associated equipment, whether placed with or without a permit, without prior notice if such items and associated equipment are placed in the public

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right-of-way in such a place or manner as to pose an immediate and serious danger to persons or property or if the condition of the items and associated equipment renders them unsafe, unsound, or hazardous so as to pose an immediate and serious danger to persons or property. After seizure, the City shall promptly notify the owner or operator of the business establishment and such individual shall have the right to request an informal hearing before the Director within ten (10) days after notification to determine whether the seizure was proper.

As a condition of recovering any items and other associated equipment properly seized under this section, the owner of the items and other associated equipment shall pay an impound fee covering the actual cost to the City of transporting and storing the items and other associated equipment.

Section 2. That the following existing sections of the Codified Ordinances of Cleveland, Ohio, 1976:

Section 411.011, as amended by Ordinance No. 979-2020, passed July 14, 2021,

Section 439.02, as amended by Ordinance No. 599-11, passed June 6, 2011,

Section 439.021, as amended by Ordinance No. 2393-02, passed February 3, 2003,

Section 503.01, as amended by Ordinance No. 1170-03, passed July 16, 2003,

Section 503.04, as amended by Ordinance No. 63410-A, passed September 22, 1924,

Section 503.99, as amended by Ordinance No. 1170-03, passed July 16, 2003,

Sections 505.01, 505.02, and 505.03, as enacted by Ordinance No. 63410-A, passed September 22, 1924,

Section 505.04, Construction Permit; Establishing Grade; Fees, as amended by Ordinance No. 2392-02, passed February 3, 2003,

Section 505.05, Repair and Maintenance Restrictions in Central Business District, as amended by Ordinance No. 84-92, passed April, 6, 1992,

Section 505.06, as enacted by Ordinance No. 63410-A, passed September 22, 1924,

Section 505.07, Board of Sidewalk Appeals, as amended by Ordinance No. 704-2023, passed July 12, 2023,

Section 505.08, Protests Filed Prior to Work, Section 505.09, Protests Filed After Work is Completed, and Section 505.10, Protests to be Filed in Writing, as amended by Ordinance No. 717-65, passed June 7, 1965,

Section 505.11, as amended by Ordinance No. 1729-01, passed October 22, 2001,

Section 505.12, as amended by Ordinance No. 837-00, passed July 17, 2000,

Section 505.13, as amended by Ordinance No. 242-05, passed April 25, 2005,

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Section 505.14, as amended by Ordinance No. 277-05, passed March 28, 2005,
Section 505.15, as amended by Ordinance No. 890-22, passed November 7, 2022,
Section 505.99, as enacted by Ordinance No. 63410-A, passed September 22, 1924,
Section 507.06, as amended by Ordinance No. 1170-03, passed July 16, 2003,
Section 507.15, as amended by Ordinance No. 1276-95, passed July 19, 1995,
Section 513.99, as amended by Ordinance No. 704-2023, passed July 12, 2023,
Sections 514.01 and 514.02, as enacted by Ordinance No. 884-10, passed August 18, 2010,
Section 514.04, as amended by Ordinance No. 243-11, passed May 9, 2011, and
Sections 514.07 and 514.09, as enacted by Ordinance No. 884-10, passed August 18, 2010,
are repealed.

Section 3. That the Codified Ordinances of the City of Cleveland, 1976, are supplemented by enacting new Section 502.01 to 502.06 to read as follows:

CHAPTER 502
BOARD OF RIGHT-OF-WAY APPEALS

Section 502.01 Board Members

The Board of Right-of-Way Appeals shall consist of the Director of Capital Projects, or his or her designee, a member of Council selected by the Council President, and the Director of Law, or his or her designee.

Section 502.02 Jurisdiction

- (a) The Board of Right-of-Way Appeals shall hear and determine any protests filed by permittees, property owners, or contractors as to sidewalks, street, curb or gutter construction, reconstruction or repair, or any written notices issued pursuant to Charter Section 164.
- (b) The Board shall also hear and determine any other appeals that the board is designated to review under the Codified Ordinances of Cleveland, Ohio, 1976.
- (c) The Board shall have no jurisdiction to review any written City administrative notices, order or decisions from any person or entity performing work in the public right-of-way under an agreement with the City, Cuyahoga County, or State of Ohio.

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Section 502.03 Protests and Appeals to be Filed in Writing

Any protests or appeals filed under this chapter shall be filed in writing with the Director of Capital Projects, who shall notify the person filing such protest or appeal of the date and place of hearing before the Board of Right-of-Way Appeals.

