

TITLE 7

PUBLIC WAYS AND PROPERTY

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CHAPTER 1 STREETS AND PUBLIC PROPERTY

SECTION:

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7-1-1: CITY DATUM:

There is established and fixed a base or datum plane in and for the City for determining, measuring and describing elevations and grades in the City, which base or datum plane shall be known under the style and name of "Genoa City Datum". The Genoa City Datum shall be and the same is established as an imaginary horizontal plane one hundred feet (100') below a copper bolt in the northeast corner of the east door step of the Genoa City Hall situated on lot 4, block 2 Merriman's Addition to the Village (now City) of Genoa, DeKalb County, Illinois. (1978 Code §3.13)

7-1-2: AUTHORITY TO REGULATE:

No street, alley, public ground or place shall be altered, repaired, disturbed or improved except under authority, control and regulation of the Council. (1978 Code §5.02)

7-1-3: WIDTH OF STREETS AND ALLEYS:

All streets hereafter laid out, platted or opened within the City shall, unless otherwise provided by the City Council, be sixty feet (60') wide and all alleys hereafter laid out, platted or opened in the City shall, unless otherwise provided by the Council, be not less than eighteen feet (18') wide. (1978 Code §5.01)

7-1-4: DISTURBING MONUMENTS:

No person shall change or remove any stake, post, stone, marker or monument placed or set to designate or show the corner or line of any line or lot, street, alley or public place or the grade of any street, alley, sidewalk or public place unless lawfully authorized so to do. (1978 Code §5.04)

7-1-5: OPENING IN STREETS:

A. Permit and Bond:

1. **Permit Required:** No street, alley, public ground or place shall be disturbed or opened nor shall any material, excavation or thing be placed or kept therein unless a permit so to do is first obtained from the Superintendent of Streets.
2. **Bond Requirements:** Before any such permit is issued, the person desiring the same shall file a good and sufficient bond, payable to the City, with surety approved by the City, conditioned that such person shall faithfully observe the ordinances of the City and shall make and repair such openings and place and shall save and keep harmless the City from all costs arising in any manner or way from the granting of such permit. The bond shall be in an amount determined by the Superintendent of Streets to be sufficient for the purposes described above, but in every case, the costs to be covered are to be calculated at a minimum rate of one hundred dollars (\$100.00) per linear foot for blacktop and gravel surfaces and two hundred fifty dollars (\$250.00) per linear foot for cement surfaces measured from the back side of the surface forward. When such work is done by the City, no bond shall be required.
3. **Cash Deposit:** The posting of a surety bond shall constitute compliance with this Section; except that cash must be deposited in the amount of two hundred dollars (\$200.00) if no pavement is involved and five hundred dollars (\$500.00) if the excavation is in a paved area, to cover the initial cost to the City of restoring the surface if the applicant fails to restore the surface. Upon satisfactory restoration, the balance of the deposit is to be refunded.
4. **Plumbers Exempt:** So long as the provisions of the ordinances concerning plumbers and the doing of the work by them shall remain in force and are complied with by any plumber, such plumber need not in addition comply with the provisions hereof.

B. Method of Work: It shall be the duty of every person disturbing or opening any street, alley, public ground or place or placing or keeping any material, excavation or thing therein to do the same in such a manner as to be safe to persons and property. Such person shall do work under the direction and to the satisfaction of the Superintendent of Streets. (1978 Code §5.03)

7-1-6: TREE BORDERS:

- A. Planting Grass or Trees Permitted: The owner of any property adjacent to any street, alley, public ground or place may, upon first receiving permission from the Director of Public Works so to do, maintain a grass plat or tree bank between the sidewalk and curb or curb line under the supervision of Director of Public Works and plant trees therein. All such trees shall be planted nine feet (9') from the lot line and shall be at least twenty feet (20') apart. All such trees shall, at all times, be properly attended to and kept trimmed by such adjacent owner, and the boughs, branches or parts thereof shall not be permitted to be nearer than ten feet (10') above any street or sidewalk.
- B. Protection of Tree Borders: No person shall injure, cut or break any tree, shrub or plant in any street, alley, public ground or place in the City. Whenever any person or lawful authority seeks to place wires, conduits, poles or other similar things in any such place, he must first have a permit in writing from the Director of Public Works to disturb, cut, break or tear any such tree, shrub or plant interfering with any such wires, conduits, poles or other similar things in any such place. This subsection shall not apply to the City in the maintenance of any street or place. (1978 Code §5.05; Ord. 2017-15, 04-18-2017)

7-1-7: ENCROACHMENTS AND OBSTRUCTIONS:

- A. Definitions: When used in this Section, the following words and terms shall have the meanings ascribed to them as follows:

ENCROACHMENT: Any building, fence, sign or any other structure or object of any kind (with the exception of utilities and public road signs) which is placed, located or maintained in, on, under or over any portion of the roadway right of way.

ROADWAY RIGHT OF WAY: Those areas existing or acquired by dedication or by fee simple for highway purposes; also, the areas acquired by temporary easement during the time the easement is in effect.

- B. Encroachment Prohibited: It shall be unlawful for any person to erect or cause to be erected, to retain or cause to be retained an encroachment as defined in subsection A of this Section within the limits of the roadway right of way. (1978 Code §5.09)
- C. Nuisance Provisions: Every encroachment upon or obstruction in any street, alley, public ground or place is declared to be a nuisance, and any taking, holding, keeping or using of any such street, alley, public ground or place for a private purpose or use is declared to be a nuisance. Every such nuisance shall be abated and removed by the Mayor or the Council or any person under their direction and supervision. No person shall cause, suffer or permit any such nuisance. (1978 Code §5.09)

7-1-8: USE BY VENDORS:

Any licensed vendor of merchandise desiring to make a temporary stopping place in any street to sell or vend such merchandise or advertise the same shall first obtain a permit from the Mayor to do so, and if the public interest shall in no way be disturbed thereby, the Mayor may grant permission to such licensed vendor to occupy the particular portion of the street designated for a period not exceeding three (3) hours at any one time. If, after the giving of such permission, the licensee violates any ordinance of the City or the public interests are shown to be disturbed, the Mayor shall have the power to revoke any such permission so granted. (1978 Code §5.08)

7-1-9: PROHIBITED ACTS AND CONDITIONS:

A. Refuse in Streets:

1. It shall be unlawful for any person to throw, place or deposit any foreign matter in any street, alley, gutter, sidewalk, drain, public ground or place in the City.
2. Any person violating this subsection shall promptly remove such foreign matter. (1978 Code §5.06)

B. Ball Playing: It shall be unlawful for any person to play ball in or upon any street in the City. (1978 Code §5.07)

7-1-10: PENALTY:

Any person who violates this section and has been issued a citation signed by a City Law Enforcement Officer of this section shall be fined in accordance with Section 1-4-1. (Ordinance 2011-29, 9-20-11)

7-1-11: Regarding Private Use of Public Ways

- A. After consultation with other City Departments, and giving due consideration to the expressed wishes of city residents, the Chief of Police may issue a block party permit under the following conditions;
- B. The block party shall be for the benefit of all persons, and their guests, who reside upon property which abuts the section of the street to be closed, and not just for the private benefit of a specific resident;
- C. The section of the street to be closed may extend only one block (i.e. Main to Railroad Street);
- D. The event may not begin before ten o'clock (10:00) A.M. and must end before ten o'clock (10:00) P.M. on the same day;
- E. The organizer(s) of the event must notify in writing all residents who reside on property which abuts the street upon which the block party is intended to be held. The notice shall be distributed to a resident of each property (or left at the property in a place where it is likely to be found by a resident) at least fourteen (14) days before the date of the block party. The notice shall set forth the procedures for making objections to the Chief of Police;
- F. The organizer(s) of the event shall be responsible for placing and removing barricades to close the street properly according to the procedures established by the Public Works Director;
- G. The organizer(s) of the event shall supply the City of Genoa with an insurance policy in an amount specified by the City's insurance and present proof of insurance coverage a minimum of 5 (five) days prior to the event;
- H. No alcohol may be served on the public way;
- I. Permits will not be issued on a main thoroughfare or State Route in the City of Genoa designated snow routes; and
- J. No more than one block permit will be issued for any particular street each year. No block party will be permitted during the annual festival known as Genoa Days. (Ord 2014-13, 5-6-2014)

CHAPTER 2 SIDEWALKS

SECTION:

7-2-1: Authority to Control and Regulate

7-2-2: Sidewalk Construction Requirements and Specifications

7-2-3: Sidewalk Construction Costs

7-2-4: Sidewalk Vaults

7-2-5: Private Use; Basement Entrances

7-2-6: Encroachments

7-2-7: Dangerous Sidewalks

7-2-8: Prohibited Acts and Conditions

7-2-9: Penalty

7-2-1: AUTHORITY TO CONTROL AND REGULATE:

All sidewalks, crossings, spaces beneath sidewalks and areaways shall at all times be subject to the control and regulation of the City. (1978 Code §5.22)

7-2-2: SIDEWALK CONSTRUCTION REQUIREMENTS AND SPECIFICATIONS:

- A. Supervision: All sidewalks and crosswalks hereafter constructed in any street, alley, public ground or place shall be constructed under the supervision of, and the material and workmanship thereof shall be subject to the approval of the Director of Public Works.
- B. Compliance with Standards: The City may remove any sidewalk constructed or laid at a different grade or level than that provided for or constructed of a material or in a manner contrary to the provisions of this Chapter or the directions of the Director of Public Works. In all cases where the building adjacent to any sidewalk is constructed to the lot line, such sidewalk shall be constructed to such building and be flush therewith. (1978 Code §5.10; amd. 1993 Code)
- C. Width: Sidewalks shall comply with the standards set forth in Title 11, otherwise known as the Unified Development Ordinance.
- D. Grades: Whenever any grade is established in any street, alley, public place or ground, no person shall lay, build or construct any such sidewalk therein except by

conformity therewith. Such sidewalk shall be so constructed that the outer edge of the top surface thereof at the curb line shall coincide with such established grade. In all cases where there is no established grade, any such sidewalk shall be constructed in accordance with the direction of and subject to the approval of the Director of Public Works. (1978 Code §5.13)

- E. Sidewalk Ramps: Where sidewalks are constructed or replaced at street intersections and other crosswalks adjacent to barrier, mountable or roll-type curb, a sidewalk ramp for the handicapped shall be provided in accordance with the requirements outlined by the Director of Public Works. (1978 Code §5.10.05; Ord. 2017-15, 04-18-2017)

7-2-3: SIDEWALK CONSTRUCTION COSTS:

- A. New Sidewalks; Sidewalk Extensions: Where there is no existing sidewalk, the City will pay twenty five percent (25%) per square foot. The Director of Public Works shall determine the dollar amount for reimbursement, not to exceed twenty five percent (25%) of the City-bid document. There will be no payment for sidewalks when it is the developer's responsibility to provide sidewalks or where workmanship is not done to the City's satisfaction or specifications. Authorization for extension of sidewalk or installation of sidewalks where none exist must receive approval of the City Council.

- B. Sidewalk Replacement And Repair:

- 1. Where any sidewalk located within the City is in need of repair, and it is determined by the City that it is advisable to replace the sidewalk, the City will pay to the owner of the property fifty percent (50%) of the total cost. The Director of Public Works shall determine the dollar amount for reimbursement, not to exceed fifty percent (50%) of the City-bid document. Said payment shall be a portion of the total cost for sidewalk removal, any fill that may be needed to bring the subgrade to the proper elevation and the placing of the new sidewalk. The new sidewalk shall be constructed in accordance with the standards established in this Chapter.

The City will not pay any reimbursement for sidewalk installation or replacement in the following cases:

- a. Where it is the developer's responsibility to provide the sidewalk.
 - b. Where damage to the sidewalk is caused primarily by the acts of property owners or their agents or employees adjoining the premises abutting the sidewalks.
 - c. Where the sidewalks are less than five (5) years old.

- d. Where the sidewalks have been damaged by the installation of underground utilities.
 - e. Where foundation walls or footings need to be built or repaired in the process of replacing or constructing the new sidewalk, the City will reimburse based only on the surface area of the sidewalk as measured and computed by the City.
 - f. Where the workmanship is not done to the City's satisfaction or specifications.
 - g. Where the sidewalk is replaced for solely cosmetic reasons.
2. There is hereby established a sidewalk program to provide for the construction, repair and replacement of sidewalks in the City. The dollar amount allocated for the sidewalk program shall be approved by the City Council and is subject to the adoption of the City's annual budget. The director of Public Works shall distribute to the City Council members a list of recommendations for sidewalk projects to be completed in the fiscal year. The list so provided shall give priority to sidewalks necessary to abate dangerous conditions, sidewalks in disrepair, and new sidewalks where necessary to provide for the safety of pedestrians. The Director of Public Works shall not expend funds allocated for the sidewalk program until the City Council has approved the sidewalk program projects for the fiscal year (Ord 2015-19, 10-6-2015).

The annual budget for the city as approved by ordinance may include provisions for the payment of the expenses of the sidewalk program from revenue derived from the collection of the utility tax. (Ord. 2006-02, 02-07-2006)

The Aldermen in each of the City's wards shall agree between themselves on an annual priority list of projects eligible for funding under this sidewalk repair program. Repair projects within each ward shall be started and completed in the order specified on the priority list, unless both Aldermen agree to amend the list. (Ord. 98-37-2-r, 6-2-1998)

7-2-4: SIDEWALK VAULTS:

Permit To Use Vaults: No person shall occupy or use any open space in any street under any sidewalk in the City unless permitted so to do by the Council. Such permit shall specify the purpose for which the space is to be used, the extent thereof and the materials and manner of construction, and the permit shall be issued only on condition that the person receiving the same shall build, maintain and keep in repair the walls of such space and the sidewalk extending over the same in such manner so as to conform to the ordinances of the City at all times. Every person receiving such permit and building or constructing any such space thereunder shall take such permit subject to the

conditions that the same may be revoked at any time upon giving thirty (30) days' notice to the owner or person in possession of the premises abutting thereon or lying opposite the same. If the owner or such person cannot be found in the City, such notice may be posted on the property thirty (30) days before the date of such revocation. (1978 Code §5.16)

A. Access To Vault From Sidewalk:

1. Authorization Required: Any person desiring to have an opening through a sidewalk into such space thereunder for the purpose of passing coal or other articles shall first obtain permission to make and maintain any such hole from the Council. No permit shall be granted for more than one hole in each ten (10) lineal feet of sidewalk, nor for a larger hole than one and one-half feet (1 1/2') in diameter. Such permit shall be issued and accepted only upon the condition that such hole or opening shall be constructed and covered with a suitable iron cover so that the strength of the sidewalk including the hole shall not be impaired nor fall below the strength herein fixed for such sidewalk to carry a load of one hundred fifty (150) pounds per square foot, and on the further condition that the owner of the abutting land or land opposite such sidewalk shall maintain the hole cover in good condition and shall be liable for all damages or injuries occasioned to persons or property in consequence of the making and maintenance of the hole and covering. It shall be unlawful for any person to uncover such hole or suffer or permit the same to be uncovered, open or exposed except at such times when open for use, and then only when a person is in attendance, or the hole is so protected as not to endanger persons or property.
2. Prohibited Uses: No boilers, steam shaft, furnace or steam pipe shall be constructed or located for use or used in any such space nor shall any explosive or inflammable substance or oil be stored or kept therein nor shall any aperture or ventilating hole be placed therein at the sides unless protected in such manner as to be safe to the public and subject to the approval of the Mayor. (1978 Code §5.17)

7-2-5: PRIVATE USE; BASEMENT ENTRANCES:

No part of any public sidewalk shall be taken or held for any private use. Entrances to areas and basements may be constructed from such sidewalk in such a manner; provided, however, that the open space in front of the same at the sidewalk line shall lead directly to the stairway, and that part of it not leading directly to the stairway shall be protected by a suitable iron railing, and the whole maintained at all times in such a manner as to be safe to persons using such sidewalk. (1978 Code §5.15, 5.22)

7-2-6: ENCROACHMENTS:

- A. Gates: All gates opening upon any sidewalk shall be so swung and constructed that no part thereof shall obstruct such sidewalk or swing or be over the sidewalk. (1978 Code §5.18)
- B. Awnings: Awnings of cloth or other light or pliable material, when securely attached to the building and properly supported by iron or other metallic fastenings and supports, may, for temporary purposes, be hung over any sidewalk but only in such a manner that the lowest part thereof shall be at least seven feet (7') above such sidewalk and shall not extend more than ten feet (10') into the public way. Such awnings shall have no posts, supports or any other part thereof upon any sidewalk. (1978 Code §5.19)
- C. Trees and Shrubs :
1. It shall be unlawful for any person to suffer the branches or parts of any tree, shrub or vine hanging over any sidewalk to be nearer than ten feet (10') above the sidewalk surface.
 2. It shall be unlawful for any person to grow corn, sunflowers or any grain over two feet (2') high within thirty feet (30') from the sidewalk line. (1978 Code §5.20)

7-2-7: DANGEROUS SIDEWALKS:

- A. It shall be unlawful to maintain sidewalks in a dangerous condition in front of, adjacent to or upon any premises.
- B. Whenever the owner or occupant of any premises in the City is notified by the Public Works Director that the sidewalk in front of, adjacent to or upon said premises is dangerous, it shall be the duty of such owner or occupant to raise, lower or replace said sidewalk as specified by the Public Works Director so as to end said dangerous condition in the time prescribed by the Director ⁷⁴. (1978 Code §5.10.03)

7-2-8: PROHIBITED ACTS AND CONDITIONS:

Damaging or Obstructing Sidewalks : It shall be unlawful for any person to injure, break, deface or destroy any sidewalk in the City or to obstruct or encumber the same or store or place or keep thereon any merchandise or property that will prevent such sidewalk from being free and open at all times to public use and travel. (1978 Code §5.12)

A. Vehicles on Sidewalks: It shall be unlawful for any person to drive any motor vehicle upon or along any sidewalk . (1978 Code §5.14)

B. Sledding: No person shall ride or drive any sled or other similar thing for the purpose of coasting or coast upon any sidewalk. (1978 Code §5.21)

CHAPTER 3 RAILROADS

SECTION:

7-3-1: Grades at Crossings; Planking Required

7-3-2: Maintenance of Areas Adjacent to Tracks

7-3-3: Obstruction of Streets or Crossings

7-3-4: Requirements for Safety

7-3-5: Trespassing Prohibited

7-3-1: GRADES AT CROSSINGS; PLANKING REQUIRED:

Railroad companies shall raise or lower their railroad tracks lying within the limits of the City so as to conform to any grade which may, at any time, be established for any street, alley or highway by ordinance of the City Council. Where tracks run across or lengthwise of any street, alley or highway, they shall keep their railroad tracks on a level with the surface and keep such streets in good order so that such tracks may be crossed at any place in such street, alley or highway and where they cross any street, they shall keep the same planked between rails. (1978 Code §38.01)

7-3-2: MAINTENANCE OF AREAS ADJACENT TO TRACKS:

Railroad companies shall make and keep open and keep in repair ditches and side drains, sewers and culverts along and under their railroad tracks so that filthy, stagnant water cannot stand on their grounds or right of way and in such manner that the natural drainage of the adjacent property shall not be impeded. (1978 Code §38.01)

7-3-3: OBSTRUCTION OF STREETS OR CROSSINGS:

No railway company or employees shall cause or allow any locomotive engine, car or cars or train of cars to stop in or remain upon any street or railroad crossing within the City for a longer period than ten (10) minutes at any one time. Should any street or railroad crossing in the City be and remain occupied and obstructed, in whole or in part, by any train of railroad cars for and during the period of ten (10) minutes, it shall be the duty of the railroad company upon whose line of road such obstruction may occur, its agents or employees, on or before the expiration of said ten (10) minutes, when, from any cause, the entire train cannot be removed, to cause such cars as may be on or

near said crossing to be uncoupled and moved so as to leave the street entirely free and unobstructed. (1978 Code §38.02)

7-3-4: REQUIREMENTS FOR SAFETY:

A. Lights: Every locomotive engine, railroad car or train of cars running in the nighttime on any railroad track in the City shall have and keep, while so running, a brilliant and conspicuous light on the forward end of such locomotive engine, car or train of cars. If such engine or train is backing, it shall have a conspicuous light on the rear car or engine so as to show in the direction the car is moving. (1978 Code §38.03)

B. Bell: The bell of each locomotive engine shall be run continually while such engine is in motion within the City. (1978 Code §38.04)

7-3-5: TRESPASSING PROHIBITED:

No person shall get upon or cling to any railroad car or locomotive, whether in motion or standing still, or loiter in or about any premises of a railroad company unless in the performance of his legitimate business or duty. (1978 Code §38.05)

CHAPTER 4

TREES, SHRUBS AND OTHER PLANTS

SECTION:

- 7-4-1: Purpose**
- 7-4-2: Statement of Value**
- 7-4-3: Definitions**
- 7-4-4: Permits**
- 7-4-5: Regulations**
- 7-4-6: Public Nuisances**
- 7-4-7: Arborist License and Bond**
- 7-4-8: Interference with Director of Public Works**
- 7-4-9: Violation and Penalty**

7-4-1: PURPOSE:

The purpose of this section is to regulate trees and shrubs located on public property, ensure the protection and maintenance of existing trees, recognize trees as critical infrastructure for the city, and to promote the planting, preservation, maintenance, restoration and survival of desirable trees, shrubs and other plants within the City rights-of-way and on City owned property. Furthermore, this section shall promote the protection of residents from personal injury and/or property damage, and the protection of the City from property damage, caused or threatened by the improper planting, maintenance or removal of trees, shrubs or other plants located within or upon City rights-of-way or on other public property owned by the City. This Chapter will regulate public property trees but recognizes that trees on private property are part of the collective community resource.

