CITY OF URBANA, ILLINOIS
DEPARTMENT OF PUBLIC WORKS

ENGINEERING

MEMORANDUM

TO: **Mayor Laurel L. Prussing and Members of the City Council**

FROM: **William R. Gray, Public Works Director**
Bradley M. Bennett, Assistant City Engineer

DATE: **January 5, 2017**

RE: **Amendments to City Code Chapter 20 Right-of-Way Ordinance**

Action Requested

A summary of proposed amendments to the City's Right-of-Way (ROW) ordinance is presented below. The Public Works Department recommends adoption of the attached amendments to Chapter 20 of the City Code on public ROW and other public places.

Background and Facts

Right of way is public property and includes any public thoroughfare, including streets, alleys, parkways, and sidewalks. As a general rule of thumb, the back of the sidewalk (side nearest to the residence) and the street are part of the ROW. Private property begins behind the ROW.

The City adopted an ordinance on public ROW and other public places (Ordinance No. 2014-01-004) on January 21, 2014, which provides regulations on managing the public ROW. Revisions to the ordinance were recently adopted on December 5, 2016 (Ordinance 2016-11-111) regarding signage, notification, parkway tree excavation, and open excavation requirements along with a new "one-dig" utility coordination policy.

Municipalities in Illinois and across the country have recently begun receiving requests from telecommunication providers to install personal wireless telecommunications facilities including cell towers in the public ROW. Typically cell towers have been installed on private property and have been required to comply with a community's zoning code. These provisions are contained in Article XIII, Section 1 of the Urbana Zoning Ordinance.

The attached Zoning Practice in Exhibit A briefly summarizes the technical aspects driving the requests in the ROW and the applicable federal rules governing a municipality's ability to regulate them. According to the article, the need for cellular sites will continue to grow due to the exponential growth in demand for bandwidth. Municipalities may still regulate these proposed facilities by placing conditions on the facility, but must process applications within the appropriate timeframe depending on the type of installation utilized by the provider.

One such provider, Mobilitie, LLC is seeking to install cell towers in the public ROW of Illinois communities including Urbana, Champaign, Rantoul, Danville, Bloomington, Normal, and Wheaton. Mobilitie, LLC is a neutral host so it designs, builds, owns and operates the telecommunication services infrastructure. The FCC spectrum is owned by a wireless carrier that will be leasing Mobilitie's equipment. An example of the cell tower monopole installation proposed by Mobilitie is shown in Exhibit B.

On November 4, 2016 Mobilitie, LLC applied for special use permits to install 75-foot tall monopole cell towers at three locations in the City's ROW, along with a fourth application for administrative review of a cell tower on University Avenue near Coler Avenue. The proposed locations of the cell towers are shown in Exhibit C. Community Development staff reviewed the applications and determined that they were incomplete. A letter documenting the deficiencies of the applications was sent to Mobilitie on December 2, 2016. The Special Use Permits will require review and approval by the Urbana Plan Commission and City Council under the terms of the Urbana Zoning Ordinance.

There are concerns about public safety and the impact on the surrounding neighborhood's quality of life where the 75-foot high cell tower monopoles are proposed in the City's ROW. Safety concerns include potential impacts on underground utilities, the fall zone of the tower, and the set back distance from the curb line and edge of sidewalk to protect vehicular traffic, bicyclists, and pedestrians adjacent to the poles. Staff also believe that the aesthetics of the cell tower monopoles could be detrimental to the quality of life in those neighborhoods. Placement of towers within the ROW may also be contrary to goals set forth in the Urbana Zoning Ordinance which to seek to prioritize placement of antennas on existing structures and at co-located facilities and to avoid proximity to residential neighborhoods.

City staff have consulted with other communities in Illinois and with legal staff regarding response to recent right-of-way tower requests and have determined that it would be in the City's best interest to limit their placement in the ROW. Accordingly, the Public Works and Community Development Department staff recommend the following proposed amendments to the ROW ordinance regarding facilities for person telecommunications services (cell towers):

1. Limit the installation of antennas to occur on existing utility poles in the ROW, rather than through construction of new cell towers in the ROW.
2. Limit the location to arterial streets.
3. Limit the height of the antenna and related equipment to no higher than five-feet above the top of the existing utility pole.
4. Limit the size of the antenna and related equipment to five-square-feet of surface area.
5. Require that not more than one antenna be placed on a utility pole and that antennas be at least 300-feet apart.
6. Require that written permission be obtained from the utility owning the poles where the antennas and related equipment are proposed to be installed.

The City of Champaign plans on adopting similar language regarding telecommunication services to their ROW ordinance.

It should be noted that while Mobilitie, LLC has not yet submitted complete Special Use Permit applications, it is advisable from a legal standpoint to review these proposals under the provisions

already established in the Zoning Ordinance, since this Article also applies to any towers proposed within City right-of-way. Once the proposed ordinance is adopted, staff will prepare any necessary amendments to the Urbana Zoning Ordinance to ensure consistency.

An unrelated amendment is also proposed to be incorporated at this time to respond to Council's recent request for Public Works staff to streamline the license agreement approval process. The revisions proposed to Section 20-600 would allow the Mayor to execute license agreements for underground utility companies. Permanent structures, utility above ground facilities, and non-utility facilities proposed to be located in City ROW would still require Council approval.

Financial Impact

There are no additional costs to the City for the proposed amendments to Chapter 20. No additional staff is required to implement the proposed amendments to Chapter 20.

Recommendations

It is recommended that the attached amendments to Chapter 20 of the City Code of Ordinances be adopted.

Attachments: Exhibit A – Zoning Practice Wireless Facility Siting Issue No. 11, November 2016

Exhibit B – Cell Tower Monopole Installation

Exhibit C - Proposed Mobilitie Cell Tower Locations in City ROW

An Ordinance Amending Urbana City Code Chapter 20 Concerning Use of Rights-of-Ways (Monopoles and Towers in the Public Right-Of-Way)

ORDINANCE NO. 2017-01-002

AN ORDINANCE AMENDING URBANA CITY CODE CHAPTER 20 CONCERNING USE OF RIGHTS-OF-WAY

(Monopoles and Towers in the Public Right-Of-Way)

WHEREAS, the City of Urbana ("City") is a home rule unit of local government pursuant to Article VII, Section 6, of the Illinois Constitution, 1970, and may exercise any power and perform any function pertaining to its government and affairs, including the power to regulate for the protection of the public health, safety, and welfare; and

WHEREAS, the City Council heretofore did enact Urbana City Code Chapter 20 to regulate the public right-of-way and other public places within the City for the protection of the public health, safety, and welfare; and

WHEREAS, after due and proper consideration, the City Council finds that amending Chapter 20, as provided herein, will protect the health, safety, and welfare of the public.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Urbana, Champaign County, Illinois, as follows:

Section 1. Urbana City Code Chapter 20, "Public Right-of-Way and Other Public Places," shall be and is hereby amended as provided in Exhibit A appended hereto and made a part hereof with underlined text indicating new language to be added and with strikethrough text indicating language to be deleted to said Chapter 20 of the Urbana City Code.

Section 2. Those sections, paragraphs, and provisions of the Urbana City Code that are not expressly amended or repealed by this Ordinance are hereby re-enacted, and it is expressly declared to be the intention of this Ordinance not to repeal or amend any portions of the Urbana City Code other than those expressly set forth in Exhibit A as provided in Section 1 of this Ordinance. The invalidity of any section or provision of this Ordinance hereby passed and approved shall not invalidate other sections or provisions thereof.

Section 3. This Ordinance shall not be construed to affect any suit or proceeding pending in any court, or any rights acquired, or a liability incurred, or any cause or causes of action acquired or existing prior to the effective date of this Ordinance; nor shall any right or remedy of any character be lost, impaired, or affected by this Ordinance.

Section 4. The City Clerk is directed to publish this Ordinance in pamphlet form by authority of the corporate authorities, and this Ordinance shall be in full force and effect from and after its passage and publication in accordance with Section 1-2-4 of the Illinois Municipal Code.

This Ordinance is hereby passed by the affirmative vote, the "ayes" and "nays" being called, of a majority of the members of the Council of the City of

Urbana, Illinois, at a meeting of said Council.

PASSED BY THE CITY COUNCIL this _____ day of _____, _____.

AYES:

NAYS:

ABSENT:

ABSTAINED:

_____
Phyllis D. Clark, City Clerk

APPROVED BY THE MAYOR this _____ day of _____, _____.

_____
Laurel Lunt Prussing, Mayor

Urbana City Code Chapter 20

PUBLIC RIGHT-OF-WAY AND OTHER PUBLIC PLACES

_____

ARTICLE I. GENERAL.

Sec. 20-100. Purpose and scope.

(a) Purpose. The purpose of this chapter is to establish policies and procedures for constructing and maintaining facilities utilizing 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. 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) Intent. In enacting this chapter, the city intends to exercise its authority over rights-of-way in the city and, in particular, the use of public ways and property by utilities and others desiring to utilize rights-of-way, by establishing uniform standards to address issues presented by such facilities, including without limitation:

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

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

(3) Preventing interference with the facilities and operations of the city's facilities and of the facilities of others lawfully located in rights-of-way or right-of-way;

(4) Protecting against environmental damage, including damage to trees, from the installation of facilities in rights-of-way;

(5) Preventing visual blight from the proliferation of facilities in rights-of-way;

(6) Assuring the continued safe use and enjoyment of private properties adjacent to facilities in rights-of-way; and

(7) Preventing the proliferation of facilities utilizing rights-of-way or areas adjacent to rights-of-way which would increase the expense of maintenance and the cost of repair, rebuilding, or expansion of rights-of-way.

Sec. 20-101. City engineer.

(a) All construction, maintenance, and repair of rights-of-way owned or controlled by the city, including but not limited to streets, alleys, parking lots, sidewalks, parkways, and easements, shall be under the supervision of the city engineer. The city engineer shall be charged with enforcement of all code provisions relating to the construction, maintenance, and repair of such public ways and is hereby authorized to enforce such provisions.

(b) Except where otherwise specified in this code, the city engineer is authorized to promulgate reasonable rules, regulations, and specifications not inconsistent with this chapter for the use of city rights-of-way, dedicated easements, and other city property. Any duty granted to the city engineer by this chapter may be delegated to the city engineer's authorized representative.

Sec. 20-102. Sound engineering judgment.

The city engineer shall use sound engineering judgment when administering this chapter and may vary the standards, conditions, and requirements expressed in this chapter when the city engineer so determines it is necessary and consistent with sound engineering judgment.

Sec. 20-103. Fees.

(a) The fees for all work requiring a permit shall be as provided for in section 14-7 of this code.

(b) Exemption from permit fees due to franchise or other agreements or state law is not an exemption from the obligation to obtain a permit. The work of those exempt from fees shall in all other respects comply with the requirements of this chapter.

(c) Exemptions. Other units of government are exempt from the permit fee. Telecommunications service providers that are exempt from charges for the use of public rights-of-way by the Simplified Municipal Telecommunications Tax Act, 35 ILCS 636/5-1 *et seq*., as amended, are also exempt from the permit fee.

Sec. 20-104. Easements; other interest in real property.

(a) The city engineer is authorized to grant or to release easements for street, sidewalk, ~~public~~ utilities~~y~~, drainage, sanitary sewer, and other public purposes. All such grants or releases shall be accompanied by a plat showing the dimensions of the easement to be granted or released.

(b) The acceptance or release of interest in real property other than easements shall be by actions of the city council.

(c) The city engineer shall record all grants and releases of permanent easements.

Sec. 20-105. Addresses.

(a) All lots, buildings, and structures in the city shall be addressed in accordance with the address map maintained by the public works department.

(b) If any person shall publicly display any number on any building or lot within the city that is not in conformance with the official street number assigned to each respective lot and building by the public works department, the city engineer shall cause to be served, by certified mail, upon the record owner and the person who last paid the general taxes on such lot (if such person be different from the record owner), a notice that the building number displayed is not in conformance with the official number assigned and shall advise such persons

what the correct number is, and further shall order such persons to permanently remove the incorrect number within ten (10) days of mailing of the notice. A copy of this section shall be attached to such notice.

(c) If the record owner or the person who last paid the general taxes on the subject lot fails to permanently remove the incorrect number within ten (10) days following mailing of the notice provided for herein, upon conviction thereof, the record owner or the person who last paid the general taxes on the subject lot shall be guilty of an offense.

(d) It shall be an affirmative defense that the person charged with a violation of this section has no legal right to remove the incorrect number.

Sec. 20-106. Requirement to repair or remove; costs.

(a) Any person performing any act that is in violation of the provisions of this chapter which damages city infrastructure shall immediately notify the city engineer of the location and extent of the damages.

(b) A person who damages city infrastructure or creates or maintains an obstruction or encroachment who fails to repair such damage or remove the obstruction or encroachment from the public way within the time period set by the city engineer is liable for the cost of repair or removal.

(c) The city may remove or cause the removal of unauthorized, unattended personal property on the city right-of-way and charge the cost of removal and disposal to the person responsible for the deposit of such property on the right-of-way.

(d) The costs to be charged shall include, but not be limited to, labor and overhead based on the personnel involved in administering this section as determined in writing by the comptroller. The amount so charged shall be billed to the person responsible. The amount shall be paid to the city within twenty-eight (28) days after the date of the bill.

Sec. 20-107. Deposit of snow or ice.

(a) Unless authorized in writing by the city engineer, no person shall deposit or place any snow or ice resulting from clearing operations upon any street or sidewalk.

(b) The city engineer may authorize persons to temporarily deposit or place snow or ice in a street or sidewalk while in the process of clearing private property provided that:

(1) Appropriate traffic control devices are used to prevent injury to the public;

(2) Appropriate machinery is used to avoid damage to the city street or sidewalk; and

(3) The authorized person continuously monitors and proceeds with snow removal on both private property and the street or sidewalk until the snow deposited is removed from the street or sidewalk.

Sec. 20-108. Removal of snow or ice.

Nothing in this article shall prevent the city under the direction of the city engineer from removing snow and ice under the police powers of the city for the protection of the public.

Secs. 20-109—20-199. - Reserved.

ARTICLE II. DEFINITIONS.

Sec. 20-200. Definitions.

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

Applicant. Applicant shall mean the contractor, utility, or individual performing work within the public right-of-way.

City engineer. City engineer shall mean the City of Urbana city engineer.

Construction or construct. Construction or construct shall mean the installation, repair, maintenance, placement, alteration, enlargement, demolition, modification, reconstruction, or abandonment in place of facilities.

Control or controlled. Control or controlled shall mean the legal relationship of a person to a parcel of land giving such person the right to possession or use of such or the right to lease such parcel of land to another.

Crossing Facility. A facility th~~e~~at crosses one or more lines which define the boundaries of a right-of-way ~~lines of right-of-way~~.

Driveway. Driveway shall mean that part of a driveway or of any asphaltic, concrete, brick paver, concrete paver, or aggregate surface located in public right-of-way.

Emergency. Emergency shall mean 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.

Facility. Facility shall mean any and 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, street lights, grates, covers, pipes, cables, and appurtenances, signs thereto, together with any natural vegetation, screening, and other materials installed or planted to hide or otherwise camouflage any of the forgoing) located on, over, above, along, upon, under, across, or within rights-of-way under this chapter. For purposes of this chapter, the term “facility” shall not include any facility owned or operated by the city.

Freestanding facility. Freestanding facility shall mean a facility that is not a crossing facility or a parallel facility, such as an antenna, transformer, pump utility cabinet, or meter station.

Highway. Highway shall mean 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, but not sidewalks.

