

AN ORDINANCE AMENDING THE WHEATON CITY  
CODE BY ADDING CHAPTER 68. TELECOMMUNICATIONS

Chapter 68

**TELECOMMUNICATIONS**

**ARTICLE I. IN GENERAL**

**Sec. 68-1. Purpose.**

- (a) establish a local policy concerning telecommunications providers and services;
- (b) establish clear local guidelines, standards and time frames for the exercise of local authority with respect to the regulation of telecommunications providers and services;
- (c) promote competition in telecommunications;
- (d) minimize unnecessary local regulation of telecommunications providers and services;
- (e) encourage the provision of advanced and competitive telecommunications services on the widest possible basis to the businesses, institutions and residents of the City;
- (f) permit and manage reasonable access to the public ways of the City for telecommunications purposes on a competitively neutral basis;
- (g) conserve the limited physical capacity of the public ways held in public trust by the City;
- (h) assure that the City's current and ongoing costs of granting and regulating private access to and use of the public ways are fully paid by the persons seeking such access and causing such costs;
- (i) secure fair and reasonable compensation to the City and the residents of the City for permitting private use of the public ways;
- (j) assure that all telecommunications carriers providing facilities or services within the City comply with the ordinances, rules and regulations of the City;
- (k) assure that the City can continue to fairly and responsibly protect the public health, safety and welfare; and

(l) enable the City to discharge its public trust consistent with rapidly evolving federal and state regulatory policies, industry competition and technological development.

**Sec. 68-2. Definitions.**

For the purpose of this Chapter, and the interpretation and enforcement thereof, the following words and phrases shall have the following meanings, unless the context of the sentence in which they are used shall indicate otherwise:

***Affiliate*** means a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with another person.

***Annual gross revenue*** ... reserved.

***Cable Act*** shall mean the Cable Communications Policy Act of 1984, 47 U.S.C. §532, *et seq.*, as now and hereafter amended.

***Cable operator*** means a telecommunications carrier providing or offering to provide "cable service" within the City as that term is defined in the Cable Act.

***Cable service*** for the purpose of this Chapter shall have the same meaning provided by the Cable Act.

***City*** means the City of Wheaton.

***City property*** means and includes all real property owned by the City, other than public streets and utility easements as those terms are defined herein, and all property held in a proprietary capacity by the City, which are not subject to right-of-way licensing and franchising as provided in this Chapter.

***Corporate Authorities*** means the Mayor and City Council of the City.

***Excess capacity*** means the volume or capacity in any existing or future duct, conduit, manhole, handhole or other utility facility within the public way that is or will be available for use for additional telecommunications facilities.

***FCC or Federal Communications Commission*** means the Federal administrative agency, or lawful successor, authorized to regulate and oversee telecommunications carriers, services and providers on a national level.

***ICC or Illinois Commerce Commission*** means the State administrative agency, or lawful successor, authorized to regulate and oversee telecommunications carriers, services and providers in the State of Illinois.

*Other ways* means the highways, streets, alleys, utility easements or other rights-of-way within the City, but under the jurisdiction and control of a governmental entity other than the City.

*Overhead facilities* means utility poles, utility facilities and telecommunications facilities located above the surface of the ground, including the underground supports and foundations for such facilities.

*Person* means and includes corporations, companies, associations, joint stock companies or associations, firms, partnerships, limited liability companies and individuals and includes their lessors, trustees and receivers.

*Public street* means any highway, street, alley or other public right of way for motor vehicle travel under the jurisdiction and control of the City which has been acquired, established, dedicated or devoted to highway purposes not inconsistent with telecommunications facilities.

*Public way* means and includes all public streets and utility easements, as those terms are defined herein, now or hereafter owned by the City, but only to the extent of the City's right, title, interest or authority to grant a license or franchise to occupy and use such streets and easements for telecommunications facilities.

*Self provider* shall mean any company, institution, or person which provides telecommunications service to itself, its affiliates, or members between buildings under common ownership or control.

*State* means the State of Illinois.

*Surplus space* means that portion of the usable space on a utility pole which has the necessary clearance from other pole users, as required by the orders and regulations of the Illinois Commerce Commission, to allow its use by a telecommunications carrier for a pole attachment.

