

LEGISLATIVE SUMMARY

Mayor's Office of Capital Projects

Division of Engineering and Construction

Amend various codified ordinances within section 411, 439, 503, 505, 507, 513, 514 and create codified ordinance 502 related to permitting, registration, and code compliance within the Public Right of Way

Ordinance No: 1141-2023

Legislative Purpose: 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.

Codified Ord. No. 411: STREET OBSTRUCTION PERMITS. Enforcing any person or entity to obtain a street opening permit to perform work or create an obstruction within the right of way. Currently the ordinance only states an obstruction permit which you cannot receive without a street opening permit. Permit and inspection fees are now created per Board of Control. Removing exemptions to obstruction permits.

Codified Ord. No. 439: PERMITS FOR OVERWEIGHT AND/OR OVERSIZE VEHICLES, OBJECTS, AND STRUCTURES. We are placing the route review on the applicant. Permit and inspection fees are now created per Board of Control.

Codified Ord. No. 503: STREET OPENING PERMITS; RIGHT OF WAY REGISTRATION; COSTS. Creating a Right of Way Contractor Registration to allow only registered contractors to work within the right of way and to have the ability to remove the ability of contractors to work

within the right of way who violate the ordinance. Permit and inspection fees are now created per Board of Control. Allow the City to perform work that was neglected by a right of way contractor and bill them for the work. We now have authorization to issue a stop work order as needed. We now have the authorization to revoke or suspend a street opening permit as needed. We have adjusted fines as needed for violations of this section.

Codified Ord. No. 505: **SIDEWALK CONSTRUCTION.** Defined the sidewalk area and treelawn area. Adopted PROWAG (Professional Right of Way Access guidelines) as our right of way guidelines. Allowed material other than concrete or stone flagging within the right of way. Gives the City authority to to remove a curb cut to vacant property. Authorizes the City to ensure that a property owner brings the sidewalk, curbs, and apron into compliance if new construction occurs on their property. Gives the City the authority to perform work on the sidewalk, curb, apron and bill the property owner if necessary. Requires any person performing sidewalk work to receive a street opening permit – there has been no stand-alone sidewalk permits for a number of years. Removed mention of the Board of Sidewalk Appeals with the creation of the Board of Right of Way Appeals. Created specific maintenance criteria for curbs. Renamed the 50/50 Hazardous Sidewalk Repair Program to the Non-Compliant Sidewalk Repair Program – the word hazardous is very subjective where non-compliant is not and we allow for the potential changing of the program funding percentage in the future. Removed root pruning from the residential costs and worded that the residential portion of the estimated can be paid from another person or entity. Permit and inspection fees are now created per Board of Control.

Codified Ord. No. 507: **SIDEWALK OBSTRUCTIONS AND MAINTENANCE.** Permit and inspection fees are now created per Board of Control.

Codified Ord. No. 513.99: ISSUANCE OF TEMPORARY PUBLIC RIGHT-OF-WAY OCCUPANCY PERMITS FOR PATIOS AND PARKLETS – PENALTY. Made the Board of Right of Way appeals the appealing body in lieu of the Board of Sidewalk Appeals.

Codified Ord. No. 514: ISSUANCE OF TEMPORARY PUBLIC RIGHT-OF-WAY OCCUPANCY PERMITS FOR STREETScape AMENITIES. Requiring a Street Opening permit for the construction of the Streetscape Amenity. Permit fees are now created per Board of Control. Permits for certain amenities will now be for a period of 60 months

Codified Ord. No. 502: BOARD OF RIGHT OF WAY APPEALS. Creating the Board of Right of Way appeals because there was no place for anyone appealing a violation or citation in the street to appeal besides for the Board of Zoning Appeals, which is extremely busy. This body will also review any appeals from the Right of Way Contractor Registration or other right of way permits.