7-4-2: STATEMENT OF VALUE:

Trees provide a wide range of benefits to the city. Healthy trees appreciate in value as they mature, unlike other components of the infrastructure that continually depreciate over time. Trees need sufficient soil, water, and air to survive. Protecting existing natural resources and planning for the establishment and care of new trees will enhance the economic and environmental health of the city.

It is recognized that trees are infrastructure and a capital asset (a significant, highly valuable property) for the community, and shall be managed and preserved as such. Trees provide the following services and benefits:

1. Trees absorb pollution from the air;
2. Trees absorb and sequester carbon dioxide;

3. Trees absorb and filter pollution from stormwater run-off;
4. Trees produce oxygen;
5. Trees reduce flooding;
6. Trees stabilize soils and reduce erosion;
7. Trees cool the surrounding area helping to reduce impacts due to heat islands;
8. Trees reduce energy consumption by shielding structures from harsh winds and sun;
9. Trees provide a buffer and screen against noise, light and pollution;
10. Trees improve property values;
11. Trees improve commercial district traffic and purchasing;
12. Areas with trees have lower crime rates;
13. Areas with trees have higher levels of community interaction;
14. Trees provide important habitat for birds and other wildlife; and
15. Trees protect and enhance our quality of life.

7-4-3: DEFINITIONS:

As used within this Chapter, the following terms shall have the meanings set forth in this Section:

ARBORICULTURAL SPECIFICATIONS AND STANDARDS OF PRACTICE FOR GENOA, ILLINOIS (hereinafter, "Arboricultural Specifications Manual"): A manual prepared by the Tree Board pursuant to Ordinance 868 containing regulations and standards for the planting, maintenance, and removal of trees, shrubs, and other plants upon City-owned property .

The Arboricultural Specifications Manual provides the requirements and standards that are derived from the Urban Forestry Plan and are used as City policy to regulate tree planting practices and tree maintenance for trees that are located on City property, i.e. parkway trees.

CITY-OWNED PROPERTY: Property within the City limits of Genoa, Illinois and: 1) owned by the City in fee simple absolute, or 2) implied or expressly dedicated to the public for present or future use for purposes of vehicular or pedestrian traffic, or for public easements.

DBH: Diameter breast height, measured at four and five-tenths feet (4.5') above ground.

LARGE TREES: Those trees attaining a height of forty five feet (45') or more.

MEDIUM TREES: Those trees attaining a height of thirty feet (30') to forty five feet (45').

PARK: All public parks having individual names.

PARKWAY: The area along a public street between the curb and the sidewalk or if there is no curb of sidewalk, the unpaved portion of the area between the property line and the paved portion of the street or alley.

PRINCIPAL THOROUGHFARE: Any street upon which trucks are not prohibited.

PROPERTY LINE: The outer edge of a street or highway.

PROPERTY OWNER: The record owner or contract purchaser of any parcel of land.

PUBLIC PLACES: All other grounds owned by the Municipality of Genoa, County of DeKalb, State of Illinois.

PUBLIC/PARKWAY TREES: All shade and ornamental trees now or hereafter growing on any street or any public areas where otherwise indicated.

RIGHTS-OF-WAY: The privilege of the immediate use of the roadway or other property, including the surface of and the space above or below any public street, road, place, public way or place, sidewalk, alley, boulevard, parkway, or drive.

SMALL TREES: Those attaining a height of twenty feet (20') to thirty feet (30').

STREET or HIGHWAY: The entire width of every public way or right of way when any part thereof is open to the use of the public, as a matter of right, for purposes of vehicular and pedestrian traffic.

TOPPING: The severe cutting back of limbs to stubs larger than three inches (3") in diameter within the tree's crown to such a degree so as to remove the normal canopy and disfigure the tree.

TREEBANK: That part of a street or highway, not covered by sidewalk or other paving, lying between the property line and that portion of the street or highway usually used for vehicular traffic. (Ord. 867, 7-12-94) (Ord 32, 10-18-11) (Ord 2011-32, 10-18-11)

7-4-4: PERMITS:

A. A Public Tree Protection permit is required for any building permit that involves the construction of a new building, structure, site improvements, and any type of remodeling, roofing, flat work, fencing, and paver brick work.

B. A Public Tree Planting, Removal and Pesticide Treatment permit is required for planting a tree(s), removal, and pesticide treatment to and parkway tree(s) located in the City right-of-ways.

C. New development shall include parkway trees as part of the public improvements required letter of credit.

1. A building permit fee is required to be paid by the applicant to pay the City's cost to install the number of trees required for each zoning lot. The cost per tree for the 2017-planting year cycle is \$300.00 and is subject to change based on availability of nursery stock, labor, and administrative fees (Ord. 2017-15, 04-18-2017).
2. The fee is required to be paid by the applicant before the building permit can be approved. The City will install the tree or trees subject to the approved occupancy permit and the seasonal tree planting schedule.
3. The spring planting schedule is from the 3rd week of April to the 1st week in June and the fall planting schedule is from the 1st week of September to the 3rd week of October. The City will make every effort to install the applicable tree or trees as indicated in paragraph C unless otherwise determined by the Director of Public Works.
4. Permit required: No person except the Director of Public Works or his designee or the regulated electrical utility and their authorized agents or contractors may plant, spray, remove, cut below ground or otherwise damage any tree on any street or City-owned property without first filing an application and procuring a permit from the Finance Office Manager or otherwise specified municipal authority. The person receiving the permit shall abide by the "Arboricultural Specifications Manual".

D. Application for permit: Application for permits must be made at the office of the Finance Office Manager.

1. An application must be signed by the applicant and submitted to the Director of Public Works detailing the location, number, size, and species of trees, shrubs, or other plants that will be affected by such acts, setting forth the purpose of such acts and the methods to be used and presenting any additional information that the Director of Public Works may find reasonably necessary; and
2. The applicant agrees to perform the work for which the permit is sought in accordance with the provisions of this Chapter, the Urban Forestry Plan and regulations and standards set forth in the "Arboricultural Specifications Manual"; and
3. The applicant certifies that he or she has read and understands those provisions of the Urban Forestry Plan, this Chapter and of the "Arboricultural Specifications Manual" which are pertinent to the work for which the permit is sought; and

4. If the work for which a permit is issued entails the felling of any tree or part thereof, located on private or public property, which, as a result of such felling reasonably may be expected to fall upon City owned property, and if such felling is done by other than the owner of the property on which such felling is done, then the applicant shall agree to indemnify and to hold the City harmless for all damages resulting from work conducted pursuant to the permit and shall deposit with the City Clerk a liability insurance policy in the amount of one hundred thousand dollars (\$100,000.00) per person/three hundred thousand dollars (\$300,000.00) per accident for bodily injury liability and fifty thousand dollars (\$50,000.00) aggregate for property damage liability, which policy shall name the City as an additional insured.

E. Standard of Issuance: The Finance Office Manager or designee shall issue the permit provided for herein within fourteen (14) days if, in the judgement of the Director of Public Works, the proposed work is desirable and the proposed method and workmanship thereof are of a satisfactory nature. Any permit granted shall contain a definite date of expiration, and the work shall be completed in the time allowed on the permit and in the manner as therein described. Any permit shall be void if its terms are violated.

F. Notice of Completion: Notice of completion shall be given within five (5) working days to the Director of Public Works for his inspection. (Ord 2011-32, 10-18-11)

7-4-5: REGULATIONS:

A. Improper Planting: Whenever any tree shall be planted or set out in conflict with the provisions of this Section, it shall be lawful for the Director of Public Works to remove or cause removal of the same, and the exact cost thereof shall be assessed to the owner as provided by law in the case of assessments.

B. Removal, Replanting, and Replacement:

1. Whenever it is necessary to remove a tree or trees from a Parkway or Right-of-ways in connection with the replacement of a sidewalk, or the paving or widening of the portion of a street or highway used for vehicular traffic, the Municipality shall replant such trees or replace them. Provided that conditions prevent planting on parkway or right-of-ways, this requirement will be satisfied if any equivalent number of trees as provided for in the arboricultural specifications are planted in an attractive manner on the adjoining property, or other public places, as conditions allow.

2. No person or property owner shall remove a tree from public places for the purpose of construction, or for any other reason, without first filing an application

and procuring a permit from the Finance Office and without replacing the removed tree or trees in accordance with the adopted arboricultural specifications. Such replacement shall meet the standards of size, species, and placement as provided for in a permit issued by the Finance Office. The person or property owner shall bear the cost of removal and replacement of all trees removed (Ord 2015-19, 10-6-2015).

3. All stumps of street and park trees shall be removed below the surface of the ground so that the top of the stump shall not project above the surface of the ground.

C. Obstruction; Trees Pruned:

1. Owner Responsibility: It shall be the duty of any person or persons owning or occupying real property bordering on any street upon which property there may be trees, to prune such trees in such manner that they will not obstruct or shade the street lights, obstruct the passage of pedestrians on sidewalks, obstruct vision of traffic signs, or obstruct view of any street or ally intersection. The minimum clearance of any overhanging portion thereof shall be eight feet (8') over sidewalks, and fourteen feet (14') over all streets. Except when a canopy to height ratio is appropriate, as determined by the City Arborist.
2. Notice to Prune: Should any person or persons owning real property bordering on any street fail to prune trees as hereinabove provided, the Director of Public Works shall order such person or persons, within ten (10) working days after receipt of written notice, to so prune such trees.
3. Order Required: The order required herein shall be served by mailing a copy of the order to the last known address of the property owner, by certified mail.
4. Failure to Comply: When a person to whom an order is directed shall fail to comply within the specified time, it shall be lawful for the Municipality to prune such trees, and the exact cost thereof shall be assessed to the owner as provided by law in the case of special assessments.

D. Abuse or Mutilation of Public Trees:

1. Unless specifically authorized by the Director of Public Works, no person shall intentionally damage, cut, carve, transplant, top, or remove any tree; attach any rope, wire, nails, advertising posters, or other contrivance to any tree; allow any gaseous liquid or solid substance which is harmful to such trees to come in contact with them; or set fire or permit any fire to burn when such fire or the heat thereof will injure any portion of any tree. Trees severely damaged by storms or other

obstructions, where pruning techniques other than topping are impractical, may be exempted from this Chapter by the determination of the Director of Public Works.

E. Protection of Trees:

1. All trees on any street or other publicly owned property near any excavation or construction of any building, structure, or street work, shall be guarded with a good substantial fence, frame, or box not less than four feet (4') high and eight feet (8') square, or at a distance in feet from the tree equal to the diameter of the trunk in inches breast diameter height, whichever is greater, and all vehicles, construction equipment, building materials, dirt, or other debris shall be kept outside the barrier.
2. No person shall excavate any ditches, tunnels, trenches, or lay any drive within a radius of ten feet (10') from any public tree without first obtaining a written permit from the Director of Public Works.

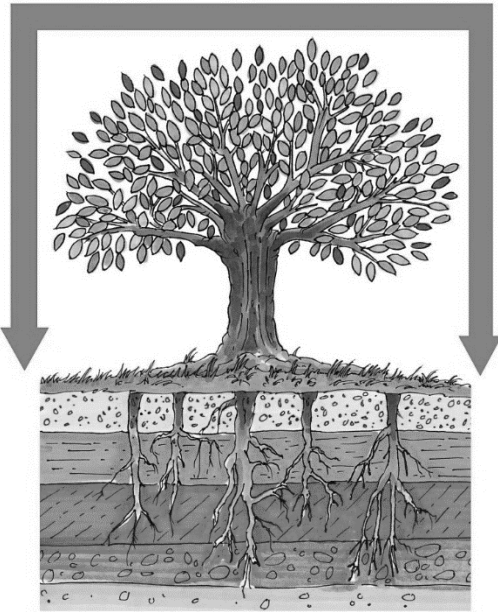
F. Public Utility Companies:

1. Public utility companies shall notify the Director of Public Works prior to pruning any tree located on City-owned property for the purpose of maintaining safe line clearance and shall carry out all such work in accordance with accepted arboricultural standards. If accepted arboricultural standards are not followed, the Director of Public Works will immediately file a formal complaint with the State utility regulatory agency.

G. Placing Materials on Public Property:

1. No person shall deposit, place, store, or maintain upon any public place of the Municipality, any stone, brick, sand, concrete or other materials which may impede the free passage of water, air, or fertilizer to the Critical Root Zone of any tree growing therein, except by written permit of the Director of Public Works.
(Ord. 867, 7-12-94)

Critical Root Zone



Critical Root Zone, also referred to as the Tree Protection Zone, is the area of roots that require the most protection and care. Multiply the diameter of the trunk by 1.5 to arrive at the proper radius for the critical root zone.

(Diameter = circumference X 3.14)

Circumference is measured at least 4 feet above the ground.

7-4-6: PUBLIC NUISANCES:

A. Definition: The following are hereby declared public nuisances under this Chapter:

1. Any dead or dying tree, shrub, or other plant, whether located on City-owned property or on private property;
2. Any otherwise healthy tree, shrub, or other plant, whether located on City-owned property or on private property which harbors insects or diseases which reasonably may be expected to injure or harm any tree, shrub, or other plant;
3. Any tree, shrub, or other plant or portion thereof whether located on City-owned property or on private property which by reason of location or condition constitutes an imminent danger to the health, safety, or welfare of the general public;
4. Any tree, shrub, or other plant or portion thereof whether located on City-owned property or on private property which obstructs the free passage of pedestrian or vehicular traffic or which obstructs a street light;
5. Any tree, shrub, or other plant or portion thereof whether located on City-owned property or on private property which dangerously obstructs the view in the "sight distance triangle" as such may be determined by the City Engineer or the Director of Public Works pursuant to this Chapter (Ord 2014-28, 12-2-2014).

B. Right to Inspect:

1. The City shall remove any tree or part thereof that has been determined by the Director Public Works to be in an unsafe condition or which by reason of its nature is injurious to sewers, electric lines, gas lines, water lines, or other public improvements, or is infested with any injurious fungus, insect, or other pest. The officers, agents, servants, and employees of the City have the authority to enter onto private property whereupon there is located a tree, shrub, or plant part that is suspected to be a public nuisance. (Ord 2011-32, 10-18-11)

C. Abatement: The following are the prescribed means of abating public nuisances under this Chapter:

1. Any public nuisance under this Chapter which is located on City-owned property shall be pruned, removed, or otherwise treated by the Director of Public Works in whatever fashion is required to cause the abatement of the nuisance within ten (10) days after its discovery;
2. Any public nuisance under this Chapter which is located on private-owned property shall be pruned, removed, or otherwise treated by the property owner or his/her agent in whatever fashion is required to cause the abatement of the nuisance. No property owner may be found guilty of violating this provision unless and until the following requirements of notice have been satisfied:
 - a. The Director of Public Works shall cause a written notice to be personally serviced or sent by registered mail to the person to whom was sent the tax bill for the general taxes for the last preceding year;
 - b. Such notice shall describe the kind of tree, shrub, or other plant or plant part which has been declared to be a public nuisance; its location on the property; the reason for declaring it a nuisance;
 - c. Such notice shall describe by legal description, or by street address, the premises;
 - d. Such notice shall state the actions that the property owner may undertake to abate the nuisance;
 - e. Such notice shall require the elimination of the nuisance no less than ten (10) days after the notice is delivered or sent to the person to whom was sent the tax bill for the general taxes for the last preceding year;
 - f. In the event that the nuisance is not abated by the date specified in the notice, the Director of Public Works is authorized to cause the abatement of said nuisance. The reasonable cost of such abatement shall be paid by the owner of the property, provided, however, the City may, at the discretion of the Director of Public Works, enter into a reimbursement agreement with the owner of the

property. The reimbursement agreement would allow the owner to pay for the abatement performed by the City or the City's contractor by the making not more than twelve (12) monthly payments due on the same date as the City's charges for water and wastewater services. If the owner fails to pay the costs of abatement when demanded by the City or as described in the reimbursement agreement, the City may file a lien against the property on which the nuisance was abated in the amount of the reasonable costs of the abatement (Ord 2014-28, 12-2-2014).

3. The Director of Public Works is empowered to cause the immediate abatement of any public nuisance provided that the nuisance is determined by the Director of Public Works to be an immediate threat to any person or property.
4. The Director of Public Works is hereby empowered to seek from any court of competent jurisdiction an order directing immediate abatement of any public nuisance.
5. This Section is enforceable under Title 4, Chapter 1 of City Code of the City of Genoa. (Ord. 867, 7-12-94) (Ord 2011-32, 10-18-11)

7-4-7: ARBORIST LICENSE AND BOND:

It shall be unlawful for any person to engage in the business or occupation of pruning, treating, or removing street or park trees within the City without first applying for and procuring a license. The license fee shall be twenty-five dollars (\$25.00) annually in advance; provided, however, that no license shall be required of any public service company including electric utilities and their agents or contractors or City employees doing such work in pursuit of their public service endeavors. Before any license shall be issued, each applicant shall first file evidence of possession of liability insurance in the minimum amounts of three hundred thousand dollars (\$300,000.00) for bodily injury and one hundred thousand dollars (\$100,000.00) property damage indemnifying the City or any person injured or damaged resulting from the pursuit of such endeavors as herein described. (Ord. 867, 7-12-94). Professional or contracted forestry services shall be overseen by at least one Certified Arborist to perform tree care including but not limited to tree trimming, pruning, removal, and plant health care operations.

