

## CHAPTER 38, ARTICLE 6: CONSTRUCTION OF UTILITY FACILITIES IN THE RIGHTS-OF-WAY

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### **§ 38.6.01 PURPOSE; SCOPE; APPLICABILITY; PRESCRIPTION.**

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

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

(1) Prevent interference with the use of streets, sidewalks, alleys, parkways and other public ways and places;

(2) Prevent the creation of visual and physical obstructions and other conditions that are hazardous to vehicular and pedestrian traffic;

(3) Prevent interference with the facilities and operations of the City's utilities and of other utilities lawfully located in rights-of-way or public property;

(4) Protect against environmental damage, including damage to trees, from the installation of utility facilities;

(5) Protect against increased storm water 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.* Except as provided by applicable law, this chapter shall apply to all excavations, use, construction, operation, and maintenance of facilities or structures in the rights-of-way by any person other than the City. No utility shall commence or continue with the operation of any facilities or structures in the rights-of-way, except as provided and in compliance with this chapter.

(D) *Franchise or license required.*

(1) *Franchise.* Except as may be otherwise provided by law, no utility may construct, maintain, own, control or use facilities or structures in the rights-of-way without a binding lawful franchise with the city granting the privilege of locating such facilities on, over, above, along, upon, under, across or within the city's rights-of-way. In the event of any conflict with, or inconsistency between, the provisions of this chapter and the provisions of any franchise, the provisions of such franchise shall govern and control during the term of such franchise, and any lawful renewal or extension thereof authorized by the city. All utilities claiming to be engaged in the sale of telecommunications at retail pursuant to ILCS Ch. 35, Act 636, §§ 5-1 et seq. must so state by verified application, and provide the city with the applicable resale number as provided in ILCS Ch. 35, Act 636, § 5-45(a).

(2) *License for incidental use.* Persons desiring to install facilities qualifying as merely an incidental use, which includes installation of temporary structures or minor incidental uses in the rights-of-way, such as mailboxes, driveway aprons, ingress or egress facilities, and similar incidental uses, that utilize a small area of the rights-of-way and serves the principal structure, may be permitted without a franchise pursuant to a license issued by the City Manager. The City Manager shall have discretion to establish such application, requirements, and conditions applicable to such uses consistent with the purposes of this chapter or as otherwise established by law. Any person granted a license hereunder shall be subject to the applicable requirements of this chapter.

(E) *Grant and nature of approval; terms and compensation.* The authority granted by the city in franchise or license shall be for non-exclusive use of the rights-of-way. Such grant does not in any way limit the continuing authority of the city through the proper exercise of its statutory powers to adopt and enforce ordinances necessary to provide for the health,

safety, and welfare of the public. The city specifically reserves the right to grant, at any time, such additional agreements or other rights to use the rights-of-way for any purpose and to any other person, including itself, as it deems appropriate, subject to all applicable laws. The granting of any franchise or license shall not be deemed to create any property interest of any kind in favor of the person, nor shall it create any relationship of agency, partnership, joint venture, or employment between the parties. Except as provided in § 38.6.03(G), all franchises shall be approved by ordinance of the City Council on a non-discriminatory basis, provided that the utility is in compliance with all applicable requirements. All licenses may be approved by the City Manager on a nondiscriminatory basis, provided that the applicant is in compliance with all applicable requirements. Each franchise and license shall include terms of use and be deemed to incorporate the terms of this chapter and other applicable laws of the city, except as may be expressly stated in such franchise or license. Franchise compensation and terms shall be as provided in this code or as may be otherwise lawfully established in the franchise.

(F) *Conflicts with other chapters.* This chapter supersedes all chapters or parts of chapters adopted prior hereto that are in conflict herewith, to the extent of such conflict.

(G) *Conflicts with state and federal laws; preemption.* No provision of this chapter shall apply to any circumstance in which such application shall be unlawful under superseding state or federal law. Furthermore, if any section, division, sentence, clause, phrase, or portion of this chapter is now or in the future superseded or preempted by state or federal law, or found by a court of competent jurisdiction to be unauthorized, that provision shall be automatically interpreted and applied as required by law. In the event that applicable state or federal laws or regulations conflict with the requirements of this chapter, the person or utility shall comply with the requirements of this chapter, to the maximum extent possible without violating state or federal 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.

(I) *No warranty.* The city makes no express or implied representation or warranty regarding its rights to authorize the installation or construction of facilities on any particular segment of rights-of-way and shall not be liable for any damage therefrom. The burden and responsibility for making all such determinations in advance of construction or installation shall be entirely upon the utility. Such utility shall be wholly liable for any damages to facilities or other property due to excavation, facilities construction, or other ROW work performed prior to obtaining the location of all facilities, without cost or liability to the city. No person shall make or attempt to make repairs, relocation, or replacement of damaged or disturbed facilities or uses without the approval of the owner of such facilities.

(J) *Use of city or third-party facilities.* No franchise or license shall be deemed to grant the right to use facilities or other property owned or controlled by the city or a third party, and no such use shall occur, without the express written consent of such party (on file with the city and subject to other applicable requirements), nor shall any franchise or license excuse such person from first obtaining a pole attachment agreement or other express consent for such right or use before locating on the facilities controlled or owned by the city or a third party.

(K) *Lease required for public lands.* Unless otherwise provided, use or installation of any facilities in non-rights-of-way public property of the city shall be permitted only if a lease agreement or other separate written approval has been negotiated and approved by the city, with such reasonable terms as the city may require.

(L) *Condition precedent to permit.* Unless otherwise required by applicable law, no permit required by this chapter may be issued unless or until such person has a valid franchise or license with the city that authorizes that person's use of the rights-of-way. Unless prohibited by applicable law, in addition to any other reason provided herein, the Director may deny a permit to any person that does not have a valid franchise or license with the city.

(M) *Transferability.* Except as provided in this chapter or as otherwise required by law, no franchise, license, or permit may be transferred or assigned to a third party without the written application to, and consent of the city, based on the requirements and policies of this chapter. The city shall not unreasonably withhold its consent as provided herein, but any costs incurred shall be paid by the utility to the extent allowed by law.

(N) *Forfeiture of agreement and privilege.* In case of failure on the part of the person or utility, including its successors and assigns, to comply with any of the provisions of this chapter, or the provisions of franchise or license, or if the person or utility, its successors and assigns, should do or cause to be done any act or thing prohibited by or in violation of this chapter, or the terms of the authorization of such use, or otherwise loses authority to provide its service in the city, the person or utility, its successors and assigns, shall forfeit all rights and privileges permitted by this chapter and any franchise or license, and all rights hereunder shall cease, terminate, and become null and void, provided that the forfeiture shall not take effect until the city shall carry out the following proceedings.

(1) Before the city declares the forfeiture or revocation of a franchise or license, it shall first serve a written notice upon the person, setting forth in detail the neglect or failure complained of.

(2) The person shall have 30 days thereafter, or such other reasonable period established by the City Council, in which to cure the default by complying with the conditions of the franchise or license, and fully remedying any default or violation.

(3) If at the end of such period the city determines that the conditions have not been complied with, and that the person did not reasonably and in the public interest

require more than 30 days to cure the default, the city shall take action by an affirmative vote of the City Council present at the meeting, and voting to terminate the franchise or license, setting out the grounds upon which the agreement or other authorization is to be forfeited or revoked.