Major intersection. Major intersection shall mean the intersection of two or more arterial or collector streets.

Obstruction. Obstruction shall mean any facility that may prevent or impede the full use by the public of the entire sidewalk, street, alley, or public right-of-way.

Owner occupied. Owner occupied shall mean lived in by the property owner of the dwelling.

Parkway. Parkway shall mean any portion of the right-of-way not improved by street or sidewalk.

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

Personal Wireless Services. Any technologies defined in 47- U.S.C. 332(c)(7) as may be amended from time to time including but not necessarily limited to commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services, provided to personal mobile communication devices through wireless facilities or any fixed mobile wireless services provided using personal wireless facilities.

Practicable. Practicable shall mean that which is performable, feasible, or possible, rather than that which is simply convenient.

Public disruption. Public disruption shall mean 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, excavating or other cutting; placing (whether temporary or permanent) of materials, equipment, devices, or structures; damaging vegetation; and compacting or loosening of the soil, but shall not include the parking of vehicles or equipment in a manner that does not materially obstruct the flow of traffic on a highway.

Public way, right-of-way, or rights-of-way. Public way, right-of-way, or rights-of-way shall mean any street, sidewalk, alley, parking, other land or waterway, dedicated or commonly used for pedestrian, bicycle or vehicular traffic or other public 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 herein and shall not include city buildings, fixtures, or other structures or improvements, regardless of whether or not they are situated in the right-of-way. “Right-of-way" includes easements dedicated to the city or to the public for any public purpose or where use for utilities is a permitted use.

Roadway. Roadway shall mean that part of the highway consisting of the pavement and shoulders, including curb, if any.

Sidewalk. Sidewalk shall mean the paved or hardened portion of the right-of-way between the curb lines, or the lateral lines of a roadway, and the adjacent property lines, designed, constructed, and intended for the use of pedestrians to the exclusion of vehicles.

User or right-of way user. User or right-of way user shall mean the individual or entity owning a facility, occupying, or disturbing the public right-of-way as defined in this section.

Utility. The entity owning or operating any facility in the right-of-way to deliver or transmit electricity, natural gas, water, telecommunications, cable television or broadband internet services, or any sanitary or storm water sewer facility in the right-of-way that is not owned or operated by the City. ~~Utility shall mean the entity owning or operating any facility regulated by the Illinois Commerce Commission~~.

Utility Pole. A pole, tower or similar structure owned or operated by a utility, as defined by 220 ILCS 5/3-105, or the City, that is designed specifically for and used to carry line, cables or wires for telecommunications, cable TV, electricity, or to provide lighting.

Visibility triangle. Visibility triangle shall mean the area within the vertices as identified in the right-of-way standards that includes any physical barrier which impairs visibility within the public right-of-way.

Visual obstruction. Visual obstruction means any physical barrier which impairs visibility; provided, however, it shall not include wire fences or chain link fences which are more than ninety-five (95) percent open. And provided further, it shall not include any physical barrier which is less than two (2) feet or more than seven (7) feet from an elevation line extending between the surface of the pavement at points B and C as described in this chapter of two (2) intersecting pavements in the visibility triangle section of the right-of-way standards. Visual obstruction shall not include traffic controls, illuminators, or ~~public~~ utility devices and items which are less than twelve (12) inches in width.

Secs. 20-201—20-299. - Reserved.

ARTICLE III.GENERAL PROHIBITIONS.

Sec. 20-300. Obstructions and encroachments prohibited.

(a) Except as otherwise provided, no person shall cause, create, or maintain any obstruction of any public way.

(b) No person shall erect or maintain any building or structure, including a fence, which encroaches upon any public way.

Sec. 20-301. Delivery or sale of merchandise on sidewalks.

Merchandise or other articles in the process of delivery may be temporarily deposited on sidewalks provided that an unobstructed width of the sidewalk is not reduced to less than four (4) feet. No such merchandise or article shall remain on the sidewalk for more than four (4) hours. No person shall obstruct or encumber any street, alley or sidewalk or any portion thereof with merchandise for a longer time than may be reasonably necessary for

the purpose of loading or unloading any merchandise or property, or removing the same therefrom. This section shall not be construed to require a permit for placing merchandise on any street, alley, or sidewalk.

Sec. 20-302. Storage of personal property on right-of-way.

(a) The presence of unattended personal property in the right-of-way is declared to be a public nuisance.

(b) Except as otherwise authorized by this code, no person shall use any right-of-way for the placement or storage of unattended personal property unless such person has obtained a permit pursuant to this code. Unauthorized unattended personal property on the right-of-way shall be presumed abandoned and may be disposed of or salvaged by the city.

(1) Except as otherwise authorized by this code, no person shall place personal property, while attending same, on any right-of-way for more than four (4) hours.

(2) No person shall place attended personal property on a sidewalk, if, by such placement, the unobstructed width of the sidewalk is reduced to less than four (4) feet.

(c) If the unattended personal property belongs to the tenant, or former tenant, of the real estate immediately adjacent to the location of the unattended personal property, the owner of such adjacent real estate shall, upon notice from the city, immediately cause removal of the unattended personal property and upon failure to do, the city shall remove the unattended personal property and file a lien for the reasonable costs of the removal.

Sec. 20-303. Depositing injurious substances on right-of-way.

No person shall deposit, throw, or place on any public way or other right-of-way any material, waste material, glass, or other articles or substances which may be harmful to the pavement or which may do injury to any person, vehicle, bicycle, animal, or property.

Sec. 20-304. Damaging new or existing pavement.

No person shall walk upon or drive any vehicle or animal upon or damage any newly laid street or sidewalk pavement regardless of whether or not such street or sidewalk is guarded by a warning sign or barricade. Any person who damages, breaks, or cracks paved portions of the public way by any means whatsoever shall immediately notify the city engineer of the location and extent of the damage. Such person shall be responsible to repair or remove and replace damaged portions within the timeframe directed by the city engineer. Any and all costs associated with the repair or removal and replacement shall be the responsibility of the person who damaged the sidewalk, street, or parkway.

Sec. 20-305. Disturbing barricades prohibited.

No person shall disturb, damage, remove, or interfere with any barricade, fencing, lights, signs, or other traffic control device placed to protect or mark any work, excavation, or openings in any public way.

Sec. 20-306. Equipment in right-of-way prohibited.

No ditches, drains, track, rails, poles, wires, pipeline, conduit or transmission or utility equipment of any ~~public~~ utility company, municipal corporation or other public or private corporation, association or person shall be located or placed for a period of time greater than four (4) hours or constructed upon, under, over or along any city street or other city property without a license or franchise agreement with the city.

Sec. 20-307. Obstructing surface water drains prohibited.

No person shall obstruct any surface water drains in any way or by any means.

Sec. 20-308. Damaging existing sewer system prohibited.

No person shall damage, alter, remove, or destroy any part of the existing storm or sanitary sewer system in the city, including, but not limited to, manhole covers.

Sec. 20-309. Water discharge onto right-of-way prohibited.

It shall be unlawful for any person to suffer or permit the water falling or draining from any building owned by such person or under his or her control to fall upon or spread over the sidewalk adjoining thereto. Discharges from sump pumps and downspouts are prohibited on city streets, sidewalks, and alleys if these cause hazardous conditions to pedestrians, automobiles, or bicyclists. Hazardous conditions shall include, but not limited to, creating an ice hazard in freezing temperatures or creating a falling hazard due to slickness of the sidewalk during non-freezing temperatures. Discharges from sump pumps and downspouts shall be relocated so that the hazard to the street or sidewalk is eliminated at the direction of the city engineer.

Sec. 20-310. Open cellar doors, vaults prohibited.

No person shall leave open any cellar door, cellar, vault, well, cistern, excavation, ditch or other like hole upon or adjoining any street, alley or sidewalk without protecting and securing the same so as not to endanger the safety of persons or animals passing thereby.

Sec. 20-311. Removal of corner posts, grade markers prohibited.

No person shall willfully change or remove any stake, post or stone placed or set to designate the corner or line of any lot or tract of land, street, alley, or sidewalk, or to show the grade of any street, alley, or sidewalk.

Sec. 20-312. Visibility triangle.

(a) No person shall suffer or permit the continuance of a visual obstruction of the sightlines within the visibility triangle as determined by the city engineer or his or her agent in accordance with this article on any property owned or controlled by such person after having received notice to remove the obstruction.

(b) When in the opinion of the traffic commission it is deemed inadvisable or not feasible to remove obstacles such as existing buildings, or trees with diameters in excess of one foot, which violate the area defined as within the visibility triangle, the traffic commission may redesignate the street speed limit or change the intersection traffic-control signaling or both, to establish a new visibility

triangle for the intersection in question. The provisions of the visibility triangle section of the right-of-way standards will be used for this purpose.

(c) The visibility standards set forth in this article shall prevail and govern over any screening height required and over building setback regulations of the zoning ordinance. If construction is desired or intended which will violate a defined visibility triangle, appeal may be made to request resignaling or change of speed limit of streets in question.

Sec. 20-313. Private lighting systems.

No person shall install, maintain, or operate any private system of lights on the city streets or alleys except under franchise or contract with the city.

Sec. 20-314. Other activities.

Any other activity on, above, or below any public right-of-way may be prohibited at the discretion of the city engineer.

Secs. 20-315—20-399. - Reserved.

ARTICLE IV. RIGHT-OF-WAY PERMITS GENERALLY.

Sec. 20-400. Right-of-way permit required.

No person shall construct any facility or perform any work on, over, above, along, upon, under, across, or within any city or state right-of-way including installations of additional facilities on existing poles or other facilities in the right-of-way; except pursuant to a permit issued by the city.

Sec. 20-401. Permit application.

(a) All applications for permits pursuant to this chapter shall be filed in the manner required by the city.

(b) The applicant may designate those portions of its application materials that it reasonably believes contain proprietary or confidential information as "proprietary" or "confidential" by clearly marking each page of such materials accordingly.

(c) At the request of any applicant, information requested by the city that qualifies as a "trade secret" under the Freedom of Information Act, 5 ILCS 140/1 *et seq*., as amended, shall be treated as trade secret information as provided therein.

Sec. 20-402. Minimum general application requirements; required notices.

(a) The application shall be made by the applicant or its duly authorized representative and shall contain, at a minimum, the information required on the right-of-way permit application promulgated by the city engineer, including a statement that the applicant does not have any unpaid administrative fees due to the city.

(b) The applicant shall notify the city engineer twenty-four (24) hours in advance (Saturday, Sunday, and legal holidays excluded) of the following activities covered by the permit:

(1) Traffic control set up; and

(2) Readiness for concrete pour or backfill inspection.

(c) The applicant shall notify the city engineer within twenty-four (24) hours when the work is completed (including landscape restoration) and is ready for final inspection.

(d) Failure to provide a notice required under this section shall subject the applicant to an administrative fee in accordance with the section 14-7 of the code.

Sec. 20-403. Applicant's duty to update information.

Throughout the entire permit application review period and the construction period authorized by the permit, the applicant or user shall submit any amendments to information contained in a permit application to the city engineer in writing within thirty (30) days after the change necessitating the amendment. The city engineer shall review the amendments in accordance with section 20-404 of this article.

Sec. 20-404. Action on permit applications.

If a permit application contains all required documentation, the engineering division of the public works department shall examine the application within ten (10) business days after filing. If the application does not conform to the requirements of applicable ordinances, codes, laws, rules, and regulations, the city engineer or the engineer's designee shall reject the application and shall give written notice of the reasons for rejection to the applicant. If the city engineer is satisfied that the proposed work conforms to the requirements of this article and applicable ordinances, codes, laws, rules, and regulations, the engineer 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 city engineer, that the construction proposed under the application shall be in full compliance with the requirements of the code. Any construction that is deemed to be non-compliant shall be brought into compliance within twenty-four (24) hours of notice to the applicant.

Sec. 20-405. Effect of permit.

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

(b) Duration. No permit issued under this article shall be valid for longer than one hundred eighty (180) calendar days. Upon expiration of the permit, the right-of-way shall be restored in accordance with section 20-507 of this chapter.

(c) Pre-construction meeting if required by the city; required attendance. If notified by the city that attendance at a pre-construction meeting is required, no construction shall begin pursuant to a permit issued under this article 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 engineer with such city representatives in attendance as the city engineer 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 user's facilities in the area and their locations, procedures to avoid public disruption, use of rights-of-way by the public during construction, and access and egress by adjacent property owners.

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

Sec. 20-406. Deviation from permit.

(a) In the event that the actual locations of any facilities deviate in any material respect from the locations identified in the plans, drawings, and specifications submitted with the permit application, the permittee shall submit a revised set of drawings or plans to the city engineer prior to the start of any permit related work in the format required by the city. The revised drawings or plans shall specifically identify where the locations of the actual facilities deviate from the locations approved in the permit. Any deviations in the permit must be reviewed and approved by the city engineer prior to implementation of permit work.

(b) If any deviation from the permit also deviates from the requirements of this article, it shall be treated as a request for variance in accordance with section 20-412 of this chapter. If the city denies the request for variance, the permittee shall either remove the facility from the right-of-way or modify the facility so that it conforms to the permit and submit revised drawings or plans therefore.

Sec. 20-407. Insurance.

(a) Unless otherwise provided by franchise, license, or similar agreement, each user or applicant occupying right-of-way or constructing any facility in the right-of-way shall secure and maintain the following liability insurance policies. The user or applicant shall maintain the following types of insurance with companies qualified to do business in Illinois, rated A- VIII or better in the current A.M. Best key rating guide. Prior to commencing work, the user or applicant shall provide the city with insurance certificates evidencing such coverage.

(1) Comprehensive General Liability insurance (CGL) and, if necessary, a commercial umbrella insurance policy to cover bodily injury to persons other than employees and for damage to tangible property, including loss of use thereof, including the following exposure:

a. All premises and operations.

b. Explosion, collapse, and underground damage.

c. Contractor's protective coverage for independent contractors or subcontractors employed by the contractor.

d. The usual personal liability endorsement with no exclusions pertaining to employment.

The CGL insurance shall be written on ISO occurrence form CG 00 01 (or substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, independent contractors, subcontractors, and personal and advertising injury. The city, its officers, and employees shall be included as insured under the CGL, using ISO additional insured endorsement 20 10 07/04 or substitute providing equivalent coverage, and under the commercial umbrella. A waiver of subrogation in favor of the city and its officers shall be included. Completed operations coverage shall be for one year, using Form CG 2037 07/04. The insurance shall apply as primary and non-contributory insurance with respect to any other insurance or self-insurance programs afforded to the city. A copy of the primary/non-contributory endorsement shall be included with the certificate.

(2) Comprehensive Automobile Liability, and if necessary, commercial umbrella liability insurance policy to cover bodily injury and property damage arising out of the ownership, maintenance and/or use of any motor vehicle, including owned, non-owned and hired vehicles. In light of standard policy provisions concerning (a) loading and unloading and (b) definitions pertaining to motor vehicles licensed for road use versus unlicensed or self-propelled construction equipment, it is strongly recommended that the comprehensive General Liability and the Comprehensive Auto Liability be written by the insurance carrier, though not necessarily in one policy.

(3) Worker's Compensation Insurance including employer's liability to cover employee injuries or disease compensable under the Worker's Compensation Statutes of Illinois disability benefit laws, if any. A waiver of subrogation in favor of the city shall be required.