*Telecommunications carrier* means and includes every person that directly or indirectly owns, controls, operates or manages plant, equipment or property within the City, used or to be used for the purpose of offering telecommunications service.

*Telecommunications facilities* means the plant, equipment and property, including but not limited to, cables, wires, conduits, ducts, pedestals, antennae, electronics and other appurtenances used or to be used to transmit, receive, distribute, provide or offer telecommunications services.

*Telecommunications provider* means and includes every person who provides telecommunications service over telecommunications facilities without any ownership or management control of the facilities.

*Telecommunications service* means the providing or offering for rent, sale or lease, or in

exchange for other value received, of the transmittal of voice, data, image, graphic and video programming information between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite or similar facilities, with or without benefit of any closed transmission medium.

***Telecommunications system*** See ***Telecommunications facilities***.

***Underground facilities*** means utility and telecommunications facilities located under the surface of the ground, excluding the underground foundations or supports for Overhead Facilities.

***Usable space*** means the total distance between the top of a utility pole and the lowest possible attachment point that provides the minimum allowable vertical clearance as specified in the orders and regulations of the Illinois Commerce Commission.

***Utility easement*** means any easement owned by the City and acquired, established, dedicated or devoted for public utility purposes not inconsistent with telecommunications facilities.

***Utility facilities*** means the plant, equipment and property, including but not limited to the poles, pipes, mains, conduits, ducts, cables, wires, plant and equipment located under, on or above the surface of the ground within the public ways of the City and used or to be used for the purpose of providing utility or telecommunications services.

**Sec. 68-3. Registration.**

Except as otherwise provided herein, all telecommunications carriers and providers engaged in the business of transmitting, supplying or furnishing of telecommunications originating or terminating in the City shall register with the City pursuant to Article II of this Chapter.

**Sec. 68-4. Telecommunications License.**

Except as otherwise provided therein, any telecommunications carriers who desire to construct, install, operate, maintain, or otherwise locate telecommunications facilities in, under, over or across any public way of the City for the sole purpose of providing telecommunications service to persons and areas outside the City shall first obtain a license granting the use of such public ways from the City pursuant to Article III of this Chapter.

**Sec. 68-5. Telecommunications Franchise.**

Except as otherwise provided herein, any telecommunications carriers who desire to construct, install, operate, maintain or otherwise locate telecommunications facilities in, under, over or across any public way of the City, and to also provide telecommunications service to persons or areas in the City, shall first obtain a franchise granting the use of such public ways from the City pursuant to Article IV of this Chapter.

**Sec. 68-6. Cable Television Franchise.**

Except as otherwise provided herein, any telecommunications carrier who desires to construct, install, operate, maintain or locate telecommunications facilities in any public way of the City for the purpose of providing cable service to persons in the City shall first obtain a cable franchise from the City as provided in Article V of this Chapter.

**Sec. 68-7. Application to Existing Franchise Ordinances and Agreements.**

This Chapter shall have no effect on any existing franchise ordinance or franchise agreement until:

- (a) the expiration of said franchise ordinance or agreement;
- (b) an amendment to an unexpired franchise ordinance or franchise agreement, unless both parties agree to defer full compliance to a specific date not later than the present expiration date.

**Sec. 68-8. Penalties.**

Any person found guilty of violating, disobeying, omitting, neglecting or refusing to comply with any of the provisions of this Chapter may have their license or franchise suspended or revoked and/or shall be fined not less than One Hundred Dollars (\$100.00) nor more than Seven Hundred and Fifty Dollars (\$750.00) for each offense after a hearing before the corporate authorities as required by Section 68-82 of this Chapter. A separate and distinct offense shall be deemed committed each day on which a violation occurs or continues.

**Sec. 68-9. Other Remedies.**

Nothing in this ordinance shall be construed as limiting any judicial remedies that the City may have, at law or in equity, for enforcement of this Chapter.

