

Council of the Village of Mariemont, Ohio
October 12, 2020
Agenda

- 1. Call to Order – Pledge of Allegiance
- 2. Roll Call
- 3. Minutes Regular Council Meeting September 28, 2020
- 4. Communications: (Council has copies except those marked **. (These are in the Village Office for Perusal)

- *From Police Chief Hines: September 2020 Monthly Report
- *From Service Superintendent Scherpenberg: September 2020 Monthly Report
- *From Tax Administrator Darrah: September 2020 Monthly Report
- *From Pool Manager Schad: August/September 2020 Monthly Report
- *From Anastasia Nurre: Email dated October 1, 2020 re: Waldorf School
- *From Assistant Fiscal Officer Wendler: September 2020 Monthly Report
- *From Hamilton County: HB 614 CRF Local Distribution \$126,774.00

- 5. **Permission to Address Council (If addressing Council with prepared notes/speech please leave a copy with Mrs. Van Pelt for accurate minutes)**
- 6. Motion to Pay the Bills

Committee agenda items to be discussed at this meeting are in bold and italics below

Rules and Law:

- 📌 Installation of Solar Panels (3-26-18) ****Target Date 3-19-20**** (*Tabled 2-24-20*)
- 📌 ***Review MCO Code (1-27-20)**Phase I Target Date July 2020** (5-27-20) (6-8-20) (7-11-20)***
- 📌 ***Update Ordinance Pertaining to Grills on Balconies in Multifamily Dwellings (7-13-20)***
- 📌 Review Ordinance Regarding Overnight Parking (7-27-20)
- 📌 Review/Discovery DORA Legislation (7-27-20)

Health and Recreation:

- 📌 Construction Documents for Multi-Use Path from Plainville Road to Settle Road (6-10-19) ****Target Date December 31, 2020****
- 📌 Walking Path Whiskey Creek (3-25-19) ****Target Date May 31, 2020****
- 📌 Dale Park Hillside Conservation (3-25-19) ****Target Date October 31, 2020**
- 📌 Review Process for Naming and Use of Village Properties (12-16-19)

Finance:

- 📌 Incentive Program for Creation of Parking on Private Property (11-18-19) ****Target Date June ****
- 📌 Trash Sticker Program (9-14-20)
- 📌 Direct Deposit (9-14-20)
- 📌 Finance/Payroll Software (9-14-20)

Safety:

- ✚ Traffic Speed Concerns: Settle Road, Petoskey Avenue, Miami Road Hill and South Miami Road (7-13-20)
- ✚ Handicap Parking Spot in Front of Hampstead Condominiums (9-28-20)
- ✚ Speed Table Miami Hill (9-28-20)

Planning and Zoning & Economic Development

- ✚ Building Tear Down Aesthetics (9-10-18) **Target Date 11-2020**
- ✚ Work with MPF Task Force To Take Proactive Steps To Preserve Village Architectural Heritage (4-18-19) (1-27-20) **Target Date 1-2021**
- ✚ Business Economic Development in the Village (4-13-20) (Moved from Committee of the Whole 5-13-19) **Ongoing**
- ✚ Creation of CRA Council (2-25-19) **Target Date 11-2020** Transferred From Public Works (6-22-20)

Public Works and Service:

- ✚ Raise Building Department Permit Fees (12-19-16) **Target Date January 2020**
- ✚ Governmental Aggregation (5-28-19)
- ✚ Murray Avenue Repairs (Partner with Columbia Township) (June 10, 2019)**Target Date Spring 2020**
- ✚ Comprehensive Village Parking Assessment (11-18-19)**Target Date June 2020** Includes Overnight Parking Regulations Homewood/Settle Road (moved from Committee of the Whole 4-13-20)
- ✚ Trash/Recycling Renewal Contract (6-22-20) (9-14-20)

Committee of the Whole:

- ✚ Municipal Building Renovations/Additions for Police/Fire/Administration/Building Departments (9-10-18) **Target Date June 2021**

7. Miscellaneous:

- ✚ Beggar's Night
- ✚ Tree Committee
- ✚ Park Review/Planning (Tot Lot improvements and Ann Buntin Becker Park)
- ✚ What is the Principle for when Letters are added to Council Agenda and when they are not
- ✚ Update from Each Committee Chair on each topic in Respective Committee
- ✚ Potential CARES Act Projects – Spreadsheet Attached
- ✚ Swim Pool Update/Pool Commission and Review of Pool Commission Bylaws – Attached
- ✚ Creation of Waldorf Neighborhood Advisory Group
- ✚ Update Street Vacation and Sale
- ✚ Work with ICRC for Public Access to Council Meetings
- ✚ Village Offices will be Closed Thursday and Friday November 26 and 27, 2020 in Observation of Thanksgiving
- ✚ The Council meeting in December will be Monday December 21, 2020 at 6:30 p.m.

8. Resolutions:

- ✚ “To Reappoint Rick Gibson as Mayor’s Court Magistrate for Calendar Years 2021 and 2022; To Set Compensation” (Third Reading)
- ✚ “To Reappoint Edward J. McTigue as Solicitor for the Village of Mariemont for the Calendar Years 2021 and 2022” (Third Reading)

- “To Confirm the Reappointment of Christopher M. Ertel as Village Engineer for Calendar Years 2021 and 2022; and To Set Compensation” (Third Reading)
- “To Confirm the Reappointment of Jordan Schad as Swim Pool Manager for Calendar Years 2021 and 2022” (Third Reading)
- “To Reappoint Ted Beach as a Member of the Pool Commission for the Calendar Years 2021 and 2022” (Third Reading)
- “To Reappoint Terry Donovan as a Member of the Pool Commission for the Calendar Years 2021 and 2022” (Third Reading)
- “To Reappoint Leesa Blanding as a Member of the Pool Commission for the Calendar Years 2021 and 2022” (Third Reading)
- “To Reappoint Mandy Rohal as a Member of the Pool Commission for the Calendar Years 2021 and 2022” (Third Reading)
- “Resolution Authorizing the Mayor to Enter Into a State-Local Project Sponsor Contract Agreement pursuant to Provisions of the Clean Ohio Trails Fund (COTF) and/or Recreational Trails Program (RTP) Including the Contracting for all Work Necessary Relative to Preliminary Design and Construction Drawings and To Declare Emergency” *(Requires Three Readings)*
- “To Reappoint Peter Wren as a Member of the Architectural Review Board for the Calendar Years of 2021 & 2022” (First Reading)
- “To Reappoint Eric Marsland as a Member of the Parks Advisory Board for Calendar Year 2021” (First Reading)
- “To Reappoint Dave Wuertemberger as a Member of the Parks Advisory Board for Calendar Year 2021” (First Reading)
- “To Reappoint Ruth Varner as a Member of the Parks Advisory Board for the Calendar Year 2021” (First Reading)
- “To Reappoint Carrie Gray as a Member of the Parks Advisory Board for the Calendar Year 2021” (First Reading)
- “To Reappoint Mary Tensing as a Member of the Parks Advisory Board for the Calendar Years 2021 and 2022” (First Reading)

9. Ordinances:

- “To Amend Chapter 79 of the Mariemont Code of Ordinances for a Charge of \$100 for Annual Stickers Issued for Overnight Parking” (Third Reading)
- “An Ordinance Enacting Chapter 56 of the Codified Ordinances of the Village of Mariemont, Entitled “Comprehensive Right of Way Administration” (Second Reading)

**Village of Mariemont
Regular Council Meeting
September 28, 2020**

Mayor Brown called the meeting to order at 6:33 PM. Present was Mr. Bartlett. Present virtually due to the COVID-19 pandemic were Mrs. Graves, Dr. Lewis, Ms. Palazzolo, Mrs. Rankin, Mr. Stelzer, Fiscal Officer Borgerding, Solicitor McTigue and Engineer Ertel.

Mrs. Rankin moved, seconded by Mr. Bartlett to accept the minutes as written for the regular Council meeting September 14, 2020. On roll call; six ayes, no nays.

Mr. Bartlett referenced an email that was received from a resident in the last minutes regarding the port-o-lets violating sections of the Mariemont Code of Ordinances. We asked the Village Solicitor to look into it and Mr. McTigue responded back that there was no violation of the code. That is good considering the Village does allow them at the Tennis Courts and various locations for Village events. There is also a precedent about tents on public property. The same issue applies. We need to apply the rule consistently. We cannot say no to certain organizations and yes to other ones. Tents are used for really good fundraising events such as the 5K Race, Taste of Mariemont and Farmers Market. The important thing is to treat everyone equally. We cannot single out one organization and say they cannot while everyone else can. The Mayor is trying to treat everyone equally and he believes it is an important message for the residents as well that the Village is trying to consistently apply the law.

Mayor Brown said the Village does not have any really clear defined ordinance regarding port-o-lets other than on private property and even then it is not well defined. In the future it may be something we look to having a committee work on to define where they should be placed and the length of time.

Mayor Brown read the following communications:

From Hamilton County Auditor: 2nd Half Real Estate Tax Deposit \$601,836.34

From Service Superintendent Scherpenberg: Memo Dated September 4, 2020 re: Handicap Ramp Hampstead Park Condominium. Mayor Brown referred the matter to the Safety Committee. The ramp would go from the sidewalk to the curb and would be in the Village right-of-way. The question is who would pay for it. Mrs. Graves said she would contact Superintendent Scherpenberg to get the contact information.

Mayor Brown said he has talked with Mr. Molski, 4004 Miami Road, who was telling him about a 'speed table'. It is not a speed hump or bump but lays flat on the surface with perhaps an inch elevation. He asked Mrs. Graves and the Safety Committee to exam to see if those would be a possibility on the Miami Hill. The speeding issue on the hill is ongoing. We have signs and reflectors but we never really came up with a good remedy. He talked with Chief Hines who may have other ideas about cutting grooves into the pavement. Mr. Stelzer said grooves in the pavement on that hill could turn into a disaster for cyclists. He would be a strong no in any grooves on the hill of any type. Solicitor McTigue suggested the small speed tracker devices that are used instead of the speed trailers. Perhaps there is assistance from the State of Ohio. Mayor Brown said he gave Chief Hines permission to explore the devices. They are nice because they can be moved and used in other areas such as Homewood Road. They are approximately \$5,000 but Chief Hines is still exploring options. Engineer Ertel said he does not know of any funding available for these devices. Mayor Brown said the police are utilizing the speed trailer to gather data on speed patterns, time etc. on the hill. Ms. Palazzolo said most times when there have been accidents on the hill they have been due to drivers in distress or asleep. They would not see a speed sign. Dr. Lewis suggested using the old fashion police officer at the bottom of the hill. Mayor Brown said the police department is doing that as well. Mayor Brown said the Safety Committee can look into the options and make a recommendation.

Mayor Brown said he and Mr. Stelzer had a meeting with Melissa Taylor, Columbia Township Administrator, and Trustee Dave Kubicki regarding the funding for Murray Path. Mr. Stelzer said the fundraising is going well. There is an event at 50 West on October 21, 2020 at 4:00 p.m. 50 West is going to brew a special beer featuring the Murray Path logo. The new alignment plan was presented to Columbia Township. They have indicated they are fully behind the project and ready to fund immediately with a resolution being passed. We got the contract from ODNR for the grant Solicitor McTigue believes the Village needs a Resolution to give the Mayor authority to sign the contract. Mr. Stelzer said hopefully we can

get it signed and moving at the next Council meeting. Mayor Brown said he would send the contract to all Council members for their review.

Mayor Brown is not sure that we need to sign the contract to move forward with the construction documents. It is his understanding that the construction documents are needed when the contract is signed for ODNR approval. We need to determine if the original resolution to approve the preliminary drawings is sufficient or if a new resolution is needed to proceed with the construction documents. Mr. Stelzer disagreed and said Council should get this moving and get the paperwork done. We have been messing with this for a couple of years. Construction documents should take 6-8 weeks to complete. We then have to go through the bid process. He believes we can easily get this done within the 15 month timeframe. If in fact the construction documents are needed to be attached to the contract then that would hold it up. The Village is able to do progress billing so any monies spent on design engineering we can collect after the contract has been signed. Engineer Ertel said he believes it has to be 30% minimum of the threshold for the contract amount. Mr. Stelzer said he would like to see if the Village can recover the monies already spent on design and engineering. Engineer Ertel said he can look into that. ODNR will not allow the Village to go to bid without seeing the construction documents. We can sign the contract now if desired but we will be eating into the 15 months as we prepare the construction documents. Mr. Stelzer said the only penalty if we do not hit the 15 month timeframe is if the Village goes out for another grant application we could be penalized. There is enough presently collected in private funding and the commitment from Columbia Township to build the path. We are raising the rest of the landscaping monies right now. Mr. Bartlett suggested going forward with the construction documents being paid with the private funds. Engineer Ertel said Choice One would have to check to see if they would take the money from them. Mr. Stelzer would prefer it come from the Village money so we get the reimbursement from the State. We need to make sure we do this in the right order.

Mr. Bartlett moved, seconded by Mrs. Rankin to pay the bills as approved by the Mayor, Fiscal Officer and Chairman of the Finance Committee. On roll call; six ayes, no nays.

Mr. Bartlett moved, seconded by Ms. Palazzolo to accept the recommendation of the Finance Committee which met on Thursday, September 24, 2020 at 3:00 pm via Zoom to discuss the possibility of using CARES Act money to pay for an IT Infrastructure project that would support social distancing and remote access within the Municipal Building. Present at the meeting were Finance Committee Chair Rob Bartlett, Finance Committee Members Joe Stelzer and Kelly Rankin, Mayor Bill Brown, and IT Leader Eli Wendler. To date, Mariemont has received \$92,865.71 in CARES Act funding, with \$36,842.04 allocated so far, leaving \$56,023.67. One of the ways this money can be used is for IT projects that would support social distancing. Eli Wendler shared with the committee four interrelated projects that meet that criteria. The projects are:

1. Re-cabling of the infrastructure to move all of the networking equipment to an isolated, secure location so social distancing can be maintained when on-site maintenance is being provided.
2. Replacing old networking hardware, and adding modern networking software which will allow for remote VPN access to critical on-premises systems for employees and remote management.
3. Creating a comprehensive wireless network within the building to support employee, community and Council access while maintaining distancing within the building. Wireless can support live streaming of Council and Committee meetings should we choose to do so in the future.
4. Migrating to the Office 365 product which will allow employees off-site access to critical shared files and secure remote email service that meets the government compliance/retention standards for municipalities.

Ms. Wendler went to several vendors for quotes on this work. The vendors that provided the best overall value for the Village were as follows. The "Up To" amount below provides a 10% contingency to allow for any change orders that may occur as the work progresses.

Vendor	Work to be Done	Cost	Up to
CBTS	Network as a Service provisioning and set-up	\$25,583.00	\$28,000.00
Intrust	MSOffice 365 tenant set-up, email migration	\$9,770.00	\$10,700.00
PCS Cabling	Cabling to basement	\$16,293.00	\$18,000.00
Dell UPS	Rack Mount 2,200 Volt Amp	\$2,000.00	\$2,200.00

The Finance Committee is recommending we proceed with this project. In order to qualify for CARES Act money, the work needs to be encumbered by October 15 and completed by December 15. All of the above vendors have said they can get this work done on that timing, provided they start the work in early October. Members of Council thanked

Mrs. Wendler for all her hard work on this project and added she did a great job. It was determined that the Resolution passed to get the CARES Act monies should be sufficient going forward. On roll call; six ayes, no nays.

Miscellaneous:

Mayor Brown said Ms. Palazzolo had thoughts on an alternative plan to Trick or Treat. He contacted Madeira, Terrace Park and Fairfax to see what those communities were doing and they are all observing traditional Trick or Treat at this stage. Hamilton County has set guidelines but essentially left the decision to local municipalities. Mr. Brown suggested looking at a way to do both traditional Trick or Treat and perhaps the alternative at a different time.

Mrs. Rankin said people are in control of that. If people are not comfortable with people coming to their house they do not turn their house light on.

Dr. Lewis said she saw data today that said COVID-19 is not qualified as an epidemic in Ohio for six weeks based on CDC guidelines.

Ms. Palazzolo said both events could not happen concurrently. The MPPG idea is for a daytime parade for younger children. Her idea is a drive through event for all ages at the Concourse where people in masks and gloves would hand out items. She has talked with many people and some feel that we should leave Halloween as is unless the county goes to a level 3 or 4 indicating a problem in the community. This could be done conditionally should there be a mass outbreak. She does not want to spend the money and plan for it and not do it. She can call to see if items are ordered and not opened if they may be returned. She does not want to cancel Halloween and not have an event. The event would require Miami Bluff to have the traffic go one way down and one way out. It would not be safe to have this event concurrent with traditional trick-or-treating. Her idea would be to have it 6-7:30 with blown up characters and car hatch backs decorated like caves or monster faces. Mrs. Rankin said people could donate candy to the event. Ms. Palazzolo said because of the concern about eating food handed out by others and food allergies she priced out non-food items.

Mayor Brown said it may be good to have a back-up plan should we not be able to do traditional trick-or treating.

Mr. Stelzer said there are very strong feelings on both side of COVID-19. Some people don't want to do anything and others don't want their rights restricted. Even if we called off Halloween there is still a good chance people are going to do it anyway. It will be hard to enforce and an uncontrollable event by the Village. Whatever decision is made is not going to be completely acceptable to 100% of the Village. It was agreed by Council to wait and talk further at the next Council meeting. Ms. Palazzolo said that would allow enough time to still prepare. It would be a municipality sponsored event so she would need time to raise funds or work with a budget. Her thought was also to have the fire truck at the municipal building passing out glow sticks. Dr. Lewis suggested doing a hybrid and offering the alternative plan for earlier in the day and having traditional trick-or-treat at night. Mrs. Graves said we can encourage people to socially distance, wear masks and set out their candy via the website and NextDoor. Mr. Stelzer asked Ms. Palazzolo to send to Council what she is planning and what the estimated cost would be.

Mr. Stelzer said the Pool Commission met last week. They are bringing more formality to the commission and working on a draft of the by-laws. He will forward a copy to the Solicitor for review. The Chairperson will be Lorne Hlad, Vice-Chairman is Leesa Blanding and Laura Stith is Secretary. She will be preparing minutes which will be prepared and distributed to Council. We are still dealing with the leaks in the pool and what the solution is. He is hoping to have more information to Council by the end of October.

Mr. Stelzer said he circulated a spreadsheet with the street spending. He worked with Engineer Ertel to gather data on what the needs are for the Village going forward. His opinion is that we have not been spending enough in the past. At some point Council needs to address how to spend more. Some will be solved by the gas tax but we cannot ignore streets that we should be spending money on.

Mr. Stelzer said he is hopeful that the street vacation closing should happen this week. The contract needs to be signed by Mayor Brown. There was some delay due to Hamilton County not being able to find the original survey map when Mariemont was created.

Resolutions:

“To Establish Court Costs as Authorized by Section 33.05 of the Code of Ordinances of the Village of Mariemont” had a third reading. Mrs. Rankin moved, seconded by Dr. Lewis to adopt the Resolutions. On roll call; six ayes, no nays. Resolution No. R-17-20 was adopted.

“To Accept the Amounts and Rates as Determined by the Budget Commission and Authorizing the Necessary Tax Levies and Certifying them to the County Auditor; and To Declare Emergency” had a first reading. Mrs. Rankin moved, seconded by Mr. Bartlett to suspend the rules to allow for the second and third readings. On roll call; six ayes, no nays. The Resolution had a second reading. Fiscal Officer Borgerding said this a compliance measure we need to do every year after we submit the budget. Hamilton County looks over the budget and approves it. They estimate what the levies should bring to the Village. The emergency is due to the county needing it back by October 15, 2020. The Resolution had a third reading. Mrs. Rankin moved, seconded by Ms. Palazzolo to adopt the Resolution. On roll call; six ayes, no nays. Mr. Bartlett moved, seconded by Mrs. Rankin to invoke the emergency clause. On roll call; six ayes, no nays. Resolution No. R-18-20 was adopted.

To Authorize Fiscal Officer to Advertise for Bids for Waste Collection to Pay for Advertising and To Declare Emergency” had a first reading. Mrs. Rankin moved, seconded by Dr. Lewis to suspend the rules to allow for the second and third readings. On roll call; six ayes, no nays. The Resolution had a second reading. Mr. Bartlett said the first reading of the Resolution to adopt the bid will occur the same meeting as the Committee recommendation to avoid emergency legislation. The Resolution had a third reading. Mrs. Rankin moved, seconded by Mr. Bartlett to adopt the Resolution. On roll call; six ayes, no nays. Mr. Bartlett moved, seconded by Mrs. Rankin to invoke the emergency clause. On roll call; six ayes, no nays. Resolution No. R-19-20 was adopted.

“To Reappoint Rick Gibson as Mayor’s Court Magistrate for Calendar Years 2021 and 2022; To Set Compensation” had a second reading.

“To Reappoint Edward J. McTigue as Solicitor for the Village of Mariemont for the Calendar Years 2021 and 2022” had a second reading.

“To Confirm the Reappointment of Christopher M. Ertel as Village Engineer for Calendar Years 2021 and 2022; and To Set Compensation” had a second reading.

“To Confirm the Reappointment of Jordan Schad as Swim Pool Manager for Calendar Years 2021 and 2022” had a second reading. Mayor Brown said she is working well with the new Pool Commission. Mr. Stelzer said this was a challenging year and she has worked very hard with the Pool Commission.

“To Reappoint Ted Beach as a Member of the Pool Commission for the Calendar Year 2021” had a second reading.

“To Reappoint Terry Donovan as a Member of the Pool Commission for the Calendar Year 2021” had a second reading.

“To Reappoint Leesa Blanding as a Member of the Pool Commission for the Calendar Year 2021” had a second reading.

To Reappoint Mandy Rohal as a Member of the Pool Commission for the Calendar Year 2021” had a second reading.

Ordinances:

“To Amend Chapter 79 of the Mariemont Code of Ordinances for a Charge of \$100 for Annual Stickers Issued for Overnight Parking” had a second reading.

“An Ordinance Enacting Chapter 56 of the Codified Ordinances of the Village of Mariemont, Entitled Comprehensive Right of Way Administration” had a first reading.

Mr. Bartlett reminded Council that they need to provide a written or verbal update on their Committee assignments for the next meeting.

The meeting adjourned at 7:40 p.m.

William A. Brown, Mayor

Anthony J. Borgerding, Fiscal Officer

MARIEMONT POLICE DEPARTMENT

2020 MONTHLY REPORT

September



Submitted by: *Chief Richard D. Hines*

**Mariemont Police Department
September, 2020**

Crime	Reported			Closed			Arrests		
	Sept.	2020	2019	Sept.	2020	2019	Sept.	2020	2019
Homicide	0	0	0	0	0	0	0	0	0
Rape	0	0	0	0	0	0	0	0	0
Robbery	0	0	0	0	0	0	0	0	0
Felonious Assault	0	0	0	0	0	0	0	0	0
Burglary	0	2	0	0	0	0	0	0	0
Theft	0	16	19	0	7	9	0	2	3
Auto Theft	0	1	0	0	1	0	0	1	0
Other Assaults	0	1	1	0	1	1	0	1	0
Arson	0	0	1	0	0	1	0	0	1
Forgery	0	0	0	0	0	0	0	0	0
Bad Checks	0	1	0	0	1	0	0	0	0
Receive Stolen Property	0	3	0	0	3	0	0	3	0
Criminal Damaging	0	3	6	0	2	2	0	2	3
Weapons Violations	0	1	1	0	1	1	0	1	1
Sex Offenses	0	0	0	0	0	0	0	0	0
Drug Abuse	1	36	44	1	36	44	1	36	44
Domestic Violence	0	1	2	0	1	2	0	1	2
Liquor Laws	1	3	8	1	3	8	1	3	8
Disorderly Conduct	0	0	1	0	0	1	0	0	1
Telephone Harassment	0	0	0	0	0	0	0	0	0
Runaways	0	2	2	0	2	2	0	2	2
All Other Offenses	1	14	8	0	13	8	0	13	8
Mayor's Court Warrants							29	249	397
Arrests for Others							9	76	84
Totals	3	84	93	2	71	79	40	389	552

-30%

-10%

-10%

85%

Closure Rate

Mariemont Police Department September, 2020

Drug Violation(s)		
6-Sep	FB31 was arrested for possession of heroin and syringes - transported to the justice center	18-30-036
Receiving Stolen Property		
1-Sep	MB24 was arrested for receiving a stolen credit card (taken from an unlocked veh.)	13-20-003
1-Sep	MB19 was arrested for receiving a stolen credit card (taken from an unlocked veh.)	13-20-003
Operating a Vehicle Impaired (O.V.I.)		
22-Sep	MW62 was arrested for O.V.I. - Test result: .097 BAC - Transported to the justice center	21-20-004
Pursuit / High Speed		
12-Sep	Suspect failed to stop for traffic violation and fled - High speed chase called off at Columbia Pky and Delta	26-20-007

Mariemont Police Department September, 2020

Value of Property Stolen & Recovered

	Stolen		Recovered		Recovered for Other Agencies	
	Sept.	2020	Sept.	2020	Sept.	2020
	\$0	\$0	\$0	\$0	\$0	\$0
Robbery	\$0	\$500	\$0	\$0	\$0	\$0
Burglary	\$0	\$6,682	\$0	\$20	\$0	\$0
Theft	\$5	\$1,505	\$0	\$1,500	\$0	\$25,000
Auto Theft	\$0	\$10,707	\$0	\$3,540	\$0	\$27,020
Totals	\$5	\$19,394	\$0	\$5,060	\$0	\$52,020

Persons Arrested and Charged:

- MW19 Open Container in MV
- FB31 Drug Paraphernalia
- MW62 O.V.I.
- FB31 Drug Poss / Heroin Syringe

Persons Arrested for Other Agencies: 9

Mayor's Court Warrants Served: 29

**Mariemont Police Department
September, 2020**

Traffic Enforcement	Sept.	2020	2019	% Change
Total Citations	95	782	821	-5%
Driving Under the Influence	1	4	13	-69%
Speeding	19	85	103	-17%
Assured Clear Distance	3	9	21	-57%
Reasonable Control	0	3	9	-67%
Reckless	0	0	2	-100%
Right of Way	1	11	15	-27%
Red Light	7	64	53	21%
Stop Sign	6	110	16	588%
Passing	0	0	0	#DIV/0!
Turning	0	2	3	-33%
Lane Usage	2	6	18	-67%
Backing	0	0	4	-100%
Unsafe Vehicle	0	1	0	#DIV/0!
Other Hazardous Violations	2	7	15	-53%
Truck Violations (Road Use & Weight)	0	1	0	#DIV/0!
Parking	0	25	110	-77%
No Drivers License	11	125	109	15%
Driving Under Suspension	18	122	96	27%
License Plates	19	184	208	-12%
Equipment	6	22	24	-8%
Other Non-Hazardous Violations	0	1	2	-50%
Courtesy Citations	56	456	793	-42%

Average MPH Over Limit for Speeding Cite	14.26	15.75	16.05	-2%
Average No. Days License Plate Expired	295.35	231.45	114.38	102%

**Mariemont Police Department
September, 2020**

Citations by Street:	Sept.	2020	2019	% Change
Wooster Pike	59	453	447	1%
Madisonville Road	16	118	121	-2%
Miami Road	9	45	72	-38%
Plainville Road	4	41	37	11%
Private Property	0	0	0	#DIV/0!
All Other Streets	7	125	144	-13%
Totals	95	782	821	-5%

Accidents By Street:	September	2020	2019	% Change
Wooster Pike	4	16	43	-63%
Madisonville Road	0	5	8	-38%
Miami Road	0	2	3	-33%
Plainville Road	0	1	5	-80%
Private Property	0	1	1	0%
All Other Streets	2	10	20	-50%
Totals	6	35	80	-56%

**Mariemont Police Department
September, 2020**

Traffic Accident Summary:				
	Sept.	2020	2019	% Change
Total Traffic Accidents	6	35	80	-56%
Cleared by Arrest	4	21	56	-63%
Cleared - No Arrest	2	12	12	0%
Fatal Accidents	0	0	0	#DIV/0!
Injury Accidents	0	2	6	-67%
Persons Injured	0	3	6	-50%
Pedestrian Accidents	0	1	2	-50%
Accidents Involving Bicycles	0	0	0	#DIV/0!
Weather Related Accidents	0	0	1	-100%
Citations Issued	4	24	65	-63%
Hit Skip Accidents	0	1	9	-89%
Hit Skip Accidents - Cleared	0	1	6	-83%

**Mariemont Police Department
September, 2020**

Miscellaneous Activity:	Sept.	2020	2019	% Change
Alarms Drops	2	59	80	-26%
Vacation Houses Checked	7	94	639	-85%
Suspicious Persons Checked	7	122	118	3%
Open Business Walk-Thrus	192	920	6,291	-85%
Other Security Checks	3,261	27,525	29,062	-5%
Places Found Open (PFO)	10	49	38	29%
Motorists Assisted	13	97	101	-4%
Prowler Calls	0	0	0	#DIV/0!
Domestic Calls (except Domestic Violence)	2	27	20	35%
Animal Complaints	1	48	68	-29%
Animal Owners Warned	0	3	9	-67%
Animal Owners Cited	0	0	1	-100%
Juvenile Complaints	5	33	48	-31%
Juveniles Arrested	0	2	5	-60%
Traffic Complaints	12	82	164	-50%
Traffic Details	19	72	166	-57%
Fire Department Assists	17	190	239	-21%
Maintenance Department Assists	0	8	14	-43%
Tax Summons Served	0	0	20	-100%
Other Police Departments Assisted	25	385	446	-14%
Contacts for Trash	2	11	10	10%
Contacts for Weeds, Grass, Etc.	1	10	32	-69%
Contacts for Signs, Snow, Etc.	25	40	337	-88%
Miscellaneous Services Rendered	957	8,354	7,865	6%
Total Service Demands	2,554	23,128	23,204	0%
Final Trash Fee Notices Served	0	0	0	#DIV/0!



