

CHAPTER 12.28: CONSTRUCTION OF UTILITY FACILITIES IN THE RIGHTS-OF-WAY

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§ 12.28.010 PURPOSE AND SCOPE.

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

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

- (1) Prevent interference with the use of streets, sidewalks, alleys, parkways and other public ways and places;
- (2) Prevent the creation of visual and physical obstructions and other conditions that are hazardous to vehicle 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 on 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.

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(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 articles. 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. If 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.

(Ord. 1443, passed 12-17-07)

§ 12.28.020 DEFINITIONS.

For the purposes of this chapter, the following definitions shall apply unless the context clearly indicates or requires otherwise. A term not described in this section shall have the meaning ascribed to it in Ill. Adm. Code Ch. 92, § 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.

CITY. The City of Crest Hill, Illinois.

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

COATING. Protective wrapping or mastic cover applied to buried pipe for protection against external corrosion.

CODE. The Municipal Code of the City of Crest Hill.

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.

ENGINEER. The City Engineer or his/her designee.

EQUIPMENT. Materials, tools, implements, supplies, and/or other items used to facilitate construction of facilities.

EXCAVATION. The making of a hole or cavity by removing material or laying bare by digging.

EXTRA HEAVY PIPE. Pipe meeting ASTM standards for this pipe designation.

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

FREESTANDING FACILITY. A facility that is not a crossing facility or a parallel facility, such as an antenna, transformer, pump, or meter station.

FRONTAGE ROAD. Roadway, usually parallel, which provides 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 City Engineer or the Public Works Director or his/her designee 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, ILCS Ch. 605, Act 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, ILCS Ch. 220, Act 5, § 21-401.

IDOT. Illinois Department of Transportation.

ICC. Illinois Commerce Commission.

JACKING. Pushing a pipe horizontally under a roadway by mechanical means with or without boring.

JETTING. Pushing a pipe through the earth using water under pressure to create a cavity ahead of the pipe.

JOINT USE. The use of pole lines, trenches or other facilities by two or more utilities.

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

MAJOR INTERSECTION. The intersection of two or more major arterial highways.

OCCUPANCY. The presence of facilities on, over or under right-of-way.

PARALLEL FACILITY. A facility that is generally parallel or longitudinal to the centerline of a right-of-way.

PARKWAY. Any portion of the right-of-way not improved by street or sidewalk.

PAVEMENT CUT. The removal of an area of pavement for access to facility or for the construction of a facility.

PERMITTEE. That entity to which a permit has been issued pursuant to §§ 12.28.040 and 12.28.050 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.

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 § 12.28.100.

SHOULDER. A width of roadway, adjacent to the pavement, which provides lateral support to the pavement edge and provides an area for emergency vehicular stops and storage of snow removed from the pavement.

SMALL WIRELESS FACILITY. As defined in section 12.28.210 of this chapter.

SOUND ENGINEERING JUDGMENT. A decision(s) consistent with generally accepted engineering principles, practices and experience.

PUBLIC WORKS DIRECTOR. The City Public Works Director or his/her designee.

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

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

TELECOMMUNICATIONS RETAILER. Means and includes every person engaged in making sales of telecommunications at retail as defined herein.

TRENCH. A relatively narrow open excavation for the installation of an underground facility.

UTILITY. The individual or entity owning or operating any facility as defined in this chapter.

VENT. A pipe to allow the dissipation into the atmosphere of gases or vapors from an underground casing.

VIDEO SERVICE. That term as defined in ILCS Ch. 220, § 21-201(v) of the Illinois Cable and Video Competition Law of 2007.

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.
(Ord. 1443, passed 12-17-07)

§ 12.28.030 ANNUAL REGISTRATION REQUIRED.

Every utility that occupies right-of-way within the city shall register on January 1 of each year with the Public Works Director or his/her designee, providing the utility's name, address and regular business telephone and telecopy numbers, the name of one or more contact persons who can act on behalf of the utility in connection with emergencies involving the utility's facilities in the right-of-way and a 24-hour telephone number for each such person, and evidence of insurance as required in § 12.28.080 of this chapter, in the form of a certificate of insurance.

(Ord. 1443, passed 12-17-07)

§ 12.28.040 PERMIT REQUIRED; APPLICATIONS AND FEES.

(A) Permit required. No person shall construct (as defined in this chapter) any facility on, over, above, along, upon, under, across, or within any city right-of-way which (1) changes the location of the facility, (2) adds a new facility, (3) disrupts the right-of-way (as defined in this chapter), or (4) materially increases the amount of area or space occupied by the facility on, over, above, along, under across or within the right-of-way, without first filing an application with the City Public Works Director or his/her designee and obtaining a permit from the city therefor, except as otherwise provided in this chapter. No permit shall be required for installation and maintenance of service connections to customers' premises where there will be no disruption of the right-of-way. Small wireless facilities shall also be subject to the permit requirements of Section 12.28.210.

(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. Small wireless facilities shall also be subject to the permit requirements of Section 12.28.210.

(C) Minimum general application requirements. The application shall be made by the utility or its duly authorized representative and shall contain, at a minimum, the following:

- (1) The utility's name and address and telephone and telecopy numbers;
- (2) The applicant's name and address, if different than the utility, its telephone, telecopy numbers, e-mail address, and its interest in the work;
- (3) The names, addresses and telephone and telecopy numbers and e-mail addresses of all professional consultants, contractors and subcontractors, if any, advising or performing work for the applicant with respect to the application;
- (4) Provide name, addresses and telephone number and email address of person or department that will handle non-emergency and residential complaints.

(5) Any and all residential complaints and non-emergency complaints received must be logged and reported to the City on a bi-monthly basis. The report shall include the residents' contact number and address, compliant and resolution. This report shall be emailed to Public Works Director or his/her designee.

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(6) 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;

(7)(b) Evidence that the utility has placed on file with the city:

(a) A written traffic control plan demonstrating the protective measures and devices that will be employed consistent with the Illinois Manual on Uniform Traffic Control Devices, to prevent injury or damage to persons or property and to minimize disruptions to efficient pedestrian and vehicular traffic; and

(b) An emergency contingency plan which shall specify the nature of potential emergencies, including, without limitation, construction and hazardous materials emergencies, and the intended response by the applicant. The intended response shall include notification to the city and shall

promote protection of the safety and convenience of the public. Compliance with ICC regulations for emergency contingency plans constitutes compliance with this section unless the city finds that additional information or assurances are needed;

(8)(7) Drawings, plans and specifications showing the work proposed, including the certification of an engineer registered as a PE in the State of Illinois that such drawings, plans, and specifications comply with applicable codes, rules, and regulations;

(9)(8) Evidence of insurance as required in§ 12.28.080 of this chapter;

(10)(9) Evidence of posting of the security fund as required in§ 12.28.010 of this chapter;

(11)(10) Any request for a variance from one or more provisions of this chapter (see§ 12.28.210); and

(12)(11) 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 division (C) of this section, the permit application shall include the following items, as applicable to the specific utility that is the subject of the permit application:

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

(2) The maximum length 2,000 ft of installation for telecommunications for a single permit; The permittee is required to have a permit for each section of 2,000 ft.