(b) Limits of liability. The required limits of liability of insurance coverages required above shall be not less than the following:

1. Worker's Compensation

Coverage A – Compensation	Statutory
Coverage B - Employer's Liability	$500,000

2. Comprehensive General Liability

Bodily Injury – Each Occurrence	$1,000,000
Bodily Injury – Aggregate (Completed Operations)	$2,000,000

3. Comprehensive Automobile Liability

Combined Single Limit	$1,000,000

4. Umbrella: (providing coverage in excess of items, 1, 2, & 3) $1,000,000

(c) Copies required. The user or applicant shall provide copies of any of the policies required by this section to the city within ten (10) days following receipt of a written request therefore from the city.

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

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

(e) Within ten (10) days after receipt by the city of a notice of intent to cancel or not to renew insurance, and in no event later than ten (10) days prior to said cancellation, the user or applicant shall obtain and furnish to the city evidence of replacement insurance policies meeting the requirements of this section.

(f) Exceptions. Individual owner occupied single family residential property owners who are performing the permitted activities at their own property without compensation for labor to others shall be exempt from the above insurance requirements but shall furnish a certificate of insurance with general liability insurance with limits of not less than three hundred thousand dollars ($300,000.00) and shall sign a statement to the effect that the property is occupied by the owner and that all work shall be done and conform to all city ordinances, rules, and regulations that are applicable.

Sec. 20-408. Indemnification.

By occupying or constructing facilities in the right-of-way, a user or applicant 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 user 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 article or by a franchise, license, or similar agreement; provided, however, that the user's indemnity obligations hereunder shall not apply to any injuries, claims, demands, judgments, damages, losses or expenses that are determined by agreement or court finding to have resulted from the sole negligence, misconduct, or breach of this article by the city, its officials, officers, employees, agents, or representatives. By accepting a permit, the permit holder agrees to the provisions of this section.

Sec. 20-409. Security.

(a) Purpose. A permittee shall continuously maintain a security in accordance with this section at the permittee's sole cost and expense until the completion of the work authorized under the permit. The purposes of the security are as follows:

(1) The faithful performance by the permittee of all the requirements of this article;

(2) Any expenditure, damage, or loss incurred by the city occasioned by the permittee's failure to comply with any codes, rules, regulations, orders, permits, or other directives of the city issued pursuant to this article; and

(3) The payment by the 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 the permittee in violation of this article, including, without limitation, any damage to right-of-way or restoration work the permittee is required by this article 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 article or any other applicable law.

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

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

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

(3) Provide a location convenient to the city and within the State of Illinois at which it can be drawn.

(c) Amount. The dollar amount of the security shall be $10,000, except as provided in subsection (g) of this section. This amount shall be sufficient to provide for the reasonably estimated cost to restore the right-of-way to at least as good a condition as that existing prior to the construction under the permit, as determined by the city engineer, and the reasonable, directly related costs that the city estimates are likely to be incurred if the permittee fails to perform such restoration. Where the construction of facilities proposed under the permit will be performed in phases in multiple locations in the city, with each phase consisting of construction of facilities in one location or a related group of locations, and where construction in another phase will not be undertaken prior to substantial completion of restoration in the previous phase or phases, the city engineer 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 for phased construction shall be equal to the greatest amount that would have been required under the provisions of this subsection (c) for any single phase.

(d) Withdrawals. The city, upon fourteen (14) days advance written notice clearly stating the reason for, and its intention to exercise withdrawal rights under this

subsection, may withdraw an amount from the security, provided that the permittee has not reimbursed the city for such amount within the fourteen (14) day notice period. Withdrawals may be made if the permittee:

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

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

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

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

(e) Replenishment. Within fourteen (14) days after receipt of written notice from the city that any amount has been withdrawn from the security, the permittee shall restore the security to the amount specified in subsection (c) of this section.

(f) Rights not limited. The rights reserved to the city with respect to the security are in addition to all other rights of the city, whether reserved by this article or otherwise authorized by law, and no action, proceeding, or exercise of right with respect to said security 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.

(g) Exceptions. Individual property owners who are performing the permitted activities at their own property without compensation for labor to others shall be exempt from the above security requirements but shall sign a statement to the effect that the property is occupied by the owner and that all work shall be done and conform to all city ordinances, rules, and regulations that are applicable.

Sec. 20-410. Permit suspension and revocation.

(a) City's right to revoke permit. In addition to grounds provided for in chapter 14 of this code, the city may revoke or suspend a permit issued pursuant to this article for one or more of the following reasons:

(1) Any materially incomplete statements in the permit application;

(2) The permittee's physical presence or the presence of the 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

(3) The permittee's failure to construct the facilities substantially in accordance with the permit and approved plans.

(b) Notice of revocation or suspension. The city shall send written notice of its intent to revoke or suspend a permit issued pursuant to this chapter stating the reason

or reasons for the revocation or suspension and the alternatives available to the permittee under this section.

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

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

(2) Immediately correct, to the satisfaction of the city engineer, the deficiencies stated in the written notice, providing written proof of such correction to the city within five (5) working days after receipt of the written notice of revocation; or

(3) Immediately remove the facilities located on, over, above, along, upon, under, across, or within the rights-of-way and restore the rights-of-way to the satisfaction of the city providing written proof of such removal to the city within five (5) working days after receipt of the written notice of revocation.

The city engineer may, at his discretion, for good cause shown, extend the time periods provided in this subsection.

(d) Stop work order.

(1) 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 or suspension set forth within subsection (a) of this section.

(2) The city engineer shall have the power to order the permittee to stop all work on construction, alteration or repair, replacement, or connection on sanitary sewer, storm sewer, or any other work within the right-of-way in the city when such work is being done in violation of any ordinance or regulation relating hereto. Work shall not be resumed after the issuance of the stop work order except on the written permission of the city engineer. If the stop work order is oral, the city engineer shall issue a written stop work order within a reasonable time.

(e) Failure or refusal of the permittee to comply. If the permittee fails to comply with the provisions of subsection (c) of this section, the city engineer or the city engineer's designee may, at the option of the city:

(1) Correct the deficiencies;

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

(3) After not less than thirty (30) days' notice to the permittee of failure to cure the noncompliance, deem the facilities abandoned and property of the city.

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

(f) Review.

(1) Any permittee may request review by the mayor of any stop work order issued under this section. Such request shall be in writing, setting forth the reasons, and shall be filed with the mayor within seven (7) days after the notice to stop work is given.

(2) Upon receipt of the notice, the mayor shall fix a time and place for such review. The review shall be held not more than fourteen (14) days following the receipt of the request for review.

(3) The filing of a request for a review by the permittee shall not operate as a stay of the determination of the city engineer to stop work.

Sec. 20-411. Change of ownership or owner's identity or legal status.

(a) Notification of change. A user shall notify the city not less than thirty (30) days prior to the transfer of ownership of any facility in the right-of-way or change in identity of the owner.

(b) Amended or new permit. Not less than thirty (30) days prior to the transfer of ownership of any facility in the right-of-way or change in identity of the owner, the new owner shall request that a new permit be issued or that any current permit be amended to show current ownership. Upon issuance of the new or amended permit, the new owner or the new user of 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 article, with respect to the work and facilities in the right-of-way. If the new owner fails to have a new or amended permit issued in its name, the new owner shall be presumed to have accepted, and agreed to be bound by, the terms and conditions of the permit if the new owner uses the facility or allows it to remain on the city's right-of-way.

(c) Insurance and bonding. All required insurance coverage or bonding shall be changed to reflect the name of the new owner prior to transfer.

Sec. 20-412. Variances.

(a) Request for variance. A user requesting a variance from one or more of the provisions of this chapter must do so in writing to the city engineer as a part of the permit application. The request shall identify each provision of this chapter from which a variance is requested and the reasons why a variance should be granted.

(b) Authority to grant variances. The city engineer shall decide on an individual basis whether a variance is authorized for each provision of this chapter identified in the variance request.

(c) Conditions for granting of variance. The city engineer may authorize a variance only if the user requesting the variance has demonstrated that:

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

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

(d) Additional conditions for granting of a variance. As a condition for authorizing a variance, the city engineer may require that the user requesting the variance meet reasonable standards and conditions that may or may not be expressly contained within this chapter but which carry out the purposes of this chapter.

Sec. 20-413. Appeals.

Any user aggrieved by any order, requirement, decision, or determination, including denial of a variance, made by the city engineer under the provisions of this chapter shall have the right to appeal to the mayor, or such other person designated by the mayor. The application for appeal shall be submitted in writing to the city clerk within thirty (30) days after the date of such order, requirement, decision, or determination. The mayor shall decide the appeal in a timely manner.

Sec. 20-414. Enforcement.

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

Secs. 20-415—20-439. - Reserved.

DIVISION 1. DUMPSTERS AND PORTABLE STORAGE CONTAINERS.

Sec. 20-440. Definitions.

Applicant. Applicant shall mean the property owner or occupant of a property that abuts a right-of-way who applies for a permit to store one (1) or more dumpsters or other containers in said right-of-way.

Dumpster. Dumpster shall mean a receptacle designed for the disposal of litter, trash, refuse, or recycled materials.

Portable storage container. Portable storage container, other than a dumpster, shall mean a container used for temporary storage of non-waste items.

Sec. 20-441. Standards for issuance of permit.

Upon application in accordance with the requirements of this article, the city engineer shall issue a right-of-way permit for a dumpster or portable storage container upon a finding that each of the following circumstances is present:

(a) The location for the proposed dumpster or portable storage container is directly adjacent to the property being served by said dumpster or portable storage container or as close to said property as is practical.

(b) If the proposed location of the dumpster or portable storage container is not directly adjacent to the property being served by the dumpster or portable storage container but is directly adjacent to another private property, the applicant shall obtain the written consent of the owner of that adjacent private property for said dumpster or portable storage container.

(c) There is no available space on the lot being served by said dumpster or portable storage container to store said dumpster or portable storage container that is unoccupied by above-ground buildings or other permanent improvements, or that is located indoors in an accessory storage area on the ground floor that is accessible from the right-of-way.

(d) The proposed storage of said dumpster or storage container will not interfere with the public's right to use said right-of-way, nor will it prevent emergency vehicles from gaining access through said right-of-way to all properties abutting said right-of-way.

Sec. 20-442. Restrictions.

The holder of a right-of-way permit for a dumpster or portable storage container shall comply with the following restrictions and requirements.

(a) Only dumpsters or portable storage containers identified in the permit shall be stored pursuant to said permit and only in the location identified on the permit.

(b) Any dumpsters or portable storage containers stored pursuant to the permit shall be positioned in the right-of-way in a manner that maximizes the area on the right-of-way that will remain unobstructed for use by the public.

(c) Lids or doors on any stored dumpster or portable storage container shall remain closed and secure except when said dumpster or container is being loaded or emptied.

(d) No trash or other refuse shall be stored or allowed to remain outside of a dumpster or portable storage container, and the area immediately around the dumpster or containers shall be maintained in a clean and sanitary manner.

(e) Dumpsters and portable storage containers shall be maintained in a leak proof condition.

Secs. 20-443—20-499. - Reserved.

ARTICLE V. CONSTRUCTION STANDARDS.

Sec. 20-500. General construction standards.

(a) Standards and principles. All construction in the right-of-way shall be consistent with applicable ordinances, codes, laws, rules and regulations, and commonly recognized and accepted traffic control and construction principles, sound engineering judgment and, where applicable, the principles and standards set forth in the following most recent IDOT publications, as amended from time to time, unless these standards have been modified by the City of Urbana Right-of-Way Permit Standard Details:

(1) Standard Specifications for Road and Bridge Construction;

(2) Supplemental Specifications and Recurring Special Provisions;

(3) Highway Design Manual;

(4) Highway Standards Manual;

(5) Standard Specifications for Traffic Control Items;

(6) Illinois Manual on Uniform Traffic Control Devices (92 Ill. Adm. Code §545);

(7) Flagger's Handbook;

(8) Proposed Guidelines for Public Rights-of-Way (PROWAG);

(9) Urbana- Champaign Sanitary Sewer Technical Standards;

(10) Standard Specifications for Water and Sewer Construction in Illinois;

(11) Work Site Protection Manual for Daylight Maintenance Operations; and

(12) Champaign-Urbana Urbanized Area Transportation Study (CUUATS) Access Management Guidelines for the Urbanized Area.

(b) Interpretation of municipal standards and principles. If a discrepancy exists between or among differing principles and standards required by this chapter, the city engineer shall determine, in the exercise of sound engineering judgment, which principles apply, and such decision shall be final, subject to appeal as provided in this chapter. If requested, the city engineer shall state which standard or principle will apply to the construction, maintenance, or operation of a facility.

Sec. 20-501. Location of facilities.

(a) General requirements. In addition to location requirements applicable to specific types of ~~user~~ facilities in this Chapter, all ~~user~~ facilities, regardless of type, shall be subject to the general location requirements of this section. The term "facilities" for purposes of interpreting the intent and effect of the restrictions placed on the location of facilities in this section shall, in addition to the facility in question, include any natural vegetation or other materials installed around said facility to comply with any screening requirements in this Chapter.

(1) No interference with city facilities. No user facilities shall be placed in any location if the city engineer determines that the proposed location will require the relocation or displacement of any of the city's user facilities or will otherwise interfere with the operation or maintenance of any of the city's user facilities.

(2) Minimum interference and impact. The proposed location shall cause only the minimum possible interference with the use of the right-of-way and shall cause only the minimum possible impact upon, and interference with, the rights and reasonable convenience of property owners who adjoin said right-of-way.

(3) No interference with travel. No ~~user~~ facility shall be placed in any location that unnecessarily interferes with the usual travel on such right-of-way, including motorists, bicyclists, and pedestrians.

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

(5) Size of user 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.

(6) General location plan drawings. Plan drawings drawn to scale for the proposed facilities shall be submitted to and approved by the city engineer prior the start of any construction activities. The general location plan drawings at a minimum shall include:

a. Edges of pavement, edges of sidewalk, right-of-way lines, street names, and known utilities;

b. Proposed location of facilities relative to the public right-of-way shown as a distance off the right-of-way line;

c. Proposed depth of facilities; and

d. Proposed size of facilities (e.g. diameter of conduit or diameter or pipe).

(7) As-built plan drawings. As-built plan drawings drawn to scale for the facilities shall be submitted to the city engineer within thirty (30) days of completion of construction activities. The as-built plan drawings at a minimum shall include:

a. Edges of pavement, edges of sidewalk, right-of-way lines, street names, and known utilities;

b. Installed location of facilities relative to the public right-of-way shown as a distance off the right-of-way line;

c. Installed depth of facilities; and

d. Installed size of facilities (e.g. diameter of conduit or diameter or pipe).

Both paper and electronic as-built drawings shall be submitted to the city engineer. Electronic as-built drawings shall be submitted to the city engineer in a digital format that is acceptable to the city engineer. The city engineer shall review the as-built drawings within thirty (30) days after completed drawings are submitted.

(b) Parallel facilities located within highways.

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

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

b. Where pavement is curbed, poles are as remote as practicable from the curb with a minimum distance of two feet behind the face of the curb to the face of the pole, where available;

c. Where pavement is uncurbed, poles are as remote from pavement edge as practicable with minimum distance of four feet outside the outer shoulder line of the roadway to the face of the pole and are not within the clear zone;

d. No new pole is located in the ditch line of a highway; and

~~d.~~e. No new utility pole or tower whose construction has not been completed prior to January 1, 2017 intended to support facilities for personal wireless services may be installed anywhere within the right-of-way; and

~~e.~~f. Any ground-mounted appurtenance is located within one foot of the right-of-way line or as near as possible to the right-of-way line and does not obstruct any public sidewalk.