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From: Bezerra, Jorge <Jorge.Bezerra@cchmc.org>
To: rhines@mariemont.org <rhines@mariemont.org>
Cc:

Subject: Open garage door
Priority: Normal **Date:** Sunday, September 13, 2020 3:00 PM **Size:** 14 KB

Dear Mr. Hines,

My wife and I are very grateful for your patrol and for your note about our open garage door. Nothing is missing from our garage. I recognize that I forgot to close it after an afternoon bike ride.

Thank you for all you do to keep us safe.

Our wishes that you remain healthy and safe – along with all of your colleagues that make Mariemont Police a point of pride for our community.

Jorge

Jorge A. Bezerra, M.D.
Professor of Pediatrics
Cincinnati Children's Hospital Medical Center
The William and Rebecca Balistreri Chair in Pediatric Hepatology
Director, Division of Gastroenterology, Hepatology and Nutrition
Medical Director, Liver Care Center
Director, Digestive Health Center

Mail address:

Cincinnati Children's Hospital Medical Center
Division of Gastroenterology, Hepatology and Nutrition
3333 Bumet Avenue
Cincinnati, OH 45229-3039
Phone: 513-636-3008
Fax: 513-636-5581

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**SERVICE DEPARTMENT
MONTHLY REPORT
SEPTEMBER
2020**

BRUSH ROUTE	3 Loads of chipped brush \$ 0 Charge this month Saving of \$ 75.00 1,152 savings year to date.
Dump Brush either Hafner or S-80	
Other Dumping's	2 Load of brush \$50.00 0 Loads of debris Cost \$0.00 \$ 925.00 Total savings
Street Sweeping/ debris	loads cost \$ 0.00
TOTAL COST SAVINGS YTD	\$ 1,935.00

SAFETY TRAINING:

PARK WORK INCLUDES THE FOLLOWING:

Clean up of CG&E Median	Denny Place Island	Settle Island
The Point	Albert Place	Trolley Park
Dale Park & Cemetery	Sheldon Close	Concourse
Jordan Memorial	Beech Grove	S-80
Tot Lot	Bell Tower	Lower Meadow
Midden Island	Livingood	

CONTRCTOR'S WORK:

Grass Cor

MECHANICAL WORK :

Chain saws Leaf Vac # 2,3
Street Sweeper Wood Chipper
Dump truck 351
Pick up truck

General check each morning on all trucks

STREET SWEEPING FOR SEPTEMBER:

N/A

TOTAL HOURS: 4 YEAR TO DATE: 38.5

Tree Work in House:

Dead Wood	Total cost for tree co.	\$
Total Removed	Total in house cost	\$
Total Hours	Total savings	\$
	Savings YDT	\$ 247

Total Trees planted 2020

SAFTEY TRAINING CLASS:

OVERTIME HOURS	TOTAL HOURS	HOURS COST PAID	COMP TIME
Scherpenberg	7.25	\$	\$ 283.12
Schmid	0	\$	\$.
James	0	\$	\$
Evanchyk	0	\$	\$
Swader	0	\$	\$
TOTAL HRS	7.25		\$ 283.12
TOTAL HRS. PAID		\$	
Meetings			
Completion of work			

SICK TIME FOR SEPTEMBER.....TOTAL HOURS

Scherpenberg	0
Schmid	35
James	8
Evanchyk.....	19
Swader.....	0

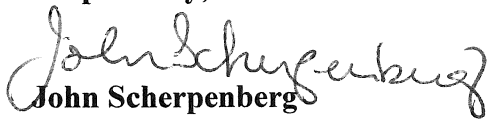
SICK TIME YEAR TO DATE.....TOTAL HOURS

Scherpenberg	0
Schmid	187
James	68
Evanchyk.....	35
Swader.....	0

MISCELLANEOUS WORK INCLUDES THE FOLLOWING:

Village repair catch basin
Tot Lot, bell Tower, Ann Buntin Becker, John Nolen and Erickson Pavilions Covid Spray
Prevy Park mow grass
Tennis Court replace rotten boards on shelter
Grove sidewalk repair
Town Square repair electric box
Pool video sewer and test drainage
Old Town, Concourse repair sprinkler system
Service Dept Shop worked on storm water list of repairs
Homewood @ Murray video storm lines
Bell Tower drop off sand for Boy Scout project
CG&E install interconnector sign
Pool remove handicap chairs Chlorinators
Madisonville @ Plainville repair entrance sign
Village, remove hornet nests
Street sweeping throughout village
S-80 black top chips for main road
Village, clean out storm drains
Village clean up limbs from storms
Village Pothole repair
Miami Hill clean out 5 drains
Town Square Clock and Boathouse reset timers for time change
Village clean up brush from volunteers
Village started making and replacing broken wooden street signs
Village marked utilities for OUPS tickets
Pick up dead animals off roadway
Village streetlight repair
Wooster Pike clean up island tips
Village East Corp mowed and trim high grasses
Village, cleaned up trash and debris left by volunteers
Boathouse clean up area and gutter/drains
Village picked up bags/debris, limbs from volunteers
Village, continue to clean storm 446 sewers/catch basins
Village, installed wooden street signs and post
Fridays, Mt. Vernon, cleaned out head wall
Monday and Friday's empty trash/recycling cans
Clarence Erickson shelter clean up
John Nolen Pavilion clean out inside debris

Respectfully,


John Scherpenberg
Superintendent

MARIEMONT TAX DEPARTMENT

MONTHLY REPORT

September 2020

The attached Deposit Journal Report shows collection for tax totaled \$217,121.51 for September. This amount is **\$10,655.39** less than September 2019 and **\$160,346.51** less than the year to date total collected in 2019.

September 2018 comparisons show month to date collections are up \$17,875.84 with a year to date difference of **\$50,768.62**.

Respectfully submitted,

DeAnna Darrah

Tax Administrator

Closed Batch Number(s) 7676, 7677, 7678, 7679, 7680, 7681, 7682, 7683, 7684, 7686, EPAV200910, 7687, 7688, 7689, 7690, 7691, 7692, 7693, 7694, 7695, 7696, 7697, 7698
 Deposit Date Range: 09/01/2020 To 09/30/2020, Report type: Detail Report, Sort Selection by Account Number.

Transaction	Count	Charge Amt	Credit Amt	Count	Charge Amt	Credit Amt	Count	Charge Amt	Credit Amt	Count	Charge Amt	Credit Amt	Count	Charge Amt	Credit Amt
AMENDED ESTIMATE	11	\$14,207.45	\$2,567.88	0	\$0.00	\$0.00	0	\$0.00	\$0.00	11	\$14,207.45	\$2,567.88	11	\$14,207.45	\$2,567.88
AMENDED FINAL	1	\$1,392.00	\$0.00	0	\$0.00	\$0.00	0	\$0.00	\$0.00	1	\$1,392.00	\$0.00	1	\$1,392.00	\$0.00
BALANCE DUE	15	\$0.00	\$3,288.12	11	\$0.00	\$1,773.59	0	\$0.00	\$0.00	26	\$0.00	\$3,465.51	26	\$0.00	\$3,465.51
BATCH NOTE	10	\$0.00	\$0.00	0	\$0.00	\$0.00	6	\$0.00	\$0.00	16	\$0.00	\$0.00	16	\$0.00	\$0.00
COURT COST	0	\$0.00	\$0.00	1	\$-0.89	\$-0.89	0	\$0.00	\$0.00	1	\$-0.89	\$-0.89	1	\$-0.89	\$-0.89
CHARGE-OFF FINAL RET	4	\$-10.11	\$0.00	3	\$-9.54	\$0.00	0	\$0.00	\$0.00	7	\$-19.65	\$0.00	7	\$-19.65	\$0.00
DECLARATION OF	20	\$13,975.02	\$2,595.04	2	\$1,536.00	\$902.00	0	\$0.00	\$0.00	22	\$15,511.02	\$3,497.04	22	\$15,511.02	\$3,497.04
EXTENSION	0	\$0.00	\$0.00	2	\$0.00	\$0.00	0	\$0.00	\$0.00	2	\$0.00	\$0.00	2	\$0.00	\$0.00
FINAL RETURN	47	\$15,550.49	\$1,205.00	20	\$2,024.54	\$789.00	0	\$0.00	\$0.00	67	\$17,575.03	\$1,994.00	67	\$17,575.03	\$1,994.00
INTEREST	0	\$0.00	\$0.00	1	\$4.00	\$4.00	0	\$0.00	\$0.00	1	\$4.00	\$4.00	1	\$4.00	\$4.00
OVERPAY FORWARD	20	\$0.00	\$0.00	10	\$0.00	\$0.00	0	\$0.00	\$0.00	30	\$0.00	\$0.00	30	\$0.00	\$0.00
OVERPAY REFUND	9	\$0.00	\$-6,568.57	1	\$0.00	\$-158.00	0	\$0.00	\$0.00	10	\$0.00	\$-6,726.57	10	\$0.00	\$-6,726.57
LATE FILE PENALTY	0	\$0.00	\$0.00	1	\$50.00	\$50.00	0	\$0.00	\$0.00	1	\$50.00	\$50.00	1	\$50.00	\$50.00
LATE PAY PENALTY	0	\$0.00	\$0.00	1	\$50.00	\$50.00	0	\$0.00	\$0.00	1	\$50.00	\$50.00	1	\$50.00	\$50.00
UNDERPAID ESTIMATE	1	\$0.00	\$81.18	0	\$0.00	\$0.00	0	\$0.00	\$0.00	1	\$0.00	\$81.18	1	\$0.00	\$81.18
QUARTERLY PAYMENT	243	\$0.00	\$107,577.51	21	\$0.00	\$9,238.50	0	\$0.00	\$0.00	264	\$0.00	\$116,816.01	264	\$0.00	\$116,816.01
WITHHOLDING	0	\$0.00	\$0.00	0	\$0.00	\$0.00	227	\$88,596.79	\$88,596.78	227	\$88,596.79	\$88,596.78	227	\$88,596.79	\$88,596.78
Total:	381	\$45,114.85	\$110,746.16	74	\$3,654.11	\$11,052.00	233	\$88,596.79	\$88,596.78	688	\$137,365.75	\$210,394.94	688	\$137,365.75	\$210,394.94
** Total:	381	\$45,114.85	\$110,746.16	74	\$3,654.11	\$11,052.00	233	\$88,596.79	\$88,596.78	688	\$137,365.75	\$210,394.94	688	\$137,365.75	\$210,394.94
<u>Deposit Total</u>			<u>Cash</u>			<u>Check</u>			<u>Charge</u>		<u>Lock Box</u>			<u>Refund Total</u>	<u>ACH</u>
			\$217,121.51			\$89.50			\$208,708.52		\$0.00			\$-6,726.57	\$7,660.20

*** End Of Report ***

TO: Mayor Brown
 FROM: Jordan Schad, Swim Pool Manager
 DATE: September 4th, 2020
 RE: Receipts and Attendance Report of Swimming Pool – August 2020

Cash/Check

Family Passes	0	\$	0
Adult Passes	0	\$	0
Junior Passes	0	\$	0
Senior Passes	0	\$	0
			<u>Total</u>
			0

On-Line

Family Passes	0	\$	0
Adult Passes	0	\$	0
Junior Passes	0	\$	0
Senior Passes	0	\$	0
			<u>Total</u>
			0

Adult Resident Single Admission	18	\$	180.00
Junior Resident Single Admission	22	\$	154.00
Miscellaneous		\$	0

POOL FEES		\$	334.00
CONCESSION RECEIPTS		\$	1,648.89
COLLECTED SALES TAX		\$	124.11
TOTAL RECEIPTS		\$	<u>2,107.00</u>

NET DEPOSIT TO VILLAGE		\$	<u>2,107.00</u>
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Respectfully Submitted,


 Jordan Schad, Swim Pool Manager

Please note: Attendance is limited to 300 Members daily based on the reservation system we have to follow with the social distance guidelines. The month of August was very low in attendance in comparison with June and July.

TO: Mayor Brown
 FROM: Jordan Schad, Swim Pool Manager
 DATE: September 30th, 2020
 RE: Receipts and Attendance Report of Swimming Pool – September 2020

Cash/Check

Family Passes	0	\$	0
Adult Passes	0	\$	0
Junior Passes	0	\$	0
Senior Passes	0	\$	0
			<u>Total</u>
			0

On-Line

Family Passes	0	\$	0
Adult Passes	0	\$	0
Junior Passes	0	\$	0
Senior Passes	0	\$	0
			<u>Total</u>
			0

Adult Resident Single Admission	5	\$	50.00
Junior Resident Single Admission	0	\$	0.00
Miscellaneous		\$	0

POOL FEES		\$	50.00
CONCESSION RECEIPTS		\$	555.21
COLLECTED SALES TAX		\$	41.79
TOTAL RECEIPTS		\$	<u>647.00</u>
 NET DEPOSIT TO VILLAGE		\$	 <u>647.00</u>

Respectfully Submitted,

Jordan A. Schad
 Jordan Schad, Swim Pool Manager

Please note: Attendance is limited to 300 Members daily based on the reservation system we have to follow with the social distance guidelines. The month of September we were only open after school 4-7 and one weekend. (total of 9 days)

Joanee Van Pelt

From: Anastasia Nurre <anastasianurre@gmail.com>
Sent: Thursday, October 01, 2020 6:59 PM
To: Bill Brown; RobBartlettCouncil@gmail.com; Avia; MarcyLewisCouncil@gmail.com; Maggie Palazzolo; KellRankinCouncil@gmail.com; JoeStelzerCouncil@gmail.com
Subject: Regarding Waldorf

Dear council,

Thank you for all the hard work you do to keep Mariemont the family-centered community that Mary Emery planned it to be. With Emery's goal in mind, I wanted to write in support of the good that the Waldorf School has done in keeping childhood joy literally at the center of the Old Town.

The Cincinnati Waldorf school has brought much good to the community. Aside from more laughing children--always welcome!--Waldorf has enriched the community in a number of pragmatic and fun ways.

From a fiscal standpoint, Waldorf has bought payroll taxes to the community. In addition, they have chosen to upkeep the spaces they use, which saves the Village money. Finally, they occupy a historic elementary school in Mariemont, preserving the integrity of the structure through upkeep and continuing to use it as it was historically used in Mariemont.

From a recreational standpoint, the spaces they use have become much more enjoyable for my family. We do at times play on the Waldorf playground on weekends. We enjoy the landscaping around the school. When visiting Ann Buntin Becker park, we often stroll through the garden to see what is growing and to learn about the life cycle of plants. We enjoy the play spaces that have been significantly restored since Waldorf began bringing classes there. Of course we thank the Village for their support and financial contributions to restoring that green space as well!

From a community standpoint, Waldorf has been gracious about lending their spaces for community events like Luminaria. They open their doors to the community to participate in their events. They leave no trace in the spaces they occupy with few and usually approved exceptions. They have a strong desire to fit into the community and for the school and the Village to flourish together.

In full disclosure, my son went to preschool at Waldorf and I loved it. I was so taken with the people and the school that I worked as a substitute in their classrooms. They are peaceful people with ready smiles who really just want to peacefully beautify the green spaces so they can enjoy the outdoors, which is an integral part of Waldorf education. I believe this is a goal supported by both the school and the Village.

Waldorf is filled with individual parents and students, which means there are problems at times that are related to the school but not directly under their control. I have spoken to Waldorf leadership when there were problems with traffic in the Old Town. Just as I see Mariemont parents sometimes speeding down Settle Road, there are Waldorf parents that lose track of time and rush their kids to school forgetting that it is a neighborhood. I DO NOT condone speeding and I am fully in favor of giving as many tickets as possible to anyone who speeds through our neighborhoods regardless of their home zip code. I also do not hold the school responsible for random parents any more than I hold our amazing Mariemont Elementary staff for parents, or let's be honest, high school students, who race down my street. Even so, the school has made sure to communicate with their parents when they receive complaints from their neighbors.

I thank you for taking the time to read this very long letter. I do hope you will consider the contents carefully. It is wonderful to have the building fully occupied by children in fulfillment with Mary Emery's dream. I smile every time I see a group of happy children walking to make use of the parks. While they are not a perfect tenant--humans just aren't made to be perfect--their goals do align with Village goals. I hope that we can find a way to continue to grow together.

**VILLAGE OF MARIEMONT
FISCAL OFFICER'S REPORT
September 30, 2020**

<u>FUND</u>	<u>BAL. 1-1-20</u>	<u>MO. RECEIPTS</u>	<u>YTD RECEIPTS</u>	<u>MO. DISBMNT</u>	<u>YTD DISBMNT</u>	<u>END. BAL.</u>
General - 101	1,011,326	574,560	2,988,237	319,003	2,963,662	1,035,903
Street Improv. - 201	15,351	15,891	127,409	2,900	44,493	98,268
State Highway - 202	10,012	1,226	10,606	323	5,048	15,570
Drug Rel. Pol. Fines - 208	1,257	0	650	0	500	1,407
Alc. Educ. & Enf. - 213	28,683	1,697	6,719	0	4,113	31,289
Court Computer - 214	387	755	6,280	1,580	9,086	(2,418)
MariElders - 280	0	28,117	62,770	305	34,959	27,812
Paramedic 295	10,730	97,731	260,000	2,675	263,859	6,870
Coronavirus Relief - 305	0	30,955	113,128	1,399	36,848	76,280
Perm. Improv. - 403	62,434	170,624	385,121	14,325	190,436	257,119
Health Insur. - 707	1,986	1,607	3,725	49	489	5,222
Building Fee - 708	0	0	0	0	0	0
Ann Buntin Becker Park- 715	3,452	0	0	0	0	3,452
Street Restor. - 804	0	0	0	0	0	0
Total All Funds	1,145,618	923,163	3,964,646	342,560	3,553,493	1,556,772

INVESTMENTS					BANK RECONCILIATION	
<u>FUNDS</u>	<u>INSTITUTION</u>	<u>DETAILS</u>	<u>AMOUNT</u>			
101.201,295, 403	PNC Capital Markets		509,641		Bank Balance	110,130
					Petty Cash funds(3)	225
					Money Market Sweep Acct	986,796
					◆ Deposits in Transit ◆	531
					Paypal Retained Balance	120
					Plus: Investments PNC **	509,641
					Less: Pending check void	(340)
					Less: Checks Outstanding	(50,331)
					TREASURY BALANCE	1,556,772
LIABILITIES						
<u>INSTITUTION</u>	<u>DETAILS</u>	<u>TOTAL AMOUNT</u>	<u>YEARLY DUE</u>	<u>Maturity</u>		
PNC BOND	Bldg Addition	\$396,230	\$100,888	2024		
OPWC	CT07U Paving	\$39,512	\$1,976	2037		
OPWC	CT11V Paving	\$44,422	\$2,221	2039		
AMBULANCE		\$205,647	\$51,412	2024		

Joanee Van Pelt

From: info@mariemont.org
Sent: Wednesday, October 07, 2020 2:19 PM
To: Joanee
Subject: FW: Direct Deposit Payment

From: Hamilton County Direct Deposit <HamiltonCounty.DirectDeposit@auditor.hamilton-co.org>
Sent: Wednesday, October 7, 2020 8:11 AM
To: info@mariemont.org
Subject: Direct Deposit Payment

On behalf of Hamilton County, a direct deposit for \$126,774.00 was made on 10/08/2020 to VILLAGE OF MARIEMONT at 6907 WOOSTER PK. The remittance number is 386870. Below you will find further information about this payment. If you have any questions, please call the Hamilton County Auditor's Office at 513-946-4200.

Voucher No.	Invoice No.	Invoice Desc.	Invoice Amt.
IS011056 002	HB 614 CRF LOCAL DISTRIBUTION		\$126,774.00

<!-- Converted from text/rtf format -->On behalf of Hamilton County, a direct deposit for \$126,774.00 was made on 10/08/2020 to VILLAGE OF MARIEMONT at 6907 WOOSTER PK. The remittance number is 386870. Below you will find further information about this payment. If you have any questions, please call the Hamilton County Auditor's Office at 513-946-4200.

Voucher No.	Invoice No.	Invoice Desc.	Invoice Amt.
IS011056 002	HB 614 CRF LOCAL DISTRIBUTION		\$126,774.00

VOUCHERS FOR THE REGULAR COUNCIL MEETING, October 12, 2020

DEPARTMENT	VENDOR	DESCRIPTION	COST
Administration	Schwaab, Inc.	Two Signature Stamps for Checks	64.74
Administration	William Brown	Mayor's Car Allowance	41.66
All	Reliance Standard	Life Insurance Monthly Premium October 2020	45.51
All	Village Payroll Account	Soc. Sec. \$1764.36, Medi. \$1229.33, Gross \$84,780.88	87,774.57
Building	Martin Simon	Plan Reviews for September 2020	170.00
Fire	A&A Safety	Graphics & Wrap for Assistant Chief's Vehicle	2,450.00
Fire	Ace Hardware	Miscellaneous Parts/Supplies/Materials	40.56
Fire	Spectrum	Cable Service Monthly Charges	24.79
Fire	Thomas Engraving Service	Shipping for Accountability Tags	7.80
Fire	Wex Bank/Fleet Services	Fuel for Village Vehicles	248.16
Fire	Sam's Club	Janitorial Supplies	432.32
Fire & Medic	Board of County Commissioners	Fire/EMS Dispatch Fees	987.50
Legislative	Gilson's Inc.	Engraving on Name Plate for Outstanding Citizen Plaque	18.00
Mayor's Court	Richard Gibson	Magistrate Fees for September 2020	500.00
Miscellaneous	Duke Energy	Gas & Electric Monthly Charges	4,426.13
Miscellaneous	Ellis Virtual Solutions	Marketing Services for Farmers Market September 2020	120.00
Miscellaneous	Marielders Inc.	2nd Half 2020 Real Estate Tax Distribution	27,811.65
Miscellaneous	PNC Bank	Credit Card Purchases (Paypal, Internet Storage, Antivirus, PD)	398.80
Miscellaneous	Rumpke	Trash & Recycling Monthly Charge	26,177.25
Miscellaneous	The Kleingers Group	Petoskey Ave Improvement Project (Final Payment)	2,900.00
Miscellaneous	Ed McTigue	Solicitor Services for Sept. 2020	1,700.00
Miscellaneous	Sam's Club	Batteries for Hand Sanitizers (CARES Act)	46.44
Municipal	Ace Hardware	Miscellaneous Parts/Supplies/Materials	26.97
Municipal	Affordable Pest Control	Preventive Pest Control	75.00
Municipal	CBTS	Long Distance Service Monthly Charges	48.51
Municipal	Grainger	Hand Sanitizer Refills & 8 Soap Dispensers (CARES Act)	365.43
Municipal	Jani-King of Cincinnati	Janitorial Services for October 2020	500.00
Municipal	Sam's Club	Fans for the Building	199.88
Municipal	Schindler Elevator Company	Warranty Agreement Monthly Charges	80.85
Municipal	Spectrum	Broadband Service	224.98
Municipal	Verizon	Bell Tower Elevator Emergency Phone Alarm	7.04
Paramedics	American Welding & Gas	Medical Oxygen Tanks & Refills	68.54
Paramedics	Bound Tree	EMS Supplies	219.99
Paramedics	Verizon	Transmit Data from Squad to Hospital	11.04
Paramedics	Wex Bank/Fleet Services	Fuel for Village Vehicles	248.15
Police	Board of County Commissioners	Law Enforcement Dispatch Fees	2,275.00
Police	Galls	Various Uniform Items, Evidence Bags, & Crossing Guard Raincoats	948.90
Police	Hamilton County Coroner	Lab Fees/Evidence Analysis	200.00
Police	Ohio Association of Chiefs of Police	Annual OACP Membership Dues	195.00
Police	TransUnion	Data Subscription Fees September 2020	50.00
Police	Wex Bank/Fleet Services	Fuel for Village Vehicles	1,137.26
Pool	Ace Hardware	Miscellaneous Parts/Supplies/Materials	47.95
Pool	Cincinnati Bell	Phone & Internet Service Monthly Charges	180.81
Pool	Grainger	Parts for Pool	370.04
Pool	SWS Environmental Service	Video Inspections of Pool Drains	915.00
Service	Ace Hardware	Miscellaneous Parts/Supplies/Materials	94.47
Service	Board of County Commissioners	Radio Service for 5 Non-Public Safety Radios	130.00
Service	CBTS	Long Distance Service Monthly Charges	11.43
Service	Cincinnati Bell	Phone Service Monthly Charges	99.10
Service	Davey Tree	Storm Damage, Tree Removal, and Tree Pruning	7,925.00
Service	Flow-Rite Plumbing	Re-issue of a Voided Check (Yearly Backflow Test)	340.00
Service	H. Hafner & Sons	Sand for Boy Scouts at Bell Tower	27.00
Service	Old Dominion Brush	Replacement Parts for Vacs	99.24
Service	Spectrum	Cable Service Monthly Charges	17.98
Service	Wex Bank/Fleet Services	Fuel for Village Vehicles	314.10
Service	Grass Cor	Mowing Contract October 2020	5,865.03
Service	John Scherpenberg	Reimbursement for Meetings & Mileage	103.55
Service	Kaffenbarger Truck Equipment	Parts for Leaf Vac.	146.00
Tennis	David Russell	Tennis Pro Services for Period Ending 10-3-2020	633.45
Tennis	Hyde Park Lumber	Materials for Tennis Courts	71.28
TOTAL			180,659.85

VILLAGE OF MARIEMONT
BIWEEKLY PAYROLL ENDING OCTOBER 3, 2020

Police Department

Richard D. Hines, Regular	4055.52	Nick Pittsley, Vacation	1492.44
Steve Watt, Regular	2673.60	Paul Rennie, Comp	176.93
Adam Geraci, Regular	2044.52	Nick Pittsley, Regular	1824.09
Steve Watt, Vacation	471.81	Adam Geraci, Sick	1100.90
Paul Rennie, Regular	2496.67	Paul Rennie, Vacation	471.81
Derek Bischoff, Regular	1971.00	Nick Pittsley, Longevity	225.00
Tom Ostendarp, Regular	2325.75	Tom Ostendarp, Vacation	1252.33
Dan Lyons, Overtime	294.88	Derek Bischoff, Overtime	821.25
Dan Lyons, Vacation	471.81	Derek Bischoff, Sick	876.00
Derek Bischoff, Vacation	73.00	Matt Kurtz, Vacation	943.62
Matt Kurtz, Regular	2201.79	Nick Pittsley, Vacation	497.48
Dan Lyons, Regular	2673.60	Margie Maupin, Regular	1418.15
Margie Maupin, Comp	47.27	Blake Wallace, Overtime	135.00
Fred Romano, PT, Regular	2027.25	Margie Maupin, Sick	177.27
Ron Wallace, PT, Regular	948.00	Margie Maupin, Vacation	177.27
Penny Anderson, PT, Regular	459.00	Doris Hallums, PT, Regular	510.00
Tracie Clausing, PT, Regular	530.40	Judy Gerros, PT, Regular	530.40
Blake Wallace, PT, Regular	558.00	Department Total	38184.10

Paramedics/Fire

Jim Henderson, Supervisor Pay	505.20	Jim Henderson, Overtime	378.84
Richard Cathcart, PT, Regular	792.00	Evan Dunkelman, PT, Regular	1080.00
Robert Mercer, PT, Regular	846.00	Keary Henkener, Supervisor Pay	105.00
Mike Washington, Jr., PT, Regular	848.35	Joe Lowry, PT, Regular	432.00
Michael Washington, Supervisor Pay	484.15	Ryan Brown, PT, Regular	846.00
Tim Peaker, PT, Regular	1191.30	Tim Peaker, Supervisor Pay	126.30
Josh Hanauer, PT, Regular	648.00	Blake Rockey, PT, Regular	864.00
Keary Henkener, PT, Regular	324.00	Josh Watren, Supervisor Pay	1220.90
Brian Gross, PT, Regular	216.00	Hunter Morgan, PT, Regular	848.35
Derek Hunt, PT, Regular	216.60	Bryan Schmidlapp, PT, Regular	378.00
Joey Homan, PT, Regular	864.00	Ethan Roell, PT, Regular	1080.00
Dan Copeland, Supervisor Pay	2020.80	Mike Washington, Supervisor Pay	757.80
Chris Ramsey, Supervisor Pay	926.10	Donald Scarpiniski, PT, Regular	252.00
Assistant Chief Feichtner, Regular	3499.61	Ben Kutcher, PT, Regular	487.90
Rick Hines, Regular	647.67	Ray Scott, PT, Regular	1296.00
Mark Hardin, PT, Regular	1296.00	Nick Guilkey, Supervisor Pay	999.88
David Huckleby, PT, Regular	982.98	Curtis Ryan, PT, Regular	344.40
Brandon Manor, Supervisor Pay	989.35	Joey Homan, PT, Regular	864.00
Jeremy Burns, PT, Regular	470.34	Craig Coburn, PT Regular	433.20
		Department Total	28457.38

Maintenance Department

John M. Scherpenberg, Regular	3124.02	Ben James, Regular	2119.10
Ben James, Sick	111.53	Mike Evanchyk, Sick	62.30
Kevin Schmid, Regular	2146.98	Jeremy Swadder, Regular	1599.14
Kevin Schmid, Sick	83.65	Mike Evanchyk, Regular	1329.15
		Department Total	11061.12

Administrative

Joanee B. Van Pelt, Regular	2278.64	Joanee Van Pelt, Council	125.00
Joanee Van Pelt, ARB	125.00	Allison Uhrig, Regular	1594.80
Joanee Van Pelt, Vacation	423.31	Joanee Van Pelt, Planning Commission	125.00
Allison Uhrig, Vacation	21.55	Department Total	4693.28

Tax Department

DeAnna Darrah, Regular	2385.00	Department Total	2385.00
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GRAND TOTAL

84780.88

To: Mayor Brown and Members of Council

From: Rules and Law Committee, Maggie Palazzolo – Chairman

Date: October 12, 2020

Re: Changes to Code

The Rules and Law Committee Met on Thursday October 8, 2020 at 1:30PM via Zoom. Present at the meeting were Rob Bartlet, Marcy Lewis, Maggie Palazzolo and Assistant Fire Chief Tim Feichtner.