(3) In the case of natural gas systems, state the proposed pipe size, design, construction class, and operating pressures;

(4) In the case of water lines, indicate that all requirements of the Illinois Environmental Protection Agency, Division of Public Water Supplies, have been satisfied;

(5) 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 the Metropolitan Water Reclamation District (other local or state entities with jurisdiction), have been satisfied; or

(6) 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.

(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 in the amount of \$250 plus the City can recover all direct costs, including consultants' and legal fees associated with the permittee coming in the ROW. No application fee is required to be paid by any electricity utility that is paying the municipal electricity infrastructure maintenance fee pursuant to the Electricity Infrastructure Maintenance Fee Act.

(Ord. 1443, passed 12-17-17)

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§ 12.28.050 ACTION ON PERMIT APPLICATIONS.

(A) City review of permit applications. Completed permit applications, containing all required documentation, shall be examined by the City Public Works Director or his/her designee within a reasonable time after filing. If the application does not conform to the requirements of applicable ordinances, codes, laws, rules, and regulations, the City Public Works Director or his/her designee shall reject such application in writing, stating the reasons therefor. If the City Public Works Director or his/her designee is satisfied that the proposed work conforms to the requirements of this chapter and applicable ordinances, codes, laws, rules, and regulations, the City Public Works Director or his/her designee shall issue a permit therefor as soon as practicable. In all instances, it shall be the duty of the applicant to demonstrate, to the satisfaction of the City Public Works Director or his/her designee, 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 ILCS, Ch. 220, Act 65, § 4 of the Telephone Company Act, a telecommunications retailer shall notify the city that it intends to commence work governed by this chapter for facilities for the provision of telecommunications services. Such notice shall consist of plans, specifications, and other documentation sufficient to demonstrate the purpose and intent of the facilities and shall be provided by the telecommunications retailer to the city not less than ten 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 City Public Works Director or his/her designee shall specify the portion of the right-of-way upon which the facility may be placed, used and constructed.

(2) In the event that the City Public Works Director or his/her designee fails to provide such specification of location to the telecommunications retailer within either (a) 45 days after service of notice to the city by the telecommunications retailer in the case of work not involving excavation for new construction or (b) 45 days after service of notice by the telecommunications retailer in the case of work involving excavation for new construction, the telecommunications retailer may commence work without obtaining a permit under this chapter.

(3) Upon the provision of such specification by the city, where a permit is required for work pursuant to § 12.28.040 of this chapter the telecommunications retailer shall submit to the city an application for a permit and all plans, specifications and documentation available regarding the facility to be constructed. Such application shall be subject to the requirements of subdivision (A) of this section.

(C) Additional City review of applications of holders of state authorization under the Cable and Video Competition Law of 2007. Applications by a utility that is a holder of a state-issued authorization under the Cable and Video Competition Law of 2007 shall be deemed granted 45 days after submission to the city, unless otherwise acted upon by the city, provided the holder has complied with applicable city codes and rules, ordinances, and regulations even if a permit is not issued.

(Ord. 1443, passed 12-17-07)

§ 12.28.060 EFFECT OF PERMIT.

(A) Authority granted; no property right or other interest created. A permit from the city authorizes a permittee to undertake only certain activities in accordance with this chapter on city rights-of-way, and does not create a property right or grant authority to the permittee to impinge upon the rights of others who may have an interest in the rights-of-way.

(B) Duration. No permit issued under this chapter shall be valid for a period longer than six months unless construction is actually begun within that period and is thereafter diligently pursued to completion.

(C) Pre-construction meeting at the City's request for special projects or for projects valued at \$250,000.00 or more. No construction shall begin pursuant to a permit issued under this chapter prior to attendance by the permittee and all major contractors and subcontractors who will perform any work under the permit at a pre-construction meeting. The pre-construction meeting shall be held at a date, time and place designated by the city with such city representatives in attendance as the city deems necessary. The meeting shall be for the purpose of reviewing the work under the permit, and reviewing special considerations necessary in the areas where work will occur, including, without limitation, presence or absence of other utility facilities in the area and their locations, procedures to avoid disruption of other utilities, use of rights-of-way by the public during construction, and access and egress by adjacent property owners.

(D) Compliance with all laws required. The issuance of a permit by the city does not excuse the permittee from complying with other requirements of the city and applicable statutes, laws, ordinances, rules, and regulations.

(Ord. 1443, passed 12-17-07)

§ 12.28.070 REVISED PERMIT DRAWINGS.

If 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 variance in accordance with § 12.28.210 of this chapter. If the city denies the request for a variance, then the permittee shall either remove the facility from the right-of-way or modify the facility so that it conforms to the permit and submit revised drawings or plans therefor.

(Ord. 1443, passed 12-17-07)

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§ 12.28.080 INSURANCE.

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

(1) Commercial general liability insurance, including premises liability, 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 for bodily injury or death to each person;
- (b) Five million dollars for property damage resulting from any one accident; and
- (c) Five million dollars 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 policies required by this section to the city within ten days following receipt of a written request therefor from the city.

(D) Maintenance and renewal of required coverages. The insurance policies required by this section shall contain the following endorsement:

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

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

(E) Self-insurance. A utility may self-insure all or a portion of the insurance coverage and limit requirements required by division (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 division (A), or the requirements of divisions (B), (C) and (D) of this section. A utility that elects to self-insure shall provide to the city evidence sufficient to demonstrate its financial ability to self-insure the insurance coverage and limit requirements required under division (A) of this section, such as evidence that the utility is a "private self insurer" under the Workers Compensation Act.

(F) Effect of insurance and self-insurance on utility's liability. The legal liability of the utility to the city and any person for any of the matters that are the subject of the insurance policies or self-insurance required by this section shall not be limited by such insurance policies or self-insurance or by the recovery of any amounts thereunder.

(G) Insurance companies. All insurance provided pursuant to this section shall be effected under valid and enforceable policies, issued by insurers legally able to conduct business with the licensee in the State of Illinois. All insurance carriers and surplus line carriers shall be rated "A-" or better and of a class size "X" or higher by A.M. Best Company.