(4) Nothing herein shall prevent the city from invoking any other remedy or from declaring immediate forfeiture where the default is incapable of being cured by the utility, including where such defaults or violations have repeatedly occurred.

(O) *No cause of action against the city.* A person or utility shall have no damages remedy or monetary recourse whatsoever against the city for any loss, cost, expense, or damage arising from any of the provisions or requirements of any franchise or license, or because of the enforcement thereof by the city, or from the use of the rights-of-way. Nothing herein shall preclude the person or utility from seeking injunctive or declaratory judgment relief against the city where such relief is otherwise available and the requirements therefor are otherwise satisfied.

(P) *Review required; use of existing facilities.* The design, location, and nature of all facilities shall be subject to the review by staff and approval of the City Manager. Such review shall be on a non-discriminatory basis in application of city policy, and approvals shall not be unreasonably withheld. All new facilities or structures shall collocate on existing poles or existing conduit, trenches or other facilities, to minimize unnecessary use of rights-of-way space, to reduce potential existing or future interference and obstructions, and to reduce the cost to the public or others therefrom, and to maximize the public's ability to use and license appropriate private or public uses of the rights-of-way in the public interest (except where preempted by law or where good cause is established as determined by the city applying these objectives). Where existing poles or facilities are available, or exist at or near the proposed use, unless otherwise approved, the applicant must either use such facilities, or file a written request, verified by the applicant, for exception specifying the specific reasons why such facilities are not available or feasible to be used, and addressing the objectives hereof. City height limitations, applicable zoning restrictions, and general city policies with regard to all users of the rights-of-way shall be applicable to all facilities. The City Manager may establish such regulations or policies as may be deemed necessary or appropriate to effect this provision. For applications for installation of any facility in the rights-of-way, the most restrictive adjacent underlying zoning district classification shall apply unless otherwise specifically zoned and designated on the official zoning map.

(1) (a) No utility may erect, construct, or install new utility poles or other facilities above the surface of the rights-of-way without the written permission of the city based on good cause established by the utility and found by the city. Good cause may be shown by demonstrating the following;

1. There exist other utility poles or support structures, proximate to the area, that are located above ground. For purposes of showing good cause under this factor, evidence of good cause for new utility poles shall only be compared to existing utility poles, evidence of good cause for new support structures shall only be compared to existing support structures;

2. The proposed underground installation is impossible, impractical, or not technically feasible; or

3. When, in the city's judgment, the proposed utility pole installation will be made at a location, and will employ suitable design and materials, to provide the greatest protection of aesthetic qualities of the proximate area without adversely affecting safety.

(b) Where reasonable and appropriate and where adequate rights-of-way exist, the utility shall place above-ground facilities underground in conjunction with city capital improvement projects and/or at specific locations requested by the city provided that such placement is practical, efficient, and economically feasible. The requirements herein shall not prohibit the replacement of existing utility poles.

(2) (a) All small wireless facilities, as defined in ILCS Ch. 50, Act 840, § 10, in the rights-of-way shall comply with the following requirements, in addition to any other design, safety, spacing, or construction requirements as may be outlined in a franchise agreement or the city's code:

1. The maximum height of a small wireless facility that is collocated on a utility pole or support structure shall be no more than ten feet above the utility pole or support structure that such small wireless facility is collocated;

2. All written design standards, currently in effect or as may hereafter be adopted by the City Manager, applicable to the city's utility poles or support structures shall be followed, along with all stealth, concealment, and any other aesthetic requirements or written design plans applicable to such utility poles or support structures on record, adopted, or in effect within the city, including such stealth, concealment, or other aesthetic requirements for historic landmarks or within a district currently, or hereafter, zoned historic;

3. The small wireless facility and any associated equipment permitted shall be painted the same or similar color as the utility pole or support structure upon which the facility and/or equipment is collocated. If good cause is shown for ground-mounted equipment, such ground-mounted equipment associated with a collocated small wireless facility shall be of such design, including color and size, such that it maximally blends in to the built environment of the proximate area;

4. New or replacement utility poles or support structures may not exceed the higher of:

A. Forty-five feet AGL; or

B. Ten feet in height above the tallest existing utility pole, other than a utility pole supporting only wireless facilities, that is in place on the date that an applicant submits an application to the city, that is located within 300 feet of the proposed utility pole or support structure and that is in the same ROW within the jurisdiction of the city; provided, however, that the city may designate which intersecting ROW within 300 feet of the proposed utility pole or support structure shall control the height limitation for such facility; without a special use permit approved by City Council.

5. A utility must comply with any requirements imposed by any contract between the city and a private property owner that concerns, or relates to, design or construction standards for utility poles located in the rights-of-way;

6. No new utility poles or other support structures may be installed within the city's rights-of-way without the prior approval of the city upon good cause shown for compliance with design and aesthetic requirements. This requirement does not prohibit modification of existing utility poles or support structures to allow for collocation of small wireless facilities. Replacement utility poles shall be permitted as required by applicable law. In such a circumstance requiring a replacement pole for a small wireless facility, replacement utility poles shall be at the sole cost of the utility proposing the replacement utility pole;

7. No ground-mounted equipment associated with the small wireless facility will be permitted. Waiver to this requirement may be granted by the City Manager upon good cause shown that the utility requires ground-mounted equipment to utilize the site for a small wireless facility. If good cause is shown permitting such ground-mounted equipment for a small wireless facility, no other ground-mounted equipment shall be allowed for the utility, or for the particular utility if the person provides only infrastructure-related services for the utility, within 250 feet of that approved ground-mounted equipment;

8. The proposed collocation, modification, or replacement of utility poles or support structures where approved pursuant to this franchise, shall cause only the minimum possible interference with the use of the rights-of-way and shall cause only the minimum possible impact upon, and interference with, the rights and reasonable convenience of the property owners who adjoin said rights-of-way;

9. The height of all portions of the small wireless facility shall be located at least eight feet above ground level so as not to interfere with pedestrian or vehicle traffic;

10. No portions of the small wireless facility shall extend horizontally from the surface of the utility pole or collocated support structure more than 16 inches;

11. If the proposed utility pole or support structure the person proposes to locate its small wireless facility on is not structurally sound, but the Director finds such site to be a desired location, the Director can require the person to install a substantially similar utility pole or support structure, at the person's cost; and

12. Notwithstanding the maximum size descriptions which define a small wireless facility contained in ILCS Ch. 50, Act 840, § 10 or otherwise contained in applicable law, the proposed installation or collocation shall endeavor to use the smallest suitable vaults, boxes, equipment enclosures, power pedestals, and/or cabinets then in use by the person, regardless of location, for the particular application.

(b) The City Manager may further waive one or more of these requirements upon good cause shown by the person, and provided a showing that the waiver is the minimum necessary to accomplish the purposes of this division (P), or as otherwise required by applicable law. The burden of proof for any waiver shall be wholly on the person and must be shown by clear and convincing evidence.

(Q) *Utility responsible for costs.* The utility shall be responsible for all reasonable costs borne by the city that are directly associated with the utility's installation, maintenance, repair, operation, use, and replacement of its facilities in the rights-of-way that are not otherwise accounted for as part of a permit fee established pursuant to this chapter, to the extent permitted by law. All such costs shall be itemized, and the city's books and records related to these costs shall be made available upon request of the utility.