Section 502.04 Protests and Appeals Filed Prior to Work

If protests or appeals are filed prior to the doing of the work called for by a notice issued by an administrative official or agency, the Board of Right-of-Way Appeals shall have authority to modify, alter or revoke any such notice as to the amount or type of work required, or the time in which it must be completed, consistent with the City ordinances and the specifications regarding sidewalk, street, curbing and gutter construction, reconstruction or repair. The Board shall also have the authority to waive strict compliance with such requirements where such compliance would cause undue hardship, provided such waiver will not cause or continue a public nuisance or an unsafe condition. Protests filed under this section must be filed no later than thirty (30) days after the service of the notice. The Board shall issue an order setting for its findings and, if applicable, indicating the period of time within which the party must comply therewith.

Section 502.05 Protests and Appeals Filed After Work is Completed

If a protest or appeal is filed after the work provided for in the notice has been completed by the City, or through its contractor, the authority of the Board of Right-of-Way Appeals shall be limited to a determination that the amount of the bill is correct, that the bill has been properly charged against the appropriate party and that the work as performed was in accordance with the notice served. If the Board finds that an amount has been incorrectly charged, but that work has been performed, it may order that such payment be made from the fund provided for the payment of the City’s portion of the right-of-way work. Protests or appeals filed under this section must be filed no later than thirty (30) days after the receipt of the bill from the City.

Section 502.06 Further Appeal

A person aggrieved by a final decision of the Board of Right-of-Way Appeals may further appeal to the Board of Zoning Appeals within thirty (30) days after the Board of Right-of- Way Appeals’ written decision. The Board of Zoning Appeals shall approve, modify, or annul any orders, notices, or decisions issued pursuant to these Codified Ordinances from which the appeal has been perfected.

Section 4. That the Codified Ordinances of Cleveland, Ohio, 1976, are supplemented by enacting new Sections 503.014, 503.015, 505.16 and 514.091 to read as follows:

Section 503.014 Restoration of the Public Right-of-Way

(a) As used in this section, “public right-of-way” has the same meaning as defined in Section 510.01 of these Codified Ordinances.

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(b) No person, including a corporation, private utility or public utility, performing, or causing to perform, work in or affecting the public right-of-way shall fail to restore, at its own expense, the public right-of-way, to either as good a condition as existed before the work was undertaken or in compliance with the City of Cleveland Standard Construction Drawings or specifications, as determined by the Director of Capital Projects or the Director's designee. Restoration of the public right-of-way includes, but is not limited to:

- (1) Re-establishing any traffic striping;
- (2) Repairing or reconstructing any pavement as deemed necessary by the Manager of Engineering and Construction;
- (3) Restoring of any grass or other softscape, such as flowers, plants, shrubs, and other similar items, within the public right-of-way or outside the public right-of-way that has been damaged or impacted; and
- (4) Restoring of any sidewalks.

(c) If a person performs work in the public right-of-way or performs work on private property that impacts the public right-of-way without securing the necessary permit(s) required under these Codified Ordinances, such person shall be charged the regular permit fee plus any inspection costs related to the work and restoration.

Section 503.015 Failure to Restore the Public Right-of-Way

(a) When the Director of Capital Project, Manager of Engineering and Construction, or a designee determines that a person has failed to comply with the provisions of Section 503.014, he/she shall serve or cause to be served upon such person a notice which states in detail the nature of the violation. The notice shall also contain an estimate of the cost to repair the public-right-of-way and any appurtenances thereto required for the public right-of-way to be in compliance with the City of Cleveland Standard Construction Documents and shall notify the person that he or she may submit payment of the estimated amount, which amount shall be the full amount, to the City by a certain date and enter into an agreement with the City to effectuate the repairs. Funds submitted as an estimated amount shall be deposited in Fund No. 10 SF 058 and said funds are appropriated for public right-of-way purposes. Upon receipt of the estimated amount and the agreement, the City will construct or repair the public right-of-way. If the actual cost of construction or repair is not equal to the estimated amount, the City will bill the person for any additional cost or reimburse the person from Fund No. 10 SF 058 for any amount paid to the City that exceeds the actual cost. The agreement required above shall contain such terms and provisions as determined by the Director of Law to protect and benefit the City.

(b) The notice described in division (a) above shall further provide that, within thirty (30) days after service of the notice, the recipient thereof shall:

- (1) Remedy the violation;
- (2) Appeal the Office of Capital Project's determination to the Board of Right-of Way Appeals under Chapter 502 of these Codified Ordinances; or
- (3) Submit payment and enter into an agreement pursuant to division (a).

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The notice shall also clearly indicate that if the person fails to take one (1) of the three (3) steps listed in this division within thirty (30) days after service of the notice, the person may be found guilty of a fourth degree misdemeanor.