(Ord. 1443, passed 12-17-07)

§ 12.28.090 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.

(Ord. 1443, passed 12-17-07)

§ 12.28.100 SECURITY.

(A) **Purpose.** The permittee shall establish a Security Fund in a form and in an amount as set forth in this section. The Security Fund shall be continuously maintained in accordance with this section at the permittee's sole cost and expense until the completion of the work authorized under the permit. The Security Fund shall serve as security for:

- (1) The faithful performance by the permittee of all the requirements of this chapter;
- (2) Any expenditure, damage, or loss incurred by the city occasioned by the permittee's failure to comply with any codes, rules, regulations, orders, permits and other directives of the city issued pursuant to this chapter; and
- (3) The payment by permittee of all liens and all damages, claims, costs, or expenses that the city may pay or incur by reason of any action or nonperformance 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 division shall, at a minimum:

- (1) Provide that it will not be canceled without prior notice to the city and the permittee;
- (2) Not require the consent of the permittee prior to the collection by the city of any amounts covered by it; and
- (3) Shall provide a location convenient to the city and within the State of Illinois at which it can be drawn.

(C) **Excavation Bond for Utilities in Right of Way.** An Excavation Bond shall be in place and approved by the City prior to issuance of a permit. The Bond shall be sufficient to remove any above grade structures and restore the right-of-way to at least as good a condition as that existing prior to the construction under the permit plus all erosion and sediment control to complete the restoration work. The permittee shall provide an estimate of cost to complete the work defined above minus any direct costs required by the City to be as approved by the City Public Works Director or his/her designee. The approved bond amount 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 City Public Works Director or his/her designee may, in the exercise of sound discretion, allow the permittee to post a single Excavation Bond which shall be applicable to each phase of the construction under the permit. The amount of the Excavation bond for phased construction shall be equal to the greatest

amount that would have been required under the provisions of this division for any single phase.

~~(H)(D)~~ Withdrawals. The city, upon 14 days' advance written notice clearly stating the reason for, and its intention to exercise withdrawal rights under this division, 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.

~~(H)(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 division (C) of this section.

~~(H)(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 division (C) of this section.

~~(H)(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)(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.

(Ord. 1443, passed 12-17-07)

§ 12.28.110 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 five working days after receipt of the written notice of revocation; or

(3) Immediately remove the facilities located on, over, above, along, upon, under, across, or within the rights-of-way and restore the rights-of-way to the satisfaction of the city providing written proof of such removal to the city within ten 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 division (A) of this section.

(E) Failure or refusal of the permittee to comply. If the permittee fails to comply with the provisions of division (C) of this section, the city or its designee may, at the option of the city: (1) correct the deficiencies; (2) upon not less than 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.

(Ord. 1443, passed 12-17-07)

§ 12.28.120 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.

(Ord. 1443, passed 12-17-07)

§ 12.28.130 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 (Ill. Adm. Code Ch. 92, § 545);
- (7) Flagger's Handbook; and
- (8) Work Site Protection Manual for Daylight Maintenance Operations.

(B) City of Crest Hill Standard Construction Details -In addition, all applicable "City Standards" shall also apply to construction in the right of public right of way.

(B)(C) Interpretation of municipal standards and principles. If a discrepancy exists between or among differing principles and standards required by this chapter, the City Public Works Director or his/her designee shall determine, in the exercise of sound engineering judgment, which principles apply and such decision shall be final. If requested, the City Public Works Director or his/her designee shall state which standard or principle will apply to the construction, maintenance, or operation of a facility in the future.

(Ord. 1443, passed 12-17-07)

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§ 12.28.140 TRAFFIC CONTROL.

(A) Minimum requirements. The city's minimum requirements for traffic protection are contained in IDOT's Illinois Manual on Uniform Traffic Control Devices and this Code.

(B) Warning signs, protective devices, and flaggers. The utility is responsible for providing and installing warning signs, protective devices and flaggers, when necessary, meeting applicable federal, state, and local requirements for protection of the public and the utility's workers when performing any work on the rights-of-way.

(C) Interference with traffic. All work shall be phased so that there is minimum interference with pedestrian and vehicular traffic.

(D) Notice when access is blocked. At least 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 § 12.28.200 of this chapter, the utility shall provide such notice as is practicable under the circumstances.

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

(Ord. 1443, passed 12-17-07)

§ 12.28.150 LOCATION OF FACILITIES.

++(A) As part of the permit process, the owners of the facility being installed shall gain approval from the City for the locations of utility facilities within public right of way and the location and size of cabinets and handhole being installed. The city shall have the right to control the location of these items in its right of way in order to not interfere with current or future city facilities or future or existing private utilities.

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

(1) No interference with city facilities. No utility facilities shall be placed in any location if the City Public Works Director or his/her designee 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.

(C) Parallel facilities located within highways.

(1) Underground parallel facilities required. Unless preemptive state law or a franchise grants the utility the right to locate parallel facilities above ground or unless a variance is otherwise granted as hereinafter provided, all utility facilities located in that portion of a right-of-way parallel to a highway or street shall be located underground.

(2) Underground parallel facilities. An underground parallel facility may be located within the right-of-way lines of a highway only if:

(a) The facility is located as near the right-of-way line as practicable and not more than eight feet (2.4m) 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 (such as a new cable may be installed in existing conduit without disrupting the pavement); and

(c) In the case of an underground power or communications line, the facility shall be located as near the right-of-way line as practicable and not more than five feet (1.5 m) from the right-of-way line and any above-grounded appurtenance shall be located within one foot (0.3 m) of the right-of-way line or as near as practicable.

(3) Underground parallel facilities. An overhead parallel facility may be located within the right-of-way lines of a highway or street only if:

(a) The design materials and construction methods will provide maximum maintenance-free service life;

(b) Capacity for the utility's foreseeable future expansion needs is provided in the initial installation;

(c) Where pavement is uncurbed, poles are as remote from pavement edge as practicable with minimum distance of four feet (1.2 m) outside the outer shoulder line of the roadway and are not within the clear zone;

(d) No pole is located in the ditch line of a highway; and

(e) Any ground-mounted appurtenance is located within one foot (0.3 m) of the right-of-way line or as near as possible to the right-of-way line.

(D) Facilities crossing highways.

(1) Underground crossing facilities required. Unless preemptive state law or a franchise grants the utility the right to locate crossing facilities aboveground or unless a variance is granted as hereinafter provided, all utility facilities that cross a highway right-of-way shall be located underground.