(R) *Notification required.* The utility shall be responsible for notifying all affected residents of work to be done in their yards. This notification should include an explanation of the work and contact information of the utility.

### **§ 38.6.02 DEFINITIONS.**

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

**AASHTO.** American Association of State Highway and Transportation Officials.

**ANSI.** American National Standards Institute.

**ANTENNA.** Any device that transmits and/or receives radio waves for voice, data or video communications purposes, including, but not limited to, television, AM/FM radio, microwave, cellular telephone and similar forms of communications. A combination of panels, boxes, or other antenna physically connected and designed in conjunction to receive signals at one location in the system shall be considered one antenna.

**APPLICANT.** A person applying for a franchise, license, or any permit or other authorization to install, maintain, repair or otherwise physically access facilities in the rights-of-way 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 Mascoutah, Illinois.

**CITY MANAGER.** The city's City Manager or his or her designee.

**CITY UTILITY POLE.** A utility pole owned or operated by the city in public rights-of-way.

**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 Mascoutah, Illinois.

**CONDUCTOR.** Wire carrying electrical current.

**CONDUIT.** A casing or encasement for wires or cables.

**CONSTRUCTION or CONSTRUCT or BUILDING OPERATIONS.** 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 Manager or his or her designee.

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

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

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

**FACILITY.** All structures, devices, objects and materials (including, but not limited to, track and rails, wires, ducts, fiber optic cable, antenna, vaults, boxes, equipment enclosures, cabinets, pedestals, transmitters, meters, foundations, poles, towers, conduits, grates, covers, pipes, cables and appurtenances thereto, and any other equipment, infrastructure, structures or obstruction) located on, over, above, along, upon, under, across or within rights-of-way under this chapter. FACILITY shall not include a temporary, lawful presence on rights-of-way such vehicular parking.

**FRANCHISE AGREEMENT or FRANCHISE.** A binding and accepted ordinance or right-of-way agreement with a person or utility, executed by the city, authorizing the operation of facilities within the rights-of-way of the city.

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

**FRONTAGE ROAD.** Roadway, usually parallel, providing access to land adjacent to the highway, where it is precluded by control of access to a highway.

**HAZARDOUS MATERIALS.** Any substance or material that, due to its quantity, form, concentration, location or other characteristics, is determined by the Public Works Director to pose an unreasonable and imminent risk to the life, health or safety of persons, 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.** 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.

**HIGHWAY CODE.** The Illinois Highway Code, ILCS Ch. 605, Act 5, §§ 1-101 et seq., as amended from time to time.

**HOLDER.** A person or entity that has received authorization to offer or provide cable or video service from the ICC pursuant to the State Cable and Video Competition Law, ILCS Ch. 220, Act 5, § 21-401.

**IDOT.** Illinois Department of Transportation.

**ICC.** Illinois Commerce Commission.

**INCIDENTAL USE.** Facilities of a minor nature, such as mailboxes, driveway aprons, private cross-connections or other incidental facilities, that may be permitted by license issued by the Director as provided herein.

**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.

**LICENSE.** The executed agreement between the city and a person to use and occupy the rights-of-way for the purpose of installing incidental facilities in the rights-of-way, or incidental uses such as ingress and egress facilities, lateral lines, mailboxes or driveway aprons.

**LINEAR FOOT.** The length in feet of cable, wire, fiber, conduit or other linear facilities. Facilities that are physically connected, wrapped or lashed as a single cable, conduit or bundle of cables or conduit shall be considered a single facility for purposes of calculating each linear foot, provided that each conduit or bundle of conduit, up to and including four inches in exterior diameter, shall constitute a separate facility for calculating linear feet. Conduit having fiber optic or other cable or wire installed within it shall not be considered separate facilities, but shall be considered part of the single "conduit" or bundle for purposes of calculating linear feet. Each utility shall be subject to a separate linear foot charge for facilities used by the utility and subject to this code.

**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 the facility or for the construction of a facility.

**PERMITTEE.** That entity to which a permit has been issued pursuant to §§38.6.04 and 38.6.05 of this chapter.

**PERSON.** Any corporation, partnership, proprietorship, individual, organization, governmental entity, or any natural person, including, but not limited to, utilities and licensees as referenced herein.

**PETROLEUM PRODUCTS PIPELINES.** Pipelines carrying crude or refined liquid petroleum products, including, but not limited to, gasoline, distillates, propane, butane or coal-slurry.

**PLANNING AND ZONING ADMINISTRATOR.** The city's Planning and Zoning Administrator or his or her designee.

**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).

**PROMPT.** That which is done within a period of time specified by the city. If no time period is specified, the period shall be 30 days.

**PUBLIC ENTITY.** A legal entity that constitutes or is part of the government, whether at local, state or federal level.

**PUBLIC WORKS DIRECTOR.** The city's Public Works Director or his or her designee.

**RESTORATION.** The repair of a right-of-way, highway, roadway or other area disrupted by the construction of a facility.

**RIGHT-OF-WAY, RIGHTS-OF-WAY or ROW.** The area on, under, along, across or above any street, alley, roadway, other land or waterway, dedicated or commonly used for pedestrian or vehicular traffic or other similar purposes, in which the city has the right and authority to authorize, regulate or permit the location of facilities other than those of the city, and including such adjacent areas within such public ways within city control, except as may be limited herein or by law. RIGHT-OF-WAY, RIGHTS-OF-WAY or ROW 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.** The 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.** The amount of security required pursuant to § 38.6.10 of this chapter.

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

**SMALL WIRELESS FACILITY.** A wireless communications facility that meets both of the following qualifications:

(1) Each antenna is located inside an enclosure of no more than six 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 cubic feet; and

(2) All other wireless equipment attached to a utility pole or support structure, associated with the small wireless facility, is cumulatively no more than 25 cubic feet in volume, calculated to the extent permitted by law.

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

**SUPPORT STRUCTURE.** A free-standing structure such as a billboard or other structure designed to, or capable of, supporting wireless communications facilities. A SUPPORT STRUCTURE shall not include a utility pole.

**TELECOMMUNICATIONS.**

(1) 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.

(2) 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.

(3) 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.

(4) 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. §§ 521 et seq.), 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 et seq.), as now or hereafter amended.

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

**TELECOMMUNICATIONS RETAILER.** 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.** A person owning, controlling, leasing, maintaining, using, installing, or operating any facility as defined in this chapter, and including all persons subject to the requirement of a franchise or license. A UTILITY may be made up of multiple persons. As defined in this chapter, a UTILITY does not require that the person be certified as a “public utility” by the ICC pursuant to the Public Utilities Act (ILCS Ch. 220, Act 5, §§ 1-101 et seq.). For purposes of this chapter, a UTILITY does not include the city except as may otherwise be required by law.

**UTILITY POLE.** A pole or similar structure that is used in whole or in part by a utility or for electric distribution, lighting, or traffic control. UTILITY POLE shall not include a support structure.

**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 § 21-201(v) of the State Cable and Video Competition Law of 2007, ILCS Ch. 220, Act 5, § 21-201(v).

**WATER LINES.** Pipelines carrying raw or potable water.

**WET BORING.** Boring using water under pressure at the cutting auger to soften the earth and to provide a sluice for the excavated material.