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

a. The facility shall be located as near the right-of-way line as physically practicable and not more than eight (8) feet from and parallel to the right-of-way line.

b. In the case of an underground power or communications line, the facility shall be located as near the right-of-way line as physically practicable and not more than five (5) feet from the right-of-way line and any above-grounded appurtenance shall be located within one foot of the right-of-way line or as near as physically practicable; and

c. Minimum depth of the facility shall be three (3) feet deep as physically practicable.

d. If it is demonstrated to be physically impractical to locate a facility in accordance with subsections (b)(2)(a) and (b) of this section, a new facility may be located elsewhere within the parkway with the approval of the city engineer.

e. A new facility may be located under the paved portion of a highway only if all other locations are demonstrated as being physically impracticable. Such locations must be approved by the city engineer.

(c) Facilities crossing highways.

(1) Incorporation of materials. The construction and design of crossing facilities installed between the ditch lines or curb lines of city streets may require the incorporation of materials and protections (such as encasement or alternative fill materials) to avoid settlement or future repairs to the roadbed resulting from the installation of such crossing facilities.

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

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

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

a. It has a minimum vertical line clearance as required by 83 Ill. Adm. Code 305 *et seq*., as amended;

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

c. Overhead crossings at major intersections are avoided.\

d. No new utility pole or tower whose construction has not been completed prior to January 1, 2017 intended to support facilities for personal wireless services may be installed anywhere within the right-of-way; and

~~c.~~e. .

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

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

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

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

~~(e)~~(d) Freestanding facilities.

(1) The city may restrict the location and size of any freestanding facility located within a right-of-way~~.~~ to promote one or more of the purposes set forth in Section 20-100.

(2) ~~The city may require a~~Any new above ground box, equipment enclosure, cabinet or other similar freestanding facility that is otherwise authorized to be located within a right-of-way to having two (2) or more dimensions equal to or greater than four (4) feet in length shall be screened from view by landscaping installed in accordance with a landscaping plan approved by the City Engineer.~~freestanding facility located within a right-of-way to be screened from view~~.

(3) No new freestanding facility may be installed at a particular location in the right-of-way if the proposed location is, ~~according to the provisions of Sec. 37-9 of this Code,~~ not permitted by Urbana Zoning Ordinance, Article XIII, Section 1.~~entitled Zoning map interpretation, within a zoning district that prohibits the installation of the proposed facility in a required front yard in that district.~~

~~(f)~~(e) Facilities installed above ground general. Above ground facilities may be installed only if:

(1) No ~~other~~ existing facilities of the same type as that being proposed are located underground in the area of the proposed installation;~~in the area are located underground at that location;~~

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

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

~~(g)~~(f) Facility attachments to bridges or roadway structures.

(1) Facilities may be installed as attachments to bridges or roadway structures only where the user has demonstrated that all other means of accommodating the facility are not physically practicable. Other means shall include, but shall not be 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 present potential high degrees of risk are not permitted as attachments to bridges or roadway structures.

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

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

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

c. The alternative routings available to the user and their comparative practicability;

d. The proposed method of attachment;

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

f. The degree of interference with bridge maintenance and painting;

g. The effect on the visual quality of the structure; and

h. The public benefit expected from the user service as compared to the risk involved.

~~(h)~~(g) Appearance standards.

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

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

(h) Facilities for Personal Telecommunications Services Installed on Existing Utility Poles.

(1) (1) Facilities for Personal Telecommunications Services may be installed on existing utility poles in the right-of-way, subject to the following restrictions and conditions:

(i) The utility pole must be located along the right-of-way of any street in the City that is formally designated as an arterial street in the City's ROW Standards,

(ii) Utility poles used for right-of-way lighting must be 22 feet six inches or more in height, may not consist of or support decorative or antique light fixtures, and may not be post top light fixtures.
(iii) The addition of said facilities for Personal Wireless Services does not exceed more than five (5) feet above the height of the existing Utility Pole to which it is attached.
(iv) No guy or other support wires shall be used in connection with such facilities for Personal Wireless Services.
(v) Facilities for Personal Wireless Service's antenna and related equipment shall not exceed five (5) square feet in antenna surface area or five (5) feet in any dimension.
(vi) Replacement Utility Poles can be placed at the same height as the existing Utility Pole to accommodate Facilities for Personal Wireless Services.
(vii) Facilities for Personal Wireless Services, including antenna and related equipment shall be a color that blends with the surroundings of the existing Utility Pole on which it is mounted. Any wiring on the Utility Pole must be covered with an appropriate cover or cable shield.
(viii) Not more than one facility for Personal Wireless Services may be located on an existing single Utility Pole.
(ix) No facility for Personal Wireless Services shall be installed within three hundred feet (300') of an existing facility for Personal Wireless Services, or within three hundred feet (300') of a site specific location already granted a permit for a facility for Personal Wireless Services, and
(x) Facilities mounted on an existing Utility Pole of a current franchisee or licensee with the written permission of the franchisee or licensee, regardless of the terms and conditions of any existing franchise or license agreement between the City and, a franchisee or a licensee, so long as the owner of the Facilities has entered into a License Agreement as required by this Article and secured any site specific permit as required by this Chapter.

Sec. 20-502. Construction methods and materials.

All construction methods and materials shall be in conformance with the City of Urbana Right-of-Way Permit Standard Details.

Sec. 20-503. Vegetation control.

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

Sec. 20-504. Additional requirements.

(a) Compliance with laws. All construction, maintenance, or repair under this chapter will be in accordance with applicable local, state, and federal laws, ordinances, rules, and regulations.

(b) Existing brick sidewalks.

(1) When any portion of the public sidewalk that is constructed of brick is reconstructed or replaced, that portion shall be replaced with brick, unless all of the following conditions are found by the city engineer to exist:

a. The particular section of sidewalk constructed of brick to be replaced is neither located within a "major brick walk block," as defined below, nor in a "downtown streetscape area";

b. The particular section of sidewalk or adjacent property has not been designated as "historic" by the city council under the city's historic preservation ordinance, and;

c. The adjacent property owner has agreed to replacement of the brick walk with a concrete walk.

(2) Major brick walk block is defined as any block zoned R1, R2 or R3 on a local street in "Old West" or "Near East" as such areas are defined below, where the sidewalk on one side or the average of both sides is sixty (60) percent or more brick sidewalk.

a. Old West is defined as that area encompassed from the south curb of University Avenue to the north curb of Washington Street and from the east curb of Lincoln Avenue to the west curb of Vine Street.

b. Near East area is defined as that area encompassed by the south curb of University Avenue and the north curb of Washington Street and the east curb of Vine Street and the west curb of Cottage Grove Avenue.

(3) Notwithstanding the restrictions set forth in this section concerning the retention of brick sidewalks, those sections of brick sidewalk need not be retained where the city council finds that due to changes in the vicinity of a specific request for waiver, a brick sidewalk no longer serves as an enhancement. In such cases, waiver may be granted by a motion passed by a majority vote of the alderpersons then holding office.

(c) Brick street and sidewalk excavation. When an excavation is made upon any portion of a street or sidewalk constructed of brick, maintenance or repair shall include salvage and restoration of the brick street to its original condition by replacement of any removed material with salvaged or purchased brick. Such restoration shall be at the sole expense of the permittee.

(d) Time limit on open excavation. No excavation in any street, sidewalk, or other public way or place shall be allowed to remain open for a period longer than ten (10) days without prior written approval of the city engineer.

Sec. 20-505. Unused curb openings to be closed.

(a) Unused curb openings. Whenever any person applies for a demolition or right-of-way permit, for a zoning lot with a driveway approach, such permit shall not be issued unless the permit requires the closing of all unused curb openings in the right-of-way adjacent to the zoning lot or lot for which the permit is issued.

(b) Defining unused. Provided that there is at least one curb opening remaining in the right-of-way adjacent to the zoning lot or lot, a curb opening or driveway not included in any site plan approved for the permit as part of the traffic flow in and out of the lot shall be considered to be "unused" in any of the following cases:

(1) It is not connected to a paved surface off the right-of-way large enough to park a car; or

(2) It has not been regularly used on a monthly basis by motor vehicles for more than one year; or

(3) There is more than the maximum number of access points permitted onto the lot by zoning and subdivision regulations, or the access points do not comply with the CUUATS) Access Management Guidelines for the Urbanized Area; or

(4) No redevelopment activity is anticipated on a zoning lot within eighteen (18) months of demolition activities.

(c) Installation of replacement curb. The permittee, as a condition of any of the permits authorized by this chapter, shall install the replacement curb to match the shape of the existing curb unless the existing curb is substandard, in which case the replacement curb shall be installed as prescribed by the city engineer.

(d) Parkway. The permittee, as a condition of any of the permits authorized by this chapter, shall remove the apron pavement or other driving surface material behind the unused curb opening from the curb or edge of pavement to the sidewalk or right-of-way line and replace it with topsoil, seed, and mulch to match the adjacent parkway, unless otherwise directed by the city engineer.

(e) Waiver of requirement. If, in the opinion of the city engineer, it is in the best interest of the city to do so, the city engineer may waive the requirement to close a curb opening if the existing driveway is in regular use or will be utilized as part of future redevelopment activities.

Sec. 20-506. Removal, relocation, or modifications of user facilities.

(a) Notice. Within sixty (60) days following written notice from the city, a user shall, at its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change, or alter the position of any user facilities within the rights-of-way whenever the city engineer has determined that such removal, relocation, change, or alteration, is reasonably necessary for the construction, repair, maintenance, or installation of any city improvement in or upon, or the operations of the city in or upon, the rights-of-way.

(b) Removal of unauthorized facilities. Within thirty (30) days following written notice from the city, any user that owns, controls, or maintains any unauthorized facilities or related appurtenances within the rights-of-way shall, at its own expense, remove all or any part of such facilities or appurtenances from the rights-of-way. A facility is unauthorized and subject to removal in the following circumstances:

(1) Upon expiration or termination of the permittee's license or franchise, unless otherwise permitted by applicable law;

(2) If the facility was constructed or installed without the prior grant of a license, franchise, or agreement;

(3) If the facility was constructed or installed without prior issuance of a required permit in violation of this chapter; or

(4) If the facility was constructed or installed at a location within the right-of-way not permitted by the permittee's license or franchise.

(c) Emergency removal or relocation of facilities. All agreements, licenses, permits, or franchises are subservient to the city's right to cut or move any facilities located within the rights-of-way of the city, as the city may determine to be necessary, appropriate, or useful in response to any public health or safety emergency. If circumstances permit, the city shall attempt to notify the utility, if known, prior to cutting or removing a facility and shall notify the utility, if known, after cutting or removing a facility.

(d) Lack of use, abandonment, and removal.

(1) If an above ground utility facility is no longer being used for the purpose of providing utility services, the owner of the facility shall notify the city within sixty (60) days of the time the use ceases.

(2) If an above ground utility facility is believed to be inoperable, the city shall contact the owner of the facility and seek written proof that the above ground utility facility is still in operation.

(3) In the event that an above ground utility facility becomes inactive for more than sixty (60) days, the above ground facility shall be removed by the owner within ninety (90) days after written notification from the city that such removal will be in the best interest of the public.

(4) In the event that an above ground facility has not been removed within one hundred twenty (120) days after notification by the city, the above ground facility is hereby declared a public nuisance, and the provisions in chapter 15 of this code shall apply.

(5) In the event the city does not direct the user that abandoned the facility to remove it, the abandoning user shall be deemed to consent to the alteration or removal of all or any portion of the facility by another user or person by giving notice of abandonment to the city.

Sec. 20-507. Clean-up and restoration.

(a) Requirement for clean-up. The user shall remove all excess material and restore all turf and terrain and other property within ten (10) days after any portion of the rights-of-way are disturbed, damaged, or destroyed due to construction or maintenance by the user, all to the satisfaction of the city. This includes restoration of entrances and side roads. Restoration of roadway surfaces shall be made using materials and methods approved by the city engineer. Such cleanup

and repair may be required to consist of backfilling, re-grading, re-seeding, re-sodding, or any other requirement to restore the right-of-way to a condition substantially equivalent to that which existed prior to the commencement of the project. The time period provided in this section may be extended by the city engineer for good cause shown.

(b) Remedies. If, after receiving notice from the city engineer:

(1) The user required to restore the public right-of-way within the time period set by the city engineer fails to restore the right-of-way to the same condition as it was before the surface was disturbed, or to such other condition as approved by the city engineer; or

(2) If the efforts to restore the public right-of-way fail within a six month period after such excavation; then

The city may perform or cause such restoration work to be performed and charge the whole cost thereof to the user. Such costs shall include an overhead charge based on the personnel involved in administering this section, as determined in writing by the city comptroller. The amount so charged shall be billed to the user. The amount billed shall be paid to the city within twenty-eight (28) days after the date of the bill.

Sec. 20-508. Maintenance and emergency maintenance.

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

(b) Emergency maintenance procedures. Emergencies may excuse compliance with normal procedures for securing a permit.

(1) If an emergency creates a hazard on the traveled portion of the right-of-way, the user 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 is permitted only when no other means of access to the facility is available.

(2) In an emergency, the user shall, as soon as practicable, notify the city engineer or his or her duly authorized agent of the emergency, informing him or her of the steps taken to protect the traveling public and the actions that 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 user shall notify the city police department as soon as practicable.

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

(c) Emergency repairs. The user shall file in writing with the city engineer a description of the repairs undertaken in the right-of-way within 48 hours after an emergency repair is completed.

Secs. 20-509—20-599. - Reserved.

ARTICLE VI. FRANCHISE AND LICENSE AGREEMENTS.

DIVISION 1. GENERALLY.

Sec. 20-600. Consent to license agreements.

The Mayor, on behalf of the City, is authorized to enter into and execute license agreements which contain terms which provide for the items below ~~in substantially the form set forth below~~ thereby giving the consent of the City to a underground utility to use City streets or other property for the installation and maintenance of its facilities, including, drains, pipeline, conduit, materials or other equipment under City streets or other City property, but not including permanent building structures, above ground utilities, or types of facilities that are expressly prohibited in this Code from being installed and maintained in the right-of-way. ~~If authorized by an ordinance of the city council, the mayor is empowered to enter into license agreements giving the consent of the city to use city right-of-way for infrastructure or other permanent structures.~~ The minimum requirements for an agreement are as follows:

(a) Location. The license shall specify the length and width of licensed property and shall include an accurate map of the exact location.

(b) Term. Unless otherwise noted, the initial term of the agreement shall be twenty (20) years. Upon expiration of this initial term or any renewal term, the agreement shall automatically renew for a subsequent term of five (5) years, unless, not less than ninety (90) days prior to expiration, either party gives written notice of its intent not to renew. The agreement may be terminated at any time upon the express written consent of both parties. Either party may terminate the agreement for cause by giving written notice to the other party at least forty-five (45) calendar days prior to the proposed termination. Such notice of termination shall specify the reason or reasons for such termination and shall specifically state that such termination shall become effective thirty (30) calendar days after the date thereof in the event the reason or reasons for such notice of the termination are not fully and completely concurred.

(c) Plans and specifications. The plans and specifications shall be subject to the approval of the city engineer and shall comply with all ordinances and regulations of the city.

(d) Compensation. Compensation shall be paid per negotiated agreement.

(e) Transfer. The license granted pursuant to this article may not be transferred or assigned.

(f) Installation and maintenance. The license shall require the licensee to comply with all ordinances or regulations of the city. The licensee shall be required to restore any pavement disturbed in the course of construction as well as any non-pavement surface. Such restoration shall be to the satisfaction of the city engineer. The agreement shall require the licensee to pay to the city any costs occasioned to the city on account of the licensee's failure to restore.

