

PROPOSED AMENDMENT TO TOLEDO MUNICIPAL CODE

945.10. Relocation, removal or abandonment of facilities.

(a) Every owner or operator of facilities located in the right of way or on public property shall, at its own expense, temporarily or permanently remove, relocate, change, support, hold or alter the position of any facility when the City shall have determined that such removal, relocation, change, support, holding or alteration is reasonably necessary for any one of the following reasons:

- (1) the need to construct, repair, maintain, improve or use the right of way or public property;
- (2) the need to locate, construct, replace, maintain, improve or use any other City property;
- (3) the efficient performance of City operations.

(b) No permit holder shall, without reasonable compensation, be required by the City to:

- (1) relocate its existing aerial facilities underground;
- (2) relocate, change, support, hold or alter the position of any facility for the benefit of a third party unless that party is performing services in the right of way on behalf of the City or installing facilities that will be owned by the City;
- (3) relocate, change, support, hold or alter the position of any facility for the benefit of a municipal utility providing the same service as and competing for customers with any permit holder; or
- ~~(4) relocate, change, support, hold or alter the position of any facility for a non-transportation related aesthetic improvement.~~

(4) relocate, change, support, hold or alter the position of any facility for an improvement whose purpose is primarily proprietary versus governmental, under the law of Ohio as explained in *State ex rel. Speeth v. Carney*, 163 Ohio St. 159 (1955) and *Duke Energy, Ohio, Inc. v. City of Cincinnati*, 2014 WL 12873312 (Ohio Com.Pl.), *aff'd*, 2015-Ohio-4844 (1st Dist.), appeal not accepted, 2016-Ohio-2807.

(c) Upon written notice from the Director of Public Utilities, any person that owns, controls or maintains any unauthorized facility or related appurtenances within the right of way shall, at its own expense, remove such facilities or appurtenances from the right of way. If any unauthorized facilities are not removed within the time period set by the Director, the City may remove the facilities or appurtenances from the right of way at the expense of the person that owns, controls or maintains the unauthorized facilities. For the purposes of this section, a facility is unauthorized and subject to removal in the following circumstances:

- (1) upon failure to obtain a right of way permit or upon revocation of the right of way permit for such facility as provided in section 945.19;
- (2) if the facility was constructed or installed or any excavation of the right of way was performed after the effective date of this ordinance without prior issuance of the required right of way permit except as otherwise permitted under this chapter;

EXHIBIT A

(3) if the facility was constructed or installed or any excavation of the right of way was performed after the effective date of this ordinance in a manner inconsistent with the terms of a right of way permit or the provisions of this chapter.

(d) Each permit holder shall notify the City in writing of its intent to abandon facilities in the right of way. Facilities shall be considered to be abandoned when they have not been used to provide services for a period of one year and are unlikely to be used to accommodate future service growth, or when the permit holder notifies the City of its intent to discontinue the use of the facilities. Facilities shall be allowed to be abandoned in place unless the Director specifies in writing otherwise in which case they shall be removed by the permit holder without cost to the City. In the event of an abandonment in place, the City shall notify the permit holder in writing of its intent to take full title and ownership of the abandoned facilities for the purpose of removing the facilities from the right of way or in order to utilize the abandoned facilities. The permit holder shall have thirty (30) days to respond to the notice except that, in an emergency situation, a lesser amount of time may be specified. The permit holder shall be given a reasonable amount of time to either utilize or remove the abandoned facilities prior to the acquisition of ownership by the City. If the permit holder does not utilize or remove the facilities within the specified time period or demonstrate to the City that the facilities are intended to accommodate future service growth, the City shall take title and ownership of the abandoned facilities without the need to pay compensation to the permit holder. Until such time as the City takes title to or the permit holder removes the abandoned facilities, the permit holder shall retain all liability and be responsible for all necessary repairs, maintenance and relocation of the abandoned facilities in the same manner and degree as if the facilities were in active use.

(e) The City retains the right and privilege to stop work on any construction, installation or excavation located within the right of way as the City may determine to be necessary and appropriate to protect the public health, safety and welfare.