(2) 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.

(3) Cattle passes, culverts, or drainage facilities. Crossing facilities shall not be located in cattle passes, culverts, or drainage facilities.

(4) Ninety degree crossing required. Crossing facilities shall cross at or as near to a 90-degree angle to the centerline as practicable.

(5) Overhead power or communication facility. If a variance has been granted, 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" (Ill. Adm. Code Ch. 83, 305);

(b) Poles are located within one foot of the right-of-way line of the highway and outside of the clear zone; and

(c) Overhead crossings at major intersections are avoided.

(6) 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.

(7) 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)).

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(E) 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.

(F) Freestanding facilities.

(1) Immediately upon filing a permit application which includes a freestanding facility, the utility shall meet with the Public Works Director or his/her designee and schedule an on-site review. In accordance with the standards and purposes of this chapter, the city may restrict the location and size of any freestanding facility located within a right-of-way, as appropriate to mitigate the impact upon the right-of-way and adjoining property.

(2) The city may require any freestanding facility located within a right-of-way to be screened from view.

(G) Facilities installed above ground. Above ground facilities, including freestanding 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 prohibited unless the Public Works Director or his/her designee makes a written finding that it is impracticable to use existing utility poles and light standards.

(H) 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.

(I) Appearance standards.

(J) 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.

(Ord. 1443, passed 12-17-07)

§ 12.28.160 CONTRACTOR WORKFORCE IDENTIFICATION AND PUBLIC NOTIFICATION SIGNAGE.

(A) Contractor Workforce Identification.

(B) a. All employees of the permittee and contractor must have visible ID tag that includes the company name and logo, name of the employee, job title, signature and employee number.

a.b. All trucks and vehicles must have on them the company logo which is clearly visible.

(C) (B) Public Notification Signing

a. The company will be allowed to install public notification signing of the construction.

i. All signing must be approved by the City.

ii. Signs shall be installed no earlier than 5 days prior but at least 3 days minimum prior to the start of construction.

iii. All signs must be removed 3 days after final restoration has been completed.

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§ 12.28.170 CONSTRUCTION METHODS AND MATERIALS.

(A) Locates. All utilities proposing to construct, repair or maintain facilities in the city shall contact J.U.L.I.E. and the City's Public Works Department a minimum 3 working days prior to excavation to ascertain the presence and location of existing above-ground and underground facilities within the rights-of-way to be occupied by its existing or proposed facilities. The city will make its permit records available to a utility for the purpose of identifying possible facilities.

(B) Standards and requirements for particular types of construction methods.

(1) Boring or jacking.

(a) Pits and shoring. Boring or jacking under rights-of-way shall be accomplished from pits located at a minimum distance specified by the City Public Works Director or his/her designee 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 six inches. Borings over six inches (0.15 m) in diameter shall be accomplished with an auger and following pipe, and the diameter of the auger shall not exceed the outside diameter of the following pipe by more than one inch (25 mm).

(d) Borings with diameters six inches or less. Borings of six inches or less in diameter may be accomplished by either jacking, guided with auger, or auger and following pipe method.

(e) Tree preservation. Any facility located within the drip line of any tree designated by the city to be preserved or protected shall be bored under or around the root system.

(2) Trenching. Trenching for facility installation, repair, or maintenance on rights-of-way shall be done in accord with the applicable portions of Section 603 of IDOTs "Standard Specifications for Road and Bridge Construction" or with city standards, whichever standards are more restrictive.

(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 City Public Works Director or his/her designee.

(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

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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.

(d) Pavement cut standards. Any pavement cuts required and authorized by the city shall comply with all requirements set out in division (A)(4) below.

(3) Backfilling.

(a) Any pit, trench, or excavation created during the installation of facilities shall be backfilled for its full width, depth, and length using methods and materials in accordance with IDOT's "Standard Specifications for Road and Bridge Construction." When excavated material is hauled away or is unsuitable for backfill, suitable granular backfill shall be used.

(b) For a period of three years from the date construction of a facility is completed, the utility shall be responsible to remove and restore any backfilled area that has settled due to construction of the facility. If so ordered by the Public Works Director or his/her designee, 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 Director or his/her designee.

(4) Pavement cuts.

(a) Pavement cuts for facility installation or repair shall be permitted on a highway only if that portion of the highway is closed to traffic. Pavement cuts for facility installation or repair shall be permitted on a street or highway only if:

1. Required by sound engineering judgment, as determined by the Public Works Director or his/her designee, where the Superintendent determines that boring is not practicable;

2. Appropriate traffic control measures are approved by the Public Works Director or his/her designee;

3. Appropriate pavement rehabilitation measures are approved by the Public Works Director or his/her designee (up to and including full width pavement resurfacing).

(b) If a variance to the limitation set forth in this division is permitted under § 12.28.210, the following requirements shall apply:

1. Any excavation under pavements shall be backfilled with flowable fill, as soon as practicable, as approved by the Public Works Director or his/her designee.

2. 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.

3. All saw cuts shall be full depth.

4. For all rights-of-way which have been reconstructed with a concrete surface/base in the last seven years, or resurfaced in the last seven years, permits shall not be issued unless such work

is determined to be an emergency repair or other work considered necessary and unforeseen before the time of the reconstruction or unless a pavement cut is necessary for a J.U.L.I.E. locate.

(5) Encasement.

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

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

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

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

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

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

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

TYPE OF FACILITY	MINIMUM COVER
Electric Lines	30 inches
Communication, Cable or Video Service Lines	30 Inches
Gas or Petroleum Products	36 inches
Water Line	Sufficient Cover to Provide Freeze Protection
Sanitary Sewer, Storm Sewer, or Drainage Line	Sufficient Cover to Provide Freeze Protection

(7) Area restoration. As required by the Public Works Director or his/her designee, and to the extent practicable, all areas disturbed by the work of installing the facilities shall be restored to their original configuration and condition. Where necessary, grassy areas shall be reseeded.

(C) 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 Ill. Adm. Code, Ch. 83, Part 305 (formerly General Order 160 of the Illinois Commerce Commission) entitled "Rules for Construction of Electric Power and Communications Lines," and the National Electrical Safety Code.

(b) Overhead facilities. Overhead power or communication facilities shall use single pole construction and, where practicable, joint use of poles shall be used. Utilities shall make every reasonable effort to design the installation so guys and braces will not be needed. Variances may be allowed if there is no feasible alternative and if guy wires are equipped with guy guards for maximum visibility.

(c) Underground facilities.

1. Cable may be installed by trenching or plowing, provided that special consideration is given to boring in order to minimize damage when crossing improved entrances and side roads.