**Sec. 68-10. Severability.**

If any section, subsection, sentence, clause, phrase, or other portion of this Chapter, or its application to any person, is, for any reason, declared invalid, in whole or in part by any court or agency of competent jurisdiction, said decision shall not affect the validity of the remaining portions hereof.

## **ARTICLE II. REGISTRATION OF TELECOMMUNICATIONS CARRIERS AND PROVIDERS**

### **Sec. 68-11. Registration Required.**

All telecommunications carriers and providers that offer or provide any telecommunications service for a fee directly to the public, either within the City, or outside the corporate limits from telecommunications facilities within the City, and all self providers shall register with the City pursuant to this Article on forms to be provided by the City Clerk, which shall include the following:

- (a) The identity and legal status of the registrant, including any affiliates.
- (b) The name, address and telephone number of the officer, agent or employee responsible for the accuracy of the registration statement.
- (c) A description of registrant's existing or proposed telecommunications facilities within the City.
- (d) A description of the telecommunications service that the registrant intends to offer or provide, or is currently offering or providing, to persons, firms, businesses or institutions within the City.
- (e) Information sufficient to determine whether the registrant is subject to public way licensing or franchising under this Chapter.
- (f) Information sufficient to determine whether the transmission, origination or receipt of the telecommunications services provided or to be provided by the registrant constitutes an occupation or privilege subject to any municipal telecommunications tax, utility message tax or other occupation tax imposed by the City.
- (g) Information sufficient to determine that the applicant has applied for and received any certificate of authority required by the Illinois Commerce Commission to provide telecommunications services or facilities within the City.
- (h) Information sufficient to determine that the applicant has applied for and received any construction permit, operating license or other approvals required by the Federal Communications Commission to provide telecommunications services or facilities within the City.
- (i) Such other information as the City Manager may reasonably require.

### **Sec. 68-12. Registration Fee**

Each application for registration as a telecommunications carrier or provider shall be accompanied by a fee of Twenty-Five Dollars (\$25.00).

### **Sec. 68-13. Purpose of Registration.**

The purpose of registration under this Article II is to:

- (a) provide the City with accurate and current information concerning the telecommunications carriers and providers who offer or provide telecommunications services within the City, or that own or operate telecommunication facilities within the City;
- (b) assist the City in enforcement of this Chapter;
- (c) assist the City in the collection and enforcement of any municipal taxes, franchise fees, license fees or charges that may be due the City; and
- (d) assist the City in monitoring compliance with local, State and Federal laws.

## **ARTICLE III. TELECOMMUNICATIONS LICENSE**

### **Sec. 68-14. Telecommunications License.**

A telecommunications license shall be required of any self provider who desires to occupy specific public ways of the City, and any telecommunications carrier who desires to occupy specific public ways of the City for the sole purpose of providing telecommunications services to persons or areas outside the City.

### **Sec. 68-15. License Application.**

Any person that desires a telecommunications license pursuant to this Article III shall file an application with the City on forms to be provided by the City Clerk, which shall include the following information:

- (a) The identity of the license applicant, including all affiliates of the applicant.
- (b) A description of the telecommunications services that are or will be offered or provided by licensee over its telecommunications facilities.
- (c) A description of the transmission medium that will be used by the licensee to offer or provide such telecommunications services.

(d) Preliminary engineering plans, specifications and a network map of the facilities to be located within the City, all in sufficient detail to identify:

- (1) the location and route requested for applicant's proposed telecommunications facilities.
- (2) the location of all overhead and underground public utility, telecommunication, cable, water, sewer drainage and other facilities in the public way along the proposed route.
- (3) the location(s), if any, for interconnection with the telecommunications facilities of other telecommunications carriers.
- (4) the specific trees, structures, improvements, facilities and obstructions, if any, that applicant proposes to temporarily or permanently remove or relocate.

(e) If applicant is proposing to install overhead facilities, evidence that surplus space is available for locating its telecommunications facilities on existing utility poles along the proposed route.

(f) If applicant is proposing an underground installation in existing ducts or conduits within the public ways, information in sufficient detail to identify:

- (1) the excess capacity currently available in such ducts or conduits before installation of applicant's telecommunications facilities;
- (2) the excess capacity, if any, that will exist in such ducts or conduits after installation of applicant's telecommunications facilities.