Ten items related to Updating the code book were addressed.

Item 1: Addressed signs in residential districts. Please see the proposed changes in the addendum. The committee voted unanimously to accept them. The only exception is the time limit. Maggie will review how the City of Cincinnati manages how long residents may have signs in their yards. This could be an undue hassle for enforcement, so we want to write it well.

Item 2: Updates/corrects our code language about no parking on certain streets. The committee voted unanimously to accept this change.

Item 3: To allow the building commissioner's position to be filled by a non-resident and change the term to two years to match the Village solicitor, Fiscal Officer, etc. The committee had two votes in favor of this change and one member abstained from voting.

Item 4: Makes a correction regarding the use of Robert's Rules of order. The committee voted unanimously to accept this change.

Item 5: Makes the language regarding dog's in the Tot Lot fenced area consistent with the other sections of the code book. The committee voted unanimously to accept this change.

Item 6: Eliminates the dog/cat warden position. The committee voted unanimously to accept this change.

Item 7: Adds clarity to the rules of council regarding assigning/moving items to committees and approving newly created committees and commissions. The committee voted unanimously to accept this change.

Item 8: Clarifies Council Rule 25. The committee voted unanimously to accept this change.

Item 9: Adds language to clarify that Mariemont is required to follow the Ohio Manual of Uniform Traffic Devices when adding traffic control devices. The committee had two votes in favor of this change and one member abstained from voting.

Item 10: The item addresses ordinance No. O-14-16 regarding the maintenance of the historic and aesthetic character of the entire Village of Mariemont. The committee voted unanimously to not take action at this time and has the following statement: We recognize that this has been in process since 2016 and the Village Solicitor has provided his opinion that it is likely unconstitutional. We choose not to strike it from the codebook until we have language to replace it with, and we support the Economic Planning and Zoning Committee in their work to update this section.

The Committee recommends the Solicitor prepare the necessary legislation

The meeting concluded at 2:30pm.

Thank you!!!!

Maggie

Respectfully Submitted,

Maggie Palazzolo, Chairman

Marcy Lewis, Vice-Chairman

Rob Bartlett, Member

Item 1:

Discussion: the legislation that was passed earlier this year concerning setbacks for temporary yard signs is not as clear as it could be concerning setbacks from the street, making it more difficult to enforce (someone would need to measure the sign to determine if it is setback an equal distance). To simplify things, I am proposing we just require that all signs be set back at least 15 feet from the street unless there are bushes blocking the view. Also, Bill has requested that we also include a restriction on how close to a neighbor's lot line a temporary sign may be placed. He recommended that we limit the placement of the sign to the width of the house, which makes sense to me. The other thing that Bill is interested in, including in the temporary yard sign legislation is a limit on how long the sign can be in the yard, like 60 days. I mentioned to Bill that this could be very hard to enforce, as it would require the police to write down when each sign was placed in a yard, and track how long it was there. Also, a lot of residents put temporary signs in their yard, identifying that they participate in a Mariemont school sport, and those signs tend to stay in the yard throughout whatever season it is (and the sports seasons tend to last longer than 60 days). All temporary yard signs need to be treated equally, so the high school sports signs would also be subject to a 60 day limit. In order to have an impact this year, this would need to be passed as an emergency measure.

§ 151.126 SIGNS WITHIN RESIDENTIAL DISTRICTS.

(A) (6) currently says:

Temporary signs not intended for permanent use, subject to requirements specified in § 151.131; Such signs will not exceed six square feet in area and shall be placed back from every street lot line at least the distance in feet equal to the number of square feet area of the sign; provided, that no such sign shall be placed nearer to a street lot line than 15 feet. An exception may exist where permanent shrubbery or topography prevent view of sign if placed as required above. In such event, approval may be given by the Chief of Police for a location other than that required under normal conditions as long as it does not create a safety issue.

Proposed changes are:

Temporary signs not intended for permanent use, subject to requirements specified in § 151.131; Such signs will not exceed six square feet in area and shall not be placed back from every street lot line at least the distance in feet equal to the number of square feet area of the sign; provided, that no such sign shall be placed nearer to a street lot line than 15 feet. Also, such signs shall not be placed outside the width of the house that is facing the street. An exception may exist where permanent shrubbery or topography prevent view of sign if placed as required above. In such event, approval may be given by the Chief of Police for a location other than that required under normal conditions as long as it does not create a safety issue.

Item 2:

Discussion: the legislation concerning streets with no parking is outdated in 2 sections. This would update the code book to reflect how this is currently being handled.

Chapter 79

Schedule I. No Parking

(B) (1) currently says:

Street	Between	Side	Ord. No.	Date
Wooster Pike	Bank Place and a distance of 20 feet west from Bank Place	South	O-5-61	
Wooster Pike	East Street and eastern corporation limit	South	O-39-83	11-14-1983
Wooster Pike	Eastern corporation limit and East Street	North	O-39-83	11-14-1983
Wooster Pike	Entrance and exit of the Kroger Store parking lot	North	O-26-60	

Proposed changes are:

Street	Between	Side	Ord. No.	Date
Wooster Pike	Miami Avenue Bank Place and a distance of 20 feet west from Bank Place	South	O-5-61	
Wooster Pike	East Street and eastern corporation limit	South	O-39-83	11-14-1983
Wooster Pike	Eastern corporation limit and East Street	North	O-39-83	11-14-1983
Wooster Pike	Entrance and exit of the Strand Kroger Store parking lot	North	O-26-60	

Item 3:

Discussion: the legislation concerning the Building Commissioner requires that the Building Commissioner be a resident of the Village. This limits our ability to pick a person who might be more qualified for the role. Also, the current legislation requires the Building Commissioner's term should not exceed the term of the Mayor. I would propose to make the position a two year appointment, consistent with the Fiscal Officer, Village Solicitor, Village Engineer and others, with the opportunity to reappoint the same person, just as we can reappoint all of the positions previously mentioned.

31.077 Building Commissioner

Currently says:

- (A) The Mayor shall appoint a Building Commissioner, subject to confirmation of Council. The Building Commissioner shall be a resident and elector of the village and be required to hold office, subject to removal at any time by the Mayor. Appointment shall be for the period designated and confirmed but shall not exceed the term of the Mayor.

Proposed changes are:

- (B) The Mayor shall appoint a Building Commissioner, subject to confirmation of Council. The Building Commissioner shall be ~~a resident and elector of the village and be required to hold office~~, subject to removal at any time by the Mayor. Appointment shall be ~~for a two year period designated but shall not exceed the term of the Mayor.~~

Item 4:

Discussion: the code book says that council shall follow Robert's Rule of Order. However, the section on what constitutes a majority is not consistent with Robert's rule of Order. Specifically, Robert's Rules of Order states that a "majority vote" means "more than half of the votes cast by persons legally entitled to vote, *excluding blanks or abstentions.*" This change would make us consistent with Robert's Rule of Order.

§ 32.13 RULES OF COUNCIL.

The following rules shall apply in connection with the organization and administration of the meetings of the Council of the municipality.

(GG) *Rule 33.*

(1) The following procedures shall apply to the passage of ordinances and resolutions.

(a) Each ordinance and resolution may be read by title only, provided, the legislative authority may require any reading to be in full by a majority vote of its members.

(b) Each ordinance or resolution shall be read on three different days, provided the legislative authority may dispense with this rule by a vote of at least three-fourths of its members.

(c) The vote on the passage of each ordinance or resolution shall be taken by yeas and nays, and entered on the journal.

(d) An ordinance or resolution shall be passed, except as otherwise provided by law, by a vote of at least a majority of all the members of the legislative authority.

(2) Action by the legislative authority, not required by law to be by ordinance or resolution, may be taken by motion approved by at least a majority vote of the members present at the meeting when the action is taken.

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(c) The vote on the passage of each ordinance or resolution shall be taken by yeas and nays, and entered on the journal.

(d) An ordinance or resolution shall be passed, except as otherwise provided by law, by a vote of at least a majority of all the members of the legislative authority, **excluding blanks or abstentions.**

(2) Action by the legislative authority, not required by law to be by ordinance or resolution, may be taken by motion approved by at least a majority vote of the members present at the meeting when the action is taken.

Item 5:

Discussion: Section 90.01 (A) (1) (b) currently states that dogs are allowed in the Tot Lot area of Dogwood Park if they are under positive leash control. However, council passed a law some years ago not allowing dogs in the Tot Lot area at all, and there is signage at the Tot Lot indicating that ban. Thus, the code book needs to be updated to reflect that.

§ 90.01 DOGS OR OTHER ANIMALS RUNNING AT LARGE; DANGEROUS OR VICIOUS DOGS.

(A) *Animals running at large.*

(1) (a) Any person who is the owner or has charge of any animal shall not permit it to run at large in the public road, highway, street, lane, or alley, or upon unenclosed land, or permit them to go upon any private yard, lot, or enclosure. Any such time that a dog is not in an enclosed and secured area on its owner's property, it shall be under positive leash control of the owner, keeper, or harbinger of the dog.

(b) Notwithstanding the provisions set forth in division (A)(1)(a) above, an owner, keeper, or harbinger of a dog may allow the dog to run off leash at Ann Buntin Becker Park, Dogwood Bell Tower Park, the green space on the south side of Miami Bluff Drive between 6812 Miami Bluff and 6973 Miami Bluff, including the Mariemont Concourse, the lower 80 acres, the grassy boulevard between Hiawatha Avenue and Rembold Avenue, and the practice field at Waldorf School; provided, that the dogs must be under positive leash control while in the Tot Lot area of Dogwood Park as well as at all times in the sports field area of Dogwood Park and the practice field by Waldorf School during sporting activities.

(c) This division (A)(1) shall go into effect at the earliest date allowed by law.

§ 90.01 DOGS OR OTHER ANIMALS RUNNING AT LARGE; DANGEROUS OR VICIOUS DOGS.

(A) *Animals running at large.*

(1) (a) Any person who is the owner or has charge of any animal shall not permit it to run at large in the public road, highway, street, lane, or alley, or upon unenclosed land, or permit them to go upon any private yard, lot, or enclosure. Any such time that a dog is not in an enclosed and secured area on its owner's property, it shall be under positive leash control of the owner, keeper, or harbinger of the dog.

(b) Notwithstanding the provisions set forth in division (A)(1)(a) above, an owner, keeper, or harbinger of a dog may allow the dog to run off leash at Ann Buntin Becker Park, Dogwood Bell Tower Park, the green space on the south side of Miami Bluff Drive between 6812 Miami Bluff and 6973 Miami Bluff, including the Mariemont Concourse, the lower 80 acres, the grassy boulevard between Hiawatha Avenue and Rembold Avenue, and the practice field at Waldorf School; provided, that the dogs must be under positive leash control ~~while in the Tot Lot area of Dogwood Park as well as~~ at all times in the sports field area of Dogwood Park and the practice field by Waldorf School during sporting activities.

(c) This division (A)(1) shall go into effect at the earliest date allowed by law.

Item 6:

Discussion: remove Section 31.078 creating the position of Dog and Cat Warden. I did not see any reference to ORC saying this was required. Also, this section of the code book was last updated in 1967.

§ 31.078 DOG AND CAT WARDEN.

(A) *Position established.*

(1) The position of Dog and Cat Warden is established and appointment of the position shall be made by the Mayor. The person appointed shall perform the duties hereinafter set forth, under the direction of the Mayor, and shall be paid a monthly salary established by Council, chargeable to the Dog and Cat Warden Account of the General Fund. The person appointed may, but need not, be one who is already a village employee.

(2) If a village employee is appointed, his or her duties as Dog and Cat Warden and his or her compensation as such shall be additional to his or her other duties and compensation.

(B) *Duties.* The Dog and Cat Warden shall take and impound any dogs or cats found running at large in the village, whether the animal is licensed or unlicensed. Any animals so impounded shall not be returned to the owner, harborer, or claimant thereof until an impounding fee as set by Council is paid the village, for which a receipt shall be issued. The fee shall be credited to the General Fund.

(C) *Notification to owner; disposition of animal.* Whenever the owner or harborer of any impounded licensed dog or of any impounded cat is known to the Warden, he or she shall notify the owner or harborer that the animal has been impounded. If the owner or harborer does not claim the dog or cat within 48 hours of such notification and pay the impounding fee, the animal shall be kept impounded by the Warden for the seven days following the 48-hour period. If, during the seven-day period, the owner or harborer calls for and claims the dog or cat, pays the impounding fee and a boarding charge as set by Council per day for the number of days of the seven-day period that have elapsed, the Warden shall deliver the animal to the owner, harborer, or claimant. If, at the end of the seven-day period, the owner or harborer has not claimed the animal, the Warden shall notify the owner or harborer that if the animal is not called for and all charges paid within 24 hours following notification, the animal shall be deemed abandoned property and will be disposed of by the Warden by sending the animal to the SPCA or to any cat or dog pound maintained by the county or any governmental unit that may be available, or by humanely or otherwise disposing of that animal.

(D) *Unknown owner or unlicensed dog; disposition of animal.* Whenever the owner or harborer of any dog or cat is unknown to the Warden, or the animal impounded is an unlicensed dog, and no person makes claim to the dog or cat within 48 hours of the impounding, the animal shall be disposed of as provided above for animals deemed abandoned property. No unlicensed dog shall be returned to any claimant until the claimant has procured and exhibited a license therefor.

(E) *Violations.* The Warden, whenever he or she has reasonable or probable cause to believe an owner or harborer of a dog or cat has violated village ordinances with respect to dogs and cats, shall also file an appropriate affidavit before the Mayor or other magistrate, charging such violation.

(F) *Equipment.* The Mayor shall procure and furnish from time to time any equipment deemed by him or her necessary or desirable for use by the Dog and Cat Warden in the performance of his or her duties, and shall charge the cost thereof to the Dog and Cat Warden account of the General Fund.

(1967 Code, § 33.02) (Ord. O-15-54, passed 12-27-1954)

Item 7:

Discussion: Section 32.13 (S). I propose adding two items to this section. The first is for council to have the opportunity to weigh in when items are assigned to committees or moved to another committee. Under the previous administration, items were at times assigned in a way that was inconsistent with what is in the code book. This attempts to rectify that, or at least for council to agree to not follow what is in the code book. The second item is to establish a process for council to create any new special committees or commissions, similar to what we did with the Swim Pool Task Force. In particular, creating a charter document helps to ensure that expectations and scope are understood up front by all involved.

§ 32.13 RULES OF COUNCIL.

The following rules shall apply in connection with the organization and administration of the meetings of the Council of the municipality.

(S) *Rule 19.* There shall be six standing committees appointed of three members each. Each member of Council shall be Chairperson of one committee and serve on two other committees. The standing committees are as following with functions:

- (1) *Rules and Laws.* General assembly, law, contracts, and claims;
- (2) *Health and Recreation.* Health, sanitation, parks, playgrounds, waste, and garbage collection;
- (3) *Finance.* Appropriation of property, sale of property, assessments for improvement, finance, ways and means;
- (4) *Public Safety.* Fire, police, and traffic;
- (5) *Public Works and Services.* Light, telephone, telegraph, gas, water, conduits, sewers, heat, streets, roads, and transportation; and
- (6) *Planning, Zoning, and Economic Development.* Building code, zoning, and dedication of property.

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- (1) *Rules and Laws.* General assembly, law, contracts, and claims;
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- (3) *Finance.* Appropriation of property, sale of property, assessments for improvement, finance, ways and means;
- (4) *Public Safety.* Fire, police, and traffic;
- (5) *Public Works and Services.* Light, telephone, telegraph, gas, water, conduits, sewers, heat, streets, roads, and transportation; and
- (6) *Planning, Zoning, and Economic Development.* Building code, zoning, and dedication of property.

(7) Items shall be assigned to the committees by the Mayor with the consent of Council. Items can also be moved from one committee to another by the Mayor, again with the consent of Council.

(8) Any special committees or commissions created by the Village shall be voted on and approved by Council. A charter shall also be created, laying out clear responsibilities, deliverables and any desired timelines. Any committees or commissions that are temporary should be called out as such.

Item 8:

Discussion: Section 32.13 (Z) Rule 25. I propose adding that if a motion is required to be put in writing, that it can be done right then and does not need to be postponed to a later council meeting. Once again, this tactic had been used by the previous administration to delay action on items proposed by council. This is an attempt to address that.

§ 32.13 RULES OF COUNCIL.

The following rules shall apply in connection with the organization and administration of the meetings of the Council of the municipality.

(Z) *Rule 25.* When a motion is made and seconded, before debate, it shall be stated by the Mayor or presiding officer. A motion shall be reduced to writing, if the Mayor or any member requires it.

(Z) *Rule 25.* When a motion is made and seconded, before debate, it shall be stated by the Mayor or presiding officer. A motion shall be reduced to writing, if the Mayor or any member requires it. The writing of such motion can occur during the meeting or be presented at a following meeting, at the discretion of the person making the motion.

Item 9:

Discussion: Section 70.30 Traffic Control Devices. The Village Solicitor has confirmed that per Section 4511.11 of Ohio Revised Code, Mariemont does need to follow the Ohio Manual of Uniform Traffic Control Devices (OMUTCD). However, many council members are not aware of that and there have been instances where council has voted to install traffic control devices that do not comply with the OMUTCD. As such, I would propose we insert a preamble to Section 70.30 which states that per ORC Section 4511.11 Mariemont has to follow the OMUTCD, and also states that council should refer to the requirements laid out in the OMUTCD before voting to install any new traffic control devices.

§ 70.30 OBEYING TRAFFIC-CONTROL DEVICES.

(A) (1) No pedestrian or driver of a vehicle shall disobey the instructions of any traffic-control device placed in accordance with the provisions of this traffic code, unless at the time otherwise directed by a police officer.

(2) No provision of this traffic code for which signs are required shall be enforced against an alleged violator if, at the time and place of the alleged violation, an official sign is not in proper position and sufficiently legible to be seen by an ordinarily observant person. Whenever a particular section of this traffic code does not state that signs are required, that section shall be effective even though no signs are erected or in place.

§ 70.30 OBEYING TRAFFIC-CONTROL DEVICES.

Per Ohio Revised Code 4511.11, Mariemont has to follow the Ohio Manual of Uniform Traffic Control Devices (OMUTCD) concerning the installation and maintenance of any and all traffic control devices. As such, before voting to install or modify a traffic control device, council should refer to the OMUTCD if any new traffic control devices are being contemplated, to ensure they comply with Ohio law.

(A) (1) No pedestrian or driver of a vehicle shall disobey the instructions of any traffic-control device placed in accordance with the provisions of this traffic code, unless at the time otherwise directed by a police officer.

(2) No provision of this traffic code for which signs are required shall be enforced against an alleged violator if, at the time and place of the alleged violation, an official sign is not in proper position and sufficiently legible to be seen by an ordinarily observant person. Whenever a particular section of this traffic code does not state that signs are required, that section shall be effective even though no signs are erected or in place.

Item 10:

Discussion: On July 18, 2016, council passed ordinance No. O-14-16, to maintain the historic and aesthetic character of the entire Village of Mariemont. However, in an email from our Village Solicitor, Ed McTigue, to our then Mayor, Dan Policastro, dated June 8, 2016, Ed stated the following concerning ordinance No. O-14-16, “Frankly, ordinances such as this are often times considered vague and overbroad, so they may not survive a constitutional challenge.” It doesn’t make sense to me that we would have a law on the books that our Village Solicitor has said is likely unconstitutional. Furthermore, the Planning and Zoning & Economic Development Committee currently has as an agenda item titled “Building Tear Down Aesthetics” that is meant to address the vague and overbroad legislation that was passed back in 2016. As such, I would propose that we remove ordinance No. O-14-16 from our code book.

To: Mayor Brown and Members of Council

From: Rules and Law Committee, Maggie Palazzolo – Chairman

Date: October 12, 2020

Re: Grills on Balconies

The Rules and Law Committee Met on Thursday October 8, 2020 at 1:30PM via Zoom. Present at the meeting were Rob Bartlet, Marcy Lewis, Maggie Palazzolo and Assistant File Chief Tim Feichtner. (The meeting ended at 2:30, but this portion only lasted about 20 minutes.)

The first topic discussed was the use of grills on balconies. Our current code prohibits this, but some of the owners of condos paid to have a natural gas line run to their balconies and had sprinklers installed. The state fire code allows for grills on patios and balconies as long as those two conditions are met (permanent gas line and sprinkler). Assist. Fire Chief Feichtner stated that he thinks it is appropriate to change our code to match the state code, but he would like to add the requirement that each resident with a grill on their balcony also have a mounted fire extinguisher. The committee unanimously supports this recommendation.

In addition, to clarify our code, the committee recommends that Section 91.36,c,5 be changed to read "no fire pits of any sort are permitted in multi-family dwellings" rather than "wood burning fire pits", remove the word "patios", and add a requirement that fire pits on patios need to be 10 feet away from the dwelling.

It is recommended that the Solicitor prepare the necessary legislation.

Our current Code:

§ 91.36 VIOLATIONS OF STATE FIRE CODE PROHIBITED.

(A) No person shall knowingly violate any provision of the State Fire Code or any order made pursuant to it.

(R.C. § 3737.51(A))

(B) Except as a violation of R.C. § 2923.17, regarding the felonies of unlawful possession of a dangerous ordnance and illegal manufacture or processing of explosives, involves subject matter covered by the State Fire Code, whoever violates division (A) above is guilty of a misdemeanor of the first degree.

(R.C. § 3737.99(B))

(C) (1) Nothing contained in this section shall in any way modify the provisions of the State Fire Code, except as expressly set forth herein.

(2) (a) The storage and use of electric **grills** is permitted on balconies of multi-family units, provided, the **grills** are inspected and approved by the Fire Department for the village. For purposes of this section, a *MULTI-FAMILY UNIT* shall be defined as when

multiple separate units for dwellings are located within one or several buildings within a complex.

(b) A few examples of multi-family housing are duplexes, townhomes, condominiums, and apartments.

(3) The use of open flame **grills** of any size, whether gas or charcoal, is not permitted on the balconies, porches, or patios of multi-unit structures, except if the **grill** is located ten feet or more from the structure, whether owner occupied or a rental tenant.

(4) The storage of gas or charcoal **grills** and their related fuels is not permitted in multi-dwelling structures, either on balconies or in the building itself.

(5) No outdoor wood-burning fire pits are permitted on the balconies, porches, or patios of multi-unit structures.

(6) This division (C) shall go into effect at the earliest date allowed by law.

Passed: January 14, 2012

(2000 Code, § 91.36) (Ord. O-2-13, passed 1-14-2012)

Statutory reference:

Fire Code violations, see R.C. §§ 3737.41 et seq.

State Fire Code, see O.A.C. Ch. 1301:7-7

Proposed Changes:

§ 91.36 VIOLATIONS OF STATE FIRE CODE PROHIBITED.

(A) No person shall knowingly violate any provision of the State Fire Code or any order made pursuant to it.

(R.C. § 3737.51(A))

(B) Except as a violation of R.C. § 2923.17, regarding the felonies of unlawful possession of a dangerous ordnance and illegal manufacture or processing of explosives, involves subject matter covered by the State Fire Code, whoever violates division (A) above is guilty of a misdemeanor of the first degree.

(R.C. § 3737.99(B))

(C) (1) Nothing contained in this section shall in any way modify the provisions of the State Fire Code, except as expressly set forth herein.

(2) (a) The storage and use of electric **grills** is permitted on balconies of multi-family units, provided, the **grills** are inspected and approved by the Fire Department for the village. For purposes of this section, a **MULTI-FAMILY UNIT** shall be defined as when multiple separate units for dwellings are located within one or several buildings within a complex.

(b) A few examples of multi-family housing are duplexes, townhomes, condominiums, and apartments.

(3) The use of open flame **grills** of any size, whether gas or charcoal, is not permitted on the balconies, porches, or patios of multi-unit structures, except if the **grill** is located ten feet or more from the structure, whether owner occupied or a rental tenant or the grill is permanently installed with a natural gas line and the unit is equipped with a sprinkler system. (We will use the language in the state code, but this is approximately what it will say.)

(4) The storage of gas or charcoal **grills** and their related fuels is not permitted in multi-dwelling structures, either on balconies or in the building itself.

(5) No outdoor wood-burning fire pits of any kind are permitted on the balconies, porches, or patios of multi-unit structures.

(6) This division (C) shall go into effect at the earliest date allowed by law.

Passed: January 14, 2012

(2000 Code, § 91.36) (Ord. O-2-13, passed 1-14-2012)

Statutory reference:

Fire Code violations, see R.C. §§ 3737.41 et seq.

State Fire Code, see O.A.C. Ch. 1301:7-7

Respectfully Submitted,

Maggie Palazzolo, Chairman

Marcy Lewis, Vice-Chairman

Rob Bartlett, Member

Open CARES act encumbrances

Vend Name	Po / Vch	---Date---	Balance	Orig Encumbr
ENZO CLEANING SOLUTIONS, LLC	RG220290	8/27/2020	2,400.00	2,400.00
ABCO SAFETY	RG220292	8/27/2020	1,500.00	1,500.00
VOGELPOHL FIRE EQUIPMENT INC	RG220295	9/22/2020	5,653.33	5,653.33
VOGELPOHL FIRE EQUIPMENT INC	RG220296	9/22/2020	11,396.00	11,396.00
CINCINNATI BELL TELEPHONE CO	RG220317	10/5/2020	18,000.00	18,000.00
INTRUST GROUP	RG220318	10/5/2020	10,700.00	10,700.00
CIVICA CMI	RG220319	10/5/2020	240.00	240.00
CBTS	RG220322	10/5/2020	28,000.00	28,000.00
GRAINGER	RG220025	9/28/2020	134.57	500.00
BOUND TREE MEDICAL, LLC	RG220020	8/19/2020	1,195.58	2,000.00
VOGELPOHL FIRE EQUIPMENT INC	RG220297	9/4/2020	10,400.00	10,400.00
			89,619.48	90,789.33

closed CARES act expenses

EMS COVID SUPPLIES	910.93
STRYKER MEDICAL SUPPLIES LUCAS DEVICE #2	14,881.40
MUNI BLDG COVID SUPPLIES	793.23
	16,585.56

CARES ACT REVENUE RECEIVED	92,865.71
TOTAL OF REMAINING ENCUMBRANCES AND EXPENSES	106,205.04
SHORTFALL TO CURRENT ENCUMBRANCES	-13,339.33
EXPECTED FUTURE DISBURSEMENT	126,774.00
REMAINING PROJECTED REVENUE	113,434.67

BYLAWS

Village of Mariemont Pool Commission

ARTICLE 1. NAME OF COMMISSION

The name of the commission is THE VILLAGE OF MARIEMONT POOL COMMISSION and shall herein be referred to as the "VMPC."

ARTICLE 2. CORPORATE PURPOSE

Section 1. Purpose

VMPC is organized exclusively in support of the Mariemont Municipal Swimming Pool (MSP).

VMPC shall hold and may exercise all such powers as may be conferred upon any municipal organization by the laws of the State of Ohio and as may be necessary or expedient for the administration of the affairs and attainment of the purposes of the commission.

Section 2. Specific Purpose

VMPC exists to provide strategic support, make recommendations, and steward the long-range vision of the Mariemont Municipal Swimming Pool (MSP) on behalf of the Village of Mariemont Municipal Government.

The specific objectives and purpose of this commission shall be:

- a. To work with the Pool Manager to recommend and propose to Village Government Council the annual operating plan which includes, pool fees, hours, and schedule.
- b. To work with the Pool Manager to provide the Village Government with an accurate understanding of facility needs, repairs, and ongoing maintenance.
- c. To serve as stewards and champions for the long-term viability of the Mariemont Municipal Swimming Pool which includes recommending permanent improvements and facility enhancements.