7-4-8: AUTHORITY:

The Director of Public Works and/or their designee, shall have full authority and responsibility to plant, prune, maintain, and remove trees and woody plants growing in or upon all municipal streets, rights-of-ways, city parks, and other public property. This

shall include the removal of trees that may threaten electrical, telephone, gas, or any tree that is affected by fungus, insect, or other pest disease.

All City departments will coordinate as necessary with the Director and will provide services as required to ensure compliance with this Ordinance as it relates to streets, alleys, rights-of-way, drainage, easements, and other public properties not under direct jurisdiction of the Director.

The Director of Public Works and/or their designee shall possess a current and active arborist certification from the International Society of Arboriculture. No person shall unreasonably hinder, prevent, delay, or interfere with the Director of Public Works or his/her agents while engaged in the execution or enforcement of this Chapter. (Ord. 867, 7-12-94)

7-4-9: APPEALS, VIOLATION AND PENALTY:

1. Any person who violates this Chapter and has been issued a citation signed by a City Law Enforcement Officer of this section shall be fined in accordance with section 1-4-1. Where applicable, each day that a violation exists shall constitute a separate offense. The payment of a fine shall not relieve any violator of this Chapter from tree replacement requirements.
2. Any person aggrieved by a decision made by the Public Works Director's decision may appeal to the City of Genoa Tree Board within ten (10) business days after the date of the decision. The notice of appeal shall set forth concisely the decision and the reasons or grounds for the appeal. The City of Genoa Tree Board will issue a decision that affirms, modifies, or reverses the administrative decision made by the Director within ten (5) business days following the next regularly scheduled or Special Meeting called to order after the appeal's issuance. The decision of the City of Genoa Tree Board, shall be final and no petition for reconsideration shall be available.

CHAPTER 5 TELECOMMUNICATIONS INFRASTRUCTURE MAINTENANCE FEE

SECTION:

7-5-1: Definitions

7-5-2: Registration of Telecommunications Providers

7-5-3: Municipal Telecommunications Infrastructure Maintenance Fee

**7-5-4: Collection, Enforcement, and Administration of Telecommunications
Infrastructure Maintenance Fees**

7-5-5: Compliance with Other Laws

7-5-6: Existing Franchises and Licenses

7-5-7: Penalties

7-5-8: Enforcement

7-5-9: Severability

7-5-10: Conflict

7-5-11: Waiver and Fee Implementation

7-5-1: DEFINITIONS:

As used in this Chapter, the following terms shall have the following meanings:

GROSS CHARGES: The amount paid to a telecommunications retailer for the act or privilege of originating or receiving telecommunications within the City, and for all services rendered in connection therewith, valued in money whether paid in money or otherwise, including cash, credits, services, and property of every kind or nature, and shall be determined without any deduction on account of the cost of such telecommunications, the cost of the materials used, labor or service costs, or any other expense whatsoever. In case credit is extended, the amount thereof shall be included only as and when paid. "Gross charges" for private line service shall include charges imposed at each channel point within the City, charges for the channel mileage between each channel point within the City, and charges for that portion of the interstate interoffice channel provided within the City. However, "gross charges" shall not include:

- A. Any amounts added to a purchaser's bill because of a charge made under: 1) the fee imposed by this Chapter, 2) additional charges added to a purchaser's bill under section 9-221 or 9-222 of the Public Utilities Act, 3) amounts collected under 65 Illinois Compiled Statutes 5/8-11-17, 4) the tax imposed by the Telecommunications Excise Tax Act, 5) 911 surcharges, or 6) the tax imposed by section 4251 of the Internal Revenue Code;

- B. Charges for a sent collect telecommunication received outside the City;
- C. Charges for leased time on equipment or charges for the storage of data or information or subsequent retrieval or the processing of data or information intended to change its form or content. Such equipment includes, but is not limited to, the use of calculators, computers, data processing equipment, tabulating equipment, or accounting equipment and also includes the usage of computers under a time-sharing agreement;
- D. Charges for customer equipment, including such equipment that is leased or rented by the customer from any source, wherein such charges are disaggregated and separately identified from other charges;
- E. Charges to business enterprises certified under section 9-222.1 of the Public Utilities Act to the extent of such exemption and during the period of time specified by the City;
- F. Charges for telecommunications and all services and equipment provided in connection therewith between a parent corporation and its wholly owned subsidiaries or between wholly owned subsidiaries, and only to the extent that the charges between the parent corporation and wholly owned subsidiaries or between wholly owned subsidiaries represent expense allocation between the corporations and not the generation of profit other than a regulatory required profit for the corporation rendering such services;
- G. Bad debts ("bad debt" means any portion of a debt that is related to a sale at retail for which gross charges are not otherwise deductible or excludable that has become worthless or uncollectible, as determined under applicable Federal income tax standards; if the portion of the debt deemed to be bad is subsequently paid, the retailer shall report and pay the tax on that portion during the reporting period in which the payment is made);
- H. Charges paid by inserting coins in coin-operated telecommunications devices; or
- I. Charges for telecommunications and all services and equipment provided to the City.

PUBLIC RIGHT OF WAY: Any Municipal street, alley, water or public right of way dedicated or commonly used for utility purposes, including utility easements wherein the City has acquired the right and authority to locate or permit the location of utilities consistent with telecommunications facilities. "Public right of way" shall not include any real or personal City property that is not specifically described in the previous sentence and shall not include City buildings and other structures or improvements, regardless of whether they are situated in the public right of way.

RETAILER MAINTAINING A PLACE OF BUSINESS IN THIS STATE (Or Any Like Term): Means and includes any retailer having or maintaining within the State of Illinois, directly or by a subsidiary, an office, distribution facilities, transmission facilities, sales office, warehouse, or other place of business, or any agent or other representative operating within this State under the authority of the retailer or its subsidiary, irrespective of whether such place of business or agent or other representative is located here permanently or temporarily, or whether such retailer or subsidiary is licensed to do business in this State.

SALE OF TELECOMMUNICATIONS AT RETAIL: The transmitting, supplying, or furnishing of telecommunications and all services rendered in connection therewith for a consideration, other than between a parent corporation and its wholly owned subsidiaries or between wholly owned subsidiaries, when the gross charge made by one such corporation to another such corporation is not greater than the gross charge paid to the retailer for their use or consumption and not for sale.

SERVICE ADDRESS: The location of telecommunications equipment from which telecommunications services are originated or at which telecommunications services are received. If this is not a defined location, as in the case of wireless telecommunications, paging systems, maritime systems, air-to-ground systems, and the like, "service address" shall mean the location of the customer's primary use of the telecommunications equipment as defined by the location in Illinois where bills are sent.

TELECOMMUNICATIONS: Includes, but is not limited to, messages or information transmitted through use of local, toll, and wide area telephone service, channel services, telegraph services, teletypewriter service, computer exchange services, private line services, specialized mobile radio services, or any other transmission of messages or information by electronic or similar means, between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite, or similar facilities. Unless the context clearly requires otherwise, "telecommunications" shall also include "wireless telecommunications" as hereinafter defined. "Telecommunications" shall not include value added services in which computer processing applications are used to act on the form, content, code, and protocol of the information for purposes other than transmission. "Telecommunications" shall not include purchase of telecommunications by a telecommunications service provider for use as a component part of the service provided by him or her to the ultimate retail consumer who originates or terminates the end-to-end communications. Retailer access charges, right of access charges, charges for use of intercompany facilities, and all telecommunications resold in the subsequent provision and used as a component of, or integrated into, end-to-end telecommunications service shall not be included in gross charges as sales for resale. "Telecommunications" shall not include the provision of cable services through a cable system as defined in the Cable Communications Act of 1984 (47 USC section 521 and following) as now or hereafter amended or cable or other programming services subject to an open video system fee payable to the City through an open video system as

defined in the Rules of the Federal Communications Commission (47 CDF 76.1550 and following) as now or hereafter amended.

TELECOMMUNICATIONS PROVIDER:

- A. Any telecommunications retailer; and
- B. Any person that is not a telecommunications retailer that installs, owns, operates or controls equipment in the public right of way that is used or designed to be used to transmit telecommunications in any form.

TELECOMMUNICATIONS RETAILER OR RETAILER OR CARRIER: Means and includes every person engaged in the business of making sales of telecommunications at retail as defined in this Section. The City may, in its discretion, upon application, authorize the collection of the fee hereby imposed by any retailer not maintaining a place of business within this State, who, to the satisfaction of the City, furnishes adequate security to ensure collection and payment of the fee. When so authorized, it shall be the duty of such retailer to pay the fee upon all of the gross charges for telecommunications in the same manner and subject to the same requirements as a retailer maintaining a place of business within the City.

WIRELESS TELECOMMUNICATIONS: Includes cellular mobile telephone services, personal wireless services as defined in section 704(C) of the Telecommunications Act of 1996 (Public Law No. 104-104), 42 USC section 332(c)(7), as now or hereafter amended, including all commercial mobile radio services, and paging services. (Ord. 97-32-1, 11-18-1997)

7-5-2: REGISTRATION OF TELECOMMUNICATIONS PROVIDERS:

- A. Every "telecommunications provider" as defined by this Chapter shall register with the City within thirty (30) days after the effective date hereof or becoming a telecommunications provider, whichever is later, on a form to be provided by the City, provided, however, that any telecommunications retailer that has filed a return pursuant to subsection 7-5-4C of this Chapter shall be deemed to have registered in accordance with this Section.
- B. Every telecommunications provider who has registered with the City pursuant to subsection A of this Section has an affirmative duty to submit an amended registration form or current return as required by subsection 7-5-4C of this Chapter, as the case may be, to the City within thirty (30) days from the date of the occurrence of any changes in the information provided by the telecommunications provider in the registration form or most recent return on file with the City. (Ord. 97-32-1, 11-18-1997)

7-5-3: MUNICIPAL TELECOMMUNICATIONS INFRASTRUCTURE MAINTENANCE FEE:

- A. A City telecommunications infrastructure maintenance fee is hereby imposed upon all telecommunications retailers in the amount of one percent (1%) of all gross charges charged by the telecommunications retailer to service addresses within the City for telecommunications originating or received in the City.
- B. Upon the effective date of the infrastructure maintenance fee authorized in this Chapter, the City infrastructure maintenance fee authorized hereunder shall be the only fee or compensation for the use of all public rights of way within the City by telecommunications retailers. Imposition of the infrastructure maintenance fee provided under this Chapter does not, however, serve as a limitation on the levying of any taxes or imposition of any fees otherwise authorized by law.
- C. The City telecommunications infrastructure maintenance fee authorized by this Section shall be collected, enforced, and administered as set forth in Section 7-5-4 of this Chapter. (Ord. 97-32-1, 11-18-1997)

7-5-4: COLLECTION, ENFORCEMENT, AND ADMINISTRATION OF TELECOMMUNICATIONS INFRASTRUCTURE MAINTENANCE FEES:

- A. A telecommunications retailer shall charge to and collect from each customer an additional charge in an amount equal to the City infrastructure maintenance fee attributable to that customer's service address.
- B. Unless otherwise approved by the City the infrastructure maintenance fee shall be remitted by the telecommunications retailer to the City not later than the last day of the month subsequent to the month in which a bill is issued to the customer; provided, however, that the telecommunications retailer may retain an amount not to exceed two percent (2%) of the City infrastructure maintenance fee collected by it to reimburse itself for expenses incurred in accounting for and remitting the fee.
- C. Remittance of the Municipal infrastructure fee to the City shall be accompanied by a return, in a form to be prescribed by the City, which shall contain such information as the City may reasonably require.

- D. Any infrastructure maintenance fee required to be collected pursuant to this Chapter and any such infrastructure maintenance fee collected by such telecommunications retailer shall constitute a debt owed by the telecommunications retailer to the City. The charge imposed under subsection A of this Section by the telecommunications retailer pursuant to this Chapter shall constitute a debt of the purchaser to the telecommunications retailer who provides such services until paid and, if unpaid, is recoverable at law in the same manner as the original charge for such services.
- E. If it shall appear that an amount of infrastructure maintenance fee has been paid that was not due under the provisions of this Chapter, whether as a result of a mistake of fact or an error of law, then such amount shall be credited against any infrastructure maintenance fee due, or to become due, under this Chapter, from the telecommunications retailer who made the erroneous payment telecommunications retailer who made the erroneous payment; provided, however, the City may request, and telecommunications retailer shall provide, written substantiation for such credit. However, no claim for such credit may be made more than three (3) year after the date of the erroneous payment unless: 1) the credit is used only to offset a claim of underpayment made by the City within the applicable statutory period of limitations, and 2) the credit derives from an overpayment made by the same telecommunications retailer during the applicable statutory period of limitations.
- F. Amounts paid under this Chapter by telecommunications retailers shall not be included in the tax base under any of the following acts as described immediately below:
1. "Gross charges" for purposes of the Telecommunications Excise Tax Act;
 2. "Gross receipts" for purposes of the municipal utility tax as prescribed in 65 Illinois Compiled Statutes 5/8-11-2;
 3. "Gross charges" for purposes of the municipal telecommunications tax as prescribed in 65 Illinois Compiled Statutes 5/8-11-17;
 4. "Gross revenue" for purposes of the tax on annual gross revenue of public utilities prescribed in section 2-202 of the Public Utilities Act.
- G. The City shall have the right, in its discretion, to audit the books and records of all telecommunications retailers subject to this Chapter to determine whether the telecommunications retailer has properly accounted to the City for the City infrastructure maintenance fee. Any underpayment of the amount of the City infrastructure maintenance fee due to the City by the telecommunications retailer shall be paid to the City plus five percent (5%) of the total amount of the underpayment determined in an audit, plus any costs incurred by the City in conducting the audit, in an amount not to exceed five percent (5%) of the total

amount of the underpayment determined in an audit. Said sum shall be paid to the City within twenty one (21) days after the date of issuance of an invoice for same.

H. The City, or its designee, may promulgate such further or additional regulations concerning the administration and enforcement of this Chapter, consistent with its provisions, as may be required from time to time and shall notify all telecommunications retailers that are registered pursuant to Section 7-5-2 of this Chapter of such regulations. (Ord. 97-32-1, 11-18-1997)

7-5-5: COMPLIANCE WITH OTHER LAWS:

Nothing in this Chapter shall excuse any person or entity from obligations imposed under any law, including, but not limited to:

- A. Generally applicable taxes; and
- B. Standards for construction on, over, under, or within, use of or repair of the public rights of way, including standards relating to freestanding towers and other structures upon the public rights of way, as provided; and
- C. Any liability imposed for the failure to comply with such generally applicable taxes or standards governing construction on, over, under, or within, use of or repair of the public rights of way; and
- D. Compliance with any ordinance or provision of this Code concerning uses or structures not located on, over, or within the right of way. (Ord. 97-32-1, 11-18-1997)

7-5-6: EXISTING FRANCHISES AND LICENSES:

Any franchise, license, or similar agreements between telecommunications retailers and the City entered into before the effective date hereof regarding the use of public rights of way shall remain valid according to and for their stated terms except for any fees, charges or other compensation to the extent waived. (Ord. 97-32-1, 11-18-1997)

7-5-7: PENALTIES:

Any telecommunications provider who violates, disobeys, omits, neglects or refuses to comply with any of the provisions of this Chapter shall be subject to fine in accordance with the general penalty provisions of this Code. (Ord. 97-32-1, 11-18-1997)

7-5-8: ENFORCEMENT:

Nothing in this Chapter shall be construed as limiting any additional or further remedies that the City may have for enforcement of this Chapter. (Ord. 97-32-1, 11-18-1997)

7-5-9: SEVERABILITY:

If any section, subsection, sentence, clause, phrase or portion of this Chapter is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions hereof. (Ord. 97-32-1, 11-18-1997)

7-5-10: CONFLICT:

This Chapter supersedes all chapters or parts of chapters adopted prior hereto which are in conflict herewith, to the extent of such conflict. (Ord. 97-32-1, 11-18-1997)

7-5-11: WAIVER AND FEE IMPLEMENTATION:

- A. The City hereby waives all fees, charges, and other compensation that may accrue, after the effective date of the waiver, to the City by a telecommunications retailer pursuant to any existing City franchise, license, or similar agreement with a telecommunications retailer during the time the City imposes the telecommunications infrastructure maintenance fee. This waiver shall only be effective during the time the infrastructure maintenance fee provided for in this Chapter is subject to being lawfully imposed on the telecommunications retailer and collected by the telecommunications retailer from the customer.
- B. The Finance Office shall send a notice of the waiver by certified mail/return receipt requested to each telecommunications retailer with whom the City has a franchise.
- C. The City infrastructure maintenance fee provided for in this Chapter shall become effective and imposed on the first day of the month not less than ninety (90) days after the City provides written notice by certified mail to each telecommunications retailer with whom the City has an existing franchise, license, or similar agreement that the City waives all compensation under such existing franchise, license, or

similar agreement during such time as the fee is subject to being lawfully imposed and collected by the retailer and remitted to the City. The infrastructure maintenance fee shall apply to gross charges billed on or after the effective date as established in the preceding sentence. (Ord. 97-32-1, 11-18-1997)

CHAPTER 6 CABLE/VIDEO SERVICE PROVIDER FEE

SECTION:

7-6-1: Definitions

7-6-2: Cable/Video Service Provider Fee Imposed

7-6-3: Applicable Principles

7-6-4: No Impact on Other Taxes Due from Holder

7-6-5: Audits of Cable/Video Service Provider

7-6-6: Late Fees/Payments

7-6-1 DEFINITIONS

As used in Chapter, the following terms shall have the following meanings:

- A. "Cable Service" means that term as defined in 47 U.S.C. § 522(6)
- B. "Commission" means the Illinois Commerce Commission
- C. "Gross Revenues" means all consideration of any kind or nature, including, without limitation, cash, credits, property, and in-kind contributions received by the holder for the operation of a cable or video service within the holder's cable service or video service area within the City.
 - 1. Gross revenues shall include the following:
 - a. Recurring charges for cable or video service.
 - b. Event-based charges for cable service or video service, including, but not limited to, pay-per-view and video-on-demand charges.
 - c. Rental of set top boxes and other cable service or video service equipment.
 - d. Service charges related to the provision of cable services or video service, including but not limited to activation, installation, and repair charges.
 - e. Administrative charges related to the provision of cable service or video service, including but not limited to service order and service termination charges.
 - f. Late payment fees or charges, insufficient funds check charges, and other charges assessed to recover the cost of collecting delinquent payments.
 - g. A *pro rata* portion of all revenue derived by the holder or its affiliates pursuant to compensation arrangements for advertising or for promotion or exhibition of any products or services derived from the operation of the holder's network to provide cable service or video service within the City. The allocation shall be based on the number of subscribers in the City

divided by the total number of subscribers in relation to the relevant regional or national compensation arrangement.