### **§ 38.6.03 ANNUAL REGISTRATION REQUIRED; APPLICATION FOR FRANCHISE REQUIRED.**

(A) *Annual registration required.* Every utility that occupies a right-of-way within the city shall register on January 1 of each year with the City Manager, 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 § 38.6.08 of this chapter, in the form of a certificate of insurance.

(B) *Franchise or license application required.* An application for a franchise or license, on city forms, shall be presented to the City Manager or designee in writing, and shall include all such information as is required by this section. The utility shall be responsible for accurately maintaining the information in the application during the term of any franchise, and shall be responsible for all costs incurred by the city due to the failure to provide or maintain as accurate any application information required herein. Wherever any application or code requirement is claimed to be preempted by state or federal law, as applied to the circumstances of the applicant and proposed use in the city, such preemption shall be specifically stated, citing the precise provision of law and the specific requirement claimed to be preempted, along with documentation establishing applicability to the circumstances or applicant at issue.

(C) *Application deposit fee.* Except where inconsistent with applicable law, a \$2,500 application deposit fee for review, documentation and approval of such franchise is

required to be submitted with the application form to recover any actual costs anticipated and incurred by the city in reviewing, documenting or negotiating such franchise, provided that no costs shall be included if such inclusion is prohibited by applicable law as to that person. If the actual costs are thereafter determined to be less than the application deposit fee, such amount shall be returned to the person, after written request therefrom. If the actual costs exceed the application deposit fee, such person shall pay such additional amount prior to issuance of any final city approval after written notice from the city.

(D) *Application form.* An applicant shall submit a completed application for a franchise on such form provided by the city, which shall include information necessary to determine compliance with this chapter, including, but not limited to:

- (1) Identity and legal status of the applicant;
- (2) Name, address, telephone number and email address of each officer, agent or employee responsible for the accuracy of the application. Each officer, agent or employee shall be familiar with the local facilities of the applicant, shall be the person(s) to whom notices shall be sent, and shall be responsible for facilitating all necessary communications, including, but not limited to, certification to the city of any material changes to the information provided in such completed application during the term of any franchise;
- (3) Name, address, telephone number and email address of the local representative of the applicant, who shall be available at all times to act on behalf of the applicant in the event of an emergency;
- (4) Proof of any necessary permit, license, certification, grant, registration, franchise, agreement or any other authorization required by any appropriate governmental entity, including, but not limited to, the FCC;
- (5) Description of the applicant's intended use of the rights-of-way, including such information as to proposed services so as to determine the applicable, federal, state and local regulatory provisions as may apply to such person;
- (6) A list of authorized agents, contractors and subcontractors eligible to obtain permits on behalf of the applicant. The list may be updated to add such person at the time of permit application if the updated information on the application is submitted by an authorized representative of the applicant;
- (7) Evidence of insurance, as required in §38.6.08 of this chapter, in the form of a certificate of insurance information sufficient to determine the amount of net assets of the applicant;
- (8) Information sufficient to determine whether the applicant is subject under applicable law to franchising, service regulation, payment of compensation for the use of the rights-of-way, taxation or other requirements of the city;
- (9) Any request to provide telecommunications shall also include all requirements set forth in the Telephone Company Act (ILCS Ch. 220, Act 65, §§ 0.01 et. seq.) or other applicable law; and
- (10) Such other information as may be reasonably required by the City Manager to determine requirements and compliance with applicable regulations.

(E) *Standard for approval or renewal of franchises.* In reviewing an application for a new or renewal of a franchise, the city may consider prior conduct of the person in performance of its obligations or compliance with the city's ordinances in the past, or the existence of

any outstanding violations or deficiencies. The city may deny or condition any franchise where the proposed use would interfere with the public use of the rights-of-way or otherwise conflict with the legitimate public interests of the city or as otherwise provided by law. Applications for franchises may be approved, denied or approved with conditions consistent with requirements of applicable law or other applicable requirements as may be necessary to fulfill the requirements and objectives of this chapter.

(F) *Approval process.* After submission by the applicant of a duly executed and completed application, including applicable application deposit fee, and an executed franchise as may be provided by the City Manager or as modified by the City Manager in review of the specific circumstances of the application, all in conformity with the requirements of this chapter and all applicable laws, the City Manager shall submit the franchise agreement to the City Council for approval. Upon determining compliance with this chapter, the City Council may authorize execution of the franchise (or a modified agreement otherwise acceptable to the city consistent with the purposes of this chapter), and such executed franchise shall constitute consent to use the rights-of-way; provided that nothing herein shall preclude the rejection or modification of any executed franchise submitted to the city, to the extent applicable law does not prohibit such rejection or modification, including, where necessary to reasonably, and in a uniform or nondiscriminatory manner, reflect the distinct engineering, construction, operation, maintenance, public work or safety requirements applicable to the person.

(G) *Administrative approval process; form franchises.*

(1) Various communication related users of the ROW may be subject to various and differing state and federal approval requirements, including timing requirements for expedited or shorter approval times. Accordingly, the City Manager shall have the authority pursuant to this division (G) to execute on behalf of the city such franchise agreements as provided below that are identical to, or substantially the same as, the city's "form" franchises currently on file with the City Clerk, and incorporated herein, where such franchise terms fully comply with applicable law under the application and applicant at issue. City Manager approval may be authorized only for the following circumstance which may require more expedited approvals:

(a) A franchise authorizing use of the ROW for facilities authorized solely to provide "telecommunications at retail" as are subject to specific state law definitions and requirements, specifically being limited to such services as "sale of telecommunications at retail" as defined in ILCS Ch. 35, Act 635, § 10 and "telecommunications" "sale at retail" as defined in ILCS Ch. 35, Act 636, § 5-7 as may be applicable; and

(b) A franchise authorizing use of the ROW for facilities authorized to provide communications services that may include both such "telecommunications at retail" (being limited to such services as "sale of telecommunications at retail" as defined in ILCS Ch. 35, Act 635, § 10 and "telecommunications" "sale at retail" as defined in ILCS Ch. 35, Act 636, § 5-7 as may be applicable), and other services or facilities (including but not limited to wholesale, dark fiber or other communications services that are not "telecommunications at retail" and are subject to the city's linear foot fee as provided for in § 53.23, except where may be otherwise provided by applicable law).

(2) To the extent not prohibited by applicable law, the City Manager may execute these form franchise agreements with applicants without any additional approval by the City

Council upon determination by the City Manager that the applicant satisfies the city's requirements and policies for issuance of a franchise pursuant to this code. Failure to include a specific form franchise shall in no way preclude an applicant seeking to utilize the city's rights-of-way for any authorized service from applying for such a franchise and receiving authorization as provided for by the City Council in this division (G). The administrative approval process in this division (G) shall not be available for any franchise or license not provided for herein or any franchise or license for which the City Manager determines there are material changes to the form, or where full compliance with the code has not been demonstrated. Upon determination by the City Manager that a form franchise agreement (or such form with any minor or ministerial changes or clarifications from the application or review that are consistent with the purposes of the policies and code of the city) may be properly issued based on the application submitted, the City Manager may so indicate to the applicant and request an executed copy be returned to the city for execution by the City Manager within a reasonable time period stated. If actual or potential regulatory or other deadlines warrant more immediate action by the city, the City Manager may alternatively send to the applicant the completed franchise agreement already executed by the City Manager which franchise agreement shall be valid only if thereafter executed by applicant, dated and returned to the city all within seven calendar days of the date of execution by the City Manager. For purposes of this division (G), RETURNED TO THE CITY shall mean a complying document delivered to City Hall and date and time stamped by the City of such receipt. No franchise or license shall be valid to authorize use of the ROW if not executed by both parties in conformance with all applicable requirements of this code. Such executed transmittal to the applicant shall be deemed completion of the city's obligation under any applicable time requirements for a final decision.

