

CHAPTER 6
PUBLIC PROPERTIES

- 6.01 Barricades**
- 6.02 Damage to Public Property**
- 6.03 Encroachments**
- 6.04 Obstructions**
- 6.05 Posting Bills**
- 6.06 Openings and Stairways**
- 6.07 Private Use of Public Property**
- 6.08 Snow**
- 6.09 Sump Pump Discharge**
- 6.10 Excavations, Openings and Tunneling**
- 6.11 Trees**
- 6.12 Sidewalk Repair Program**
- 6.13 Parks**
- 6.14 Scaffolds**
- 6.15 Coin Operated Beverage Machines on Public Property**
- 6.16 Special Service Areas Administration**
- 6.17 Maintenance of Rights of Way and Parkways**
- 6.18 Utilities in Right of Way**
- 6.19 Newspaper Dispensing Racks**
- 6.20 Penalty**

6.01 BARRICADES

Any person, firm or corporation laying or repairing any pavement on a street, sidewalk or other public place, or making an excavation or tunnel in any such place, shall maintain suitable barricades to prevent injury to any person, property or vehicle by reason of the work. Such barricades shall be protected by lights at night time.

6.02 DAMAGE TO PUBLIC PROPERTY

No person shall maliciously, willfully or negligently break, damage or deface any public property including, but not limited to streets, alleys, sidewalks, public ways, sewer and water mains or appurtenances thereto, parks or other public property, or any post, wire, lamp, street sign, traffic sign, tree, grass, vegetation, gutter, drain, manhole or any other appurtenance thereon.

No unauthorized person shall repair, remove or replace any equipment, appurtenance or property of the City.

6.03 ENCROACHMENTS

A. Permit: No person shall erect or maintain any structure or thing on, over or under any street, alley, sidewalk of public way except by permit from the City Council. Application for such permit shall describe the nature of the encroachment in such detail as the Council shall require.

The Council, in its discretion, may issue or deny the permit, and may impose any conditions and fees to such permit it deems appropriate.

B. Maintenance: Any encroachment on any street, alley, sidewalk or public way shall be maintained so that it does not endanger or obstruct the public.

C. Nuisance: Any encroachment maintained in violation of this Section is declared a nuisance and may be abated by the City.

6.04 OBSTRUCTIONS

A. Free Passage: No person shall obstruct or endanger the free passage or proper use of the public of any street, sidewalk, alley or public place, except as may be permitted by this Code. No person shall play any games in the roadway of any street.

B. Loading, Unloading: Goods, wares and merchandise may be placed on sidewalks for such reasonable time as may be necessary while loading and unloading, but not exceeding one-half hour, provided the usable sidewalk width is not reduced to less than four feet.

C. Motorized Vehicles: Except as provided herein, no person shall obstruct any public sidewalk, street, alley or public right of way or public property with any motorized vehicle for the purpose of repair, replacement, removal or installation of any component, manufactured or after market, of said vehicle. Exceptions to this prohibition shall include, but not be limited to, incidents deemed to be an emergency or performed with prior permission from the Police Department. (Ord 2009-108, §1)

D. Penalty: Any person, firm or corporation violating any provision of this Section shall be fined not less than \$50 for the first offense and not less than \$100 for the second or subsequent offense and be responsible for the City's cost of prosecution, including reasonable attorney fees. Each day that a violation exists shall be considered a separate offense. (Ord 2009-108, §1)

6.05 POSTING BILLS

It is unlawful to post any bills on any public utility pole in the City.

6.06 OPENINGS AND STAIRWAYS

It is unlawful to construct or maintain any opening or stairway in any public street, sidewalk or alley without a permit from the City. All such lawfully maintained openings shall be guarded by a suitable strong cover or a railing, to the approval of the City.

6.07 PRIVATE USE OF PUBLIC PROPERTY

Except where written application is made to, and written permission received from the Council, it is unlawful for any person, firm or corporation to use any street, sidewalk or other public

place, as space for the display of goods or merchandise for sale; or to write or mark any signs or advertisements on any such pavement.

6.08 SNOW

The person occupying the ground floor of any building, the user of any lot without a structure thereon, and the owner of any vacant building or other premises shall remove the snow and ice accumulating on the abutting sidewalks within 24 hours after any snowfall has ceased. If snow or ice cannot be removed the surface shall be sanded or otherwise treated to lessen the hazard for pedestrians until the climate permits removal.

6.09 SUMP PUMP DISCHARGE

No person shall construct, alter, maintain or in any way provide for the discharge of a sump pump, either directly indirectly, to any public sanitary sewer, street, sidewalk or right-of-way.

6.10 EXCAVATIONS, OPENINGS and TUNNELING

No street, alley, sidewalk, tree bank, public ground or place shall be disturbed, excavated, opened or tunneled, nor shall any material or thing be placed or kept therein without obtaining a City permit.

6.11 TREES, BUSHES AND SHRUBS (Amended Ord. 99-149, 1999)

A. Definitions: In addition to the definitions found in Appendix A of this Code, the following terms, whether capitalized or not, are defined as follows:

Bush (shrub): a low, woody plant with several permanent stems branching out low instead of a single stem or a single trunk.

Tree: a woody, perennial plant with one main stem or trunk which develops many branches, usually of some height above the ground.

B. Planting Locations: The planting of shrubs and bushes in any parkway is prohibited. In addition, nothing shall be planted around any fire hydrant or street signs.

C. Permit Required: A permit, at no cost to the applicant, is required from the City before planting tree(s) in the right-of-way. Accompanying the permit application shall be verification that the tree(s) is acceptable to the City. Among the trees permitted to be planted in the right-of-way are:

- | | |
|-------------------------------|--------------------------|
| 1. Autumn Blaze Maple | 7. Patmore Green Ash |
| 2. Crimson King Maple | 8. Redmond Linden |
| 3. Emerald Lustre Maple | 9. Red Sunset Maple |
| 4. Green Mountain Sugar Maple | 10. Skyline Honey Locust |

- 5. Greenspire Linden
- 6. Norway Maple

11. Summit Ash

Exceptions to the listed trees will be considered by the City. In no event shall a tree or shrub not listed or approved by the City be planted in the public street or parkway. (Ord. 2000-124, §1, 2000)

D. Removal: It is unlawful to remove or cut down any tree or shrub in any street, parkway or other public place without first having secured a permit. Permit applications are available in the Building Department and are considered by the Mayor and City Council.

E. Injury: It is unlawful to injure any tree or shrub planted in any public place.

F. Advertisements, Notices: It is unlawful to attach any sign, advertisement or notice to any tree or shrub in any street, parkway or other public place.

G. Trimming:

- 1. Any tree or shrub which overhangs any sidewalk, street or other public place in such a way as to impede or interfere with traffic or travel on such public place shall be trimmed by the owner of the abutting premises on which such trees or shrubs grow so that the obstruction is removed.
- 2. Any limb which is likely to fall on or across any public way or place shall be removed by the owner of the premises on which such tree or shrub grows or stands.

H. Wires:

- 1. It is unlawful to attach any wire or other rope to any tree without permission of the Mayor and City Council.
- 2. Any person or company given the right to maintain poles and wires in the streets, alleys or other public places shall, in the absence of provision in the franchise concerning the subject, keep such wires and poles free from and away from any trees or shrubs in such places so far as may be possible and shall keep all such trees and shrubs properly trimmed, subject to the supervision of the Superintendent of Public Works, so that no injury shall be done to the poles or wires or shrubs and trees by contact.
- 3. Excavations: In making excavations in streets or other public places, proper care shall be taken to avoid injury to the roots of any tree or shrub, wherever possible.

