

# City of Cincinnati

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## An Ordinance No. \_\_\_\_\_

- 2021

**MODIFYING** Title VII, “General Regulations,” of the Cincinnati Municipal Code by **AMENDING** the provisions of Section 722-3, “Construction Permit,” of Chapter 722, “Management and Control of the Use of the City Right-of-Way,” and by **ORDAINING** new Section 723-79, “Streetcar Power-Down and Shutdown Work Permit,” and Section 723-99-J, “Violation of Section 723-79,” of Chapter 723, “Streets and Sidewalks, Use Regulations” to establish a clear and effective framework for ensuring the safety, security, and welfare of persons in the right of way whose work requires prolonged access to the streetcar system, including work that requires the shutdown of the electrified overhead catenary system; and further **MODIFYING** Title XV, “Code Compliance and Hearings,” of the Cincinnati Municipal Code by **AMENDING** the provisions of Section 1501-3, “Class A Civil Offenses,” and Section 1501-9, “Class D Civil Offenses,” to specify the penalties associated with violations of the framework established herein.

WHEREAS, Cincinnati Municipal Code (“CMC”) Chapter 723, “Streets and Sidewalks, Use Regulations,” requires persons to first obtain a permit when they seek access to the City right-of-way to perform certain types of work; and

WHEREAS, these permits are the primary tool by which the City ensures that work performed in the right of way is coordinated and safely performed; and

WHEREAS, performing work in the streetcar right-of-way in particular presents elevated concerns for the safety, security, and welfare of the persons performing the work, other persons who may be impacted by the work, and the City’s infrastructure and assets; and

WHEREAS, City Council accordingly wishes to establish certain supplemental conditions for obtaining a permit to work in proximity to the streetcar right-of-way in order to provide for the safety, security, and welfare of persons and the City’s infrastructure and assets, and further wishes to establish the penalties associated with the failure to satisfy those conditions; and

WHEREAS, additionally, CMC Section 722-3(d)(xi) currently requires a provider seeking to do work in the right of way along the Cincinnati Bell Connector route to obtain authorization from SORTA when performing the work; and

WHEREAS, the Council wishes to modify this section to recognize the transition of the management of the Cincinnati Bell Connector from SORTA to the City; now, therefore,

BE IT ORDAINED by the Council of the City of Cincinnati, State of Ohio:

Section 1. That Section 722-3, “Construction Permit,” of the Cincinnati Municipal Code is hereby amended as follows:

**Sec. 722-3. - Construction Permit.**

(a) *Permit Required for Construction in Right of Way.* The director is charged with regulating the right of way for the construction, maintenance, and repair of streets, sidewalks, sidewalk spaces, alleys, public ways and places, and no provider, whether an abutting owner or not, shall do or permit to be done by his agents or employees without having first obtained from the director a permit under Chapter 718, Chapter 719, Chapter 721, Chapter 722, or Chapter 723, any of the following acts:

- (i) Make any excavation or dig into any street, sidewalk, sidewalk space, alley, or other portion of the right of way;
- (ii) Remove, break or make holes in any pavement of the roadway or sidewalk or in any sidewalk space or any curb;
- (iii) Construct, build, erect, or place any thing or structure in, upon, over, or under a street, sidewalk, sidewalk space, alley, or public way or place;
- (iv) Make an improvement to the surface of any street, sidewalk, sidewalk space, alley, or public way or place by grading or paving, or construct or repair a sidewalk or curb, or make any other improvement thereto; ~~or~~
- (v) Occupy or obstruct the right-of-way for purposes of accessing or maintaining facilities; or
- (vi) Engage in construction or demolition activities, make any street opening, place any obstruction, or otherwise perform work within, or in proximity to, the streetcar right-of-way that requires the power-down or shutdown of the streetcar transit system or that otherwise materially interferes with the operation of the streetcar transit system.

(b) *Repealed.*

(c) *Other Approvals, Permits, and Agreements.* 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 city’s reasonable request, shall provide copies of such documents to the city. Further, permission to occupy the right-of-way 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 city.