ARTICLE 3. COMMISSION MEMBERS

Section 1. General Powers

The affairs of VMPC shall be managed by its Commission Members.

Section 2. Number, Tenure, Requirements, and Qualifications

The number of Members shall be fixed from time-to-time by the Village of Mariemont but shall consist of no less than nine (9) including the following officers: The Chair, the Vice-Chair, and the Secretary

The members of the VMPC shall, upon appointment, immediately enter upon the performance of their duties and shall continue in office until their successors shall be duly appointed and qualified.

Newly appointed members of the VMPC who have not served before shall serve initial one-year terms. At the conclusion of the initial one-year term, members of the VMPC may serve additional two-year terms.

An appointed Commission member who is absent from 3 consecutive regular meetings of the Board during a fiscal year shall be encouraged to reevaluate with the Chair of the Board his/her commitment to the Commission. The VMPC may deem a Commission member who has missed 3 consecutive meetings without such a reevaluation with the Chair to have resigned from the VMPC.

Section 3. Regular and Annual Meetings

The VMPC shall meet four times a year at a time, day, and location designated by the Chair of the VMPC. Two of these four meetings may be held digitally. Notice of these meetings shall be sent to all members of the VMPC no less than thirty (30) days, prior to the meeting date. The VMPC may provide by resolution the time and place, for the holding of regular meetings of the Board.

Section 4. Special Meetings

Special meetings of the VMPC may be called by or at the request of the Chair or any two members of the VMPC. The person or persons authorized to call special meetings of the VMPC may fix any location, including cyber meetings, as the place for holding any special meeting of the Commission called by them.

Section 5. Notice

Notice of any special meeting of the VMPC shall be given at least two (2) days in advance of the meeting by telephone, facsimile or electronic methods or by written notice. Any Member may

waive notice of any meeting. The attendance of a Member at any meeting shall constitute a waiver of notice of such meeting, except where a Member attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular meeting of the VMPC need be specified in the notice or waiver of notice of such meeting, unless specifically required by law or by these by-laws.

Section 6. Quorum

The presence, in person of a majority of current members of the VMPC shall be necessary at any meeting to constitute a quorum to transact business, but a lesser number shall have power to adjourn to a specified later date without notice. The act of a majority of the members of the VMPC present at a meeting at which a quorum is present shall be the act of the VMPC, unless the act of a greater number is required by law or by these by-laws.

Section 7. Forfeiture

Any member of the VMPC who fails to fulfill any of his or her requirements as set forth in Section 2 shall automatically forfeit his or her seat on the VMPC. The Secretary shall notify the Member in writing that his or her seat has been declared vacant, and the Village Government may forthwith immediately proceed to fill the vacancy. Members of the VMPC who are removed for failure to meet any or all of the requirements of Section 2 of this Article are not entitled to vote at the annual meeting and are not entitled to the procedure outlined in Section 14 of this Article in these by-laws.

Section 8. Vacancies

Whenever any vacancy occurs in the VMPC it shall be filled without undue delay by Appointment of the Mayor and ratification by the Village Council.

Section 9. Compensation

Members of the VMPC shall not receive any compensation for their services as Members.

Section 10. Informal Action by Directors

Any action required by law to be taken at a meeting of the Members, or any action which may be taken at a meeting of Members, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by two-thirds (2/3) of all of the Members following notice of the intended action to all members of the ILT.

Section 11. Parliamentary Procedure

Any question concerning parliamentary procedure at meetings shall be determined by the Chair by reference to Robert's Rules of Order.

ARTICLE 5. OFFICERS

The officers of this Board shall be the Chair, Vice-Chair, and Secretary. All officers must have the status of active members of the Commission.

Section 1. Chair

It shall be the responsibility of the Chair of the Commission, when present, to preside over all meetings of the VMPC.

Section 2. Vice-Chair

The Vice-Chair shall be vested with all the powers and shall perform all the duties of the Chair during the absence of the latter.

Section 3. Secretary

The Secretary, or his/her designee, shall be the custodian of all records and documents of VMPC, and shall act as secretary at all meetings of the VMPC, and shall keep the minutes of all such meetings on file in hard copy or electronic format. S/he shall attend to the giving and serving of all notices of VMPC and shall see that the seal of, if any, is affixed to all documents, the execution of which on behalf of the Commission under its seal is duly authorized in accordance with the provisions of these bylaws.

Section 5. Election of Officers

Nominations of persons to serve as officers may come from any member of the VMPC. The election shall be held at a regular meeting of the VMPC. Those officers elected shall serve a term of two(2) years, commencing at the next meeting following the annual meeting and may serve unlimited consecutive terms subject to the affirmation of a 2/3 vote by the VMPC.

Section 6. Removal of Officer

The Commission with the concurrence of 3/4 of the members voting at the meeting may remove any officer of the VMPC and elect a successor for the unexpired term. No officer of the VMPC shall be expelled without an opportunity to be heard and notice of such motion of expulsion shall be given to the member in writing twenty (20) days prior to the meeting at which motion shall be presented, setting forth the reasons of the Commission for such expulsion.

Section 7. Vacancies

The VMPC shall also be responsible for nominating persons to fill vacancies which occur between annual meetings, including those of officers. Nominations shall be sent in writing to members of the VMPC at least two (2) weeks prior to the next meeting at which the election will be held. The persons so elected shall hold membership or office for the unexpired term in respect of which such vacancy occurred.

ARTICLE 6. FOCUS TEAMS

Section 1. Team Formation

The VMPC may create special focus teams as needed. The Commission Chair appoints all team chairs. Individuals may serve on focus teams who are not members of the VMPC, so long as each focus team maintains a majority of VMPC members.

Section 2. Executive Team

The three officers serve as the members of the Executive Team. Except for the power to amend the Articles of Incorporation and Bylaws, the Executive Team shall have all the powers and authority of the VMPC in the intervals between meetings of the VMPC and is subject to the direction and control of the full commission.

Section 3. Revenue & Operations Team

The Revenue & Operations Team will have a chair and two members.

The Revenue & Operations Team is responsible for working with the Pool Manager to help develop and review fiscal procedures, revenue plans, and expenditures. The Revenue & Operations Team will work with the Pool Manager, to develop annual membership fees and structures. The Revenue & Operations Team will propose the plan to the full VMPC for discussion and approval. The VMPC will propose the plan to The Village Government who must approve the final budget. The fiscal year shall be the calendar year.

Section 4. Community Engagement Team

The Community Engagement Team will have a chair and two members.

The Community Engagement Team shall help develop strategic goals which include strengthening and expanding community volunteers on behalf of the pool and coordinating seasonal social events.

Section 5. Facility Maintenance & Enhancement Team

The Facility and Maintenance & Enhancement Team will have a chair and two members.

The Facility and Maintenance & Enhancement Team shall help develop strategic goals which include coordinating an annual assessment of the pool facilities and presenting it to the Village Council. The Facility and Maintenance & Enhancement Team shall also help facilitate long-range improvements and enhancements for the MSP.

ARTICLE 7. CORPORATE STAFF

Section 1: Pool Manager

The Pool Manager shall have immediate and overall supervision of the operations of The Mariemont Municipal Swimming Pool, and shall direct the day-to-day business of the pool, maintain the properties of the pool, hire, discharge, and determine the salaries and other compensation of all staff members under the Pool Managers supervision in consultation with the Mayor, and perform such additional duties as may be directed by the Mayor or the VMPC. The Pool Manager will report directly to the Mayor of The Village of Mariemont.

No officer or member of the VMPC may individually instruct the Pool Manager or any other employee. The Pool Manager shall make such reports at the VMPC and Executive Team meetings as shall be required by the Chair or the VMPC. The Pool Manager shall be an ad-hoc member of all mission teams.

ARTICLE 8. – Conflict of Interest and Compensation

Section 1: Purpose

The purpose of the conflict of interest policy is to protect VMPC's interest when it is contemplating entering into a transaction or arrangement that might benefit the private interest of an officer or director of the Organization or might result in a possible excess benefit transaction. This policy is intended to supplement but not replace any applicable state and federal laws governing conflict of interest applicable to local municipalities

Section 2: Definitions

- a. Interested Person
Any director, principal officer, or member of a committee with governing board delegated powers, who has a direct or indirect financial interest, as defined below, is an interested person.
- b. Financial Interest
A person has a financial interest if the person has, directly or indirectly, through business, investment, or family:

Proposed: September 15, 2020

1. An ownership or investment interest in any entity with which VMPC has a transaction or arrangement,
2. A compensation arrangement with the Organization or with any entity or individual with which the Organization has a transaction or arrangement, or
3. A potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which the Organization is negotiating a transaction or arrangement.

Compensation includes direct and indirect remuneration as well as gifts or favors that are not insubstantial.

A financial interest is not necessarily a conflict of interest. Under Article III, Section 2, a person who has a financial interest may have a conflict of interest only if the appropriate governing board or committee decides that a conflict of interest exists.

Section 3. Procedures

- a. **Duty to Disclose.** In connection with any actual or possible conflict of interest, an interested person must disclose the existence of the financial interest and be given the opportunity to disclose all material facts to the directors and members of committees with governing board delegated powers considering the proposed transaction or arrangement.
- b. **Determining Whether a Conflict of Interest Exists.** After disclosure of the financial interest and all material facts, and after any discussion with the interested person, he/she shall leave the governing board or committee meeting while the determination of a conflict of interest is discussed and voted upon. The remaining board or committee members shall decide if a conflict of interest exists.
- c. **Procedures for Addressing the Conflict of Interest**
 1. An interested person may make a presentation at the governing board or committee meeting, but after the presentation, he/she shall leave the meeting during the discussion of, and the vote on, the transaction or arrangement involving the possible conflict of interest.
 2. The chairperson of the governing board or committee shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement.
 3. After exercising due diligence, the governing board or committee shall determine whether the Organization can obtain with reasonable efforts a more advantageous transaction or arrangement from a person or entity that would not give rise to a conflict of interest.
 4. If a more advantageous transaction or arrangement is not reasonably possible under circumstances not producing a conflict of interest, the governing board or committee shall determine by a majority vote of the disinterested directors whether the transaction or arrangement is in the Organization's best interest, for its own benefit, and whether it is fair and reasonable. In conformity with the above determination it shall make its decision as to whether to enter into the transaction or arrangement.

d. Violations of the Conflicts of Interest Policy

1. If the governing board or committee has reasonable cause to believe a member has failed to disclose actual or possible conflicts of interest, it shall inform the member of the basis for such belief and afford the member an opportunity to explain the alleged failure to disclose.
2. If, after hearing the member's response and after making further investigation as warranted by the circumstances, the governing board or committee determines the member has failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action.

Section 4. Records of Proceedings

The minutes of the governing board and all teams with board delegated powers shall contain:

- a. The names of the persons who disclosed or otherwise were found to have a financial interest in connection with an actual or possible conflict of interest, the nature of the financial interest, any action taken to determine whether a conflict of interest was present, and the governing board's or team's decision as to whether a conflict of interest in fact existed.
- b. The names of the persons who were present for discussions and votes relating to the transaction or arrangement, the content of the discussion, including any alternatives to the proposed transaction or arrangement, and a record of any votes taken in connection with the proceedings.

Section 5. Compensation

- a. A voting member of the governing board who receives compensation, directly or indirectly, from the Organization for services is precluded from voting on matters pertaining to that member's compensation.
- b. A voting member of any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Organization for services is precluded from voting on matters pertaining to that member's compensation.
- c. No voting member of the governing board or any team whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Organization, either individually or collectively, is prohibited from providing information to any team regarding compensation.

Section 6. Annual Statements

Each director, principal officer and member of a team with governing board delegated powers shall annually sign a statement which affirms such person:

- a. Has received a copy of the conflicts of interest policy,
- b. Has read and understands the policy,
- c. Has agreed to comply with the policy

ARTICLE 9. INDEMNIFICATION

Section 1. General

To the full extent authorized under the laws of the State of Ohio, The Village of Mariemont shall indemnify any commission member, officer, employee, or agent, or former member, director, officer, employee, or agent of the commission, or any person who may have served at The Village of Mariemont's request as a Commission Member or officer of another corporation (each of the foregoing members, directors, officers, employees, agents, and persons is referred to in this Article individually as an "indemnitee"), against expenses actually and necessarily incurred by such indemnitee in connection with the defense of any action, suit, or proceeding in which that indemnitee is made a party by reason of being or having been such member, director, officer, employee, or agent, except in relation to matters as to which that indemnitee shall have been adjudged in such action, suit, or proceeding to be liable for gross negligence or intentional misconduct in the performance of a duty. The foregoing indemnification shall not be deemed exclusive of any other rights to which an indemnitee may be entitled under any bylaw, agreement, resolution of the Village of Mariemont, or otherwise.

Section 2. Expenses

Expenses (including reasonable attorneys' fees) incurred in defending a civil or criminal action, suit, or proceeding may be paid by HTF in advance of the final disposition of such action, suit, or proceeding, if authorized by the Board of Directors, upon receipt of an undertaking by or on behalf of the indemnitee to repay such amount if it shall ultimately be determined that such indemnitee is not entitled to be indemnified hereunder.

Section 3. Insurance

The Village of Mariemont may purchase and maintain insurance on behalf of any person who is or was a member, director, officer, employee, or agent against any liability asserted against such person and incurred by such person in any such capacity or arising out of such person's status as such, whether or not The Village of Mariemont would have the power or obligation to indemnify such person against such liability under this Article.

ARTICLE 10. BOOKS AND RECORDS

VMPC shall keep complete books and records of account and minutes of the proceedings of the commission.

ARTICLE 11. AMENDMENTS

Section 1. Bylaws

These bylaws may be adopted, amended, or repealed by a two-thirds majority of the commission members then in office. Such action is authorized only at a duly called and held meeting of the VMPC for which written notice of such meeting, setting forth the proposed bylaw revisions with explanations, therefore, is given in accordance with these bylaws. If any provision of these bylaws requires the vote of a larger portion of the VMPC than is otherwise required by law, that provision may not be altered, amended or repealed by that greater vote.

ADOPTION OF BYLAWS

We, the undersigned, are all of the initial directors or incorporators of VMPC, and we consent to, and hereby do, adopt the foregoing Bylaws, consisting of the 10 preceding pages, as the Bylaws of this corporation.

ADOPTED AND APPROVED by the Board of Directors on this ____ day of _____, 20__.

Chair, The Village of Mariemont Pool Commission

ATTEST: Secretary, The Village of Mariemont Pool Commission

VILLAGE OF MARIEMONT

RESOLUTION NO. R- -20

TO REAPPOINT RICK GIBSON AS MAYOR'S COURT MAGISTRATE FOR
CALENDAR YEARS 2021 AND 2022; TO SET COMPENSATION

WHEREAS, the Mayor has chosen to reappoint Rick Gibson as Mayor's Court Magistrate for calendar years 2021 and 2022; and

WHEREAS, Council feels that Rick Gibson is well qualified to fulfill the duties of the position for which he has been hired.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE VILLAGE OF MARIEMONT, OHIO, A MAJORITY OF THE MEMBERS DULY ELECTED THERETO CONCURRING

SECTION I. That Council confirms the Mayor's reappointment of Rick Gibson as Mayor's Court Magistrate for calendar years 2021 and 2022. The remuneration for Mr. Gibson shall be \$500 per court session.

Passed: October 12, 2020

William A. Brown, Mayor

ATTEST:

Anthony J. Borgerding, Fiscal Officer

I, Anthony J. Borgerding, Fiscal Officer of the Village of Mariemont, Ohio, do hereby certify that there is no newspaper printed in said municipality and that publication of the foregoing resolution was duly made by posting true copies thereof at five of the most public places in said corporation as determined by the Council, as follows: at the Concourse, Miami Bluff and Flintpoint Way; the Tennis Court property, on the east side of Plainville Road between Maple and Chestnut Streets; the site of the Municipal Building, Wooster Pike and Crystal Springs Road; the northeast corner of the intersection of Rembold and Miami Road inside the enclosure; the northwest corner of the Old Town Center, intersection of Chestnut and Oak Streets; each for a period of fifteen days commencing on the 13th day of October 2020.

Anthony J. Borgerding, Fiscal Officer

VILLAGE OF MARIEMONT, OHIO

RESOLUTION NO. R- -20

TO CONFIRM THE REAPPOINTMENT OF EDWARD J. MCTIGUE AS SOLICITOR
FOR THE VILLAGE OF MARIEMONT FOR THE CALENDAR YEARS 2021 AND 2022

WHEREAS, Council is of the opinion that it would be in the best interest of the Village of Mariemont to reappoint Edward J. McTigue as Village Solicitor, and,

WHEREAS, Edward J. McTigue wishes to continue his service to the Village and Council believes he is qualified to fulfill the duties of this position.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE
VILLAGE OF MARIEMONT, STATE OF OHIO, TWO THIRDS OF THE MEMBERS
ELECTED THERETO CONCURRING:

SECTION I. That Council confirms the Mayor's reappointment of Edward J. McTigue as Village Solicitor for the calendar years of 2021 and 2022.

SECTION II. That this Resolution shall take effect at the earliest time allowed by law.

Passed: October 12, 2020

William A. Brown, Mayor

ATTEST:

Anthony J. Borgerding, Fiscal Officer

I, Anthony J. Borgerding, Fiscal Officer of the Village of Mariemont, Ohio, do hereby certify that there is no newspaper printed in said municipality and that publication of the foregoing Ordinance was duly made by posting true copies thereof at five of the most public places in said corporation as determined by the Council as follows: the Concourse, Miami Bluff and Flintpoint Way; the Tennis Court property, on the east side of Plainville Road between Maple & Chestnut Streets; the site of Municipal Building, Wooster Pike and Crystal Springs Road; the northeast corner of the intersection of Rembold and Miami Road inside the enclosure; the northwest corner of the Old Town Center, intersection of Chestnut and Oak Streets; each for a period of fifteen days commencing on the 13th day of October 2020.

Anthony J. Borgerding, Fiscal Officer

VILLAGE OF MARIEMONT, OHIO

RESOLUTION NO. R- -20

TO CONFIRM THE REAPPOINTMENT OF CHRISTOPHER M. ERTEL AS VILLAGE ENGINEER FOR CALENDAR YEARS 2021 AND 2022, AND TO SET COMPENSATION

WHEREAS, the Mayor recommends to Council that Christopher M. Ertel be reappointed Village Engineer; and

WHEREAS, Christopher M. Ertel is a registered professional engineer and Council believes he is qualified to fulfill the duties of this position.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE VILLAGE OF MARIEMONT, STATE OF OHIO, TWO THIRDS OF THE MEMBERS ELECTED THERETO CONCURRING:

SECTION I. That Council confirms the reappointment of Christopher M. Ertel as Village Engineer, for the calendar years of 2021 and 2022, and that he shall serve at the will of Council, pursuant to Section 32.22 of the Codified Ordinances of the Village of Mariemont. He shall be paid at the rate of \$51.50 per hour in addition to the \$1,500 annual compensation established by Ordinance.

SECTION II. The new pay rate will be effective for the May 2019 pay period.

Passed: October 12, 2020

William A. Brown, Mayor

ATTEST:

Anthony J. Borgerding, Fiscal Officer

I, Anthony J. Borgerding, Fiscal Officer of the Village of Mariemont, Ohio, do hereby certify that there is no newspaper printed in said municipality and that publication of the foregoing Ordinance was duly made by posting true copies thereof at five of the most public places in said corporation as determined by the Council as follows: the Concourse, Miami Bluff and Flintpoint Way; the Tennis Court property, on the east side of Plainville Road between Maple & Chestnut Streets; the site of Municipal Building, Wooster Pike and Crystal Springs Road; the northeast corner of the intersection of Rembold and Miami Road inside the enclosure; the northwest corner of the Old Town Center, intersection of Chestnut and Oak Streets; each for a period of fifteen days commencing on the 13th day of October 2020.

Anthony J. Borgerding, Fiscal Officer

VILLAGE OF MARIEMONT, OHIO

RESOLUTION NO. R- -20

**TO CONFIRM THE REAPPOINTMENT OF JORDAN SCHAD AS SWIM POOL
MANAGER FOR CALENDAR YEARS 2021 AND 2022, AND TO SET COMPENSATION**

WHEREAS, the Mayor recommends to Council that Jordan Schad be reappointed Swim Pool Manager; and

WHEREAS, Council believes she is qualified to fulfill the duties of this position and said recommendation should be accepted.

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE
VILLAGE OF MARIEMONT, STATE OF OHIO, TWO THIRDS OF THE MEMBERS
ELECTED THERETO CONCURRING:**

SECTION I. That Council confirms the reappointment of Jordan Schad as Swim Pool Manager, for the calendar years of 2021 and 2022.

SECTION II. That the current salary range is \$5295.22 to \$11,450.49. She shall be paid at the rate of \$10,200.00 annual compensation established by this Resolution.

Passed: October 12, 2020

William A. Brown, Mayor

ATTEST:

Anthony J. Borgerding, Fiscal Officer

I, Anthony J. Borgerding, Fiscal Officer of the Village of Mariemont, Ohio, do hereby certify that there is no newspaper printed in said municipality and that publication of the foregoing Ordinance was duly made by posting true copies thereof at five of the most public places in said corporation as determined by the Council as follows: the Concourse, Miami Bluff and Flintpoint Way; the Tennis Court property, on the east side of Plainville Road between Maple & Chestnut Streets; the site of Municipal Building, Wooster Pike and Crystal Springs Road; the northeast corner of the intersection of Rembold and Miami Road inside the enclosure; the northwest corner of the Old Town Center, intersection of Chestnut and Oak Streets; each for a period of fifteen days commencing on the 13th day of October 2020.

Anthony J. Borgerding, Fiscal Officer

VILLAGE OF MARIEMONT

RESOLUTION NO. R- -20

TO REAPPOINT TED BEACH AS A MEMBER OF THE POOL COMMISSION FOR
THE CALENDAR YEARS 2021 and 2022

WHEREAS, Council is of the opinion that it would be in the best interest of the Village of Mariemont to reappoint Ted Beach to the Pool Commission; and

WHEREAS, Ted Beach wishes to contribute his time and energies in this capacity to the betterment of the Village.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE VILLAGE OF MARIEMONT, OHIO, A MAJORITY OF THE MEMBERS DULY ELECTED THERETO
CONCURRING

SECTION I. That Council confirms the Mayor's reappointment of Ted Beach to the Pool Commission for the calendar years of 2021 and 2022.

Passed: October 12, 2020

William A. Brown, Mayor

ATTEST:

Anthony J. Borgerding, Fiscal Officer

I, Anthony J. Borgerding, Fiscal Officer of Council of the Village of Mariemont, Ohio, do hereby certify that there is no newspaper printed in said municipality and that publication of the foregoing resolution was duly made by posting true copies thereof at five of the most public places in said corporation as determined by the Council, as follows: at the Concourse, Miami Bluff and Flintpoint Way; the Tennis Court property, on the east side of Plainville Road between Maple and Chestnut Streets; the site of the Municipal Building, Wooster Pike and Crystal Springs Road; the northeast corner of the intersection of Rembold and Miami Road inside the enclosure; the northwest corner of the Old Town Center, intersection of Chestnut and Oak Streets; each for a period of fifteen days commencing on the 13th day of October 2020.

Anthony J. Borgerding, Fiscal Officer

VILLAGE OF MARIEMONT

RESOLUTION NO. R- -20

TO REAPPOINT TERRY DONOVAN AS A MEMBER OF THE POOL COMMISSION
FOR THE CALENDAR YEARS 2021 AND 2022

WHEREAS, Council is of the opinion that it would be in the best interest of the Village of Mariemont to reappoint Terry Donovan to the Pool Commission; and

WHEREAS, Terry Donovan wishes to contribute his time and energies in this capacity to the betterment of the Village.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE VILLAGE OF MARIEMONT, OHIO, A MAJORITY OF THE MEMBERS DULY ELECTED THERETO CONCURRING

SECTION I. That Council confirms the Mayor's reappointment of Terry Donovan to the Pool Commission for the calendar years 2021 and 2022.

Passed: October 12, 2020

William A. Brown, Mayor

ATTEST:

Anthony J. Borgerding, Fiscal Officer

I, Anthony J. Borgerding, Fiscal Officer of the Village of Mariemont, Ohio, do hereby certify that there is no newspaper printed in said municipality and that publication of the foregoing resolution was duly made by posting true copies thereof at five of the most public places in said corporation as determined by the Council, as follows: at the Concourse, Miami Bluff and Flintpoint Way; the Tennis Court property, on the east side of Plainville Road between Maple and Chestnut Streets; the site of the Municipal Building, Wooster Pike and Crystal Springs Road; the northeast corner of the intersection of Rembold and Miami Road inside the enclosure; the northwest corner of the Old Town Center, intersection of Chestnut and Oak Streets; each for a period of fifteen days commencing on the 13th day of October 2020.

Anthony Borgerding, Fiscal Officer

VILLAGE OF MARIEMONT

RESOLUTION NO. R- -20

TO REAPPOINT LEESA BLANDING AS A MEMBER OF THE POOL COMMISSION
FOR THE CALENDAR YEARS 2021 and 2022

WHEREAS, Council is of the opinion that it would be in the best interest of the Village of Mariemont to reappoint Leesa Blanding to the Pool Commission; and

WHEREAS, Leesa Blanding wishes to contribute her time and energies in this capacity to the betterment of the Village.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE VILLAGE OF MARIEMONT, OHIO, A MAJORITY OF THE MEMBERS DULY ELECTED THERETO
CONCURRING

SECTION I. That Council confirms the Mayor's reappointment of Lessa Blanding to the Pool Commission for the calendar years 2021 and 2022.

Passed: October 12, 2020

William A. Brown, Mayor

ATTEST:

Anthony J. Borgerding, Fiscal Officer

I, Anthony J. Borgerding, Fiscal Officer of the Village of Mariemont, Ohio, do hereby certify that there is no newspaper printed in said municipality and that publication of the foregoing resolution was duly made by posting true copies thereof at five of the most public places in said corporation as determined by the Council, as follows: at the Concourse, Miami Bluff and Flintpoint Way; the Tennis Court property, on the east side of Plainville Road between Maple and Chestnut Streets; the site of the Municipal Building, Wooster Pike and Crystal Springs Road; the northeast corner of the intersection of Rembold and Miami Road inside the enclosure; the northwest corner of the Old Town Center, intersection of Chestnut and Oak Streets; each for a period of fifteen days commencing on the 13th day of October 2020.

Anthony Borgerding, Fiscal Officer

VILLAGE OF MARIEMONT

RESOLUTION NO. R- -20

TO REAPPOINT MANDY ROHAL AS A MEMBER OF THE POOL COMMISSION
FOR THE CALENDAR YEARS 2021 AND 2022

WHEREAS, Council is of the opinion that it would be in the best interest of the Village of Mariemont to reappoint Mandy Rohal to the Pool Commission; and

WHEREAS, Mandy Rohal wishes to contribute her time and energies in this capacity to the betterment of the Village.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE VILLAGE OF MARIEMONT, OHIO, A MAJORITY OF THE MEMBERS DULY ELECTED THERETO
CONCURRING

SECTION I. That Council confirms the Mayor's reappointment of Mandy Rohal to the Pool Commission for the calendar years 2021 and 2022.

Passed: October 12, 2020

William A. Brown, Mayor

ATTEST:

Anthony J. Borgerding, Fiscal Officer

I, Anthony J. Borgerding, Fiscal Officer of the Village of Mariemont, Ohio, do hereby certify that there is no newspaper printed in said municipality and that publication of the foregoing resolution was duly made by posting true copies thereof at five of the most public places in said corporation as determined by the Council, as follows: at the Concourse, Miami Bluff and Flintpoint Way; the Tennis Court property, on the east side of Plainville Road between Maple and Chestnut Streets; the site of the Municipal Building, Wooster Pike and Crystal Springs Road; the northeast corner of the intersection of Rembold and Miami Road inside the enclosure; the northwest corner of the Old Town Center, intersection of Chestnut and Oak Streets; each for a period of fifteen days commencing on the 13th day of October 2020.

Anthony Borgerding, Fiscal Officer

VILLAGE OF MARIEMONT, OHIO

RESOLUTION NO. R-__-20

**RESOLUTION AUTHORIZING THE MAYOR TO ENTER
INTO A STATE-LOCAL PROJECT SPONSOR CONTRACT AGREEMENT PURSUANT
TO PROVISIONS OF THE CLEAN OHIO TRAILS FUND (COTF) AND/OR RECREATIONAL TRAILS PROGRAM (RTP)
INCLUDING THE CONTRACTING FOR ALL WORK NECESSARY RELATIVE TO PRELIMINARY DESIGN AND
CONSTRUCTION DRAWINGS AND TO DELCARE AN EMERGENCY**

WHEREAS, Council for the Village of Mariemont previously authorized the Mayor to apply for a grant with the Ohio Department of Natural Resources ("ODNR") to solicit funding for construction of an all-purpose trail within the Village of Mariemont; and

WHEREAS, the ODNR has committed to grant funds to the Village to allow for the completion of said project; and

WHEREAS, the required amount of public / private funds has been committed for the project and the Village is desirous of pursuing the actual construction of the project.