I. Penalty: Any person, firm or corporation violating any provision of this Section 6.11 shall be fined not less than \$25.00 nor more than \$500.00 for each offense. A separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

6.12 SIDEWALK REPAIR PROGRAM

(Added Ord. 2006-112,§1)

A. Policy: It is hereby declared to be the public policy of the City that, based upon the availability of public funds, to be determined each year by the City Council, a program of City and citizen participation in the maintenance of deteriorating sidewalks shall be administered by the Public Works Department.

B. Requirements: The minimum requirements for the sidewalk repair program in the City shall be as follows:

1. The City and owner or agent of the owner of property abutting and fronting upon any street or alley within the City shall be responsible for the cost of sidewalk repairs.
2. Upon application from an owner or agent to participate in the sidewalk repair program, and acceptance into the program, the City shall require the owner or agent to enter into a contract guaranteeing the City will be reimbursed for 66.5 percent of the full cost of the sidewalk repairs.
3. The City shall be responsible for paying the full cost of the repairs at the time they are undertaken and be responsible for hiring a contractor to complete the repairs.
4. Upon the completion of the repairs, the City shall bill the owner or agent for 66.5 percent of the cost within 90 days of notice from the City.
5. In the event the owner or agent does not pay the 66.5 percent cost within 90 calendar days, the City shall file a lien against the property for the full cost of replacement.
6. The construction specifications of said sidewalks, which include the sidewalk width, materials and manner of construction, shall be determined by the City.

C. Although applications will be accepted on a “first come, first serve” basis, the City reserves the right to reject, or delay, an application when subsequent applications are received for sidewalks that are more badly deteriorated and pose a safety hazard, or in the event the City does not have sufficient revenue to fund the program.

D. Determination by the City that a particular sidewalk has not deteriorated sufficiently to warrant inclusion in the sidewalk repair program shall be final. Any citizen who wants a sidewalk replaced without City participation shall be responsible for conformance with all City codes and regulations pertaining to sidewalk repairs.

6.13 PARKS

A. Administration: All City parks and playgrounds and all improvements therein shall be administered by the Mayor and City Council.

B. Rules and Regulations: Rules and regulations for the maintenance and control of the City parks and playgrounds shall be made by the Mayor and City Council and enforced by the Superintendent of Parks and Recreation.

C. Alcoholic Liquor in Parks: Alcoholic liquor shall not be allowed in any City park unless a one-day liquor been obtained pursuant to the requirements of Section 25.070(8) of this Code.

D. Littering: It is unlawful for any person, firm, corporation, organization, association or group of people to litter any City park or playground with any garbage, cans, bottles, paper, trash or other refuse.

E. Damage to Park Property: It is unlawful for any person, firm or corporation to damage any real or personal property situated in any City park or playground.

F. Dogs: Except as provided herein, dogs that are leashed and licensed shall be allowed within City park property provided that the person walking or exercising the dog shall be responsible for any damage done to the landscaping of any park and shall be responsible for removing all animal excrement deposited by said animal. (Ord. 2006-109, §3)

G. Exceptions: Except for guide dogs, hearing ear dogs and assistance animals, as defined by 740 ILCS 13/1 *et seq.*, the City Council, by a majority vote and at its discretion, may ban dogs and/or other animals from any City property. (Ord. 2006-109, §3)

H. Park Use Permits, User Fees:
(Renumbered 2006-109, §3)

1. Definitions: In addition to the definitions found in Appendix A of this Code, the following terms, whether capitalized or not, used in this Section 6.12-G are defined as follows:

User Group: Any business, club, lodge, league, association or group of persons, whether incorporated or unincorporated, whether formed for a single or multiple purpose, which has received approval from the City for the exclusive use of a specific park facility, athletic facility or recreational facility operated by the City.

Adult User Group: Any User Group where the majority, defined as more than 50 percent of the participants are 18 years of age or more, at the time of application for a park use permit.

Non-Resident User Group: Any User Group where less than 70 percent of the total participants of the group are residents of the City at the time of application for a park use permit.

Organization: Any business, club, lodge, league, association or group of persons, whether incorporated or unincorporated, whether formed for a single or multiple purpose.

Resident User Group: Any User Group where 70 percent or more of the total participants of the group are residents of the City at the time of application for a park use permit.

Youth User Group: Any User Group where the majority, defined as more than 50 percent of the participants, are under the age of 18 years of age, at the time of application for a park use permit and where no participants are older than 18 years of age.

2. Non-Exclusive Use of City Facilities: Any individuals, Organization, association or User Group may utilize any park, athletic or recreational facilities operated by the City without paying a fee or obtaining a permit. However, such use will be considered to be non-exclusive and the individuals, Organization, association or User Group will be required to vacate their use of the City's facilities when there is a conflict with any scheduled and reserved activity. The City shall not provide any special facilities maintenance or preparation for events and activities that have not been issued a permit for exclusive use. Such User Groups shall be required to comply with all other provisions of this Code pertaining to public parks and playgrounds and shall be required to comply with all rules and regulations established by the City. This shall include, but not be limited to, police supervision, City park hours, prohibited acts and the payment of any fees that may be charged by the City.
3. Permit Required: No individual, Organization, league, association or User Group shall be permitted the exclusive use of any City park, athletic or recreational facility without first applying for and securing a permit from the City. Such applications shall be made in writing, upon forms provided by the City, and submitted to the City Administrator. The User Group shall be required to submit the appropriate membership information at the same time as the application is submitted, necessary for the City to determine the User Group type and classification. Accompanying an application for a park use permit shall be a certificate of insurance with the City as an additional insured. The amount of said insurance shall be determined by the City Council. The City reserves the right to approve or reject any application submitted for the exclusive use of any City facility. Applications may be rejected by the City due to scheduling conflicts, maintenance needs, field closures, unsafe or unacceptable field conditions and other activities within a

park that may be in conflict with the requested use, incomplete information with the application, incomplete insurance requirements, lack of payment, past performance of the User Group or other similar items.

4. Requests for special activities in the City parks, athletic or recreational facilities, such as bands, canopies, disc jockeys, dunk tanks, pony rides, large tents and pig roasts, shall be approved by the City Council. In addition, the City Council may impose certain conditions when granting such requests. (Ord. 2003-123,§2)
5. Fee Requirements: For every organized activity (i.e. baseball game, softball game, soccer game, football game, etc.) any adult Resident User Group making application for the exclusive use of any City park, athletic or recreational facility shall be charged a fee of \$25 and any non-resident Adult User Group shall be charged a fee of \$50 for such usage. In addition, the following fees shall be charged for using any City park, athletic or recreational facility: (Ord. 2006-129,§II,2003-123,§1)

Park shelter reservation: \$25 for residents and \$50 for non-residents; (Ord. 2006-129,§II)

Baseball, softball and soccer fields reservations: \$25 per game for residents and \$50 per game for non-residents;

Tennis court reservations (for four hours): \$10 for residents and \$15 for non-residents;

Electricity usage: \$50 base fee for residents and \$75 base fee for non-residents;

Special events (150 or more persons) will require a \$250 security deposit and City Council approval. In addition, police officers, dumpsters, porta-potties, “special event” insurance and any other items, all of which will be determined by the City, may be required.

