

## Chapter 38

### CONSTRUCTION OF UTILITY FACILITIES IN THE RIGHTS OF WAY<sup>1</sup>

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#### **38.01 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

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<sup>1</sup> Established by Ordinance 07-11-1

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 Chapters 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.

## **38.02 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 Section 1.02 of this Code or 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 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.

**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.

**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.

**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.

**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 Engineer or Public Works Coordinator 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.

**JULIE:** The Joint Utility Locating Information for Excavators utility notification program, operated pursuant to 220 ILCS 5/1 *et seq.*

**Major intersection:** The intersection of two or more major arterial highways.

**Occupancy:** The presence of facilities on, over or under the 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 38.04 and 38.05 of this 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.

**Public Works Coordinator:** The duly appointed Coordinator of Public Works or his or her designee.

**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 38.10.

**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:

1. 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.
2. 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.
3. 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 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:** 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:** 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.

### **38.03 ANNUAL REGISTRATION REQUIRED**

Every utility that occupies right of way within the City shall register by January 1 of each year with the Public Works Coordinator, providing the utility's name, address and regular business telephone and teletype 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 38.08, in the form of a certificate of insurance.

### **38.04 PERMIT REQUIRED; APPLICATIONS AND FEES** *Amended 18-7-2*

A. Permit Required: Except as otherwise provided in this Chapter, no person shall construct 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, 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 Public Works Coordinator and obtaining a permit from the City. 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, telephone and teletype numbers and an e-mail address contact.
2. The applicant's name and address, if different than the utility, its telephone, teletype numbers, e-mail address and its interest in the work.
3. The names, addresses and telephone and teletype 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:
  - i. 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
  - ii. 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 38.08.
8. Evidence of posting of the security fund as required in Section 38.10.
9. Any request for a variance from one or more provisions of this Chapter (see Section 38.21).
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 Section 38.04-C, 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, and City have been satisfied.
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. With regard to installation of Small Cell Antennas or Towers to be attached to new or existing utility poles or structures, the provisions of Section 38.04 of the City Code shall so apply and, in the event of any conflict with the provisions of this section 38.04, the provisions in Section 38.17 shall control.

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 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 that shall be determined by City Council. (ordinance 06-06-4)

### **38.05 ACTION ON PERMIT APPLICATIONS**

A. City Review of Permit Applications: Completed permit applications, containing all required documentation, shall be examined by the Public Works Coordinator within a reasonable time after filing. If the application does not conform to the requirements of applicable ordinances, codes, laws, rules and regulations, the Public Works Coordinator shall reject such application in writing, stating the reasons. If the Public Works Coordinator is satisfied that the proposed work conforms to the requirements of this Chapter and applicable ordinances, codes, laws, rules and regulations, the Public Works Coordinator shall issue a permit as soon as practicable. In all instances, it shall be the duty of the applicant to demonstrate, to the satisfaction of the Public Works Coordinator, 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 10 days prior to the commencement of work requiring no excavation and not less than 30 days prior to the commencement of work requiring excavation. The Public Works Coordinator shall specify the portion of the right of way upon

which the facility may be placed, used and constructed.

2. In the event the Public Works Coordinator fails to provide such specification of location to the telecommunications retailer within either (i) 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) 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, although in all other appropriate respects, the telecommunications retailer shall be bound by the provisions of this Chapter.
3. Upon the provision of such specification by the City, where a permit is required for work pursuant to Section 38.04 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 Section 38.05-A.

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 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.

### **38.06 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 6 months unless construction is actually begun within that period and is thereafter diligently pursued to completion.

C. Pre-Construction Meeting Required: At the election of the City, 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 City permit does not excuse the permittee from complying with other requirements of the City and applicable statutes, laws, ordinances, rules and regulations.

### **38.07 REVISED PERMIT DRAWINGS**

In the event 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 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 a variance in accordance with Section 38.21. If the City denies the request, then the permittee shall either remove the facility from the right of way or modify the facility so it conforms to the permit and submit revised drawings or plans therefor.

### **38.08 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 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 \$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 \$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 required policies to the City within 10 days following receipt of a written request 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 30 days after receipt by the City, by registered mail or certified mail, return receipt requested, of a written notice addressed to the City Manager of such intent to cancel or not to renew.”

Within 10 days after receipt by the City of said notice, and in no event later than 10 days prior to 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 Section 38.08-A, or the requirements of Sections 38.08-B, C and D. 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 Section 38.08-A, 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.]

### **38.09 INDEMNIFICATION**

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.

### **38.10 SECURITY**

A. Purpose: The permittee shall establish a Security Fund in a form and in an amount 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 Section 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 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 Public Works Coordinator, 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 Public Works Coordinator 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 Section for any single phase.