#### **§ 38.6.04 PERMIT REQUIRED; APPLICATIONS AND FEES.**

*(A) Permit required.*

(1) 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:

- (a) Changes the location of the facility;
- (b) Adds a new facility;
- (c) Disrupts the right-of-way (as defined in this chapter); or

(d) 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 Manager and obtaining a permit from the city therefore, except as otherwise provided in this chapter.

(2) No permit shall be required for installation and maintenance of service connections to customers' premises where there will be no disruption of the right-of-way.

*(B) Permit application.* All applications for permits pursuant to this chapter shall be filed on a form provided by the city and shall be filed in such number of duplicate copies as the city may designate.

*(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 (including a 24-hour emergency contact telephone number);

(2) The applicant's name and address, if different than the utility, its telephone, telecopy numbers, e-mail address and its interest in the work;

(3) The names, addresses and telephone and telecopy numbers and e-mail addresses of all professional consultants, if any, advising the applicant with respect to the application;

(4) A general description of the proposed work and the purposes and intent of the facility and the uses to which the facility will be put. The scope and detail of such description shall be appropriate to the nature and character of the work to be performed, with special emphasis on those matters likely to be affected or impacted by the work proposed;

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

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

(b) An emergency contingency plan which shall specify the nature of potential emergencies, including, without limitation, construction and hazardous materials emergencies, and the intended response by the applicant. The intended response shall include notification to the city and shall promote protection of the safety and convenience of the public. Compliance with Illinois Commerce Commission (ICC) regulations for emergency contingency plans constitutes compliance with this section unless the city finds that additional information or assurances are needed;

(6) Drawings, plans and specifications showing the work proposed, including the certification of an engineer that such drawings, plans and specifications comply with applicable codes, rules and regulations;

(7) Evidence of insurance as required in § 38.6.08 of this chapter;

(8) Evidence of posting of the security fund as required in § 38.6.10 of this chapter;

(9) Any request for a variance from one or more provisions of this chapter (see § 38.6.21 of this chapter); and

(10) Such additional information as may be reasonably required by the city, to include, but not necessarily limited to, digital submission of data in a format acceptable by the city for inclusion in the city's geographical information system (GIS) such as spatially referenced digitized drawings.

(D) *Supplemental application requirements for specific types of utilities.* In addition to the requirements of division (C) above, 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 Illinois Commerce Commission (ICC) or other jurisdictional authority;

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

(3) In the case of water lines, indicate that all requirements of the State Environmental Protection Agency, Division of Public Water Supplies, have been satisfied; and state the proposed pipe size, design, construction class and operating pressures;

(4) In the case of sewer line installations, indicate that the land and water pollution requirements of the State Environmental Protection Agency, Division of Water Pollution Control, have been satisfied; and state the proposed pipe size, design, construction class and operating pressures; or

(5) In the case of petroleum products pipelines, state the type or types of petroleum products, pipe size, maximum working pressure and the design standard to be followed.

(6) Small wireless facilities. To the extent permitted by applicable law, the following additional application for small wireless facilities shall be as follows:

(a) *Additional information required.* The following information shall also be required on a permit for any small wireless facility:

1. A site-specific structural integrity report for each utility pole and support structures, and for city utility poles and city-controlled support structures, a make-ready analysis prepared by a structural engineer, as that term is defined in Section 4 of the Structural Engineering Practice Act of 1989;

2. Specifications and drawings prepared by a structural engineer for each small wireless facility;

3. Location of each proposed small wireless facility to be installed with photographs of the immediate surrounding areas depicting where the small wireless facility would be mounted on its associated structure;

4. The equipment types and model numbers for the antennas and all other equipment associated with the small wireless facility;

5. A proposed schedule for the installation and completion for each small wireless facility;

6. Certification that the collocation proposed complies with the city's requirements for collocation, to the extent permitted by applicable law, including the existence of an enforceable franchise agreement between the city and the utility, undergrounding requirements, design requirements, and all other requirements of this chapter, including § 53.15, to the best of the applicant's knowledge; and

7. All application fees to the extent permitted by law. All application fees to the city shall be non-refundable. If such application requires replacement utility pole(s), such cost of the replacement utility pole(s) will also be included in the application.

(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 \$500, except for small wireless facilities, which shall be the maximum

amounts established by applicable law, including, but not limited to, ILCS Ch. 50, Act 840, §§ 1 et seq.

#### **§ 38.6.05 ACTION ON PERMIT APPLICATIONS.**

(A) *City review of permit applications.* Completed permit applications, containing all required documentation, shall be examined by the City Manager 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 Manager shall reject such application in writing, stating the reasons therefor. If the City Manager is satisfied that the proposed work conforms to the requirements of this chapter and applicable ordinances, codes, laws, rules and regulations, the City Manager 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 Manager, 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 § 4 of the Telephone Company Act, ILCS Ch. 220, Act 65, § 4, a telecommunications retailer shall notify the city that it intends to commence work governed by this chapter for facilities for the provision of telecommunications services. Such notice shall consist of plans, specifications and other documentation sufficient to demonstrate the purpose and intent of the facilities, and shall be provided by the telecommunications retailer to the city not less than ten 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 Manager 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 Manager fails to provide such specification of location to the telecommunications retailer within either:

(a) Ten 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) Twenty-five 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.

(c) If the City Manager cannot meet the timeline outlined in §38.6.05(B)(2)(a) or §38.6.05(B)(2)(b), the City Manager shall notify the applicant in writing of the need for a 10-day extension.

(3) Upon the provision of such specification by the city, where a permit is required for work pursuant to § 38.6.04 of this chapter the telecommunications retailer shall submit to the city an application for a permit and any and all plans, specifications and documentation available regarding the facility to be constructed. Such application shall be subject to the requirements of division (A) above.

(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 (ILCS Ch. 220, Act 5, §§ 21-100 et seq.) shall be deemed granted 45 days after submission to the city,

unless otherwise acted upon by the city, provided the holder has complied with applicable city codes, ordinances and regulations.

#### **§ 38.6.06 EFFECT OF PERMIT.**

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

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

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

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

#### **§38.6.07 REVISED PERMIT DRAWINGS.**

In the event that the actual locations of any facilities deviate in any material respect from the locations identified in the plans, drawings and specifications submitted with the permit application, the permittee shall submit a revised set of drawings or plans to the city within 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 § 38.6.21 of this chapter. If the city denies the request for a variance, then the permittee shall either remove the facility from the right-of-way or modify the facility so that it conforms to the permit and submit revised drawings or plans therefor.