- h. Compensation received by the holder that is derived from the operation of the holder's network to provide cable service or video service with respect to commissions that are received by the holder as compensation for promotion or exhibition of any products or services on the holder's network, such as a "home shopping" or similar channel, subject to subsection (ix).
 - i. In the case of a cable service or video service that is bundled or integrated functionality with other services, capabilities, or applications shall be included in the gross revenue unless the holder can reasonably identify the division or exclusion of the revenue from its books and records that are kept in the regular course of business.
 - j. The service provider fee permitted by 220 ILCS 5/21-801(b).
2. Gross revenues do not include any of the following:
- a. Revenues not actually received, even if billed, such as bad debt, subject to 220 ILCS 5/21-801(c)(1)(vi).
 - b. Refunds, discounts, or other price adjustments that reduce the amount of gross revenues received by the holder of the State-issued authorization to the extent the refund, rebate, credit, or discount is attributable to cable or video service.
 - c. Regardless of whether the services are bundled, packaged, or functionally integrated with cable service or video service, any revenues received from services not classified as cable service or video service, including, without limitation, revenue received from telecommunication services, or the provision of directory or Internet advertising, including yellow pages, white pages, banner advertisement, and electronic publishing or nonvideo service in accordance with the holder's books and records kept in the regular course of business and any applicable laws, rules, regulations, standards, or orders
 - d. The sale of cable services or video services for resale in which the purchaser is required to collect the service provider fee from the purchaser's subscribers to the extent the purchaser certifies in writing that it will resell the service within the City and pay the fee permitted by 220 ILCS 5/21-801(b) with respect to the service.
 - e. Any tax fee of general applicability imposed upon the subscribers or the transaction by a city, State, federal, or any other governmental entity and collected by the holder of the State-issued authorization and required to be remitted to the taxing entity, including sales and use taxes.
 - f. Security deposits collected from subscribers.
 - g. Amounts paid by subscribers to "home shopping" or similar vendors for merchandise sold through any home shopping channel offered as part of the cable service or video service.
3. Revenue of an affiliate of a holder shall be included in the calculation of gross revenues to the extent the treatment of the revenue as revenue of the affiliate rather than the holder has the effect of evading the payment of the fee permitted

by 220 ILCS 5/21-801(b) which would otherwise be paid by the cable service or video service.

- D. "Holder" means a person or entity that has received authorization to offer or provide cable or video service from the Commission pursuant to 220 LCS 5/21-401.
- E. "Service" means the provision of "cable service" or "video service" to subscribers and the interaction of subscribers with the person or entity that has received authorization to offer or provide cable or video service from the Commission pursuant to 220 ILCS 5/21-401.
- F. "Service Provider Fee" means the amount paid under this Chapter and 220 ILCS 5/21-801 by the holder to a City for service areas within its territorial jurisdiction.
- G. "Video Service" means video programming and subscribers interaction, if any, the required for the selection or use of such video programming services, and which is provided through wireline facilities located at least in part in the public right-of-way without regard to delivery technology, including Internet protocol technology. This definition does not include any video programming provided by a commercial mobile service provider defined in 47 U.S.C. § 332(d) or any video programming provided solely as part of, and via, service that enables users to access content, information, electronic mail, or other services offered over the public Internet.

7-6-2 Cable/Video Service Provider Fee Imposed

- A. Fee Imposed- A fee is hereby imposed on any holder providing cable service or video service in the City.
- B. Amount of Fee- The amount of the fee imposed hereby shall be five percent (5%) of the holder's gross revenues.
- C. Notice of the City- The holder shall notify the City at least ten (10) days prior to the date on which the holder begins to offer cable service or video service in the City.
- D. Holder's Liability- The holder shall be liable for and pay the service provider fee to the City. The holder's liability for the fee shall commence on the first day of the calendar month following thirty (30) das after receipt of the ordinance adopting this Chapter by the holder. The ordinance adopting this Chapter shall be sent by mail, postage prepaid, to the address listed on the holder's application notice sent pursuant to 220 ILCS 5/21-401(b)(6) to the City.
- E. Payment Date- The payment of the service provider fee shall be due on quarterly basis, forty-five (45) days after the close of the calendar quarter. If mailed, the fee is

considered paid on the date it is postmarked. Each payment shall include a statement explaining the basis for the calculation of the fee.

- F. Exemption- The fee hereby imposed does not apply to existing cable service or video service providers that have an existing franchise agreement with the City in which a fee is paid.
- G. Credit for Other Payments- An incumbent cable operator that elects to terminate an existing agreement pursuant to 220 ILCS 5/21-301(c) with credit from the fees that operator owes under Section 6.2(b).

7-6-3 APPLICABLE PRINCIPLES

All determinations and calculations under this Chapter shall be made pursuant to generally accepted accounting principles.

7-6-4 NO IMPACT ON OTHER TAXES DUE FROM HOLDER

Nothing contained in this Chapter shall be construed to exempt a holder from any tax that is or may be later imposed by the City, including any tax that is or may later be required to be paid by or through the holder with respect to cable service or video service. A state-issued authorization shall not affect any requirement of the holder with respect to payment of the City's simplified municipal telecommunications tax or any other tax as it applies to any telephone service provided by the holder. A State-issued authorization shall not affect any requirement of the holder with respect to payment of the local unit of government's 911 or E911 fees, taxes or charges.

7-6-5 AUDITS OF CABLE/VIDEO SERVICE PROVIDER

- A. Audit Requirement: The City will notify the holder of the requirements it imposes on other cable service providers to submit to an audit of its books and records. The holder shall comply with the same requirements the City imposes on other cable service or video service providers in its jurisdiction to audit the holder's books and records and to precompute any amounts determined to be payable under the requirements of the City. If all local franchises between the City and cable operator terminate, the audit requirements shall be those adopted by the City pursuant to the Local Government Taxpayers' Bill of Rights Act, 50 ILCS 45/1 *et seq.* No acceptance of amounts remitted should be construed as an accord that the amounts are correct.
- B. Additional Payments- Any additional amount due after an audit shall be paid within thirty (30) days after the municipality's submission of an invoice for the sum.

7-6-6 LATE FEES/PAYMENTS

All fees due and payments which are past due shall be governed by ordinances adopted by this municipality pursuant to the Local Government Taxpayers' Bill of Rights Act, 50 ILCS 45/1 *et seq.* Ord 2007-45, 12-18-07)

CHAPTER 8 CABLE & VIDEO CUSTOMER PROTECTION LAW

SECTION:

7-8-1: Customer Service and Privacy Protection Law

7-8-2: Enforcement

7-8-3: Penalties

7-8-4: Customer Credits

7-8-1 CUSTOMER SERVICE AND PROTECTION LAW

A. Adoption: The regulations of 220 ILCS 5/70-501 are hereby adopted by reference and made applicable to the cable or video providers offering services within the City's boundaries.

B. Amendments: Any amendment to the Cable and Video Customer Protection Law that becomes effective after the effective date of this Chapter shall be incorporated into this Chapter by reference and shall be applicable to cable or video providers offering services within the municipality's boundaries. However, any amendment that makes its provisions optional for adoption by municipalities shall not be incorporated into this Chapter by reference without formal action by the City Council.

7-8-2 ENFORCEMENT

The City does hereby pursuant to law declare its intent to enforce all of the customer service and privacy protection standards of the Cable and Video Protection Law with respect to complains received from residents within the City.

7-8-3 PENALTIES

The City, pursuant to 220 ILCS 5/70-501(r)(1), does hereby provide for a schedule of penalties for any material breach of the Cable and Video Protection Law by cable or video providers in addition to the penalties provided in law. The momentary penalties shall apply on a competitively neutral basis and shall not exceed \$750.00 for each day of the material breach, and not exceed \$25,000.00 for each occurrence of a material breach per customer.

A. Material breach means any substantial failure of a cable or video provider to comply with service quality and other standards specified in any provision of the law.

B. The City shall give the cable or video provider written notice of any alleged material breaches of the law and allow such provider at least 30 days from the receipt of the notice to remedy the specified material breach.

C. A material breach, for the purposes of assessing penalties, shall be deemed to occur for each day that a material breach has not been remedied by the cable or video service provider after the notice in (b).

7-8-4 CUSTOMER CREDITS

The City hereby adopts the schedule of customer credits for violations. Those credits shall be as provided for in the provisions of 220 ILCS 5/70-501(s) and applied on the statement issued to the customer for the next billing cycle following the violation or following the discovery of the violation. The cable or video provider is responsible for providing the credits and the customer is under no obligation to request the credit. (Ord 2007-46, 12-18-07)

CHAPTER 9 CONSTRUCTION OF UTILITY FACILITIES IN THE RIGHTS-OF-WAY

SECTION:

7-9-1: Purpose and Scope

7-9-2: Definitions

7-9-3: Annual Registration Required

7-9-4: Permit Required; Applications and Fees

7-9-5: Action on Permit Applications

7-9-6: Effect of Permit

7-9-7: Revised Permit Drawings

7-9-8: Insurance

7-9-9: Indemnification

7-9-10: Security

7-9-11: Permit Suspension and Revocation

7-9-12: Change of Ownership or Owner's Identity or Legal Status

7-9-13: General Construction Standards

7-9-14: Traffic Control

7-9-15: Location of Facilities

7-9-16: Construction Methods and Materials

7-9-17: Vegetation Control

7-9-18: Removal, Relocation, or Modifications of Utility Facilities

7-9-19: Clean-Up and Restoration

7-9-20: Maintenance and Emergency Maintenance

7-9-21: Variances

7-9-22: Penalties

7-9-23: Severability

7-9-1: PURPOSE AND SCOPE

A. Purpose: The purpose of this Chapter is to establish policies and procedures for constructing facilities on rights-of-way within the City's jurisdiction, which will provide public benefit consistent with the preservation of the integrity, safe usage, and visual qualities of the City rights-of-way and the City as a whole.

B. Intent: In enacting this Chapter, the City intends to exercise its authority over the rights-of-way in the City and, in particular, the use of the public ways and property by utilities, by establishing uniform standards to address issues presented by utility facilities, including without limitation:

1. prevent interference with the use of streets, sidewalks, alleys, parkways and other public ways and places;

2. prevent the creation of visual and physical obstructions and other conditions that are hazardous to vehicular and pedestrian traffic;
3. prevent interference with the facilities and operations of the City's utilities and of other utilities lawfully located in rights-of-way or public property;
4. protect against environmental damage, including damage to trees, from the installation of utility facilities;
5. protect against increased stormwater run-off due to structures and materials that increase impermeable surfaces;
6. preserve the character of the neighborhoods in which facilities are installed;
7. preserve open space, particularly the tree-lined parkways that characterize the City's residential neighborhoods;
8. prevent visual blight from the proliferation of facilities in the rights-of-way; and
9. assure the continued safe use and enjoyment of private properties adjacent to utility facilities locations.

C. Facilities Subject to This Chapter: This Chapter applies to all facilities on, over, above, along, upon, under, across, or within the rights-of-way within the jurisdiction of the City. A facility lawfully established prior to the effective date of this Chapter may continue to be maintained, repaired and operated by the utility as presently constructed and located, except as may be otherwise provided in any applicable franchise, license or similar agreement.

D. Franchises, Licenses, or Similar Agreements: The City, in its discretion and as limited by law, may require utilities to enter into a franchise, license or similar agreement for the privilege of locating their facilities on, over, above, along, upon, under, across, or within the City rights-of-way. Utilities that are not required by law to enter into such an agreement may request that the City enter into such an agreement. In such an agreement, the City may provide for terms and conditions inconsistent with this Chapter.

E. Effect of Franchises, Licenses, or Similar Agreements:

1. Utilities Other Than Telecommunications Providers: In the event that a utility other than a telecommunications provider has a franchise, license or similar agreement with the City, such franchise, license or similar agreement shall govern and control during the term of such agreement and any lawful renewal or extension thereof.
2. Telecommunications Providers: In the event of any conflict with, or inconsistency between, the provisions of this Chapter and the provisions of any franchise, license or similar agreement between the City and any telecommunications provider, the provisions of such franchise, license or similar agreement shall govern and control during the term of such agreement and any lawful renewal or extension thereof.

F. Conflicts with Other Chapters: This Chapter supersedes all Chapters or parts of Articles adopted prior hereto that are in conflict herewith, to the extent of such conflict.

G. Conflicts with State and Federal Laws: In the event that applicable federal or State laws or regulations conflict with the requirements of this Chapter, the utility shall comply with the requirements of this Chapter to the maximum extent possible without violating federal or State laws or regulations.

H. Sound Engineering Judgment: The City shall use sound engineering judgment when administering this Chapter and may vary the standards, conditions, and requirements expressed in this Chapter when the City so determines. Nothing herein shall be construed to limit the ability of the City to regulate its rights-of-way for the protection of the public health, safety and welfare.

7-9-2: DEFINITIONS

As used in this Chapter and unless the context clearly requires otherwise, the words and terms listed shall have the meanings ascribed to them in this Section. Any term not defined in this Section shall have the meaning ascribed to it in 92 Ill. Adm. Code § 530.30, unless the context clearly requires otherwise.

“AASHTO” - American Association of State Highway and Transportation Officials.

“ANSI” - American National Standards Institute.

“Applicant” - A person applying for a permit under this Article[Chapter].

“ASTM” - American Society for Testing and Materials.

“Backfill” - The methods or materials for replacing excavated material in a trench or pit.

“Bore” or “Boring” - To excavate an underground cylindrical cavity for the insertion of a pipe or electrical conductor.

“Cable operator” - That term as defined in 47 U.S.C. 522(5).

“Cable service” - That term as defined in 47 U.S.C. 522(6).

“Cable system” - That term as defined in 47 U.S.C. 522(7).

“Carrier Pipe” - The pipe enclosing the liquid, gas or slurry to be transported.

“Casing” - A structural protective enclosure for transmittal devices such as: carrier pipes, electrical conductors, and fiber optic devices.

“City” - The City of Genoa.

“City Administrator” - The City Administrator of the City of Genoa.

“Clear Zone” - The total roadside border area, starting at the edge of the pavement, available for safe use by errant vehicles. This area may consist of a shoulder, a recoverable slope, a non-recoverable slope, and a clear run-out area. The desired width is dependent upon the traffic volumes and speeds, and on the roadside geometry. Distances are specified in the AASHTO Roadside Design Guide.

“Coating” - Protective wrapping or mastic cover applied to buried pipe for protection against external corrosion.

“Code” - The Municipal Code of the City of Genoa.

“Conductor” - Wire carrying electrical current.

“Conduit” - A casing or encasement for wires or cables.

“Construction” or “Construct” - The installation, repair, maintenance, placement, alteration, enlargement, demolition, modification or abandonment in place of facilities.

“Cover” - The depth of earth or backfill over buried utility pipe or conductor.

“Crossing Facility” - A facility that crosses one or more right-of-way lines of a right-of-way.

“Director of Public Works” - The City Director of Public Works or his or her designee.

“Disrupt the Right-of-Way” - For the purposes of this Chapter, any work that obstructs the right-of-way or causes a material adverse effect on the use of the right-of-way for its intended use. Such work may include, without limitation, the following: excavating or other cutting; placement (whether temporary or permanent) of materials, equipment, devices, or structures; damage to vegetation; and compaction or loosening of the soil, and shall not include the parking of vehicles or equipment in a manner that does not materially obstruct the flow of traffic on a highway.

“Emergency” - Any immediate maintenance to the facility required for the safety of the public using or in the vicinity of the right-of-way or immediate maintenance required for the health and safety of the general public served by the utility.

“Encasement” - Provision of a protective casing.

“Engineer” - The City Engineer or his or her designee.

“Equipment” - Materials, tools, implements, supplies, and/or other items used to facilitate construction of facilities.

“Excavation” - The making of a hole or cavity by removing material, or laying bare by digging.

“Extra Heavy Pipe” - Pipe meeting ASTM standards for this pipe designation.

“Facility” - All structures, devices, objects, and materials (including, but not limited to, track and rails, wires, ducts, fiber optic cable, antennas, vaults, boxes, equipment enclosures, cabinets, pedestals, poles, conduits, grates, covers, pipes, cables, and appurtenances thereto) located on, over, above, along, upon, under, across, or within rights-of-way under this Chapter. For purposes of this Chapter, the term “facility” shall not include any facility owned or operated by the City.

“Freestanding Facility” - A facility that is not a crossing facility or a parallel facility, such as an antenna, transformer, pump, or meter station.

“Frontage Road” - Roadway, usually parallel, providing access to land adjacent to the highway where it is precluded by control of access to a highway.

“Hazardous Materials” - Any substance or material which, due to its quantity, form, concentration, location, or other characteristics, is determined by the Director of Public Works to pose an unreasonable and imminent risk to the life, health or safety of persons or property or to the ecological balance of the environment, including, but not limited to explosives, radioactive materials, petroleum or petroleum products or gases, poisons, etiology (biological) agents, flammables, corrosives or any substance determined to be hazardous or toxic under any federal or state law, statute or regulation.

“Highway Code” - The Illinois Highway Code, 605 ILCS 5/1-101 et seq., as amended from time to time.

“Highway” - A specific type of right-of-way used for vehicular traffic including rural or urban roads or streets. “Highway” includes all highway land and improvements, including roadways, ditches and embankments, bridges, drainage structures, signs, guardrails, protective structures and appurtenances necessary or convenient for vehicle traffic.

“Holder” - A person or entity that has received authorization to offer or provide cable or video service from the ICC pursuant to the Illinois Cable and Video Competition Law, 220 ILCS 5/21-401.

“IDOT” - Illinois Department of Transportation.

“ICC” - Illinois Commerce Commission.

“Jacking” - Pushing a pipe horizontally under a roadway by mechanical means with or without boring.

“Jetting” - Pushing a pipe through the earth using water under pressure to create a cavity ahead of the pipe.

“Joint Use” - The use of pole lines, trenches or other facilities by two or more utilities.

“J.U.L.I.E.” - The Joint Utility Locating Information for Excavators utility notification program.

“Major Intersection” - The intersection of two or more major arterial highways.

“Occupancy” - The presence of facilities on, over or under right-of-way.

“Parallel Facility” - A facility that is generally parallel or longitudinal to the centerline of a right-of-way.

“Parkway” - Any portion of the right-of-way not improved by street or sidewalk.

“Pavement Cut” - The removal of an area of pavement for access to facility or for the construction of a facility.

“Permittee” - That entity to which a permit has been issued pursuant to Sections ____4 and __.5 of this Article[Chapter].

“Practicable” - That which is performable, feasible or possible, rather than that which is simply convenient.

“Pressure” - The internal force acting radially against the walls of a carrier pipe expressed in pounds per square inch gauge (psig).

“Petroleum Products Pipelines” - Pipelines carrying crude or refined liquid petroleum products including, but not limited to, gasoline, distillates, propane, butane, or coal-slurry.

“Prompt” - That which is done within a period of time specified by the City. If no time period is specified, the period shall be 30 days.

“Public Entity” - A legal entity that constitutes or is part of the government, whether at local, state or federal level.

“Restoration” - The repair of a right-of-way, highway, roadway, or other area disrupted by the construction of a facility.

“Right-of-Way” or "Rights-of-Way"- Any street, alley, other land or waterway, dedicated or commonly used for pedestrian or vehicular traffic or other similar purposes, including utility easements, in which the City has the right and authority to authorize, regulate or permit the location of facilities other than those of the City. “Right-of-way” or "Rights-of-way" shall not include any real or personal City property that is not specifically described in the previous two sentences and shall not include City buildings, fixtures and other structures or improvements, regardless of whether they are situated in the right-of-way.