D. Withdrawals: The City, upon 14 days' advance written notice clearly stating the reason for, and its intention to exercise withdrawal rights under this Section, may withdraw an amount from the Security Fund, provided that the permittee has not reimbursed the City for such amount within the 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 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 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 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.

### **38.11 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.

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 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 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 Section.



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 this Section.

E. Failure or Refusal of the Permittee to Comply: If the permittee fails to comply with the provisions of this Section, the City or its designee may, at the option of the City: (1) correct the deficiencies; (2) upon not less than 20 days notice to the permittee, remove the subject facilities or equipment; or (3) after not less than 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.

### **38.12 CHANGE OF OWNERSHIP OR OWNER'S IDENTITY OR LEGAL STATUS**

A. Notification of Change: A utility shall notify the City no less than 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.

### **38.13 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 Public Works Coordinator shall determine, in the exercise of sound engineering judgment, which principles apply and such decision shall be final. If requested, the Public Works Coordinator shall state which standard or principle will apply to the construction, maintenance or operation of a facility in the future.

### **38.14 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 there is minimum interference with pedestrian and vehicular traffic.

D. Notice When Access is Blocked: At least 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 38.20, 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.

### **38.15 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 Section.

1. No Interference with City Facilities: No utility facilities shall be placed in any location if the Public Works Coordinator 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 2 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 4 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 1 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 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 5 feet (1.5 m) from the right of way line and any above-grounded appurtenance shall be located within 1 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 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 1 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 in a manner appropriate for the surrounding environment, and the City may require the facility's owner to maintain such screening.

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.

### **38.16 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 Public Works Coordinator 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 6 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 1 inch (25 mm).
  - d. Borings with Diameters 6 Inches or Less: Borings of 6 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 Public Works Coordinator.
  - 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 3 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 Public Works Coordinator, 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 Public Works Coordinator.
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 is permitted under Section 38.21, 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 Public Works Coordinator.
  - 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 7 years, or resurfaced in the last 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 JULIE 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 1 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	18-24 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 ICC) 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 or (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 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. Water Lines, 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 1 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 Public Works Coordinator. With the approval of the Public Works Coordinator, 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 *Standard Specifications for Road and Bridge Construction*, the requirements of the ICC 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 Public Works Coordinator. 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 Public Works Coordinator 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 Section 43.08 of this Code.

E. Location of Existing Facilities: Any utility proposing to construct facilities in the City shall contact JULIE 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 JULIE, 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.*)

**38.17 SMALL CELL ORDINANCE** *Added 18-7-2*

A. Purpose: The purpose of this Section 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 Illinois Small Wireless Facilities Deployment Act (P.A. 100-0585).

B. Conflicts with Other Ordinances: This Section supersedes all Sections or parts thereof adopted prior hereto that are in conflict herewith, to the extent of such conflict.

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

D. Definitions: For purposes of this Section, the following definitions shall apply:

**Act:** The Illinois Small Wireless Facilities Deployment Act (P.A. 100-0585), as may be subsequently amended.

**Antenna:** communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of wireless services.

**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 who submits an application and is a wireless provider.

**Application:** a request submitted by an applicant to the City for a permit to collocate small wireless facilities, 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.

E. Regulation of Small Wireless Facilities.

1. Permitted Use. Small wireless facilities shall be classified as permitted uses and subject to administrative review 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:
  - i. 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:
    - (a) 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;
    - (b) 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;
    - (c) 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;

- (d) The equipment type and model numbers for the antennas and all other wireless equipment associated with the small wireless facility;
- (e) A proposed schedule for the installation and completion of each small wireless facility covered by the application, if approved; and
- (f) Certification that the collocation complies with the Collocation Requirements and Conditions contained herein, to the best of the applicant's knowledge.
- (g) 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.

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

- (a) The first completed application shall have priority over applications received by different applicants for collocation on the same utility pole or wireless support structure.
- (b) 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 and shall be deemed approved if the City fails to approve or deny the application within 90 days after the submission of a completed application.

However, if an applicant intends to proceed with the permitted activity on a deemed approved basis, the applicant shall notify the City in writing of its intention to invoke the deemed approved remedy no sooner than 75 days after the submission of a completed application.

The permit shall be deemed approved on the latter of the 90th day after submission of the complete application or the 10th day after the receipt of the deemed approved notice by the City. The receipt of the deemed approved notice shall not preclude the City's denial of the permit request within the time limits as provided under this Section.

- (c) An application to collocate a small wireless facility that includes the installation of a new utility pole shall be processed on a nondiscriminatory basis and deemed approved if the City fails to approve or deny the application within 120 days after the submission of a completed application.



However, if an applicant intends to proceed with the permitted activity on a deemed approved basis, the applicant shall notify the City in writing of its intention to invoke the deemed approved remedy no sooner than 105 days after the submission of a completed application.

