

Council of the Village of Mariemont, Ohio
October 26, 2020
Agenda

1. Call to Order – Pledge of Allegiance
2. Roll Call
3. Minutes Regular Council Meeting October 12, 2020
4. Communications: (Council has copies except those marked **. (These are in the Village Office for Perusal)

*From Fiscal Officer Borgerding: 2020 3rd Quarter Financial Reports
 *From Assistant Fire Chief Feichtner: September 2020 Monthly Report

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 Ordinance Regarding Overnight Parking (7-27-20) (*Tabled 10-12-20*)
- ✚ Review MCO Code (1-27-20) ****Phase I Target Date July 2020****(6-8-20)(7-11-20)(10-12-20)
- ✚ Review/Discovery DORA Legislation (7-27-20)
- ✚ Policy for Resident Comments in Minutes (10-12-20)
- ✚ Recodification of Code of Ordinances (10-12-20)

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)
- ✚ Tree Committee Plan and Recommendations (10-12-20)
- ✚ Creation of Waldorf Neighborhood Advisory Group (10-12-20)

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 Spring 2021****
- ⚡ Governmental Aggregation (5-28-19) (*Tabled 10-12-20*)
- ⚡ 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 Will be Saturday October 31, 2020 from 6:00-8:00 p.m.
- ⚡ Leaf Pick-Up will Begin October 26, 2020
- ⚡ Village Offices will be Closed Thursday and Friday November 26 and 27, 2020 in Observation of Thanksgiving
- ⚡ The Permanent Improvement Meeting will be Monday December 21, 2020 at 5:30 p.m.
- ⚡ The Council meeting in December will be Monday December 21, 2020 at 6:30 p.m.

8. Resolutions:

- ⚡ "To Reappoint Peter Wren as a Member of the Architectural Review Board for the Calendar Years of 2021 & 2022" (Second Reading)
- ⚡ "To Reappoint Eric Marsland as a Member of the Parks Advisory Board for Calendar Year 2021" (Second Reading)
- ⚡ "To Reappoint Dave Wuertemberger as a Member of the Parks Advisory Board for Calendar Year 2021" (Second Reading)
- ⚡ "To Reappoint Ruth Varner as a Member of the Parks Advisory Board for the Calendar Year 2021" (Second Reading)
- ⚡ "To Reappoint Carrie Gray as a Member of the Parks Advisory Board for the Calendar Year 2021" (Second Reading)
- ⚡ "To Reappoint Mary Tensing as a Member of the Parks Advisory Board for the Calendar Years 2021 and 2022" (Second Reading)
- ⚡ "To Reappoint Steve Spooner as a Member of the South 80 Trails, Gardens and Park Advisory Board for the Calendar Year 2021" (First Reading)

- ⚡ “To Reappoint Andrew Seeger as a Member of the South 80 Trails, Gardens and Park Advisory Board for the Calendar Year of 2021” (First Reading)
- ⚡ “To Reappoint Jason Brownknight as a Member of the South 80 Trails, Gardens and Park Advisory Board for the Calendar Year of 2021” (First Reading)
- ⚡ “To Reappoint Chris White as a Member of the South 80 Trails, Gardens and Park Advisory Board for the Calendar Year of 2021” (First Reading)
- ⚡ “To Reappoint Mark Glassmeyer as a Member of the South 80 Trails, Gardens and Park Advisory Board for the Calendar Year of 2021” (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) (Tabled 10-12-20)
- ⚡ “An Ordinance Enacting Chapter 56 of the Codified Ordinances of the Village of Mariemont, Entitled “Comprehensive Right of Way Administration” (Third Reading)
- ⚡ “To Amend Section 151.025(A)(1)(a) of the Mariemont code of Ordinances, Powers and Duties of the Architectural Review Board and To Declare Emergency” (*Requires Three Readings*)
- ⚡ “Ordinance Amending Chapter 31.077 of the Mariemont code of Ordinances Regarding Building Commissioner” (First Reading)
- ⚡ “To Amend Mariemont Code Chapter 79, Schedule I(B)(1), No Parking of the Mariemont Code of Ordinances to Update Current Requirements for Parking on Wooster Pike” (First Reading)
- ⚡ “Ordinance Amending Chapter 32.13 Rule 19 of the Mariemont Code of Ordinances” (First Reading)
- ⚡ “Ordinance Amending Section 32.13 Rules of Council (Z) Rule 25 of the Mariemont Code of Ordinances” (First Reading)
- ⚡ “Ordinance Removing Chapter 31.078 From the Mariemont Code of Ordinances Regarding Dog and Cat Wardens” (First Reading)
- ⚡ “Ordinance Amending Chapter 90.01(A)(1)(b) of the Mariemont Code of Ordinances Regarding Dogs or Other Animals Running at Large; Dangerous or Vicious Dogs” (first Reading)
- ⚡ “Ordinance Amending Section 32.13 Rules of Council (GG) of the Mariemont Code of Ordinances” (First Reading)
- ⚡ “Repealing No O-14-16 of the Mariemont Code of Ordinances” (First Reading)
- ⚡ “Ordinance Amending Section 91.36 of the Mariemont Code of Ordinances’ (First Reading)
- ⚡ “To Amend Section 151.26(A)(6) of the Mariemont Code of Ordinances, Signs within Residential District” (First Reading)
- ⚡ “To Amend Section 70.30 of the Mariemont Code of Ordinances Regarding Obeying Traffic-Control Devices” (First Reading)

**Village of Mariemont
Regular Council Meeting
October 12, 2020**

Mayor Brown called the meeting to order at 6:30 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 Superintendent Scherpenberg.

Mr. Bartlett moved, seconded by Mrs. Rankin to accept the minutes as written for the regular Council meeting September 28, 2020. On roll call; six ayes, no nays.

Mayor Brown read the following communications:

From Police Chief Hines: September 2020 Monthly Report

From Assistant Fire Chief Hines: September 2020 Monthly Report

From Tax Administrator Darrah: September 2020 Monthly Report. Mr. Bartlett commented that year-to-date is still \$160,000 less for income taxes. Fiscal Officer Borgerding said he talked with Mrs. Darrah today and to date there are 400 less returns this year versus last year. Hopefully those are received in the office shortly. Mr. Stelzer said that is 25% of the total returns.

From Pool Manager Schad: August & September 2020 Monthly Report

Mr. Stelzer said he would like to see the monthly reports indicate where the department is with year-to-date spending versus budget.

Fiscal Officer Borgerding said the 3rd Quarter Report should be ready for the next meeting.

From Anastasia Nurre: Email Dated October 1, 2020 re: Waldorf School. Mayor Brown asked that the email be made part of the permanent minutes:

“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."

From Assistant Fiscal Officer Wendler: September 2020 Monthly Report

From Hamilton County: HB 614 CRF local Distribution \$126,774.00. Fiscal Officer Borgerding said he needs to do a report for anything that has been encumbered through September 2020 plus any receipts which is due October 20 and another report is due the first of January. The work needs to be done by December 31, 2020 and can be paid in January 2021.

Mayor Brown said he and Council members are receiving requests from residents to be able to participate in the Council meetings. He is working with ICRC to formulate a plan whereby they will be able to do that. He was hopeful to have a trial run tonight but the technical hoops for this are a bit more than he anticipated. He is planning a method for the next Council meeting where a resident can address Council in real time for the three minute limit. We will need a monitor, perhaps Mrs. Wendler, to allow those to link into the meeting. There are 4 remaining meetings this year and perhaps by the first of the year go back to live Council meetings. Mr. Stelzer said we may need to do Zoom meeting for a while going forward as it does not appear that there is going to be a vaccine for COVID-19 anytime soon. He believes we may need to do this for the next three months if not longer.

Mrs. Rankin moved, seconded by Dr. Lewis 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 Rules and Law Committee which met on Thursday October 8, 2020 at 1:30PM via Zoom. Present at the meeting were Rob Bartlett, 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 dogs 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. Dr. Lewis clarified that she did not sign the report. Ms. Palazzolo said she has not yet collected signatures. She added once the Economic Planning and Zoning Committee completes their work they will readdress Item #10.

Dr. Lewis said in the future the agenda should delineate exactly what is going to be referenced. She found the public notice agenda too vague. Mr. Bartlett said it had been addressed in the past at the last two meetings in the same way. Dr. Lewis said residents should see what it is Council is proposing to change. Dr. Lewis said the report does not mention that some items were accepted by Council in a previous report but not all items were accepted. She made the point because she felt it was important. Ms. Palazzolo said she pulled the old report and opted not to make any changes with the sidewalks. The other item was the removal of the cat/dog warden.

Mayor Brown said item #9 which requires the Village to follow the Ohio Manual of Uniform Traffic Devices when discussing the addition of a traffic control device causes him concern that we are adding a layer of ungodly expense to do something simple such as a yield, stop sign etc. He asked if anyone looked into the cost to hire a traffic control engineer. Mr. Bartlett said that is not required. This is a preamble. It has been discussed with Solicitor McTigue many times. This says that Council has to follow the Ohio Manual of Uniform Traffic Devices – it does not say the Village has to hire anyone. Solicitor McTigue said it is correct that the Village must follow the manual for traffic devices.

Council discussed and agreed to vote on the report as a whole. Dr. Lewis said she wanted the report amended to reflect that she asked to have the agenda reflect items to be discussed. Solicitor McTigue said the report does not need to be amended to reflect that but it should be done going forward. Ms. Palazzolo said she will reflect Dr. Lewis's concern and request in the committee meeting minutes. Ms. Palazzolo said before the next codification they will address the time limit in item number one. Solicitor McTigue said the Village has to be ultra-careful on the changes they make due to potential litigation. On roll call; six ayes, no nays.

Mrs. Rankin moved, seconded by Ms. Palazzolo to accept the recommendation of the Rules and Law Committee which met on Thursday October 8, 2020 at 1:30PM via Zoom. Present at the meeting were Rob Bartlett, Marcy Lewis, Maggie Palazzolo and Assistant Fire 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.

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(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

Dr. Lewis asked if they have to be on a patio. Ms. Palazzolo no it was not addressed should it be in the grass. Dr. Lewis said she believes the whole 10' rule should apply even if it is in the grass On roll call; six ayes, no nays.

Miscellaneous:

Mayor Brown said he has spoken with surrounding communities and all are staying with traditional Trick-or-Treating October 31, 2020 from 6:00-8:00. He is of the belief the Village should stick with this and suggest that everyone follow protocols from the Board of Health. Those will be put on the website and on NextDoor Mariemont. For those who do not wish to participate he encourages those residents to turn their lights off. Obviously, if something drastic happens with the numbers in the county we will need to re-evaluate the situation. Mr. Stelzer said should the schools lockdown then we should take a hard look at Halloween.

Mr. Stelzer said he sent an email to Council regarding questions he has regarding the Tree Committee such as what are they set up to do? Is it a comprehensive committee or limited to a certain area of the Village and what is the plan for trees for the entire Village?

Superintendent Scherpenberg said the Village is a Tree City USA which includes certain criteria that the Village has to follow. The Village no longer has an arborist. The Parks Advisory Board was put in the position to also act as the Tree Commission. It crosses a very thin line with Tree City USA. In order to keep Tree City USA commission the Village needs a Tree Commission. The Mayor is in charge of street trees per Village Ordinance. Over the years, residents have moved in and removed trees they did not like thus resulting in a loss of tree canopy. The Village established the Tree Ordinance that requires a permit should someone wish to take down a heritage tree. An arborist needs to sign off on why the tree needs to be removed. To keep our Tree City status he has been working with ODNR and MPF has offered \$10,000 as reimbursements to the Village for trees. Due to some areas having a small workable easement due to utility lines, MPF may give money directly to a homeowner to plant a tree on the other side of the walk where they would take ownership of it. The Village cannot maintain private trees. He has been working in the Historic areas with Mary Beth York, Marcy Lewis and Brad Lockhart. The last couple years the budget for trees has been \$50,000 per year. Tree City USA application requires the number of trees removed, trees that were planted and the cost factor. The Village averages \$80,000-\$100,000 throughout the Village every year on tree work.