(g) Removal. The license shall require the licensee to remove the equipment upon termination of the agreement at the licensee's expense.

(h) Relocation. The license shall require the licensee to relocate the equipment at the licensee's expense at the request of the city.

(i) Indemnification. The license shall require the licensee to defend and indemnify the city and its employees and agents for all expenses related to the licensee's use of the city street or other city property.

(j) Insurance and security. The license shall require the licensee to maintain insurance in accordance with the requirements of sections 407 and 409 of this chapter.

(k) Notice and requirement to update owner information. The license shall provide for the method of notification of each party and shall include a requirement that the city be informed of changes in ownership.

Sec. 20-601. Facilities subject to this article.

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

Sec. 20-602. Franchises, licenses, or similar agreements.

The city, in its discretion and as limited by law, may require users 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. Users that are not required by law to enter into such an agreement may request that the city enter into such an agreement. In such an agreement, the city may provide for terms and conditions inconsistent with this chapter.

Sec. 20-603. Effect of franchises, licenses, or similar agreements.

(a) In the event of any conflict with, or inconsistency between, the provisions of this chapter and the provisions of any franchise, license, or similar agreement between the city and any user, 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.

(b) Installation, operation, and maintenance of infrastructure resulting from changed technology not in common usage or reasonably contemplated for use as of the

effective date of this chapter shall be governed by the requirements of this chapter.

Sec. 20-604. Conflicts with other articles.

This article supersedes all articles or parts of articles adopted prior hereto that are in conflict herewith, to the extent of such conflict.

Sec. 20-605. Conflicts with state and federal laws.

In the event that applicable federal or state laws or regulations conflict with the requirements of this article, the user shall comply with the requirements of this article to the maximum extent possible without violating federal or state laws or regulations.

Sec. 20-606. Construction and use in conformance with easements.

No user's facility will be placed in violation of the terms of dedication or grant of any easement.

Sec. 20-607. Annual registration required.

Every user that occupies right-of-way within the city shall register by the end of January of each year with the city engineer, providing the user's name, address, regular business telephone and telecopy numbers, e-mail address, the name of one or more contact persons who can act on behalf of the user in connection with emergencies involving the user'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 20-407 of this chapter, in the form of a certificate of insurance.

Sec. 20-608. Implied agreement.

Any person maintaining ditches, drains, track, rails, poles, wires, pipeline, materials, or other equipment upon, under, over, or along city streets or city property without the written consent of the city shall, in addition to other penalties provided for herein, be irrefutably presumed to have consented to the formation of a contract between the city and that person for the time period when no express written consent of the city was in effect. The provisions of this section shall be deemed to have been in effect except that the city may direct immediate removal of such equipment and except that the compensation for the time period where no express written consent was in effect shall be triple the cost referred to in section 14-7 of this code.

DIVISION 2. OUTDOOR CAFÉS.

Sec. 20-609. License required.

No person shall maintain movable outdoor furniture or provide space for the consumption of food or beverages on property in the right-of-way without first having obtained a license from the city engineer. The city engineer may designate the duration of the license and any dates or times on which the license is not valid.

Sec. 20-610. Application.

Application for an outdoor café license in the city shall be in writing to the city engineer. The application shall state specifically the size of the space intended to be used or maintained, the purpose for which it is to be used, and such other information as the city engineer shall require.

Sec. 20-611. Insurance and security.

General liability insurance pursuant to section 20-407 of this chapter shall be required. No security shall be required.

Sec. 20-612. Fees.

Fees for outdoor café licenses shall be as provided for in section 14-7 of this code.

Sec. 20-613. Transfer; personal privilege.

The license may not be transferred or assigned. The license shall be construed as a privilege granted to the licensee and shall not create any vested rights to renewal or continuation.

Sec. 20-614. Termination; revocation; suspension.

(a) In the event of cessation of business by the licensee at the licensed address for more than seven (7) consecutive days, the license granted hereunder shall automatically terminate. Unless revoked or terminated, the license shall remain valid indefinitely if all required fees are properly and timely paid to the city.

(b) The city engineer may alter, revoke, or suspend the license if:

(1) The licensee violates any provision of the license agreement or this code;

(2) The city engineer in his or her judgment concludes that it would be necessary or convenient for the city to perform any work in the licensed area of the public property or right-of-way; or to reclaim that area for pedestrian or other public use; or

(3) The use of the licensed area causes public disruption.

(c) If any such licensed area is not vacated and such use not discontinued by the time specified, the city may remove from such area any property left thereon at the risk and expense of the licensee.

Sec. 20-615. Consent to license agreements.

The public works director is empowered to enter into license agreements giving the consent of the city to use city right-of-way for outdoor cafés. The minimum requirements for an agreement are as follows:

(a) The licensee shall properly supervise and maintain the property in a clean, orderly, and safe condition and in such a manner as to protect the public health and safety. All tables, chairs, umbrellas, and any other objects provided with a sidewalk café shall be maintained with a clean and attractive appearance and shall be in good repair at all times.

(b) The licensee shall use positive action to assure that its use of the sidewalk in no way interferes with sidewalk users or limits their free, unobstructed passage.

(c) The licensee shall prevent the accumulation, blowing and scattering of trash, garbage, or any other such debris caused or permitted by the licensee's use of the property or by any person's use of the property during the time periods of said license. The licensee shall retrieve and properly dispose of any debris scattered onto adjacent property caused by any use of the property under the license, and, additionally, shall maintain its own trash containers upon the property for disposal of any debris.

(d) The licensee shall assure compliance with pedestrian minimum clear path guidelines of the Americans with Disabilities Act of 1990, as amended.

(e) The license shall not restrict ingress and egress to the property during the time periods of such license except as needed as to comply with current liquor laws.

(f) The licensee shall be strictly responsible that no customer, employee, or other person be permitted to remove alcoholic liquor from the area designated in the outdoor café license.

(g) The licensee shall not erect, attach, or affix any permanent barrier or fixture upon the property.

(h) The licensee shall remove all outdoor furniture from the property during any time period when the license for the property is not in effect. No furniture or any parts of the sidewalk café shall be attached, chained, or in any manner affixed to any tree, post, signs, sidewalk, streetlight, fire hydrant, or other public fixture within or near the licensed area.

(i) The licensee shall not impede any maintenance activity conducted by the city or impair ingress or egress to the premise of any other person.

(j) The licensee shall not be permitted to use or operate any public address system, or similar device.

(k) The licensee shall be allowed to provide amplified or piped-in music within the licensed property during the hours of operation, but no earlier than 11:00 a.m. and no later than 1:00 a.m., so long as such sound otherwise complies with chapter 16 of the code.

(l) No advertising shall be permitted on or in any sidewalk café except a sandwich board portable sign that advertises daily specials or sales for a business. Such sign shall not be located in the traveled roadway or block pedestrian traffic and shall be moved indoors daily at the end of business hours. Such sign shall be permitted only in the B-1, B-2, B-3U, B-4, B-4E, or MOR Zoning Districts and shall not exceed eight square feet in area and four feet in height. If applicable, a scale drawing of the sign shall be included as part of the license agreement.

(m) Should the licensee breach any section of the agreement, the city may perform such cleaning or removal as it considers in its best interests, and the licensee shall reimburse the city for the cost thereof.

DIVISION 3. UTILITY EQUIPMENT.

Sec. 20-616. Consent to license agreements.

If authorized by resolution of the city council, the mayor is empowered to enter into license agreements giving the consent of the city to use city streets or other property for the maintenance of ditches, drains, track, poles, wires, pipeline conduit materials, or other equipment upon, under, over or along city streets or other city property.

Sec. 20-617. Fees.

Fees for license agreements for utility equipment shall be as provided for in section 14-7 of this code.

DIVISION 4. PERMANENT STRUCTURES.

Sec. 20-618. Consent to license agreements.

If authorized by resolution of the city council, the mayor is empowered to enter into license agreements giving the consent of the city to use city streets or other right-of-way for permanent structures, such as, but not limited to, ramps that meet the minimum guidelines of the Americans with Disabilities Act of 1990, as amended.

Sec. 20-619. Fees.

Fees for license agreements for permanent structures shall be as provided for in the license agreement.

DIVISION 5. SUBSIDEWALK STRUCTURES.

Sec. 20-620. License required.

No person shall construct or use any vault, room, or structure under any street or sidewalk in the city without first having obtained a permit therefore from the city engineer.

Sec. 20-621. Application.

Application for a license to use or maintain a vault, space, room, or structure under any street or sidewalk in the city shall be made in writing to the city engineer. The application shall state thereon specifically the size of the space intended to be used or maintained, the purpose for which it is to be used, and such other information as the city engineer may require.

Sec. 20-622. Insurance and security.

General liability insurance pursuant to section 20-407 of this chapter shall be required. No security shall be required.

Sec. 20-623. Transfer.

Whenever any premises abutting on any such vault, room, or structure for which a license has been issued shall be conveyed, or whenever the interest, lease, or right of occupancy of the person holding the license shall be transferred or conveyed, the grantee or transferee shall make application for a transfer of the license. Such application for a transfer shall comply with the provisions for granting a license for subsidewalk structures.

Sec. 20-624. Cover required for openings.

All openings through the sidewalk or street into any vault, space, room, or structure shall be kept covered and guarded. If the opening is a manhole or trapdoor, an adequately strong metal cover shall be provided and shall be equipped with a rough surface so that there will be no danger of any pedestrian slipping on it. If a stairway is provided, the stairway shall be properly guarded with a railing at least three (3) feet high to protect pedestrians from injury.

Sec. 20-625. Flammable liquids and explosives prohibited.

No such vault, space, room, or structure shall be used for the storage of explosives or flammable liquids.

Sec. 20-626. Closing subsidewalk vault.

At any time, the city council may authorize the city engineer to close any vault, space, room, or structure for which a license has been obtained prior to the effective date of this chapter. Said closure will be at the expense of the property owner.

Sec. 20-627. Construction specifications; inspections.

(a) Subsidewalk and substreet vaults, rooms, spaces or structures shall be firmly constructed so as to support the sidewalk or street over it with the maximum load which the sidewalk or street will carry, with a margin of safety of fifty (50) percent over its maximum load or weight.

(b) The city engineer shall inspect all such rooms, spaces, vaults, or structures to see to the enforcement of the provisions of this section.

Sec. 20-628. Maintenance of sidewalk over vault.

The licensee shall keep the surface of the sidewalk over any such structure free of snow and ice and free from all dirt and obstruction of any kind and shall keep the sidewalk over such structure in good repair.

Sec. 20-629. - Reserved.

DIVISION 6. NEWSPAPER DISPENSING DEVICES IN COURTHOUSE BLOCK.

Sec. 20-630. Purpose.

The purpose of this section is to promote the health and safety of the users of the courthouse block while allowing outdoor dispensing of newspapers and other publications in a way which will:

(a) Provide for pedestrian, bicyclist, and motorist safety and convenience;

(b) Restrict unreasonable interference with the flow of pedestrian, bicycle, or vehicular traffic, including ingress and egress from the Champaign County courthouse or from the street to the sidewalk by persons exiting or entering parked or standing vehicles;

(c) Provide for the safety of the public and property during windstorms and other inclement weather;

(d) Replace, remove, or relocate individual news racks that create visual blight on the public rights-of-way or unreasonably detract from the aesthetics of adjacent businesses, landscaping, and other improvements;

(e) Maintain and protect the values of surrounding properties; and

(f) Reduce unnecessary exposure of the public to personal injury and property damage.

Sec. 20-631. Definitions.

Compartment. Compartment shall mean the individual space within a modular news rack that dispenses one newspaper or other publication, including the door, coin return mechanism, and associated hardware.

Modular news rack. Modular news rack shall mean a newspaper dispensing device that is designed with multiple separate enclosed compartments to accommodate at any one time the display, sale, or distribution of multiple distinct and separate newspapers or other publications.

Modular news rack district. Modular news rack district shall mean all of the area bounded on the north by the existing northerly right-of-way line of Main Street, on the south by the existing southerly right-of-way line of Elm Street, on the west by the existing westerly right-of-way line of Broadway Avenue and on the east by the existing easterly right-of-way line of Vine Street.

Newspapers and other publications. Newspapers and other publications shall mean newspapers, periodicals, advertising circulars, and all other printed materials that may be distributed through the use of news racks.

Newspaper dispensing device. Newspaper dispensing device shall mean any unmanned, self-service or coin-operated box, container, storage unit, or other dispenser not located within an enclosed space and other than a modular news rack.

Publisher. Publisher shall mean the person or other legal entity selling, displaying, or distributing newspapers and other publications in a modular newspaper dispensing device.

Sec. 20-632. Administration.

The city engineer shall be responsible for administration of newspaper dispensing devices and shall have the following powers and duties:

(a) To administer and rule upon the application for, and the issuance, renewal, suspension, denial, and revocation of modular space licenses as set forth in this division;

(b) To conduct or provide for such inspections of modular newspaper dispensing devices as shall be necessary to determine and ensure compliance with the provisions of this division and other applicable provisions of law; and

(c) To take such further actions as he or she shall deem necessary to carry out the purposes and intent of this division and to exercise such additional powers in furtherance thereof as are implied or incident to those powers and duties expressly set forth in this division.

Sec. 20-633. Modular news dispensing devices generally.

(a) Modular space license required. Within the modular news rack district, a modular space license shall be required to display newspapers and other publications in a modular newspaper dispensing device.

(b) Operation in violation of license prohibited. It shall be unlawful for any publisher to sell, display, or distribute newspapers and other publications within the modular news rack district except in the manner authorized by, and in compliance with, the provisions of this division and by the licensee's modular space license.

Sec. 20-634. Application and license for space in a modular news rack.

(a) Applications for a license under this division shall be made on forms provided by the city engineer. The application shall include such information as the name of publisher, its business address, telephone number, and e-mail address, the name of the publication, the frequency of the publication, the date that the publication was first distributed in the city, and such information as the city engineer may require to allocate space in the modular newspaper dispensing devices in accordance with this division.

(b) Within five (5) business days of receipt of an application for a license under this section, the city engineer shall grant the application and issue the license if the application contains all information required by subsection (a) of this section and if compartments are available. Otherwise, the city engineer shall, within five (5) business days of receipt of the application for a license, deny the application and state the reasons in writing for such denial.

Sec. 20-635. Provisions of modular news racks.

(a) Modular news racks shall be installed and maintained by the city.

(b) After the initial installation of a modular news rack, the total number of compartments in the modular news rack in the modular news rack district may be increased or decreased by the city engineer only if consistent with the purposes stated in this division. Modular news racks shall be placed in locations in the district determined by the city engineer to afford easy, convenient service to pedestrians but which do not obstruct or interfere with access to abutting

properties and which do not impede or endanger pedestrian, bicycle, or vehicular traffic.

(c) There shall be no newspaper dispensing devices of any type located within the modular news rack district. All newspaper dispensing devices existing upon the enactment of this division shall be removed from the modular news rack district within fourteen (14) days. Any newspaper dispensing device not so removed or otherwise placed in violation of this section shall be subject to confiscation by the city.

Sec. 20-636. Allocation of modular news rack compartments.

The city engineer shall ensure that modular news rack compartments are allocated in accordance with the following procedures:

(a) Each compartment in a modular news rack shall contain copies of only one (1) newspaper or other publication and have a door that is sized to fit and display such newspaper or other publication.