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE VILLAGE OF MARIEMONT,
HAMILTON COUNTY, OHIO, TWO THIRDS OF THE MEMBERS ELECTED THERETO CONCURRING:**

SECTION I. That the Mayor is hereby authorized to execute the State-Local Project Sponsor Contract Agreement, a copy of which agreement is attached hereto and made a part hereof.

SECTION II. That the Mayor is hereby authorized to contract with Choice One Engineering for the preliminary design and construction drawings for the project contemplated.

SECTION III. That this Resolution is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety, and welfare; the reason for the emergency being because of the deadline imposed by ODNR for the use of grant funds and therefore shall be in effect immediately upon its passage.

Passed: October 12, 2020

William A. Brown, Mayor

ATTEST:

Anthony Borgerding, Fiscal Officer

I, Anthony Borgerding, Fiscal Officer of the Village of Mariemont, Ohio, do hereby certify that there is no newspaper printed in said municipality and that publication of the foregoing Resolution was duly made by posting true copies thereof at five of the most public places in said corporation as determined by the Council, as follows: the Concourse, Miami Bluff and Flintpoint Way; the Tennis Court property, on the east side of Plainville Road between Maple and Chestnut Streets; the site of the Municipal Building. Wooster Pike and Crystal Springs Road; the northeast corner of the intersection of Rembold and Miami Road inside the enclosure; the northwest corner of the Old Town Center, intersection of Chestnut and Oak Streets; each for a period of fifteen days commencing on the 13th day of October 2020.

Anthony Borgerding, Fiscal Officer

VILLAGE OF MARIEMONT

RESOLUTION NO. R- -20

TO REAPPOINT PETER WREN AS A MEMBER OF THE ARCHITECTURAL
REVIEW BOARD FOR THE CALENDAR YEARS OF 2021 & 2022

WHEREAS, Council is of the opinion that it would be in the best interest of the Village of Mariemont to reappoint Peter Wren to the Architectural Review Board.

WHEREAS, Peter Wren wishes to contribute his time and energies in this capacity to the betterment of the Village.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE VILLAGE OF MARIEMONT, HAMILTON COUNTY, OHIO, TWO-THIRDS OF THE MEMBERS DULY ELECTED THERETO CONCURRING

SECTION I. That Council confirms the Mayor's reappointment of Peter Wren to the Architectural Review Board for the calendar years of 2021 and 2022.

Passed: November 9, 2020

William A. Brown, Mayor

ATTEST:

Anthony J. Borgerding, Fiscal Officer

I, Anthony Borgerding, Fiscal Officer of Council of the Village of Mariemont, Ohio, do hereby certify that there is no newspaper printed in said municipality and that publication of the foregoing resolution was duly made by posting true copies thereof at five of the most public places in said corporation as determined by the Council, as follows: at the Concourse, Miami Bluff and Flintpoint Way; the Tennis Court property, on the east side of Plainville Road between Maple and Chestnut Streets; the site of the Municipal Building, Wooster Pike and Crystal Springs Road; the northeast corner of the intersection of Rembold and Miami Road inside the enclosure; the northwest corner of the Old Town Center, intersection of Chestnut and Oak Streets; each for a period of fifteen days commencing on the 10th day of November 2020.

Anthony J. Borgerding, Fiscal Officer

VILLAGE OF MARIEMONT

RESOLUTION NO. R- -20

**TO REAPPOINT ERIC MARSLAND AS A MEMBER OF THE PARKS
ADVISORY BOARD FOR CALENDAR YEAR 2021**

WHEREAS, Council is of the opinion that it would be in the best interest of the Village of Mariemont to reappoint Eric Marsland to the Parks Advisory Board; and

WHEREAS, Eric Marsland wishes to contribute his time and energies in this capacity to the betterment of the Village.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE VILLAGE OF MARIEMONT, OHIO, A MAJORITY OF THE MEMBERS DULY ELECTED THERETO CONCURRING

SECTION I. That Council confirms the Mayor's reappointment of Eric Marsland to the Parks Advisory Board for calendar year 2021.

Passed: November 9, 2020

William A. Brown, Mayor

ATTEST:

Anthony J. Borgerding, Fiscal Officer

I, Anthony J. Borgerding, Fiscal Officer of the Village of Mariemont, Ohio, do hereby certify that there is no newspaper printed in said municipality and that publication of the foregoing resolution was duly made by posting true copies thereof at five of the most public places in said corporation as determined by the Council, as follows: at the Concourse, Miami Bluff and Flintpoint Way; the Tennis Court property, on the east side of Plainville Road between Maple and Chestnut Streets; the site of the Municipal Building, Wooster Pike and Crystal Springs Road; the northeast corner of the intersection of Rembold and Miami Road inside the enclosure; the northwest corner of the Old Town Center, intersection of Chestnut and Oak Streets; each for a period of fifteen days commencing on the 10th day of November 2020.

Anthony J. Borgerding, Fiscal Officer

VILLAGE OF MARIEMONT

RESOLUTION NO. R- -20

TO REAPPOINT DAVE WUERTEMBERGER AS A MEMBER OF THE PARKS
ADVISORY BOARD FOR THE CALENDAR YEAR 2021

WHEREAS, Council is of the opinion that it would be in the best interest of the Village of Mariemont to reappoint Dave Wuertemberger to the Parks Advisory Board; and

WHEREAS, Dave Wuertemberger wishes to contribute his time and energies in this capacity to the betterment of the Village.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE VILLAGE OF MARIEMONT, OHIO, A MAJORITY OF THE MEMBERS DULY ELECTED THERETO CONCURRING

SECTION I. That Council confirms the Mayor's reappointment of Dave Wuertemberger to the Parks Advisory Board for the calendar year 2021.

Passed: November 9, 2020

William A. Brown, Mayor

ATTEST:

Anthony J. Borgerding, Fiscal Officer

I, Anthony J. Borgerding, Fiscal Officer of the Village of Mariemont, Ohio, do hereby certify that there is no newspaper printed in said municipality and that publication of the foregoing resolution was duly made by posting true copies thereof at five of the most public places in said corporation as determined by the Council, as follows: at the Concourse, Miami Bluff and Flintpoint Way; the Tennis Court property, on the east side of Plainville Road between Maple and Chestnut Streets; the site of the Municipal Building, Wooster Pike and Crystal Springs Road; the northeast corner of the intersection of Rembold and Miami Road inside the enclosure; the northwest corner of the Old Town Center, intersection of Chestnut and Oak Streets; each for a period of fifteen days commencing on the 10th day of November 9, 2020.

Anthony J. Borgerding, Fiscal Officer

VILLAGE OF MARIEMONT

RESOLUTION NO. R- -20

TO REAPPOINT RUTH VARNER AS A MEMBER OF THE PARKS ADVISORY BOARD FOR THE CALENDAR YEAR 2021

WHEREAS, Council is of the opinion that it would be in the best interest of the Village of Mariemont to reappoint Ruth Varner to the Parks Advisory Board; and

WHEREAS, Ruth Varner wishes to contribute her time and energies in this capacity to the betterment of the Village.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE VILLAGE OF MARIEMONT, OHIO, A MAJORITY OF THE MEMBERS DULY ELECTED THERETO CONCURRING

SECTION I. That Council confirms the Mayor's reappointment of Ruth Varner to the Parks Advisory Board for the calendar years of 2021.

Passed: November 9, 2020

William A. Brown, Mayor

ATTEST:

Anthony J. Borgerding, Fiscal Officer

I, Anthony J. Borgerding, Fiscal Officer of the Village of Mariemont, Ohio, do hereby certify that there is no newspaper printed in said municipality and that publication of the foregoing resolution was duly made by posting true copies thereof at five of the most public places in said corporation as determined by the Council, as follows: at the Concourse, Miami Bluff and Flintpoint Way; the Tennis Court property, on the east side of Plainville Road between Maple and Chestnut Streets; the site of the Municipal Building, Wooster Pike and Crystal Springs Road; the northeast corner of the intersection of Rembold and Miami Road inside the enclosure; the northwest corner of the Old Town Center, intersection of Chestnut and Oak Streets; each for a period of fifteen days commencing on the 10th day of November 2020.

Anthony J. Borgerding, Fiscal Officer

VILLAGE OF MARIEMONT

RESOLUTION NO. R- -20

TO REAPPOINT CARRIE GRAY AS A MEMBER OF THE PARKS ADVISORY BOARD FOR THE CALENDAR YEAR 2021

WHEREAS, Council is of the opinion that it would be in the best interest of the Village of Mariemont to reappoint Carrie Gray to the Parks Advisory Board; and

WHEREAS, Carrie Gray wishes to contribute her time and energies in this capacity to the betterment of the Village.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE VILLAGE OF MARIEMONT, OHIO, A MAJORITY OF THE MEMBERS DULY ELECTED THERETO CONCURRING

SECTION I. That Council confirms the Mayor's reappointment of Carrie Gray to the Parks Advisory Board for the calendar year of 2021.

Passed: November 9, 2020

William A. Brown, Mayor

ATTEST:

Anthony J. Borgerding, Fiscal Officer

I, Anthony J. Borgerding, Fiscal Officer of the Village of Mariemont, Ohio, do hereby certify that there is no newspaper printed in said municipality and that publication of the foregoing resolution was duly made by posting true copies thereof at five of the most public places in said corporation as determined by the Council, as follows: at the Concourse, Miami Bluff and Flintpoint Way; the Tennis Court property, on the east side of Plainville Road between Maple and Chestnut Streets; the site of the Municipal Building, Wooster Pike and Crystal Springs Road; the northeast corner of the intersection of Rembold and Miami Road inside the enclosure; the northwest corner of the Old Town Center, intersection of Chestnut and Oak Streets; each for a period of fifteen days commencing on the 10th day of November 2020.

Anthony J. Borgerding, Fiscal Officer

VILLAGE OF MARIEMONT

RESOLUTION NO. R- -20

TO REAPPOINT MARY TENSING AS A MEMBER OF THE PARKS ADVISORY BOARD FOR THE CALENDAR YEARS OF 2021 AND 2022

WHEREAS, Council is of the opinion that it would be in the best interest of the Village of Mariemont to reappoint Mary Tensing to the Parks Advisory Board; and

WHEREAS, wishes to contribute her time and energies in this capacity to the betterment of the Village.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE VILLAGE OF MARIEMONT, OHIO, A MAJORITY OF THE MEMBERS DULY ELECTED THERETO CONCURRING

SECTION I. That Council confirms the Mayor's reappointment of Mary Tensing to the Parks Advisory Board for the calendar years of 2021 and 2022.

Passed: November 9, 2020

William A. Brown, Mayor

ATTEST:

Anthony J. Borgerding, Fiscal Officer

I, Anthony J. Borgerding, Fiscal Officer of Council of the Village of Mariemont, Ohio, do hereby certify that there is no newspaper printed in said municipality and that publication of the foregoing resolution was duly made by posting true copies thereof at five of the most public places in said corporation as determined by the Council, as follows: at the Concourse, Miami Bluff and Flintpoint Way; the Tennis Court property, on the east side of Plainville Road between Maple and Chestnut Streets; the site of the Municipal Building, Wooster Pike and Crystal Springs Road; the northeast corner of the intersection of Rembold and Miami Road inside the enclosure; the northwest corner of the Old Town Center, intersection of Chestnut and Oak Streets; each for a period of fifteen days commencing on the 10th day of November 2020.

Anthony J. Borgerding, Fiscal Officer

VILLAGE OF MARIEMONT, OHIO

ORDINANCE NO. 0-____-20

TO AMEND CHAPTER 79 OF THE MARIEMONT CODE OF ORDINANCES TO ALLOW FOR
A CHARGE OF \$100 FOR ANNUAL STICKERS ISSUED FOR OVERNIGHT PARKING

WHEREAS, the Finance Committee met to discuss the possibility of charging fees for overnight parking stickers which are issued for those who live on certain streets in the Village and also for those who do not have enough room in their garages and/or driveways to accommodate all of their vehicles; and

WHEREAS, the Finance Committee has recommended charging a fee in the amount of \$100 for each overnight parking sticker issued and believes said charge to be reasonable; and

WHEREAS, Council for the Village of Mariemont believes it would be in the best interest of the Village to charge the suggested amount of \$100 annually per overnight parking sticker issued.

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE
OF MARIEMONT, STATE OF OHIO, TWO THIRDS OF THE MEMBERS DULY
ELECTED THERETO CONCURRING:**

SECTION I. That Mariemont Code of Ordinances Chapter 79 shall be amended as follows to reflect that a fee of \$100 shall be charged for any sticker obtained for overnight parking on certain streets within the Village where parking is not allowed between 1:00 a.m. and 6:00 a.m as set forth below:

SCHEDULE II. LIMITED PARKING

(B) (2) Residents of the village who have parking hardships may petition the Police Chief and/or his or her designate for relief. A hardship is the combination of a garage, if one exists, and a driveway which cannot contain the number of automobiles belonging to the occupants of the dwelling without blocking the sidewalk and with no parking on the tree lawn. Consideration shall also be given to the ability to enter and exit the vehicle due to the width of the garage and driveway. If the Police Chief or his or her designate, after an on-site inspection, determines that a hardship exists, the owners of the vehicles living in the residence shall receive annual hardship stickers for their automobiles, allowing their automobiles to be parked overnight on the street. The hardship stickers will be issued annually on January 1 of each year **at a cost of \$100 for each sticker issued.** Motor homes, trucks not used for primary use, boats, and trailers shall not qualify for hardship cases. Temporary permits may be granted by the Police Chief or his or her designee for up to 90 days only at no charge. Residents may appeal decisions of the Police Chief or his or her designate to the Safety Committee within 30 days of the decision. The Safety Committee may grant the appeal for the hardship listed above or any other hardship the Safety Committee deems appropriate.

SECTION II. That this ordinance shall go into effect at the earliest date allowed by law.

Passed: October 12, 2020

William Brown, Mayor

ATTEST:

Anthony Borgerding, Fiscal Officer

I, Anthony Borderding, Fiscal Officer of the Village of Mariemont, Ohio, do hereby certify that there is no newspaper printed in said municipality and that publication of the foregoing Ordinance was duly made by posting true copies thereof at five of the most public places in said corporation as determined by the Council, as follows: the Concourse, Miami Bluff and Flintpoint Way; the Tennis Court property, on the east side of Plainville Road between Maple and Chestnut Streets; the site of the Municipal Building. Wooster Pike and Crystal Springs Road; the northeast corner of the intersection of Rembold and Miami Road inside the enclosure; the northwest corner of the Old Town Center, intersection of Chestnut and Oak Streets; each for a period of fifteen days commencing on the 13th day of October 2020.

Anthony Borgerding, Fiscal Officer

VILLAGE OF MARIEMONT

ORDINANCE NO. O-__-20

AN ORDINANCE ENACTING CHAPTER 56 OF THE CODIFIED ORDINANCES OF THE VILLAGE OF MARIEMONT, ENTITLED "COMPREHENSIVE RIGHT OF WAY ADMINISTRATION."

WHEREAS, to provide regulations for the use, preservation, and management of the Village of Mariemont's right-of-way and intending to preserve the health, safety, and welfare of the people of the Village; and

WHEREAS, the Village of Mariemont has primary responsibility for regulating the use and management of its municipal right-of-way; and

WHEREAS, the Village of Mariemont intends that its regulations serve the public, preserve the integrity of the Mariemont Historic District, and provide non-discriminatory and non-burdensome standards and regulations to all parties seeking to use and operate within the Village right-of-way;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF MARIEMONT, STATE OF OHIO:

Section 1. That Chapter 56 is hereby adopted and made a part of the Codified Ordinances of the Village of Mariemont, as set forth in Exhibit A of this Ordinance, which is hereby incorporated as if set forth in full herein:

CHAPTER 56: COMPREHENSIVE RIGHT OF WAY ADMINISTRATION

- 56.01 Declaration of findings and purpose, scope, definitions
- 56.02 Rights of way administration
- 56.03 Certificate of registration applications
- 56.04 Reporting requirements
- 56.05 Compensation for certificate of registration
- 56.06 Oversight and regulation
- 56.07 Registration term
- 56.08 Indemnity
- 56.09 Civil forfeitures
- 56.10 Termination of certificate of registration
- 56.11 Unauthorized use of public rights of way
- 56.12 Assignment or transfer of ownership and renewal
- 56.13 Construction permits
- 56.14 Construction, relocation and restoration
- 56.15 Minor maintenance permit
- 56.16 Enforcement of permit obligation
- 56.17 Construction and removal bonds
- 56.18 Indemnification and liability
- 56.19 General provisions
- 56.99 Penalties

§ 56.01 DECLARATION OF FINDINGS AND PURPOSE, SCOPE, DEFINITIONS.

(A) Findings and purpose.

(1) The Village of Mariemont Ohio (the "Village") is vitally concerned with the use of all rights of way in the Village as such rights of way are a valuable and limited resource which must be utilized to promote the public health, safety, and welfare including the economic development of the Village.

(2) Changes in the public utilities and communication industries have increased the demand and need for access to rights of way and placement of facilities and structures therein.

(3) It is necessary to comprehensively plan and manage access to, and structures and facilities in, the rights of way to promote efficiency, discourage uneconomic duplication of facilities, lessen the public inconvenience of uncoordinated work in the rights of way, and promote the public health, safety, and welfare.

(4) The Village has authority under the Laws and Constitution of the State of Ohio, including but not limited to Article 18, Sections 3, 4 and 7, to regulate public and private entities which use the rights of way.

(B) Scope. The provisions of this chapter shall apply to all users of the rights of way as provided herein. To the extent that anything in this Chapter 56 conflicts with Chapter 151, then the provisions of this Chapter 56 shall control.

(C) Definitions. For the purposes of Chapter 56 the following terms, phrases, words, and their derivations have the meanings set forth herein. When not inconsistent with the context, words in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The words "shall" and "will" are mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning. References hereafter to "sections" are, unless otherwise specified, references to sections in this chapter. Defined terms remain defined terms whether or not capitalized.

(1) AFFILIATE. Each person who falls into one or more of the following categories:

(a) Each person having, directly or indirectly, a controlling interest in a provider,

(b) Each person in which a provider has, directly or indirectly a controlling interest,

(c) Each officer, director, general partner, limited partner or shareholder holding an interest of 15% or more, joint-venturer or joint venture partner, of a provider, and

(d) Each person, directly or indirectly, controlling, controlled by, or under common control with the provider; provided that affiliate shall in no event mean any limited partner or shareholder holding an interest of less than 15% of such provider, or any creditor of such provider solely by virtue of its status as a creditor and which is not otherwise an affiliate by reason of owning a controlling interest in, being owned by, or being under common ownership, common management, or common control with, such provider.

(2) APPLICANT. Any person who seeks to obtain a certificate of registration and/or a permit.

(3) APPLICATION. The process by which an applicant submits a request to obtain certificate of registration and/or a permit.

(4) APPLICATION FEE. The fee paid to the Village for application for a certificate of registration pursuant to § 56.03(A).

(5) BANKRUPTCY CODE. The United States Bankruptcy Code of 1978, as amended including regulations promulgated by Title 11 of the United States Code.

(6) BEST EFFORT(S). The best reasonable efforts under the circumstances, taking into consideration, among other appropriate matters, all applicable laws, regulations, safety, engineering and operational codes, available technology, human resources, and cost.

(7) CABLE FRANCHISE. The same as "franchise" in the Cable Communications Policy Act of 1984, 98 Stat. 2779, 47 U.S.C. 522.

(8) CABLE OPERATOR. The same as in the Cable Communications Policy Act of 1984, 98 Stat. 2779, 47 U.S.C. 522.

(9) CABLE SERVICE. The same as in the Cable Communications Policy Act of 1984, 98 Stat. 2779, 47 U.S.C. 522.

(10) CERTIFICATE OF REGISTRATION. The document issued to each provider and its unique system to occupy the rights of way within the Village that outlines the terms of that occupancy of the rights of way.

(12) CODE. The codified ordinances of Mariemont, Ohio.

(13) CONFIDENTIAL/PROPRIETARY INFORMATION. All information that has been either identified or clearly marked as confidential/proprietary information by the provider prior to any submission. Information that is considered by a provider to be either trade secret, confidential and/or proprietary, or information that upon public disclosure would be highly likely to place critical portions of a provider's system in material danger of vandalism, sabotage, or an act of terrorism, all may be marked as confidential/proprietary information by a provider when submitted. Upon receipt of such clearly marked confidential/proprietary information from a provider, the Village shall endeavor, in accordance with the requirements of R.C. Chapter 149 (The Ohio Public Records Act), to use all the same reasonable measures and exercise the same degree of care that the Village uses to protect its own information of such a nature from disclosure to third parties. In the event that the Village receives a request from a third party for disclosure of information a provider has clearly marked as confidential/proprietary information, then the Village shall respond as required by R.C. Chapter 149, but will attempt to use all reasonable means to notify the provider as soon as possible.

(14) CONSTRUCT. Means, but is not limited to, digging, boring, tunneling, trenching, excavating, obstructing, installing wires, installing conduit, installing pipes, installing transmission lines, installing poles, installing signs or installing facilities, other than landscaping, ornamental plantings in, on, above, within, over, below, under or through any part of the rights of way. CONSTRUCT shall also include the act of opening and/or cutting into the surface of any paved or improved surface that is any part of the right of way.

(15) CONSTRUCTION. Means, but not limited to, the act or process of digging, boring, tunneling, trenching, excavating, obstructing, installing wires, installing conduit, installing pipes, installing transmission lines, installing poles, installing signs or installing facilities, other than landscaping, ornamental plantings in, on, above, within, over, below, under or through any part of the rights of way. CONSTRUCTION shall also include the act of opening and/or cutting into the surface of any paved or improved surface that is part of the right of way.

(16) CONSTRUCTION AND MAJOR MAINTENANCE PLAN. A written plan including maps of the expected location, design, other related equipment and facilities of a provider which describes in full the construction intended to be accomplished by the provider in the rights of way over the next calendar year.

(17) CONSTRUCTION BOND. A bond posted to ensure proper and complete construction and/or repair of a facility and the affected rights of way pursuant to a permit.

(18) CONSTRUCTION PERMIT. The permit specified in § 56.13 et seq. which must be obtained before a person may construct in, locate in, occupy, maintain, move or remove facilities from, in or on the rights of way.

(19) COUNTY. Hamilton Ohio. County specifically excludes any and all contractors, agents or other person acting on behalf of said County.

(20) CREDIBLE. Worthy of being believed.

(21) EMERGENCY. A condition that poses a clear and immediate danger to life or health, or of a significant loss of property.

(22) FACILITY(IES). Any tangible thing located in any rights of way within the Village; but shall not include boulevard plantings, ornamental plantings or gardens planted or maintained in the rights of way between a person's property and the street edge of pavement.

(23) FCC. The Federal Communications Commission, or any successor thereto.

(24) FERC. The Federal Energy Regulatory Commission as created and amended in accordance with the Federal Power Act, 16 U.S.C. 792, or its statutory successor.

(25) FULL. Unable to accommodate any additional facilities as determined by the Village Engineer in accordance with the principles of public health, safety and welfare, following a reasonable analysis taking into consideration all applicable law; commonly accepted industry standards; and routine engineering practices.

(26) IN. When used in conjunction with rights of way, means in, on, above, within, over, below, under or through a right of way.

(27) INSPECTOR. Any person authorized by the Mayor to carry out inspections related to the provisions of Chapter 56.

(28) LAW. Any local, state and/or federal legislative, judicial or administrative order, certificate, decision, statute, constitution, ordinance, resolution, regulation, rule, tariff or other requirement in effect either at the time of execution of Chapter 56 or at any time during the location of, and/or while a provider's facilities are located in the public rights of way.

(29) MAYOR. The duly elected Mayor of the Village of Mariemont, Ohio.

(30) MINOR MAINTENANCE PERMIT. A permit, which must be obtained before a person can perform minor maintenance, as set forth in § 56.15, in or on the rights of way.

(31) OHIO MANUAL OF UNIFORM TRAFFIC CONTROL DEVICES or OMUTCD. The uniform system of traffic control devices promulgated by the Ohio Department of Transportation pursuant to R.C. § 4511.09.

(32) OHIO UTILITY PROTECTION SERVICE. The utility protection service as defined in R.C. § 153.64 and/or § 3781.26 or a statutory successor thereto.

(33) PERMIT. A construction permit or a minor maintenance permit, as the context requires.

(34) PERMIT COST. All direct, incidental and indirect costs actually incurred or realized by the Village for permit issuance, permit oversight and pavement degradation resulting from construction activity.

(35) PERMIT FEE. Money paid to the Village for a permit to construct in the rights of way as required by Chapter 56.

(36) PERMITTEE. Any person to whom a construction permit and/or minor maintenance permit has been granted by the Village and not revoked.

(37) PERSON. Any natural or corporate person, business association or other business entity including, but not limited to, a partnership, a sole proprietorship, a political subdivision, a public or private agency of any kind, a utility, a successor or assign of any of the foregoing, or any other legal entity.

(38) PROVIDER. A person who owns or operates a system and has a valid certificate of registration. The Village, Hamilton County, and cable operators operating pursuant to a valid cable franchise, or video service provider operating pursuant to a valid video service authorization shall also be considered providers.

(39) PUCO. The Public Utilities Commission of Ohio as defined in R.C. § 4901.02.

(40) REGISTRATION MAINTENANCE FEE. The money paid to the Village to maintain a certificate of registration and compensate the Village for all actual costs incurred by the Village in the management, administration and control of the rights of way of the Village, and which are not reasonably recoverable by the Village through construction permit fees or other approved recovery mechanisms.

(41) REMOVAL BOND. A bond posted to ensure the availability of sufficient funds to remove a provider's facilities upon abandonment or disuse, or discontinuance of a provider's use or occupation of the rights of way.

(42) RESTORATION. The process and the resultant effects by which a right of way is returned to a condition as good as or better than its condition immediately prior to the construction. Restoration

shall occur in accordance with the rules and regulations as may be enacted or amended from time to time.

(43) R.C. The Revised Code of the State of Ohio.

(44) RIGHT(S) OF WAY. The surface and space in, above, within, over below, under or through any real property in which the Village has an interest in law or equity, whether held in fee, or other estate or interest, or as a trustee for the public, including, but not limited to any public street, boulevard, road, highway, freeway, lane, alley, court, sidewalk, parkway, river, tunnel, viaduct, bridge, conduit, or any other place, area, or real property owned by or under the legal or equitable control of the Village that, consistent with the purposes for which it was dedicated, may be used for the purposes of constructing, operating, repairing, or replacing a system. RIGHTS OF WAY shall not include buildings, parks, or other public property or easements that have not been dedicated to compatible uses, except to the extent the use or occupation of such property is specifically granted in a permit or by law.

(45) RIGHT(S) OF WAY COST. All direct, incidental and indirect costs borne by the Village for the management and administration of the rights of way and this chapter.

(46) RULE(S) AND REGULATION(S). Any rules or regulations adopted by the Village Engineer pursuant to § 56.06(E).

(47) SERVICE(S). The offering of any service or utility for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, or alternatively, the provision (for a fee or otherwise) of any service or utility between two or more points for a proprietary purpose to a class of users other than the general public that in the opinion of the Mayor constitutes a service.

(48) SUPPLEMENTARY APPLICATION. Any application made to construct on or in more of the rights of way than previously allowed, or to extend a permit that had already been issued.

(49) SYSTEM. Any system of conduit, cables, ducts, pipes, wires, lines, towers, antennae wave guides, optic fiber, microwave, laser beams and any associated converters, equipment or facilities or utilities designed and constructed for the purpose of producing, receiving, amplifying, delivering or distributing services within the Village. A system shall specifically include, but not necessarily be limited to: electric distribution and/or transmission systems, natural or artificial gas distribution and/or transmission systems, water distribution systems, storm sewer systems, sanitary sewer systems, cable television systems, video service networks, telecommunications systems (whether voice, video, data, or other), fiber optic systems, and wireless communications systems.

(50) SYSTEM REPRESENTATIVE. The specifically identified agent/employee of a provider who is authorized to direct field activities of that provider and serve as official notice agent for system related information. Any such system representative shall be required to be available at all times to receive notice of and immediately direct response to system related emergencies or situations.

(51) TRANSFER. The disposal by the provider, directly or indirectly, by gift, assignment, voluntary sale, merger, consolidation or otherwise, of 51% or more at one time of the ownership or controlling interest in the system, or 51% cumulatively over the term of a certificate of registration of such interests to a corporation, partnership, limited partnership, trust, or association or person or group of persons acting in concert.

(52) TRENCHLESS TECHNOLOGY. Means but is not limited to, the use of directional boring, horizontal drilling, micro-tunneling and other techniques in the construction of underground portions of facilities which result in the least amount of disruption and damage to rights of way as possible.

(53) UNDERGROUND FACILITY(IES). All lines, cables, conduits, pipes, posts, tanks, vaults and any other facilities which are located wholly or partially underneath rights of way.