I. Fishing: The provisions of 515 ILCS 5/20-5 *et seq.* (Licenses and Permits; Exemptions) shall be applicable in the City parks. (Ord 2008-123,§18)

J. Penalty: Except for Sections 6.13-F, G and I, any person, firm or corporation violating any provision of this Section 6.13, any rules or regulations for the maintenance and control of City parks and playgrounds or refusing to comply with the directions of the Superintendent of Parks and Recreation shall be fined not less than \$50.00 nor more than \$100.00 for each offense. Restitution by the violator shall also be made to any property damaged or destroyed or person injured. Any person, firm or corporation violating Section 6.13-G shall be fined not less than \$100.00 or more than \$200.00 for each offense. Any violation of Section 6.13-I shall be pursuant to 515 ILCS 5/20-35. (Ord 2008-123,§18;Ord. 2006-109)

6.14 SCAFFOLDS

Any scaffold or ladder placed in such a position that they overhang or can fall onto any public street, sidewalk, alley or other public place in the City, shall be firmly and properly constructed and safeguarded. It is unlawful to place or leave any tool or article on any such place in such a manner that the same can fall into any street, sidewalk, alley or other public place from a height greater than four feet.

6.15 COIN OPERATED BEVERAGE MACHINES ON PUBLIC PROPERTY

Coin operated beverage machines are prohibited on City sidewalks, effective January 1, 1996. (Ord. 95-162, §2, 1995)

6.16 SPECIAL SERVICE AREAS ADMINISTRATION (Ord. 2000-125,§1)

Whenever a special service area ("SSA") is formed in the City for the purpose of installing infrastructure, the administrative rules shall be as follows:

1. The developer and/or owner of the subdivision benefiting from the SSA shall be required to establish an escrow with the City equal to five percent of the bond issue, pursuant to Chapter 20, Development Fee Schedule, of this Code.
2. In the event bonds are issued to finance the improvements, the City shall be responsible for hiring an underwriter, bond counsel and general counsel to market the bonds and prepare the necessary ordinances. All costs of these consultants shall be paid from the escrowed funds. Any City staff time shall be paid from the escrowed funds at the rate of \$50.00 an hour.
3. The City shall be responsible for determining whether a general contractor shall be hired for the project. If required, the general contractor shall be hired by the City. In the event the City, in its sole discretion, determines that the developer should assume responsibility to hire the general contractor, then the City shall approve of the developer's selection in writing.
4. Awarding of construction contracts shall be by competitive bid after fourteen days public notice published in the Northwest Herald.

6.17 MAINTENANCE OF RIGHTS OF WAY AND PARKWAYS

Every property owner in the City is required to maintain that portion of the City's right of way commonly known as a tree bank or parkway. Maintenance includes, but is not limited to, installation and mowing of grass. Standing water, mud or gravel shall not be permitted. In the event of new construction and a Certificate of Occupancy is issued between November 1 and April 30, compliance with this Section 6.24 shall be by June 30. (Ord. 2001-134,§1, 2001)

6.18 CONSTRUCTION OF UTILITY FACILITIES IN THE RIGHTS OF WAY

A. PURPOSE AND SCOPE

1. Purpose: The purpose of this Section 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.
2. Intent: In enacting this Section, 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:
 - a. Prevent interference with the use of streets, sidewalks, alleys, parkways and other public ways and places;
 - b. Prevent the creation of visual and physical obstructions and other conditions that are hazardous to vehicular and pedestrian traffic;
 - c. 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;
 - d. Protect against environmental damage, including damage to trees, from the installation of utility facilities;
 - e. Protect against increased stormwater run-off due to structures and materials that increase impermeable surfaces;
 - f. Preserve the character of the neighborhoods in which facilities are installed;
 - g. Preserve open space, particularly the tree-lined parkways that characterize the City's residential neighborhoods;
 - h. Prevent visual blight from the proliferation of facilities in the rights of way; and
 - i. Assure the continued safe use and enjoyment of private properties adjacent to utility facilities locations.
3. Facilities Subject to this Section: This Section applies to all facilities on, over, above, along, upon, under, across, or within the rights of way within the jurisdiction of the City. A facility lawfully established prior to the effective date of this Section may continue to be maintained, repaired and operated by the utility as presently constructed and located, except as may be otherwise provided in any applicable franchise, license or similar agreement.
4. Franchises, Licenses, or Similar Agreements: The City, in its discretion and as

limited by law, may require utilities to enter into a franchise, license or similar agreement for the privilege of locating their facilities on, over, above, along, upon, under, across, or within the City rights of way. Utilities that are not required by law to enter into such an agreement may request that the City enter into such an agreement. In such an agreement, the City may provide for terms and conditions inconsistent with this Section.

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

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

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

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

8. Sound Engineering Judgment: The City shall use sound engineering judgment when administering this Section and may vary the standards, conditions, and requirements expressed in this Section 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.

B. DEFINITIONS

As used in this Section and unless the context clearly requires otherwise, the words and terms listed shall have the meanings ascribed to them in this Section. Any term not defined in this Section shall have the meaning ascribed to it in Section 1.02 of this Code or 92 Ill. Adm. Code § 530.30, unless the context clearly requires otherwise.

AASHTO: American Association of State Highway and Transportation Officials.

ANSI: American National Standards Institute.

Applicant: A person applying for a permit under this Section.

ASTM: American Society for Testing and Materials.

Backfill: The methods or materials for replacing excavated material in a trench or pit.

Bore or boring: To excavate an underground cylindrical cavity for the insertion of a pipe or electrical conductor.

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

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

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

Carrier pipe: The pipe enclosing the liquid, gas or slurry to be transported.

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

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

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

Community Development Director: Pursuant to Section 3.03 of this Code, the duly appointed Community Development Director or his or her duly authorized agent.

Conductor: Wire carrying electrical current.

Conduit: A casing or encasement for wires or cables.

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

Cover: The depth of earth or backfill over buried utility pipe or conductor.

Crossing facility: A facility that crosses one or more right of way lines of a right of way.

Disrupt the right of way: For the purposes of this Section, 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: Pursuant to Section 3.04 of this Code, the City Engineer or his or her duly authorized agent.

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

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

Extra heavy pipe: Pipe meeting ASTM standards for this pipe designation.

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

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

Frontage road: Roadway, usually parallel, providing access to land adjacent to the highway where it is precluded by control of access to a highway.

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

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

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

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

IDOT: Illinois Department of Transportation.

ICC: Illinois Commerce Commission.

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

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

Joint use: The use of pole lines, trenches or other facilities by two or more utilities.

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

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

Occupancy: The presence of facilities on, over or under the right of way.

Parallel facility: A facility that is generally parallel or longitudinal to the centerline of a right of way.

Parkway: Any portion of the right of way not improved by street or sidewalk.

Pavement cut: The removal of an area of pavement for access to facility or for the construction of a facility.

Permittee: That entity to which a permit has been issued pursuant to Sections 6.18-D&E of this Section.

Practicable: That which is performable, feasible or possible, rather than that which is simply convenient.

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

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

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

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

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

Right of way or rights of way: Any street, alley, other land or waterway, dedicated or commonly used for pedestrian or vehicular traffic or other similar purposes, including utility easements, in which the City has the right and authority to authorize, regulate or permit the location of facilities

other than those of the City. Right of way or rights of way shall not include any real or personal City property that is not specifically described in the previous two sentences and shall not include City buildings, fixtures and other structures or improvements, regardless of whether they are situated in the right of way.

Roadway: That part of the highway that includes the pavement and shoulders.

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

Security fund: That amount of security required pursuant to Section 6.18-J.

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

Sound engineering judgment: A decision(s) consistent with generally accepted engineering principles, practices and experience.

Telecommunications: This term includes, but is not limited to, messages or information transmitted through use of local, toll and wide area telephone service, channel services, telegraph services, teletypewriter service, computer exchange service, private line services, mobile radio services, cellular mobile telecommunications services, stationary two-way radio, paging service and any other form of mobile or portable one-way or two-way communications, and any other transmission of messages or information by electronic or similar means, between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite or similar facilities. Private line means a dedicated non-traffic sensitive service for a single customer that entitles the customer to exclusive or priority use of a communications channel, or a group of such channels, from one or more specified locations to one or more other specified locations.