Ward: All Wards

Attachments: Details of codified ordinance changes for 411.011, 439.02, 439.021, 503.01, 503.04, 503.99, 505.1, 505.02, 505.03, 505.06, 505,11, 505.12, 505.13, 505.14, 505.15, 505.99, 507.06, 507.15, 513.99, 514.01, 514.02, 514.04, 514.07, 514.09.

Ordinances that need revised:

411.011(a): Street Obstruction Permits

Existing: (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 from the Director of Capital Projects.

Revised: (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 street opening permit, if necessary,** from the Director of Capital Projects.

Reason: You cannot get a stand-alone obstruction permit. All obstruction permits are via a street opening permit.

411.011(d) : Street Obstruction Permits

Existing: The application shall be accompanied with the fee established from time to time by the Board of Control 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.

Revised: The application shall be accompanied with the fee **for the obstruction permit and any inspection costs related thereto** established from time to time by the Board of Control 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.

Reason: This allows us to receive payment for an inspection of an obstruction permit. Not all obstruction permits need inspections, but some, particularly dumpsters, do need an inspection to verify the obstruction is moved at the time of permit expiration.

411.011(g): Street Obstruction Permits

Existing:

(g) This section shall not apply to any person that has been issued a permit under 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.

New: (g) This section shall not apply to any person that has been issued a permit under Chapter 3109 relating to encroachment permits.

Reason: Items 1-4 all receive obstruction permits as a means to apply conditions to their events. The Special Event permit does not have conditions placed onto itself.

Commercial and Heavy Vehicles

439.02– Oversize or Overweight Vehicle Operation on State Routes; State Permit

Existing: 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 prescribed by the Director.

Revised: 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 **requested by the applicant or modified by the Director. The applicant must review all routes requested to ensure height clearances and weight allowances are met.**

Reason: The wording of the existing ordinance implies that the City reviews and authorizes each route requested. We do not have the staff to review each route. The route safety is entirely on the applicant.

439.021(a) Categories of Permits for Overweight and / or Oversize Moves; Permit Fees

Existing: The Director of Public Service shall use the following categories for purposes of assessing fees for permits issued under Section 439.02.

Revised: The Director of **Capital Projects** shall use the following categories for purposes of assessing fees for permits issued under Section 439.02.

Reason: Revised Public Service for Capital Projects throughout the section as required.

439.021(b) – Categories of Permits for Overweight and/or Oversize Moves; Permit Fees

Existing:

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

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

Revised:

- (b) **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 for permits issued under Section 439.02.**

Reason: Changing fee to BOC so that fees can be revised without council legislation. Majority of fees for Engineering and Construction permitting are via BOC currently.

Street Openings and Maintenance

503.01(a): Street Opening Permits; Contents; Costs

Existing: Except as provided in division (g) of this section, no person shall 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. 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.

Revised: **No person, including a corporation, private utility, or public utility, shall excavate 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.**

(a)(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 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.

(a)(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 application, 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 certification or registration shall be required for officials or employees of a public utility or private utility.

Reason: allowed for us to fee out inspection costs. This was allowed at one point, but then the was revoked. Changed Director's name based on current Director since there is no Director of Public Service any more. Created ROW Contractor Registration so that we have the ability to control who works within the ROW.

503.01(d): Street Opening Permits; Contents; Costs

Existing: (d) Prior to being issued a street opening permit, permittee shall submit a performance bond either:

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

Reason: We changed this in 505 because if the contractor already has a performance bond on file, they do not need to submit a new one.

503.01(f): Street Opening Permits; Contents; Costs

Existing: (f) All excavations shall be restored by permittee according to regulations promulgated by the Director of Public Service. Any regulations promulgated by the Director shall be effective thirty (30) days after publication in the *City Record*.

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

Reason: Some may consider a boring not to be an excavation. Placing the work penetration will cover anything that goes beneath the surface of the street, sidewalk or treelawn. Changed director to MOCAP

503.01(f)(2): Street Opening Permits; Contents; Costs

Existing: (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.