(54) UNUSED FACILITY(IES). Facilities located in the rights of way which have remained unused for 12 months and for which the provider is unable to provide the Village with a credible plan detailing the procedure by which the provider intends to begin actively using such facilities within the next 12 months, or that it has a potential purchaser or user of the facilities who will be actively

using the facilities within the next 12 months, or that the availability of such facilities is required by the provider to adequately and efficiently operate its system.

(55) UTILITY(IES). Any water, sewer, gas, drainage, sprinkler or culvert pipe and any electric power, telecommunications, signal communications, cable television or video service provider conduit, fiber, wire, cable, or an operator thereof.

(56) UTILITY CORRIDOR(S). Those specific areas of the rights of way designated as such by the Village Engineer pursuant to § 56.03(F)(1).

(57) VIDEO SERVICE. The same as "video service" in R.C. § 1332.21(J).

(58) VIDEO SERVICE AUTHORIZATION (or VSA). A "video service authorization" as issued to a video service provider by the Director of the Ohio Department of Commerce in accordance R.C. § 1332.24(A)(1).

(59) VIDEO SERVICE NETWORK. The same as "video service network" in R.C. § 1332.21(L).

(60) VIDEO SERVICE PROVIDER (or VSP). The same as "video service provider" in R.C. § 1332.21(M).

(61) VILLAGE. The Village of Mariemont, Ohio.

(62) VILLAGE COUNCIL. The governing body of the Village of Mariemont, Ohio.

(63) VILLAGE ENGINEER. The duly appointed Village Engineer of the Village of MARIEMONT, Ohio.

(64) VILLAGE FISCAL OFFICER. The duly appointed Fiscal Officer of the Village of MARIEMONT, Ohio.

(65) VILLAGE SOLICITOR. The duly appointed Village Solicitor of Mariemont, Ohio.

(66) WORKING DAY. Any Monday, Tuesday, Wednesday, Thursday, or Friday, but excluding legal holidays observed by the Village.

§ 56.02 RIGHTS OF WAY ADMINISTRATION.

(A) Administration. The Mayor shall be the principal Village official responsible for the administration of Chapter 56, except as otherwise provided herein. The Mayor may delegate any or all of the duties hereunder to the Village Engineer or other designee.

(B) Rights of way occupancy. Each person who occupies, uses or seeks to occupy or use the rights of way to operate a system located in the rights of way, or who has, or seeks to have, a system located in any rights of way, shall apply for and obtain a certificate of registration pursuant to Chapter 56. Any person owning, operating or maintaining a system in the rights of way without a certificate of registration, including persons operating under a permit, license or franchise issued by the Village prior to the effective date of Chapter 56 shall apply for and obtain a certificate of registration from the Village, unless exempted by § 56.02(D). Application will consist of providing the information set forth in § 56.03 and as reasonably required by the Mayor.

(C) No construction without a certificate of registration. Following the effective date of Chapter 56, no person shall construct or perform any work on or in, or use any system or any part thereof located on or in any rights of way without first obtaining a certificate of registration. Whoever violates this section is guilty of a misdemeanor of the fourth degree as provided for in § 56.99.

(D) Exceptions.

(1) The following entities are not obligated to obtain a certificate of registration: The Village and resellers of services or persons that do not own any system or facilities in the rights of way.

(2) The following entities are required to participate in the certificate of registration process, but shall be exempt from the financial obligations of the application fee required by § 56.03(a) and the registration maintenance fee required by § 56.05(A): the Hamilton County, the Village of Mariemont and cable operators for the purpose of providing only cable service and operating pursuant to a valid cable franchise and video service provider for the purpose of providing only video service and operating pursuant to a valid video service authorization issued in accordance with R.C. § 1332.24,

the Village of Mariemont and Hamilton County. In addition, cable operators shall be exempt from any requirement of the certificate of registration process that is in direct conflict with the requirements of, and/or specifically exempted by, a valid current and valid cable franchise with the Village.

(E) Systems in place without a certificate of registration. Any system or part of a system found in a right of way for which a certificate of registration has not been obtained shall be deemed to be a nuisance and an unauthorized use of the rights of way. The Village may exercise any remedies or rights it has at law or in equity, including, but not limited to abating the nuisance; taking possession of the facilities and/or non-complying portion of such system; and/or prosecuting the violator.

(F) Future uses. In allowing providers and permittees to place facilities in the rights of way, the village shall not be liable for any damages caused thereby to any provider's facilities that are already in place or that shall be placed in the rights of way unless those damages arise out of the sole negligence, gross negligence, willful misconduct, or fraud of the Village. No provider is entitled to rely on the provisions of this chapter as creating a special duty to any provider.

(G) Discontinuance of operations, abandoned and unused facilities.

(1) A provider who has discontinued or is discontinuing its operations of any system in the Village shall:

(a) Provide information satisfactory to the Village that the provider's obligations for its system in the rights of way under this section and any other sections in the Code of Ordinances have been lawfully assumed by another applicant and/or provider; or

(b) Submit a written proposal to re-use its facilities in a manner that promotes the Village's goals of providing innovative and economic solutions to efficiently and economically utilize limited rights of way capacity. Such proposal must be approved by the Village Engineer; or

(c) Submit a written proposal for abandonment of facilities in place indicating why good engineering practice would support this type of solution. The Village Engineer must approve said proposal; or

(d) Completely remove all specifically identified portion(s) of its system in a manner acceptable to the Village within a reasonable amount of time if the Village believes that there exists a reasonable justification for such removal; or

(e) Submit to the Village within a reasonable amount of time and in accordance with R.C. §§ 4905.20 and 4905.21, a proposal for transferring ownership of its facilities to the Village. If a provider proceeds under this clause, the Village may, at its option where lawful:

1. Purchase the facilities; or

2. Unless a valid removal bond has already been posted pursuant to § 56.17(B), require the provider to post a bond in an amount sufficient to reimburse the Village for reasonably anticipated costs to be incurred in removing the facilities.

(2) Facilities of a provider who fail to comply with this section and which remain unused facilities shall be deemed to be abandoned. Abandoned facilities are deemed to be a nuisance. The Village may exercise any remedies or rights it has at law or in equity, including, but not limited to:

(a) Abating the nuisance;

(b) Taking possession of the facilities and restoring them to a useable condition subject to a finding of the PUCO pursuant to the requirements of R.C. §§ 4905.20 and 4905.21; or

(c) Requiring removal of the facilities by the provider or by the provider's surety.

(3) If the Village requires a provider to remove unused facilities in any rights of way, the Village shall use reasonable efforts to direct that this removal occur in conjunction with other scheduled excavations of the rights of way. If the Village abates the nuisance it may take all action necessary to recover its costs and to abate said nuisance, including but not limited to, those methods set forth in R.C. § 715.261.

(H) Nature of issuance. A certificate of registration shall not convey equitable or legal title in the rights of way. A certificate of registration is only the nonexclusive, limited right to occupy rights of

way in the Village, for the limited purposes and for the limited period stated in the certificate of registration and in accordance with Chapter 56 of the Code. The rights to occupy the right of way may not be subdivided or subleased; provided, however, that two or more providers may collocate facilities in the same area of the rights of way so long as each such provider complies with the provisions of Chapter 56. Collocating providers may file a joint application for a construction permit. A certificate of registration does not excuse a provider from obtaining appropriate access or pole attachment agreements before collocating its facilities on facilities of others, including the Village's facilities. A certificate of registration does not prevent a provider from leasing space in or on the provider's system, so long as the sharing of facilities does not cause a violation of law, including the provisions of Chapter 56. A certificate of registration does not excuse a provider from complying with any provisions of the code or other applicable law.

(I) Other approvals, permits, and agreements. In addition to a certificate of registration, providers shall obtain any and all regulatory approvals, permits, authorizations, or licenses necessary for the offering or provision of such services from the appropriate federal, state and local authorities and upon the Village's reasonable request, shall provide copies of such documents to the Village. Further, a certificate of registration issued pursuant to Chapter 56 shall not entitle a provider to use, alter, convert to, or interfere with, the facilities, easements, poles, conduits, lines, pipelines, wires, fiber, cable or any other real or personal property of any kind whatsoever under the management or control of the Village.

§ 56.03 CERTIFICATE OF REGISTRATION APPLICATIONS.

(A) Certificate of registration applications. To obtain a certificate of registration to construct, own, or maintain any system within the Village, or to obtain a renewal of a certificate of registration issued pursuant to this chapter, an application must be filed with the Village on the form adopted by the Village which is hereby incorporated by reference. For all applications the Village shall collect an application fee. The application fee shall be equal to all the actual and direct costs incurred by the Village that are associated with receiving, reviewing, processing and granting (or denying) an application. At the time of its decision to either grant or deny an application the Village shall calculate and assess all actual and direct costs involved in receiving, reviewing, processing and granting (or denying) the application and provide a written invoice to the applicant for the appropriate amount. The Village shall require that the applicant remit all application fee amounts invoiced within 30 days of its decision to either grant or deny a certificate of registration. Any applicant who fails to timely remit such invoiced application fee amounts shall be subject to the penalties of this chapter, the imposition of any other legal or equitable remedies available to the Village and the immediate revocation of any certificate of registration having been issued.

(B) Information required for application to obtain a certificate of registration.

(1) The applicant shall keep all of the information required in this section current at all times, provided further that applicant or provider shall notify the Village of any changes to the information required by this section within 30 days following the date on which the applicant or provider has knowledge of such change. The information provided to the Village at the time of application shall include, but not be limited to:

(a) Each applicant's name, legal status (i.e. partnership, corporation, etc.), street address and email address, if applicable, and telephone and facsimile numbers; and

(b) The name, address and email address, if applicable, and telephone and facsimile numbers of a system representative. The system representative shall be available at all times. Current information regarding how to contact the system representative in an emergency shall be provided at the time of application and shall be updated as necessary to assure accurate contact information is available to the Village at all times; and

(c) A certificate of insurance where required to be provided to meet the requirements of this section shall:

1. Verify that an insurance company licensed to do business in the State of Ohio has issued an insurance policy to the applicant;

2. Verify that the applicant is insured on an occurrence basis against claims for personal injury, including death, as well as claims for property damage arising out of the:

a. Use and occupancy of the rights of way by the applicant, its officers, agents, employees and contractors; and

b. Placement and use of facilities in the rights of way by the applicant, its officers, agents, employees and contractors, including, but not limited to, protection against liability arising from any and all operations, damage of underground facilities and collapse of property;

3. Name the Village, its elected officials, officers, employees, agents and volunteers as an additional insured as to whom the comprehensive general liability and completed operation and products liability insurance required herein are in force and applicable and for whom defense will be provided as to all such coverage, as is required within Chapter 56.

4. Require that the Village be notified 30 days in advance of cancellation of, or coverage changes in, the policy. The liability insurance policies required by this section shall contain the following endorsement:

a. "It is hereby understood and agreed that this policy may not be diminished in value, canceled nor the intention not to renew be stated, until 30 days after receipt by the Village, by registered mail, return receipt requested, of a written notice addressed to the Mayor or her/his designee of such intent to cancel, diminish or not to renew."

b. Within 30 days after receipt by the Village of said notice, and in no event later than five days prior to said cancellation, the provider (or applicant) shall obtain and furnish to the Mayor a certificate of insurance evidencing replacement insurance policies.

5. Satisfy the requirements for comprehensive liability coverage, automobile liability coverage and umbrella coverage as follows:

a. Comprehensive general liability insurance: comprehensive general liability insurance to cover liability, bodily injury, and property damage must be maintained. Coverage must be written on an occurrence basis, with the following minimum limits of liability and provisions, or their equivalent:

1) Bodily injury:

Each occurrence - \$1,000,000

Annual aggregate- \$3,000,000

2) Property damage:

Each occurrence - \$1,000,000

Annual aggregate - \$3,000,000

3) Personal Injury:

Annual aggregate - \$3,000,000

4) Completed operations and products liability shall be maintained for six months after the termination of a certificate of registration.

5) Property damage liability insurance shall include coverage for the following hazards: E - explosion, C - collapse, U - underground.

b. Comprehensive auto liability insurance: Comprehensive auto liability insurance to cover owned, hired, and non-owned vehicles must be maintained. Applicant may maintain comprehensive auto liability insurance as part of applicant's comprehensive general liability insurance, however, said insurance is subject to approval by the Mayor or her or his designee. Coverage must be written on an occurrence basis, with the following limits of liability and provisions, or their equivalent:

1) Bodily injury:

Each occurrence - \$1,000,000

Annual aggregate - \$3,000,000

2) Property damage:

Each occurrence - \$1,000,000

Annual aggregate - \$3,000,000

(2) Additional insurance. The Village reserves the right to require any other insurance coverage it deems necessary after review of any proposal submitted by the applicant.

(3) Self-insurance. Those applicants maintaining a book value in excess of \$50,000,000 may submit a statement requesting to self-insure. If approval to self-insure is granted, applicant shall assure the Village that such self-insurance shall provide the Village with no less than would have been afforded to the Village by a third party insurer providing applicant with the types and amounts of coverage detailed in this Section. This statement shall include:

(a) Audited financial statements for the previous year; and

(b) A description of the applicant's self-insurance program; and

(c) A listing of any and all actions against or claims made against the applicant for amounts over \$1,000,000 or proof of available excess umbrella liability coverage to satisfy all total current claim amounts above \$50,000,000.

(d) The Mayor may modify or waive these requirements if they are not necessary in determining the sufficiency of the self-insurance. The Mayor may request applicable and pertinent additional information if it is necessary in determining the sufficiency of the self-insurance.

(4) The Village's examination of, or failure to request or demand, any evidence of insurance in accordance with Chapter 56 shall not constitute a waiver of any requirement of this section and the existence of any insurance shall not limit applicant's obligations under Chapter 56.

(5) Documentation that applicant or provider maintains standard workers' compensation coverage as required by law. Similarly, provider shall require any subcontractor to provide workers' compensation coverage in amounts required by law for all of the subcontractor's employees.

(6) If the person is a corporation, upon specific request of the Village, a copy of the certificate of incorporation (or its legal equivalent) as recorded and certified to by the secretary of state (or legal equivalent) in the state or country in which incorporated.

(7) A copy of the person's certificate of authority from the PUCO and/or the FCC and/or FERC, if the person is lawfully required to have or actually does possess such certificate from said commission(s) and any other approvals, permits, or agreements as set out in § 56.02(I).

(8) Upon request of the Village, a narrative (or if applicable PUCO/FCC/FERC application information) describing applicant's proposed activities in the Village including credible information detailing applicant's financial, managerial, and technical ability to fulfill applicant's obligations under Chapter 56 and carry on applicant's proposed activities.

(C) Criteria for issuance of a certificate of registration. In deciding whether to issue a certificate of registration, the Village shall consider:

(1) Whether the issuing of the certificate of registration will contribute to the health, safety, and welfare of the Village and its citizens.

(2) Whether the issuing of the certificate of registration will be consistent with Chapter 56.

(3) Whether the applicant has submitted a complete application and has secured all certificates and other authorizations required by law in order to construct and operate a system in the manner proposed by the applicant.

(4) Whether the applicant is delinquent on any taxes or other obligations owed to the Village, Hamilton County or State of Ohio.

(5) Unless applicant is otherwise exempted from such consideration by R.C. § 4939.03(C)(5), whether the applicant has the requisite financial, managerial, and technical ability to fulfill all its obligations under this Chapter and the issuance of a certificate of registration.

(6) Any other applicable law.

(D) Grant or denial of an application for a certificate of registration.

(1) The Village, not later than 60 days after the date of filing by an applicant of a completed application, shall grant or deny the application.

(2) If an application for a certificate of registration is denied, the Village shall provide to the applicant, in writing, the reasons for denying the application and such other information as the applicant may reasonably request to obtain consent.

(E) Obligations of a provider upon receipt of a certificate of registration. In addition to the other requirements set forth herein and in the rules and regulations each provider shall:

(1) Use its best efforts to cooperate with other providers and users of the rights of way and the Village for the best, most efficient, and least obtrusive use of rights of way, consistent with safety, and to minimize traffic and other disruptions including street cuts; and

(2) When possible, participate in joint planning, construction and advance notification of rights of way work, as may be required by the Village; and

(3) Upon reasonable written notice, and at the direction of the Mayor or his or her designee, promptly remove or rearrange facilities as necessary for public safety; and

(4) Perform all work, construction, maintenance or removal of facilities within the rights of way, in accordance with good engineering, construction and arboricultural practice (if applicable), including any appropriate state building codes, safety codes and law and use best efforts to repair and replace any street, curb or other portion of the rights of way, or facilities located therein, to a condition to be determined by the Village Engineer to be adequate under current standards and not less than materially equivalent to its condition prior to such work and to do so in a manner which minimizes any inconvenience to the public, the Village and other providers, all in accordance with all applicable provisions of this chapter, any rules and regulations the Village may adopt and the code of ordinances; and

(5) Construct, install, operate and maintain its facilities and system in a manner consistent with all applicable laws, ordinances, construction standards and governmental requirements including, but not limited to, The National Electric Safety Code, National Electric Code and applicable FCC, FERC, or other federal, state and/or local regulations; and

(6) Be on notice that removal of trees, or the use of vegetation management programs within the rights of way of the Village require prior written approval by the Mayor or his or her designee. Any such activities, unless an emergency, shall only be performed following the prior written approval of the Mayor or his or her designee and must be performed in accordance with standard horticultural and arboreal practices as promulgated by entities such as the National Arbor Day Foundation, the International Society of Arboriculture, and the Tree Care Industry, all as may be required by the Village. Pruning shall at a minimum meet or exceed the requirements of the most current version of the American National Standards Institute ANSI A300 standard. Any additionally required horticultural and arboreal practices and guidelines shall be described in the rules and regulations adopted by pursuant to § 56.05(E). Emergency removal of trees or the use of vegetation management programs within the rights of way of the Village may be performed in rights of way as described herein and in accordance with the rules and regulations, but the Mayor shall be provided notice of such emergency work being performed within two business days of the start of the work. Any non-emergency tree removal or the use of vegetation management programs within the rights of way that is performed without the Mayor or designee's written permission shall subject a person to the penalties of § 56.99 and may further require that the tree or vegetation be replaced, at the sole expense of the responsible person, with a healthy tree or vegetation of like kind and quality; and

(7) Warrant that all worker facilities, conditions and procedures that are used during construction, installation, operation and maintenance of the provider's facilities within the rights of way shall comply with all applicable standards of the Federal Occupational Safety and Health Administration; and

(8) Use its best efforts to cooperate with the Village in any emergencies involving the rights of way; and

(9) Provider shall, weather permitting, remove all graffiti within 21 calendar days of notice. Provider shall use all reasonable efforts to remove any and all graffiti on any of the provider's facilities located within the Village rights of way. Should the provider fail to do so, the Village may take whatever action is necessary to remove the graffiti and bill the provider for the cost thereof; and

(10) Providers shall use all reasonable efforts to field identify their facilities in the rights of way whenever providers are notified by the Village that the Village has determined that such identification is reasonably necessary in order for the Village to begin planning for the construction, paving, maintenance, repairing, relocating or in any way altering any street or area in the rights of way as defined in this chapter. The Village shall notify the providers of the Village's date to begin the process at least 30 days prior to the commencement of said activities. In field identifying facilities:

(a) Providers shall identify all facilities that are within the affected rights of way using customary industry standards and distinct identification; and

(b) Facilities will be so marked as to identify the provider responsible for said facilities; and

(c) Should any such marking interfere with the facilities function, create a safety problem or violate any safety code, alternative methods of marking the facilities may be approved by the Village Engineer; and

(d) All marking should be clearly readable from the ground and include provider's name, logo and identification numbering or tracking information. No advertising will be permitted.

(11) A provider that is replacing an existing utility pole shall be responsible to coordinate with all other providers to ensure the orderly transfer of all lines or cables to the replacement utility pole, the removal of the existing utility pole, and the restoration of the rights of way within 30 days weather permitting after the replacement utility pole is installed. Upon request, the Village Engineer may grant the provider additional time for good cause.

(F) Establishment of utility corridors.

(1) The Village Council may assign specific corridors within the rights of way, or any particular segment thereof as may be necessary, for each type of facilities that are, or that the Village Engineer expects may someday be, located within the rights of way.

(2) Any provider whose facilities are in the rights of way and are in a position at variance with utility corridors established by the Village Council shall at the time of the next construction of the area, excluding normal maintenance activities, move such facilities to their assigned position within the rights of way. Existing underground facilities located within a designated utility corridor shall not be required to relocate into adjacent or alternative portions of the rights of way unless they are in conflict with an actual or proposed public improvement project. The above requirements may be waived by the Mayor for good cause shown including, but not limited to, consideration of such factors as: the remaining economic life of the facilities, public safety, customer service needs, law precluding such undergrounding of facilities, and hardship to the provider. If a provider is denied a requested waiver from the above requirements, the provider may appeal the denial of the Mayor.

(3) The Village Engineer shall make every good faith attempt to accommodate all existing and potential users of the rights of way as set forth in this chapter.

(4) Providers may enter into written agreements to use existing poles and conduits with the owners of same and shall use best efforts to install their facilities within the rights of way.

(5) No facility placed in any rights of way shall be placed in such a manner that interferes with normal travel on such rights of way.

(6) Unless otherwise stated in a certificate of registration, permit, or § 56.03(F)(6)(c) all facilities within the rights of way shall be constructed and located in accordance with the code and with the following provision:

(a) Whenever all existing facilities that have been traditionally located overhead are located underground in a certain area within the Village, a provider who desires to place its facilities in the same area must also locate its facilities underground.

(b) Whenever a provider is required to locate or relocate facilities underground within a certain area of the Village, every provider with facilities within the same area of the Village shall concurrently re-locate their facilities underground.

(c) The above requirements may be waived by the Village for good cause shown including, but not limited to, consideration of such factors as: the remaining economic life of the facilities, public safety, customer service needs, law precluding such undergrounding of the facilities, and hardship to the provider. If a provider is denied a requested waiver from the above requirements, the provider may appeal the denial of the Village Engineer to the Mayor.

§ 56.04 REPORTING REQUIREMENTS.

(A) Construction and major maintenance plan. Each provider shall, at the time of initial application and by January 1 of each following year, file a construction and major maintenance plan with the Building Dept. Such construction and major maintenance plan shall be provided for all geographical areas requested by the Village Engineer, up to and including the entire geographical area of the Village. It shall be submitted using a format(s) mutually agreeable to the provider and the Village and shall contain the information determined by the Village Engineer to be necessary to facilitate the coordination and reduction in the frequency of construction in the rights of way. The construction and major maintenance plan shall include, but not be limited to, all currently scheduled and/or anticipated construction projects for the next calendar year, if none are scheduled or anticipated then the plan shall so state. The provider shall use its best efforts in supplying this information and shall update the construction and major maintenance plan on file with the Building Dept. whenever there is a material change in scheduled and/or anticipated construction projects. In an effort to assist providers with the completion of their annual construction and major maintenance plan, the BUILDING DEPT COMMISSIONER, as soon as possible, will send each provider's system representative a descriptive narrative (and any mapping information reasonably available) for all the planned right of way improvements and/or scheduled maintenance that the Village then currently intends to undertake during the calendar year.

(B) Mapping data. With the filing of its application for a certificate of registration, a provider shall be required to accurately inform the Village of the number of miles (rounded up to the nearest mile) of right of way the provider's system then currently occupies and begin submitting to the Village all information that currently exists (Actual street address range) and which can be provided regarding the location of its facilities in the right of way in hard copy or in the most advanced format (including, but not limited to, electronic and/or digital format (preferred) then currently being used by the provider that is then currently capable of technologically being read (or readily converted to a readable form) by the Village. Unless otherwise required by § 56.13(B), a provider shall have up to one year from the date of the provider's initial filing of an application for a certificate of registration to completely submit all the mapping data for a provider's system in the entire geographical area of the Village which it owns or over which it has control that are located in any rights of way of the Village in the most advanced format (including, but not be limited to electronic and/or digital format) then currently being used by the provider that is then currently capable of technologically being read (or readily converted to a readable form) by the Village. The mapping data is only required to be at the "atlas" level of detail necessary for the Village to reasonably determine the location of the provider's facilities in the rights of way. The provider shall supply the mapping data on paper if the Village Engineer determines that the format currently being used by the provider is not capable of being read by the Village. Any time after the issuance of a certificate of registration, and upon the reasonable request of the Village Engineer, a provider shall be required to provide to the Village any additional location information for any facilities which it owns or over which it has control that are located in any rights of way of the Village required by the Village. Any and all actual direct, incidental

and indirect costs incurred by the Village during the process of reviewing, inputting and/or converting a provider's mapping information to comport with the Village's then current standard format (whether electronic or otherwise) shall be directly billed to, and must be timely remitted by, the provider. Failure to pay such mapping costs within 60 days of receipt of an invoice shall subject an applicant or provider to revocation of its certificate of registration and the penalties of § 56.99. Further, each provider that has been issued a certificate of registration shall accurately inform the Village on or before each subsequent January 1 of the number of miles (rounded up to the nearest mile) of right of way the provider's system then occupied as of the immediately previous December 1. The Village Engineer may, in the future, adopt additional specifications and further define or modify the mapping data requirements under this section for reasons including, but not limited to, changes in technology or the law regarding public disclosure of a provider's mapping information. When the Village modifies and/or amends the mapping data requirements, the Village shall use best efforts to avoid unreasonably increasing the burden to the providers that may be associated with satisfying the amended mapping requirements. When the mapping requirements of § 56.04(B) are amended, each provider shall be served with a copy of the new specifications or modifications by regular U.S. mail to the system representative identified in each certificate of registration and in accordance with § 56.19(B); provided, however, that any failure of any provider to actually receive such notice shall not in any way affect the validity or enforceability of said specifications or modifications.

(C) Exemption from disclosure. A provider shall notify the Village if the provider believes that any specific document or portion of a document being submitted to the Village is exempt from the public records disclosure requirements of R.C. § 149.43. The notification shall be in writing and indicate the specific document or portion of a document that the provider believes is exempt from disclosure. The notification shall include the legal basis for the claimed exemption, including the applicable statutory reference and any additional information necessary to make a determination of exemption for each specific document or portion of a document. If a public records request is made for documents submitted by a provider, the Village will consider the written notification in making its own independent determination of whether a specific document or a portion of a document is exempt from the disclosure requirements of R.C. § 149.43. To the extent permitted by law, the village will endeavor to use reasonable best efforts to notify the provider of the request prior to making the document available for inspection or copying.

§ 56.05 COMPENSATION FOR CERTIFICATE OF REGISTRATION.

(A) Compensation. As compensation for the Village's costs to administer Chapter 56, manage, administer and control the rights of way and maintain each certificate of registration issued, every provider or any person operating a system shall pay to the Village registration maintenance fees beginning January 1, 2009. The registration maintenance fee shall be determined and assessed to providers and other persons operating a system or otherwise using and occupying the rights of way in accordance with the following process and formula:

(1) The Village by January 31 of each year shall calculate all actual and incurred costs associated with rights of way management, administration and control for the previous calendar year that the Village was not able to reasonably recover through construction permit fees or other recovery mechanisms provided for in Chapter 56.

(2) Providers and applicants, as required in § 56.04(B), shall accurately inform the Village upon application for a certificate of registration and on or before each subsequent January 1 of the number of miles (rounded up to the nearest mile) of right of way the provider's system then occupied as of the immediately previous December 1.

(3) The Village shall total the entire number of miles of right of way reported as being used or occupied by all providers.

(4) The village shall divide the calculated costs referenced in § 56.05(A)(1) by the total number of miles of right of way reported as being used or occupied by all providers as referenced in § 56.05(A)(3) to arrive at a per-mile cost number.

(5) The Village shall then multiply each provider's mileage calculation as referenced in § 56.05(A)(2) by the per-mile cost calculation referenced in § 56.05(A)(4). The product shall be a provider's then current annual registration maintenance fee.

(6) The Village shall perform its calculation of registration maintenance fees every 3 years following receipt of the providers required January 1 mileage report. Registration maintenance fees shall be invoiced to providers on or about February 1 of each calendar year and shall be due 30 days following receipt.

(7) Cable companies operating under non-exclusive cable franchises for the purposes of providing cable service, video services provider operating under a VSA for the purpose of providing video services, and providers of open video system services, which compensate the Village under other mechanisms in an amount equal to or greater than the annual registration maintenance fee that would normally be required for their right of way use in the Village, shall have the mileage of the right of way they use and/or occupy included in the calculations described in § 56.05, but shall not be required to contribute to the recovery of rights of way costs as defined by Chapter 56 with the exception of permit costs.

(8) The Village may by separate legislation enacted by Council on or about January 31 of each year, in accordance with the results of § 56.05(A)(4), enact an initial and thereafter a new annual registration maintenance fee (per mile) by appropriately increasing or decreasing the previous year's registration maintenance fee (per mile). Revised registration maintenance fees shall be effective upon passage.

(B) Timing. registration maintenance fees shall be invoiced to providers on or about February 1st of each calendar year and shall be due 30 days following receipt. Registration maintenance fees shall be paid in full for the first year of the registration as a condition of the certificate of registration becoming effective. Fees may be prorated from the effective date of the certificate of registration to the end of the calendar year if less than one full year.