Mayor Brown said it was his understanding that Wendy Van Buren, Arborist for ODNR, was going to inventory the types of trees the Village has and then determine a plan for the types and sizes of trees to be planted throughout the Village. Superintendent Scherpenberg said they are still working off the plan put in place by Karen Sullivan when she was with MPF, but yes – Mrs. Van Buren is still working on a plan for the Village. We do not want to be in the same position as we were with the Emerald Ash Borer. Dr. Lewis added that the Commission is looking at what is historically consistent with what John Nolen recommended if possible.

Mr. Stelzer said there is some concern with Council just hearing about this but understands the need to comply with Tree City USA. He wonders if the Village is spending enough money in the Village overall. From the data given to him the Village spends a lot more money taking trees out than planting trees. Superintendent Scherpenberg said that is correct – by the time trees that need to be removed are, it leaves very little room in the budget for planting new trees. Mr. Stelzer said that is when Council needs to be informed so they can discuss whether more money needs to be allocated. Right now Council does not know what the plan is. Superintendent Scherpenberg said for the last five years he has been given \$50,000 plus \$25,000 in the beautification fund. Prior to that there was no budget given for trees. We are not like other communities such as Terrace Park that has a tree levy to help fund monies for the tree program. Hurricane Ike devastated the Village. Former Councilmember, Cortney Scheeser said the Village needed to budget more money for tree plantings. Mr. Stelzer interjected that Council needed to know the magnitude of the problems we are facing. It is up to Council to allocate the monies to fix the problems.

Mr. Bartlett said that Tree City USA is important and agrees for the need for a Tree Committee. He wants to be clear on what the scope of responsibility would be.

Mayor Brown referred to the Health and Recreation Committee the Tree Committee Plan and Recommendations in conjunction with working with Wendy Van Buren and members of MPF. Council agreed that Health and Recreation was the proper Committee for review. Dr. Lewis said she would reach out to Mrs. Van Buren for a summary of where she is with her plan to date.

Mayor Brown said several people have expressed concern with a tree that is in the Tot Lot. He would like to take action prior to Mr. Stelzer getting the Tree Committee up to speed. He wants to remove the tree and replant now since fall is the best time for planting. He will work with Mandy Rohal and MPPG. Superintendent Scherpenberg said he believes that has changed. Mr. Stelzer moved, seconded by Mrs. Rankin to have the Mayor be the point person for the Tot Lot improvements. On roll call; six ayes, no nays.

Mayor Brown said the issue of what is the principle for when letters are added to the Council agenda was raised by Mr. Bartlett. Ms. Palazzolo said if there are no guidelines then it should be put into committee for discussion. After discussion, Mayor Brown referred the matter to the Rules and Law Committee.

Council Members gave verbal updates on committee assignments:

Mrs. Graves said regarding traffic speeding concerns, some work has been done in this area, but she has been waiting until it could be a meeting with public input and participation. She has had conversations with the Mayor, Police Chief and many residents and it needs to be brought together and outline the data in an open meeting to determine future process and procedures. Regarding the handicap parking spot in front of Hampstead Condominiums she does have the contact information from the gentleman that sent the letter. She is reaching out to him to gather information on what he wants to do and then she will set a meeting. Regarding the speed table/Miami Hill she has been gathering information and talking with the Police Chief, Superintendent Scherpenberg and Engineer Ertel. She plans to move forward with a meeting in the near future. She said the Mayor and Police Chief were able to secure a speeding device that will be utilized on Homewood Road. It has the ability to be moved as needed. She believes it will help with the speeding issue and her hope is the Village will budget for an additional device.

Mr. Bartlett said the Incentive Program for creation of parking spots on private property is linked to the conversation of overnight parking fees. The Mayor is working with MPF on a test on it in the Historic District. The trash sticker program will be discussed once the contract for waste collection is decided. We are in the informational gathering stage for direct deposit and then will evolve to the Finance/Payroll software which will heavily involve Mrs. Van Pelt and Mrs. Wendler.

Dr. Lewis said building tear down aesthetics is in process with members of MPF who drafted the recommendations. Members of MPF reached out to several realtors and Mr. Spinnenweber for their input. That process is still ongoing. The matter of working with MPF Task Force to take proactive steps to preserve Village Architectural heritage was also submitted as part of the recommendation from MPF in January. She chose to separate the two issues as aesthetics is going to take a bit more time. Business economic development in the Village is ongoing. She is working with Kim Beach to put an incentive program together for businesses to offer discounted gift cards. It would encourage residents to shop locally and would be advertised in the Town Crier. The creation of a CRA Council was moved into her committee. She has met with the Mayor and Mrs. Rankin to get up to speed. She was given some names of potential members whom she will be meeting with and is hoping to have a meeting towards the end of the month. Mr. Bartlett asked if she was looking into TIF and other financial incentives for redeveloping in the industrial area. Dr. Lewis said they have not addressed that but it is certainly worth discussing.

Ms. Palazzolo said she tabled the matter of installation of solar panels as she does not feel it is the most pressing issue right now. She will be contacting those who showed interest in it and would like to leave it tabled. It may be something to turn over to an interested party of residents to do the fact gathering. Reviewing the Ordinance regarding overnight parking was tabled. It was unclear if it was to be tackled as a whole or was it to be tackled as it pertains to overnight passes. Because we may or may not make changes to the approach to the passes as a whole. It can be picked back up once it goes through the Finance Committee. The review and discovery of DORA (Designated Outdoor Recreational Area) Legislation allows people to patronize businesses with open container beverages purchased at local establishments. It crosses over with Economic Development but with Dr. Lewis on the Rules and Law Committee it works well. It could be successful in the square and Old Town Square. We are still in Phase one of reviewing the Mariemont Code of Ordinances for changes or deletions of outdated legislation. She asked that the recodification of the code book be added back into committee. She wants to get a quote and list of options so the committee can review and discuss. The Mayor referred the matter to the Rules and Law Committee.

Mr. Stelzer said the construction drawings for the multi-use drawings path is going to be discussed later in the meeting. Not much has been done with the Whiskey Creek Walking Path due to COVID-19 and organizing work groups.

He will work on formalizing a plan but currently it is being used. The same holds for the Dale Park Hillside Conservation. He is hoping to get back to work on it in the spring. He has not yet done work on the review process for naming and use of Village properties. He has had some questions from people regarding naming rights with the Murray Trail. We also need to discuss what we charge for those types of things. Ms. Palazzolo said Lorne Hlad did quite a bit of work on naming rights with the building addition and suggested he reach out to him for his research.

Mrs. Rankin said regarding raising the building department fees she believes we need to address the future structure of the building department. We have talked in preliminary discussions how the department will move forward. Until we know more of how that will go and the possibility of putting the permit fees out to a third party. She is targeting spring 2021. It was agreed by Council that it was premature to discuss the Building Department personnel at this time. It was agreed to table the matter of Governmental Aggregation. She had a conversation with Melissa Taylor with Columbia Township regarding Murray Avenue repairs. Ms. Taylor said Columbia Township is focused on the empty fire department building on Murray Avenue. There is a huge drainage project they need to work on with that. Until the scope is known we will not know if it will be repaved. Their engineer is to do a top five street assessment for immediate attention. Our timeline is contingent on their timeline. She said there are parking issues in Finance, Rules and Law. Mrs. Graves said a decision needs to be made as a whole with regards to overnight parking before changing fees etc. Ms. Palazzolo said she strongly feels the overall assessment should be completed, not recommendations from an overall assessment, but what is current state, what is the desired state and which places are or are not at desired states. It was decided that Public Works would look at what the comprehensive Village parking assessment would look like and what the scope of the work would be. Mr. Stelzer said Columbia Township did a parking assessment of Madison Place and paid a firm and suggested seeing a copy of report to see if it would be helpful. The Committee will target the beginning of November to hold a meeting. The trash contract bids will be opened Wednesday with a meeting to follow to discuss the bids.

Mayor Brown said there was a spreadsheet on potential spending of the CARES Act funding. The IT work is one of the larger projects being taken on. Mrs. Wendler has been an excellent point person on this project. Mr. Bartlett said there is still \$113,000 left and the criteria is the funds have to be encumbered by November 20, 2020 with the project complete by December 31, 2020. We need a process to make sure the project (s) qualify. Fiscal Officer Borgerding is arbitrator for making sure our projects meet qualifications. We believe that code codification qualifies (what work has been completed could be billed and paid with funding), police/fire payroll, maintenance, pool cleaning and sanitizing. He said the Tennis Association has raised money and got bids to make another patio area to allow for more social distancing when multiple teams are playing. Creating a recreational area for expanding or improving does fall within the spending qualifications. The quote is \$55,000 and the work can be done prior to the end of the year. Enhancements to the hut area could be used from private funds and money from the school. Mrs. Rankin said the administrative office/building department has no social distancing at all. It is not even doable. Consideration should be given to restructuring the offices. It was agreed by Council to hold a Special Meeting of Council next week to discuss the list. Fiscal Officer Borgerding will put together a spreadsheet with the various projects and cost estimates.

Service Superintendent Scherpenberg gave an update on the pool repairs and pool leaks. The belief is the upper part is okay. The pit to the downstairs area has a leak somewhere in the 57' from the pit. The baby pool has a leak in the seating area. They are still in the process to determine where all the leaks are. The proposal is to reseal the lap pool, main pool and talk with Shamrock and/or Ed Beck about the configuration with the baby pool. Mr. Stelzer said the Service Department and Ben James have been fantastic on working at the pool and especially all the help they gave throughout the summer.

Mr. Stelzer said Council received copies of the Swim Commission By-Laws. There were two changes made being they will not be indemnified for gross negligence or intentional misconduct. It was reviewed by Solicitor McTigue. Ms. Palazzolo said for consistency the term Village government is used but it is very vague. Mr. Stelzer said it is Council's responsibility to tell them who they need to report to. Village Code will define who they report to. Council voted unanimously to approve the by-laws.

Mayor Brown said he and Mr. Stelzer have been talking with representatives of the Waldorf School regarding the creation of a Waldorf Neighborhood Advisory Group. Resident Matt Ayer has said he was willing to be the point person on this. The details still need to be formulated. We need to notify residents in the immediate area of the group to get participants. Mayor Brown referred the matter to the Health and Recreation Committee. Mr. Stelzer said we need to get an email out to garner interest and then will hold a committee meeting.

Solicitor McTigue said the plot for the street vacation sale was dropped off at the Village Offices today. It was signed by Fiscal Officer Borgerding. Once filed and recorded it will be official. Hopefully we should have the funds by the end of the month.

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. Fiscal Officer Borgerding said the Supplemental Appropriation Ordinance will be passed that meeting and it gives him more time to accurately measure December expenses and revenues. Mr. Bartlett said Council discussed the Permanent Improvement meeting occurring in December to allow more time to get the best pricing. It was agreed to hold the Permanent Improvement meeting at 5:30 p.m.

Superintendent Scherpenberg said leaf pick-up will begin October 26, 2020. Due to the fact that Hamilton County is a red alert county we will not be bringing in the part-time workers from Minute Men so we do not risk the health of the employees of the Service Department. We will have a two man crew with two trucks. We have instructed residents not to have their landscape companies rake to the street but to bag the leaves prior to the 26th. The process will take longer and in between the department will be busy with the Tree Lighting preparations. He anticipates a lot of complaints. The department will work the best they can to get them removed as quickly as possible. Bagged leaves will be hauled free of charge by Rumpke. Residents may also put leaves in marked cans for Rumpke to take free of charge. Many communities are now charging for leaf pickup or getting away from it all together due to the cost factor. The information has been posted to the Village website and put on NextDoor Mariemont. Dr. Lewis asked if Hamilton County goes to orange status would part-time workers be an option. Superintendent Scherpenberg said he is taking precautions for his department. It only takes one case to knock the whole department out and feels for the best safety of the Village that outside workers are not brought in. Mayor Brown reminded residents to please not rake the leaves into the street. It creates problems with catch basins and storm water runoff and they are dangerous when slick.