The permit shall be deemed approved on the latter of the 120th day after submission of the complete application or the 10th day after the receipt of the deemed approved notice by the City. The receipt of the deemed approved notice shall not preclude the City's denial of the permit request within the time limits as provided under this Section.

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

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.

- iii. 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.

- iv. Completeness of Application. Within 30 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 30 days after all documents, information and fees specifically enumerated in the City's permit application form are submitted by the applicant to the City.

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

- v. Tolling. The time period for applications may be further tolled by:
  - (a) An express written agreement by both the applicant and the City; or
  - (b) A local, State or federal disaster declaration or similar emergency that causes the delay.
- vi. 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.

- vii. 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 Section.

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.

viii. 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.

F. Collocation Requirements and Conditions.

1. 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.
2. 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 Section. 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.
3. 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.

4. 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.

5. The wireless provider shall comply with all applicable codes and local code provisions or regulations that concern public safety.
6. 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 38 (at Section 38.22):
  - a. 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.
  - b. 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.
  - c. 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.
7. 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 100 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.

8. 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:

- a. 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
  - b. 45 feet above ground level.
9. 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 (at Section 38.22).
  10. 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.
  11. Ground-mounted Equipment Spacing. Subject to the variance provisions of this Chapter 38 (at Section 38.22) and state law, the wireless provider shall comply with applicable spacing requirements of this Chapter 38 concerning the location of ground-mounted equipment located in the right-of-way.
  12. Undergrounding Regulations. Subject to the variance provisions of this Chapter 38 (at Section 38.22) and state law, the wireless provider shall

comply with the provisions of this Chapter 38 concerning undergrounding requirements that prohibit the installation of new or the modification of existing utility poles in a right-of-way without prior approval.

13. 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.

G. Application Fees. Application fees are imposed as follows:

1. 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.
2. 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.
3. 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.
4. 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:
  - a. routine maintenance;
  - b. the replacement of wireless facilities with wireless facilities that are substantially similar, the same size, or smaller if the wireless provider notifies the City at least 10 days prior to the planned replacement and includes equipment type and model numbers for any of the replacement equipment; or
  - c. 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.
5. 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.

H. Exceptions to Applicability. Nothing in this Section authorizes a person to collocate small wireless facilities on:

1. 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;
2. 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
3. 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 Public Utilities Act, without the consent of the rail carrier, public commuter rail service, or electric utility. The provisions of this Section 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 Public Utilities Act.

For the purposes of this subsection, "public utility" has the meaning given to that term in Section 3-105 of the Public Utilities Act. Nothing in this Section 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 Section.

I. 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 Section.

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 Section 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.

J. 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.

K. 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.

L. Dispute Resolution. The Circuit Court of McHenry County 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.

M. 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 Section 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.



N. Insurance. The wireless provider shall carry, at the wireless provider's own cost and expense such insurance as is required by this Chapter at Section 38.08.

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.

### **38.18 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 state 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 state 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 Public Works Coordinator that such spraying is the only practicable method of vegetation control.

**38.19 REMOVAL, RELOCATION OR MODIFICATIONS OF UTILITY FACILITIES**

A. Notice: Within 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-initiated or mandated improvement in or upon, or the operations of the City in or upon, the rights of way.

B. Removal of Unauthorized Facilities: Within 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 City 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 90 days. Following receipt of such notice the City may direct the utility to remove all or any portion of the facility if the Public Works

Coordinator determines that such removal will be in the best interest of the public health, safety and welfare. In the event 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.

### **38.20 CLEAN-UP AND RESTORATION**

The utility shall remove all excess material and restore all turf and terrain and other property within 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 Public Works Coordinator. 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 Public Works Coordinator for good cause shown.

### **38.21 MAINTENANCE AND EMERGENCY MAINTENANCE**

A. General: Facilities and any associated screening or landscaping 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 Public Works Coordinator, 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 Police Department 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.

D. Gas Pipes: Any person or company maintaining any gas pipes in the City shall keep such pipes free from leaks so that no injury shall be done thereby to any person or property.

### **38.22 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 Public Works Coordinator 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 Public Works Coordinator 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 Public Works Coordinator 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 not practical in relation to the requested approach.

D. Additional Conditions for Granting a Variance: As a condition for authorizing a variance, the Public Works Coordinator 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 Public Works Coordinator under the provisions of this Chapter shall have the right to appeal to the City Council, or such other Council or commission as it may designate. The application for appeal shall be submitted in writing to the City Clerk 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 7 days after the filing of the appeal. The City Council shall timely decide the appeal.

### **38.23 PENALTIES**

Any person who violates, disobeys, omits, neglects or refuses to comply with any of the provisions of this Chapter shall be subject to a fine in accordance with the penalty provisions of this Code, not to exceed \$750.00 per violation per day. 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.

#### **38.24 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.