(C) Taxes and assessments. To the extent taxes or other assessments are imposed by taxing authorities on the use of village property as a result of a provider's use or occupation of the rights of way, the provider shall be responsible for payment of such taxes. Such payments shall be in addition to any other fees payable pursuant to Chapter 56 and shall not be considered an offset to, or in lieu of, the fees and charges listed in Chapter 56. The registration maintenance fee is not in lieu of any tax, fee, or other assessment except as specifically provided in Chapter 56, or as required by applicable law.

(D) Interest on late payments. In the event that any registration maintenance fee is not paid to the Village by January 31, the provider shall pay a monthly late charge of 1% of the unpaid balance for each month or any portion thereof for which payment is not made.

(E) No accord and satisfaction. No acceptance by the Village of any registration maintenance fee shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of such registration maintenance fee payment be construed as a release of any claim the Village may have for additional sums payable.

§ 56.06 OVERSIGHT AND REGULATION.

(A) Reports. Upon reasonable request of the Mayor, a provider shall provide the Village with a list of any and all material communications, public reports, petitions, or other filings, either received from or submitted to any municipal, county, state or federal agency or official (and any response thereto submitted by or received by a provider), and any other information or report reasonably related to a provider's obligations under Chapter 56 which in any way materially affects the operation of the system or a provider's representations and warranties set forth herein, but not

including tax returns or other filings which are confidential. Upon request, a provider shall promptly, but in no case later than 30 business days following the request, deliver to the Village a complete copy of any item on said list. Upon the request of the Village, a provider shall promptly submit to the Village any information or report reasonably related to a provider's obligations under Chapter 56, its business and operations with respect to the system or its operation, in such form and containing such information as the Village shall specify. Such information or report shall be accurate and complete and supplied within 30 days.

(B) Confidentiality. All information submitted to the Village that is considered confidential/proprietary information must be clearly marked as such when submitted. A provider, at any time after submitting information without confidential/proprietary information markings, may request and shall be provided the opportunity to, subsequently mark any provided information as confidential/proprietary information. The Village shall exercise all reasonable legal protections so as not to publicly disclose to any third party such information unless required by law. The Village shall, following receipt of a request for public disclosure of clearly marked trade secret and/or proprietary information submitted by a provider, endeavor to use reasonable best efforts to timely place the provider's system representative on notice that such a request for public disclosure has been made.

(C) Provider's expense. All reports and records required under Chapter 56 shall be furnished at the sole expense of a provider.

(D) Right of inspection and audit. The Village's designated representatives shall have the right to inspect, examine, or audit during normal business hours and upon reasonable notice to a provider under the circumstances; documents, records, or other information which pertain to a provider's operation of a system within the Village that are related to its obligations under Chapter 56. All such documents shall be made available within the Village or in such other place that the Village may agree upon in writing in order to facilitate said inspection, examination, or audit.

(E) Rules and regulations. The Village Engineer may propose, and Village Council may adopt (and from time to time amend) the rules and regulations regarding Chapter 56, construction standards and occupancy requirements of the right of way. Such rules and regulations shall not materially increase the obligation of any provider hereunder, provided however that none of the following shall in any way be considered a material increase in obligation; the adoption of rules and regulations increasing fees; the requiring of the placement of facilities in designated portions of the rights of way (underground or otherwise); the overbuilding of facilities; or the requiring of joint-builds. Prior to the adoption or amendment of the rules and regulations, the Village shall provide written notice and a copy of the proposed language of such adoption or amendment, via United States regular mail, to each provider who holds a then current certificate of registration. Each provider shall then have 30 days following the date of the Village's mailing to provide written comment regarding the proposed language to the Village. At least 45 days, but not more than 60 days following the date of the Village's mailing, the Village shall schedule and hold a meeting, to make available a forum at which all then current providers may address any questions, concerns and make reasonable suggestions regarding the proposed new rules and regulations to the Village. The Village Engineer shall, following said meeting and the review of the providers' comments and suggestions, adopt or amend the rules and regulations in a manner that best serves the Village, for approval by Village Council.

§ 56.07 REGISTRATION TERM.

The term of each certificate of registration granted under Chapter 56 shall be valid from the date of issuance until such time as it is revoked, terminated, has lapsed or is properly amended.

§ 56.08 INDEMNITY.

Indemnity required. Each certificate of registration issued pursuant to Chapter 56 shall contain provisions whereby providers agree to defend, indemnify and hold the Village and its agents, officers,

elected officials, employees, volunteers, and subcontractors harmless from and against all damages, costs, losses or expenses:

(A) For the repair, replacement, or restoration of Village property, equipment, materials, structures and facilities which are damaged, destroyed or found to be defective as a result of such provider's acts or omissions; and

(B) From and against any and all claims, demands, suits, causes of action, and judgments:

(1) For damage to or loss of the property of any person, and/or the death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person;

(2) Arising out of, incident to, concerning or resulting from the act or omissions of such provider, its agents, employees, and/or subcontractors, in the performance of activities pursuant to such certificate of registration, no matter how, or to whom, such loss may occur.

(C) In any event, all persons using or occupying the rights of way agree to defend, indemnify and hold harmless the Village as set forth above as a condition of their use and occupancy of the rights of way, but such requirement to defend, indemnify and hold harmless shall not extend to the negligence of the Village or its agents, elected officials, officers, employees, volunteers and subcontractors, to the extent that the existence of such negligence shall be proven to exist.

§ 56.09 CIVIL FORFEITURES.

In addition to any other penalties set forth in this Chapter 56 and the remedy of specific performance, which may be enforced in a court of competent jurisdiction, the Mayor may assess an additional penalty of civil forfeiture for failure to comply with any provision of Chapter 56. Such penalty shall be a monetary sum, payable to the Village, in the amount of \$500 per 24-hour day of violation and any subsequent portion of a day less than 24 hours in length. Prior to assessing said penalty, the Village will provide written notice to the provider detailing the failure to comply with a specific provision of Chapter 56. Such notice shall also indicate that said penalty shall be assessed in 15 calendar days subsequent to the date of receipt if compliance is not achieved. If a provider desires to challenge such penalty, provider must request a public hearing before the Village Council within ten days of service of the notice. Such public hearing shall be held within 30 days of the provider's request. If provider requests such hearing before the Village Council, such penalty shall be temporarily suspended. However, if, after the public hearing, the Village Council determines that provider failed to comply with the specific provision(s) of Chapter 56 referenced in the notice, such penalty shall be assessed starting with the 15 calendar days after receipt of the notice referenced in this section and continuing each day thereafter until compliance is achieved. The determination of the Village Council shall be final. The provider may file an administrative appeal pursuant to R.C. Chapter 2506. The penalty shall continue to accrue during the appeal unless the provider obtains a stay and posts a supersedeas bond pursuant to R.C. § 2505.09 or the provider comes into full compliance with Chapter 56.

§ 56.10 TERMINATION OF CERTIFICATE OF REGISTRATION.

(A) Default notice provided. The Village through its Mayor shall give written notice of default to a provider if the Village, in its sole discretion, determines that a provider has:

(1) Violated any material provision or requirement of the issuance or acceptance of a certificate of registration or any law and failed to cure as may be required; or

(2) Attempted to evade any provision of the issuance of a certificate of registration or the acceptance of it; or

(3) Practiced any fraud or deceit upon Village; or

(4) Made a material misrepresentation of fact in the application for a certificate of registration.

(B) Cure required. If a provider fails to cure a default within 30 calendar days after such notice is served by the Village then such default shall be a material default and Village may exercise any

remedies or rights it has at law or in equity to terminate the certificate of registration. If the Mayor decides there is cause or reason to terminate, the following procedure shall be followed:

(1) Village shall serve a provider with a written notice of the reason or cause for proposed termination and shall allow a provider a minimum of 15 calendar days to cure its breach.

(2) If the provider fails to cure within 15 calendar days, the Village Engineer may declare the certificate of registration terminated.

(3) The provider shall have ten calendar days to appeal the termination to the Village Council. All such appeals shall be in writing. If the Village Council determines there was not a breach, then the Village Council shall overturn the decision of the Mayor. Otherwise, the Village Council shall affirm the decision of the Mayor to terminate. The determination of the Village Council shall be final.

§ 56.11 UNAUTHORIZED USE OF PUBLIC RIGHTS OF WAY.

(A) No use without authorization. No person shall use the rights of way to operate a system that has not been authorized by the Village in accordance with the terms of Chapter 56 and has been issued a certificate of registration.

(B) No use without a certificate of registration. No person shall place or have placed any facilities in, on, above, within, over, below, under, or through the rights of way, unless allowed under Chapter 56 or having been issued a certificate of registration.

(C) Unauthorized use a violation. Each and every unauthorized use shall be deemed to be a violation and a distinct and separate offense. Each and every day any violation of Chapter 56 continues shall constitute a distinct and separate offense.

(D) Distinct and separate offense. No person shall fail to comply with the provisions of Chapter 56. Each and every failure to comply shall be deemed a distinct and separate offense. Each and every day any violation of Chapter 56 continues shall constitute a distinct and separate offense.

(E) Penalty assessed. The violation of any provision of Chapter 56 shall be unlawful and a misdemeanor offense. The penalty for any violation of Chapter 56 shall be as provided in § 56.99.

§ 56.12 ASSIGNMENT OR TRANSFER OF OWNERSHIP AND RENEWAL.

(A) Assignment or transfer approval required. A certificate of registration shall not be assigned or transferred, either in whole or in part, other than to an affiliate, without the prior written consent of the Village, which consent shall not be unreasonably withheld. Any assignment or transfer of certificate of registration, including an assignment or transfer by means of a fundamental corporate change, requires the written approval of the Village.

(B) Procedure to request assignment or transfer approval. The parties to the assignment or transfer of certificate of registration shall make a written request to the Village for its consent in the form of the certificate of registration application. The Village shall reply in writing within 60 days of actual receipt of the request and shall indicate its approval of the request or its determination that a public hearing is necessary. Village may conduct a public hearing on the request within 30 days of such determination if it determines that a sale or transfer of the certificate of registration adversely affects the Village.

(C) Notice and hearing. Notice of a hearing shall be given 14 days prior to the hearing by publishing notice thereof once in a newspaper of general circulation in the Village. The notice shall contain the date, time and place of the hearing and shall briefly state the substance of the action to be considered by Village.

(D) Review by Village. The Village will review the qualifications (including, but not limited to legal, technical and financial where appropriate) of the proposed assignee or transferee and terms of the existing certificate of registration. Village will make its decision in writing setting forth any conditions for assignment or transfer. Within 120 days of actual receipt of the request for assignment or transfer, the Village shall approve or deny such assignment or transfer request in writing.

(E) Fundamental corporate change. For purposes of this section, fundamental corporate change means the sale or transfer of a controlling interest in the stock of a corporation or the sale or transfer of all or a majority of a corporation's assets, merger (including a parent and its subsidiary corporation), consolidation or creation of a subsidiary corporation. For the purposes of this section, fundamental partnership change means the sale or transfer of all or a majority of a partnership's assets, change of a general partner in a limited partnership, change from a limited to a general partnership, incorporation of a partnership, or change in the control of a partnership.

(F) Certificate of registration and assignee/transferee replacement issuance required. In no event shall a transfer or assignment of ownership or control be ultimately acceptable to the Village without transferee or assignee requesting and being issued a replacement certificate of registration within 90 days of transfer or assignment.

(G) Not a transfer. Notwithstanding anything to the contrary, no such consent or approval shall be required for a transfer or assignment to any person controlling, controlled by or under the same common control of the original holder of the certificate of registration.

§ 56.13 CONSTRUCTION PERMITS.

(A) Construction permit requirement. Except as otherwise provided in the code, no person may construct in any rights of way without first having obtained a construction permit as set forth below. This requirement shall be in addition to any requirement set forth in Chapter 92 of the code.

(1) A construction permit allows the permittee to construct in that part of the rights of way described in such construction permit and to obstruct travel over the specified portion of the rights of way by placing facilities described therein, to the extent and for the duration specified therein.

(2) A construction permit is valid only for the dates and the area of rights of way specified in the construction permit.

(3) No permittee may construct in the rights of way beyond the date or dates specified in the construction permit unless such permittee:

(a) Submits a supplementary application for another construction permit before the expiration of the initial construction permit; and

(b) Is granted a new construction permit or construction permit extension.

(4) Original construction permits issued pursuant to § 56.13 shall, when possible, be conspicuously displayed at all times at the indicated work site and shall be available for inspection by inspectors and authorized Village personnel. If the original construction permit involves work conducted simultaneously at multiple locations, each location shall display a photocopy of the original construction permit. If the original construction permit is not conspicuously displayed at the indicated work site, then upon request, the original construction permit must be produced within 12 hours or the first earliest business hour, whichever is later. For purposes of this section, business hours shall mean the hours between 8:00 a.m. and 5:00 p.m. during a business day.

(B) Construction permit applications.

(1) Application for a construction permit shall be made to the Village Building Dept.

(2) All construction permit applications shall contain, and will be considered complete only upon compliance with the requirements of the following provisions:

(a) Credible evidence that the applicant (where required) has been issued a certificate of registration or proof that the applicant has written authority to apply for a construction permit on behalf of a party that has been issued a certificate of registration; and

(b) Submission of a completed construction permit application in the form required by the Village, including, but not limited to, all required attachments, and dated drawings showing the location and area of the proposed project, number and location of street cuts, and the location of all then known existing and proposed facilities of the applicant or provider within the proposed project area. All drawings, plans and specifications submitted with the application shall comply with

applicable technical codes, rules and regulations and be certified as to being in such compliance by trained technical personnel acceptable to the Village Engineer (and/or professional engineer) The mapping data is only required to be at the "atlas" level of detail necessary for the Village to reasonably determine the location of the provider's facilities in the rights of way. The Village reserves the right, in circumstances that the Village Engineer considers unique, complex or unusual, to request that certain submitted drawings, plans and specifications be accompanied by the certification of a registered licensed professional engineer; and

(c) A Village approved traffic control plan demonstrating the protective measures and devices that will be employed, consistent with the OMUTCD, to prevent injury or damage to persons or property and to minimize disruptions to efficient pedestrian and vehicular traffic; and

(d) If the applicant wants to install new facilities, if specifically requested by the Village Engineer, evidence that there is no surplus space and evidence that the applicant has received an appropriate permit and is adhering to the Village's rules and regulations; and

(e) If applicant is proposing an above ground installation on existing poles within the rights of way, the applicant shall provide credible information satisfactory to the Village to sufficiently detail and identify:

1. The size and height of the existing poles; and
2. Based on the facilities currently on the existing poles and if specifically requested by the Village Engineer, the excess capacity currently available on such poles before installation of applicant's facilities; and
3. Based on the facilities currently on the existing poles and if specifically requested by the Village Engineer, the excess capacity for like or similar facilities that will exist on such poles after installation of applicant's facilities; and

(f) If the applicant proposes to install new poles within the rights of way, the applicant shall provide:

1. Credible evidence if specifically requested by the Village Engineer, satisfactory to the Village that there is no excess capacity on existing poles or in existing underground systems; and
2. Credible evidence to the Village Engineer that it is not financially and/or technically practicable for the applicant to make an underground installation or locate its facilities on existing poles; and
3. The location, size, height, color, and material of the proposed poles; and
4. Credible evidence satisfactory to the Village that the applicant will adhere to all the applicable laws concerning the installation of new poles.
5. A utility engineering study that satisfies the requirements of § 56.14 and meets any additional plan submittal requirement of the Village Engineer.

(g) If applicant is proposing an underground installation in existing ducts or conduits within the rights of way, the applicant shall provide credible information satisfactory to the Village to sufficiently detail and identify:

1. Based on the existing facilities, the excess capacity for like or similar facilities currently available in such ducts or conduits before installation of applicant's facilities; and
2. Based on existing facilities, the excess capacity for like or similar facilities that will exist in such ducts or conduits after installation of applicant's facilities.

(h) If applicant is proposing an underground installation within new ducts or conduits to be constructed within the rights of way, the applicant must provide a utility engineering study that satisfies the requirements of § 56.14 and meets any additional plan submittal requirements of the Village Engineer and also credible information satisfactory to the Village to sufficiently detail and identify:

1. The location, depth, size, and quantity of proposed new ducts or conduits; and

2. The excess capacity for like or similar equipment that will exist in such ducts or conduits after installation of applicant's facilities.

(i) A preliminary construction schedule and completion date; and

(j) Payment of all money due to the Village for:

1. Permit fees;

2. Any loss, damage, or expense suffered by the Village as a result of applicant's prior construction in the rights of way or any emergency actions taken by the Village.

3. Any certificate of registration issued to the applicant/person whose facilities are being constructed.

4. Any other money due to the Village from the applicant/person whose facilities are being constructed.

(k) When a construction permit is requested for purposes of installing additional systems or any part of a system, the posting of a construction bond and removal bond, acceptable to the Village and subject to Chapter 56, for the additional systems or any part of a system is required.

(l) Upon request, the Village Engineer may modify or waive the information requirements if they are not necessary in evaluating the construction permit application. The Village Engineer may request applicable and pertinent additional information if it is necessary in evaluating the construction permit application.

(C) Issuance of permit; conditions.

(1) If the Village determines that the applicant has satisfied the requirements of Chapter 56 and the construction permit process, the Village shall issue a construction permit subject to the provisions of § 56.13(C)(2).

(2) The Village may impose reasonable conditions upon the issuance of the construction permit and the performance of the permittee thereunder in order to protect the public health, safety and welfare, to insure the structural integrity of the rights of way, to protect the property and safety of other users of the rights of way, and to minimize the disruption and inconvenience to the traveling public.

(D) Construction permit fees.

(1) The Village shall annually calculate construction permit fees and appropriately revise any prior year's construction permit fees based upon the formula and calculations described in § 56.13(D). Construction permit fees shall remain in effect until the Village's next annual modification of the construction permit fees.

(2) The Village, on or about January 1 of each year, shall calculate all the actual and incurred construction permit issuance, inspection, oversight, enforcement and regulation costs for the previous calendar year including the value of the degradation and reduction in the useful life of the rights of way that will result from construction that takes place therein. "Degradation and the reduction in the useful life" for the purpose of this section means the accelerated depreciation of the rights of way caused by construction in or disturbance of the rights of way, resulting in the need to reconstruct or repair such rights of way earlier than would be required if the construction did not occur.

(3) The Village, on or about January 1 of each year, shall total all the construction permit fee receipts received in accordance with the scheduled fees required by the prior year's construction permit fees for the previous calendar year.

(4) The Village shall divide the calculated costs referenced in § 56.13(D)(2) by the total construction permit fees received as referenced in § 56.13(D)(3) to arrive at a numerical factor representing the previous year's cost versus receipts analysis.

(5) The Village shall multiply the then currently codified construction permit fees by the numerical factor as referenced in § 56.13(D)(4) to calculate revised permit fees for the new calendar year.

(6) The Village shall act, on or about January 31 of each year, in accordance with the results of § 56.13(D)(5), to codify new annual permit fees by separate legislation enacted by Council by appropriately increasing or decreasing the previous year's permit fees. Revised permit fees shall be effective upon passage. Any permit requests pending on the date of any annual permit fee modification shall be subject to all new permit fees as modified.

(7) Except as provided in subsection § 56.13(D)(8), no construction permit shall be issued without payment of construction permit fees except to the Village which shall be exempt. Construction permit fees that were paid for a permit that the Village has revoked due to breach and in accordance with the terms of § 56.10 or § 56.16(E) are not refundable.

(8) The Building Dept. may permit a provider to make quarterly payments of construction permit fees based upon the provider's financial condition and past payment history. The quarterly payment shall be due and payable within 30 days after the end of the quarter. The Village Fiscal Officer may revoke this permission due to a change in financial condition, late payment, or other just cause.

(E) Joint applications. Applicants are encouraged to submit joint applications for construction permits to work in the rights of way at the same place and time. Joint applicants shall have the ability to divide amongst themselves, in proportions the parties find appropriate, any applicable construction permit fees.

§ 56.14 CONSTRUCTION, RELOCATION AND RESTORATION.

(A) Utility engineering study required.

(1) Prior to commencement of any initial construction, extension, or relocation of facilities in the rights of way, except for repair, maintenance or replacement with like facilities or relocations requested or caused by a third party (excluding the Village) or another permittee, a permittee shall conduct a utility engineering study on the proposed route of construction expansion or relocation if requested by the Village Engineer. Where such construction and/or relocation is requested or caused by a third party, every permittee located within the rights of way at issue or involved with the work shall use all best efforts to cooperate and assist any other permittee or person who is directed by the Village to perform the required utility engineering study. A utility engineering study consists of, at minimum, completion of the following tasks:

(a) Secure all available "as-built" plans, plats and other location data indicating the existence and approximate location of all facilities along the proposed construction route.

(b) Visibly survey and record the location and dimensions of any facilities along the proposed construction route, including, but not limited to, manholes, valve boxes, utility boxes, posts and visible street cut repairs.

(c) Determine and record the presence and precise location of all underground facilities the applicant or person on whose behalf the permit was applied for owns or controls in the rights of way along the proposed system route. Upon request of the Village Engineer, a permittee shall also record and identify the general location of all other facilities in the rights of way along the proposed system route. For the purposes of this section, general location shall mean the alignment of other facilities in the rights of way but shall not necessarily mean the depth of other facilities in the rights of way.

(d) Plot and incorporate the data obtained from completion of the tasks described in § 56.14(A)(1)(a) through (A)(1)(c) on the construction permittee's proposed system route maps and construction plans, along with the locations of the proposed facilities and all other topographic and cadastral information.

(e) Where the proposed location of facilities and the location of existing underground facilities appear to conflict on the plans drafted in accordance with § 56.14(A)(1)(d), permittee has the option of either utilizing non-destructive digging methods, such as vacuum excavation, at the critical points identified to determine as precisely as possible, the horizontal, vertical and spatial position, composition, size and other specifications of the conflicting underground facilities, or re-designing

the construction plans to eliminate the apparent conflict. Unless waived by the Village Engineer, a permittee shall not excavate more than a 12-inch hole in the rights of way to complete this task for each apparent conflict. Any surfaces damaged shall be immediately repaired by the permittee. A minimum of two working days' notice shall be provided to the Village prior to performing these investigations.

(f) Based on all of the data collected upon completion of the tasks described in this section, adjust the proposed system design to avoid the need to relocate other underground facilities.

(2) The Village Engineer may modify the scope of the utility engineering study as necessary depending on the proposed construction plans.

(B) Copy to Village. Upon completion of the tasks described in § 56.14(A), the construction permittee shall submit, if necessary labeled in accordance with the requirements of § 56.06(b), the proposed system route maps and construction plans, with the results of the utility engineering study, in the most advanced format (including, but not be limited to electronic and/or digital format) then currently being used by the provider that is then currently capable of technologically being read (or readily converted to a readable form) by the Village. The mapping data is only required to be at the "atlas" level of detail necessary for the Village to reasonably determine the location of the provider's facilities in the rights of way. The provider shall supply the mapping data on paper if the Village Engineer determines that the format currently being used by the provider is not capable of being read by the Village.

(C) Qualified firm. All utility engineering studies conducted pursuant to this section shall be performed by the permittee if in the discretion of the Village Engineer the construction permittee is qualified to complete the project itself, alternatively utility engineering studies shall be performed by a firm specializing in utility engineering.

(D) Cost of study. The permittee shall bear the cost of compliance with § 56.14(A) through (C).

(E) Construction schedule. Unless otherwise provided for in Chapter 56 or in the rules and regulations, or unless the Village Engineer waives any of the requirements of this section due to unique or unusual circumstances, a permittee shall be required to submit a written construction schedule to the Village not less than five working days before commencing any work in or about the rights of way, and shall further notify the Village not less than two working days in advance of any excavation in the rights of way. This section shall apply to all situations with the exception of circumstances under § 56.16(D)(1) (emergency situations) and § 56.15 (minor maintenance).

(F) Location of facilities

(1) The placement of new facilities and replacement of old facilities, either above ground or underground, shall be completed in conformity with applicable laws and the Village's rules and regulations. Detailed plans and applicable specifications shall be submitted to the Village for review and approval prior to construction of any facilities except those that are categorized as "minor maintenance" issues as per § 56.15 herein.

(2) The Village shall have the power to prohibit or limit the placement of new or additional facilities within the rights of way if the right of way is full. In making such decisions, the Village shall strive to the extent possible to accommodate all existing and potential users of the rights of way, but shall be guided primarily by considerations of the public health, safety and welfare, the condition of the rights of way, the time of year with respect to essential utilities, the protection of existing facilities in the rights of way, future Village and County plans for public improvements, development projects which have been determined to be in the public interest and nondiscriminatory and competitively neutral treatment among providers.

(G) Least disruptive technology. All construction or maintenance of facilities shall be accomplished in the manner resulting in the least amount of damage and disruption of the rights of way. Specifically, every permittee when performing underground construction, if technically and/or technologically feasible and not economically unreasonable, shall utilize trenchless technology, including, but not limited to, horizontal drilling, directional boring, or micro-tunneling of pavement,

driveways, and other sensitive topographic areas. In addition, all cable, wire or fiber optic cable installed in the subsurface rights of way pursuant to Chapter 56 may be required to be installed in conduit, and if so required, no cable, wire or fiber optic cable may be installed pursuant to Chapter 56 using "direct bury" techniques.

(H) Special exceptions. The Village may grant a special exception to the requirements of § 56.14(F) and § 56.14(G) if a permittee, upon application, demonstrates with written evidence that:

- (1) The exception will not create any threat to the public health, safety or welfare.
- (2) Permittee demonstrates that the increased economic burden and the potential adverse impact on the permittee's construction schedule resulting from the strict enforcement of the requirement actually or effectively inhibits the ability of the permittee to provide services in the Village.
- (3) The permittee demonstrates that the requirement unreasonably discriminates against the permittee in favor of another person.
- (4) The requirements requested by the Village herein create an unreasonable economic burden for the permittee that outweighs any potential benefit to the Village.

(I) Relocation of facilities.

(1) A provider shall as promptly as reasonably possible and at its own expense, permanently remove and relocate its facilities in the rights of way whenever the Village finds it necessary to require such removal and relocation. In instances where the Village requires removal and/or relocation, the Village shall waive all applicable construction permit fees. Upon removal and/or relocation, the provider shall restore the rights of way to the same or better condition it was in prior to said removal or relocation. If existing poles are required to be removed and/or relocated, then the existing poles will be replaced with poles of the same or similar size. In accordance with law, the Village may request relocation and/or removal in order to prevent unreasonable interference by the provider's facilities with:

- (a) A public improvement undertaken or approved by the Village.
- (b) When the public health, safety, and welfare requires it, or when necessary to prevent interference with the safety and convenience of ordinary travel over the rights of way.
- (c) The sale, conveyance, vacation, or narrowing of all or any part of a right of way.

(2) Notwithstanding the foregoing, a provider who has facilities in the rights of way subject to a vacation or narrowing that is not required for the purposes of the Village, shall have a permanent easement in such vacated portion or excess portion in conformity with R.C. § 723.041.

(3) If, in the reasonable judgment of the Village, a provider fails to commence removal and/or relocation of its facilities as designated by the Village, within 30 days after the Village's removal order, or if a provider fails to substantially complete such removal, including all associated repair of the rights of way of the Village, within 12 months thereafter, then, to the extent not inconsistent with applicable law, the Village shall have the right to:

(a) Declare that all rights, title and interest to the facilities belong to the Village with all rights of ownership, including, but not limited to, the right to connect and use the facilities or to effect a transfer of all right, title and interest in the facilities to another person for operation; or

(b) Authorize removal of the facilities installed by the provider in, on, over or under the rights of way of the Village at provider's cost and expense, by another person; however, the Village shall have no liability for any damage caused by such action and the provider shall be liable to the Village for all reasonable costs incurred by the Village in such action; and

(c) To the extent consistent with applicable law, any portion of the provider's facilities in, on, over or under the rights of way of the Village designated by the Village for removal and not timely removed by the provider shall belong to and become the property of the Village without payment to the provider, and the provider shall execute and deliver such documents, as the Village shall request, in form and substance acceptable to the Village, to evidence such ownership by the Village.

(J) Pre-excavation facilities location.

(1) Before the start date of any rights of way excavation, each provider who has facilities located in the area to be excavated shall, to the best of its ability, mark the horizontal and approximate vertical placement of all its facilities.

(2) All providers shall notify and work closely with the excavation contractor in an effort to establish the exact location of its facilities and the best procedure for excavation.

(K) Rights of way restoration.

(1) The work to be done under the permit, and the restoration of the rights of way as required herein, weather permitting, must be completed within the dates specified in the permit. In addition to its own work, the permittee must restore the general area of the work, and the surrounding areas, including trench backfill, paving and its foundations in accordance with the code and rules and regulations. If a permittee is unable to timely complete the restoration of rights of way due to unreasonable inclement weather conditions, the permittee shall provide interim surface restoration as directed by the engineer, and complete the restoration of the rights of way as soon as weather conditions make it possible to do so and upon said completion notify the Village.

(2) In approving an application for a construction permit, the Village may choose either to have the permittee restore the rights of way or alternatively to restore the rights of way itself if the permittee has in the past not abided by requirements of Chapter 56.