Resolutions:

“To Reappoint Rick Gibson as Mayor’s Court Magistrate for Calendar Years 2021 and 2022; To Set Compensation” had a third reading. Mrs. Rankin moved, seconded by Mr. Bartlett to adopt the Resolution. On roll call; six ayes, no nays. Resolution No. R-20-20 was adopted. Mr. Stelzer asked to see a copy of the contract before they are signed.

“To Reappoint Edward J. McTigue as Solicitor for the Village of Mariemont for the Calendar Years 2021 and 2022” had a third reading. Mrs. Rankin moved, seconded by Mr. Bartlett to adopt the Resolution. On roll call; six ayes, no nays. Resolution No. R-21-20 was adopted.

“To Confirm the Reappointment of Christopher M. Ertel as Village Engineer for Calendar Years 2021 and 2022; and To Set Compensation” had a third reading. Mrs. Rankin moved, seconded by Dr. Lewis to adopt the Resolution. On roll call; six ayes, no nays. Resolution No. R-22-20 was adopted.

“To Confirm the Reappointment of Jordan Schad as Swim Pool Manager for Calendar Years 2021 and 2022” had a third reading. Mrs. Rankin moved, seconded by Dr. Lewis to adopt the Resolution. On roll call; six ayes, no nays. Resolution No. R-23-20 was adopted.

“To Reappoint Ted Beach as a Member of the Pool Commission for the Calendar Year 2021” had a third reading. Mrs. Rankin moved, seconded by Mr. Bartlett to adopt the Resolution. On roll call; six ayes, no nays. Resolution No. R-24-20 was adopted.

“To Reappoint Terry Donovan as a Member of the Pool Commission for the Calendar Year 2021” had a third reading. Mrs. Rankin moved, seconded by Mr. Bartlett to adopt the Resolution. On roll call; six ayes, no nays. Resolution No. R-25-20 was adopted.

“To Reappoint Leesa Blanding as a Member of the Pool Commission for the Calendar Year 2021” had a third reading. Mrs. Rankin moved, seconded by Mr. Bartlett to adopt the Resolution. On roll call; six ayes, no nays. Resolution No. R-26-20 was adopted.

“To Reappoint Mandy Rohal as a Member of the Pool Commission for the Calendar Year 2021” had a third reading. Mrs. Rankin moved, seconded by Mr. Bartlett to adopt the Resolution. On roll call; six ayes, no nays. Resolution No. R-27-20 was adopted.

“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” 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. Mr. Stelzer said we need to get an item from Columbia Township regarding the easement before we can we can sign the contract. He is not sure we need an emergency to sign the contract. Solicitor McTigue said his opinion is to pass the Resolution on an emergency as Engineer Ertel was not sure if we needed the easement and was going to check with Columbia Township. We should at least authorize the Mayor to sign. Mr. Stelzer said we are discussing \$267,000 and the wording has been reviewed by the Solicitor, Mayor and himself and is found to be acceptable. We can start recovery of 75% of costs once the contract is signed. We have raised \$36,000 in private fundraising and have a \$75,000 commitment from Columbia Township. There will be a fundraiser on October 21 at Fifty West from 4-9. They will be sharing the profits from sales that day. We need to get moving on the construction drawings which will take 6-8 weeks to complete. There will be no cost to the Village. The cost will be covered by the ODNR grant or private funds. The plan is to build in spring 2021. There is a preliminary landscaping plan can be found on the Murray Path.com website. It will definitely be modified and any comments can be left on the website. They plan to do it virtually to start with before bringing it into a Health and Recreation Committee meeting. There is another grant program from Hamilton County Development that has large sums of money floating around for potential recreational projects. We are in the process of gathering more information. 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-28-20 was adopted.

“To Reappoint Peter Wren as a Member of the Architectural Review Board for the Calendar Years of 2021 & 2022” had a first reading.

“To Reappoint Eric Marsland as a Member of the Parks Advisory Board for the Calendar Year of 2021” had a first reading.

“To Reappoint Dave Wuertemberger as a Member of the Parks Advisory Board for the Calendar Year of 2021” had a first reading.

“To Reappoint Ruth Varner as a Member of the Parks Advisory Board for the Calendar Year of 2021” had a first reading.

“To Reappoint Carrie Gray as a Member of the Parks Advisory Board for the Calendar Year of 2021” had a first reading.

“To Reappoint Mary Tensing as a Member of the Parks Advisory Board for the Calendar Years of 2021 and 2022” had a first 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 the third reading. Mr. Bartlett said in order to allow residents to directly provide input he moved, seconded by Ms. Palazzolo to table the Ordinance. On roll call; six ayes, no nays. *The Ordinance was tabled.*

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

The meeting adjourned at 8:47 p.m.

William A. Brown, Mayor

Anthony J. Borgerding, Fiscal Officer

QUARTERLY FINANCIAL REPORT - 2020
Summary - General Fund

Department	Jan-September Expenses			Annual Budgeted Expenses		
	Budget	Actual	Diff. Vs. Bud.	Approved	Est. Actual	Diff. Vs. Bud.
Police	\$ 1,099,500	\$ 1,078,157	\$ (21,343)	\$ 1,466,000	1,437,543	\$ (28,457)
Fire	403,500	343,614	(59,886) Note 1	538,000	535,637	(2,363)
Paramedics	228,000	263,859	35,859 Note 1	307,000	293,895	(13,105)
Maintenance	526,500	481,819	(44,681)	702,000	634,740	(67,260)
Tax	134,250	146,428	12,178	179,000	195,237	16,237
Trash	235,593	286,411	50,818	335,000	364,411	29,411
Building Inspector	82,500	67,042	(15,458)	110,000	89,389	(20,611)
Clerk/Treasurer	238,500	242,478	3,978	318,000	323,304	5,304
Swimming Pool	129,850	123,315	(6,535)	144,000	129,456	(14,544)
Public Health	9,000	11,135	2,135	12,000	14,847	2,847
Recreation	14,400	17,180	2,780	19,200	22,907	3,707
Street M & R (Chris)	13,875	8,569	(5,306)	18,500	11,425	(7,075)
Mayor & Admin	11,625	9,523	(2,102)	15,500	12,697	(2,803)
Legislative	31,875	46,067	14,192	42,500	61,423	18,923
Land & Buildings	67,875	74,997	7,122	90,500	99,996	9,496
Solicitor	15,113	16,810	1,698	20,150	22,413	2,263
Other	10,500	10,118	(382)	14,000	13,491	(509)
Total	\$ 3,252,456	\$ 3,227,522	\$ (24,934)	\$ 4,331,350	\$ 4,262,811	\$ (68,539)
Less Paramedic	(228,000)	(263,859)	(35,859)	(307,000)	(293,895)	13,105
General Fund	\$ 3,024,456	\$ 2,963,663	\$ (60,793)	\$ 4,024,350	\$ 3,968,916	\$ (55,434)
		Note A			Note B	

Note 1: Fire Department salaries were charged to the Paramedics for the first six month of the year due to difficulty in coding payroll between the two departments. Starting in July, the Paramedic salaries will be charged to the Fire Department for the remainder of the 2020 year.

Note A Agrees with general fund MTD/YTD report for September 2020

Note B Agrees with appropriations ordinance passed in January 2020

QUARTERLY FINANCIAL REPORT - 2020
POLICE DEPARTMENT

	<u>Jan-September Expenses</u>			<u>Annual Budgeted Expenses</u>		
	<u>Budget</u>	<u>Actual</u>	<u>Diff. Vs. Bud.</u>	<u>Approved</u>	<u>Est. Actual</u>	<u>Variance</u>
Salaries	\$ 775,500	\$ 763,513	\$ (11,987)	\$ 1,034,000	\$ 1,018,017	\$ (15,983)
Police Pension	152,250	142,361	(9,889)	203,000	189,815	(13,185)
Health Care	94,500	126,294	31,794	126,000	168,392	42,392
Other Benefits	13,500	4,692	(8,808)	18,000	6,256	(11,744)
Travel	750	-	(750)	1,000	-	(1,000)
Dispatch Fees	11,250	6,435	(4,815)	15,000	8,580	(6,420)
Other Contractual Services	750	-	(750)	1,000	-	(1,000)
Office Supplies	3,750	2,155	(1,595)	5,000	2,873	(2,127)
Gas & Oil	13,500	11,132	(2,368)	18,000	14,843	(3,157)
Rep/Maint. Of Equip.	7,500	2,442	(5,058)	10,000	3,256	(6,744)
Other O&M	26,250	19,133	(7,117)	35,000	25,511	(9,489)
Total	<u>\$ 1,099,500</u>	<u>\$ 1,078,157</u>	<u>\$ (21,343)</u>	<u>\$ 1,466,000</u>	<u>\$ 1,437,543</u>	<u>\$ (28,457)</u>

QUARTERLY FINANCIAL REPORT - 2020
FIRE DEPARTMENT

	<u>Jan-September Expenses</u>				<u>Annual Budgeted Expenses</u>		
	<u>Budget</u>	<u>Actual</u>	<u>Diff. Vs. Bud.</u>		<u>Approved</u>	<u>Est. Actual</u>	<u>Variance</u>
Salaries	\$ 334,500	\$ 292,545	\$ (41,955) Note 1	\$ 446,000	\$ 467,545	\$ 21,545	
Fire Pension	17,250	0	(17,250)	23,000	0	(23,000)	
Health Care	7,500	0	(7,500)	10,000	0	(10,000)	
Other Benefits	5,250	1,893	(3,357)	7,000	2,524	(4,476)	
Travel	375	0	(375)	500	0	(500)	
Dispatch Fees	1,875	1,481	(394)	2,500	1,975	(525)	
Other Contr. Svcs.	2,625	2,030	(595)	3,500	2,707	(793)	
Office Supplies	1,875	2,697	822	2,500	3,596	1,096	
Gas & Oil	3,000	2,359	(641)	4,000	3,145	(855)	
Rep/Maint. Of Equip.	7,500	29,748	22,248	10,000	39,664	29,664	
Other O&M	21,750	10,861	(10,889)	29,000	14,481	(14,519)	
Total	\$ 403,500	\$ 343,614	\$ (59,886)	\$ 538,000	\$ 535,637	\$ (2,363)	

Note 1: Fire Department salaries were charged to the Paramedics for the first six months of the year due to difficulty in coding payroll between the two departments. Starting in July, the Paramedic salaries will be charged to the Fire Department for the remainder of the 2020 year.