2. If a crossing is installed by boring or jacking, encasement shall be provided between jacking or bore pits. Encasement may be eliminated only if:

a. The crossing is installed by the use of "moles," "whip augers," or other approved method which compress the earth to make the opening for cable installation; or

b. The installation is by the open trench method which is only permitted prior to roadway construction.

3. Cable shall be grounded in accordance with the National Electrical Safety Code.

4. Burial of drops. All temporary service drops placed between November 1 of the prior year and March 15 of the current year, also known as snowdrops, shall be buried by May 31 of the current year, weather permitting, unless otherwise permitted by the city. Weather permitting, utilities shall bury all temporary drops, excluding snowdrops, within ten business days after placement.

(2) Underground facilities other than electric power or communication lines. Underground facilities other than electric power or communication lines may be installed by:

(a) The use of "moles," "whip augers," or other approved methods which compress the earth to move the opening for the pipe;

(b) Jacking or boring with vented encasement provided between the ditch lines or toes of slopes of the highway;

(c) Open trench with vented encasement between ultimate ditch lines or toes of slopes, but only if prior to roadway construction; or

(d) Tunneling with vented encasement, but only if installation is not possible by other means.

(3) Gas transmission, distribution and service. Gas pipelines within rights-of-way shall be constructed, maintained, and operated in a city-approved manner and in conformance with the Federal Code of the Office of Pipeline Safety Operations, Department of Transportation, Part 192 -Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards (49 CFR § 192), IDOT's "Standard Specifications for Road and Bridge Construction," and all other applicable laws, rules, and regulations.

(4) Petroleum products pipelines. Petroleum products pipelines within rights-of-way shall conform to the applicable sections of ANSI Standard Code for Pressure Piping. (Liquid Petroleum Transportation Piping Systems ANSI-B 31.4).

(5) Waterlines, sanitary sewer lines, storm water sewer lines or drainage lines. Water lines, sanitary sewer lines, storm sewer lines, and drainage lines within rights-of-way shall meet or exceed the recommendations of the current "Standard Specifications for Water and Sewer Main Construction in Illinois."

(6) Ground mounted appurtenances. Ground mounted appurtenances to overhead or underground facilities, when permitted within a right-of-way, shall be provided with a vegetation-free area extending one foot (305 mm) in width beyond the appurtenance in all directions. The vegetation-free area may be provided by an extension of the mounting pad, or by heavy duty plastic or similar material approved by the Public Works Director or his/her designee. With the approval of the Public Works Director or his/her designee, 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.

(D) 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 IDOTs "Standards Specifications for Road and Bridge Construction," the requirements of the Illinois Commerce Commission, or the standards established by other official regulatory agencies for the appropriate industry.

(2) Material storage on right-of-way. No material shall be stored on the right-of-way without the prior written approval of the City Public Works Director or his/her designee. 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.

(E) 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 Director or his/her designee 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 § 9.42.035 of this Code.

(F) Location of existing facilities. Any utility proposing to construct facilities in the city shall contact J.U.L.I.E. and ascertain the presence and location of existing above ground and underground facilities within the rights-of-way to be occupied by its proposed facilities. The city will make its permit records available to a utility for the purpose of identifying possible facilities. When notified of an excavation or when requested by the city or by J.U.L.I.E., a utility shall locate and physically mark its underground facilities within 48 hours, excluding weekends and holidays, in accordance with the Illinois Underground Facilities Damage Prevention Act (ILCS, Ch. 220, Act 50, §§1et seq.)
(Ord. 1443, passed 12-17-07)

§ 12.28.180 VEGETATION CONTROL.

(A) Electric utilities - compliance with state laws and regulations. An electric utility shall conduct all tree-trimming and vegetation control activities in the right-of-way in accordance with applicable Illinois laws and regulations, and additionally, with such local franchise or other agreement with the city as permitted by law.

(B) Other utilities - tree trimming permit required. Tree trimming that is done by any other utility with facilities in the right-of-way and that is not performed pursuant to applicable Illinois laws and regulations specifically governing same, shall not be considered a normal maintenance operation, but shall require the application for, and the issuance of, a permit, in addition to any other permit required under this chapter.

(1) Application for tree trimming permit. Applications for tree trimming permits shall include assurance that the work will be accomplished by competent workers with supervision who are experienced in accepted tree pruning practices. Tree trimming permits shall designate an expiration date in the interest of assuring that the work will be expeditiously accomplished.

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

(C) Specimen trees or trees of special significance. The city may require that special measures be taken to preserve specimen trees or trees of special significance. The required measures may consist of higher poles, side arm extensions, covered wire or other means.

(D) Chemical use.

(1) Except as provided in the following paragraph, no utility shall spray, inject or pour any chemicals on or near any trees, shrubs or vegetation in the city for any purpose, including the control of growth, insects or disease.

(2) Spraying of any type of brush-killing chemicals will not be permitted on rights-of-way unless the utility demonstrates to the satisfaction of the Public Works Director or his/her designee that such spraying is the only practicable method of vegetation control.
(Ord. 1443, passed 12-17-07)

§ 12.28.190 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 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 municipality shall attempt to notify the utility, if known, prior to cutting or removing a facility and shall notify the utility, if known, after cutting or removing a facility.

(D) Abandonment of facilities. Upon abandonment of a facility within the rights-of-way of the city, the utility shall notify the city within 90 days. Following receipt of such notice the city may direct the utility to remove all or any portion of the facility if the City Public Works Director or his/her designee determines that such removal will be in the best interest of the public health, safety and welfare. In the event that the city does not direct the utility that abandoned the facility to remove it, by giving notice of abandonment to the city, the abandoning utility shall be deemed to consent to the alteration or removal of all or any portion of the facility by another utility or person.

(Ord. 1443, passed 12-17-07)

§ 12.28.200 CLEAN-UP AND RESTORATION.

The utility shall remove all excess material and restore all turf and terrain and other property within ten 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 City Public Works Director or his/her designee. 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 City Public Works Director or his/her designee for good cause shown.

(Ord. 1443, passed 12-17-07)

§ 12.28.210 MAINTENANCE AND EMERGENCY MAINTENANCE.

(A) General. Facilities on, over, above, along, upon, under, across, or within rights-of-way are to be maintained by or for the utility in a manner satisfactory to the city and at the utility's expense.