#### **§ 38.6.08 INSURANCE.**

(A) *Required coverages and limits.*

(1) 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)(a) and (A)(1)(b) below:

(a) Commercial general liability insurance, including premises-operations, explosion, collapse and underground hazard (commonly referred to as “X”, “C” and “U” coverages) and products-completed operations coverage with limits not less than:

1. Five million dollars for bodily injury or death to each person;
2. Five million dollars for property damage resulting from any one accident; and
3. Five million dollars for all other types of liability.

(b) 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;

(c) Worker’s compensation with statutory limits; and

(d) Employer’s liability insurance with limits of not less than \$1,000,000 per employee and per accident.

(2) 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.*

(1) The insurance policies required by this section shall contain the following endorsement:

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

(2) Within ten days after receipt by the city of the notice, and in no event later than ten days prior to the 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) above. 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) above, or the requirements of divisions (B), (C) and (D) above. 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 (ILCS Ch. 820, Act 305).

(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. (All insurance carriers and surplus line carriers shall be rated "A-" or better and of a class size "X" or higher by A.M. Best Company.)

### **§38.6.09 INDEMNIFICATION.**

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

### **§38.6.10 SECURITY.**

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

- (1) The faithful performance by the permittee of all the requirements of this chapter;
- (2) Any expenditure, damage or loss incurred by the city occasioned by the permittee's failure to comply with any codes, rules, regulations, orders, permits and other directives of the city issued pursuant to this chapter; and
- (3) The payment by permittee of all liens and all damages, claims, costs or expenses that the city may pay or incur by reason of any action or non-performance by permittee in violation of this chapter including, without limitation, any damage to public property or restoration work the permittee is required by this chapter to perform that the city must perform itself or have completed as a consequence solely of the permittee's failure to perform or complete, and all other payments due the city from the permittee pursuant to this chapter or any other applicable law.

(B) *Form.* The permittee shall provide the security fund to the city in the form, at the permittee's election, of cash, a surety bond in a form acceptable to the city or an unconditional letter of credit in a form acceptable to the city. Any surety bond or letter of credit provided pursuant to this division (B) shall, at a minimum:

(1) Provide that it will not be canceled without prior notice to the city and the permittee;

(2) Not require the consent of the permittee prior to the collection by the city of any amounts covered by it; and

(3) Shall provide a location convenient to the city and within the state at which it can be drawn.

(C) *Amount.* The dollar amount of the security fund shall be sufficient to provide for the reasonably estimated cost to restore the right-of-way to at least as good a condition as that existing prior to the construction under the permit, as determined by the City Manager, and may also include reasonable, directly related costs that the city estimates are likely to be incurred if the permittee fails to perform such restoration. Where the construction of facilities proposed under the permit will be performed in phases in multiple locations in the city, with each phase consisting of construction of facilities in one location or a related group of locations, and where construction in another phase will not be undertaken prior to substantial completion of restoration in the previous phase or phases, the City Manager may, in the exercise of sound discretion, allow the permittee to post a single amount of security which shall be applicable to each phase of the construction under the permit. The amount of the security fund for phased construction shall be equal to the greatest amount that would have been required under the provisions of this division (C) for any single phase.

(D) *Withdrawals.* The city, upon 14-days' advance written notice clearly stating the reason for, and its intention to exercise withdrawal rights under this division (D), may withdraw an amount from the security fund, provided that the permittee has not reimbursed the city for such amount within the 14-day notice period. Withdrawals may be made if the permittee:

(1) Fails to make any payment required to be made by the permittee hereunder;

(2) Fails to pay any liens relating to the facilities that are due and unpaid;

(3) Fails to reimburse the city for any damages, claims, costs or expenses which the city has been compelled to pay or incur by reason of any action or non-performance by the permittee; or

(4) Fails to comply with any provision of this chapter that the city determines can be remedied by an expenditure of an amount in the security fund.

(E) *Replenishment.* Within 14 days after receipt of written notice from the city that any amount has been withdrawn from the security fund, the permittee shall restore the security fund to the amount specified in division (C) above.

(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 the withdrawal to the city, provided that any such withdrawal does not reduce the security fund below the minimum balance required in division (C) above.

(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 the revocation; provided that, any amounts in excess of the costs, loss or damage shall be refunded to the permittee.

(H) *Rights not limited.* The rights reserved to the city with respect to the security fund are in addition to all other rights of the city, whether reserved by this chapter or otherwise authorized by law, and no action, proceeding or exercise of right with respect to the security fund shall affect any other right the city may have. Notwithstanding the foregoing, the city shall not be entitled to a double monetary recovery with respect to any of its rights which may be infringed or otherwise violated.

### **§38.6.11 PERMIT SUSPENSION AND REVOCATION.**

(A) *City right to revoke permit.* The city may revoke or suspend a permit issued pursuant to this chapter for one or more of the following reasons:

(1) Fraudulent, false, misrepresenting or materially incomplete statements in the permit application;

(2) Non-compliance with this chapter;

(3) Permittee's physical presence or presence of permittee's facilities on, over, above, along, upon, under, across or within the rights-of-way presents a direct or imminent threat to the public health, safety or welfare; or

(4) Permittee's failure to construct the facilities substantially in accordance with the permit and approved plans.

(B) *Notice of revocation or suspension.* The city shall send written notice of its intent to revoke or suspend a permit issued pursuant to this chapter stating the reason or reasons for the revocation or suspension and the alternatives available to permittee under this section.

(C) *Permittee alternatives upon receipt of notice of revocation or suspension.* Upon receipt of a written notice of revocation or suspension from the city, the permittee shall have the following options:

(1) Immediately provide the city with evidence that no cause exists for the revocation or suspension;

(2) Immediately correct, to the satisfaction of the city, the deficiencies stated in the written notice, providing written proof of such correction to the city within 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 division (C).

(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) above.

(E) *Failure or refusal of the permittee to comply.*



(1) If the permittee fails to comply with the provisions of division (C) above, the city or its designee may, at the option of the city:

(a) Correct the deficiencies;

(b) Upon not less than 20-days' notice to the permittee, remove the subject facilities or equipment; or

(c) 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.

(2) The permittee shall be liable in all events to the city for all costs of removal.

### **§38.6.12 CHANGE OF OWNERSHIP OR OWNER'S IDENTITY OR LEGAL STATUS.**

(A) *Notification of change.* A utility shall notify the city no less than 30 days prior to the transfer of ownership of any facility in the right-of-way or change in identity of the utility. The new owner of the utility or the facility shall have all the obligations and privileges enjoyed by the former owner under the permit, if any, and applicable laws, ordinances, rules and regulations, including this chapter, with respect to the work and facilities in the right-of-way.

(B) *Amended permit.* A new owner shall request that any current permit be amended to show current ownership. If the new owner fails to have a new or amended permit issued in its name, the new owner shall be presumed to have accepted, and agreed to be bound by, the terms and conditions of the permit if the new owner uses the facility or allows it to remain on the city's right-of-way.

(C) *Insurance and bonding.* All required insurance coverage or bonding must be changed to reflect the name of the new owner upon transfer.

### **§38.6.13 GENERAL CONSTRUCTION STANDARDS.**

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

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

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

#### **§38.6.14 TRAFFIC CONTROL.**

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

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

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

(D) *Notice when access is blocked.* At least 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 § 38.20 of this chapter, the utility shall provide such notice as is practicable under the circumstances.