QUARTERLY FINANCIAL REPORT - 2020
MAINTENANCE DEPARTMENT

	<u>Jan-September Expenses</u>			<u>Annual Budgeted Expenses</u>		
	<u>Budget</u>	<u>Actual</u>	<u>Diff. Vs. Bud.</u>	<u>Approved</u>	<u>Est. Actual</u>	<u>Variance</u>
Salaries	\$ 217,500	\$ 211,064	\$ (6,436)	\$ 290,000	\$ 281,419	\$ (8,581)
PERS	33,000	29,179	(3,821)	44,000	38,905	(5,095)
Health Care	70,500	81,516	11,016	94,000	108,688	14,688
Other Benefits	3,000	1,331	(1,669)	4,000	1,775	(2,225)
Travel	1,125	493	(632)	1,500	657	(843)
Lawn Service	35,250	41,055	5,805	47,000	47,055	55
Other Contr. Svcs.	18,750	7,238	(11,512)	25,000	9,650	(15,350)
Office Supplies	1,125	412	(713)	1,500	549	(951)
Gas & Oil	9,750	6,762	(2,988)	13,000	9,016	(3,984)
Rep/Maint. Of Equip.	13,500	14,881	1,381	18,000	19,841	1,841
Landscaping	78,000	48,713	(29,287)	104,000	64,951	(39,049)
Other O&M	45,000	39,175	(5,825)	60,000	52,233	(7,767)
Total	\$ 526,500	\$ 481,819	\$ (44,681)	\$ 702,000	\$ 634,740	\$ (67,260)

QUARTERLY FINANCIAL REPORT - 2020
TAX DEPARTMENT

	<u>Jan-September Expenses</u>			<u>Annual Budgeted Expenses</u>		
	<u>Budget</u>	<u>Actual</u>	<u>Diff. Vs. Bud.</u>	<u>Approved</u>	<u>Est. Actual</u>	<u>Variance</u>
Salaries	\$ 52,500	\$ 51,524	\$ (976)	\$ 70,000	\$ 68,699	\$ (1,301)
PERS	10,500	6,453	(4,047)	14,000	8,604	(5,396)
Health Care	15,000	20,554	5,554	20,000	27,405	7,405
Other Benefits	3,000	565	(2,435)	4,000	753	(3,247)
Travel	1,500	-	(1,500)	2,000	-	(2,000)
Other Contr. Svcs.	5,625	4,223	(1,402)	7,500	5,631	(1,869)
Office Supplies	1,500	265	(1,235)	2,000	353	(1,647)
Other O&M	7,125	843	(6,282)	9,500	1,124	(8,376)
Tax Refunds	37,500	62,001	24,501	50,000	82,668	32,668
Total	\$ 134,250	\$ 146,428	\$ 12,178	\$ 179,000	\$ 195,237	\$ 16,237

QUARTERLY FINANCIAL REPORT - 2020
BUILDING INSPECTOR DEPARTMENT

	<u>Jan-September Expenses</u>			<u>Annual Budgeted Expenses</u>		
	<u>Budget</u>	<u>Actual</u>	<u>Diff. Vs. Bud.</u>	<u>Approved</u>	<u>Est. Actual</u>	<u>Variance</u>
Salaries	\$ 56,250	\$ 30,000	\$ (26,250)	\$ 75,000	\$ 40,000	\$ (35,000)
PERS	9,750	4,200	(5,550)	13,000	5,600	(7,400)
Health Care	-	-	-	-	-	-
Other Benefits	1,500	377	(1,123)	2,000	503	(1,497)
Travel	188	-	(188)	250	-	(250)
Other Contr. Svcs.	2,625	3,000	375	3,500	4,000	500
Office Supplies	188	179	(9)	250	239	(11)
Other O&M	12,000	29,286	17,286	16,000	39,048	23,048
Total	\$ 82,500	\$ 67,042	\$ (15,458)	\$ 110,000	\$ 89,389	\$ (20,611)

QUARTERLY FINANCIAL REPORT - 2020
CLERK/TREASURER DEPARTMENT

	<u>Jan-September Expenses</u>			<u>Annual Budgeted Expenses</u>		
	<u>Budget</u>	<u>Actual</u>	<u>Diff. Vs. Bud.</u>	<u>Approved</u>	<u>Est. Actual</u>	<u>Variance</u>
Salaries	\$ 118,500	\$ 116,421	\$ (2,079)	\$ 158,000	\$ 155,228	\$ (2,772)
PERS	16,500	15,248	(1,252)	22,000	20,331	(1,669)
Health Care	26,250	38,559	12,309	35,000	51,412	16,412
Other Benefits	52,500	59,576	7,076	70,000	79,435	9,435
Travel	188	-	(188)	250	-	(250)
Other Contr. Svcs.	6,000	8,241	2,241	8,000	10,988	2,988
Office Supplies	2,438	582	(1,856)	3,250	776	(2,474)
Other O&M	16,125	3,851	(12,274)	21,500	5,135	(16,365)
Total	\$ 238,500	\$ 242,478	\$ 3,978	\$ 318,000	\$ 323,304	\$ 5,304

QUARTERLY FINANCIAL REPORT - 2020
SWIMMING POOL

	<u>Jan-September Expenses</u>			<u>Annual Budgeted Expenses</u>		
	<u>Budget</u>	<u>Actual</u>	<u>Diff. Vs. Bud.</u>	<u>Approved</u>	<u>Est. Actual</u>	<u>Variance</u>
Salaries	\$ 65,000	\$ 56,883	\$ (8,117)	\$ 72,000	\$ 59,883	\$ (12,117)
PERS	7,500	6,877	(623)	9,500	7,877	(1,623)
Other Benefits	2,000	322	(1,678)	2,500	500	(2,000)
Office Supplies	350	37	(313)	500	0	(500)
Other O&M	55,000	59,196	4,196	59,500	61,196	1,696
Total	\$ 129,850	\$ 123,315	\$ (6,535)	\$ 144,000	\$ 129,456	\$ (14,544)



Mariemont Fire Department

6907 Wooster Pike
Cincinnati, Ohio 45227

PHONE: 513-271-4089 / FAX: 513-271-1655
www.mariemont.org

Monthly Report September 2020

Fire Dispatches-	17	Total Fire Dispatch Sept. 2019	17
EMS Dispatches-	23	Total EMS Dispatch Sept. 2019	29
Total Fire Reports-	40		
		Total Fire Dispatch YTD 2020	135
EMS Transports-	18	Total Fire Dispatch YTD 2019	168
Canceled-	1		
Patient Refusals-	4	Total EMS Dispatch YTD 2020	231
DOA -	0	Total EMS Dispatch YTD 2019	284
M/A = Mutual Aid		Total M/A Given YTD 2020	81
M/A Received	4	Total M/A Given YTD 2019	118
M/A Given	5		
		Total M/A Received YTD 2020	36
		Total M/A Received YTD 2019	46

Monthly Highlights

- The Village currently has 25 Confirmed Cases of Covid-19 reported by the Board of Health.
- The Fire Department assisted Sycamore Township, Anderson Township with a Structure Fire this past month.
- Brakes were installed on Chief Hines Department Vehicle by Fire Department saving nearly \$300.00.
- Please see the attached Memo in reference to a substantial grant award from FEMA's Assistance to Firefighters Grant.
- I am continuing to explore any and all available grants for the Village and Fire Department.

Submitted By: Assistant Chief Timothy J. Feichtner



Mariemont Fire Department
6907 Wooster Pike
Cincinnati, Ohio 45227

PHONE: 513-271-4089 / FAX: 513-271-1655
www.mariemont.org

September 9, 2020

Members of Council,

I wanted to give you a brief explanation for one of the line items on the bill list I know will raise some questions.

You may remember from the permanent improvement meeting earlier this year that we were needing to replace our current SCBA's (Self Contained Breathing Apparatus) due to them reaching the end of their life span in 2021. This was potentially going to cost the Village around \$160,000.00. In March of this year I dedicated about forty hours of time to thoroughly complete the application for FEMA's Assistance to Firefighters Grant.

On September 1, 2020 I received notification that we had been awarded a substantial amount of money to complete the SCBA replacement. We were awarded \$118,720.00 minus the 5% contribution of \$5,563.33 required by the Village for their share. We needed some additional equipment to complete this project but it was not approved to be funded through FEMA. This includes additional batteries, battery charger and RFID tags used to electronically identify firefighters on emergency incidents requiring the use of a SCBA. This additional equipment totals \$11,396.00.

I was also able to work with the vendor and get better pricing than quoted last year. The Village will only spend \$16,959.33 for \$130,116.00 in equipment that will protect the firefighters and residents for the next 15 years. This will now eliminate the request for replacement and remove the financial burden from the Village next year for SCBA replacement.

Should you have any additional questions, please feel free to call me and I will explain further. I can be reached at 859-620-0464.

Respectfully,


Timothy J. Feichtner
Assistant Fire Chief

VOUCHERS FOR THE REGULAR COUNCIL MEETING, October 26, 2020

DEPARTMENT	VENDOR	DESCRIPTION	COST
Administration	Joanee Van Pelt	Reimbursement for Petty Cash	69.27
Administration	Staples	Misc. Office Supplies & Hard Drive (Van Pelt)	270.50
Administration	Verizon	Cell Phone Service Monthly Charges (Mayor)	48.50
All	Jefferson Health Plan	Health Care Insurance Premium November 2020	21,460.89
All	PERS	Village Obligation for September 2020	8,990.10
All	Village Payroll Account	Soc. Sec. \$1779.08, Medi. \$1179.08, Gross Payroll for Period Ending 10-17-2020 \$1779.08	86,298.98
Building	Aileen Beatty	Building Dept. Asst. for Periods Ending 10/3/2020 & 10/17/2020	1,155.00
Building	Board of Building Standards	Permit Assessment Fees (August & September 2020)	33.57
Building	William Fiedler	Plan Reviews/Building Inspections for Sept. 2020	1,262.50
Fire	Ohio Fire Chiefs Assn.	Annual Fire Chiefs Association Membership Fees - Hines	125.00
Fire	Staples	Miscellaneous Office Supplies	65.68
Fire	Verizon	Router Lines for Internet & Cell Phone Service Monthly Charges	457.44
Miscellaneous	Duke Energy	Gas & Electric Monthly Charges	1,024.39
Municipal	Affordable Pest Control	Preventive Treatment Service Monthly Charge	75.00
Municipal	Cincinnati Bell	Phone Service Monthly Charges & Elevator Alarm	728.23
Municipal	Intrust IT	Office365 Migration and Sharepoint Set-up (CARES Act)	9,770.00
Municipal	Verizon	Router Lines for Internet	40.11
Paramedics	Bethesda North Apothecary	EMS Medications	788.06
Paramedics	Bound Tree	EMS Supplies	142.63
Paramedics	Verizon	Machine to Machine Activity (Ambulance to Hospital)	13.22
Police	A&A Safety, Inc.	Replace Graphics on Cruiser (K9)	150.00
Police	Galls Uniforms	Uniform Trousers (Geraci)	56.04
Police	Milford Towing	Stolen Car Towed to Garage for Evidence Processing	150.00
Police	National Assoc. of Chiefs of Police	Membership Renewal (Hines)	60.00
Police	Police & Fire Pension Fund	Village Obligation for September 2020	20,423.68
Police	Ritze's Auto Service	Replace Battery on Police Vehicle	180.25
Police	Tire Discounters	Oil Change for Ford Explorer	36.94
Police	Verizon	Cell Phone Service Monthly Charges	130.10
Service	Davey Tree	Tree Removal (5) & Pruning	8,395.00
Service	Rumpke	Dumpster Exchange	389.68
Service	Safety Shoe Distributors	Safety Shoes (3 Pairs)	501.97
Service	Spectrum	Internet & Cable Service Monthly Charges	103.10
Service	Verizon	Cell Phone Service Monthly Charges	78.65
Tax	Benefit Wallet	HSA Distribution for 2nd Half Compliance Contribution (Darrah)	600.00
Tennis	David Russell	Tennis Pro Services for Period Ending 10-17-2020	633.45
TOTAL			164,707.93

**VILLAGE OF MARIEMONT
BIWEEKLY PAYROLL ENDING OCTOBER 17, 2020**

Police Department

Richard D. Hines, Regular	3649.97	Rick Hines, Vacation	405.55
Steve Watt, Regular	3673.60	Paul Rennie, Overtime	235.91
Adam Geraci, Regular	1258.17	Nick Pittsley, Regular	3316.54
Steve Watt, Vacation	471.81	Adam Geraci, Sick	1887.25
Paul Rennie, Regular	2201.79	Paul Rennie, Vacation	943.63
Derek Bischoff, Regular	1168.00	Nick Pittsley, Longevity	225.00
Tom Ostendarp, Regular	3220.26	Tom Ostendarp, Vacation	357.81
Dan Lyons, Overtime	530.79	Derek Bischoff, Comp	876.00
Dan Lyons, Comp	19.66	Derek Bischoff, Vacation	876.00
Derek Bischoff, Vacation	73.00	Blake Wallace, PT, Regular	396.00
Matt Kurtz, Regular	3145.42	Margie Maupin, Court	125.00
Dan Lyons, Regular	3125.76	Margie Maupin, Regular	1619.05
Margie Maupin, Comp	23.64	Blake Wallace, Overtime	81.00
Fred Romano, PT, Regular	1696.00	Margie Maupin, Sick	47.27
Ron Wallace, PT, Regular	503.63	Margie Maupin, Vacation	82.73
Penny Anderson, PT, Regular	408.00	Doris Hallums, PT, Regular	459.00
Tracie Clausing, PT, Regular	477.36	Judy Gerros, PT, Regular	477.36
		Department Total	36759.97