Revised: (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 with Section 503.015 of these Codified Ordinances.**

Reason: Trying to utilize bond money from a contractor is a lengthy process. If someone has a permit and doesn't finish restoring the street, we need to be able to get the street restored and bill back the permit holder to his permit or bill directly if they don't have a permit.

503.01(h)(3): Street Opening Permits; Contents; Costs

Existing: 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.

Revised:

(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.

(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.
- (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 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.
- (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.

Reasons: The City needs a way to temporarily halt construction of a permit if it needs to evaluate a condition or have other emergency work performed in that location. Also giving reasons for revoking of the ROW contractor registration. This gives us the ability to not allow a contractor to work within the ROW or pull a ROW permit if it is decided that they should not work within the ROW by the Section Chief of Permits and Sidewalks and is agreed upon with the Administrative Manager of E&C. We have a stop work order, but no legislation allowing its use. Currently we have no knowledge or say on who can work within the ROW. The current contractor registration is via B&H, but that is supposed to be for contractors working on private property. We need the ability to govern who works in the ROW and have the ability to revoke the privilege of a contractor to work in the ROW if they continually are in non-compliance with our ordinances and construction drawings.

503.04 Location of Trees and Lamp Posts

Existing: All lamp posts and all shade or ornamental trees, hereafter placed in any of the streets of the City, 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.

Revised:

(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.

Reason: 509.13 talks about tree planting permits. If someone would want to install a lamp post within the ROW, it would go through our street opening permit system, streetscape amenity process or encroachment process.

503.99: Penalty

Existing:

(b) Every person, firm or corporation violating 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.

Revised:

(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).

(c) 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.

Reason: expands violations for ROW contractor registration.

Sidewalk Construction

505.01

Existing: All sidewalks shall be under the direction of the Director of Public Service. The space between the property line and 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, 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 two and one-half (2-1/2) feet in width.

Revised: All sidewalks shall be under the direction of the Director of **Capital Projects**. 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**. **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.**

Reason: Making all sidewalks at least PROWAG regulations, even if an Alley. Providing clarification on where right of way is. Changing Director to current. Defining Treelawn and making it grass unless approved by City Engineer.

505.02(a): Grading

Existing: 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, and in accordance with the specifications prescribed by the Director of Public Service, and shall be of the width

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.

Revised: 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, concrete, or any other material as approved by the Manager of Engineering and Construction or the Manager's designee and in accordance with the specifications prescribed by the Director of Capital Projects, and shall be of the width set forth in Section 505.01. 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.

Reason: Currently we have other materials being used for sidewalks (brick pavers and asphalt). This would give us the ability to change materials as necessary or as needed depending on the circumstances.

505.02(c): **Grading**

Existing: 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 City Engineer; Thence extending to the street line at right angles to the curb line, with a rise of three- eighths (3/8) of an inch to the 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 of Engineering and Construction.

Revised:

(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; Thence extending to the street line at right angles to the curb line, with a rise in compliance with current PROWAG (Professional Rights of Way Accessibility Guidelines) regulations to the 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 Manager or the Manager's designee.

(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.

Reason: Existing ordinance is in violation of PROWAG regulations. Revised language allows the regulation to change (via state or federal mandates) without having to change our ordinance.

505.03(d): Changing Sidewalks; Curb Line and Grading; Notice of Noncompliance

Existing: None

Revised:

(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.

Reason: We currently do not have the authority to remove an existing curb cut that has no legal use. We need the ability to have the property owner fix the curb cut or the City does the work and bills back the property owner.

505.06: Construction Permit; Deposit; Bond

Existing: 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 preceding 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.

Revised:

Name: 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 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.

Reason: The existing section of the ordinance has not been changed since it was originally written (the bonding was for sidewalk at ten cents a square foot). Currently, all sidewalk work is permitted via a street opening permit. Revising this ordinance allows us to do what we've been doing since January 1, 2018.

505.11(d): **Duty to Repair Sidewalks, Curbs and Gutters; Duty to Maintain Certain Sidewalks; Liability**

Existing: When the Director of 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 and said funds are appropriated for 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 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.