“Roadway” - That part of the highway that includes the pavement and shoulders.

“Sale of Telecommunications at Retail” - The transmitting, supplying, or furnishing of telecommunications and all services rendered in connection therewith for a consideration, other than between a parent corporation and its wholly owned subsidiaries or between wholly owned subsidiaries, when the gross charge made by one such corporation to another such corporation is not greater than the gross charge paid to the retailer for their use or consumption and not for sale.

“Security Fund” - That amount of security required pursuant to Section __.10.

“Shoulder” - A width of roadway, adjacent to the pavement, providing lateral support to the pavement edge and providing an area for emergency vehicular stops and storage of snow removed from the pavement.

“Sound Engineering Judgment” - A decision(s) consistent with generally accepted engineering principles, practices and experience.

“Telecommunications” - This term includes, but is not limited to, messages or information transmitted through use of local, toll and wide area telephone service, channel services, telegraph services, teletypewriter service, computer exchange service, private line services, mobile radio services, cellular mobile telecommunications services, stationary two-way radio, paging service and any other form of mobile or portable one-way or two-way communications, and any other transmission of messages or information by electronic or similar means, between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite, or similar facilities. “Private line” means a dedicated non-traffic sensitive service for a single customer that entitles the customer to exclusive or priority use of a communications channel, or a group of such channels, from one or more specified locations to one or more other specified locations. “Telecommunications” shall not include value added services in which computer processing applications are used to act on the form, content, code and protocol of the information for purposes other than transmission. “Telecommunications” shall not include purchase of telecommunications by a telecommunications service provider for use as a component part of the service provided by such provider to the ultimate retail consumer who originates or terminates the end-to-end communications. “Telecommunications” shall not include the provision of cable services through a cable system as defined in the Cable Communications Act of 1984 (47 U.S.C. Sections 521 and following), as now or hereafter amended, or cable or other programming services subject to an open video system fee payable to the Village[City] through an open video system as defined in the Rules of the Federal Communications Commission (47 C.F.R. §76.1500 and following), as now or hereafter amended.

“Telecommunications Provider” - Means any person that installs, owns, operates or controls facilities in the right-of-way used or designed to be used to transmit telecommunications in any form.

“Telecommunications Retailer” - Means and includes every person engaged in making sales of telecommunications at retail as defined herein.

“Trench” - A relatively narrow open excavation for the installation of an underground facility.

“Utility” - The individual or entity owning or operating any facility as defined in this Chapter.

“Vent” - A pipe to allow the dissipation into the atmosphere of gases or vapors from an underground casing.

“Video Service” - That term as defined in section 21-201 (v) of the Illinois Cable and Video Competition Law of 2007, 220 ILCS 21-201(v).

“Water Lines” - Pipelines carrying raw or potable water.

“Wet Boring” - Boring using water under pressure at the cutting auger to soften the earth and to provide a sluice for the excavated material.

7-9-3: ANNUAL REGISTRATION REQUIRED

Every utility that occupies right-of-way within the City shall register on January 1 of each year with the Director of Public Works, providing the utility’s name, address and regular business telephone and telecopy numbers, the name of one or more contact persons who can act on behalf of the utility in connection with emergencies involving the utility’s facilities in the right-of-way and a 24-hour telephone number for each such person, and evidence of insurance as required in Section 9.8 of this Chapter, in the form of a certificate of insurance.

7-9-4: PERMIT REQUIRED; APPLICATIONS AND FEES.

A. Permit Required: No person shall construct (as defined in this Chapter) any facility on, over, above, along, upon, under, across, or within any City right-of-way which (1) changes the location of the facility, (2) adds a new facility, (3) disrupts the right-of-way (as defined in this Chapter), or (4) materially increases the amount of area or space occupied by the facility on, over, above, along, under across or within the right-of-way, without first filing an application with the City Director of Public Works and obtaining a permit from the City therefor, except as otherwise provided in this Chapter. No permit shall be required for installation and maintenance of service connections to customers’ premises where there will be no disruption of the right-of-way.

B. Permit Application: All applications for permits pursuant to this Chapter shall be filed on a form provided by the City and shall be filed in such number of duplicate copies as the City may designate. The applicant may designate those portions of its application materials that it reasonably believes contain proprietary or confidential information as “proprietary” or “confidential” by clearly marking each page of such materials accordingly.

C. Minimum General Application Requirements: The application shall be made by the utility or its duly authorized representative and shall contain, at a minimum, the following:

1. The utility's name and address and telephone and telecopy numbers;
2. The applicant's name and address, if different than the utility, its telephone, telecopy numbers, e-mail address, and its interest in the work;
3. The names, addresses and telephone and telecopy numbers and e-mail addresses of all professional consultants, if any, advising the applicant with respect to the application;
4. A general description of the proposed work and the purposes and intent of the facility and the uses to which the facility will be put. The scope and detail of such description shall be appropriate to the nature and character of the work to be performed, with special emphasis on those matters likely to be affected or impacted by the work proposed;
5. Evidence that the utility has placed on file with the City:
 - a. A written traffic control plan demonstrating the protective measures and devices that will be employed consistent with the Illinois Manual on Uniform Traffic Control Devices, to prevent injury or damage to persons or property and to minimize disruptions to efficient pedestrian and vehicular traffic; and
 - b. An emergency contingency plan which shall specify the nature of potential emergencies, including, without limitation, construction and hazardous materials emergencies, and the intended response by the applicant. The intended response shall include notification to the City and shall promote protection of the safety and convenience of the public. Compliance with ICC regulations for emergency contingency plans constitutes compliance with this Section unless the City finds that additional information or assurances are needed;
6. Drawings, plans and specifications showing the work proposed, including the certification of an engineer that such drawings, plans, and specifications comply with applicable codes, rules, and regulations;
7. Evidence of insurance as required in Section 9.8 of this Chapter;
8. Evidence of posting of the security fund as required in Section 9.10 of this Chapter;
9. Any request for a variance from one or more provisions of this Chapter (See Section 9.21); and
10. Such additional information as may be reasonably required by the City.

D. Supplemental Application Requirements for Specific Types of Utilities: In addition to the requirements of Subsection c) of this Section, the permit application shall include the following items, as applicable to the specific utility that is the subject of the permit application:

1. In the case of the installation of a new electric power, communications, telecommunications, cable television service, video service or natural gas distribution system, evidence that any "Certificate of Public Convenience and Necessity" or other regulatory authorization that the applicant is required by law to obtain, or that the applicant has elected to obtain, has been issued by the ICC or other jurisdictional authority;

2. In the case of natural gas systems, state the proposed pipe size, design, construction class, and operating pressures;
3. In the case of water lines, indicate that all requirements of the Illinois Environmental Protection Agency, Division of Public Water Supplies, have been satisfied;
4. In the case of sewer line installations, indicate that the land and water pollution requirements of the Illinois Environmental Protection Agency, Division of Water Pollution Control, have been satisfied; or
5. In the case of petroleum products pipelines, state the type or types of petroleum products, pipe size, maximum working pressure, and the design standard to be followed.
6. In the case of the installation of Small Cell Antenna/Towers on either new or existing poles or structures, the provisions of Section 7-9-25 also shall apply, and in the event of any conflict, those provisions shall control. (Ordinance 2017-23, 07-17-2018)

E. Applicant's Duty to Update Information: Throughout the entire permit application review period and the construction period authorized by the permit, any amendments to information contained in a permit application shall be submitted by the utility in writing to the City within thirty (30) days after the change necessitating the amendment.

F. Application Fees: Unless otherwise provided by franchise, license, or similar agreement, all applications for permits pursuant to this Chapter shall be accompanied by a fee in the amount established in the permit fee schedule of the City of Genoa or any other provision of the City Code. No application fee is required to be paid by any electricity utility that is paying the municipal electricity infrastructure maintenance fee pursuant to the Electricity Infrastructure Maintenance Fee Act.

7-9-5: ACTION ON PERMIT APPLICATIONS

A. City Review of Permit Applications: Completed permit applications, containing all required documentation, shall be examined by the City Director of Public Works within a reasonable time after filing. If the application does not conform to the requirements of applicable ordinances, codes, laws, rules, and regulations, the Director of Public Works shall reject such application in writing, stating the reasons therefor. If the Director of Public Works is satisfied that the proposed work conforms to the requirements of this Chapter and applicable ordinances, codes, laws, rules, and regulations, the Director of Public Works shall issue a permit therefor as soon as practicable. In all instances, it shall be the duty of the applicant to demonstrate, to the satisfaction of the Director of Public Works, that the construction proposed under the application shall be in full compliance with the requirements of this Chapter.

B. Additional City Review of Applications of Telecommunications Retailers

1. Pursuant to Section 4 of the Telephone Company Act, 220 ILCS 65/4, a telecommunications retailer shall notify the City that it intends to commence work governed by this Chapter for facilities for the provision of telecommunications services. Such notice shall consist of plans, specifications, and other documentation sufficient to demonstrate the purpose and intent of the facilities, and shall be provided by the telecommunications retailer to the City not less than ten (10) days prior to the commencement of work requiring no excavation and not less than thirty (30) days prior to the commencement of work requiring excavation. The Director of Public Works shall specify the portion of the right-of-way upon which the facility may be placed, used and constructed.
2. In the event that the Director of Public Works fails to provide such specification of location to the telecommunications retailer within either (i) ten (10) days after service of notice to the City by the telecommunications retailer in the case of work not involving excavation for new construction or (ii) twenty-five (25) days after service of notice by the telecommunications retailer in the case of work involving excavation for new construction, the telecommunications retailer may commence work without obtaining a permit under this Chapter.
3. Upon the provision of such specification by the City, where a permit is required for work pursuant to Section 9.4 of this Chapter the telecommunications retailer shall submit to the City an application for a permit and any and all plans, specifications and documentation available regarding the facility to be constructed. Such application shall be subject to the requirements of Subsection (a) of this Section.

C. Additional City Review of Applications of Holders of State Authorization Under the Cable and Video Competition Law of 2007: Applications by a utility that is a holder of a State-issued authorization under the Cable and Video Competition Law of 2007 shall be deemed granted forty-five (45) days after submission to the City, unless otherwise acted upon by the City, provided the holder has complied with applicable City codes, ordinances, and regulations.

7-9-6: EFFECT OF PERMIT

A. Authority Granted; No Property Right or Other Interest Created: A permit from the City authorizes a permittee to undertake only certain activities in accordance with this Chapter on City rights-of-way, and does not create a property right or grant authority to the permittee to impinge upon the rights of others who may have an interest in the rights-of-way.

- B. Duration: No permit issued under this Chapter shall be valid for a period longer than six (6) months unless construction is actually begun within that period and is thereafter diligently pursued to completion.
- C. Pre-construction meeting required: No construction shall begin pursuant to a permit issued under this Chapter prior to attendance by the permittee and all major contractors and subcontractors who will perform any work under the permit at a pre-construction meeting. The pre-construction meeting shall be held at a date, time and place designated by the City with such City representatives in attendance as the City deems necessary. The meeting shall be for the purpose of reviewing the work under the permit, and reviewing special considerations necessary in the areas where work will occur, including, without limitation, presence or absence of other utility facilities in the area and their locations, procedures to avoid disruption of other utilities, use of rights-of-way by the public during construction, and access and egress by adjacent property owners.
- D. Compliance with All Laws Required: The issuance of a permit by the City does not excuse the permittee from complying with other requirements of the City and applicable statutes, laws, ordinances, rules, and regulations.

7-9-7: REVISED PERMIT DRAWINGS

In the event that the actual locations of any facilities deviate in any material respect from the locations identified in the plans, drawings and specifications submitted with the permit application, the permittee shall submit a revised set of drawings or plans to the City within ninety (90) days after the completion of the permitted work. The revised drawings or plans shall specifically identify where the locations of the actual facilities deviate from the locations approved in the permit. If any deviation from the permit also deviates from the requirements of this Chapter, it shall be treated as a request for variance in accordance with Section 9.21 of this Chapter. If the City denies the request for a variance, then the permittee shall either remove the facility from the right-of-way or modify the facility so that it conforms to the permit and submit revised drawings or plans therefor.

7-9-8: INSURANCE

- A. Required Coverages and Limits. Unless otherwise provided by franchise, license, or similar agreement, each utility occupying right-of-way or constructing any facility in the right-of-way shall secure and maintain the following liability insurance policies insuring the utility as named insured and naming the City, and its elected and appointed officers, officials, agents, and employees as additional insureds on the policies listed in paragraphs 1 and 2 below:

1. Commercial general liability insurance, including premises-operations, explosion, collapse, and underground hazard (commonly referred to as “X,” “C,” and “U” coverages) and products-completed operations coverage with limits not less than:
 - a. Five million dollars (\$5,000,000) for bodily injury or death to each person;
 - b. Five million dollars (\$5,000,000) for property damage resulting from any one accident; and
 - c. Five million dollars (\$5,000,000) for all other types of liability;
2. Automobile liability for owned, non-owned and hired vehicles with a combined single limit of one million dollars (\$1,000,000) for personal injury and property damage for each accident;
3. Worker’s compensation with statutory limits; and
4. Employer’s liability insurance with limits of not less than one million dollars (\$1,000,000) per employee and per accident.

If the utility is not providing such insurance to protect the contractors and subcontractors performing the work, then such contractors and subcontractors shall comply with this Section.

B. Excess or Umbrella Policies: The coverages required by this Section may be in any combination of primary, excess, and umbrella policies. Any excess or umbrella policy must provide excess coverage over underlying insurance on a following-form basis such that when any loss covered by the primary policy exceeds the limits under the primary policy, the excess or umbrella policy becomes effective to cover such loss.

C. Copies Required: The utility shall provide copies of any of the policies required by this Section to the City within ten (10) days following receipt of a written request therefor from the City.

D. Maintenance and Renewal of Required Coverages: The insurance policies required by this Section shall contain the following endorsement:

“It is hereby understood and agreed that this policy may not be canceled nor the intention not to renew be stated until thirty (30) days after receipt by the City, by registered mail or certified mail, return receipt requested, of a written notice addressed to the City Administrator of such intent to cancel or not to renew.”

Within ten (10) days after receipt by the City of said notice, and in no event later than ten (10) days prior to said cancellation, the utility shall obtain and furnish to the City evidence of replacement insurance policies meeting the requirements of this Section.

- E. Self-Insurance: A utility may self-insure all or a portion of the insurance coverage and limit requirements required by Subsection a) of this Section. A utility that self-insures is not required, to the extent of such self-insurance, to comply with the requirement for the naming of additional insureds under Subsection a), or the requirements of Subsections b), c) and d) of this Section. A utility that elects to self-insure shall provide to the City evidence sufficient to demonstrate its financial ability to self-insure the insurance coverage and limit requirements required under Subsection a) of this Section, such as evidence that the utility is a “private self insurer” under the Workers Compensation Act.
- F. Effect of Insurance and Self-Insurance on Utility’s Liability: The legal liability of the utility to the City and any person for any of the matters that are the subject of the insurance policies or self-insurance required by this Section shall not be limited by such insurance policies or self-insurance or by the recovery of any amounts thereunder.
- G. Insurance Companies: All insurance provided pursuant to this section shall be effected under valid and enforceable policies, issued by insurers legally able to conduct business with the licensee in the State of Illinois. All insurance carriers and surplus line carriers shall be rated "A-" or better and of a class size "X" or higher by A.M. Best Company.

7-9-9: INDEMINIFICATION

By occupying or constructing facilities in the right-of-way, a utility shall be deemed to agree to defend, indemnify and hold the City and its elected and appointed officials and officers, employees, agents and representatives harmless from and against any and all injuries, claims, demands, judgments, damages, losses and expenses, including reasonable attorney’s fees and costs of suit or defense, arising out of, resulting from or alleged to arise out of or result from the negligent, careless or wrongful acts, omissions, failures to act or misconduct of the utility or its affiliates, officers, employees, agents, contractors or subcontractors in the construction of facilities or occupancy of the rights-of-way, and in providing or offering service over the facilities, whether such acts or omissions are authorized, allowed or prohibited by this Chapter or by a franchise, license, or similar agreement; provided, however, that the utility’s indemnity obligations hereunder shall not apply to any injuries, claims, demands, judgments, damages, losses or expenses arising out of or resulting from the negligence, misconduct or breach of this Chapter by the City, its officials, officers, employees, agents or representatives.

7-9-10: SECURITY

- A. Purpose. The permittee shall establish a Security Fund in a form and in an amount as set forth in this Section. The Security Fund shall be continuously maintained in accordance with this Section at the permittee's sole cost and expense until the completion of the work authorized under the permit. The Security Fund shall serve as security for:
1. The faithful performance by the permittee of all the requirements of this Chapter;
 2. Any expenditure, damage, or loss incurred by the City occasioned by the permittee's failure to comply with any codes, rules, regulations, orders, permits and other directives of the City issued pursuant to this Chapter; and
 3. The payment by permittee of all liens and all damages, claims, costs, or expenses that the City may pay or incur by reason of any action or non-performance by permittee in violation of this Chapter including, without limitation, any damage to public property or restoration work the permittee is required by this Chapter to perform that the City must perform itself or have completed as a consequence solely of the permittee's failure to perform or complete, and all other payments due the City from the permittee pursuant to this Chapter or any other applicable law.
- B. Form: The permittee shall provide the Security Fund to the City in the form, at the permittee's election, of cash, a surety bond in a form acceptable to the City, or an unconditional letter of credit in a form acceptable to the City. Any surety bond or letter of credit provided pursuant to this Subsection shall, at a minimum:
1. Provide that it will not be canceled without prior notice to the City and the permittee;
 2. Not require the consent of the permittee prior to the collection by the City of any amounts covered by it; and
 3. Shall provide a location convenient to the City and within the State of Illinois at which it can be drawn.
- C. Amount: The dollar amount of the Security Fund shall be sufficient to provide for the reasonably estimated cost to restore the right-of-way to at least as good a condition as that existing prior to the construction under the permit, as determined by the Director of Public Works, and may also include reasonable, directly related costs that the City estimates are likely to be incurred if the permittee fails to perform such restoration. Where the construction of facilities proposed under the permit will be performed in phases in multiple locations in the City, with each phase consisting of construction of facilities in one location or a related group of locations, and where construction in another phase will not be undertaken prior to substantial completion of restoration in the previous phase or phases, the Director of Public Works may, in

the exercise of sound discretion, allow the permittee to post a single amount of security which shall be applicable to each phase of the construction under the permit. The amount of the Security Fund for phased construction shall be equal to the greatest amount that would have been required under the provisions of this Subsection (c) for any single phase.