(b) The city engineer shall ensure that there are enough compartments in each modular news rack to accommodate all publishers who initially wish to distribute their newspapers and other publications at that location, up to a maximum of twelve (12) compartments per news rack in the modular news rack district. If more than twelve (12) publishers wish to distribute newspapers or other publications at that location, the compartments shall be allocated as follows:

(1) Priority shall be given to publishers who continuously have distributed newspapers or other publications in news racks in the county courthouse block for more than twelve (12) months before the effective date of this division, as indicated by the publisher's affidavit provided to the city;

(2) Among publishers who have priority under this subsection, compartments will be allocated first to newspapers and other publications issued at least five (5) days per week, second to newspapers and other publications issued between two (2) and four (4) days per week, third to newspapers and other publications issued once per week, and fourth to newspapers and other publications issued less frequently;

(3) If there are more compartments than publishers with priority under this subsection, the city engineer shall allocate the remaining compartments among publishers who do not have priority, first to newspapers and other publications issued at least five (5) days per week, second to newspapers and other publications issued between two (2) and four (4) days per week, third to newspapers and other publications issued once per week, and fourth to newspapers and other publications issued less frequently;

(4) Notwithstanding the requirements of this subsection, no newspaper or other publication may receive a second space in a modular news rack until all other interested publishers have had the opportunity to have their newspaper or other publication allocated to a compartment;

(5) Whenever additional compartments become available, they shall be allocated in the manner described in this subsection; and

(6) In the event two (2) or more publishers have equal priority under this subsection, allocation shall be by lottery or other random method.

(c) For initial assignment of news rack space, the city shall notify all publishers who currently distribute their newspapers and publications in the district where the city is installing a modular news rack. Such notification shall, at a minimum, consist of a copy of the city's application for modular news rack space. On the application, each publisher shall include the number of compartments and the locations it is seeking. All applications shall be returned to the city engineer, who shall ensure that compartments are allocated in accordance with the procedure set forth above.

(d) After the initial assignment of news rack space, any publisher seeking to place its publication within the modular news rack district must fill out an application for modular news rack space and submit it to the city engineer, who shall ensure that compartments are allocated in accordance with the procedure set forth above.

(e) The opportunity of publishers to have their newspapers or other publications distributed from a modular news rack shall not be affected whatsoever by their content, consistent with the First Amendment to the United States Constitution.

Sec. 20-637. Appeal of denied permits.

The decision of the city engineer in refusing to grant a license under this division shall be appealable the city council, provided that the applicant files a written notice of appeal, including a statement of the grounds for appeal, with the city engineer within fifteen (15) days after the mailing of the notice of the decision of the city engineer. The city council shall set a hearing on the appeal, and the city engineer shall send notice to the applicant at the address provided by the applicant on the application form. The city council shall have the power to reverse, affirm, or modify the decision of the city engineer. In making its determination, the city council shall only consider the standards set forth in this division. Its decision shall be rendered within thirty (30) days of the hearing. The decision of the city council shall be final.

Sec. 20-638. Emergency.

Whenever an emergency exists or is reasonably anticipated, the mayor may, by executive order, exercise the powers and authority of the corporate authorities of the city which are set forth in this article; provided however, that the mayor shall not exercise such powers and authority except after signing under oath a statement that an emergency exists. Such statement shall set forth facts substantiating that an emergency exists, shall describe the nature of the emergency, and shall declare that an emergency exists. Such statement shall be filed with the city clerk as soon as practicable.

Secs. 20-639—20-699. - Reserved.

ARTICLE VII. HIGHWAY AUTHORITY AGREEMENTS.

Sec. 20-700. Definitions.

The following words and phrases, when used in this article, shall have the meanings respectively ascribed to them in this article, unless the context otherwise requires.

Contaminated groundwater or soil. Contaminated groundwater or soil shall mean groundwater or soil containing concentrations of hazardous substances above Tier 1 residential levels, as those levels are defined in the Illinois Administrative Code.

Highway authority agreement. Highway authority agreement shall mean an agreement entered into between an owner/operator and the city to provide an institutional control that is acceptable to the Illinois Environmental Protection Agency, and in compliance with the provisions of the Illinois Administrative Code, for the purpose of avoiding the need for immediate remediation of contaminated groundwater or soil on or under the right-of-way.

Illinois Administrative Code. Illinois Administrative Code shall mean Title 35, Subtitle G, of the Illinois Administrative Code, and any amendments thereto.

Owner/operator. Owner/operator shall mean any person, trust, partnership, corporation, or other entity that is legally responsible for the remediation of contaminated groundwater or soil at a particular site under the pertinent provisions of the Illinois Administrative Code because of that person or entity's ownership or control of the real property and/or facilities at the site.

Property. Property shall mean the real property where the release of contaminants giving rise to the need for the proposed highway authority agreement occurred.

Release of contaminants on the property. Release of contaminants on the property shall mean the release of hazardous substances on the property that gave rise to the requirement, under the Illinois Administrative Code, to institute an institutional control, such as the proposed highway authority agreement, in order to avoid the need for immediate remediation of contaminated groundwater or soil on the right-of-way adjacent thereto.

Sec. 20-701. Application for highway authority agreement.

Requirements generally. Any owner/operator requesting that the city enter into a highway authority agreement shall submit to the city engineer for approval the following:

(a) A draft highway authority agreement substantially in the form and format of the current Illinois Environmental Protection Agency approved highway authority agreement form, as amended.

(b) A draft supplemental highway authority agreement substantially in the form and format of a supplemental authority agreement form provided in the City of Urbana Right-of-Way Permit Standard Details.

Sec. 20-702. Criteria for approval of proposed highway authority agreement.

The city engineer shall not recommend approval of, and the mayor shall not execute a proposed highway authority agreement, unless the execution and implementation of said agreement will not pose any significant risk of harm to persons or the environment from contaminated soil or groundwater. In addition, any approved and executed highway authority or supplemental agreement shall, at a minimum, by its terms and conditions, do the following:

(a) Provide that the agreement shall be null and void should the Illinois Environmental Protection Agency not approve it as a basis for issuing a "no further remediation letter" in accordance with the pertinent provisions of the Illinois Administrative Code.

(b) Provide that there shall be a rebuttable presumption that any contaminants found in the right-of-way arose from release of contaminants on the property.

(c) Commit the city to prohibiting the use of groundwater under the right-of-way as a potable or other domestic supply of water and to imposing reasonable controls on the access to soils on and under said right-of-way to reduce to an acceptable level the risks of harmful exposure to contaminated soils by persons or the environment.

(d) Commit the owner/operator to indemnify, defend, and hold the city harmless for any damages to property or injury to individuals, including death therefrom, and costs incurred, including attorney's fees and court costs, associated with or in any manner arising from the release of contaminants on the property.

(e) Reserve to the city the right to construct, reconstruct, improve, repair, maintain, and operate a highway upon the right-of-way, or allow others to do the same by permit, and reserve to the city or others by permit the right to remove contaminated soil and/or groundwater.

(f) Reserve to the city the right to remove and dispose of contaminated groundwater and/or soil as needed to avoid further release of contaminated soils or groundwater from activities described in subsection (e) of this section.

(g) Commit the owner/operator, at the city's discretion, to perform the removal and disposal of contaminated groundwater and/or soil resulting from the release of contaminants on the property, at no cost to the city, in accordance with state and federal environmental rules and regulations, as needed to avoid further release of contaminated soils or groundwater from activities described in subsection (e) of this section.

(h) Commit the owner/operator to reimburse the city, or any agent acting on the city's behalf, for any reasonable costs that it or its agent may incur in protecting human health and environment from hazards posed by or arising from release of contaminants on the property, including but not limited to those associated with identifying, handling, storing, removing, or disposing of contaminated groundwater and/or soil associated with the release of contaminants on the property.

Secs. 20-703—20-799. - Reserved.

ARTICLE VIII. ENFORCEMENT.

Sec. 20-800. Enforcement – city engineer.

The city engineer or the city engineer's designee is hereby authorized to enforce and shall be responsible for enforcing provisions of this chapter insofar as violations of this chapter occur on the public right-of-way.

Sec. 20-801. Enforcement – city attorney; court orders

(a) The city attorney may take any steps necessary to prosecute violations of this chapter in court or to collect money owed relating to violations of this chapter. The city attorney is authorized to negotiate settlements of any such enforcement or collection action.

(b) In addition to any other remedy or penalty provided by this code, the city attorney may institute any appropriate action or proceeding to:

(1) Prevent the unlawful construction, reconstruction, alteration, repair, conversion, maintenance, or use of the right-of-way;

(2) Prevent the occupancy of the right-of-way;

(3) Prevent any illegal act, conduct, business, or use in or about the right-of-way; or

(4) Restrain, correct, or abate the violation.

Sec. 20-802. Notice of violation; voluntary compliance; agreement to comply.

(a) General. Whenever the public works department has grounds to believe that a violation has occurred, the city engineer may delay seeking sanctions against the person or persons responsible for the violation and attempt to obtain voluntary compliance by issuing a written notice of violation to the person or persons responsible for the violation in the manner set forth in this section.

(b) Content. Written notice shall include, at a minimum, the following information:

(1) A description of the right-of-way sufficient for identification;

(2) A brief description of the condition constituting the violation;

(3) A reference to the code section defining the violation;

(4) A date when a re-inspection will be made to determine whether the violation has been corrected; and

(5) An invitation to meet with the city engineer or the city engineer's designee to discuss the violations.

(c) Methods of service. A notice shall be deemed to be properly served upon the responsible party if:

(1) A copy thereof is delivered to the responsible party personally;

(2) A copy thereof is mailed to the responsible party by regular, first-class U.S. mail, postage prepaid, at the violator's last known address; or

(3) A message containing the notice is delivered by email to an address the responsible party has provided to the city, and the responsible party acknowledges receipt of the message. Provided, however, an automatic "read receipt" shall not constitute acknowledgment of notice for the purposes of this subsection.

(d) Notice to corporations and partnerships. Notice by mail or personal delivery upon a corporation may be to its registered agent or any officer or agent of the corporation, or pursuant to the notice provisions in any agreement between the violator and the city. Notice by mail or personal delivery to a partnership may be to a partner or any agent of the partnership.

(e) Delivery of notice not jurisdictional for subsequent prosecution. The purpose of serving the written notice as provided in this subsection is to attempt to secure voluntary compliance by the responsible party with the requirement in question. Delivery of said written notice shall not be deemed to be the initiation of or a precondition to prosecution of any action in a court of law or equity based on the violation in question. Any defects in the form or manner of delivery of said notice shall not be deemed jurisdictional regarding any related prosecution in a court of equity or law but may be considered on the issue of whether said written notice constitutes notice for the purpose of calculating the number of separate offenses committed under this chapter.

(f) The city engineer may enter into written agreements with responsible parties to extend the time allowed for correction of violations.

Sec. 20-803. Failure to comply tickets.

(a) General. The city engineer or the city engineer's designee is authorized to issue a failure to comply ticket upon any person the city engineer determines has violated any of the provisions of this chapter. A failure to comply ticket may be issued for each day the violation continues.

(b) Content. A failure to comply ticket shall include the name of the person charged with the offense, the section violated, a description of the condition or activity constituting the violation, and instructions for settling the claim.

(c) Method of service; effective date.

(1) A failure to comply ticket shall be deemed to be properly served upon the responsible party if:

a. A copy thereof is delivered to the responsible party personally; or

b. A copy thereof is mailed to the responsible party by regular, first-class U.S. mail, postage prepaid, at the violator's last known address.

(2) If the notice is served by mailing and posting, the service shall be deemed effective on the third day after mailing and posting.

(3) Service of corporations and partnerships. Service by mail or personal delivery upon a corporation may be to its registered agent or any officer or

agent of the corporation or pursuant to the notice provisions in any agreement between the violator and the city. Service by mail or personal delivery to a partnership may be to a partner or any agent of the partnership.

(d) Settlement of ticket. Tickets issued under this section shall be in lieu of arrest. Payment of a ticket constitutes an admission of guilt. A second or subsequent violation is a violation of this code committed by the same user within twelve (12) months of the initial violation. The responsible person may comply and settle the claim prior to the person being charged by written complaint in accordance with the following schedule:

Schedule of fines for failure to comply tickets.		
Offense	**Minimum fine if paid within 7 days**	**Minimum fine if paid after 7 days**
First offense	**$100.00**	**$200.00**
Second offense	**$300.00**	**$400.00**
Third offense	**$500.00**	**$600.00**
Fourth offense	**$700.00**	**$750.00**
Subsequent offenses	**$750.00**	**$750.00**

(e) Filing complaint in court: If the person accused of the violation does not settle the claim within fourteen (14) days after being issued a failure to comply ticket, a complaint may be filed with the circuit court. Upon conviction, the person shall be subject to a fine in accordance with this code.

Sec. 20-804. Notice to appear.

(a) General. The city engineer or the city engineer's designee shall have the authority to issue and serve a notice to appear to any person the city engineer has reasonable grounds to believe is committing or has committed a violation of this chapter. The authority to issue a notice to appear shall be construed as conferring on the city engineer the status of "code enforcement officer" pursuant to any law of this state or other state for the limited purpose of issuing and serving such notice to appear.

(b) Service. The notice to appear shall be served by personally delivering said notice to the individual charged with the violation or in any other manner provided by law. Service by personal delivery upon a corporation may be to its registered agent or any officer or agent of the corporation or pursuant to the notice provisions of any agreement between the violator and the city. Service by personal delivery to a partnership may be to a partner or any agent of the partnership, or, in the case of a partnership, corporation, trust or other business entity, to an authorized agent of said entity, or in any other manner authorized by law.

(c) The notice to appear shall comply in form with the requirements of 725 ILCS 5/107-12, as amended, and the rules of the Illinois Supreme Court or any amendment thereto.

Secs. 20-805—20-899. - Reserved.

EXHIBIT A - ZONING PRACTICE WIRELESS FACILITY SITING

ZONING PRACTICE NOVEMBER 2016

AMERICAN PLANNING ASSOCIATION

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PRACTICE WIRELESS FACILITY SITING

11

Regulating Wireless Facilities in Public Rights-of-Way

By L.S. (Rusty) Monroe and Jackie Hicks

Communities nationwide are being faced with a new wireless facility siting issue: applicants claiming the need and right to locate new tall communications support structures, and related equipment, in public rights-of-way.

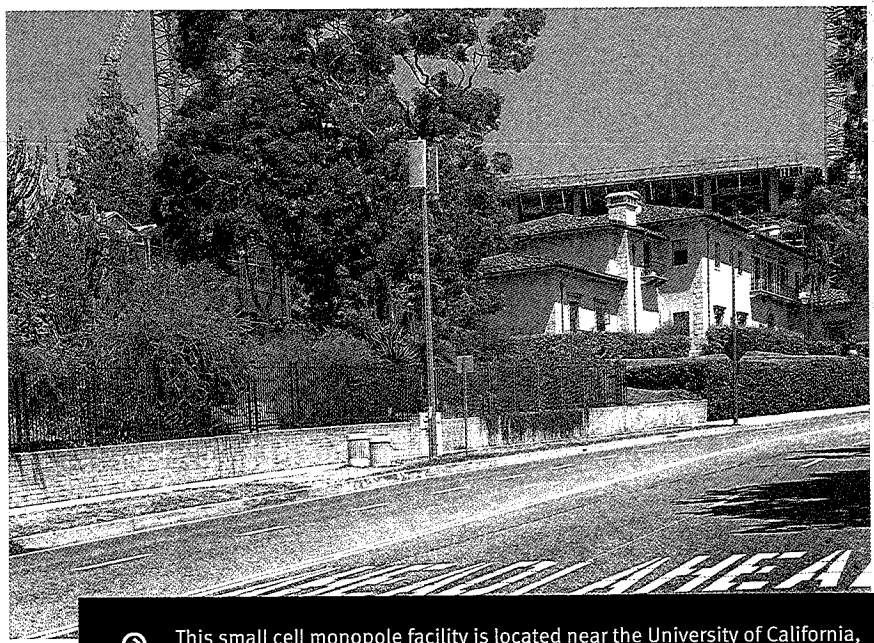
When first discussing the issue of new wireless facilities in the public right-of-way (PROW), all too frequently we hear comments such as these from local officials and staff:

- "We were told that most of this issue was preempted and that we had little to say about it anymore."
- "With all the changes in the law and technology, we don't even know what choices of policies we have."
- "We just took the company's word with respect to our rights."
- "How are we expected to deal with the number of applications the Federal Communications Commission (FCC) and other experts say to expect?"