Telecommunications shall not include:

1. Value added services in which computer processing applications are used to act on the form, content, code and protocol of the information for purposes other than transmission.
2. Purchase of telecommunications by a telecommunications service provider for use as a component part of the service provided by such provider to the ultimate retail consumer who originates or terminates the end-to-end communications.
3. The provision of cable services through a cable system as defined in the Cable Communications Act of 1984 (47 U.S.C. Sections 521 and following), as now or hereafter amended, or cable or other programming services subject to an open video system fee payable to the City through an open video system as defined in the Rules of the Federal Communications Commission (47 C.F.R. §76.1500 and following), as now or hereafter amended.

Telecommunications provider: Any person that installs, owns, operates or controls facilities in the right of way used or designed to be used to transmit telecommunications in any form.

Telecommunications retailer: Every person engaged in making sales of telecommunications at retail as defined herein.

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

Utility: The individual or entity owning or operating any facility as defined in this Section.

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

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

Water lines: Pipelines carrying raw or potable water.

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

C. ANNUAL REGISTRATION REQUIRED

Every utility that occupies right of way within the City shall register by January 1 of each year with the Community Development Director, providing the utility's name, address and regular business telephone and telecopy numbers, the name of one or more contact persons who can act on behalf of the utility in connection with emergencies involving the utility's facilities in the right of way and a 24-hour telephone number for each such person, and evidence of insurance as required in Section 6.18-H, in the form of a certificate of insurance.

D. PERMIT REQUIRED; APPLICATIONS AND FEES

1. Permit Required: Except as otherwise provided in this Section, no person shall construct any facility on, over, above, along, upon, under, across or within any City right of way which (1) changes the location of the facility, (2) adds a new facility, (3) disrupts the right of way, or (4) materially increases the amount of area or space occupied by the facility on, over, above, along, under across or within the right of way, without first filing an application with the Community Development Director and obtaining a permit from the City. No permit shall be required for installation and maintenance of service connections to customers' premises where there will be no disruption of the right of way.
2. Permit Application: All applications for permits pursuant to this Section shall be filed on a form provided by the City and shall be filed in such number of duplicate copies as the City may designate. The applicant may designate those portions of its application materials that it reasonably believes contain proprietary or confidential information as "proprietary" or "confidential" by clearly marking each page of such materials accordingly.

3. 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:
- a. The utility's name and address, telephone and telecopy numbers and an e-mail address contact.
 - b. The applicant's name and address, if different than the utility, its telephone, telecopy numbers, e-mail address and its interest in the work.
 - c. 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.
 - d. 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.
 - e. Evidence that the utility has placed on file with the City:
 - i. A written traffic control plan demonstrating the protective measures and devices that will be employed consistent with the *Illinois Manual on Uniform Traffic Control Devices*, to prevent injury or damage to persons or property and to minimize disruptions to efficient pedestrian and vehicular traffic; and
 - ii. An emergency contingency plan which shall specify the nature of potential emergencies, including, without limitation, construction and hazardous materials emergencies, and the intended response by the applicant. The intended response shall include notification to the City and shall promote protection of the safety and convenience of the public. Compliance with ICC regulations for emergency contingency plans constitutes compliance with this Section unless the City finds that additional information or assurances are needed.
 - f. 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.
 - g. Evidence of insurance as required in Section 6.18-H.
 - h. Evidence of posting of the security fund as required in Section 6.18-J.
 - i. Any request for a variance from one or more provisions of this Section (see Section 6.18-U).
 - j. Such additional information as may be reasonably required by the City.

- k. To Scale Drawings (1" = 20')
4. Supplemental Application Requirements for Specific Types of Utilities: In addition to the requirements of Section 6.18-D(3), the permit application shall include the following items, as applicable to the specific utility that is the subject of the permit application:
- a. In the case of the installation of a new electric power, communications, telecommunications, cable television service, video service or natural gas distribution system, evidence that any "Certificate of Public Convenience and Necessity" or other regulatory authorization that the applicant is required by law to obtain, or that the applicant has elected to obtain, has been issued by the ICC or other jurisdictional authority.
 - b. In the case of natural gas systems, state the proposed pipe size, design, construction class and operating pressures.
 - c. In the case of water lines, indicate that all requirements of the Illinois Environmental Protection Agency, Division of Public Water Supplies, have been satisfied.
 - d. In the case of sewer line installations, indicate that the land and water pollution requirements of the Illinois Environmental Protection Agency, Division of Water Pollution Control, and City have been satisfied.
 - e. 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.
5. 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.

E. ACTION ON PERMIT APPLICATIONS

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

construction proposed under the application shall be in full compliance with the requirements of this Section.

2. Additional City Review of Applications of Telecommunications Retailers:

- a. Pursuant to Section 4 of the Telephone Company Act, 220 ILCS 65/4, a telecommunications retailer shall notify the City that it intends to commence work governed by this Section for facilities for the provision of telecommunications services. Such notice shall consist of plans, specifications, and other documentation sufficient to demonstrate the purpose and intent of the facilities, and shall be provided by the telecommunications retailer to the City not less than 10 days prior to the commencement of work requiring no excavation and not less than 30 days prior to the commencement of work requiring excavation. The Engineer or Community Development Director shall specify the portion of the right of way upon which the facility may be placed, used and constructed.
- b. In the event the Engineer or Community Development Director fails to provide such specification of location to the telecommunications retailer within either (i) 10 days after service of notice to the City by the telecommunications retailer in the case of work not involving excavation for new construction or (ii) 25 days after service of notice by the telecommunications retailer in the case of work involving excavation for new construction, the telecommunications retailer may commence work without obtaining a permit under this Section, although in all other appropriate respects, the telecommunications retailer shall be bound by the provisions of this Section.
- c. Upon the provision of such specification by the City, where a permit is required for work pursuant to Section 6.18-D, the telecommunications retailer shall submit to the City an application for a permit and any and all plans, specifications and documentation available regarding the facility to be constructed. Such application shall be subject to the requirements of Section 6.18-E(1).

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

F. EFFECT OF PERMIT

1. 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 Section 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.

2. Duration: No permit issued under this Section shall be valid for a period longer than 6 months unless construction is actually begun within that period and is thereafter diligently pursued to completion.
3. Pre-Construction Meeting Required: At the election of the City, no construction shall begin pursuant to a permit issued under this Section 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.
4. Compliance with All Laws Required: The issuance of a City permit does not excuse the permittee from complying with other requirements of the City and applicable statutes, laws, ordinances, rules and regulations.

G. REVISED PERMIT DRAWINGS

In the event the actual locations of any facilities deviate in any material respect from the locations identified in the plans, drawings and specifications submitted with the permit application, the permittee shall submit a revised set of drawings or plans to the City within 90 days after the completion of the permitted work. The revised drawings or plans shall specifically identify where the locations of the actual facilities deviate from the locations approved in the permit. If any deviation from the permit also deviates from the requirements of this Section, it shall be treated as a request for a variance in accordance with Section 6.18-U. If the City denies the request, then the permittee shall either remove the facility from the right of way or modify the facility so it conforms to the permit and submit revised drawings or plans therefor.

H. INSURANCE

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

- i. Five million dollars (\$5,000,000) for bodily injury or death to each person;
 - ii. Five million dollars (\$5,000,000) for property damage resulting from any one accident; and
 - iii. Five million dollars (\$5,000,000) 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.

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.