(c) Notwithstanding any other provision contained in this section, any notice served pursuant to divisions (a) and (b) of this section between November 15 of one (1) year and February 1 of the succeeding year to an owner of a parcel of land which is located within the Central Business District shall provide that the violation shall be remedied or the Office of Capital Project’s determination appealed within thirty (30) days of the end of that period.

(d) Any person who violates the provisions of Section 503.014 of these Codified Ordinances and fails to comply with a notification used pursuant to divisions (a) and (b) of this section, an appeal an order of the Board of Right-of-Ways Appeals issued pursuant to Section 502.04 of these Codified Ordinance within the period set forth in said order, or a decision of the Board of Zoning Appeals issued pursuant to Section 502.07 of these Codified Ordinances, shall be guilty of a misdemeanor of the fourth degree. Each day during which noncompliance or a violation continues shall constitute a separate offense. Provided that the fine set forth herein shall not, with respect to any one (1) service of notice, exceed three (3) times the cost of the restoration required in such notice, as estimated by the Office of Capital Projects. The fine set forth herein is mandatory and shall not be suspended by the court, in whole or in part. All fines collected for violations of this section, or an amount equal to the fines collected, shall be deposited in Fund 10 SF 058 and said funds are appropriated for streets, sidewalk, curb or gutter repair purposes. ~~ereditd to the Neighborhood Sidewalk Assessment Fund, and such monies are hereby appropriated for the purposes for which the fund was created.~~

(e) If a person fails to comply with a notification, decision, or order described in division (d) above, the Director of Capital Projects may cause such restoration to be performed through the appropriate department or office by either by direct ~~director~~ employment of labor, or by contract, at the person’s expense, plus assess a penalty of fifteen percent (15%).

Section 505.16 Easement Acquisition

The Director of Capital Projects is authorized to purchase easements, permits, licenses and other interests in real property necessary for the installation of sidewalks in an effort to preserve trees in the public right-of-way, provided that the cost of each such easement, permit, license or other interest in real property does not exceed two-hundred and fifty dollars (\$250.00).

Section 514.091 Temporary Removal of Streetscape Amenities

(a) *Emergency Situations.* Notwithstanding any other provision of this chapter, the City may seize and remove a streetscape amenity, whether placed with or without a permit, without prior notice in the case of an emergency and shall not be responsible for any damages resulting therefrom. The City shall promptly notify the owner or operator of the business establishment of such removal.

(b) *Temporary Removal for Utility Work.* Whenever a public or private entity needs to make repairs to any utilities located in, over, or across, or through the permitted location for a streetscape amenity, the permittee shall remove, or cause to be removed, the streetscape amenity within the later of thirty (30) days or the time frame stated in the notice to the permittee by such public or private entity. If the permittee

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fails to remove the streetscape amenity, the City may remove and seize, or cause to be removed and seized, the streetscape amenity. Upon completion of any such utility repairs, the permittee may reinstall the streetscape amenity.

Section 5. That the amendments to Section 503.01 relating to Right-of-Way Certificate of Registration shall be effective the later of sixty (60) days from the effective date of this ordinance or January 2, 2024.

Section 6. That this ordinance is declared to be an emergency measure and, provided it receives the affirmative vote of two-thirds of all the members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise it shall take effect and be in force from and after the earliest period allowed by law.

SM:nl
10-2-2023
FOR: Director DeRosa

Ord. No. 1141-2023

By Council Members Bishop and Griffin (by departmental request)

AN EMERGENCY ORDINANCE

To amend various sections of the Codified Ordinances of Cleveland, Ohio, 1976, as amended by various sections; to repeal Sections 505.04, 505.05, 505.07 to 505.10, as amended by various ordinances; to supplement the codified ordinances by enacting new Sections 502.01 to 502.06, 503.014, 505.16, and 514.091, relating to sidewalks and right-of-way generally.

READ FIRST TIME on OCTOBER 2, 2023
and referred to DIRECTORS of Capital Projects, Finance, Law;
COMMITTEES on Municipal Services and Properties,
Finance Diversity Equity and Inclusion

REPORTS

CITY CLERK

READ SECOND TIME

CITY CLERK

READ THIRD TIME

PRESIDENT

CITY CLERK

APPROVED

MAYOR

Recorded Vol. 110 Page

Published in the City Record

REPORT
after second Reading

PASSAGE RECOMMENDED BY
COMMITTEE ON
MUNICIPAL SERVICES
AND PROPERTIES

FILED WITH COMMITTEE

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COMMITTEE ON
FINANCE, DIVERSITY, EQUITY
and INCLUSION

FILED WITH COMMITTEE