- D. Withdrawals: The City, upon fourteen (14) days' advance written notice clearly stating the reason for, and its intention to exercise withdrawal rights under this Subsection, may withdraw an amount from the Security Fund, provided that the permittee has not reimbursed the City for such amount within the fourteen (14) day notice period. Withdrawals may be made if the permittee:
1. Fails to make any payment required to be made by the permittee hereunder;
 2. Fails to pay any liens relating to the facilities that are due and unpaid;
 3. Fails to reimburse the City for any damages, claims, costs or expenses which the City has been compelled to pay or incur by reason of any action or non-performance by the permittee; or
 4. Fails to comply with any provision of this Chapter that the City determines can be remedied by an expenditure of an amount in the Security Fund.
- E. Replenishment: Within fourteen (14) days after receipt of written notice from the City that any amount has been withdrawn from the Security Fund, the permittee shall restore the Security Fund to the amount specified in Subsection c) of this Section.
- F. Interest: The permittee may request that any and all interest accrued on the amount in the Security Fund be returned to the permittee by the City, upon written request for said withdrawal to the City, provided that any such withdrawal does not reduce the Security Fund below the minimum balance required in Subsection C of this Section.
- G. Closing and Return of Security Fund: Upon completion of the work authorized under the permit, the permittee shall be entitled to the return of the Security Fund, or such portion thereof as remains on deposit, within a reasonable time after account is taken for all offsets necessary to compensate the City for failure by the permittee to comply with any provisions of this Chapter or other applicable law. In the event of any revocation of the permit, the Security Fund, and any and all accrued interest therein, shall become the property of the City to the extent necessary to cover any reasonable costs, loss or damage incurred by the City as a result of said revocation, provided that any amounts in excess of said costs, loss or damage shall be refunded to the permittee.

H. Rights Not Limited: The rights reserved to the City with respect to the Security Fund are in addition to all other rights of the City, whether reserved by this Chapter or otherwise authorized by law, and no action, proceeding or exercise of right with respect to said Security Fund shall affect any other right the City may have. Notwithstanding the foregoing, the City shall not be entitled to a double monetary recovery with respect to any of its rights which may be infringed or otherwise violated.

7-9-11: PERMIT SUSPENSION AND REVOCATION

A. City Right to Revoke Permit: The City may revoke or suspend a permit issued pursuant to this Chapter for one or more of the following reasons:

1. Fraudulent, false, misrepresenting, or materially incomplete statements in the permit application;
2. Non-compliance with this Chapter;
3. Permittee's physical presence or presence of permittee's facilities on, over, above, along, upon, under, across, or within the rights-of-way presents a direct or imminent threat to the public health, safety, or welfare; or
4. Permittee's failure to construct the facilities substantially in accordance with the permit and approved plans.

B. Notice of Revocation or Suspension: The City shall send written notice of its intent to revoke or suspend a permit issued pursuant to this Chapter stating the reason or reasons for the revocation or suspension and the alternatives available to permittee under this Section 6.11.

C. Permittee Alternatives Upon Receipt of Notice of Revocation or Suspension: Upon receipt of a written notice of revocation or suspension from the City, the permittee shall have the following options:

1. Immediately provide the City with evidence that no cause exists for the revocation or suspension;
2. Immediately correct, to the satisfaction of the City, the deficiencies stated in the written notice, providing written proof of such correction to the City within five (5) working days after receipt of the written notice of revocation; or
3. Immediately remove the facilities located on, over, above, along, upon, under, across, or within the rights-of-way and restore the rights-of-way to the satisfaction

of the City providing written proof of such removal to the City within ten (10) days after receipt of the written notice of revocation.

The City may, in its discretion, for good cause shown, extend the time periods provided in this Subsection.

- D. Stop Work Order: In addition to the issuance of a notice of revocation or suspension, the City may issue a stop work order immediately upon discovery of any of the reasons for revocation set forth within Subsection a) of this Section.
- E. Failure or Refusal of the Permittee to Comply: If the permittee fails to comply with the provisions of Subsection c) of this Section, the City or its designee may, at the option of the City: (1) correct the deficiencies; (2) upon not less than twenty (20) days notice to the permittee, remove the subject facilities or equipment; or (3) after not less than thirty (30) days notice to the permittee of failure to cure the non-compliance, deem them abandoned and property of the City. The permittee shall be liable in all events to the City for all costs of removal.

7-9-12: CHANGE OF OWNERSHIP OR OWNER'S IDENTITY OF LEGAL STATUS

- A. Notification of Change: A utility shall notify the City no less than thirty (30) days prior to the transfer of ownership of any facility in the right-of-way or change in identity of the utility. The new owner of the utility or the facility shall have all the obligations and privileges enjoyed by the former owner under the permit, if any, and applicable laws, ordinances, rules and regulations, including this Chapter, with respect to the work and facilities in the right-of-way.
- B. Amended Permit: A new owner shall request that any current permit be amended to show current ownership. If the new owner fails to have a new or amended permit issued in its name, the new owner shall be presumed to have accepted, and agreed to be bound by, the terms and conditions of the permit if the new owner uses the facility or allows it to remain on the City's right-of-way.
- C. Insurance and Bonding: All required insurance coverage or bonding must be changed to reflect the name of the new owner upon transfer.

7-9-13: GENERAL CONSTRUCTION STANDARDS

- A. Standards and Principles: All construction in the right-of-way shall be consistent with applicable ordinances, codes, laws rules and regulations, and commonly recognized and accepted traffic control and construction principles, sound engineering judgment and, where applicable, the principles and standards set forth in the following IDOT publications, as amended from time to time:

1. Standard Specifications for Road and Bridge Construction;
2. Supplemental Specifications and Recurring Special Provisions;
3. Highway Design Manual;
4. Highway Standards Manual;
5. Standard Specifications for Traffic Control Items;
6. Illinois Manual on Uniform Traffic Control Devices (92 Ill. Adm. Code § 545);
7. Flagger's Handbook; and
8. Work Site Protection Manual for Daylight Maintenance Operations.

B. Interpretation of Municipal Standards and Principles: If a discrepancy exists between or among differing principles and standards required by this Chapter, the City Engineer shall determine, in the exercise of sound engineering judgment, which principles apply and such decision shall be final. If requested, the City Engineer shall state which standard or principle will apply to the construction, maintenance, or operation of a facility in the future.

7-9-14: TRAFFIC CONTROL

- A. Minimum Requirements: The City's minimum requirements for traffic protection are contained in IDOT's Illinois Manual on Uniform Traffic Control Devices and this Code.
- B. Warning Signs, Protective Devices, and Flaggers: The utility is responsible for providing and installing warning signs, protective devices and flaggers, when necessary, meeting applicable federal, state, and local requirements for protection of the public and the utility's workers when performing any work on the rights-of-way.
- C. Interference with Traffic: All work shall be phased so that there is minimum interference with pedestrian and vehicular traffic.
- D. Notice When Access is Blocked: At least forty-eight (48) hours prior to beginning work that will partially or completely block access to any residence, business or institution, the utility shall notify the resident, business or institution of the approximate beginning time and duration of such work; provided, however, that in cases involving emergency repairs pursuant to Section 9.20 of this Chapter, the utility shall provide such notice as is practicable under the circumstances.

E. Compliance: The utility shall take immediate action to correct any deficiencies in traffic protection requirements that are brought to the utility's attention by the City.

7-9-15: LOCATION OF FACILITIES

A. General Requirements: In addition to location requirements applicable to specific types of utility facilities, all utility facilities, regardless of type, shall be subject to the general location requirements of this subsection.

1. No Interference with City Facilities: No utility facilities shall be placed in any location if the Director of Public Works determines that the proposed location will require the relocation or displacement of any of the City's utility facilities or will otherwise interfere with the operation or maintenance of any of the City's utility facilities.
2. Minimum Interference and Impact: The proposed location shall cause only the minimum possible interference with the use of the right-of-way and shall cause only the minimum possible impact upon, and interference with the rights and reasonable convenience of property owners who adjoin said right-of-way.
3. No Interference with Travel: No utility facility shall be placed in any location that interferes with the usual travel on such right-of-way.
4. No Limitations on Visibility: No utility facility shall be placed in any location so as to limit visibility of or by users of the right-of-way.
5. Size of Utility Facilities: The proposed installation shall use the smallest suitable vaults, boxes, equipment enclosures, power pedestals, and/or cabinets then in use by the facility owner, regardless of location, for the particular application.

B. Parallel Facilities Located Within Highways:

1. Overhead Parallel Facilities: An overhead parallel facility may be located within the right-of-way lines of a highway only if:
 - a. Lines are located as near as practicable to the right-of-way line and as nearly parallel to the right-of-way line as reasonable pole alignment will permit;
 - b. Where pavement is curbed, poles are as remote as practicable from the curb with a minimum distance of two feet (0.6 m) behind the face of the curb, where available;

- c. Where pavement is uncurbed, poles are as remote from pavement edge as practicable with minimum distance of four feet (1.2 m) outside the outer shoulder line of the roadway and are not within the clear zone;
 - d. No pole is located in the ditch line of a highway; and
 - e. Any ground-mounted appurtenance is located within one foot (0.3 m) of the right-of-way line or as near as possible to the right-of-way line.
2. Underground Parallel Facilities. An underground parallel facility may be located within the right-of-way lines of a highway only if:
- a. The facility is located as near the right-of-way line as practicable and not more than eight (8) feet (2.4 m) from and parallel to the right-of-way line;
 - b. A new facility may be located under the paved portion of a highway only if other locations are impracticable or inconsistent with sound engineering judgment (e.g., a new cable may be installed in existing conduit without disrupting the pavement); and
 - c. In the case of an underground power or communications line, the facility shall be located as near the right-of-way line as practicable and not more than five (5) feet (1.5 m) from the right-of-way line and any above-grounded appurtenance shall be located within one foot (0.3 m) of the right-of-way line or as near as practicable.

C. Facilities Crossing Highways.

- 1. No Future Disruption: The construction and design of crossing facilities installed between the ditch lines or curb lines of City highways may require the incorporation of materials and protections (such as encasement or additional cover) to avoid settlement or future repairs to the roadbed resulting from the installation of such crossing facilities.
- 2. Cattle Passes, Culverts, or Drainage Facilities: Crossing facilities shall not be located in cattle passes, culverts, or drainage facilities.
- 3. 90 Degree Crossing Required: Crossing facilities shall cross at or as near to a ninety (90) degree angle to the centerline as practicable.
- 4. Overhead Power or Communication Facility: An overhead power or communication facility may cross a highway only if:

- a. It has a minimum vertical line clearance as required by ICC's rules entitled, "Construction of Electric Power and Communication Lines" (83 Ill. Adm. Code 305);
 - b. Poles are located within one foot (0.3 m) of the right-of-way line of the highway and outside of the clear zone; and
 - c. Overhead crossings at major intersections are avoided.
5. **Underground Power or Communication Facility:** An underground power or communication facility may cross a highway only if:
- a. The design materials and construction methods will provide maximum maintenance-free service life; and
 - b. Capacity for the utility's foreseeable future expansion needs is provided in the initial installation.
6. **Markers.** The City may require the utility to provide a marker at each right-of-way line where an underground facility other than a power or communication facility crosses a highway. Each marker shall identify the type of facility, the utility, and an emergency phone number. Markers may also be eliminated as provided in current Federal regulations. (49 C.F.R. §192.707 (1989)).
- D. **Facilities to be Located Within Particular Rights-of-Way:** The City may require that facilities be located within particular rights-of-way that are not highways, rather than within particular highways.
- E. **Freestanding Facilities:**
1. The City may restrict the location and size of any freestanding facility located within a right-of-way.
 2. The City may require any freestanding facility located within a right-of-way to be screened from view.
- F. **Facilities Installed Above Ground:** Above ground facilities may be installed only if:
1. No other existing facilities in the area are located underground;
 2. New underground installation is not technically feasible; and
 3. The proposed installation will be made at a location, and will employ suitable design and materials, to provide the greatest protection of aesthetic qualities of the area being traversed without adversely affecting safety. Suitable designs

include, but are not limited to, self-supporting armless, single-pole construction with vertical configuration of conductors and cable. Existing utility poles and light standards shall be used wherever practicable; the installation of additional utility poles is strongly discouraged.

G. Facility Attachments to Bridges or Roadway Structures:

1. Facilities may be installed as attachments to bridges or roadway structures only where the utility has demonstrated that all other means of accommodating the facility are not practicable. Other means shall include, but are not limited to, underground, underwater, independent poles, cable supports and tower supports, all of which are completely separated from the bridge or roadway structure. Facilities transmitting commodities that are volatile, flammable, corrosive, or energized, especially those under significant pressure or potential, present high degrees of risk and such installations are not permitted.
2. A utility shall include in its request to accommodate a facility installation on a bridge or roadway structure supporting data demonstrating the impracticability of alternate routing. Approval or disapproval of an application for facility attachment to a bridge or roadway structure will be based upon the following considerations:
 - a. The type, volume, pressure or voltage of the commodity to be transmitted and an evaluation of the resulting risk to persons and property in the event of damage to or failure of the facility;
 - b. The type, length, value, and relative importance of the highway structure in the transportation system;
 - c. The alternative routings available to the utility and their comparative practicability;
 - d. The proposed method of attachment;
 - e. The ability of the structure to bear the increased load of the proposed facility;
 - f. The degree of interference with bridge maintenance and painting;
 - g. The effect on the visual quality of the structure; and
 - h. The public benefit expected from the utility service as compared to the risk involved.

H. Appearance Standards:

1. The City may prohibit the installation of facilities in particular locations in order to preserve visual quality.
2. A facility may be constructed only if its construction does not require extensive removal or alteration of trees or terrain features visible to the right-of-way user or to adjacent residents and property owners, and if it does not impair the aesthetic quality of the lands being traversed.

7-9-16 Construction Methods and Materials

A. Standards and Requirements for Particular Types of Construction Methods:

1. Boring or Jacking

- a. Pits and Shoring: Boring or jacking under rights-of-way shall be accomplished from pits located at a minimum distance specified by the City Engineer from the edge of the pavement. Pits for boring or jacking shall be excavated no more than 48 hours in advance of boring or jacking operations and backfilled within 48 hours after boring or jacking operations are completed. While pits are open, they shall be clearly marked and protected by barricades. Shoring shall be designed, erected, supported, braced, and maintained so that it will safely support all vertical and lateral loads that may be imposed upon it during the boring or jacking operation.
- b. Wet Boring or Jetting: Wet boring or jetting shall not be permitted under the roadway.
- c. Borings with Diameters Greater Than 6 Inches: Borings over six inches (0.15 m) in diameter shall be accomplished with an auger and following pipe, and the diameter of the auger shall not exceed the outside diameter of the following pipe by more than one inch (25 mm).
- d. Borings with Diameters 6 Inches or Less: Borings of six inches or less in diameter may be accomplished by either jacking, guided with auger, or auger and following pipe method.
- e. Tree Preservation: Any facility located within the drip line of any tree designated by the City to be preserved or protected shall be bored under or around the root system.

2. Trenching: Trenching for facility installation, repair, or maintenance on rights-of-way shall be done in accord with the applicable portions of Section 603 of IDOT's "Standard Specifications for Road and Bridge Construction."

- a. Length: The length of open trench shall be kept to the practicable minimum consistent with requirements for pipe-line testing. Only one-half of any intersection may have an open trench at any time unless special permission is obtained from the Director of Public Works.
 - b. Open Trench and Excavated Material: Open trench and windrowed excavated material shall be protected as required by Chapter 6 of the Illinois Manual on Uniform Traffic Control Devices. Where practicable, the excavated material shall be deposited between the roadway and the trench as added protection. Excavated material shall not be allowed to remain on the paved portion of the roadway. Where right-of-way width does not allow for windrowing excavated material off the paved portion of the roadway, excavated material shall be hauled to an off-road location.
 - c. Drip Line of Trees: The utility shall not trench within the drip line of any tree designated by the City to be preserved.
3. Backfilling:
- a. Any pit, trench, or excavation created during the installation of facilities shall be backfilled for its full width, depth, and length using methods and materials in accordance with IDOT's "Standard Specifications for Road and Bridge Construction." When excavated material is hauled away or is unsuitable for backfill, suitable granular backfill shall be used.
 - b. For a period of three years from the date construction of a facility is completed, the utility shall be responsible to remove and restore any backfilled area that has settled due to construction of the facility. If so ordered by the Director of Public Works, the utility, at its expense, shall remove any pavement and backfill material to the top of the installed facility, place and properly compact new backfill material, and restore new pavement, sidewalk, curbs, and driveways to the proper grades, as determined by the Director of Public Works.
4. Pavement Cuts: Pavement cuts for facility installation or repair shall be permitted on a highway only if that portion of the highway is closed to traffic. If a variance to the limitation set forth in this paragraph 4) is permitted under Section 9.21, the following requirements shall apply:
- a. Any excavation under pavements shall be backfilled and compacted as soon as practicable with granular material of CA-6 or CA-10 gradation, as designated by the Director of Public Works.
 - b. Restoration of pavement, in kind, shall be accomplished as soon as practicable, and temporary repair with bituminous mixture shall be provided immediately.

Any subsequent failure of either the temporary repair or the restoration shall be rebuilt upon notification by the City.

c. All saw cuts shall be full depth.

d. For all rights-of-way which have been reconstructed with a concrete surface/base in the last seven (7) years, or resurfaced in the last three (3) years, permits shall not be issued unless such work is determined to be an emergency repair or other work considered necessary and unforeseen before the time of the reconstruction or unless a pavement cut is necessary for a J.U.L.I.E. locate.

5. Encasement:

a. Casing pipe shall be designed to withstand the load of the highway and any other superimposed loads. The casing shall be continuous either by one-piece fabrication or by welding or jointed installation approved by the City.

b. The venting, if any, of any encasement shall extend within one foot (0.3 m) of the right-of-way line. No above-ground vent pipes shall be located in the area established as clear zone for that particular section of the highway.

c. In the case of water main or service crossing, encasement shall be furnished between bore pits unless continuous pipe or City approved jointed pipe is used under the roadway. Casing may be omitted only if pipe is installed prior to highway construction and carrier pipe is continuous or mechanical joints are of a type approved by the City. Bell and spigot type pipe shall be encased regardless of installation method.

d. In the case of gas pipelines of 60 psig or less, encasement may be eliminated.

e. In the case of gas pipelines or petroleum products pipelines with installations of more than 60 psig, encasement may be eliminated only if: (1) extra heavy pipe is used that precludes future maintenance or repair and (2) cathodic protection of the pipe is provided;

f. If encasement is eliminated for a gas or petroleum products pipeline, the facility shall be located so as to provide that construction does not disrupt the right-of-way.

6. Minimum Cover of Underground Facilities: Cover shall be provided and maintained at least in the amount specified in the following table for minimum cover for the type of facility:

TYPE OF FACILITY	MINIMUM COVER
Electric Lines	30 Inches (0.8 m)
Communication, Cable or Video Service Lines	18 to 24 Inches (0.6 m, as determined by the City)
Gas or Petroleum Products	30 Inches (0.8 m)
Water Line	Sufficient Cover to Provide Freeze Protection
Sanitary Sewer, Storm Sewer, or Drainage Line	Sufficient Cover to Provide Freeze Protection

B. Standards and Requirements for Particular Types of Facilities:

1. Electric Power or Communication Lines:

- a. Code Compliance: Electric power or communications facilities within City rights-of-way shall be constructed, operated, and maintained in conformity with the provisions of 83 Ill. Adm. Code Part 305 (formerly General Order 160 of the Illinois Commerce Commission) entitled “Rules for Construction of Electric Power and Communications Lines,” and the National Electrical Safety Code.
- b. Overhead Facilities: Overhead power or communication facilities shall use single pole construction and, where practicable, joint use of poles shall be used. Utilities shall make every reasonable effort to design the installation so guys and braces will not be needed. Variances may be allowed if there is no feasible alternative and if guy wires are equipped with guy guards for maximum visibility.
- c. Underground Facilities: (1) Cable may be installed by trenching or plowing, provided that special consideration is given to boring in order to minimize damage when crossing improved entrances and side roads. (2) If a crossing is installed by boring or jacking, encasement shall be provided between jacking or bore pits. Encasement may be eliminated only if: (a) the crossing is installed by the use of “moles,” “whip augers,” or other approved method which compress the earth to make the opening for cable installation or (b) the installation is by the open trench method which is only permitted prior to roadway construction. (3) Cable shall be grounded in accordance with the National Electrical Safety Code.