Revised: When the Director of **Capital Projects** determines that an owner fails to keep the **streets**, 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 058** and said funds are appropriated for 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 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.

Reason: Changed Director's name based on current Director since there is no Director of Public Service any more. Changed fund numbers.

505.12(a)(3): Failure to Maintain Certain Sidewalks

Existing: Any block with a transverse slope in excess of three-eighths (3/8) inch plus or minus one-eighth (1/8) inch per horizontal foot toward the street;

Revised: Any block with a transverse slope in excess of **two (2%) or current PROWAG regulations**;

Reason: Current ordinance is in non-compliance with current PROWAG regulations. Instead of citing the current standards (which may change), just make them have to comply with current standards. We shouldn't have to continually revise our standards with their changes.

505.12(a)(8): Failure to Maintain Certain Sidewalks

Existing: Any block which the Director of Public Service determines to be hazardous, regardless of whether it has any of the characteristics set forth in paragraphs (1) through (7) of this division.

Revised:

(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;

(9) Any block which the Director of **Capital Projects or his designee** 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.

Reason: Changed Director’s name based on current Director since there is no Director of Public Service any more. Curb is maintenance responsibility of the property owner, but there is no maintenance criteria for curb. This establishes curb maintenance criteria.

505.12(b): **Failure to Maintain Certain Sidewalks**

Existing: When the Director of 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 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:

Revised: When the Director of **Capital Projects or a designee** 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, **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 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 (d) of Section 505.11.

Reason: Changed Director’s name based on current Director since there is no Director of Public Service any more. Added Board of Right of Way appeals in lieu of Board of Sidewalk Appeals.

505.12(c): **Failure to Maintain Certain Sidewalks**

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

Revised:

(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** issued pursuant to **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** 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**. 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.

Reason: Changing the name based on section 505.07 revisions

505.14(a): 50/50 Hazardous Sidewalk Repair Program

Existing: The Director of Public Service may create a program for the City to repair sidewalks on residential property in the right-of-way that are designated by the Department of Public Service as being in an unsafe or dangerous condition, when the City receives voluntary payment of fifty percent (50%) of the estimated shared costs of repair 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 repairing, adjustment of castings, reseeding lawns, or grinding tree roots, except that shared costs shall not include costs incurred in removing a full tree.

Revised:

Title changed to: **Non-Compliant Sidewalk Repair Program**

(a) The Director of **Capital Projects** 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 **determined** by the **Office of Capital Projects** as being **to be non-compliant with current City of Cleveland Standard Construction Drawings, specifications or ordinances**, when the

City receives voluntary payment of fifty percent (50%) of the **shared** costs of **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 **removing and/or** repairing the **sidewalk and curbs**, 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.**

Reason: Title changed so that if city changes percentage again, title doesn't need to be changed. Grinding of tree roots is a service that Urban Forestry performs for free currently. A resident should not have to pay for it. Also, many residents have wanted to have their curb done. This would be a great way of improving the entire ROW. Currently the city only performs curb work during pavement projects or the resident can take out a permit to do the work either themselves or through their contractor. We really don't want just any contractor to do curb work if possible. Changed Director's name based on current Director since there is no Director of Public Service any more. Removed root grinding, adjustment or reconstruction of castings and valve boxes, and reseeding lawns from residential portion as those are items that they should not have to pay for – reseeding lawns is only performed if tree is removed.

505.14 (c):

Existing: 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.

Revised: The program shall be on a first-come, first- served basis, to the extent funds are available.

Reason: Opening 50/50 to commercial business outside of central business district. Removed if the sidewalk is unsafe or dangerous to make it just non-compliant.

505.14 (d):

Existing: The Director shall not authorize a contractor to perform sidewalk repairs on a property until the owner has paid his or her fifty percent (50%) share based on the Director's written estimate.