Paramedics/Fire

Jim Henderson, Supervisor Pay	757.80	Chris Miller, PT, Regular	846.00
Richard Cathcart, PT, Regular	1188.00	Evan Dunkelman, PT, Regular	837.00
Robert Mercer, PT, Regular	414.00	Keary Henkener, Supervisor Pay	105.00
Mike Washington, Jr., PT, Regular	848.35	Joe Lowry, PT, Regular	432.00
Michael Washington, Supervisor Pay	284.18	Ryan Brown, PT, Regular	198.00
Tim Peaker, PT, Regular	992.75	Tim Peaker, Supervisor Pay	105.25
Josh Hanauer, PT, Regular	216.00	Blake Rockey, PT, Regular	1521.00
Keary Henkener, PT, Regular	648.00	Josh Watren, Supervisor Pay	463.10
Brian Gross, PT, Regular	621.00	Hunter Morgan, PT, Regular	740.05
Derek Hunt, PT, Regular	487.35	Bryan Schmidlapp, PT, Regular	216.00
Joey Homan, PT, Regular	702.00	Ethan Roell, PT, Regular	1080.00
Dan Copeland, Supervisor Pay	1515.60	Mike Washington, Supervisor Pay	757.80
Chris Ramsey, Supervisor Pay	1455.30	Donald Scarpiniski, PT, Regular	144.00
Assistant Chief Feichtner, Regular	3499.61	Ben Kutcher, PT, Regular	315.70
Ben Kutcher, Supervisor Pay	121.45	Matt Clark, PT, Regular	423.00
Rick Hines, Regular	647.67	Ray Scott, PT, Regular	864.00
Mark Hardin, PT, Regular	589.50	Nick Guilkey, Supervisor Pay	1747.15
David Huckleby, PT, Regular	652.93	Curtis Ryan, PT, Regular	344.40
Brandon Manor, Supervisor Pay	1010.40	Joey Homan, PT, Regular	864.00
Jeremy Burns, PT, Regular	864.00	Craig Coburn, PT Regular	505.20
Jason Williams, PT, Regular	397.10	Department Total	28694.84

Maintenance Department

John M. Scherpenberg, Regular	3124.02	Ben James, Regular	2007.57
Ben James, Sick	223.06	Mike Evanchyk, Vacation	166.14
Kevin Schmid, Regular	1784.51	Jeremy Swadder, Regular	1814.40
Kevin Schmid, Vacation	446.13	Mike Evanchyk, Regular	1495.30
		Department Total	11061.13

Administrative

Joanee B. Van Pelt, Regular	2467.77	Joanee Van Pelt, Council	125.00
Allison Uhrig, Regular	1616.36	Joanee Van Pelt, Vacation	234.17
		Department Total	4443.29

Tax Department

DeAnna Darrah, Regular	2385.00	Department Total	2385.00
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GRAND TOTAL 83344.23

TO: Council, Village of Mariemont
FROM: Public Works & Services Committee
DATE: October 22, 2020
SUBJECT: Waste collection bid review and recommendation

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The Public Works & Service Committee met on Tuesday October 20, 2020 at 4:45 PM to discuss the bids received for the collection of waste and recycling for the Village. In attendance were the Committee Chairperson Kelly Rankin, Committee Member Rob Bartlett, Committee Member Avia Graves and Mayor Brown.

The topic of discussion was the bids received for waste collection service for calendar year 2021. Rumpke was the single provider to submit a bid. Attached is the bid submitted by Rumpke for the options requested to be bid on. The goal of the meeting was to recommend the option best suited for the needs of the Village of Mariemont.

As per the attached, the key difference in the bids is the option to move solid waste collection to the curb and eliminate rear of the house pickup. The cost savings for this option would be \$42,750.00. Also note that the curbside pickup option requires the contractor to provide the waste cans (in addition to the recycling cans currently provided). This will allow for a better aesthetics since all the receptacles will look alike and eliminate a hodge podge look that may result if residents provide their own can.

In order to be fiscally responsible to the Village, the Committee recommends the Village accept bid for option #2 and enter into a contract with Rumpke for such service.

Respectfully submitted,

Kelly Rankin
Chairman

Rob Bartlett
Vice Chair

Avia Graves
Member

VILLAGE OF MARIEMONT, OHIO

BID FORM FOR WASTE COLLECTION AND DISPOSAL

The undersigned proposes to furnish all necessary equipment and do all work necessary to perform the services of the collection and disposal of waste material within the Village of Mariemont in accordance with the contract documents and the terms and conditions contained in the rules and regulations and ordinances of the Village of Mariemont pertaining to waste collection and disposal on file in the Office of the Village Clerk; the rules and regulations of the Board of Health of Hamilton County, Ohio, and in strict compliance therewith, under the directions and to the satisfaction of the authorized officers of said Village, for the term beginning January 1, 2021 and ending December 31, 2022. Waste material as used herein is hereby defined to include garbage, cans, bottles, paper, cardboard and other waste or refuse in a proper container.

The undersigned quotes the following annual costs for picking up and disposing of waste and recyclable materials based on the alternative collection schedules listed below for two years:

OPTION #1 (Current Level of Service)

Once per week collection of solid waste at the **rear of the premises**; and once per week collection of recyclables **at curbside** in wheeled carts **provided by contractor** and once per week collection of yard waste **at curbside** in 30 gallon paper bags or **reusable** container of resident's choice (*Collection of brush is also permitted but all brush must be bundled and tied in 4-foot lengths not exceeding 50 pounds*); and once per week collection of large items including: appliances and furniture including, but not limited to, refrigerators, dishwashers, washers, dryers, sofas, chairs and mattresses. CFCs and/or HCFCs shall be removed from all appropriate appliances prior to disposal by the resident.

OPTION #1 BID AMOUNT: \$329,175.00 per year based on 1,425 units.
Includes one (1) large item per week per unit.

AND/OR

OPTION #2

Once per week collection of solid waste **at curbside in a wheeled container provided by contractor**; and once per week collection of recyclables **at curbside in a wheeled container provided by contractor**; and once per week collection of yard waste **at curbside** in 30 gallon paper bags or **reusable** container of resident's choice (*Collection of brush is also permitted but all brush must be bundled and tied in 4-foot lengths not exceeding 50 pounds*); and once per week collection of appliances and furniture including, but not limited to, refrigerators, dishwashers, washers, dryers, sofas, chairs and mattresses. CFCs and/or HCFCs shall be removed from all appropriate appliances prior to disposal by the resident.

***OPTION #2 BID AMOUNT: \$286,425.00 per year based on 1,425 units.**
Includes one (1) large item per week per unit.

* Option #2:
Rumpke will provide a 65-gallon trash cart per household. Rumpke assumes Village will eliminate sticker program. However there would be no change in rates.

BIDDER: RUMPKE OF OHIO, INC. DATE: 10/12/20

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

RESOLUTION NO. R- -20

TO REAPPOINT STEVE SPOONER AS A MEMBER OF THE SOUTH 80 TRAILS,
GARDENS AND PARK ADVISORY BOARD FOR THE CALENDAR YEAR OF 2021

WHEREAS, Council is of the opinion that it would be in the best interest of the Village of Mariemont to reappoint Steve Spooner to the South 80 Trails, Gardens and Park Advisory.

WHEREAS, Steve Spooner 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 Steve Spooner to the South 80 Trails, Gardens and Park Advisory Board for the calendar year of 2021.

Passed: November 23, 2020

William A. Brown, Mayor

ATTEST:

Anthony J. 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: 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 24th day of November 2020.

Anthony J. Borgerding, Fiscal Officer

VILLAGE OF MARIEMONT

RESOLUTION NO. R- -20

TO REAPPOINT ANDREW SEEGER AS A MEMBER OF THE SOUTH 80 TRAILS,
GARDENS AND PARK ADVISORY BOARD FOR THE CALENDAR YEAR OF 2021

WHEREAS, Council is of the opinion that it would be in the best interest of the Village of Mariemont to reappoint Andrew Seeger to the South 80 Trails, Gardens and Park Advisory Board.

WHEREAS, Andrew Seeger 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 Andrew Seeger to the South 80 Trails, Gardens and Park Advisory Board for the calendar year of 2021.

Passed: November 23, 2020

William A. Brown, Mayor

ATTEST:

Anthony J. 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: 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 24th day of November 2020.

Anthony J. Borgerding, Fiscal Officer

VILLAGE OF MARIEMONT

RESOLUTION NO. R- -20

TO REAPPOINT JASON BROWNKIGHT AS A MEMBER OF THE SOUTH 80 TRAILS, GARDENS AND PARK ADVISORY BOARD FOR THE CALENDAR YEAR OF 2021

WHEREAS, Council is of the opinion that it would be in the best interest of the Village of Mariemont to reappoint Jason Brownknight to the South 80 Trails, Gardens and Park Advisory Board.

WHEREAS, Jason Brownknight 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 Jason Brownknight to the South 80 Trails, Gardens and Park Advisory Board for the calendar year of 2021.

Passed: November 23, 2020

William A. Brown, Mayor

ATTEST:

Anthony J. 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: 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 24th day of November 2020.

Anthony J. Borgerding, Fiscal Officer

VILLAGE OF MARIEMONT

RESOLUTION NO. R- -20

TO REAPPOINT CHRIS WHITE AS A MEMBER OF THE SOUTH 80 TRAILS,
GARDENS AND PARK ADVISORY BOARD FOR THE CALENDAR YEAR OF 2021

WHEREAS, Council is of the opinion that it would be in the best interest of the Village of Mariemont to reappoint Chris White to the South 80 Trails, Gardens and Park Advisory Board.

WHEREAS, Chris White 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 Chris White to the South 80 Trails, Gardens and Park Advisory Board for the calendar year of 2021.

Passed: November 23, 2020

William A. Brown, Mayor

ATTEST:

Anthony J. 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: 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 24th day of November 2020.

Anthony J. Borgerding, Fiscal Officer

VILLAGE OF MARIEMONT

RESOLUTION NO. R- -20

TO REAPPOINT MARK GLASSMEYER AS A MEMBER OF THE SOUTH 80 TRAILS,
GARDENS AND PARK ADVISORY BOARD FOR THE CALENDAR YEAR OF 2021

WHEREAS, Council is of the opinion that it would be in the best interest of the Village of Mariemont to reappoint Mark Glassmeyer to the South 80 Trails, Gardens and Park Advisory Board.

WHEREAS, Mark Glassmeyer 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 Mark Glassmeyer to the South 80 Trails, Gardens and Park Advisory Board for the calendar year of 2021.

Passed: November 23, 2020

William A. Brown, Mayor

ATTEST:

Anthony J. 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: 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 24th day of November 2020.

Anthony J. 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 arterials 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

VILLAGE OF MARIEMONT

ORDINANCE NO. 0- ___-20

TO AMEND SECTION 151.025(A)(1)(a) OF THE MARIEMONT CODE OF ORDINANCES,
POWERS AND DUTIES OF THE ARCHITECTURAL REVIEW BOARD AND TO DECLARE
AN EMERGENCY

WHEREAS, the Rules and Law Committee of Council has met to discuss certain changes that it believes need to be made to the structure of the Architectural Review Board; and

WHEREAS, the Council for the Village of Mariemont agrees it is in the best interest of the Village that said changes are made and therefore adopt same.

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

SECTION I. That current §151.025 of the Mariemont Code of Ordinances reads as follows:

§ 151.025 POWERS AND DUTIES OF THE ARCHITECTURAL REVIEW BOARD.