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

#### **§38.6.15 LOCATION OF FACILITIES.**

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

(1) No interference with city facilities. No utility facilities shall be placed in any location if the City Manager 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 the right-of-way.

(3) No interference with travel. No utility facility shall be placed in any location that interferes with the usual travel on such right-of-way.

(4) No limitations on visibility. No utility facility shall be placed in any location so as to limit visibility of or by users of the right-of-way.

(5) Size of utility facilities. The proposed installation shall use the smallest suitable vaults, boxes, equipment enclosures, power pedestals and/or cabinets then in use by the facility owner, regardless of location, for the particular application.

(B) *Parallel facilities located within highways.*

(1) Overhead parallel facilities. An overhead parallel facility may be located within the right-of-way lines of a highway only if:

(a) Lines are located as near as practicable to the right-of-way line and as nearly parallel to the right-of-way line as reasonable pole alignment will permit;

(b) Where pavement is curbed, poles are as remote as practicable from the curb with a minimum distance of two feet (0.6 m) behind the face of the curb, where available;

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

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

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

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

(a) The facility is located as near the right-of-way line as practicable and not more than eight feet (2.4 m) from and parallel to the right-of-way line;

(b) A new facility may be located under the paved portion of a highway only if other locations are impracticable or inconsistent with sound engineering judgment (e.g., a new cable may be installed in existing conduit without disrupting the pavement); and

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

*(C) Facilities crossing highways.*

(1) No future disruption. The construction and design of crossing facilities installed between the ditch lines or curb lines of city highways may require the incorporation of materials and protections (such as encasement or additional cover) to avoid settlement or future repairs to the roadbed resulting from the installation of such crossing facilities.

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

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

(4) Overhead power or communication facility. An overhead power or communication facility may cross a highway only if:

(a) It has a minimum vertical line clearance as required by ICC's rules entitled, Construction of Electric Power and Communication Lines (83 III. Admin. Code 305);

(b) Poles are located within one foot (0.3 m) of the right-of-way line of the highway and outside of the clear zone; and

(c) Overhead crossings at major intersections are avoided.

(5) Underground power or communication facility. An underground power or communication facility may cross a highway only if:

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

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

(6) Markers. The city may require the utility to provide a marker at each right-of-way line where an underground facility other than a power or communication facility crosses a

highway. Each marker shall identify the type of facility, the utility and an emergency phone number. Markers may also be eliminated as provided in current federal regulations. (49 C.F.R. § 192.707 (1989))

(D) *Facilities to be located within particular rights-of-way.* The city may require that facilities be located within particular rights-of-way that are not highways, rather than within particular highways.

(E) *Freestanding facilities.*

(1) The city may restrict the location and size of any freestanding facility located within a right-of-way.

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

(F) *Facilities installed above ground.* Above ground facilities may be installed only if:

(1) No other existing facilities in the area are located underground;

(2) New underground installation is not technically feasible; and

(3) The proposed installation will be made at a location, and will employ suitable design and materials, to provide the greatest protection of aesthetic qualities of the area being traversed without adversely affecting safety. Suitable designs include, but are not limited to, self-supporting armless, single-pole construction with vertical configuration of conductors and cable. Existing utility poles and light standards shall be used wherever practicable; the installation of additional utility poles is strongly discouraged.

(G) *Facility attachments to bridges or roadway structures.*

(1) Facilities may be installed as attachments to bridges or roadway structures only where the utility has demonstrated that all other means of accommodating the facility are not practicable. Other means shall include, but are not limited to, underground, underwater, independent poles, cable supports and tower supports, all of which are completely separated from the bridge or roadway structure. Facilities transmitting commodities that are volatile, flammable, corrosive or energized, especially those under significant pressure or potential, present high degrees of risk and such installations are not permitted.

(2) A utility shall include in its request to accommodate a facility installation on a bridge or roadway structure supporting data demonstrating the impracticability of alternate routing. Approval or disapproval of an application for facility attachment to a bridge or roadway structure will be based upon the following considerations:

(a) The type, volume, pressure or voltage of the commodity to be transmitted and an evaluation of the resulting risk to persons and property in the event of damage to or failure of the facility;

(b) The type, length, value and relative importance of the highway structure in the transportation system;

(c) The alternative routings available to the utility and their comparative practicability;

(d) The proposed method of attachment;

(e) The ability of the structure to bear the increased load of the proposed facility;

(f) The degree of interference with bridge maintenance and painting;

(g) The effect on the visual quality of the structure; and  
(h) The public benefit expected from the utility service as compared to the risk involved.

(H) *Appearance standards.*

(1) The city may prohibit the installation of facilities in particular locations in order to preserve visual quality.

(2) A facility may be constructed only if its construction does not require extensive removal or alteration of trees or terrain features visible to the right-of-way user or to adjacent residents and property owners, and if it does not impair the aesthetic quality of the lands being traversed.

**§38.6.16 CONSTRUCTION METHODS AND MATERIALS.**

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

(1) Distance from City Utilities. Permittees shall place Facilities 24 inches away from City Utilities. Permittees may request a variance from this requirement from the City Manager.

(2) 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 Manager 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.

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

(a) Length. The length of open trench shall be kept to the practicable minimum consistent with requirements for pipeline testing. Only one-half of any intersection may have an open trench at any time unless special permission is obtained from the City Manager.

(b) Open trench and excavated material. Open trench and windrowed excavated material shall be protected as required by Chapter 6 of the Illinois Manual on Uniform Traffic Control Devices. Where practicable, the excavated material shall be deposited between the roadway and the trench as added protection. Excavated material shall not be allowed to remain on the paved portion of the roadway. Where right-of-way width does not allow for windrowing excavated material off the paved portion of the roadway, excavated material shall be hauled to an off-road location.

(c) Drip line of trees. The utility shall not trench within the drip line of any tree designated by the city to be preserved.

(4) 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 City Manager or his or 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 City.

(5) Pavement cuts. Pavement cuts for facility installation or repair shall be permitted on a highway only if that portion of the highway is closed to traffic. If a variance to the limitation set forth in this division (A)(5) is permitted under § 38.21, the following requirements shall apply.

(a) Any excavation under pavements shall be backfilled and compacted as soon as practicable with granular material of CA-6 or CA-10 gradation, as designated by the Engineer.

(b) Restoration of pavement, in kind, shall be accomplished as soon as practicable, and temporary repair with bituminous mixture shall be provided immediately. Any subsequent failure of either the temporary repair or the restoration shall be rebuilt upon notification by the city.

(c) All saw cuts shall be full depth.

(d) For all rights-of-way which have been reconstructed with a concrete surface/base in the last seven years, or resurfaced in the last three 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.

(6) 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.

(7) 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
Communication, cable or video service lines	18 to 24 inches (0.6 m, as determined by city)
Electric lines	30 inches (0.8 m)
Gas or petroleum products	30 inches (0.8 m)
Sanitary sewer, storm sewer or drainage line	Sufficient cover to provide freeze protection
Water line	Sufficient cover to provide freeze protection

(B) *Standards and requirements for particular types of facilities.*

(1) Electric power or communication lines.