- d. Burial of Drops: All temporary service drops placed between November 1 of the prior year and March 15 of the current year, also known as snowdrops, shall be buried by May 31 of the current year, weather permitting, unless otherwise permitted by the City. Weather permitting, utilities shall bury all temporary drops, excluding snowdrops, within ten (10) business days after placement.
2. Underground Facilities Other than Electric Power or Communication Lines: Underground facilities other than electric power or communication lines may be installed by:
 - a. the use of “moles,” “whip augers,” or other approved methods which compress the earth to move the opening for the pipe;
 - b. jacking or boring with vented encasement provided between the ditch lines or toes of slopes of the highway;
 - c. open trench with vented encasement between ultimate ditch lines or toes of slopes, but only if prior to roadway construction; or
 - d. tunneling with vented encasement, but only if installation is not possible by other means.
3. Gas Transmission, Distribution and Service: Gas pipelines within rights-of-way shall be constructed, maintained, and operated in a City approved manner and in conformance with the Federal Code of the Office of Pipeline Safety Operations, Department of Transportation, Part 192 – Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards (49 CFR §192), IDOT’s “Standard Specifications for Road and Bridge Construction,” and all other applicable laws, rules, and regulations.
4. Petroleum Products Pipelines: Petroleum products pipelines within rights-of-way shall conform to the applicable sections of ANSI Standard Code for Pressure Piping. (Liquid Petroleum Transportation Piping Systems ANSI-B 31.4).
5. Waterlines, Sanitary Sewer Lines, Storm Water Sewer Lines or Drainage Lines: Water lines, sanitary sewer lines, storm sewer lines, and drainage lines within rights-of-way shall meet or exceed the recommendations of the current “Standard Specifications for Water and Sewer Main Construction in Illinois.”
6. Ground Mounted Appurtenances: Ground mounted appurtenances to overhead or underground facilities, when permitted within a right-of-way, shall be provided with a vegetation-free area extending one foot (305 mm) in width beyond the appurtenance in all directions. The vegetation-free area may be provided by an extension of the mounting pad, or by heavy duty plastic or similar material

approved by the Engineer. With the approval of the Engineer, shrubbery surrounding the appurtenance may be used in place of vegetation-free area. The housing for ground-mounted appurtenances shall be painted a neutral color to blend with the surroundings.

C. Materials:

1. General Standards: The materials used in constructing facilities within rights-of-way shall be those meeting the accepted standards of the appropriate industry, the applicable portions of IDOT's "Standards Specifications for Road and Bridge Construction," the requirements of the Illinois Commerce Commission, or the standards established by other official regulatory agencies for the appropriate industry.
2. Material Storage on Right-of-Way: No material shall be stored on the right-of-way without the prior written approval of the Director of Public Works. When such storage is permitted, all pipe, conduit, wire, poles, cross arms, or other materials shall be distributed along the right-of-way prior to and during installation in a manner to minimize hazards to the public or an obstacle to right-of-way maintenance or damage to the right-of-way and other property. If material is to be stored on right-of-way, prior approval must be obtained from the City.
3. Hazardous Materials: The plans submitted by the utility to the City shall identify any hazardous materials that may be involved in the construction of the new facilities or removal of any existing facilities.

D. Operational Restrictions:

1. Construction operations on rights-of-way may, at the discretion of the City, be required to be discontinued when such operations would create hazards to traffic or the public health, safety, and welfare. Such operations may also be required to be discontinued or restricted when conditions are such that construction would result in extensive damage to the right-of-way or other property.
2. These restrictions may be waived by the Director of Public Works when emergency work is required to restore vital utility services.
3. Unless otherwise permitted by the City, the hours of construction are those set forth in this Code.

E. Location of Existing Facilities: Any utility proposing to construct facilities in the City shall contact J.U.L.I.E. and ascertain the presence and location of existing above-ground and underground facilities within the rights-of-way to be occupied by its proposed facilities. The City will make its permit records available to a utility for the purpose of identifying possible facilities. When notified of an excavation or when

requested by the City or by J.U.L.I.E., a utility shall locate and physically mark its underground facilities within 48 hours, excluding weekends and holidays, in accordance with the Illinois Underground Facilities Damage Prevention Act (220 ILCS 50/1 *et seq.*)

7-9-17 Vegetation Control

- A. Electric Utilities – Compliance with State Laws and Regulations: An electric utility shall conduct all tree-trimming and vegetation control activities in the right-of-way in accordance with applicable Illinois laws and regulations, and additionally, with such local franchise or other agreement with the City as permitted by law.

- B. Other Utilities – Tree Trimming Permit Required: Tree trimming that is done by any other utility with facilities in the right-of-way and that is not performed pursuant to applicable Illinois laws and regulations specifically governing same, shall not be considered a normal maintenance operation, but shall require the application for, and the issuance of, a permit, in addition to any other permit required under this Chapter.
 - 1. Application for Tree Trimming Permit: Applications for tree trimming permits shall include assurance that the work will be accomplished by competent workers with supervision who are experienced in accepted tree pruning practices. Tree trimming permits shall designate an expiration date in the interest of assuring that the work will be expeditiously accomplished.

 - 2. Damage to Trees: Poor pruning practices resulting in damaged or misshapen trees will not be tolerated and shall be grounds for cancellation of the tree trimming permit and for assessment of damages. The City will require compensation for trees extensively damaged and for trees removed without authorization. The formula developed by the International Society of Arboriculture will be used as a basis for determining the compensation for damaged trees or unauthorized removal of trees. The City may require the removal and replacement of trees if trimming or radical pruning would leave them in an unacceptable condition.

- C. Specimen Trees or Trees of Special Significance: The City may require that special measures be taken to preserve specimen trees or trees of special significance. The required measures may consist of higher poles, side arm extensions, covered wire or other means.

- D. Chemical Use:
 - 1. Except as provided in the following paragraph, no utility shall spray, inject or pour any chemicals on or near any trees, shrubs or vegetation in the City for any purpose, including the control of growth, insects or disease.

2. Spraying of any type of brush-killing chemicals will not be permitted on rights-of-way unless the utility demonstrates to the satisfaction of the Director of Public Works that such spraying is the only practicable method of vegetation control.

7-9-18 Removal, Relocation, or Modifications of Utility Facilities

- A. Notice: Within ninety (90) days following written notice from the City, a utility shall, at its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change or alter the position of any utility facilities within the rights-of-way whenever the corporate authorities have determined that such removal, relocation, change or alteration, is reasonably necessary for the construction, repair, maintenance, or installation of any City improvement in or upon, or the operations of the City in or upon, the rights-of-way.
- B. Removal of Unauthorized Facilities: Within thirty (30) days following written notice from the City, any utility that owns, controls, or maintains any unauthorized facility or related appurtenances within the rights-of-way shall, at its own expense, remove all or any part of such facilities or appurtenances from the rights-of-way. A facility is unauthorized and subject to removal in the following circumstances:
 1. Upon expiration or termination of the permittee's license or franchise, unless otherwise permitted by applicable law;
 2. If the facility was constructed or installed without the prior grant of a license or franchise, if required;
 3. If the facility was constructed or installed without prior issuance of a required permit in violation of this Chapter; or
 4. If the facility was constructed or installed at a location not permitted by the permittee's license or franchise.
- C. Emergency Removal or Relocation of Facilities: The City retains the right and privilege to cut or move any facilities located within the rights-of-way of the City, as the City may determine to be necessary, appropriate or useful in response to any public health or safety emergency. If circumstances permit, the municipality shall attempt to notify the utility, if known, prior to cutting or removing a facility and shall notify the utility, if known, after cutting or removing a facility.
- D. Abandonment of Facilities: Upon abandonment of a facility within the rights-of-way of the City, the utility shall notify the City within ninety (90) days. Following receipt of such notice the City may direct the utility to remove all or any portion of the facility if the Director of Public Works determines that such removal will be in the best interest of the public health, safety and welfare. In the event that the City does not direct the utility that abandoned the facility to remove it, by giving notice of abandonment to the City] the abandoning utility shall be deemed to consent to the alteration or removal of all or any portion of the facility by another utility or person.

7-9-19 Clean-Up and Restoration

The utility shall remove all excess material and restore all turf and terrain and other property within ten (10) days after any portion of the rights-of-way are disturbed, damaged or destroyed due to construction or maintenance by the utility, all to the satisfaction of the City. This includes restoration of entrances and side roads. Restoration of roadway surfaces shall be made using materials and methods approved by the Director of Public Works. Such cleanup and repair may be required to consist of backfilling, regrading, reseeding, resodding, or any other requirement to restore the right-of-way to a condition substantially equivalent to that which existed prior to the commencement of the project. The time period provided in this Section may be extended by the Director of Public Works for good cause shown.

7-9-20 Maintenance and Emergency Maintenance

- A. General: Facilities on, over, above, along, upon, under, across, or within rights-of-way are to be maintained by or for the utility in a manner satisfactory to the City and at the utility's expense.
- B. Emergency Maintenance Procedures: Emergencies may justify non-compliance with normal procedures for securing a permit:
 - 1. If an emergency creates a hazard on the traveled portion of the right-of-way, the utility shall take immediate steps to provide all necessary protection for traffic on the highway or the public on the right-of-way including the use of signs, lights, barricades or flaggers. If a hazard does not exist on the traveled way, but the nature of the emergency is such as to require the parking on the shoulder of equipment required in repair operations, adequate signs and lights shall be provided. Parking on the shoulder in such an emergency will only be permitted when no other means of access to the facility is available.
 - 2. In an emergency, the utility shall, as soon as possible, notify the Director of Public Works or his or her duly authorized agent of the emergency, informing him or her as to what steps have been taken for protection of the traveling public and what will be required to make the necessary repairs. If the nature of the emergency is such as to interfere with the free movement of traffic, the City police shall be notified immediately.
 - 3. In an emergency, the utility shall use all means at hand to complete repairs as rapidly as practicable and with the least inconvenience to the traveling public.
- C. Emergency Repairs: The utility must file in writing with the City a description of the repairs undertaken in the right-of-way within 48 hours after an emergency repair.

7-9-21 Variances

- A. Request for Variance: A utility requesting a variance from one or more of the provisions of this Chapter must do so in writing to the Director of Public Works as a part of the permit application. The request shall identify each provision of this Chapter from which a variance is requested and the reasons why a variance should be granted.
- B. Authority to Grant Variances: The Director of Public Works shall decide whether a variance is authorized for each provision of this Chapter identified in the variance request on an individual basis.
- C. Conditions for Granting of Variance: The Director of Public Works may authorize a variance only if the utility requesting the variance has demonstrated that:
 - 1. One or more conditions not under the control of the utility (such as terrain features or an irregular right-of-way line) create a special hardship that would make enforcement of the provision unreasonable, given the public purposes to be achieved by the provision; and
 - 2. All other designs, methods, materials, locations or facilities that would conform with the provision from which a variance is requested are impracticable in relation to the requested approach.
- D. Additional Conditions for Granting of a Variance: As a condition for authorizing a variance, the Director of Public Works may require the utility requesting the variance to meet reasonable standards and conditions that may or may not be expressly contained within this Chapter but which carry out the purposes of this Chapter.
- E. Right to Appeal: Any utility aggrieved by any order, requirement, decision or determination, including denial of a variance, made by the City Engineer or Director of Public Works under the provisions of this Chapter shall have the right to appeal to the City Council, or such other board or commission as it may designate. The application for appeal shall be submitted in writing to the City Administrator within 30 days after the date of such order, requirement, decision or determination. The City Council shall commence its consideration of the appeal at the Council's next regularly scheduled meeting occurring at least seven (7) days after the filing of the appeal. The City Council shall timely decide the appeal.

7-9-22 Penalties

Any person who violates, disobeys, omits, neglects or refuses to comply with any of the provisions of this Chapter shall be subject to fine in accordance with the penalty provisions of this Code. There may be times when the City will incur delay or other costs, including third party claims, because the utility will not or cannot perform its duties under its permit and this Chapter. Unless the utility shows that another allocation of the cost of undertaking the requested action is appropriate, the utility shall bear the City's costs of damages and its costs of installing, maintaining, modifying, relocating, or

removing the facility that is the subject of the permit. No other administrative agency or commission may review or overrule a permit related cost apportionment of the City. Sanctions may be imposed upon a utility that does not pay the costs apportioned to it.

7-9-23 Enforcement

Nothing in this Chapter shall be construed as limiting any additional or further remedies that the City may have for enforcement of this Chapter.

7-9-24 Severability

If any section, subsection, sentence, clause, phrase or portion of this Chapter is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions hereof.(Ordinance 2007-47, 12-18-07)

7-9-25 Small Wireless Facilities

A. Purpose and Scope.

1. Purpose. The purpose of this Ordinance is to establish regulations, standards and procedures for the siting and collocation of small wireless facilities on rights-of-way within the City's jurisdiction, or outside the rights-of-way on property zoned by the City exclusively for commercial or industrial use, in a manner that is consistent with the Act.
2. Conflicts with Other Ordinances. This Ordinance supersedes all Ordinances or parts of Ordinances adopted prior hereto that are in conflict herewith, to the extent of such conflict.
3. Conflicts with State and Federal Laws. In the event that applicable federal or State laws or regulations conflict with the requirements of this Ordinance, the wireless provider shall comply with the requirements of this Ordinance to the maximum extent possible without violating federal or State laws or regulations.

B. Definitions. For the purposes of this Ordinance, the following terms shall have the following meanings:

Act: The Illinois Small Wireless Facilities Deployment Act, 50 ILCS 840/1 *et seq.*, as may be subsequently amended.

Antenna: communications equipment that transmits or receives electromagnetic radio frequency (RF) radiation, to be operated or operating from a fixed location pursuant to Federal Communications Commission (FCC) authorization, for the provision of

personal wireless service and any comingled information services. The antenna does not include an unintentional radiator, mobile station or devices.

Applicable Codes: uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or local amendments to those codes, including the National Electric Safety Code.

Applicant: any person, entity, or the agents, employees, and contractors of such person or entity that submits an application.

Application: a request submitted by an applicant to the City for a permit to collocate small wireless facilities at a specified location, and a request that includes the installation of a new utility pole for such collocation, as well as any applicable fee for the review of such application.

Collocate or Collocation: to install, mount, maintain, modify, operate, or replace wireless facilities on or adjacent to a wireless support structure or utility pole.

Communications Service: cable service, as defined in 47 U.S.C. 522(6), as amended; information service, as defined in 47 U.S.C. 153(24), as amended; telecommunications service, as defined in 47 U.S.C. 153(53), as amended; mobile service, as defined in 47 U.S.C. 153(53), as amended; or wireless service other than mobile service.

Communications Service Provider: a cable operator, as defined in 47 U.S.C. 522(5), as amended; a provider of information service, as defined in 47 U.S.C. 153(24), as amended; a telecommunications carrier, as defined in 47 U.S.C. 153(51), as amended; or a wireless provider.

FCC: the Federal Communications Commission of the United States.

Fee: a one-time charge.

Historic District or Historic Landmark: a building, property, or site, or group of buildings, properties, or sites that are either (i) listed in the National Register of Historic Places or formally determined eligible for listing by the Keeper of the National Register, the individual who has been delegated the authority by the federal agency to list properties and determine their eligibility for the National Register, in accordance with Section VI.D.1.a.i through Section VI.D.1.a.v of the Nationwide Programmatic Agreement codified at 47 CFR Part 1, Appendix C; or (ii) designated as a locally landmarked building, property, site, or historic district by an ordinance adopted by the City pursuant to a preservation program that meets the requirements of the Certified Local Government Program of the Illinois State Historic Preservation Office or where such certification of the preservation program by the Illinois State Historic Preservation Office is pending.

Law: a federal or State statute, common law, code, rule, regulation, order, or local ordinance or resolution.

Micro Wireless Facility: a small wireless facility that is not larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height and that has an exterior antenna, if any, no longer than 11 inches.

Municipal Utility Pole: a utility pole owned or operated by the City in public rights-of-way.

Permit: a written authorization required by the City to perform an action or initiate, continue, or complete a project.

Person: an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization.

Public Safety Agency: the functional division of the federal government, the State, a unit of local government, or a special purpose district located in whole or in part within this State, that provides or has authority to provide firefighting, police, ambulance, medical, or other emergency services to respond to and manage emergency incidents.

Rate: a recurring charge.

Right-of-Way: the area on, below, or above a public roadway, highway, street, public sidewalk, alley, or utility easement dedicated for compatible use. Right-of-way does not include City-owned aerial lines.

Small Wireless Facility: a wireless facility that meets both of the following qualifications: (i) each antenna is located inside an enclosure of no more than 6 cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than 6 cubic feet; and (ii) all other wireless equipment attached directly to a utility pole associated with the facility is cumulatively no more than 25 cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meter, concealment elements, telecommunications demarcation box, ground-based enclosures, grounding equipment, power transfer switch, cut-off switch, and vertical cable runs for the connection of power and other services.

Utility Pole: a pole or similar structure that is used in whole or in part by a communications service provider or for electric distribution, lighting, traffic control, or a similar function.

Wireless Facility: equipment at a fixed location that enables wireless communications between user equipment and a communications network, including: (i) equipment associated with wireless communications; and (ii) radio transceivers, antennas, coaxial

or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration. Wireless facility includes small wireless facilities. Wireless facility does not include: (i) the structure or improvements on, under, or within which the equipment is collocated; or (ii) wireline backhaul facilities, coaxial or fiber optic cable that is between wireless support structures or utility poles or coaxial, or fiber optic cable that is otherwise not immediately adjacent to or directly associated with an antenna.

Wireless Infrastructure Provider: any person authorized to provide telecommunications service in the State that builds or installs wireless communication transmission equipment, wireless facilities, wireless support structures, or utility poles and that is not a wireless services provider but is acting as an agent or a contractor for a wireless services provider for the application submitted to the City.

Wireless Provider: a wireless infrastructure provider or a wireless services provider.

Wireless Services: any services provided to the general public, including a particular class of customers, and made available on a nondiscriminatory basis using licensed or unlicensed spectrum, whether at a fixed location or mobile, provided using wireless facilities.

Wireless Services Provider: a person who provides wireless services.

Wireless Support Structure: a freestanding structure, such as a monopole; tower, either guyed or self-supporting; billboard; or other existing or proposed structure designed to support or capable of supporting wireless facilities. Wireless support structure does not include a utility pole.