**(d) *Conditions for Providers Occupying the Right of Way.*** In order to provide for the safe and effective management of the right of way by the city and in addition to the requirements imposed by the Cincinnati municipal code, providers shall:

- (i)** Prioritize efficient, and least obtrusive use of right of way, consistent with safety, and to minimize traffic and other disruptions including street cuts; and
- (ii)** Participate in the department of transportation and engineering's construction coordination system using Cincinnati Area Geographic Information System ("CAGIS") for joint planning, construction, and advance notification of the provider's capital improvement and capital replacement projects located within the right of way. On a continuing basis, providers shall identify all capital work planned within three years, enter the planned work into the CAGIS-based construction coordination system, and make updates as necessary to maintain accuracy of the construction coordination system. Noncompliance with construction coordination requirements shall be grounds for denial of a construction permit; and
- (iii)** Upon written notice, and at the direction of the director, promptly remove or rearrange facilities as necessary for public safety; and
- (iv)** Perform all work, construction, maintenance or removal of facilities within the right of way, including tree trimming, in accordance with good engineering, construction and arboricultural practice 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 right of way, or facilities located therein, to a condition to be determined by the director 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 city and other providers, all in accordance with all applicable provisions of this chapter and the Cincinnati municipal code; and
- (v)** 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 or other federal, state and/or local regulations; and
- (vi)** Comply with CMC Section 743-19, "Protection of Public Trees," which prohibits providers from performing work within 15 feet of a public tree without first obtaining a permit for such work from the urban forestry division of the Cincinnati parks' department; and

- (vii) Warrant that all worker facilities, conditions and procedures that are used during construction, installation, operation and maintenance of the provider's facilities within the right of way shall comply with all applicable standards of the federal occupational safety and health administration; and
- (viii) Use its best efforts to cooperate with the city in any emergencies involving the right of way; and
- (ix) Weather permitting, remove all graffiti within 30 calendar days of notice. Provider shall remove any and all graffiti on any of the provider's facilities located within the city right-of-way. Should the provider fail to do so, the city may take action to remove the graffiti and bill the provider for the cost thereof; and
- (x) ~~Providers shall~~ field identify their ~~its~~ facilities in the right of way in accordance with the requirements set forth in the Ohio revised code and the Cincinnati municipal code, including, but not limited to, CMC Section 722-5(a); and
- (xi) When applicable, obtain a separate streetcar power-down or shutdown permit pursuant to CMC Section 723-79. Permittee shall have valid authorization from the streetcar transit system ~~SORTA~~ where when required ~~under the code~~ for work occurring within, or in proximity to, the right of way of ~~along~~ a streetcar route.

Section 2. That the existing Section 722-3, "Construction Permit," of the Cincinnati Municipal Code is hereby repealed.

Section 3. That new Section 723-79, "Streetcar Power-Down and Shutdown Work Permit," of Chapter 723, "Streets and Sidewalks, Use Regulations," of the Cincinnati Municipal Code is hereby ordained to read as follows:

**Sec. 723-79 – Streetcar Power-Down and Shutdown Work Permit.**

- (a) No person shall engage in construction or demolition activities, make any street opening, place any obstruction, or otherwise perform work within, or in proximity to, the streetcar right-of-way that requires the power-down or shutdown of the streetcar transit system or that otherwise materially interferes with the operation of the streetcar transit system without first obtaining a streetcar power-down permit or shutdown permit, as applicable, from the director of transportation and engineering.

- (b) In furtherance of his or her responsibility for management of the city’s multi-modal transportation system, the director of transportation and engineering is authorized to establish rules and regulations for the issuance of streetcar power-down permits and streetcar shutdown permits, including the establishment of permit fees, which rules and regulations shall be effective upon approval by the city manager.
- (c) The rules and regulations established pursuant to subsection (b) shall promote the safe and orderly conduct of work in the streetcar right-of-way, shall promote the safety and welfare of workers, transit operators, city staff, right-of-way users, and neighboring residents and business, and shall protect and secure the streetcar right-of-way and the streetcar system, including the electric overhead catenary system.
- (d) A streetcar power-down permit or shutdown permit issued under this Section 723-79 shall be conditioned on the permittee obtaining track access authorization from the department of transportation and engineering and streetcar transit system in accordance with streetcar transit system rules and regulations. The track access authorization requirements ensure permittee coordination with the streetcar operator with regard to timing of the work, safety training, and other requirements protective of the public safety.

Section 4. That new Section 723-99-J, “Violation of Section 723-79,” of Chapter 723, “Streets and Sidewalks, Use Regulations,” of the Cincinnati Municipal Code is hereby ordained to read as follows:

**Sec. 723-99-J. - Violation of Section 723-79.**

Whoever violates the provisions of Section 723-79 commits a Class D Civil Offense as set forth in Cincinnati Municipal Code § 1501-9(b) and is liable for the civil fine specified in § 1501-99 for a Class D Civil Offense.