2. 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.
3. Copies Required: The utility shall provide copies of any of the required policies to the City within 10 days following receipt of a written request from the City.
4. Maintenance and Renewal of Required Coverages: The insurance policies required by this Section shall contain the following endorsement:

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

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

5. Self-Insurance: A utility may self-insure all or a portion of the insurance coverage and limit requirements required by Subsection a) of this Section. A utility that

self-insures is not required, to the extent of such self-insurance, to comply with the requirement for the naming of additional insured's under Section 6.18-H1, or the requirements of Sections 6.18-H(1)(2)and(3). A utility that elects to self-insure shall provide to the City evidence sufficient to demonstrate its financial ability to self-insure the insurance coverage and limit requirements required under Section 6.18-H(1), such as evidence that the utility is a "private self insurer" under the Workers Compensation Act.

6. 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.
7. Insurance Companies: All insurance provided pursuant to this Section shall be effected under valid and enforceable policies, issued by insurers legally able to conduct business with the licensee in the State of Illinois. [All insurance carriers and surplus line carriers shall be rated "A-" or better and of a class size "X" or higher by A.M. Best Company.]

I. 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 Section 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 Section by the City, its officials, officers, employees, agents or representatives.

J. SECURITY

1. Purpose: The permittee shall establish a Security Fund in a form and in an amount set forth in this Section. The Security Fund shall be continuously maintained in accordance with this Section at the permittee's sole cost and expense until the completion of the work authorized under the permit. The Security Fund shall serve as security for:
 - a. The faithful performance by the permittee of all the requirements of this Section;
 - b. 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 Section; and

- c. 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 Section including, without limitation, any damage to public property or restoration work the permittee is required by this Section 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 Section or any other applicable law.
2. Form: The permittee shall provide the Security Fund to the City in the form, at the permittee's election, of cash, a surety bond in a form acceptable to the City, or an unconditional letter of credit in a form acceptable to the City. Any surety bond or letter of credit provided pursuant to this Section shall, at a minimum:
 - a. Provide that it will not be canceled without prior notice to the City and the permittee;
 - b. Not require the consent of the permittee prior to the collection by the City of any amounts covered by it; and
 - c. Shall provide a location convenient to the City and within the State at which it can be drawn.
3. 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 Engineer or Community Development Director, 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 Engineer or Community Development Director may, in the exercise of sound discretion, allow the permittee to post a single amount of security which shall be applicable to each phase of the construction under the permit. The amount of the Security Fund for phased construction shall be equal to the greatest amount that would have been required under the provisions of this Section for any single phase.
4. Withdrawals: The City, upon 14 days' advance written notice clearly stating the reason for, and its intention to exercise withdrawal rights under this Section, may withdraw an amount from the Security Fund, provided that the permittee has not reimbursed the City for such amount within the 14-day notice period.

Withdrawals may be made if the permittee:

- a. Fails to make any payment required to be made by the permittee hereunder;
 - b. Fails to pay any liens relating to the facilities that are due and unpaid;
 - c. 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
 - d. Fails to comply with any provision of this Section that the City determines can be remedied by an expenditure of an amount in the Security Fund.
5. Replenishment: Within 14 days after receipt of written notice from the City that any amount has been withdrawn from the Security Fund, the permittee shall restore the Security Fund to the amount specified in this Section.
6. Interest: The permittee may request that any and all interest accrued on the amount in the Security Fund be returned to the permittee by the City, upon written request for said withdrawal to the City, provided that any such withdrawal does not reduce the Security Fund below the minimum balance required in this Section.
7. 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 Section or other applicable law. In the event of any revocation of the permit, the Security Fund, and any and all accrued interest therein, shall become the property of the City to the extent necessary to cover any reasonable costs, loss or damage incurred by the City as a result of said revocation, provided that any amounts in excess of said costs, loss or damage shall be refunded to the permittee.
8. 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 Section or otherwise authorized by law, and no action, proceeding or exercise of right with respect to said Security Fund shall affect any other right the City may have. Notwithstanding the foregoing, the City shall not be entitled to a double monetary recovery with respect to any of its rights which may be infringed or otherwise violated.

K. PERMIT SUSPENSION AND REVOCATION

1. City Right to Revoke Permit: The City may revoke or suspend a permit issued pursuant to this Section for one or more of the following reasons:
 - a. Fraudulent, false, misrepresenting or materially incomplete statements in the permit application;

- b. Non-compliance with this Section;
 - c. 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
 - d. Permittee's failure to construct the facilities substantially in accordance with the permit and approved plans.
2. Notice of Revocation or Suspension: The City shall send written notice of its intent to revoke or suspend a permit issued pursuant to this Section stating the reason or reasons for the revocation or suspension and the alternatives available to permittee under this Section.
3. 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:
- a. Immediately provide the City with evidence that no cause exists for the revocation or suspension;
 - b. Immediately correct, to the satisfaction of the City, the deficiencies stated in the written notice, providing written proof of such correction to the City within 5 working days after receipt of the written notice of revocation; or
 - c. Immediately remove the facilities located on, over, above, along, upon, under, across or within the rights of way and restore the rights of way to the satisfaction of the City providing written proof of such removal to the City within 10 days after receipt of the written notice of revocation.

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

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

L. CHANGE OF OWNERSHIP OR OWNER'S IDENTITY OR LEGAL STATUS

1. 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 Section, with respect to the work and facilities in the right of way.

2. 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.
3. Insurance and Bonding: All required insurance coverage or bonding must be changed to reflect the name of the new owner upon transfer.

M. GENERAL CONSTRUCTION STANDARDS

1. 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:
 - a. *Standard Specifications for Road and Bridge Construction*;
 - b. *Supplemental Specifications and Recurring Special Provisions*;
 - c. *Highway Design Manual*;
 - d. *Highway Standards Manual*;
 - e. *Standard Specifications for Traffic Control Items*;
 - f. *Illinois Manual on Uniform Traffic Control Devices* (92 Ill. Adm. Code § 545);
 - g. *Flagger's Handbook*; and
 - h. *Work Site Protection Manual for Daylight Maintenance Operations*.
 - i. *City of Harvard Engineering Specifications*.
2. Interpretation of Municipal Standards and Principles: If a discrepancy exists between or among differing principles and standards required by this Section, the Engineer or Community Development Director shall determine, in the exercise of sound engineering judgment, which principles apply and such decision shall be final. If requested, the Engineer or Community Development Director shall state which standard or principle will apply to the construction, maintenance or operation of a facility in the future.

N. TRAFFIC CONTROL

1. 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.
2. 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.
3. Interference with Traffic: All work shall be phased so there is minimum interference with pedestrian and vehicular traffic.
4. Notice When Access is Blocked: At least 48 hours prior to beginning work that will partially or completely block access to any residence, business or institution, the utility shall notify the resident, business or institution of the approximate beginning time and duration of such work; provided, however, that in cases involving emergency repairs pursuant to Section 6.18-T, the utility shall provide such notice as is practicable under the circumstances.
5. 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.

O. LOCATION OF FACILITIES

1. General Requirements: In addition to location requirements applicable to specific types of utility facilities, all utility facilities, regardless of type, shall be subject to the general location requirements of this Section.
 - a. No Interference with City Facilities: No utility facilities shall be placed in any location if the Engineer or Community Development Director 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.
 - b. Minimum Interference and Impact: The proposed location shall cause only the minimum possible interference with the use of the right of way and shall cause only the minimum possible impact upon, and interference with the rights and reasonable convenience of property owners who adjoin said right of way.
 - c. No Interference with Travel: No utility facility shall be placed in any location that interferes with the usual travel on such right of way.
 - d. 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.

- e. 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.