It's disheartening to hear such comments and to hear the frustration in their voices. This article is intended to end that frustration and enable local officials to better understand the issue in context, appreciate the significant regulatory rights communities still have in most states, and make informed decisions related to the issue of siting wireless facilities in the PROW.

Understanding the Matter in Context

Wireless carriers face a demand by the consuming public for ever-increasing capacity, speed, and reliability. This multifaceted demand is rooted in the seemingly endless number of new wireless services being offered, coupled with the new myriad uses of the Internet—many of which seemed like mere pipe dreams less than a decade ago. Because of this, carriers are reducing the traffic on each original high-power macrocell site by building a number of smaller sites, each serving only a portion of the original area and thus reducing the amount of traffic on any given site. This shift to smaller sites, coupled with the shorter transmission and receive distances involved, is intended to result in the increased capacity, speed, and reliability the public demands. As a consequence, communities will be faced with the challenge of finding ways to accommodate the number of new facilities needed to meet the public's demand without upsetting a large segment of the same public by allowing structures that change neighborhood character, negatively impact property values, or present a threat to public safety. It's a classic NIMBY (not-in-my-backyard) situation.



This small cell monopole facility is located near the University of California, Los Angeles; the base station equipment is located underground.

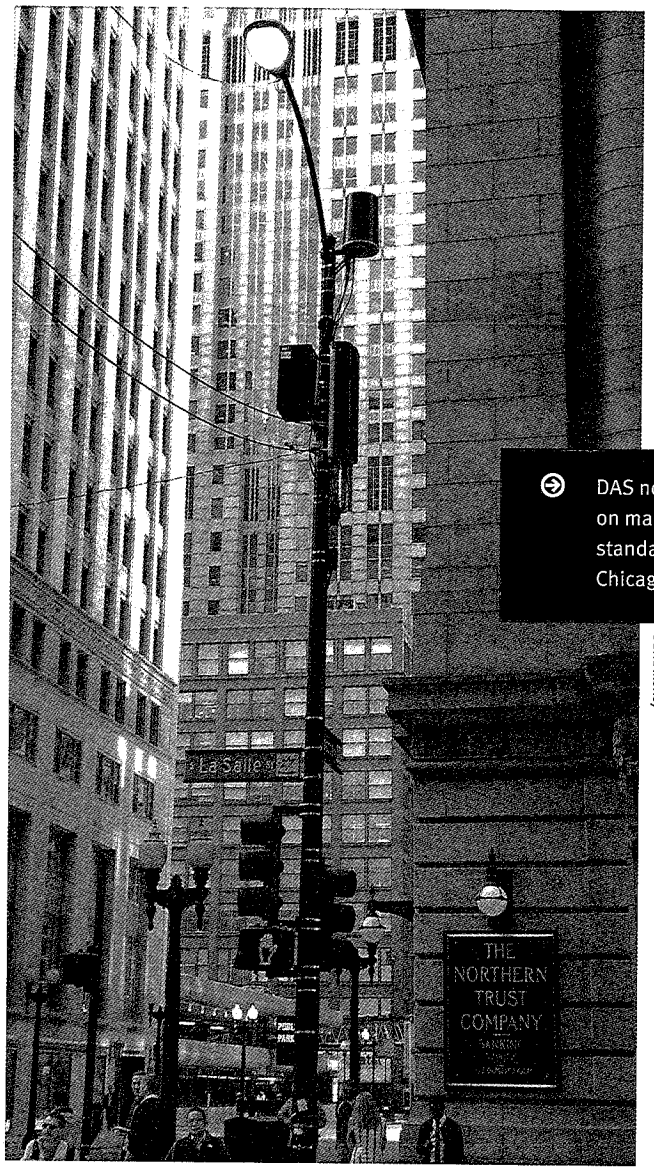
What's Coming?

The wireless industry has (finally) acknowledged that the number of new sites it needs over the next several years is a magnitude greater than currently exists. Currently there are slightly more than 300,000 wireless facilities nationally. However, going forward (make sure you're sitting down) *each carrier* is going to need—at a minimum—a site to serve no more than 50 to 75 of its customers. (You can do the arithmetic for your community.) In some communities it may be twice as many sites as that, depending upon the number of living units and the demand in a particular area of the community. Of course, in densely populated areas containing large apartment or condominium complexes, the density of sites will be significantly greater, as many complexes will need multiple sites to serve that complex.

The need for the number of new sites is because of the (exponentially) ever-increasing demand for bandwidth, the very limited range of the newly available higher frequencies, the emergence of the Internet of Things (IoT), and the desire to use the most economical means of "backhauling" the signal to the local or network switch. Experts estimate the demand for bandwidth may be as much as 1,000 times the bandwidth used three years ago. Meanwhile, the higher the frequency of the transmission, the less robust the signal, meaning higher frequency signals have a maximum usable range that is significantly less than has historically been the case. Most experts agree that the amount of traffic on the IoT— the demand created by Internet-enabled appliances, vehicles, buildings, and other objects—is expected to exceed that of the entire Internet today. Combined, this situation is creating a sea change, both for the industry and for those charged with regulating wireless facilities.

The area served by a typical macrocell site today covers an area of about one mile radius or two miles in diameter. Going forward, this same service area could require a half-dozen or more sites (for each carrier), with each site covering a few hundred yards in each direction. In most instances this will be done using distributed antenna system (DAS) or "small cell" technologies. DAS is a system that accommodates multiple carriers using a single smaller and lower powered antenna and a single central base station, with all antenna sites (nodes) connected via optical fiber cables, thus creating a (local or regional) network. Small cell is another newer technology employing smaller, lower-powered antennas serving a single carrier, and the sites are not connected via fiber.

In most communities, these new sites will need to be located in all zoning designations, and frequently the request will be to locate in the PROW, often attaching to existing utility poles, light standards, signs, and similar structures.



DAS nodes are mounted on many existing light standards in and near Chicago's Loop.

David Morley

A New Type of Player

In virtually every state across the nation there is a new type of player who wants to place support structures (monopoles) ranging in height from 60 to 180 feet in the PROW. The primary purpose of these installations is to provide backhaul service to carriers. "Backhaul" refers to the links between cell sites, controllers, and switches. Generally, the traffic arriving at a cell site is backhauled to a central location, which is the local switch or the operator's mobile switch. This new player typically wants to use microwave transmissions to provide this function, but microwave is not the only option. In many instances it's simply the least costly and can often allow the wireless signals of multiple carriers to be aggregated.

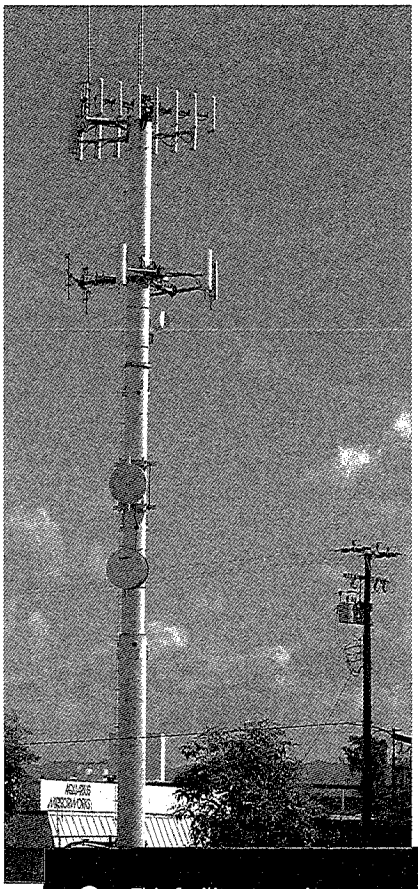
The companies who want to install these taller support structures may claim to have all the rights of a regulated utility. In fact, many communities have received a letter from one of these companies that makes certain assertions regarding who they are, what they do, and what rights they have, as well as implicitly what rights communities do not have with respect to the siting of their facilities. Based on the letters and proposals to communities we have seen (coast to coast), and those we have dealt with in the context of applications, the visual and physical impact of such facilities can be significant. However, in most cases, most of the negative effects can be prevented and still allow for a win-win situation.

It's important to understand that these entities are *not* wireless carriers, and without a specifically identified carrier as a joint applicant, they have no standing (i.e., benefits) under federal law or FCC rules. They're tower/wireless support structure companies. The problem is that they often claim that they are exempt from local zoning, land-use, or similar regulations, simply because they have a "Certificate of Necessity and Convenience" (or

the functional equivalent) from the applicable state's utility regulatory agency. This assertion is not factually correct and in most states is an example of putting a self-serving "spin" on the law.

These companies are not utilities in the traditional sense. They do not provide a retail service to the consuming public as do utilities, and their operations, rates, rate-of-return on invested capital, and customer service standards are not regulated by the state's utility regulatory agency, as is the case with utilities. We have spoken with several state utility regulatory agencies, and not one could explain how or in what manner these new players were regulated by the agency. They are simply the holder of a certificate that effectively gives them the right to locate in the PROW (if permitted under local law and regulation), and in a few states (e.g., New York) enables them to be subject to somewhat less stringent zoning variance or waiver standards. However, they are still subject to local regulations, including but not limited to zoning, construction, land-use, and safety regulations (FCC 14-153§(A)(249,259)&(B)(3)). In no state that we know of does the certificate they hold exempt them from properly adopted local regulations dealing with the location, size/height, aesthetics/appearance, physical design, construction, safety, and maintenance of the facility.

Contrary to what many local officials and staff have been [mis]led to believe, under current federal law and FCC rules, local governments still retain most of their regulatory authority over these issues, including compliance with operational safety regulations. These include compliance with FCC limits on human exposure to radio frequency fields (as explained in the Office of Engineering and Technology's Bulletin 65) and TIA 222, the Telecommunications Industry Association's tower safety standards addressing the design and the ongoing physical state or condition of a tower and the equipment attached to it. Compliance with TIA 222, or in a few states' the functional equivalent, is the elephant in the room that few applicants are addressing. In handling hundreds of applications for modifications or colocations for communities in just the last 24 months, we've found it to be the exception rather than the rule when a wireless facility passes a TIA 222 safety inspection (done by a third party). It's largely a matter of *how* that authority is implemented and administered, rather than the existence



This facility uses microwave antennas to provide backhaul to the mobile telephone switching office.

of the authority itself. The authority exists, but as with all things it must be implemented and administered in accordance with the law.

Backhauling Options

While the new player's business model involves erecting tall monopoles in the PROW to enable carriers to use microwave to backhaul the signal to the switch, microwaving is not a technical necessity, but rather a means of backhauling the signal. The alternative is fiber. Consequently, a community that prohibits new, separate wireless communications support structures in the PROW taller than the existing poles or light standards should not run afoul of the federal prohibition against communities acting in a manner that has the effect of "prohibiting" the provision of service.

A New Type of Support Structure

There has been a new development in support structures specifically for use in the PROW. These new structures allow accommodation of multiple carriers, with all antennas housed internally, and they do not exceed the height of the adjacent utility or light poles. They can function as a utility pole for incumbent utilities and others, such as a fiber transport company, and can also be designed as a light pole, or both. However, before local governments can effectively promote these structures as alternatives to tall monopoles, the owner(s) of the existing utility or light poles must be on board with the concept, and there must be someone on staff, or available to staff, who truly knows the applicable laws that allow local governments to achieve their goals. That person also needs to know and understand the new technology and its true siting needs, as opposed to the merely asserted need. Then the two areas of knowledge can be "married" to create a win-win regulatory situation.

SECTION 6409(A) AND FCC RULEMAKING 14-153

In addition to the 1996 Telecommunications Act, the federal legislation and FCC rules that are most directly applicable to the deployment of new facilities and the modification of existing facilities today are Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, the FCC Declaratory Ruling 09-99, and the FCC Report and Order 14-153 (clarifying 6409(a) and Declaratory Ruling 09-99).

Under Section 6409(a), state and local governments must approve "eligible facility" requests to modify existing towers or base stations. There have been numerous articles that discuss in detail the specifics of what constitutes an eligible facility, so that is not addressed here. Notably, Section 6409(a) applies only to state and local governments acting in their role as land-use regulators, and does not apply to them acting in their proprietary capacities (i.e., as the owners of public property, including the PROW vis-à-vis franchise or encroachment agreements). These remain contractual in nature and are not encumbered by the new regulations.

What's Preempted Under 6409(a) and 14-153?

The FCC Report and Order 14-153 expressly protect and reconfirm local authority to enforce and condition approval on compliance with generally applicable building, structural, electrical, and safety codes and with other

laws codifying objective standards reasonably related to health and safety, including local zoning and wireless siting, design, and construction regulations. However, 6409(a) and 14-153 do preempt the following:

- The definitions of what constitute an "eligible facility" and a "substantial modification" of a facility, both inside the PROW and outside the PROW.
- The maximum time allowed for determination of completeness/incompleteness and action on an application (i.e., the "Shot Clock" requirement). The allowed time periods are 60 days for an eligible facility and 150 days for a substantial modification or for a new support structure/tower (unless a longer period of time is mutually agreeable).
- Certain National Environmental Policy Act requirements, under certain conditions, for an eligible facility application.
- Proof of technical need for eligible facilities.

Conditions for Eligible Facilities Permits

Given that a community must permit an eligible facility application, and may *not* deny it, a key issue is that of being able to attach conditions. We are not aware of any FCC rule or case law that prohibits attaching conditions to a wireless facility permit, including eligible facility applications. However, for an eligible facility application on an existing structure, the law does prohibit attaching any condition(s) in excess of or more stringent than are needed to assure compliance with the permit issued for the original facility.

HANDLING TODAY'S SITUATION

The current situation, as it has developed, is a game changer for planners and local officials. Regrettably, in our experience many, if not most, municipalities are unprepared for what will be the large number of applications, often submitted simultaneously, for small cell sites, DAS nodes, and microwave backhaul installations, especially in public rights-of-way. We have seen communities as small as 1,500 residential units have as many as a half-dozen applications filed simultaneously by a single carrier. In other larger communities as many as 20 applications, or notices of intent for as many, if not more applications, have been filed simultaneously by a single applicant. Both of these situations place an unreasonable burden on staff and, because of the Shot Clock requirement, often force them to place these applications ahead of other types of applications awaiting action. Staff is often forced to "rubber-stamp" the applications (as submitted), rather than having the time to review the applications in the detail needed, and intended, by both Congress and the FCC.

Because the requests to place new (tall) wireless facilities in the PROW is new territory for many municipalities, we recommend that they immediately start thinking carefully about the end result(s) they want to achieve. This includes what they want to prevent, what they want to encourage, and what they want to assure happens, as well as the policies needed to achieve those results. As examples, does the community want to regulate any of the following vis-à-vis the PROW?