Revised: (d) The Director shall not authorize a contractor to perform **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.**

Reason: Got rid of sidewalk because repairs can be more than just sidewalk. Got rid of percentage in case the percentage is changed at some point and placed into the

rules and regulations. Allowed for another person or entity to pay for owner's share of estimate. Got rid of refunds and overages per Chief T.

505.14(e); **50/50 Hazardous Sidewalk Repair Program**

Existing: 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.

Revised: remove

Reason: getting rid of refunds and overages.

505.99 Penalty

Existing: Any person, firm or corporation neglecting to comply with 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.

Revised:

- (a) **Whoever fails** to comply with **division (a)** of Section 505.06, shall be fined not more than fifty dollars (\$50.00) for each 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.**

Reason: This gives the City the authority to have a contractor remove a section of sidewalk / concrete pad that was installed without a permit or was installed non-compliant with City of Cleveland Construction Standard Drawings.

Sidewalk Obstruction and Maintenance

507.06 (c): Sidewalk Obstruction Permits

Existing: The application shall be accompanied with the fee established from time to time by the Board of Control 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.

Revised: **Upon approval of the application, the applicant shall pay a non-refundable fee established from time to time by the Board of Control for 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.

Reason: We will be inspecting obstruction permits after expiration date to ensure obstruction is moved.

507.06 (f):

Existing:

(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) Chapter 508 relating to sidewalk occupancy for vendors in the Central Business District;
- (4) Chapter 513 relating to outdoor restaurants;
- (5) Chapter 670B relating to pay telephones;
- (6) Chapter 675 relating to peddlers and produce dealers;
- (7) Chapter 680 relating to newspaper boxes; or
- (8) Chapter 3109 relating to encroachment permits.

Revised:

(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 508 relating to sidewalk occupancy for vendors in the Central Business District;
- (2) Chapter 513 relating to outdoor restaurants;
- (3) Chapter 670B relating to pay telephones;
- (4) Chapter 675 relating to peddlers and produce dealers;
- (5) Chapter 680 relating to newspaper boxes; or
- (6) Chapter 3109 relating to encroachment permits.

Reason: Parades and special events need the Obstruction Permit for potential fees and special conditions to be placed on the permits.

Streetscape Amenity Permits

514.01(a): Definitions

Existing: (a) "Director" means the Director of Public Service, or the Director's designee.

Revised: (a) “Director” means the Director of **Capital Projects**, or the Director’s designee.

Reason: Changed director name

514.02: Temporary Public Right-of-Way Occupancy Permits

Existing:

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 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.

Revised:

Notwithstanding any codified ordinance to the contrary, the Director 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.

Reason: A street opening / obstruction permit is needed for construction.

514.04(a): Permit Fee, Issuance and Duration

Existing: An application for a permit shall be accompanied by a fee of one hundred and fifty dollars (\$150.00), plus ten dollars (\$10.00) for each individual amenity for which a permit is desired.

Revised: **Upon approval of an application for a permit, 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 each individual amenity for which a permit is desired.

Reason: This will keep all of the fees associated with the permit and other permits with our section to be held in the same place so if we need to change them, we don't have to go back to council. Also, added the street opening permit as they are required to do so to construct or place the object as needed.

514.04(d): Permit Fee, Issuance and Duration

Existing: Permits shall be valid for not more than a twelve (12) 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 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.

Revised: 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.** 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** for each individual amenity. If there are changes to the application, a new application must be made under this application

Reason: This will keep all of the fees associated with the permit and other permits with our section to be held in the same place so if we need to change them, we don't have to go back to council. Certain Amenities like planters and benches is very cumbersome to try to renew permits on an annual basis.

514.07(c): **Requirements and Conditions of Permit**

Existing: 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 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](#)

Revised: 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)** feet of unobstructed walk unless additional footage is required by the Director of **the Capital Projects**, which shall be free of snow at all times, as required by Section [507.13](#)

Reason: Our minimum sidewalk width is 4'. The existing ordinance is in conflict with this.

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.

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.