2. Parallel Facilities Located Within Highways:

- a. Overhead Parallel Facilities: An overhead parallel facility may be located within the right of way lines of a highway only if:
 - i. 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;
 - ii. 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;
 - iii. 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;
 - iv. No pole is located in the ditch line of a highway; and
 - v. 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.
- b. Underground Parallel Facilities: An underground parallel facility may be located within the right of way lines of a highway only if:
 - i. The facility is located as near the right of way line as practicable and not more than 8 feet (2.4 m) from and parallel to the right of way line;
 - ii. 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
 - iii. In the case of an underground power or communications line, the facility shall be located as near the right of way line as practicable and not more than 5 feet (1.5 m) from the right of way line and any above-grounded appurtenance shall be located within 1 foot (0.3 m) of the right of way line or as near as practicable.

3. Facilities Crossing Highways:
 - a. 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.
 - b. Culverts, or Drainage Facilities: Crossing facilities shall not be located in culverts or drainage facilities.
 - c. 90 Degree Crossing Required: Crossing facilities shall cross at or as near to a 90 degree angle to the centerline as practicable.
 - d. Overhead Power or Communication Facility: An overhead power or communication facility may cross a highway only if:
 - i. It has a minimum vertical line clearance as required by ICC's rules entitled *Construction of Electric Power and Communication Lines* (83 Ill. Adm. Code 305);
 - ii. Poles are located within 1 foot (0.3 m) of the right of way line of the highway and outside of the clear zone; and
 - iii. Overhead crossings at major intersections are avoided.
 - e. Underground Power or Communication Facility: An underground power or communication facility may cross a highway only if:
 - i. The design materials and construction methods will provide maximum maintenance-free service life; and
 - ii. Capacity for the utility's foreseeable future expansion needs is provided in the initial installation.
 - f. 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)).
4. 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.
5. Freestanding Facilities:
 - a. The City may restrict the location and size of any freestanding facility

located within a right of way.

- b. The City may require any freestanding facility located within a right of way to be screened from view in a manner appropriate for the surrounding environment. Such screening or landscaping shall be completed by the City of Harvard at the utilities' expense at a cost of \$150 per linear foot.

(At the end of each one-year period and beginning on January 1, 2009, the amount due, shall be adjusted upward by the percent, which the Chicago Area Consumer Price Index has moved upward since December 31, 2006, and every December 31 thereafter. For purposes of this paragraph, the price index to be used for comparative purposes shall be that index published for the annual average Chicago Area CPI-U, as published by the United States Department of Labor, Bureau of Labor Statistics.

6. Facilities Installed Above Ground: Above ground facilities may be installed only if:

- a. No other existing facilities in the area are located underground;
- b. New underground installation is not technically feasible; and
- c. 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.

7. Facility Attachments to Bridges or Roadway Structures:

- a. 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.
- b. 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:

- i. 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;
- ii. The type, length, value and relative importance of the highway structure in the transportation system;
- iii. The alternative routings available to the utility and their comparative practicability;
- iv. The proposed method of attachment;
- v. The ability of the structure to bear the increased load of the proposed facility;
- vi. The degree of interference with bridge maintenance and painting;
- vii. The effect on the visual quality of the structure; and
- viii. The public benefit expected from the utility service as compared to the risk involved.

8. Appearance Standards:

- a. The City may prohibit the installation of facilities in particular locations in order to preserve visual quality.
- b. 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.

P. CONSTRUCTION METHODS AND MATERIALS

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

- a. Boring or Jacking:
 - i. Pits and Shoring: Boring or jacking under rights of way shall be accomplished from pits located at a minimum distance specified by the Engineer or Community Development Director 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.

- ii. Wet Boring or Jetting: Wet boring or jetting shall not be permitted under the roadway.
 - iii. Borings with Diameters Greater Than 6 Inches: Borings over 6 inches (0.15 m) in diameter shall be accomplished with an auger and following pipe, and the diameter of the auger shall not exceed the outside diameter of the following pipe by more than 1 inch (25 mm).
 - iv. Borings with Diameters 6 Inches or Less: Borings of 6 inches or less in diameter may be accomplished by either jacking, guided with auger, or auger and following pipe method.
 - v. 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.
- b. Trenching: Trenching for facility installation, repair or maintenance on rights of way shall be done in accord with the applicable portions of Section 603 of IDOT's *Standard Specifications for Road and Bridge Construction*.
- i. Length: The length of open trench shall be kept to the practicable minimum consistent with requirements for pipe-line testing. Only one-half of any intersection may have an open trench at any time unless special permission is obtained from the Engineer or Community Development Director.
 - ii. 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.
 - iii. Drip Line of Trees: The utility shall not trench within the drip line of any tree designated by the City to be preserved.
- c. Backfilling:
- i. 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.

- ii. For a period of 3 years from the date construction of a facility is completed, the utility shall be responsible to remove and restore any backfilled area that has settled due to construction of the facility. If so ordered by the Engineer or Community Development Director, 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 Engineer or Community Development Director.
- e. Pavement Cuts: Pavement cuts for facility installation or repair shall be permitted on a highway only if that portion of the highway is closed to traffic. If a variance to the limitation set forth in this paragraph is permitted under Section 6.18-U, the following requirements shall apply:
- i. 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 or Community Development Director.
 - ii. 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.
 - iii. All saw cuts shall be full depth.
 - iv. For all rights of way which have been reconstructed with a concrete surface/base in the last 7 years, or resurfaced in the last 3 years, permits shall not be issued unless such work is determined to be an emergency repair or other work considered necessary and unforeseen before the time of the reconstruction or unless a pavement cut is necessary for a JULIE locate.
- e. Encasement:
- i. 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.
 - ii. The venting, if any, of any encasement shall extend within 1 foot

(0.3 m) of the right of way line. No above-ground vent pipes shall be located in the area established as clear zone for that particular section of the highway.

- iii. 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.
- iv. In the case of gas pipelines of 60 psig or less, encasement may be eliminated.
- v. 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;
- vi. 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.

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

TYPE OF FACILITY	MINIMUM COVER
Electric Lines	30 inches (0.8 m)
Communication, cable or video service lines	18 - 24 inches (0.6 m, as determined by the City)
Gas or petroleum products	30 inches (0.8 m)
Water line	Sufficient cover to provide freeze protection
Sanitary sewer, storm sewer or drainage line	Sufficient cover to provide freeze protection

2. Standards and Requirements for Particular Types of Facilities:

a. Electric Power or Communication Lines:

- i. Code Compliance: Electric power or communications facilities within City rights of way shall be constructed, operated and maintained in conformity with the provisions of 83 Ill. Adm. Code Part 305 (formerly General Order 160 of the ICC) entitled *Rules for Construction of Electric Power and Communications Lines*, and the National Electrical Safety Code.

- ii. 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.
- iii. Underground Facilities:
 - (a) 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.
 - (b) If a crossing is installed by boring or jacking, encasement shall be provided between jacking or bore pits. Encasement may be eliminated only if: (a) the crossing is installed by the use of “moles,” “whip augers” or other approved method which compress the earth to make the opening for cable installation or (b) the installation is by the open trench method which is only permitted prior to roadway construction or (3) Cable shall be grounded in accordance with the National Electrical Safety Code.
- iv. Burial of Drops: All temporary service drops placed between November 1 of the prior year and March 15 of the current year, also known as snowdrops, shall be buried by May 31 of the current year, weather permitting, unless otherwise permitted by the City. Weather permitting, utilities shall bury all temporary drops, excluding snowdrops, within 10 business days after placement.
- b. Underground Facilities Other than Electric Power or Communication Lines: Underground facilities other than electric power or communication lines may be installed by:
 - i. The use of “moles,” “whip augers” or other approved methods which compress the earth to move the opening for the pipe;
 - ii. Jacking or boring with vented encasement provided between the ditch lines or toes of slopes of the highway;
 - iii. Open trench with vented encasement between ultimate ditch lines or toes of slopes, but only if prior to roadway construction; or
 - iv. Tunneling with vented encasement, but only if installation is not possible by other means.
- c. Gas Transmission, Distribution and Service: Gas pipelines within rights of

way shall be constructed, maintained and operated in a City approved manner and in conformance with the Federal Code of the Office of Pipeline Safety Operations, Department of Transportation, Part 192 – Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards (49 CFR §192), IDOT’s *Standard Specifications for Road and Bridge Construction* and all other applicable laws, rules and regulations.