C. Regulation of Small Wireless Facilities.

1. Permitted Use. Small wireless facilities shall be classified as permitted uses and subject to administrative review, except as provided in paragraph I regarding Height Exceptions or Variances, but not subject to zoning review or approval if they are collocated (i) in rights-of-way in any zoning district, or (ii) outside rights-of-way in property zoned exclusively for commercial or industrial use.
2. Permit Required. An applicant shall obtain one or more permits from the City to collocate a small wireless facility. An application shall be received and processed, and permits issued shall be subject to the following conditions and requirements:
 - a. Application Requirements. A wireless provider shall provide the following information to the City, together with the City's Small Cell Facilities Permit Application, as a condition of any permit application to collocate small wireless facilities on a utility pole or wireless support structure:

- (i) Site specific structural integrity and, for a municipal utility pole, make-ready analysis prepared by a structural engineer, as that term is defined in Section 4 of the Structural Engineering Practice Act of 1989;
- (ii) The location where each proposed small wireless facility or utility pole would be installed and photographs of the location and its immediate surroundings depicting the utility poles or structures on which each proposed small wireless facility would be mounted or location where utility poles or structures would be installed. This should include a depiction of the completed facility;
- (iii) Specifications and drawings prepared by a structural engineer, as that term is defined in Section 4 of the Structural Engineering Practice Act of 1989, for each proposed small wireless facility covered by the application as it is proposed to be installed;
- (iv) The equipment type and model numbers for the antennas and all other wireless equipment associated with the small wireless facility;
- (v) A proposed schedule for the installation and completion of each small wireless facility covered by the application, if approved; and
- (vi) Certification that the collocation complies with the Collocation Requirements and Conditions contained herein, to the best of the applicant's knowledge; and
- (vii) In the event that the proposed small wireless facility is to be attached to an existing pole owned by an entity other than the City, the wireless provider shall provide legally competent evidence of the consent of the owner of such pole to the proposed collocation.
- (viii) Certification by a radio engineer that a new, replacement or modified small wireless facility operates within all applicable FCC standards.

b. Application Process. The City shall process applications as follows:

- (i) The first completed application shall have priority over applications received by different applicants for collocation on the same utility pole or wireless support structure.
- (ii) An application to collocate a small wireless facility on an existing utility pole or wireless support structure, or replacement of an existing utility pole or wireless support structure shall be processed on a nondiscriminatory basis after the submission of a completed application.

FCC regulation provides that an application to collocate a small wireless facility using an existing structure shall be granted or denied within 60 days of

submission of a completed application. Delays beyond that time limit are available only in exceptional circumstances or with the consent of applicant.

- (iii) An application to collocate a small wireless facility that includes the installation of a new utility pole shall be processed on a nondiscriminatory basis after the submission of a completed application.

FCC regulation provides that an application to collocate a small wireless facility using a new structure shall be granted or denied within 90 days of submission of a completed application. Delays beyond that time limit are available only in exceptional circumstances or with the consent of the applicant.

- (iv) The City shall deny an application which does not meet the requirements of this Ordinance.

If the City determines that applicable codes, ordinances or regulations that concern public safety, or the Collocation Requirements and Conditions contained herein require that the utility pole or wireless support structure be replaced before the requested collocation, approval shall be conditioned on the replacement of the utility pole or wireless support structure at the cost of the provider.

The City shall document the basis for a denial, including the specific code provisions or application conditions on which the denial is based, and send the documentation to the applicant on or before the day the City denies an application.

The applicant may cure the deficiencies identified by the City and resubmit the revised application once within 30 days after notice of denial is sent to the applicant without paying an additional application fee. The City shall approve or deny the revised application within 30 days after the applicant resubmits the application or it is deemed approved. Failure to resubmit the revised application within 30 days of denial shall require the applicant to submit a new application with applicable fees, and recommencement of the City's review period.

The applicant must notify the City in writing of its intention to proceed with the permitted activity on a deemed approved basis, which may be submitted with the revised application.

Any review of a revised application shall be limited to the deficiencies cited in the denial. However, this revised application does not apply if the cure requires the review of a new location, new or different structure to be collocated upon, new antennas, or other wireless equipment associated with the small wireless facility.

- (v) Pole Attachment Agreement. Within 30 days after an approved permit to collocate a small wireless facility on a municipal utility pole, the City and the applicant shall enter into a Master Pole Attachment Agreement, provided by the City for the initial collocation on a municipal utility pole by the application. For subsequent approved permits to collocate on a small wireless facility on a municipal utility pole, the City and the applicant shall enter into a License Supplement of the Master Pole Attachment Agreement. The Director of Public Works, or his or her designee, is authorized to execute the Pole Attachment Agreement on behalf of the City following review and approval by the City Attorney of any revisions.
- c. Completeness of Application. Within 10 days after receiving an application, the City shall determine whether the application is complete and notify the applicant. If an application is incomplete, the City must specifically identify the missing information. An application shall be deemed complete if the City fails to provide notification to the applicant within 10 days after all documents, information and fees specifically enumerated in the City's permit application form are submitted by the applicant to the City. FCC regulation allows 10 days for determination of completion, and that 10-day time frame replaces the 30-day period provided in the state Act.

Processing deadlines are tolled from the time the City sends the notice of incompleteness to the time the applicant provides the missing information.

- d. Tolling. The time period for applications may be further tolled by:
 - (i) An express written agreement by both the applicant and the City; or
 - (ii) A local, State or federal disaster declaration or similar emergency that causes the delay.
- e. Consolidated Applications. An applicant seeking to collocate small wireless facilities within the jurisdiction of the City shall be allowed, at the applicant's discretion, to file a consolidated application and receive a single permit for the collocation of up to 25 small wireless facilities if the collocations each involve substantially the same type of small wireless facility and substantially the same type of structure.

If an application includes multiple small wireless facilities, the City may remove small wireless facility collocations from the application and treat separately small wireless facility collocations for which incomplete information has been provided or that do not qualify for consolidated treatment or that are denied. The City may issue separate permits for each collocation that is approved in a consolidated application.

- f. Duration of Permits. The duration of a permit shall be for a period of not less than 5 years, and the permit shall be renewed for equivalent durations unless the City makes a finding that the small wireless facilities or the new or modified utility pole do not comply with the applicable City codes or any provision, condition or requirement contained in this Ordinance.

If the Act is repealed as provided in Section 90 therein, renewals of permits shall be subject to the applicable City code provisions or regulations in effect at the time of renewal.

- g. Means of Submitting Applications. Applicants shall submit applications, supporting information and notices to the City by personal delivery at the City's designated place of business, by regular mail postmarked on the date due or by any other commonly used means, including electronic mail.

3. Collocation Requirements and Conditions.

- a. Public Safety Space Reservation. The City may reserve space on municipal utility poles for future public safety uses, for the City's electric utility uses, or both, but a reservation of space may not preclude the collocation of a small wireless facility unless the City reasonably determines that the municipal utility pole cannot accommodate both uses.
- b. Installation and Maintenance. The wireless provider shall install, maintain, repair and modify its small wireless facilities in safe condition and good repair and in compliance with the requirements and conditions of this Ordinance. The wireless provider shall ensure that its employees, agents or contractors that perform work in connection with its small wireless facilities are adequately trained and skilled in accordance with all applicable industry and governmental standards and regulations.
- c. No interference with public safety communication frequencies. The wireless provider's operation of the small wireless facilities shall not interfere with the frequencies used by a public safety agency for public safety communications.

A wireless provider shall install small wireless facilities of the type and frequency that will not cause unacceptable interference with a public safety agency's communications equipment.

Unacceptable interference will be determined by and measured in accordance with industry standards and the FCC's regulations addressing unacceptable interference to public safety spectrum or any other spectrum licensed by a public safety agency.

If a small wireless facility causes such interference, and the wireless provider has been given written notice of the interference by the public safety agency,

the wireless provider, at its own expense, shall remedy the interference in a manner consistent with the abatement and resolution procedures for interference with public safety spectrum established by the FCC including 47 CFR 22.970 through 47 CFR 22.973 and 47 CFR 90.672 through 47 CFR 90.675.

The City may terminate a permit for a small wireless facility based on such interference if the wireless provider is not in compliance with the Code of Federal Regulations cited in the previous paragraph. Failure to remedy the interference as required herein shall constitute a public nuisance.

- d. The wireless provider shall not collocate small wireless facilities on City utility poles that are part of an electric distribution or transmission system within the communication worker safety zone of the pole or the electric supply zone of the pole.

However, the antenna and support equipment of the small wireless facility may be located in the communications space on the City utility pole and on the top of the pole, if not otherwise unavailable, if the wireless provider complies with applicable codes for work involving the top of the pole.

For purposes of this subparagraph, the terms “communications space”, “communication worker safety zone”, and “electric supply zone” have the meanings given to those terms in the National Electric Safety Code as published by the Institute of Electrical and Electronics Engineers.

- e. The wireless provider shall comply with all applicable codes, including acoustic regulations, and local code provisions or regulations that concern public safety.
- f. The wireless provider shall comply with the following design standards and any variations from these design standards may only be granted pursuant to the variance provisions of this chapter:
 - (i) Screening. Whenever any equipment or appurtenances are to be installed at grade, screening must be installed to minimize the visibility of the facility and shall not be permitted to obstruct sight lines or to create other traffic or safety problems.
 - (ii) Color and Stealth. All wireless facilities subject to this section, including all related equipment and appurtenances, must be a color that blends with the surroundings of the pole, structure tower or infrastructure on which it is mounted. The color must be comprised of nonreflective materials which blend with the materials and colors of the surrounding area and structures. The Applicant shall use good faith efforts to employ reasonable stealth techniques to conceal the appearance of the wireless facilities. Any pole

extensions shall not be metallic or wood and shall blend with the color of the pole upon which they are mounted.

- (iii) Wiring and Cabling. Wires and cables connecting the antenna to the remainder of the facility must be installed in accordance with the national electrical code and national electrical safety code adopted by the city and in force at the time of the installation of the facility. Any wiring must be covered with an appropriate cover. No wiring and cabling serving the facility will be allowed to interfere with any existing uses.
- g. Alternate Placements. Except as provided in this Collocation Requirements and Conditions Section, a wireless provider shall not be required to collocate small wireless facilities on any specific utility pole, or category of utility poles, or be required to collocate multiple antenna systems on a single utility pole. However, with respect to an application for the collocation of a small wireless facility associated with a new utility pole, the City may propose that the small wireless facility be collocated on an existing utility pole or existing wireless support structure within 200 feet of the proposed collocation, which the applicant shall accept if it has the right to use the alternate structure on reasonable terms and conditions, and the alternate location and structure does not impose technical limits or additional material costs as determined by the applicant.

If the applicant refuses a collocation proposed by the City, the applicant shall provide written certification describing the property rights, technical limits or material cost reasons the alternate location does not satisfy the criteria in this paragraph.

- h. Height Limitations. The maximum height of a small wireless facility shall be no more than 10 feet above the utility pole or wireless support structure on which the small wireless facility is collocated.

New or replacement utility poles or wireless support structures on which small wireless facilities are collocated may not exceed the higher of:

- (i) 10 feet in height above the tallest existing utility pole, other than a utility pole supporting only wireless facilities, that is in place on the date the application is submitted to the City, that is located within 300 feet of the new or replacement utility pole or wireless support structure and that is in the same right-of-way within the jurisdictional boundary of the City, provided the City may designate which intersecting right-of-way within 300 feet of the proposed utility pole or wireless support structures shall control the height limitation for such facility; or
- (ii) 50 feet above ground level. The 50-foot limit provided by FCC regulation replaces the limit of 45 feet under the Act.

- i. Height Exceptions or Variances. If an applicant proposes a height for a new or replacement pole in excess of the above height limitations on which the small wireless facility is proposed for collocation, the applicant shall apply for a variance in the manner provided in this chapter.
 - j. Contractual Design Requirements. The wireless provider shall comply with requirements that are imposed by a contract between the City and a private property owner that concern design or construction standards applicable to utility poles and ground-mounted equipment located in the right-of-way.
 - k. Ground-mounted Equipment Spacing. Subject to the variance provisions of this chapter and state law, the wireless provider shall comply with applicable spacing requirements of this chapter concerning the location of ground-mounted equipment located in the right-of-way.
 - l. Undergrounding Regulations. Subject to the variance provisions of this chapter and state law, the wireless provider shall comply with the provisions of this chapter concerning undergrounding requirements that prohibit the installation of new or the modification of existing utility poles in a right-of-way without prior approval.
 - m. Collocation Completion Deadline. Collocation for which a permit is granted shall be completed within 180 days after issuance of the permit, unless the City and the wireless provider agree to extend this period or a delay is caused by make-ready work for a municipal utility pole or by the lack of commercial power or backhaul availability at the site, provided the wireless provider has made a timely request within 60 days after the issuance of the permit for commercial power or backhaul services, and the additional time to complete installation does not exceed 360 days after issuance of the permit. Otherwise, the permit shall be void unless the City grants an extension in writing to the applicant.
4. Application Fees. Application fees are imposed as follows:
- a. Applicant shall pay an application fee of \$650 for an application to collocate a single small wireless facility on an existing utility pole or wireless support structure, and \$350 for each small wireless facility addressed in a consolidated application to collocate more than one small wireless facility on existing utility poles or wireless support structures. The fees established by this chapter are equal to the limit imposed by the Act and represent a reasonable approximation of the City's objectively reasonable costs. The City shall regularly review the fees imposed and may adjust the fees by further amendment to this chapter.

- b. Applicant shall pay an application fee of \$1,000 for each small wireless facility addressed in an application that includes the installation of a new utility pole for such collocation.
 - c. Notwithstanding any contrary provision of State law or local ordinance, applications pursuant to this Section shall be accompanied by the required application fee. Application fees shall be non-refundable.
 - d. The City shall not require an application, approval or permit, or require any fees or other charges, from a communications service provider authorized to occupy the rights-of-way, for:
 - (i) routine maintenance;
 - (ii) the replacement of wireless facilities with wireless facilities that are substantially similar, the same size, or smaller if the wireless provider notifies the Village at least 10 days prior to the planned replacement and includes equipment specifications and certifications consistent with the Section titled Application Requirements (Section (C)(2)(a)) for any of the replacement equipment; or
 - (iii) the installation, placement, maintenance, operation or replacement of micro wireless facilities suspended on cables that are strung between existing utility poles in compliance with applicable safety codes.
 - e. Wireless providers shall secure a permit from the City to work within rights-of-way for activities that affect traffic patterns or require lane closures.
5. Exceptions to Applicability. Nothing in this Ordinance authorizes a person to collocate small wireless facilities on:
- a. property owned by a private party or property owned or controlled by the City or another unit of local government that is not located within rights-of-way, or a privately owned utility pole or wireless support structure without the consent of the property owner;
 - b. property owned, leased, or controlled by a park district, forest preserve district, or conservation district for public park, recreation or conservation purposes without the consent of the affected district, excluding the placement of facilities on rights-of-way located in an affected district that are under the jurisdiction and control of a different unit of local government as provided by the Illinois Highway Code; or
 - c. property owned by a rail carrier registered under Section 18c-7201 of the Illinois Vehicle Code, Metra Commuter Rail or any other public commuter rail service, or an electric utility as defined in Section 16-102 of the Illinois Public

Utilities Act, without the consent of the rail carrier, public commuter rail service, or electric utility. The provisions of this Ordinance do not apply to an electric or gas public utility or such utility's wireless facilities if the facilities are being used, developed and maintained consistent with the provisions of subsection (i) of Section 16-108.5 of the Illinois Public Utilities Act.

For the purposes of this subsection, "public utility" has the meaning given to that term in Section 3-105 of the Illinois Public Utilities Act. Nothing in this Ordinance shall be construed to relieve any person from any requirement (a) to obtain a franchise or a State-issued authorization to offer cable service or video service or (b) to obtain any required permission to install, place, maintain, or operate communications facilities, other than small wireless facilities subject to this Ordinance.

6. Pre-Existing Agreements. Existing agreements between the City and wireless providers that relate to the collocation of small wireless facilities in the right-of-way, including the collocation of small wireless facilities on City utility poles, that are in effect on June 1, 2018, remain in effect for all small wireless facilities collocated on the City's utility poles pursuant to applications submitted to the City before June 1, 2018, subject to applicable termination provisions contained therein. Agreements entered into after June 1, 2018, shall comply with this Ordinance.

A wireless provider that has an existing agreement with the City on the effective date of the Act may accept the rates, fees and terms that the City makes available under this Ordinance for the collocation of small wireless facilities or the installation of new utility poles for the collocation of small wireless facilities that are the subject of an application submitted two or more years after the effective date of the Act by notifying the City that it opts to accept such rates, fees and terms. The existing agreement remains in effect, subject to applicable termination provisions, for the small wireless facilities the wireless provider has collocated on the City's utility poles pursuant to applications submitted to the City before the wireless provider provides such notice and exercises its option under this paragraph.

7. Annual Recurring Rate. A wireless provider shall pay to the City an annual recurring rate to collocate a small wireless facility on a City utility pole located in a right-of-way that equals (i) \$200 per year or (ii) the actual, direct and reasonable costs related to the wireless provider's use of space on the City utility pole.

If the City has not billed the wireless provider actual and direct costs, the fee shall be \$200 payable on the first day after the first annual anniversary of the issuance of the permit or notice of intent to collocate, and on each annual anniversary date thereafter.

8. Abandonment. A small wireless facility that is not operated for a continuous period of 12 months shall be considered abandoned. The owner of the facility shall remove the small wireless facility within 90 days after receipt of written notice from the City notifying the wireless provider of the abandonment.

The notice shall be sent by certified or registered mail, return receipt requested, by the City to the owner at the last known address of the wireless provider. If the small wireless facility is not removed within 90 days of such notice, the City may remove or cause the removal of such facility pursuant to the terms of its pole attachment agreement for municipal utility poles or through whatever actions are provided for abatement of nuisances or by other law for removal and cost recovery.

A wireless provider shall provide written notice to the City if it sells or transfers small wireless facilities within the jurisdiction of the City. Such notice shall include the name and contact information of the new wireless provider.

D. Dispute Resolution. The Circuit Court of DeKalb County, Illinois shall have exclusive jurisdiction to resolve all disputes arising under the Small Wireless Facilities Deployment Act. Pending resolution of a dispute concerning rates for collocation of small wireless facilities on municipal utility poles within the right-of-way, the City shall allow the collocating person to collocate on its poles at annual rates of no more than \$200 per year per municipal utility pole, with rates to be determined upon final resolution of the dispute.

E. Indemnification. A wireless provider shall indemnify and hold the City harmless against any and all liability or loss from personal injury or property damage resulting from or arising out of, in whole or in part, the use or occupancy of the City improvements or right-of-way associated with such improvements by the wireless provider or its employees, agents, or contractors arising out of the rights and privileges granted under this Ordinance and the Act. A wireless provider has no obligation to indemnify or hold harmless against any liabilities and losses as may be due to or caused by the sole negligence of the City or its employees or agents. A wireless provider shall further waive any claims that they may have against the City with respect to consequential, incidental, or special damages, however caused, based on the theory of liability.

F. Insurance. The wireless provider shall carry, at the wireless provider's own cost and expense such insurance as is required by this chapter.

The wireless provider shall include the City as an additional insured on the commercial general liability policy and provide certification and documentation of inclusion of the City in a commercial general liability policy prior to the collocation of any wireless facility.

A wireless provider may self-insure all or a portion of the insurance coverage and limit requirement required by the City. A wireless provider that self-insures is not required, to the extent of the self-insurance, to comply with the requirement for the name of additional insureds under this Section. A wireless provider that elects to self-insure shall provide to the City evidence sufficient to demonstrate its financial ability to self-insure the insurance coverage limits required by the City. (Ordinance 2018-23, 07-17-2018; Ordinance 2021-28, 09-01-2021)