- The maximum allowable height of facilities in the PROW
- The minimum separation distances between wireless facilities
- The location vis-à-vis the PROW in front of residences
- Appearance/aesthetics (e.g., camouflaging to minimize the impact on the nature and character of the area)
- Setback distances
- Placement and appearance of ancillary equipment (e.g., equipment enclosures)
- The amount of rent charged for the private, commercial use of the PROW

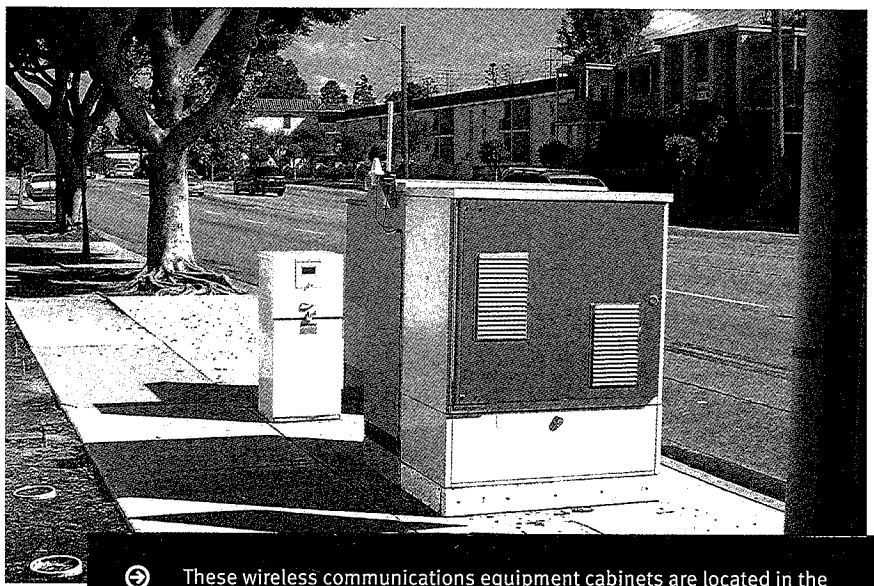
Since these facilities will likely be needed throughout most communities, and are often attempted to be placed directly in front of residences and in sensitive historic preservation and view shed areas, planners and local officials should be very careful in making the necessary new policy decisions regarding placement, size, and appearance vis-à-vis the PROW. In doing so, it is *critical* to keep in mind the law of unintended or unforeseen consequences. Knowledge of the industry, and especially what it considers its confidential and proprietary plans and goals, is the key to preventing this! To attempt to do this without an intimate knowledge of the industry can be dangerous and can have both short- and long-term undesired consequences.

RECOMMENDATIONS

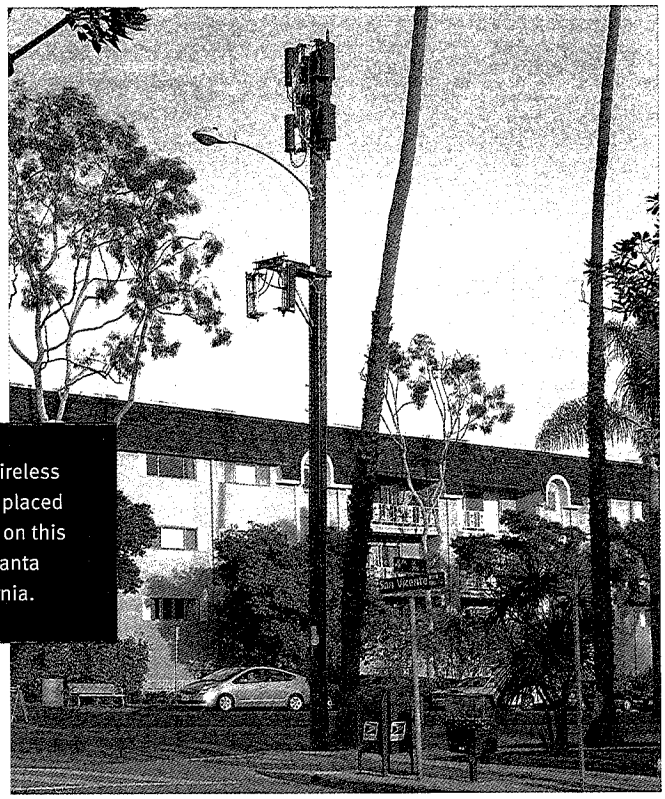
The following recommendations for consideration by planners and local officials are based upon what have been unchallenged policies and practices to date.

Priority of Types of Permits

Make sure the community's wireless facility regulations expressly state that even though a new structure may be proposed to go in the PROW, and notwithstanding anything else to the contrary, such a new structure, regardless of its location, height, or appearance, should be defined as first, foremost, and always a (wireless) communications tower or facility that is subject to the local wireless facility



These wireless communications equipment cabinets are located in the public right-of-way between the curb and the sidewalk.



Two different wireless providers have placed antenna arrays on this utility pole in Santa Monica, California.

regulations. Any other permitting regulations should be secondary to this and should require a zoning or land-use permit under the local wireless facility regulations before obtaining any other permit.

Maximum Permitted Height

We recommend that communities establish a maximum permitted height for wireless facilities in the PROW. Communities may want to consider different height limits for different zoning districts, or different geographic parts of the community regardless of the zoning district.

For taller facilities proposed in less restrictively zoned districts (such as industrial or commercial districts), but near more restrictively zoned districts (such as residential districts), there is an easy way to mitigate the impact and possibly prevent a good deal of political dissatisfaction from the public.

A community may want to require that, within a given distance of the boundary of an adjacent zoning district that is more restrictive (e.g., within 1,000 feet of an R-1 zoning district), the height limit is the same as the more restrictive district. Otherwise, residents living on or near the district border will likely have to live with the effects of a facility only a short distance from their home that would not otherwise be allowed in the residential district.

Communities can also stipulate that the maximum permitted height in the PROW (or within reasonable proximity to the PROW) may be no taller than the existing, immediately adjacent utility poles or light standards. This is not an unreasonable limit, since the vast majority of the new wireless facilities going in the PROW are for capacity and are not primarily to increase coverage. They are intended to serve only a portion of the area currently served, and thus increased coverage is not normally an issue, other than to improve service to residents in some small areas on the border of the current service area. The goal is to have no service borders.

Since they're generally going to be serving only a portion of the area currently served, these sites seldom need to be taller than the existing adjacent utility poles. Providers may need to construct two shorter facilities, rather than a single taller facility or one shorter facility in combination with a colocation on an existing structure, but most communities would prefer either of these situations to a single tall facility (that's really not needed technically).

Federal law does not require a community to grant a permit for a single facility if two or more smaller/shorter facilities can achieve substantially the same result, or better; nor does it require a community to take into account the capital cost to a carrier to achieve what it desires while complying with land-use and zoning regulations. Those costs are capitalized under an accelerated depreciation schedule.

Minimizing Visual Impact in the PROW

To minimize the visual impact and control the appearance of a specific facility in the PROW, communities might want to consider requiring, as the number one siting priority, that any proposed (new) array of antennas be mounted on a structure that enables the antennas to be placed *inside* a new pole, unless the applicant can prove (by clear and convincing technical evidence) that doing so would serve to "prohibit" the provision of service to at least a substantial portion of the area intended to be served by the new facility (47 U.S.C. §332(c)(7,B,II). This is a very high bar that Congress intentionally set, and in most instances involving the PROW is extremely difficult to prove technically, if one knows and understands the technical intricacies and nuances involved. Another slightly different approach would be to prohibit any new antenna array from being visibly identifiable as such to the average person—different wording, but the same effect.

Rather than just accepting another ugly new array of antennas attached to an existing utility pole or light standard, and notwithstanding 6409(a), some communities require that, instead of just colocating on an existing utility or light pole with the antennas mounted on the outside around the pole, an applicant must arrange to have the pole replaced with one that houses the antenna(s) inside. They may still locate in the PROW, but they must do it in accordance with this "stealthing" or "camouflaging" policy in the community's wireless facility siting regulations.

Revenue and Rent

For reasons of generating revenue, a community may prefer new wireless facilities to be located in the PROW as the number one siting priority. The rent for the commercial use of the PROW can be deemed an encroachment fee, a franchise fee, or any functional equivalent. In most states this can be accomplished easily in the local regulations. This rent can be significantly more than many communities realize they can demand, and regrettably, all too

many undervalue this asset or are convinced that charging less will gain them something or prevent some negative effect.

In more than four decades assisting hundreds of communities, we do not recall a single instance when a community gained something significant or prevented something negative by charging a low rent. Rent for the private commercial use of the PROW should be a set amount, which could be dependent upon location. On a related note, pay close attention to the entire proposed lease agreement. A number of issues may be buried there to avoid scrutiny, and seldom is the language in the lessor's favor.

One example of this is the industry preference to slip in what seems a "reasonable" requirement for a periodic rent escalator to be a percent increase (e.g., 15 percent over the initial rent every five years). If this every-five-year approach is accepted for the common 20- to 30-year lease, the community (unknowingly) may give up more than half the revenue it would otherwise have realized from the rent.

Another example is the trap of tying the initial rent to the "prevailing" rent paid in the area. That sounds reasonable, but most leases, for both towers and antennas attached to other structures, were signed for significantly less rent than the landlord could have obtained, commonly as much as two-thirds less. In such instances, if all the rents in the area are based on the prevailing amount at the time the first leases were signed, by definition that base amount never changes, not unlike with rent-controlled apartments.

When the State Prohibits Requiring the Use of the Community's Property

Some states, such as North Carolina, prohibit communities from requiring outright that their property be the number one location priority. However, there are almost always multiple owners of the PROW in a community (e.g., the municipality, the county, or the state). Simply requiring that the PROW in general (not just the ones owned by the community) are deemed to be the number one priority should steer clear of state prohibitions against requiring the use of "the community's" property. It then becomes a general land-use issue and is not tied to the ownership of the land.

For a facility proposed to be located outside the PROW, but within a given distance of the PROW, a community could require "clear and convincing" (technical) evidence of the inability to locate in the PROW, perhaps even using a couple of sites instead of just one, and still accommodate the need or goal of the carrier and likely provide even better service. Thus, there would be no "prohibition" of the provision of service vis-à-vis federal law. Conversely, if the community does not want new facilities to be located in the PROW, the PROW can be placed further down in the list of siting priorities, perhaps even last.

CONCLUSION

The rise in applications for wireless facilities in public rights-of-way is a classic NIMBY situation, but in this case it's one that actually has solutions. Often, communities can create win-win situations without giving up rights or regulatory control. Permitting can be done so that carriers can get what they need technically, but with a minimum of public controversy and with minimal visual intrusion and impact on property values.

The industry tries to get planning staff and local officials to believe that if they have the type of regulations they really need and should have, it will discourage and slow down deployment by the industry. But history has shown this to not to be factually accurate. One need only compare the situation in communities that have strict regulations crafted with an in-depth knowledge of the industry and the law to the situation in communities with minimal or even no regulation. Arguably, some of the best wireless service in the nation is found in communities with strict regulations.

Officials, staff, and attorneys should never make assumptions, unless they know for a fact that their assumptions are correct. We recommend that communities consult an expert (who has no ties with the industry) and discuss with that person their objectives and the several options they have to achieve their policy goals.

Remember, the industry largely sees part of its job as being to avoid regulations and is constantly looking for ways around—or inherent legal problems with—regulations, whether the regulations are federal, state, or local. That doesn't necessarily make them bad actors, though. They're simply not charged with protecting the public interest as are local officials.

It's up to local officials to see that they and their staff know, or have access to, an expert who knows how to assure that both the public and the public interest are protected.

ASK THE AUTHORS

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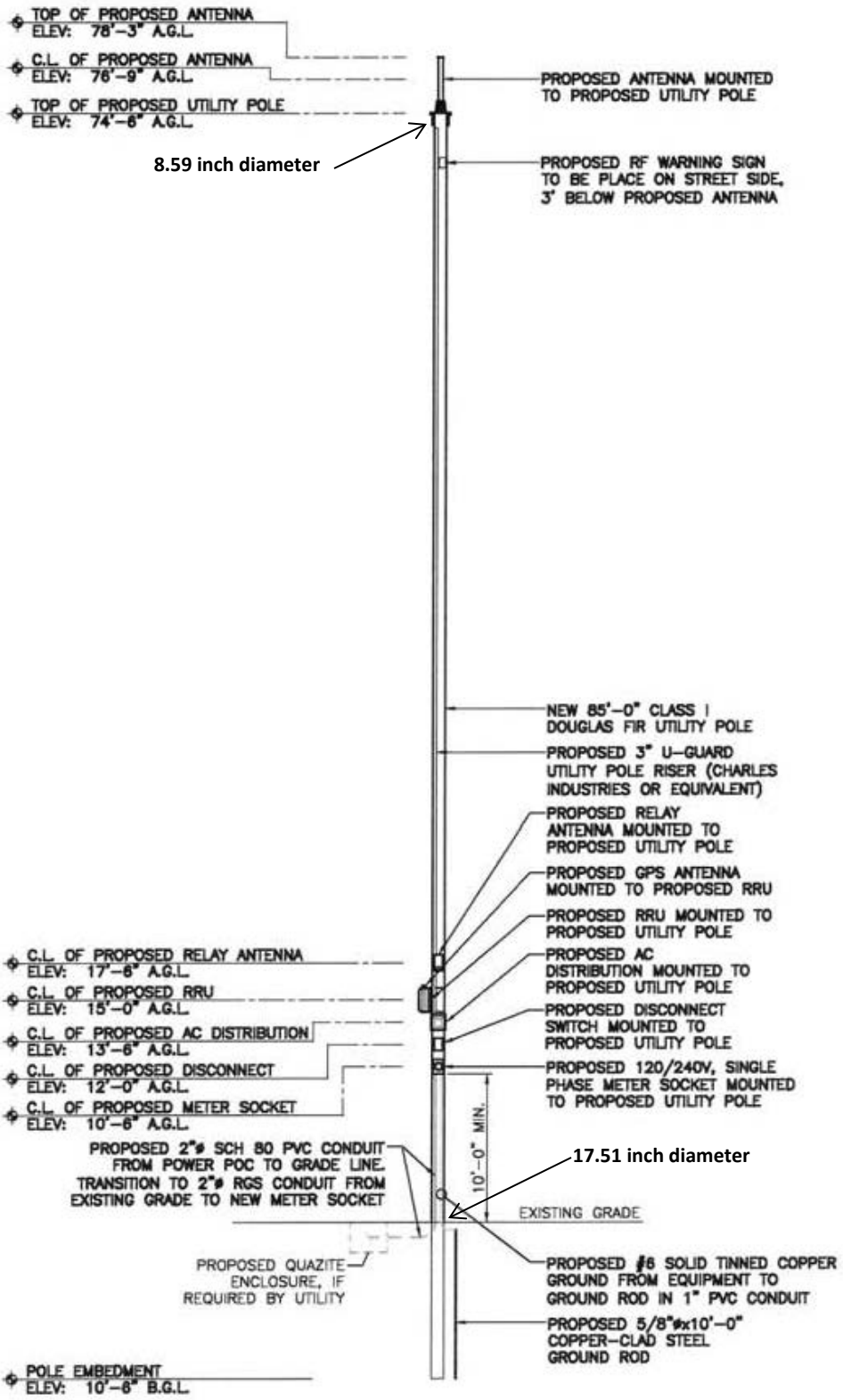
IS YOUR COMMUNITY READY FOR WIRELESS FACILITIES IN PUBLIC RIGHTS-OF-WAY?

11

EXHIBIT B - CELL TOWER MONOPOLE INSTALLATION



LEGEND

★ Proposed cell tower sites

EXHIBIT C

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