(A) *Architectural Review Board.*

(1) (a) The Architectural Review Board shall consist of seven members, the Mayor of the village, the Council Chairperson of the Planning, Zoning, and Economic Development Committee, and five members appointed by the Mayor and confirmed by Village Council. All appointments shall be for a period of two years each. Vacancies shall be filled within 60 days for the remainder of unexpired terms in the same manner as original appointments and confirmations. The Board shall include at least one registered architect and others with interest or special expertise in the historic preservation disciplines. At least one member shall be the owner of property within the Historic District. All members shall be residents of the village. Members shall be encouraged to attend an educational session relating to historic issues at least once a year. Any member of the Board shall be subject to removal for cause in the manner provided by the statutes of the state. In the case of temporary absence or disability of any member, a member may be appointed and confirmed in the manner above provided to serve during the temporary absence or disability. No member of the Board shall participate in the review of any work of which he or she, any partner or professional associate is the author, or in which he, she, or they may have any direct or indirect financial interest.

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

(2) There shall be at least four meetings a year. All meetings shall be public in conformance with requirements of R.C. § 121.22. The Village Fiscal Officer shall cause to be posted in the prescribed locations in the village a public notice of meetings (see § 151.021(E)(2)(a)2.).

(3) In exercising its duties, the Architectural Review Board shall adopt such general rules and regulations relating to its procedure as it may deem necessary, including designation of a member who shall preside in the absence of the Chairperson, and a member or members who shall prepare the certificate of appropriateness, the meeting minutes, and the annual report.

(4) Concise minutes and records shall be kept as to all official acts of the Board. A written annual report of the Board's activities, cases, decisions, and qualifications of members shall be kept on file and available for public inspection.

(B) *Board as the Historic Preservation Committee.* The Architectural Review Board shall be the Historic Preservation Commission of the municipality and shall have the following powers and duties:

(1) In conjunction with the Village Preservation Foundation and the State Historic Preservation Office, to conduct a continuing survey of cultural resources in the community. To make recommendations for designation of local historic districts, landmarks, and historic sites to the Village Council according to § 151.075(I);

(2) In conjunction with the Village Preservation Foundation, to advise Village Council regarding the protection of the village's cultural resources;

(3) In conjunction with the Village Preservation Foundation and other historic and archaeological experts, to review and facilitate all proposed National Register nominations for properties within the village;

(4) In conjunction with the Village Preservation Foundation, to work toward the continuing education of village citizens regarding historic preservation issues;

(5) To establish and use "standards for review" (see § 151.075(H)) for the conservation of designated local historic districts, landmarks, and historic sites in decisions on requests for permits for alterations, demolitions, or additions to listed landmarks and historic sites within historic district(s), whether ownership is private or public;

(6) To maintain a detailed map of the Historic District(s) and a detailed list of all historic sites and landmarks structures in the village at the Col. Donald L. Shanks Municipal Building and make it available for public inspection;

(7) To review and approve or deny applications for all landmark structures, historic sites and districts, including signage, for certificate of appropriateness based on the regulations of §§ 151.021(E) and 151.075 for landmark structures or structures within a historic district within the village. In considering a request for a certificate of appropriateness, the Architectural Review Board shall follow the design requirements in § 151.075(H) and ensure compliance with the district requirements in §§ 151.060 through 151.065 and any other guidelines adopted by the Village Council. The Architectural Review Board shall decide all landmark structure, historic site, and historic district applications by resolution (except initial signage approval, see § 151.021(E)(2)(c)). The Board shall, on the adoption of any resolution, date and record it, and forthwith mail or deliver a copy of that decision to the applicant. A denial of a certificate of appropriateness application may be appealed to the Village Council (see division (C) below, and also § 151.021(E)(2)); and

(8) (a) To review and approve or deny applications sent from the Building Commissioner and the Architectural Review Board Chairperson for all signage for landmark structures, historic sites, and historic districts for certificate of appropriateness based on the regulations of §§ 151.021(E) and 151.075 for landmark structures or structures within a historic district within the village.

(b) In considering a signage request for a certificate of appropriateness, the Architectural Review Board shall follow the design requirements in § 151.075(H) and ensure compliance with the district requirements in §§ 151.060 through 151.065 and any other guidelines adopted by the Village Council. The Architectural Review Board shall decide all signage applications by resolution. The Board shall, on the adoption of any resolution, date and record it, and forthwith mail or deliver a copy of that decision to the applicant. A denial of a certificate of appropriateness signage application may be appealed to the Village Council (see division (C) below and § 151.021(E)(2) and Appendix E)).

(C) *Appeal procedures.*

(1) Any person, firm, or corporation or any officer, department, board, or agency of the village who has been aggrieved by any decision of the Architectural Review Board involving an application for a certificate of appropriateness may appeal such decision to Council by filing notice of intent to appeal with the Village Fiscal Officer within ten days from the date of receipt of the decision, setting forth the facts of the case. No decision of the Architectural Review Board shall be reversed or modified by Council unless at least five-sixths of the full membership of the Council shall concur.

(2) An appeal regarding any section of this chapter other than § 151.075 shall be brought to the Planning Commission after the decision from the Architectural Review Board. Thereafter, appeals regarding the same property from the Planning Commission and the Architectural Review Board are to be taken simultaneously to the Village Council (see § 151.021(E) and Appendix E).

(2000 Code, § 151.026) (Ord. O-4-96, passed 3-25-1996; Ord. O-5-98, passed 1-12-1998; Ord. O-11-14, passed 3-24-2014)

Said §151.025 of the Mariemont Code of Ordinances is hereby amended to read as follows:

§ 151.025 POWERS AND DUTIES OF THE ARCHITECTURAL REVIEW BOARD.

(A) *Architectural Review Board.*

(1) (a) The Architectural Review Board shall consist of seven members, the Mayor of the Village and one Council member only, and five members appointed by the Mayor and confirmed by Village Council. All appointments shall be for a period of two years each. Vacancies shall be filled within 60 days for the remainder of unexpired terms in the same manner as original appointments and confirmations. The Mayor may not serve as chairperson of the Architectural Review Board. Moreover, neither the Mayor nor the Council member shall be allowed to vote on any appeal that may be brought to a decision of the Architectural Review Board. The Board shall include at least one registered architect and others with interest or special expertise in the historic preservation disciplines. At least one member shall be the owner of property within the Historic District. All members shall be residents of the village. Members shall be encouraged to attend an educational session relating to historic issues at least once a year. Any member of the Board shall be subject to removal for cause in the manner provided by the statutes of the state. In the case of temporary absence or disability of any member, a member may be appointed and confirmed in the manner above provided to serve during the temporary absence or disability. No member of the Board shall participate in the review of any work of which he or she, any partner or professional associate is the author, or in which he, she, or they may have any direct or indirect financial interest.

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

(2) There shall be at least four meetings a year. All meetings shall be public in conformance with requirements of R.C. § 121.22. The Village Fiscal Officer shall cause to be posted in the prescribed locations in the village a public notice of meetings (see § 151.021(E)(2)(a)2.).

(3) In exercising its duties, the Architectural Review Board shall adopt such general rules and regulations relating to its procedure as it may deem necessary, including designation of a member who shall preside in the absence of the Chairperson, and a member or members who shall prepare the certificate of appropriateness, the meeting minutes, and the annual report.

(4) Concise minutes and records shall be kept as to all official acts of the Board. A written annual report of the Board's activities, cases, decisions, and qualifications of members shall be kept on file and available for public inspection.

(B) *Board as the Historic Preservation Committee.* The Architectural Review Board shall be the Historic Preservation Commission of the municipality and shall have the following powers and duties:

(1) In conjunction with the Village Preservation Foundation and the State Historic Preservation Office, to conduct a continuing survey of cultural resources in the community. To make recommendations for designation of local historic districts, landmarks, and historic sites to the Village Council according to § 151.075(I);

(2) In conjunction with the Village Preservation Foundation, to advise Village Council regarding the protection of the village's cultural resources;

(3) In conjunction with the Village Preservation Foundation and other historic and archaeological experts, to review and facilitate all proposed National Register nominations for properties within the village;

(4) In conjunction with the Village Preservation Foundation, to work toward the continuing education of village citizens regarding historic preservation issues;

(5) To establish and use "standards for review" (see § 151.075(H)) for the conservation of designated local historic districts, landmarks, and historic sites in decisions on requests for permits for alterations, demolitions, or additions to listed landmarks and historic sites within historic district(s), whether ownership is private or public;

(6) To maintain a detailed map of the Historic District(s) and a detailed list of all historic sites and landmarks structures in the village at the Col. Donald L. Shanks Municipal Building and make it available for public inspection;

(7) To review and approve or deny applications for all landmark structures, historic sites and districts, including signage, for certificate of appropriateness based on the regulations of §§ 151.021(E) and 151.075 for landmark structures or structures within a historic district within the village. In considering a request for a certificate of appropriateness, the Architectural Review Board shall follow the design requirements in § 151.075(H) and ensure compliance with the district requirements in §§ 151.060 through 151.065 and any other guidelines adopted by the Village Council. The Architectural Review Board shall decide all landmark structure, historic site, and historic district applications by resolution (except initial signage approval, see § 151.021(E)(2)(c)). The Board shall, on the adoption of any resolution, date and record it, and forthwith mail or deliver a copy of that decision to the applicant. A denial of a certificate of appropriateness application may be appealed to the Village Council (see division (C) below, and also § 151.021(E)(2)); and

(8) (a) To review and approve or deny applications sent from the Building Commissioner and the Architectural Review Board Chairperson for all signage for landmark structures, historic sites, and historic districts for certificate of appropriateness based on the regulations of §§ 151.021(E) and 151.075 for landmark structures or structures within a historic district within the village.

(b) In considering a signage request for a certificate of appropriateness, the Architectural Review Board shall follow the design requirements in § 151.075(H) and ensure compliance with the district requirements in §§ 151.060 through 151.065 and any other guidelines adopted by the Village Council. The Architectural Review Board shall decide all signage applications by resolution. The Board shall, on the adoption of any resolution, date and record it, and forthwith mail or deliver a copy of that decision to the applicant. A denial of a certificate of appropriateness signage application may be appealed to the Village Council (see division (C) below and § 151.021(E)(2) and Appendix E)).

(C) *Appeal procedures.*

(1) Any person, firm, or corporation or any officer, department, board, or agency of the village who has been aggrieved by any decision of the Architectural Review Board involving an application for a certificate of appropriateness may appeal such decision to Council by filing notice of intent to appeal with the Village Fiscal Officer within ten days from the date of receipt of the decision, setting forth the facts of the case. No decision of the Architectural Review Board shall be reversed or modified by Council unless a majority of the eligible Council members would concur. The Council member who sits on the Architectural Review Board may not have a vote as an Appeal Board member. Moreover, the Mayor shall not have a vote, nor shall the Mayor be the tie-breaker for any vote by Council that would so require.

(2) An appeal regarding any section of this chapter other than § 151.075 shall be brought to the Planning Commission after the decision from the Architectural Review Board. Thereafter, appeals regarding the same property from the Planning Commission and the Architectural Review Board are to be taken simultaneously to the Village Council (see § 151.021(E) and Appendix E). (2000 Code, § 151.026) (Ord. O-4-96, passed 3-25-1996; Ord. O-5-98, passed 1-12-1998; Ord. O-11-14, passed 3-24-2014)

SECTION II. That this Ordinance shall be an emergency measure necessary for the immediate preservation of the public peace, health and safety of the Village of Mariemont. This emergency measure is necessary in order to avoid any further confusion and inconsistencies relative to the decisions of the Architectural Review Board.

Passed: October 26, 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 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 J. Borgerding, Fiscal Officer

VILLAGE OF MARIEMONT, OHIO

ORDINANCE NO. O-____-20

ORDINANCE AMENDING CHAPTER 31.077 OF THE MARIEMONT CODE OF ORDINANCES
REGARDING BUILDING COMMISSIONER

WHEREAS, the Rules and Law Committee has met to discuss certain changes that it believes need to be made to the Mariemont Code of Ordinances regarding the Building Commissioner.

WHEREAS, it was determined that requiring the Building Commissioner be a resident of the Village of Mariemont limits the Village's ability to pick a person who may be more qualified for the position; and

WHEREAS, it was also determined that the appointment of the Building Commissioner should be for a two-year term; and

WHEREAS, Council for the Village of Mariemont believes it is in the best interest of the Village to amend 31.077 Building Commissioner of the Mariemont Code of Ordinances to reflect said changes.