(3) If the Village allows a permittee to restore the rights of way, the permittee may at the time of application for a construction permit be required to post a construction bond in an amount submitted by the permittee with a detailed cost breakdown to the Village Engineer for approval that is sufficient to cover the cost of restoring the rights of way to its approximate pre-excavation condition. If, 12 months after completion of the restoration of the rights of way, the Village determines that the rights of way have been properly restored, the surety on the construction bond shall be released.

(4) The permittee shall perform the work according to the standards and with the materials specified by the Village. The Village shall have the authority to prescribe the manner and extent of the restoration and may do so in written procedures of general application or on a case-by-case basis. The Village in exercising this authority shall be guided by the following standards and considerations: the number, size, depth and duration of the excavations, disruptions or damage to the rights of way; the traffic volume carried by the rights of way; the character of the neighborhood surrounding the rights of way; the pre-excavation condition of the rights of way; the remaining life-expectancy of the rights of way affected by the excavation; whether the relative cost of the method of restoration to the permittee is in reasonable balance with the prevention of an accelerated depreciation of the rights of way that would otherwise result from the excavation, disturbance or damage to the rights of way; and the likelihood that the particular method of restoration would be effective in slowing the depreciation of the rights of way that would otherwise take place. Methods of restoration may include, but are not limited to, patching the affected area, replacement of the rights of way base at the affected area, and in the most severe cases; milling, overlay and/or street reconstruction of the entire area of the rights of way affected by the work.

(5) By restoring the rights-of-way itself, the permittee guarantees its work and shall maintain it for 12 months following its completion. During this 12-month period, it shall, upon notification from the Mayor, correct all restoration work to the extent necessary using the method required by the Village Engineer. Weather permitting, said work shall be completed within five calendar days of the receipt of the notice from the Mayor, unless otherwise extended by the Mayor.

(6) If the permittee fails to restore the rights of way in the manner and to the condition required by the Village, or fails to satisfactorily and timely complete all repairs required by the Village, the Village, at its option, may do such work or by its contractor of choice. In that event, the permittee shall pay to the Village, within 30 days of billing, the restoration cost of restoring the rights of way and any other costs incurred by the Village. Upon failure to pay, the Village may call upon any bond or letter of credit posted by permittee and/or pursue any and all legal and equitable remedies.

(7) If the work to be done under the permit is being done at the same location and the same period of time as work by the Village and/ or another permittee(s), then the Mayor may reasonably apportion the restoration responsibility among the Village, providers and/or other persons.

(L) Damage to other facilities.

(1) In the case of an emergency, and if possible after reasonable efforts to contact the provider seeking a timely response, when the Village performs work in the rights of way and finds it necessary, as may be allowed by law, to maintain, support, or move a provider's facilities to protect those facilities, the costs associated therewith will be billed to that provider and shall be paid within 30 days from the date of billing. Upon failure to pay, the Village may pursue all legal and equitable remedies in the event a provider does not pay or the Village may call upon any bond or letter of credit posted by the permittee and pursue any and all legal or equitable remedies. Each provider shall be responsible for the cost of repairing any damage to the facilities of another provider caused during the Village's response to an emergency occasioned by that provider's facilities.

(2) Each provider shall be responsible for the cost of repairing any Village-owned facilities in the rights of way which the provider or its facilities damage.

(M) Rights of way vacation. If the Village sells or otherwise transfers a rights of way which contains the facilities of a provider, such sale or transfer shall be subject to any existing easements of record and any easements required pursuant to R.C. § 723.041.

(N) Installation requirements. The excavation, backfilling, restoration, and all other work performed in the rights of way shall be performed in conformance with all applicable laws, rules and regulations, other standards as may be promulgated by the Village Engineer.

(O) Inspection. When the construction under any permit hereunder is completed, the permittee shall notify the Village.

(1) The permittee shall make the construction site available to the inspector and to all others as authorized by law for inspection at all reasonable times during the execution and upon completion of the construction.

(2) At the time of inspection, the inspector may order the immediate cessation of any work which poses a serious threat to the life, health, safety or well-being of the public, violates any law or which violates the term and conditions of the permit and/or Chapter 56.

(3) The inspector may issue an order to the permittee for any work which does not conform to the permit and/or applicable standards, conditions or codes. The order shall state that failure to correct the violation will be cause for revocation of the permit. The order may be served on the permittee as provided in § 56.19(B). An order may be appealed to the Mayor. The decision of the Mayor may be appealed to the Village Council whose decision shall be final. If not appealed, within ten days after issuance of the order, the provider shall present proof to the Mayor that the violation has been corrected. If such proof has not been presented within the required time, the Mayor may revoke the permit pursuant to § 56.16(E).

(P) Other obligations.

(1) Obtaining a construction permit does not relieve permittee of its duty to obtain all other necessary permits, licenses, and authority and to pay all fees required by any other laws.

(2) Permittee shall comply with all requirements of all laws, including the Ohio Utility Protection Service.

(3) Permittee shall perform all work in conformance with all applicable laws and standards and is responsible for all work done in the rights of way pursuant to its permit, regardless of who performs the work.

(4) No rights of way obstruction or excavation may be performed when seasonally prohibited or when conditions are unreasonable for such work, except in the case of an emergency as outlined in § 56.16(D)(1).

(5) Permittee shall not obstruct a right-of-way so that the natural free and clear passage of water through the gutters or other waterways shall be interfered with. The Village Engineer may waive this requirement if it is technically or economically unreasonable in the circumstances.

(6) Private vehicles other than necessary construction vehicles may not be parked within or adjacent to a permit area. The loading or unloading of trucks adjacent to a permit area is prohibited unless specifically authorized by the permit.

(Q) Undergrounding required. Any owner of property abutting upon a street or alley where service facilities are now located underground and where the service connection is at the property line, shall install or cause others to install underground any service delivery infrastructure from the property line to the buildings or other structures on such property to which such service is supplied. Where not otherwise required to be placed underground by Chapter 56, a provider shall locate facilities underground at the request of an adjacent property owner, provided that such placement of facilities underground is consistent with the provider's normal construction and operating standards and that the additional costs of such undergrounding over the normal aerial or above ground placement costs of identical facilities are borne directly by the property owner making the request. A provider, under any circumstance shall, upon the reasonable request of the Village, always use best efforts to place facilities underground. Where technically possible and not economically unreasonable or unsafe (based upon the technology employed and facilities installed), all facilities to be installed by a provider under the right of way shall be installed in conduit.

§ 56.15 MINOR MAINTENANCE PERMIT.

(A) Right of way minor maintenance permit requirement. No person shall perform minor maintenance of facilities in the rights of way without first having obtained a right of way minor maintenance permit as set forth in this chapter. Minor maintenance means: (i) the routine repair or replacement of facilities with like facilities not involving construction and not requiring traffic control for more than two hours at any one location; (ii) or the routine repair or replacement of facilities with like facilities not involving construction and taking place on thoroughfares and arteries between the hours of 9:00 a.m. and 3:00 p.m.; (iii) or the routine repair or replacement of facilities with like facilities not involving construction on all rights of ways, other than thoroughfares and arterials, that does not impede traffic and is for a period of less than eight contiguous hours; (iv) or construction other than on thoroughfares and arterials that takes less than eight contiguous hours to complete, does not impede traffic and does not involve a pavement cut; or (v) minor and/or non-material vegetation management/tree pruning. The Village Engineer may adopt rules and regulations pursuant to § 56.06(E) that clarify the definition of minor maintenance and/or provide a process for a provider to determine whether particular activity constitutes minor maintenance.

(1) A right of way minor maintenance permit allows the right of way minor maintenance permittee to perform all minor maintenance in any part of the rights of way as required.

(2) A right of way minor maintenance permit is valid from the date of issuance until revoked by the BUILDING DEPT COMMISSIONER AND/OR THE Village Engineer.

(3) A right of way minor maintenance permit must be displayed or upon request produced within 12 business hours.

(4) A right of way minor maintenance permit by itself shall under no circumstances provide a permittee with the ability to cut pavement without seeking additional authority from the Building Dept. and/or the Village Engineer.

(B) Right of way minor maintenance permit applications. Application for a right of way minor maintenance permit shall be made to the Building Dept. In addition to any information required by the Village, all right of way minor maintenance permit applications shall contain, and will only be considered complete upon compliance with the following provisions:

(1) Credible evidence that the applicant has obtained a certificate of registration or proof that the applicant has written authority to apply for a right of way minor maintenance permit on behalf of a party that has been issued a certificate of registration.

(2) Submission of a completed right of way minor maintenance permit application in the form required by the Village.

(3) A statement that the applicant will employ protective measures and devices that, consistent with the OMUTCD, will prevent injury or damage to persons or property and to minimize disruptions to the efficient movement of pedestrian and vehicular traffic.

(C) Issuance of right of way minor maintenance permits; conditions.

(1) If the Village Engineer determines that the applicant has satisfied the requirements of this chapter and the right of way minor maintenance permit process, the Village Engineer shall issue a right of way minor maintenance permit subject to the provisions of this chapter.

(2) The Village may impose reasonable conditions, in addition to the rules and regulations enacted by the Village Engineer, upon the issuance of the right of way minor maintenance permit and the performance of the right of way minor maintenance permittee thereunder in order to protect the public health, safety, and welfare, to insure the structural integrity of the rights of way, to protect the property and safety of other users of the rights of way, and to minimize the disruption and inconvenience to the traveling public.

(D) Right of way minor maintenance permit fees. The Village shall not charge a fee for the issuance of the right of way minor maintenance permit but may revoke the right of way minor maintenance permit as any other permit may be revoked under this chapter.

§ 56.16 ENFORCEMENT OF PERMIT OBLIGATION.

(A) Mandatory denial of permit. Except in the case of an emergency, no permit will be granted:

(1) To any person who has not yet made an application; or

(2) To any person who has outstanding debt owed to the Village unless payment in full has been placed in an escrow account approved by the Village Fiscal Officer and the Village Solicitor; or

(3) To any person as to whom there exists grounds for the revocation of a permit; or

(4) If, in the discretion of the Village Engineer, the issuance of a permit for the particular date and/or time would cause a conflict or interfere with an exhibition, celebration, festival, or any other event. The Village Engineer, in exercising this discretion, shall be guided by the safety and convenience of ordinary travel of the public over the rights of way, and by considerations relating to the public health, safety and welfare.

(B) Permissive denial of permit. The Village Engineer may deny a permit in order to protect the public health, safety and welfare, to prevent interference with the safety and convenience of ordinary travel over the rights of way, or when necessary to protect the rights of way and its users.

(1) The Village Engineer, in his or her discretion, may consider one or more of the following factors:

(a) The extent to which rights of way space where the permit is sought is available; and/or

(b) The competing demands for the particular space in the rights of way; and/or

(c) The availability of other locations in the rights of way or in other rights of way for the proposed facilities; and/or

(d) The applicability of Chapter 56 or other regulations of the rights of way that affect location of facilities in the rights of way; and/or

(e) The degree of compliance of the provider with the terms and conditions of its certificate of registration, Chapter 56, and other applicable ordinances and regulations; and/or

(f) The degree of disruption to surrounding communities and businesses that will result from the use of that part of the rights of way; and/or

(g) The condition and age of the rights of way, and whether and when it is scheduled for total or partial re-construction; and/or

(h) The balancing of the costs of disruption to the public and damage to the rights of way, against the benefits to that part of the public served by the expansion into additional parts of the rights of way; and/or

(i) Whether such applicant or its agent has failed within the past three years to comply, or is presently not in full compliance with, the requirements of Chapter 56 or, if applicable, any other law.

(2) Under no circumstances will open cutting take place on a newly constructed street within 24 months after construction completion or a newly reconstructed street within 24 months of reconstruction completion, except where:

(a) An emergency situation requires that an open cut is necessary; and/or

(b) Vital services to resident(s) or business(es) are needed or have been cut off and there is no reasonable alternative (such as jacking or boring) in supplying or restoring such services; and/or

(c) The Village Engineer determines it is in the best interests of the Village that such an open cut take place.

(C) Discretionary issuance of permit.

(1) Notwithstanding the provisions of § 56.16(A)(1) and § 56.16(A)(2), the Building Dept. may issue a permit in any case where the permit is necessary;

(a) To prevent substantial economic hardship to a customer of the permit applicant, if established by credible evidence satisfactory to the Village; or

(b) To allow such customer to materially improve its service; or

(c) To allow a new economic development project to be granted a permit under this section.

(2) To be granted a permit under this section, the permit applicant must not have had knowledge of the hardship, the plans for improvement of service, or the development project when it was required to submit its list of next year projects.

(D) Work done without a permit in emergency situations.

(1) Each provider shall, as soon as is practicable, immediately notify the Village Fiscal Officer of any event regarding its facilities which it considers to be an emergency. The provider may proceed to take whatever actions are necessary in order to respond to the emergency. Within five business days, unless otherwise extended by the Village Engineer, after the occurrence or discovery of the emergency (whichever is later), the provider shall apply for the necessary permits, pay the fees associated therewith and fulfill the rest of the requirements necessary to bring itself into compliance with Chapter 56 for any and all actions taken in response to the emergency. In the event that the Village becomes aware of an emergency regarding a provider's facilities, the Village shall use best efforts to contact the provider or the system representative of each provider affected, or potentially affected, by the emergency. In any event, the Village may take whatever action it deems necessary in order to respond to the emergency, the cost of which shall be borne by the provider whose facilities caused the emergency.

(2) Except in the case of an emergency, any provider who constructs in, on, above, within, over, below or through a rights of way without a valid permit must subsequently obtain a permit, pay double the normal fee for said permit, pay double all the other fees required by the code, deposit with the Village the fees necessary to correct any damage to the rights of way and comply with all of the requirements of Chapter 56.

(E) Revocation of permits.

(1) Permittees hold permits issued pursuant to the code as a privilege and not as a right. The Village reserves its right, as provided herein, to revoke any permit, without refunding any fees, in the event of a substantial breach of the terms and conditions of any law, or any provision or condition of the permit. A substantial breach by permittee shall include, but shall not be limited to, the following:

(a) The violation of any provision or condition of the permit; or

- (b) An evasion or attempt to evade any provision or condition of the permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the Village or its citizens; or
- (c) Any material misrepresentation of fact in the application for a permit; or
- (d) The failure to maintain the required construction or removal bonds and/or insurance; or
- (e) The failure to obtain and/or maintain, when required, a certificate of registration; or
- (f) The failure to complete the construction in a timely manner; or
- (g) The failure to correct a condition of an order issued pursuant to § 56.14(0)(3).

(2) If the Village Engineer determines that the permittee has committed a substantial breach of a term or condition of any law or any condition of the permit, the Village Engineer shall serve a written demand upon the permittee to remedy such violation. The demand shall state that continued violations may be cause for revocation of the permit. Upon a substantial breach, as stated above, the Village Engineer may place additional or revised conditions on the permit.

(3) By the close of the second business day following receipt of notification of the breach, permittee shall contact the Village Engineer with a plan, acceptable to the Village Engineer, for its correction. Permittee's failure to so contact the Village Engineer, or the permittee's failure to submit an acceptable plan, or permittee's failure to reasonably implement the approved plan, shall be cause for immediate revocation of the permit.

(4) If a permittee commits a second substantial default as outlined above, permittee's permit will automatically be revoked and the permittee will not be allowed further permits for up to and including one full year, except for emergency repairs.

(5) If a permit is revoked, the permittee shall also reimburse the Village for the Village's reasonable costs, including restoration costs and the costs of collection and reasonable attorneys' fees incurred in connection with such revocation.

§ 56.17 CONSTRUCTION AND REMOVAL BONDS.

(A) Construction bond. Prior to the commencement of any construction, a construction permittee, excluding the Village of Mariemont and Hamilton County, shall deposit with the Village an irrevocable, unconditional letter of credit and/or surety bond in an amount determined by the Mayor to be appropriate based upon fair and reasonable criteria. Unless a construction default, problem or deficiency involves an emergency or endangers the safety of the general public, the Village shall serve written notice to the construction permittee detailing the construction default, problem or deficiency. If the Village determines that correction or repair of the construction default, problem or deficiency has not occurred or has not been substantially initiated within ten calendar days after the date following service and notification and detailing the construction default, problem or deficiency, then the Village may attach the letter of credit or surety bond. Upon attachment, written notice shall be served on the construction permittee by the Village.

(B) Removal bond. Upon issuance of a certificate of registration and continuously thereafter, and until 120 days after a provider's facilities have been removed from the rights of way, (unless the Village notifies the provider that a reasonably longer period shall apply), a provider shall deposit with the Village and maintain an irrevocable, unconditional letter of credit or surety bond in an amount equal to or greater than \$100,000, the Village shall make all reasonable efforts to allow provider a period of five calendar days after serving notification in writing to correct or repair any default, problem or deficiency prior to the Village attachment of the letter of credit or surety bond regarding the removal of facilities. Upon attachment, written notice shall be provided to the provider by the Village.

(C) Blanket bond. In lieu of the construction bond required by § 56.17(A) and the removal bond required by § 56.17(B), provider may deposit with the Village an irrevocable, unconditional letter of credit and/or surety bond in the amount of \$5,000,000. Unless a construction default, problem or deficiency involves an emergency or endangers the safety of the general public, the Village shall make

all reasonable effort to allow permittee a period of five calendar days after sending notification in writing to correct or repair any default, problem or deficiency prior to Village's attachment of the letter of credit or surety bond.

(D) Self bonding. In lieu of the construction bond required by § 56.17(A), the removal bond required by § 56.17(B) and the blanket bond required by § 56.17(C), those providers maintaining a book value in excess of \$50,000,000 may submit a statement to the Village requesting to self-bond. If approval to self-bond is granted, a provider shall assure the Village that such self-bonding shall provide the Village with no less protection and security than would have been afforded to the Village by a third party surety providing provider with the types and amounts of bonds detailed in the above named sections. This statement shall include:

- (1) Audited financial statements for the previous year; and
- (2) A description of the applicant's self-bonding program.
- (3) Other applicable and pertinent information as reasonably requested by the Village.

(E) Purposes. The bonds required by this section, and any self-bonding to the extent it has been permitted, shall serve as security for:

(1) The faithful performance by the permittee or provider of all terms, conditions and obligations of Chapter 56; and

(2) Any expenditure, damage, or loss incurred by the Village occasioned by the permittee or provider's violation of Chapter 56 or its failure to comply with all rules, regulations, orders, permits and other directives of the Village issued pursuant to Chapter 56; and

(3) The payment of all compensation due to the Village, including permit fees; and

(4) The payment of premiums (if any) for the liability insurance required pursuant to Chapter 56; and

(5) The removal of facilities from the rights of way pursuant to Chapter 56; and

(6) The payment to the Village of any amounts for which the permittee or provider is liable that are not paid by its insurance or other surety; and

(7) The payment of any other amounts which become due to the Village pursuant to Chapter 56 or the law.

(F) Form. The bond documents required by this section and any replacement bond documents shall contain the following endorsement: "it is hereby understood and agreed that this bond may not be canceled or not renewed by the surety nor the intention to cancel or not to renew be stated by the surety until 90 days after completion of construction of the facilities and, notwithstanding the foregoing, shall in no case be canceled or not renewed by the surety until at least 90 days' written notice to Village of surety's intention to cancel or not renew this bond.

§ 56.18 INDEMNIFICATION AND LIABILITY.

(A) Village does not accept liability. By reason of the acceptance of an application, the grant of a permit or the issuance of a certificate of registration, the Village does not assume any liability:

(1) For injuries to persons, damage to property, or loss of service claims; or

(2) For claims or penalties of any sort resulting from the installation, presence, maintenance or operation of facilities.

(B) Indemnification.

(1) (a) By applying for and being issued a certificate of registration with the Village a provider is required, or by accepting a permit a permittee is required to defend, indemnify, and hold harmless the Village's agents, elected officials, officers, employees, volunteers and subcontractors from all costs, liabilities, claims, and suits for damages of any kind arising out of the construction, presence, installation, maintenance, repair or operation of its facilities, or out of any activity undertaken in or near a rights of way, whether any act or omission complained of is authorized, allowed, or prohibited by a permit. Such requirement to defend, indemnify and hold harmless shall not extend to the

negligence of the Village or its agents, elected officials, officers, employees, volunteers and subcontractors, to the extent that the existence of such negligence shall be proven to exist. A provider or permittee shall not bring, nor cause to be brought, any action, suit or other proceeding claiming damages, or seeking any other relief against the Village's agents, elected officials, officers, employees, volunteers, and subcontractors for any claim nor for any award arising out of the presence, installation, maintenance or operation of its facilities, or any activity undertaken in or near a rights of way, whether the act or omission complained of is authorized, allowed or prohibited by a permit. This section is not, as to third parties, a waiver of any defense or immunity otherwise available to the provider, permittee or to the Village; and the provider or permittee, in defending any action on behalf of the Village, shall be entitled to assert in any action every defense or immunity that the Village could assert in its own behalf. Any and all exercise of the above shall be consistent with, but not limited to, the following:

(b) To the fullest extent permitted by law, all providers and permittees shall, at their sole cost and expense, fully indemnify, defend and hold harmless the Village, its elected officials, agents, officers, employees, volunteers and subcontractors from and against any and all lawsuits, claims (including without limitation worker's compensation claims against the Village or others), causes of actions, actions, liability, and judgments for injury or damages (including, but not limited to, expenses for reasonable legal fees, costs and expenses assumed by the Village in connection therewith); and

1. Persons or property, in any way arising out of or through the acts or omissions of provider or permittee, its subcontractors, agents or employees attributable to the occupation by the provider or permittee of the rights of way, to which provider's or permittee's negligence shall in any way contribute, and regardless of whether the Village's negligence or the negligence of any other party shall have contributed to such claim, cause of action, judgment, injury or damage; and

2. Arising out of any claim for invasion of the right of privacy, for defamation of person, firm or corporation, or the violation or infringement of any copyright, trademark, trade name, service mark or patent or any other right of any person, firm and corporation by the provider, but excluding claims arising out of or related to the Village's actions; and

3. Arising out of provider or permittee's failure to comply with the provisions of law applicable to provider or permittee in its business hereunder.

(2) The foregoing indemnification is conditioned upon the Village:

(a) Giving provider or permittee prompt notice of any claim or the commencement of any action, suit or proceeding for which indemnification is sought; and

(b) Affording the provider or permittee the opportunity to jointly participate in any compromise, settlement, or other resolution or disposition of any claim or proceeding subject to indemnification; and

(c) Cooperate in the defense of such claim and making available to the provider or permittee all pertinent information under the Village's control.

(3) The Village shall have the right to employ separate counsel in any such action or proceeding and to participate in the investigation and defense thereof, and the provider or permittee shall pay all reasonable fees and expenses of such separate counsel if employed.

§ 56.19 GENERAL PROVISIONS.

(A) Reservation of regulatory and police powers. The Village, by the granting of a permit or by issuing a certificate of registration pursuant to Chapter 56, does not surrender or to any extent lose, waive, impair, or lessen the lawful powers and rights, which it has now or may be hereafter vested in the Village under the constitution and laws of the United States, State of Ohio or the Village of Mariemont to regulate the use of the rights of way. The permittee by its acceptance of a permit, or provider by applying for and being issued a certificate of registration, is deemed to acknowledge that all lawful powers and rights, regulatory power, or police power, or otherwise as now are or the same as may be from time to time vested in or reserved to the Village, shall be in full force and effect and

subject to the exercise thereof by the Village at any time. A permittee or provider is deemed to acknowledge that its rights are subject to the regulatory and police powers of the Village to adopt and enforce general ordinances necessary to the safety and welfare of the public and is deemed to agree to comply with all applicable general laws and ordinances enacted by the Village pursuant to such powers.

(B) Method of service. Any notice or order of the Building Dept., Mayor or Village Council shall be deemed to be properly served if a copy thereof is:

- (1) Delivered personally; or
- (2) Successfully transmitted via facsimile transmission to the last known fax number of the person to be served; or
- (3) Left at the usual place of business of the person to whom it is to be served upon and with someone who is 18 years of age or older; or
- (4) Sent by certified, pre-posted U.S. mail to the last known address; or
- (5) If the notice is attempted to be served by certified, pre-posted U.S. mail and then returned showing that the letter was not delivered, or the certified letter is not returned within 14 days after the date of mailing, then notice may be sent by regular, pre-posted, first-class U.S. mail; or
- (6) If the notice is attempted to be served by regular, first class U.S. mail, postage prepaid, and the letter is then returned showing that the letter was not delivered, or is not returned within 14 days after the date of mailing, then notice shall be posted in a conspicuous place in or about the structure, building, premises or property affected by such notice.

(C) Applies to all providers. Chapter 56 shall apply to all providers and all permittees unless expressly exempted.

(D) Foreclosure and receivership.

(1) Upon the filing of any voluntary or involuntary petition under the bankruptcy code by or against any provider and/or permittee, or any action for foreclosure or other judicial sale of the provider and/or permittee facilities located within the rights of way, the provider and/or permittee shall so notify the Mayor within 14 calendar days thereof and the provider and/or permittee's certificate of registration or permit (as applicable) shall be deemed void and of no further force and effect.

(2) The Village shall have the right to revoke, pursuant to the provisions of the code, any certificate of registration or permit granted pursuant to Chapter 56, subject to any applicable provisions of law, including the bankruptcy code, 120 days after the appointment of a receiver or trustee to take over and conduct the business of the provider and/or permittee, whether in receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said 120 days or unless:

(a) Within 120 days after election or appointment, such receiver or trustee shall have fully complied with all the provisions of the relevant certificate of registration, any outstanding permit, Chapter 56, and remedied all defaults thereunder; and

(b) Said receiver or trustee, within said 120 days, shall have executed an agreement, duly approved by a court having jurisdiction over the facilities, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of the relevant certificate of registration, permit and Chapter 56.

(E) Choice of law and forum. This Chapter 56 and the terms and conditions of any certificate of registration or permit shall be construed and enforced in accordance with the substantive laws of the Village, State of Ohio and United States, in that order. As a condition of the grant of any permit or issuance of any certificate of registration, unless otherwise required by law, all disputes shall be resolved in a court of competent jurisdiction in Hamilton County, Ohio.

(F) Force majeure. In the event any person's performance of any of the terms, conditions or obligations required by Chapter 56 is prevented by a cause or event not within such person's control,

such inability to perform shall be deemed excused and no penalties or sanctions shall be imposed as a result thereof. For the purpose of this section, causes or events not within the control of a provider shall include, without limitation, acts of God, strikes, sabotage, riots or civil disturbances, failure or loss of, explosions, acts of public enemies, and natural disasters such as floods, earthquakes, landslides, and fires.

(G) No warranty. The Village makes no representation or warranty regarding its right to authorize the construction of facilities on any particular rights of way. The burden and responsibility for making such determination shall be upon the person installing facilities in the rights of way.

(H) Continuing obligation and holdover. In the event a provider or permittee continues to operate all or any part of the facilities after the termination, lapse, or revocation of a certificate of registration, such provider or permittee shall continue to comply with all applicable provisions of this chapter and other laws throughout the period of such continued operation, provided that any such continued operation shall in no way be construed as a renewal or other extension of the certificate of registration, nor as a limitation on the remedies, if any, available to the Village as a result of such continued operation after the term, including, but not limited to, damages and restitution. Any conflict between the issuance of a certificate of registration or of a permit and any other present or future lawful exercise of the Village's regulatory or police powers shall be resolved in favor of the latter.

(I) Appeals. All appeals provided for by this chapter and any notification to the Village required by this chapter shall be in writing and sent via certified U.S. mail to the Mayor or Village Engineer as specified in this Chapter 56.

(J) Village facilities. As part of Village required standards wherever rights of way are under construction, if deemed advisable and practicable by the Village Engineer, the Village may install all such facilities deemed necessary to accommodate future provider needs. Any such installed facilities shall be Village property and may be conveyed to any person under such terms and conditions as are deemed advisable by the Village Council.

(K) Section headings. Section headings are for convenience only and shall not be used to interpret any portion of this chapter.

§ 56.99 PENALTIES.

In addition to any other penalties set forth in this chapter, and the remedy of specific performance which may be enforced in a court of competent jurisdiction the following penalties shall apply: any person violating the provisions of this chapter shall be guilty of a misdemeanor for the fourth degree. Each day such violation continued shall be deemed a separate offense.

Section 2. The Council hereby determines that all deliberations and votes of a public body regarding this Ordinance were conducted in an open meeting in compliance with Section 121.22 of the Ohio Revised Code.

Section 3. This Ordinance shall take effect at the earliest date allowed by law.

Passed: October 26, 2020

Mayor William A. Brown

ATTEST:

Anthony Borgerding, Fiscal Officer

I, Anthony Borgerding, Fiscal Officer of the Village of Mariemont, Ohio, do hereby certify that there is no newspaper printed in said municipality and that publication of the foregoing Ordinance was duly made by posting true copies thereof at five of the most public places in said corporation as determined by the Council, as follows: the Concourse, Miami Bluff and Flintpoint Way; the Tennis Court property, on the east side of Plainville Road between Maple and Chestnut Streets; the site of the Municipal Building. Wooster Pike and Crystal Springs Road; the northeast corner of the intersection of Rembold and Miami Road inside the enclosure; the northwest corner of the Old Town Center, intersection of Chestnut and Oak Streets; each for a period of fifteen days commencing on the 27th day of _____ October 2020.

Anthony Borgerding, Fiscal Officer