Section 5. That Section 1501-3, “Class A Civil Offenses,” of the Cincinnati Municipal Code is hereby amended as follows:

A person who violates a standard of conduct set forth in a section or chapter of the Cincinnati Municipal Code listed below is liable for the civil fine specified in § 1501-99 for a Class A Civil Offense. If a person has previously been found to have violated the same provision of the Cincinnati Municipal Code within one year that person may be charged as a second offender and on being found to have committed a second or subsequent offense is liable for the civil fine specified in § 1501-99 for the first violation of a Class B Civil Offense.

a.	§ 511-1	Advertising on Vehicles.
b.	§ 511-33	Front Yard Parking.

c.	§ 514-11	Parking Restrictions.
d.	§ 604-17	Unapproved Bird, Fowl or Animal Feeding.
e.	§ 701-19	Order to Muzzle Dogs.
f.	§ 701-27	Loud Dog.
g.	§ 701-30	Dog Excrement Removal.
h.	§ 721-63	Gutter Crossings.
i.	§ 721-65	Obstructing Gutters.
j.	§ 721-93	Temporary Driveway Permits.
k.	§ 723-5	Encumbering Sidewalks.
l.	§ 723-9	Regulations for Wholesale Produce Areas.
m.	§ 723-11	Retail Sidewalk Display.
n.	§ 723-12	Free Standing Business or Identification Signs (Sandwich Boards) on Sidewalk.
o.	§ 723-13	Temporary Encumbrances.
p.	§ 723-17	U.S. Mail Boxes.
q.	§ 723-23	Ground and Debris on Street or Sidewalk.
r.	§ 723-29	Sprinkling Roadways in Congested District.
s.	§ 723-31	Sprinkling Before Sweeping.
t.	§ 723-37	Unloading Heavy Material on Streets or Sidewalks.
u.	§ 723-39	Inscribing Names or Advertising Matter on Sidewalks Unlawful.
v.	§ 723-57	Removal of Snow.
w.	§ 723-59	Ice on Sidewalks.
x.	§ 723-65	Displaying House Numbers.
y.	§ 723-69	Removing House Numbers.
<del>z.</del>	<del>§ 723-79</del>	<del>Fire Kettle Permit.</del>
<del>z.aa.</del>	§ 729-7	Setting Out Containers.
<del>aa.bb.</del>	§ 729-15	Containers to be Removed from Collection Points.
<del>bb.ee.</del>	§ 729-37	Street Waste Receptacles.
<del>cc.dd.</del>	§ 729-87(a)	Recyclable Materials - Taking Recyclables.
<del>dd.ee.</del>	§ 729-87(b)	Recyclable Materials - Destruction of Container.
<del>ee.ff.</del>	§ 729-87(c)	Recyclable Materials - Relocation of Container.
<del>ff. gg.</del>	§ 729-87(d)	Recyclable Materials - Failure to Remove Container from Collection Point.

<del>gg. hh.</del>	§ 729-88	Yard Waste Materials.
<del>hh. ii.</del>	§ 729-89(c)	Disposal of Unacceptable Waste.
<del>ii. jj.</del>	§ 911-17	Posting Bills on Streets.
<del>jj. kk.</del>	§ 1123-11(b)	Vacant Foreclosed Property Registration - Failure to maintain accurate information.
<del>kk. ll.</del>	§ 1123-11(c)	Vacant Foreclosed Property Registration - Failure to maintain the property in accordance with the maintenance provisions.
<del>ll. mm.</del>	§ 701-2(B)(1)	Leash Required; Responsibility for Injury (Leash).
<del>mm. nn.</del>	§ 856-25(d)	Failure to Provide Registration Number on a Listing Advertising a Short Term Rental.
<del>nn. oo.</del>	§ 874.07(b)	Failure to Maintain Accurate Residential Rental Property Registration.
<del>oo. pp.</del>	§ 1601-57	Enforcement of Emergency Orders.
<del>pp. qq.</del>	§ 1601-59	Enforcement of Health Orders.

Section 6. That the existing Section 1501-3, "Class A Civil Offenses," of the Cincinnati Municipal Code is hereby repealed.