**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. §31.077 Building Commissioner which reads as follows:

§ 31.077 BUILDING COMMISSIONER.

(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.

Shall be amended to read as follows:

§ 31.077 BUILDING COMMISSIONER.

(A) The Mayor shall appoint a Building Commissioner, subject to confirmation of Council. The Building Commissioner shall be subject to removal at any time by the Mayor. Appointment shall be for a two-year period.

SECTION II. In all other respects, all other provisions of §31.077 of the Mariemont Code of Ordinances shall remain unchanged and in full force and effect.

SECTION III. This Ordinance shall take effect at the earliest date allowed by law.

Passed: November 232020.

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 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 24th day of November 2020.

Anthony J. Borgerding, Fiscal Officer

VILLAGE OF MARIEMONT, OHIO

ORDINANCE NO. O-____-20

TO AMEND MARIEMONT CODE CHAPTER 79, SCHEDULE I(B)(1), NO PARKING OF THE MARIEMONT CODE OF ORDINANCES TO UPDATE CURRENT REQUIREMENTS FOR PARKING ON WOOSTER PIKE

WHEREAS, the Rules and Law Committee has met to discuss certain changes that it believes need to be made to Chapter 79, Schedule I (B)(1), No Parking to address how parking in these certain areas are currently being handled.

WHEREAS, Council for the Village of Mariemont agrees it is in the best interest of the Village that said changes are made and therefore adopt same.

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. Mariemont Code or Ordinances '79, Schedule I(B)(1), No Parking, which currently reads as follows:

CHAPTER 79 PARKING SCHEDULES

SCHEDULE I. NO PARKING.

(B) (1) No person shall park at the following locations:

Street	Between	Side	Ord. No.	Date
Wooster Pike	Bank Place and a distance of 20 feet 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	

Shall be amended to read as follows:

CHAPTER 79 PARKING SCHEDULES

SCHEDULE I. NO PARKING.

(B) (1) No person shall park at the following locations:

Street	Between	Side	Ord. No.	Date
Wooster Pike	Miami Avenue and a distance of 20 feet 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 parking lot	North	O-26-60	

SECTION II. In all other respects, Chapter 79 of the Mariemont Code of Ordinances shall remain unchanged and in full force and effect.

SECTION III. This Ordinance shall go into effect at the earliest date allowed by law.

Passed: November 23, 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 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 24th day of November 2020.

Anthony Borgerding, Fiscal Officer

VILLAGE OF MARIEMONT, OHIO

ORDINANCE NO. O-____-20

ORDINANCE AMENDING CHAPTER 32.13(S) RULE 19 OF
THE MARIEMONT CODE OF ORDINANCES

WHEREAS, the Rules and Law Committee has met to discuss certain changes that it believes need to be made to the Mariemont Code of Ordinances.

WHEREAS, it was determined that Council should have some input into which committees a matter would be assigned to and any proposed change of assignment from one committee to another; and

WHEREAS, it was also determined that in the event the Village would create any special committees or commission that Council should be the ultimate approval authority of same and;

WHEREAS, Council for the Village of Mariemont believes it is in the best interest of the Village to amend the Mariemont Code of Ordinances §32.13 Rules of Council (S) Rule 19 to reflect said changes.

**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. §32.13 Rules of Council (S) Rule 19 which reads as follows:

§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.

Shall be amended to read as follows:

§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.

(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.**

SECTION II. In all other respects, §32 of the Mariemont Code of Ordinances shall remain unchanged and in full force and effect.

SECTION III. This Ordinance shall take effect at the earliest date allowed by law.

Passed: November 23, 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 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 24th day of November 2020.

Anthony J. Borgerding, Fiscal Officer

VILLAGE OF MARIEMONT, OHIO

ORDINANCE NO. O-____-20

ORDINANCE AMENDING SECTION 32.13 RULES OF COUNCIL (Z) RULE 25 OF THE
MARIEMONT CODE OF ORDINANCES

WHEREAS, the Rules and Law Committee has met to discuss certain changes that it believes need to be made to §32.13 Rules of Council (Z) Rule 25 of the Mariemont Code of Ordinances.

WHEREAS, it was determined by Council for the Village of Mariemont that when a motion is made and seconded, the writing of the motion can occur during the meeting or be presented at a following meeting at the discretion of the person making the motion.

WHEREAS, Council for the Village of Mariemont believes it is in the best interest of the Village to amend §32.13 Rules of Council (Z) Rule 25 of the Mariemont Code of Ordinances to reflect said change.

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. §32.13 Rules of Council (Z) Rule 25 which reads as follows:

§ 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.

Shall be amended to read as follows:

§ 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. **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.**

SECTION II. In all other respects, §32.13 of the Mariemont Code of Ordinances shall remain unchanged and in full force and effect.

SECTION III. This Ordinance shall take effect at the earliest date allowed by law.

Passed: November 23 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 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 24th day of November 2020.

Anthony J. Borgerding, Fiscal Officer

VILLAGE OF MARIEMONT, OHIO

ORDINANCE NO. O-____-20

ORDINANCE REMOVING CHAPTER 31.078 FROM OF THE MARIEMONT CODE OF ORDINANCES REGARDING DOG AND CAT WARDENS

WHEREAS, the Rules and Law Committee has met to discuss certain changes that it believes need to be made to the Mariemont Code of Ordinances.

WHEREAS, it was determined there is a current code section 31.078 regarding a Dog and Cat Warden which is outdated and is not required by the Ohio Revised Code; and

WHEREAS, Council for the Village of Mariemont believes it is in the best interest of the Village to remove Section 31.078 from the Mariemont Code of Ordinances.

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. Section 31.078 Dog and Cat Warden is deleted in its entirety.

SECTION II. In all other respects, §31 of the Mariemont Code of Ordinances shall remain unchanged and in full force and effect.

SECTION III. This Ordinance shall take effect at the earliest date allowed by law.

Passed: November 23, 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 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 24th day of November 2020.

Anthony J. Borgerding, Fiscal Officer

VILLAGE OF MARIEMONT, OHIO

ORDINANCE NO. O-____-20

ORDINANCE AMENDING CHAPTER 90.01(A)(1)(b) OF THE MARIEMONT CODE OF ORDINANCES REGARDING DOGS OR OTHER ANIMALS RUNNING AT LARGE; DANGEROUS OR VICIOUS DOGS

WHEREAS, the Rules and Law Committee has met to discuss certain changes that it believes need to be made to the Mariemont Code of Ordinances regarding the animals running at large; and

WHEREAS, the current code states that dogs are permitted in the Tot Lot area of Dogwood Park if they are under positive leash control; and

WHEREAS, a law was passed that restricts dogs from entering the Tot Lot area of Dogwood Park and signs have been posted at the Tot Lot indicating said ban; and

WHEREAS, Council for the Village of Mariemont believes it is in the best interest of the Village to amend 90.01(A)(1)(b) of the Mariemont Code of Ordinances to reflect the restriction of dogs from the Tot Lot Areas of Dogwood Park.

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. §90.01(A)(1)(b) which reads as follows:

§ 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.

Shall be amended to read as follows:

§ 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 Dale Park; provided, that the dogs must be under positive leash control at all times in the sports field area of Dogwood Park and the practice field by Dale Park during sporting activities.

SECTION II. In all other respects, §90 of the Mariemont Code of Ordinances shall remain unchanged and in full force and effect.

SECTION III. This Ordinance shall take effect at the earliest date allowed by law.

Passed: November 23, 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 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 24th day of November 2020.

Anthony J. Borgerding, Fiscal Officer

VILLAGE OF MARIEMONT, OHIO

ORDINANCE NO. O-____-20

ORDINANCE AMENDING SECTION 32.13 RULES OF COUNCIL (GG) RULE 33 OF THE
MARIEMONT CODE OF ORDINANCES

WHEREAS, the Rules and Law Committee has met to discuss certain changes that it believes need to be made to §32.13 Rules of Council (GG) Rule 33 of the Mariemont Code of Ordinances.

WHEREAS, although the Code of Ordinances states that Council shall follow Robert's Rule of Order, the current section on what constitutes a majority is not consistent with Robert's Rule of Order; and

WHEREAS, it is necessary to amend said code to be consistent with Robert's Rule of Order.

WHEREAS, Council for the Village of Mariemont believes it is in the best interest of the Village to amend §32.13 Rules of Council (GG) Rule 33 of the Mariemont Code of Ordinances to reflect said changes.

**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. §32.13 Rules of Council (GG) Rule 33 which reads as follows:

§ 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.

Shall be amended to read as follows:

§ 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, **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.

SECTION II. In all other respects, §32.13 of the Mariemont Code of Ordinances shall remain unchanged and in full force and effect.

SECTION III. This Ordinance shall take effect at the earliest date allowed by law.

Passed November 23, 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 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 24th day of November 2020.

Anthony J. Borgerding, Fiscal Officer

VILLAGE OF MARIEMONT, OHIO

ORDINANCE NO. O-____-20

REPEALING NO. O-14-16 OF THE MARIEMONT CODE OF ORDINANCES

WHEREAS, the Rules and Law Committee for the Village of Mariemont has reviewed the Mariemont Code of Ordinances relative to certain laws and ordinances that may not be constitutional, and;

WHEREAS, the Rules and Law Committee, based in part on the opinion of the Village Solicitor, has determined that Ordinance No. O-14-16, passed July 18, 2016, is likely unconstitutional; and;

WHEREAS, Council for the Village of Mariemont wishes to delete Ordinance No. O-14-16 until such time as a comprehensive ordinance relative to planning and zoning and building tear-down is created.

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. Ordinance No. O-14-16, enacted July 18, 2016, is hereby deleted and repealed in its entirety.

SECTION III. This Ordinance shall go into effect at the earliest date allowed by law.

Passed: November 23, 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 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 24th day of November 2020.

Anthony Borgerding, Fiscal Officer

VILLAGE OF MARIEMONT, OHIO

ORDINANCE NO. 0-____-20

ORDINANCE AMENDING SECTION 91.36 OF THE MARIEMONT CODE OF ORDINANCES

WHEREAS, the Rules and Law Committee has met to discuss certain changes that it believes need to be made to the Mariemont Code of Ordinances regarding the use of grills on balconies; and

WHEREAS, the Assistant Fire Chief for the Village of Mariemont advised of changes to the Ohio State Fire Code that he felt should be implemented within the Village of Mariemont; and

WHEREAS, Council believes that it is the best interest of the Village to amend Section 91.36 of the Mariemont Code of Ordinances, Violations of State Fire Code Prohibited, to reflect the changes.

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. Section 91.36 of the Mariemont Code of Ordinances which currently reads as follows:

§ 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

Shall be amended as follows:

§ 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, town homes, 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, unless the grill is permanently installed with a natural gas line and the unit is equipped with a sprinkler system. In addition, the balcony must have a mounted fire extinguisher.

(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 fire pits of any kind are permitted on the balconies or porches of multi-unit structures. Outdoor fire pits are permitted on first floor patios, provided said fire pits are at least ten (10) feet away from the premises.

(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

SECTION II. In all other respects, Section 91.36 of the Mariemont Code of Ordinances shall remain unchanged and in full force and effect.

SECTION III. This Ordinance shall go into effect at the earliest date allowed by law.

Passed: November 23, 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 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 24th day of November 2020.

Anthony J. Borgerding, Fiscal Officer

VILLAGE OF MARIEMONT

ORDINANCE NO. O- ___-20

TO AMEND SECTION 151.126 (A)(6) OF THE MARIEMONT CODE OF ORDINANCES,
SIGNS WITHIN RESIDENTIAL DISTRICT

WHEREAS, the Rules and Law Committee of Council has met to discuss certain changes that it believes need to be made to Section 151.126 (A)(6) of the Mariemont Code of Ordinances to clarify setbacks from the street for temporary yard signs.