(B) Emergency maintenance procedures. Emergencies may justify non-compliance with normal procedures for securing a permit:

(1) If an emergency creates a hazard on the traveled portion of the right-of-way, the utility shall take immediate steps to provide all necessary protection for traffic on the highway or the public on the right-of-way including the use of signs, lights, barricades or flaggers. If a hazard does not exist on the traveled way, but the nature of the emergency is such as to require the parking on the shoulder of

equipment required in repair operations. adequate signs and lights shall be provided. Parking on the shoulder in such an emergency will only be permitted when no other means of access to the facility is available.

(2) In an emergency, the utility shall, as soon as possible, notify the City Public Works Director or his/her designee 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 will interfere with the free movement of traffic, the city police shall be notified immediately.

(3) In an emergency, the utility shall use all means at hand to complete repairs as rapidly as practicable and with the least inconvenience to the traveling public.

(C) Emergency repairs. The utility must file in writing with the city a description of the repairs undertaken in the right-of-way within 48 hours after an emergency repair.
(Ord. 1443, passed 12-17-07)

§ 12.28.220 AS BUILT PLANS

A. Purpose: The purpose of this section is to establish a condition of the permit for the permittee to provide the city with a copy of the As built plans in GIS format within 60 calendar days after the project is completed.

§ 12.28.230 SMALL WIRELESS FACILITIES.

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A. Purpose: The purpose of this section is to establish standards for the location, installation, and maintenance of small wireless facilities in compliance with the Illinois Small Wireless Facilities Deployment Act and City standards. Small wireless facilities shall be subject to the requirements of this section, this chapter, and Federal law.

B. Definitions: Words or phrases in this section that are not defined in this subsection B or in section 12.28-020 of this chapter shall have the meanings ascribed to them in the Illinois Small Wireless Facilities Deployment Act. The following words and phrases have the meanings ascribed to them:

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

COLLOCATE OR COLLOCATION: Means to install, mount, maintain, modify, operate, or replace wireless facilities on or adjacent to a wireless support structure or utility pole.

MICRO WIRELESS FACILITY: Means a small wireless facility that is not larger in dimension than twenty-four inches (24") in length, fifteen inches (15") in width, and twelve inches (12") in height and that has an exterior antenna, if any, no longer than eleven inches (11").

RIGHT-OF-WAY OR ROW: For the purposes of collocation of small wireless facilities, means the area on, below, or above a public roadway, highway, street, public sidewalk, alley, or utility easement dedicated for compatible use, and does not include City-owned aerial lines.

SWF ACT: Means the Illinois Small Wireless Facilities Deployment Act, 50 Illinois Compiled Statutes 835/1.

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SMALL WIRELESS FACILITY OR SWF: Means a wireless facility that meets both of the following qualifications: 1) each antenna is located inside an enclosure of no more than six (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 six (6) cubic feet; and 2) all other wireless equipment attached directly to a utility pole associated with the facility is cumulatively no more than twenty five (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: Means a pole or similar structure that is used in whole or in part by communications service provider or for electric distribution, lighting, traffic control, or a similar function.

WIRELESS FACILITY: Means equipment at a fixed location that enables wireless communications between user equipment and a communications network, including: 1) equipment associated with wireless communications and 2) 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 the structure or improvements on, under, or within which the equipment is collocated or 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: Means any entity 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: Means a wireless infrastructure provider or a wireless services provider.

WIRELESS SERVICES: Means 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, using wireless facilities.

WIRELESS SERVICES PROVIDER: Means an entity that provides wireless services.

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

C. Permit Required: No SWF may be installed within the City unless a permit is first obtained in accordance with the provisions of this chapter; provided, however, that micro wireless facilities may be subject to the limited permitting requirements of subsection Q of this section.

D. Permit Application: All applicants for a permit to install an SWF within the City must submit a written permit application to the Director of Public Works by personal delivery, on a form provided by the City. The permit application must include the following information and the information required by section 7-5-4 of this chapter, as applicable:

- 1. Contact Information:** The names and contact information of the wireless services provider and the wireless infrastructure provider if any.
- 2. Description:** A description and depiction of the wireless services provider's existing SWFs located within the City.
- 3. Location, Photographs:** The location where each proposed small wireless facility or utility pole

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would be installed, including photographs of the location and its surroundings, depicting the utility poles or structures on which each proposed small wireless facility would be mounted or the location where a utility pole would be installed.

4. **Specifications, Drawings:** Specifications and drawings prepared by a licensed professional structural engineer for each proposed SWF as it is proposed to be installed, with a certification that each SWF complies with all applicable size and location standards.

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5. **Structural Analysis:** A site-specific structural analysis for each location by a licensed professional structural engineer as well as any make-ready analysis for a City utility pole that includes addressing the acceptability of the site for factors such as pole loading from existing utility equipment and conductors as well as the small wireless facility.

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6. **Equipment, Model Numbers:** The equipment type and model numbers for the antennas and all other wireless equipment associated with each proposed SWF.

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7. **Number:** The total number of SWFs the wireless services provider estimates it will seek within the City.

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8. **Schedule:** A proposed schedule for the installation and completion of each proposed SWF, if approved

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9. **Proof Of Insurance:** Proof of insurance coverage of the types and amount set forth in section 7-5-8 of this chapter.

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10. **Certification Of SWF Act Compliance:** A certification that the proposed SWF complies with subsection 15(d)(6) of the SWF Act and this chapter.

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11. **Application Fees:** An application fee in the amount established in the amount of: a) six hundred fifty dollars (\$650.00) for a single SWF, or b) three hundred fifty dollars (\$350.00) for each proposed SWF if the application includes two (2) or more SWFs, or c) one thousand dollars (\$1,000.00) for each SWF that includes the installation of a new utility pole.

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12. **Owner, Co-Owner Certification:** A certification from the owner or co-owner of the utility pole or wireless support structure that the owner or co-owner has approved installation of an SWF on the utility pole or wireless support structure.

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D. Review Of Application: Applications will be reviewed in accordance with the following process, except that the Director of Public Works may alter the review process for an application as appropriate based on the elements of that application; provided, however, that the review process will be consistent with the SWF Act:

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1. **Determination Of Completeness:** Within thirty (30) days after an application is filed, the Director of Public Works will determine whether the application is complete. The Director of Public Works will notify the applicant of his or her determination. If an application is not complete, then the Director of Public Works will identify the missing information.

2. **Processing Time Period:** The Director of Public Works will process a complete application to collocate: a) an SWF on an existing utility pole or wireless support structure within ninety (90) days, and b) an SWF on a new utility pole within one hundred twenty (120) days.

3. **Approvals; Permits; Duration:** The Director of Public Works will approve an application and issue a permit if it meets all requirements of the SWF Act and applicable City Code requirements. All collocation under the permit must be completed within one hundred eighty (180) days after issuance of the permit, unless otherwise mutually agreed or for reasons authorized under the SWF Act. A permit is valid for five

(5) years.