- d. 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).
- e. 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*.
- f. Ground Mounted Appurtenances: Ground mounted appurtenances to overhead or underground facilities, when permitted within a right of way, shall be provided with a vegetation-free area extending 1 foot (305 mm) in width beyond the appurtenance in all directions. The vegetation-free area may be provided by an extension of the mounting pad, or by heavy duty plastic or similar material approved by the Engineer or Community Development Director. With the approval of the Engineer or Community Development Director, 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.

3. Materials:

- a. General Standards: The materials used in constructing facilities within rights of way shall be those meeting the accepted standards of the appropriate industry, the applicable portions of IDOT’s *Standard Specifications for Road and Bridge Construction*, the requirements of the ICC or the standards established by other official regulatory agencies for the appropriate industry.
- b. Material Storage on Right of Way: No material shall be stored on the right of way without the prior written approval of the Engineer or Community Development Director. 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.

- c. 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.
4. Operational Restrictions:
- a. 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.
 - b. These restrictions may be waived by the Engineer or Community Development Director when emergency work is required to restore vital utility services.
 - c. Unless otherwise permitted by the City, the hours of construction are those set forth in Section 27.04 of this Code.
5. Location of Existing Facilities: Any utility proposing to construct facilities in the City shall contact JULIE and ascertain the presence and location of existing above-ground and underground facilities within the rights of way to be occupied by its proposed facilities. The City will make its permit records available to a utility for the purpose of identifying possible facilities. When notified of an excavation or when requested by the City or by JULIE, a utility shall locate and physically mark its underground facilities within 48 hours, excluding weekends and holidays, in accordance with the Illinois Underground Facilities Damage Prevention Act (220 ILCS 50/1 *et seq.*)

Q. VEGETATION CONTROL

- 1. Electric Utilities – Compliance with State Laws and Regulations: An electric utility shall conduct all tree-trimming and vegetation control activities in the right of way in accordance with applicable state laws and regulations, and additionally, with such local franchise or other agreement with the City as permitted by law.
- 2. Other Utilities – Tree Trimming Permit Required: Tree trimming that is done by any other utility with facilities in the right of way and that is not performed pursuant to applicable state laws and regulations specifically governing same, shall not be considered a normal maintenance operation, but shall require the application for, and the issuance of, a permit, in addition to any other permit required under this Section.
 - a. Application for Tree Trimming Permit: Applications for tree trimming permits shall include assurance that the work will be accomplished by competent workers with supervision who are experienced in accepted tree pruning practices. Tree trimming permits shall designate an expiration date

in the interest of assuring that the work will be expeditiously accomplished.

- b. Damage to Trees: Poor pruning practices resulting in damaged or misshapen trees will not be tolerated and shall be grounds for cancellation of the tree trimming permit and for assessment of damages. The City will require compensation for trees extensively damaged and for trees removed without authorization. The formula developed by the International Society of Arboriculture will be used as a basis for determining the compensation for damaged trees or unauthorized removal of trees. The City may require the removal and replacement of trees if trimming or radical pruning would leave them in an unacceptable condition.
3. Specimen Trees or Trees of Special Significance: The City may require that special measures be taken to preserve specimen trees or trees of special significance. The required measures may consist of higher poles, side arm extensions, covered wire or other means.
4. Chemical Use:
 - a. Except as provided in the following paragraph, no utility shall spray, inject or pour any chemicals on or near any trees, shrubs or vegetation in the City for any purpose, including the control of growth, insects or disease.
 - b. Spraying of any type of brush-killing chemicals will not be permitted on rights of way unless the utility demonstrates to the satisfaction of the Engineer or Community Development Director that such spraying is the only practicable method of vegetation control.

R. REMOVAL, RELOCATION OR MODIFICATIONS OF UTILITY FACILITIES

1. Notice: Within 90 days following written notice from the City, a utility shall, at its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change or alter the position of any utility facilities within the rights of way whenever the corporate authorities have determined that such removal, relocation, change or alteration, is reasonably necessary for the construction, repair, maintenance or installation of any City initiated or mandated improvement in or upon, or the operations of the City in or upon, the rights of way.
2. 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:
 - a. Upon expiration or termination of the permittee's license or franchise, unless otherwise permitted by applicable law;

- b. If the facility was constructed or installed without the prior grant of a license or franchise, if required;
 - c. If the facility was constructed or installed without prior issuance of a required permit in violation of this Section; or
 - d. If the facility was constructed or installed at a location not permitted by the permittee's license or franchise.
3. Emergency Removal or Relocation of Facilities: The City retains the right and privilege to cut or move any facilities located within the rights of way of the City, as the City may determine to be necessary, appropriate or useful in response to any public health or safety emergency. If circumstances permit, the City shall attempt to notify the utility, if known, prior to cutting or removing a facility and shall notify the utility, if known, after cutting or removing a facility.
 4. 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 Engineer or Community Development Director determines that such removal will be in the best interest of the public health, safety and welfare. In the event the City does not direct the utility that abandoned the facility to remove it, by giving notice of abandonment to the City, the abandoning utility shall be deemed to consent to the alteration or removal of all or any portion of the facility by another utility or person.

S. CLEAN-UP AND RESTORATION

The utility shall remove all excess material and restore all turf and terrain and other property within 10 days after any portion of the rights of way are disturbed, damaged or destroyed due to construction or maintenance by the utility, all to the satisfaction of the City. This includes restoration of entrances and side roads. Restoration of roadway surfaces shall be made using materials and methods approved by the Engineer or Community Development Director. 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 Engineer or Community Development Director for good cause shown.

T. MAINTENANCE AND EMERGENCY MAINTENANCE

1. General: Facilities and any associated screening or landscaping on, over, above, along, upon, under, across or within rights of way are to be maintained by or for the utility in a manner satisfactory to the City.
2. Emergency Maintenance Procedures: Emergencies may justify non-compliance with normal procedures for securing a permit:

- a. 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.
 - b. In an emergency, the utility shall, as soon as possible, notify the Community Development Director, or his or her duly authorized agent, of the emergency, informing him or her as to what steps have been taken for protection of the traveling public and what will be required to make the necessary repairs. If the nature of the emergency is such as to interfere with the free movement of traffic, the Police Department shall be notified immediately.
 - c. 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.
3. 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.

U. VARIANCES

1. Request for Variance: A utility requesting a variance from one or more of the provisions of this Section must do so in writing to the Community Development Director as a part of the permit application. The request shall identify each provision of this Section from which a variance is requested and the reasons why a variance should be granted.
2. Authority to Grant Variances: The Engineer or Community Development Director shall decide whether a variance is authorized for each provision of this Section identified in the variance request on an individual basis.
3. Conditions for Granting of Variance: The Engineer or Community Development Director may authorize a variance only if the utility requesting the variance has demonstrated that:
 - a. 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
 - b. All other designs, methods, materials, locations or facilities that would

conform with the provision from which a variance is requested are not practical in relation to the requested approach.