WHEREAS, the Council for the Village of Mariemont agrees it is in the best interest of the Village that said changes are made and therefore adopt same.

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

SECTION I. That current §151.026(A)(6) of the Mariemont Code of Ordinances which reads as follows:

§ 151.126 SIGNS WITHIN RESIDENTIAL DISTRICTS.

(A) Permitted signs. Within any residential district as designated on the building zone map, only the following signs shall be permitted subject to the provisions of this chapter:

(1) Traffic or other municipal signs pertaining to the health, welfare, and safety of the village; highway signs erected by or at the direction of the state, including legal notices, danger signs, emergency signs, and non-advertising signs, when approved by the Mayor;

(2) One non-illuminated or "front-lit" "name plaque sign", not exceeding one square foot in area, shall be permitted for each single-family dwelling. Name plaque signs shall not be placed nearer to a street lot line than 15 feet;

(3) Signs and "bulletin boards" pertaining to public or semipublic recreational or educational uses permitted in the residential districts. These signs or bulletin boards shall not exceed 12 square feet in area and shall be erected only on the premises of the use to which the sign refers. No more than one sign or bulletin board may be erected for each premises. Bulletin board signs shall not be placed nearer to a street lot line than 15 feet;

(4) Name of building or date of erection, fabricated of incombustible material and built into the walls of a building. Name of building shall not exceed six square feet in areas and shall not be placed nearer to a street lot line than 20 feet;

(5) Memorial signs, plaques, and tablets, when approved by the Council;

(6) Temporary signs not intended for permanent use, subject to requirements specified in § 151.131;

(7) Hospital, or a nursing, rest or convalescent home located within residential district may have one identification sign and additional "incidental" signs in order to denote entrances and exits. Incidental signs shall not exceed four square feet in area and shall not be placed nearer to a property line than 25 feet;

(8) "Professional signs" for home occupations as permitted by § 151.060(A)(7). Not more than one such sign shall be permitted for each premises and each sign shall not exceed two square feet in area. These signs shall be "wall signs" or lettered on the glass surface of a window or door. The top of the sign shall not be higher than the top of the front door; and

(9) Temporary signs made of lightweight wood or cardboard, or of wire frame and plastic, denoting political cause or candidate not over six square feet in area. Such signs 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 Mayor for a location other than that required under normal conditions.

(B) Prohibited signs. All other signs, announcements, declarations, demonstrations, displays, or insignia, other than those specified in division (A) above, shall be prohibited, including those designated in § 151.127(B). (2000 Code, § 151.126) (Ord. O-4-96, passed 3-25-1996; Ord. O-20-00, passed 12-20-2000; Ord. O-12-06, passed 12-26-2006; Ord. O-3-08, passed 2-25-2008) Penalty, see § 151.999

Shall be amended to read as follows:

§ 151.126 SIGNS WITHIN RESIDENTIAL DISTRICTS.

(A) Permitted signs. Within any residential district as designated on the building zone map, only the following signs shall be permitted subject to the provisions of this chapter:

(1) Traffic or other municipal signs pertaining to the health, welfare, and safety of the village; highway signs erected by or at the direction of the state, including legal notices, danger signs, emergency signs, and non-advertising signs, when approved by the Mayor;

(2) One non-illuminated or "front-lit" "name plaque sign", not exceeding one square foot in area, shall be permitted for each single-family dwelling. Name plaque signs shall not be placed nearer to a street lot line than 15 feet;

(3) Signs and "bulletin boards" pertaining to public or semipublic recreational or educational uses permitted in the residential districts. These signs or bulletin boards shall not exceed 12 square feet in area and shall be erected only on the premises of the use to which the sign refers. No more than one sign or bulletin board may be erected for each premises. Bulletin board signs shall not be placed nearer to a street lot line than 15 feet;

(4) Name of building or date of erection, fabricated of incombustible material and built into the walls of a building. Name of building shall not exceed six square feet in areas and shall not be placed nearer to a street lot line than 20 feet;

(5) Memorial signs, plaques, and tablets, when approved by the Council;

(6) **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 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 the Chief of Police for a location other than that required under normal conditions as long as it does not create a safety issue.**

(7) Hospital, or a nursing, rest or convalescent home located within residential district may have one identification sign and additional "incidental" signs in order to denote entrances and exits. Incidental signs shall not exceed four square feet in area and shall not be placed nearer to a property line than 25 feet;

(8) "Professional signs" for home occupations as permitted by § 151.060(A)(7). Not more than one such sign shall be permitted for each premises and each sign shall not exceed two square feet in area. These signs shall be "wall signs" or lettered on the glass surface of a window or door. The top of the sign shall not be higher than the top of the front door; and

(9) Temporary signs made of lightweight wood or cardboard, or of wire frame and plastic, denoting political cause or candidate not over six square feet in area. Such signs 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 Mayor for a location other than that required under normal conditions.

(B) Prohibited signs. All other signs, announcements, declarations, demonstrations, displays, or insignia, other than those specified in division (A) above, shall be prohibited, including those designated in § 151.127(B). (2000 Code, § 151.126) (Ord. O-4-96, passed 3-25-1996; Ord. O-20-00, passed 12-20-2000; Ord. O-12-06, passed 12-26-2006; Ord. O-3-08, passed 2-25-2008) Penalty, see § 151.999

SECTION II. That in all other respects Section 151.126 of the Mariemont Code of Ordinances shall remain in full force and effect.

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

Passed: November 23, 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 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 24th day of November 2020.

Anthony J. Borgerding, Fiscal Officer

VILLAGE OF MARIEMONT, OHIO

ORDINANCE NO. O-____-20

TO AMEND SECTION 70.30 OF THE MARIEMONT CODE OF ORDINANCES
REGARDING OBEYING TRAFFIC-CONTROL DEVICES

WHEREAS, the Rules and Law Committee was asked to review the Mariemont Code of Ordinances to make certain that it complies with the Ohio Manual of Uniform Traffic Control Devices ("OMUTCD"); and

WHEREAS, the Village of Mariemont is a statutory Village and, as such, is required to follow the OMUTCD;
and

WHEREAS, questions have arisen in the past as to whether or not the Village has, in fact, followed the OMUTCD; and

WHEREAS, Council wishes to make certain that in the future the Village will, in fact, follow the OMUTCD.

**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 Section 70.30 of the Mariemont Code of Ordinances, Obeying Traffic-Control Devices which now reads as follows:

§ 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.

(R.C. § 4511.12(A))

(B) (1) Except as provided in division (C) below, any operator of a commercial motor vehicle, upon approaching a scale location established for the purpose of determining the weight of the vehicle and its load, shall comply with any traffic-control device or the order of a peace officer directing the vehicle to proceed to be weighed or otherwise inspected.

(2) Any operator of a commercial motor vehicle, upon bypassing a scale location in accordance with division (C) below, shall comply with an order of a peace officer to stop the vehicle to verify the use and operation of an electronic clearance device.

(C) Any operator of a commercial motor vehicle that is equipped with an electronic clearance device authorized by the Superintendent of the State Highway Patrol under R.C. § 4549.081 may bypass a scale location, regardless of the instruction of a traffic-control device to enter the scale facility, if either of the following apply:

(1) The in-cab transponder displays a green light or other affirmative visual signal and also sounds an affirmative audible signal;

(2) Any other criterion established by the Superintendent of the State Highway Patrol is met.

(D) Any peace officer may order the operator of a commercial motor vehicle that bypasses a scale location to stop the vehicle to verify the use and operation of an electronic clearance device.

(E) As used in this section, COMMERCIAL MOTOR VEHICLE means any combination of vehicles with a gross vehicle weight rating or an actual gross vehicle weight of more than 10,000 pounds if the vehicle is used in interstate

or intrastate commerce to transport property and also means any vehicle that is transporting hazardous materials for which placarding is required pursuant to 49 C.F.R. pts. 100 through 180.
(R.C. § 4511.121(A) through (C), (E))

(F) No person shall use an electronic clearance device if the device or its use is not in compliance with rules of the Superintendent of the State Highway Patrol.
(R.C. § 4549.081(B))

(G) (1) Except as otherwise provided in this division, whoever violates division (A) above is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates division (A) above is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates division (A) above is guilty of a misdemeanor of the third degree.
(R.C. § 4511.12(B))

(2) Whoever violates division (B) above is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to a violation of division (B) above or any substantially equivalent state law or municipal ordinance, whoever violates division (B) above is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to two or more violations of division (B) above or any substantially equivalent state law or municipal ordinance, whoever violates division (B) above is guilty of a misdemeanor of the third degree.
(R.C. § 4511.121(D))

(3) Whoever violates division (F) above is guilty of a misdemeanor of the fourth degree on a first offense and a misdemeanor of the third degree on each subsequent offense.

(R.C. § 4549.081(C))

(2000 Code, § 70.20)

Statutory reference:

Placing traffic-control devices on state highways, permission required, see R.C. § 4511.10

Traffic-control devices to conform to the state manual and specifications, see R.C. § 4511.11

Uniform system of traffic-control devices, see R.C. § 4511.09

Shall be amended to read as follows:

§ 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 any 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 insure 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.

(R.C. § 4511.12(A))

(B) (1) Except as provided in division (C) below, any operator of a commercial motor vehicle, upon approaching a scale location established for the purpose of determining the weight of the vehicle and its load, shall comply with any traffic-control device or the order of a peace officer directing the vehicle to proceed to be weighed or otherwise inspected.

(2) Any operator of a commercial motor vehicle, upon bypassing a scale location in accordance with division (C) below, shall comply with an order of a peace officer to stop the vehicle to verify the use and operation of an electronic clearance device.

(C) Any operator of a commercial motor vehicle that is equipped with an electronic clearance device authorized by the Superintendent of the State Highway Patrol under R.C. § 4549.081 may bypass a scale location, regardless of the instruction of a traffic-control device to enter the scale facility, if either of the following apply:

(1) The in-cab transponder displays a green light or other affirmative visual signal and also sounds an affirmative audible signal;

(2) Any other criterion established by the Superintendent of the State Highway Patrol is met.

(D) Any peace officer may order the operator of a commercial motor vehicle that bypasses a scale location to stop the vehicle to verify the use and operation of an electronic clearance device.

(E) As used in this section, COMMERCIAL MOTOR VEHICLE means any combination of vehicles with a gross vehicle weight rating or an actual gross vehicle weight of more than 10,000 pounds if the vehicle is used in interstate or intrastate commerce to transport property and also means any vehicle that is transporting hazardous materials for which placarding is required pursuant to 49 C.F.R. pts. 100 through 180.

(R.C. § 4511.121(A) through (C), (E))

(F) No person shall use an electronic clearance device if the device or its use is not in compliance with rules of the Superintendent of the State Highway Patrol.

(R.C. § 4549.081(B))

(G) (1) Except as otherwise provided in this division, whoever violates division (A) above is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates division (A) above is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates division (A) above is guilty of a misdemeanor of the third degree. (R.C. § 4511.12(B))

(2) Whoever violates division (B) above is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to a violation of division (B) above or any substantially equivalent state law or municipal ordinance, whoever violates division (B) above is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to two or more violations of division (B) above or any substantially equivalent state law or municipal ordinance, whoever violates division (B) above is guilty of a misdemeanor of the third degree. (R.C. § 4511.12(D))

(3) Whoever violates division (F) above is guilty of a misdemeanor of the fourth degree on a first offense and a misdemeanor of the third degree on each subsequent offense.

(R.C. § 4549.081(C))

(2000 Code, § 70.20)

Statutory reference:

Placing traffic-control devices on state highways, permission required, see R.C. § 4511.10

Traffic-control devices to conform to the state manual and specifications, see R.C. § 4511.11

Uniform system of traffic-control devices, see R.C. § 4511.09

SECTION II. In all other respects, §70 of the Mariemont Code of Ordinances shall remain unchanged and in full force and effect.

SECTION III. That this Ordinance shall go into effect at the earliest date allowed by law.

Passed: November 23, 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 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 24th day of November 2020.

Anthony Borgerding, Fiscal Officer.