4. Renewal: When the permit expires, the City will renew the permit except if the City determines the SWF does not conform to any applicable Federal, State, or local code or regulation. The wireless provider must provide all reports, plans, and other documents and data necessary for the City to determine conformance of the SWF.

5. Denial: The Director of Public Works will deny an application if it does not meet all requirements of the SWF Act and applicable requirements of this Code. The Director of Public Works will notify the applicant of the denial and the reason or reasons for the denial.

6. Extensions Of Time: The time period for applications may be tolled by express written agreement of the applicant and the City or a local, State, or Federal disaster declaration or similar emergency that causes the delay.

F. Guidance On SWF Locations: Based on various factors including, among others, public safety, existing utility poles and wireless facilities, and potential adverse impacts, the applicant must consider collocation in these locations, with the items listed from most preferable to least preferable:

1. Public Utilities' Poles: Utility poles owned or maintained by ComEd or other public utilities.

2. City Poles: City-owned utility poles other than light poles or standards (whether existing or to be installed) in the following order of priority: a) within an arterial street right-of-way, b) within a parking lot or on other property related to a governmental or institutional use, and c) within a collector street right-of-way.

3. Privately Owned Poles: Privately-owned utility poles, but only in locations approved by the City.

4. City Light Poles: City-owned light poles or standards (whether existing or to be installed) in the following priority: a) within an arterial street right-of-way, b) within a parking lot or on other property related to a governmental or institutional use, and c) within a collector street right-of-way.

5. Other Poles; Nonresidential: Utility poles, regardless of ownership, located in a rear yard (or abutting easement) of any non-residential property.

6. Other Poles; Residential: Utility poles, regardless of ownership, located in a rear yard (or abutting easement) of any residential dwelling.

G. Decorative Utility Poles; Concealment Of SWF: If the Director of Public Works determines that an SWF proposed by the applicant would have an unduly adverse impact on the abutting area unless the SWF is collocated on a decorative pole or is concealed, then the Director of Public Works may require, as a condition of approval of that SWF, a decorative utility pole or concealment. The Director of Public Works or a designee may meet with the applicant to determine the plans for the SWF under that circumstance. If an agreement on plans cannot be reached, then the Director of Public Works may deny the permit for that proposed SWF.

H. Prohibited Locations: SWFs are prohibited at the following locations except as otherwise required by applicable law:

1. Residential Property: On any property classified in a residential district under the City's zoning ordinance.

2. Private Property: On any privately-owned property except with the approval of the City.

3. Government Property: On any property owned or controlled by a unit of local government that is not located within rights-of-way, except with the permission of the local government and approval of the City.

4. Poles With Equipment: On any utility pole that includes equipment such as capacitor banks, transformers, cable terminals, cable rises, fuses, or disconnects.

I. Size, Height, And Location Of Components:

1. Volume: No element of an SWF may exceed six (6) cubic feet in volume and all other wireless equipment attached directly to a utility pole associated with the SWF is cumulatively not more than twenty five (25) cubic feet.

2. Height Above Pole: No element of an SWF may extend more than ten feet (10') above a utility pole or wireless support structure on which it is collocated.

3. New Utility Pole, Wireless Support Structure Height: A new or replacement utility pole or a new wireless support structure on which an SWF will be collocated may not exceed the higher of: a) ten feet (10') in height above the tallest existing utility pole, other than a utility pole supporting only wireless facilities, that is in

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place as of the date the application is submitted to the City, that is located within three hundred feet (300') of the new or replacement utility pole or wireless support structure and that is in the same right-of-way within the City, or b) forty five feet (45') above ground level.

4. New Utility Pole Location: No new utility pole may be constructed for an SWF within one hundred feet (100') of an existing utility pole that the applicant may use on reasonable terms and conditions and without undue technical limits or undue additional costs.

J. Color: Antennas and equipment cabinets must be in colors harmonious with, and that blend with, the natural features, buildings and structures that surround such antenna and supporting structures, as well as the utility poles or wireless support structures to which they are attached, as determined by the Director of Public Works. Any wiring or cables must be covered with an appropriate cover.

K. Landscaping: The immediate area around any ground-mounted equipment or cabinets must be landscaped in a manner that largely screens the equipment and cabinets.

L. Safety Requirements:

1. Mounting Strength: The strength and sufficiency of the support structure, and the mounting of the antenna and related equipment, must be verified and stamped by a licensed structural engineer on the drawing required under subsection D of this section.

2. Guy Wires Prohibited: No guy wire or other support wires may be used in connection with an SWF antenna or its related equipment except for preexisting guy wires or other support wires on a preexisting wireless support structure.

3. Grounding: An SWF antenna and related structure must be bonded to a ground rod.

4. Emergency Disconnection: An SWF antenna must have an emergency disconnect.

5. Lighting: No SWF may be lighted unless required by the Federal Aviation Administration or other Federal or State agency with jurisdiction and authority.

6. Signs And Advertising: Unless required by Federal or State law, or by a rule of a Federal or State regulatory agency with jurisdiction and authority, no markings, signs, or advertising of any kind may be placed on any SWF component except unobtrusive identification or location markings.

7. Building Codes And Safety Standards: An SWF must meet or exceed: a) all requirements of this Code, b) all other applicable local and State Building Codes and Electrical Codes, c) and industry standards.

8. Regulatory Compliance: Each SWF and wireless facility must meet or exceed current standards and regulations of the Federal Communications Commission, the Federal Aviation Administration, and any other Federal or State agency with jurisdiction and authority.

9. Utility Worker Safety: Prior to the commencement of SWF construction, the wireless provider must provide the City with any required safety precautions for individuals working on or near the SWF. If refresher training, personal protective equipment, or tools are required for safety purposes related to an SWF collocated on a City-owned utility pole, then the wireless services provider must reimburse the City for all of its actual costs of those elements.

10. The permit package shall include a NIER report that shows that the installation is within the 1998 health laws governing emissions.

M. IDOT, Will County Approvals: The applicant must provide proof of concurrence of IDOT or Will County for the use of City utility poles located on State or County roads.

N. Abandonment: Any SWF that has been abandoned or is being used for a purpose other than its original purpose must be removed at the owner's expense. Abandonment includes, without limitation, any SWF that is not operated for a continuous period of twelve (12) months, or is otherwise out of operation or repair for any reason, or used for a purpose other than its original purpose. Notice to the owner of the facility must be given in compliance with the requirements of the SWF Act, and the owner must remove the facility within ninety (90) days of such notice.