(a) Code compliance. Electric power or communications facilities within city rights-of-way shall be constructed, operated and maintained in conformity with the provisions of 83 Ill. Admin. Code 305 (formerly General Order 160 of the State Commerce Commission) entitled Rules for Construction of Electric Power and Communications Lines, and the National Electrical Safety Code.

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

(c) Underground facilities.

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

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

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

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

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

(d) Burial of drops. All temporary service drops placed between November 1 of the prior year and March 15 of the current year, also known as snowdrops, shall be buried by May 31 of the current year, weather permitting, unless otherwise permitted by the city. Weather permitting, utilities shall bury all temporary drops, excluding snowdrops, within ten 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 C.F.R. part 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 City Manager. With the approval of the City Manager, shrubbery surrounding the appurtenance may be used in place of vegetation-free area. The housing for ground-mounted appurtenances shall be painted a neutral color to blend with the surroundings.



(C) *Materials.*

(1) General standards. The materials used in constructing facilities within rights-of-way shall be those meeting the accepted standards of the appropriate industry, the applicable portions of IDOT's Standards Specifications for Road and Bridge Construction, the requirements of the State 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 Manager. When such storage is permitted, all pipe, conduit, wire, poles, cross arms or other materials shall be distributed along the right-of-way prior to and during installation in a manner to minimize hazards to the public or an obstacle to right-of-way maintenance or damage to the right-of-way and other property. If material is to be stored on right-of-way, prior approval must be obtained from the city.

(3) Hazardous materials. The plans submitted by the utility to the city shall identify any hazardous materials that may be involved in the construction of the new facilities or removal of any existing facilities.

(D) *Operational restrictions.*

(1) Construction operations on rights-of-way may, at the discretion of the city, be required to be discontinued when such operations would create hazards to traffic or the public health, safety and welfare. Such operations may also be required to be discontinued or restricted when conditions are such that construction would result in extensive damage to the right-of-way or other property.

(2) These restrictions may be waived by the City Manager when emergency work is required to restore vital utility services.

(3) Unless otherwise permitted by the city, the hours of building and construction are those set forth in § 33.4.27 of the Mascoutah Code.

(E) *Location of existing facilities.* Any utility proposing to construct facilities in the city shall contact J.U.L.I.E. and ascertain the presence and location of existing above-ground and underground facilities within the rights-of-way to be occupied by its proposed facilities. The city will make its permit records available to a utility for the purpose of identifying possible facilities. When notified of an excavation or when requested by the city or by J.U.L.I.E., a utility shall locate and physically mark its underground facilities within 48 hours, excluding weekends and holidays, in accordance with the State Underground Facilities Damage Prevention Act (ILCS Ch. 220, Act 50, §§ 1 et seq.) (1999 Code, § 53.16)

**§38.6.17 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 Manager 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.

#### **§38.6.18 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 Manager. 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 Manager for good cause shown.

#### **§38.6.19 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 Manager or his or her duly authorized agent of the emergency, informing him or her as to what steps have been taken for protection of the traveling public and what will be required to make the necessary repairs. If the nature of the emergency is such as to interfere with the free movement of traffic, the City Police shall be notified immediately.

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

(C) *Emergency repairs.* The utility must file in writing with the city a description of the repairs undertaken in the right-of-way within 48 hours after an emergency repair.

### **§38.6.20 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 Manager 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 Manager 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 Manager 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 Manager or his or 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 Manager under the provisions of this chapter shall have the right to appeal to the City Council, or such other committee, 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.

#### **§ 38.6.21 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.

#### **§ 38-2-.22 COMPENSATION FOR USE OF THE RIGHTS-OF-WAY.**

*(A) Use fees.*

(1) Unless otherwise lawfully established by the City Council through an agreement existing before April 17, 2023, or as required by applicable law, utilities shall pay to the city as monthly compensation for the use of the rights-of-way, other than for incidental uses, a monthly use fee of:

(a) One thousand dollars per month for the first mile of linear facilities, or part thereof, plus \$0.16 per linear foot per month thereafter; and

(b) Two hundred dollars per month for each antenna per annum in the rights-of-way, or such other amounts as established by the City Council.

(2) Linear foot fees shall be due and payable on a monthly basis within 30 calendar days of the close of each month for which the payment applies. If any use fee, or any portion thereof, is not postmarked or delivered on or before the due date, interest thereon shall accrue from the due date until received, at the rate of 1.5% per month, unless such other maximum rate is established by law.

(3) The use fee required in this section shall be paid by the utility as required herein without offset, credit, refund, or deduction except for such credit as is expressly provided for above for SMTT paid.

(4) Limitation. Nothing herein shall require payment of use fees described in this division (A) to the extent such use fees are prohibited by applicable law, including for placement of small wireless facilities as defined in ILCS Ch. 50, Act 840, § 10 to the extent such use fees would be prohibited or otherwise limited by federal or state law.

*(B) Bundled services.* The utility expressly acknowledges and agrees that, to the extent it markets bundled services, including a combination of goods or services that may be subject to this chapter, it will fairly reflect to the city an appropriate and reasonable division of services among the various services offered, based on the actual value of each separate service. Whether or not the utility separates services on a subscriber's bill, it will provide to the city notice of any such allocation sufficient for city verification. Should the utility engage in billing or payment practices that, in the reasonable determination of the city, do not fairly reflect a fair and appropriate allocation, the city may nullify such allocation and require payment applicable to the full receipts.

*(C) Fee statement.* Each use fee payment shall be accompanied by a statement showing the manner in which the use fee was calculated, and in such format as may be required by the city. If any fee statement is determined to understate the fee owed, then such additional amount owed shall be made with a corrected statement, including interest on the amount as provided herein. Within 90 calendar days following the end of the calendar year, each licensee shall submit a statement, certified as true, setting forth its gross revenues, the

amount of linear foot and antennae within the facilities, and describing what revenues or receipts (including each type of services were included and excluded in the fee calculations for the calendar year, and describing any adjustments, additional payments or credits) arising from information not known and reflected as of the payment date. Any required additional payment shall be included with the report, any credit shall be deducted from the following annual payment.

(D) *No accord and satisfaction.* No acceptance by the city of any use fee shall be construed as an accord that the amount paid is in fact the correct amount, nor shall acceptance of any use fee payment be construed as a release of any claim of the city.

(E) *Maintain records.* Utilities shall at all times maintain complete and accurate books of account, and records of the business, ownership, and operations of the utility with respect to the facilities, in a manner that allows the city to determine whether the utility has properly calculated its use fee in compliance with this chapter. Should the city reasonably determine that the records are not being maintained in such manner, the utility shall correct the manner in which the books and/or records are maintained so that the utility comes into compliance with this section. All financial books and records maintained in accordance with FCC regulations and the regulations of any governmental entity regulating utilities in Illinois, and generally accepted accounting principles, shall be deemed to be acceptable under this section. Such books and records shall be maintained for a period of at least five years, but nothing herein shall limit the years or scope of audit if reasonably related to determining or enforcing compliance.

(F) *Right of inspection.* The city or its designated representatives shall have the right to inspect, examine or audit, during normal business hours and upon seven-calendar-day notice, all documents, records or other information that pertains to the facilities within the ROW and/or the utility's user fee obligations. In addition to access to the records of utility for audits, upon request, the utility shall provide reasonable access to records necessary to verify compliance with the terms of this chapter.

### **§38.6.23 PENALTY.**

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.