4. Additional Conditions for Granting a Variance: As a condition for authorizing a variance, the Engineer or Community Development Director may require the utility requesting the variance to meet reasonable standards and conditions that may or may not be expressly contained within this Section but which carry out the purposes of this Section.
5. Right to Appeal: Any utility aggrieved by any order, requirement, decision or determination, including denial of a variance, made by the Engineer or Community Development Director under the provisions of this Section shall have the right to appeal to the City Council, or such other board or commission as it may designate. The application for appeal shall be submitted in writing to the City Clerk within 30 days after the date of such order, requirement, decision or determination. The City Council shall commence its consideration of the appeal at the Board's next regularly scheduled meeting occurring at least 7 days after the filing of the appeal. The City Council shall timely decide the appeal.

V. PENALTIES

Any person who violates, disobeys, omits, neglects or refuses to comply with any of the provisions of this Section shall be subject to a fine in accordance with the penalty provisions of this Code, not to exceed \$750.00 per violation per day. There may be times when the City will incur delay or other costs, including third party claims, because the utility will not or cannot perform its duties under its permit and this Section. 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.

W. ENFORCEMENT

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

6.19 NEWSPAPER DISPENSING RACKS (Ord. 2008-134)

A. Definitions: In addition to those terms defined in Appendix A of this Code, the following words, whether capitalized or not, are defined as follows for this Section:

News rack: Any self-service or coin-operated box, container or other dispensing device installed, used or maintained in or on the public area for the sale or distribution of newspapers, periodicals or other publications from that dispenser.

Distributor: The person or entity responsible for placing, installing or maintaining a news rack on the public way.

Intersection: That portion of the public areas which surrounds the intersecting portion of two or more roadways, extended along each roadway to the mid point of each block.

Owner: The publisher, distributor or any entity that acts on behalf of the publisher and/or distributor and who is responsible for replenishing the news rack's newspapers, periodicals or other publication.

B. Purpose and Criteria: The purpose of this Section is to promote the public health and welfare through the regulation of placement, type, appearance and servicing of news racks in or on the public areas so as to:

1. Provide for pedestrian and driving safety and convenience.
2. Restrict unreasonable interference with the flow of pedestrian or vehicular traffic including ingress into or egress from any residence or place of business, or from the street to the sidewalk by persons exiting or entering parked or standing vehicles.
3. Provide reasonable access for the use and maintenance of poles, posts, traffic signs or signals, hydrants, mailboxes and access to locations used for public transportation purposes.
4. Relocate and/or replace news racks which result in a visual blight and/or excessive space allocation on or in the public areas or which unreasonably detract from the aesthetics of store window displays, adjacent landscaping and other improvements, as well as to have abandoned news racks removed.
5. Maintain and protect the values of surrounding properties.
6. Establish a uniform policy in order to treat all newspapers equally regardless of their size, content, circulation or frequency of publication.
7. Maintain and preserve freedom of the press.
8. Cooperate to the maximum extent with newspaper distributors.

C. News Racks Permitted on Public Areas: Notwithstanding any other provision of this Code, news racks may be placed in or on the public areas as permitted by this Section.

D. Installation and Maintenance of News Racks:

1. No news rack shall be placed or installed:
 - a. Within five feet of any marked or unmarked crosswalk.
 - b. Within five feet of a fire hydrant.
 - c. At any location where the clear space for the passageway of pedestrians is reduced to less than six feet in the Central Business

District, or less than three feet outside the Central Business District.

- d. On any area of lawn, flowers or shrubs or other similar landscaping, or in such a manner where ordinary use of the news rack will cause damage to such landscaping.
- e. Within 10 feet of any driveway, alley, loading zone, handicapped ramp or curb cut.
- f. On any grating or manhole cover.
- g. On any surface where the news rack will cause damage to or interfere with the use of any pipes, vault areas or telephone or electrical cables and wires.

2. News racks shall comply with the following requirements:

- a. Each news rack shall be sufficiently weighted to provide stability and safety.
- b. News racks shall be maintained in orderly rows.
- c. Within the central business district, no news rack shall be chained, tied or otherwise fastened to a tree, signpost, streetlight, telephone pole or other fixture on the public area.
- d. Each news rack shall be maintained undamaged and in good operating order at all times, and shall be kept free of graffiti, litter and other debris.
- e. News racks shall be kept free of chipped, faded, peeling and cracked paint.
- f. Each news rack shall be plainly and permanently marked with the name, address and business telephone number of the owner.
- g. News racks shall have gloss block pedestals, sides and doors.

E. News Rack Size Requirements: No person shall place, install or maintain a News rack if such news rack exceeds 20 inches in width, 20 inches in depth or 60 inches in height, including the coin slot.

F. Advertising Signs on News Racks Prohibited: No person shall place, install, maintain or affix on any news rack a sign, as defined in Appendix A of this Code, except to the extent that news racks may display the publication's logo and/or trademark, which shall be subject to City approval.

G. Registration: No later than June 1 of each year, every owner that has placed or intends to place any news rack in the City shall submit to the City an address where the owner

can be reached for any notification, along with a list of the number and locations of all news racks it owns in the City.

H. Notice of Violations and Procedures:

1. If the Administrator or his designee determines that a news rack has been placed or installed, or is not being maintained, in violation of this Section, a written notice of violation shall be issued upon the news rack. In addition, the Administrator shall send, via regular mail, a written notice of the violation to the address of the owner as provided by the owner.
2. The notice of violation shall state the nature of the violation and shall contain a specific notice that if the owner fails to request a hearing within 10 calendar days from the date of the notice, the City will cause the removal or destruction of the news rack. The owner may, during the 10-day calendar period, bring the news rack within compliance of this Section. For purposes of this Section, if the 10th day falls on a day when the City offices are closed, the following day on which the City is open for business shall be deemed the final day.
3. If the owner requests a hearing, the Administrator shall schedule a hearing at which the owner shall be given an opportunity to respond to the allegations in the notice of violation or demonstrate that the conditions constituting a violation have been remedied. The hearing shall be informal and open to the public. If, after the hearing, the Administrator determines that the violation of this Section continues to exist, the Administrator shall order the owner to remove the news rack from the public area.
4. If the owner fails to remove the news rack from the public area within five days from the date of the Administrator's order, the City Administrator shall remove, relocate or destroy the news rack, as appropriate, at the owner's expense.
5. Notwithstanding any other provision of this Section, the Administrator may require an owner to remove or relocate a news rack when such removal or relocation is necessary to accommodate a public or private construction, a repair project or similar activity. In cases where immediate removal of the news rack is necessary to protect the health or safety of the public, the Administrator may remove or relocate the news rack at the owner's expense and promptly give written notice to the owner of such removal or relocation thereafter. In all other cases, the Administrator shall cause a notice to be placed upon the news rack, or shall give written notice to the owner, stating that the news rack must be removed or relocated within five days of the date of the notice and the reason for the removal or relocation. If the news rack is not removed or relocated within the time specified, the Administrator shall remove or relocate the news rack at the distributor's expense.

6. Any news rack that is subject to removal and destruction may, at the discretion of the Administrator, be relocated to a nearby location when practicable. Notice of the relocation of the news rack shall be provided to the owner within five days of the relocation.

6.20 PENALTY

Except as provided, any person, firm or corporation violating any provision of this Chapter shall be fined not less than \$25.00 nor more than \$50.00. Each day that the violation exists shall be considered a separate cost. The violator shall be responsible for all costs of repair and abatement incurred by the City including attorney, engineering and expert witness fees. (Ord. 2008-134, §1; Ord. 2001-134, §1; Ord. 95-162, §1)