Section 7. That Section 1501-9, "Class D Civil Offenses," of the Cincinnati Municipal Code is hereby amended as follows:

A person who violates a standard of conduct set forth in a provision of the Cincinnati Municipal Code listed below is liable for the civil fine specified in § 1501-99 for a Class D Civil Offense. If the provision is listed under paragraph (a) below, the otherwise applicable civil fine is reduced by 50% if the person charged shows in accordance with § 1501-15 that the violation has been corrected. If a person has previously been found to have violated the same provision of the Cincinnati Municipal Code within one year that person may be charged as a second offender and on being found to have committed a second or subsequent offense is liable for the civil fine for the subsequent offense provided below, which fine is specified in § 1501-99 and is not subject to reduction for correction of the violation.

- (a) Class D Civil Offenses With Civil Fines Subject to 50% Reduction for Correction of Violation:

			Civil Fine for Subsequent Offense
(1)	§ 720-13	Private Facilities	Class E
(2)	§ 720-45	Notice of Violations	Class E

			Civil Fine for Subsequent Offense
(3)	§ 720-69	Notice to Correct Drainage	Class E
(4)	Chapter 855	Rooming Houses	Class D
(5)	Chapter 895	Outdoor Advertising Signs	Class D
(6)	Chapter 1101	Administration, Cincinnati Building Code	Class E
(7)	Chapter 1106	General and Specialty Contractors	Class E
(8)	Chapter 1107	Elevator and Conveyer Equipment	Class E
(9)	Chapter 1117	Housing Code	Class E
(10)	Chapter 1119	Building Hazard Abatement Code	Class E
(11)	Chapter 1127	General Inspection Programs Code	Class E
(12)	Title XIV	Zoning Code	Class E
(13)	§ 1201-21	Maintenance	Class D
(14)	§ 1201-33	Evacuation	Class D
(15)	§ 1201-35	Spills and Leaks	Class D
(16)	Chapter 1235	Detectors, Early Fire Warning Systems	Class D
(17)	§ 1123-11(a)	Vacant Foreclosed Property Registration - Failure to register a vacant, foreclosed property.	Class E
(18)	§ 874-07(a)	Failure to Register Residential Rental Property	Class D

(b) Class D Civil Offenses With Civil Fines Not Subject to 50% Reduction for Correction of Violation:

			Civil Fine for Subsequent Offense
(1)	§ 718-25	Secret Street Uses	Class E



			Civil Fine for Subsequent Offense
(2)	§ 721-59	Taking Material from Streets	Class E
(3)	§ 729-71(c)(2)	Personal Property Left Abandoned on Streets and Sidewalks - 4 or more items	Class D
(4)	§ 761-14	Eviction or Retaliation by Landlord	Class E
(5)	Chapter 891	Home Improvement	Class E
(6)	§ 1201-47	Failure to Comply with Orders	Class D
(7)	§ 1219-21	Causing Fire Through Negligence	Class D
(8)	Chapter 1251	Fire Starting Apparatus	Class D
(9)	§ 759-4	Use of a Motor Vehicle to Facilitate a Drug Related Crime	Class D
(10)	Chapter 722	Management and Control of the Use of the City Right-of-Way	Class E
(11)	Chapter 730	Commercial Waste Franchises	
(12)	§ 856-25(c)	Violation of Limitations on Operators or Operation of Short Term Rentals	Class D
(13)	§ 1125-17(1)	Failure to Register a Vacant Building	Class E
(14)	§ 1601-57	Enforcement of Emergency Orders	Class D
(15)	§ 1601-59	Enforcement of Health Orders	Class D
(16)	<u>§ 723-79</u>	<u>Failure to Obtain Streetcar Power-Down or Shutdown Work Permit</u>	<u>Class D</u>

Section 8. That the existing Section 1501-9, “Class D Civil Offenses,” of the Cincinnati Municipal Code is hereby repealed.

Section 9. That the City Manager and the proper City officials are authorized to take all necessary and proper actions to carry out the provisions of this ordinance, including by updating applicable rules and regulations, fee schedules, and policies and procedures for the Cincinnati Bell Connector and the streetcar transit system in accordance with the modifications to the Cincinnati Municipal Code provided for herein.

Section 10. That the Finance Director is authorized to accept all funds received pursuant to this Ordinance and deposit such funds into the Streetcar Operations Fund 455 account no. 0455x8361 "Streetcar Power-Down and Shutdown Permit."

Section 11. That this ordinance shall take effect and be in force from and after the earliest time allowed by law.

Passed: \_\_\_\_\_, 2021

\_\_\_\_\_  
John Cranley, Mayor

Attest: \_\_\_\_\_  
Clerk

\_\_\_\_\_  
Additions indicated by underline; Deletions indicated by strikethrough.