O. Collocation On City Utility Poles:

1. Rates And Fees For Use Of City Utility Pole: The City will set and charge nondiscriminatory rates and fees for collocation on City utility poles. The City will keep a written schedule of rates and fees in the Office of the

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City Clerk.

2. Annual Rate: Each wireless services provider must pay an annual fee of two hundred dollars (\$200.00) for each SWF located on a City utility pole in right-of-way or the actual, direct, and reasonable costs related to the wireless provider's use of space on the City's utility pole and an annual fee of three thousand six hundred dollars (\$3,600.00) for each SWF on City property not located in right-of-way.

3. Operating Agreement: Prior to commencement of SWF construction on a City-owned utility pole, the owner must develop an operating agreement satisfactory to the Director of Public Works. The agreement must include protocols for emergency response and for maintenance of the utility pole and include emergency contacts, a contact for public inquiries, the utility billing address, and the legal address of the wireless services provider.

P. SWF Equipment Replacement: The wireless provider must notify the City at least ten (10) days prior to a planned equipment replacement and provide the equipment specifications. The replacement equipment must be the same size and/or smaller than the original installation.

Q. Right-Of-Way Permit: The wireless provider must secure a permit for any activities in the right-of-way that affect traffic patterns or require lane closures.

R. General Standards:

1. No Interference: Every wireless provider's operation of a wireless facility must not interfere with the frequencies used by any public safety agency for public safety communications. The wireless provider must install SWFs of the type and frequency that will not cause interference with any 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.

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2. Curing Interference: If an SWF causes interference and the wireless provider has been given written notice of the interference by the City or public safety agency, then the wireless provider, at its expense, must take all reasonable steps necessary to correct and eliminate the interference, including, without limitation, powering down the SWF and later powering it up for intermittent testing, if necessary. The City may terminate a permit for an SWF based on interference if the wireless provider is not making a good faith effort to remedy the problem 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.

3. Compliance With Contract Terms: Every wireless provider must comply with all requirements imposed by a contract between the City and a private property owner that concern design or construction standards applicable to utility poles and to ground-mounted equipment located in right-of-way.

4. Spacing: Every wireless provider must comply with spacing requirements in this section or any other applicable City code or ordinance concerning the location of ground-mounted equipment located in the right-of-way. A wireless provider may apply for a variation of a spacing requirement.

5. Undergrounding: Every wireless provider must comply with all City codes and regulations regarding undergrounding of utilities and facilities that prohibit installation of new, or modification of existing, utility poles in a right-of-way. A wireless provider may apply for a variation of an undergrounding requirement.

6. General City Standards: Every wireless provider must comply with generally applicable City standards for construction and public safety in the rights-of-way, including, without limitation, wiring and cabling requirements, grounding requirements, utility pole extension requirements, and sign restrictions. Every wireless provider must comply with all City regulations applicable to the location, size, surface area and height of wireless facilities and the abandonment and removal of SWFs.

7. Poles For Electricity Distribution: No wireless services provider may collocate an SWF on a City utility pole that is part of an electricity distribution or transmission system within the communication worker safety zone of the pole or the electric supply zone of the utility pole, except that the antenna and support equipment of the SWF may be located in the communications space on the City's utility pole and on the top of the utility pole if no other utility pole is available and the wireless provider complies with applicable codes for work involving the top of the utility pole. The terms "communications space", "communication worker safety zone", and "electric supply zone" shall have the meanings contained in the National Electric Safety Code.

8. Public Safety Codes: Every wireless provider must comply with all applicable State, County, and City codes, ordinances, and regulations that concern public safety.

9. **Decorative, Stealth, And Concealment Standards:** Every wireless provider must comply with the City's generally applicable written standards for decorative utility poles, and the City's generally applicable standards regarding stealth, concealment, and aesthetics governing occupiers of the right-of-way, including the City's design or concealment measures in a historic district or regarding a historic landmark.

10. **Insurance:** Every wireless provider must provide insurance as provided in section 7-5-8 of this chapter.

11. **Indemnification:** Every wireless provider must indemnify the City as provided in section 7-5-9 of this chapter.

S. Installation And Maintenance Of Wireless Facilities: Each wireless provider must construct, install, and maintain all wireless facilities in accordance with the standards set forth in this chapter. (Ord. O2018-29, 7-16-2018)

§ 12.28.240 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 City Public Works Director or his/her designee 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 City Public Works Director or his/her designee 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 City Public Works Director or his/her designee may authorize a variance only if the utility requesting the variance has demonstrated that:

(1) One or more conditions not under the control of the utility (such as terrain features or an irregular right-of-way line) create a special hardship that would make enforcement of the provision unreasonable, given the public purposes to be achieved by the provision; and

(2) All other designs, methods, materials, locations or facilities that would conform with the provision from which a variance is requested are impracticable in relation to the requested approach.

(D) **Additional conditions for granting of a variance.** As a condition for authorizing a variance, the City Public Works Director or his/her designee may require the utility requesting the variance to meet reasonable standards and conditions that may or may not be expressly contained within this chapter but which carry out the purposes of this chapter.

(E) **Right to appeal.** Any utility aggrieved by any order, requirement, decision or determination, including denial of a variance, made by the City Public Works Director or his/her designee under the provisions of this chapter shall have the right to appeal to the City Council, or such other board or commission as it may designate. The application for appeal shall be submitted in writing to the City 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 seven days after the filing of the appeal. The City Council shall timely decide the appeal.

(Ord. 1443, passed 12-17-07)

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§ 12.28.250 PENALTIES.

Any person who violates, disobeys, *omits*, neglects or refuses to comply with any of the provisions of this chapter shall be subject to fine in accordance with the penalty provisions of this Code. There may be times when the city will incur delay or other costs, including third party claims, because the utility will not or cannot perform its duties under its permit and this chapter. Unless the utility shows that another allocation of the cost of undertaking the requested action is appropriate, the utility shall bear the city's costs of damages and its costs of installing, maintaining, modifying, relocating, or removing the facility that is the subject of the permit. No other administrative agency or commission may review or overrule a permit related cost apportionment of the city. Sanctions may be imposed upon a utility that does not pay the costs apportioned to it.

(Ord. 1443, passed 12-17-07)

§ 12.28.260 ENFORCEMENT.

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

(Ord. 1443, passed 12-17-07)

§ 12.28.270 SEVERABILITY.

If any section, subsection, sentence, clause, phrase or portion of this chapter is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions hereof.

(Ord. 1443, passed 12-17-07)