(g) If applicant is proposing an underground installation within new ducts or conduits to be constructed within the public ways:

- (1) the location proposed for the new ducts or conduits;
- (2) the excess capacity that will exist in such ducts or conduits after installation of applicant's telecommunications facilities.

(h) A preliminary construction schedule and completion date.

(i) A preliminary traffic control plan in accordance with the IDOT Manual on Uniform Traffic Control Devices.

(j) Financial statements prepared in accordance with generally accepted accounting

principles demonstrating the applicant's financial ability to construct, operate, maintain, relocate and remove the facilities.

- (k) Information in sufficient detail to establish the applicant's technical qualifications, experience and expertise regarding the telecommunications facilities and services described in the application.
- (l) Information to establish that the applicant has obtained all other governmental approvals and permits to construct and operate the facilities and to offer or provide the telecommunications services.
- (m) All fees, deposits or charges required pursuant to Article VI of this Chapter.
- (n) Such other and further information as may be required by the City Manager.

**Sec. 68-16. Determination by the City.**

Within sixty (60) days after receiving a complete application under Section 68-15 hereof, the corporate authorities shall issue a written determination granting or denying the application in whole or in part, applying the following standards. If the application is denied, the written determination shall include the reasons for denial.

- (a) The financial and technical ability of the applicant.
- (b) The legal ability of the applicant.
- (c) The capacity of the public ways to accommodate the applicant's proposed facilities.
- (d) The capacity of the public ways to accommodate additional utility and telecommunications facilities if the license is granted.
- (e) The damage or disruption, if any, of public or private facilities, improvements, service, travel or landscaping if the license is granted.
- (f) The public interest in minimizing the cost and disruption of construction within the public ways.
- (g) The service that applicant will provide to the community and region.
- (h) The effect, if any, on public health, safety and welfare if the license is granted.
- (i) The availability of alternate routes and/or locations for the proposed facilities.

- (j) Applicable federal and state telecommunications laws, regulations and policies.
- (k) Such other factors as may demonstrate that the grant to use the public ways will serve the community interest.

**Sec. 68-17. Agreement.**

No license granted hereunder shall be effective until the applicant and the City have executed a written agreement setting forth the particular terms and provisions under which the license to occupy and use public ways of the City will be granted.

**Sec. 68-18. Nonexclusive Grant.**

No license granted under this Article shall confer any exclusive right, privilege, license or franchise to occupy or use the public ways of the City for delivery of telecommunications services or any other purposes.

**Sec. 68-19. Rights Granted.**

No license granted under this Article shall convey any right, title or interest in the public ways, but shall be deemed a license only to use and occupy the public ways for the limited purposes and term stated in the grant. Further, no license shall be construed as any warranty of title.

**Sec. 68-20. Term of Grant.**

Unless otherwise specified in a license agreement, a telecommunications license granted hereunder shall be in effect for a term of five (5) years.

**Sec. 68-21. License Route.**

A telecommunications license granted under this Article shall be limited to a grant of specific public ways and defined portions thereof.

**Sec. 68-22. Location of Facilities.**

Unless otherwise specified in a license agreement, all facilities shall be constructed, installed and located in accordance with the following terms and conditions:

- (a) Telecommunications facilities shall be installed within an existing underground duct or conduit whenever excess capacity exists within such utility facility.
- (b) A licensee with permission to install overhead facilities shall install its telecommunications facilities on pole attachments to existing utility poles only, and then only if surplus space is available.

- (c) Whenever any existing electric utilities, cable facilities or telecommunications facilities are located underground within a public way of the City, a licensee with permission to occupy the same public way must also locate its telecommunications facilities underground.
- (d) Whenever any new or existing electric utilities, cable facilities or telecommunications facilities are located or relocated underground within a public way of the City, a grantee that currently occupies the same public way shall relocate its facilities underground, at its sole expense within eighteen (18) months, which in no event shall be later than the end of the grant term. Such relocation shall be made concurrently to minimize the disruption of the public ways.
- (e) Whenever new telecommunications facilities will exhaust the capacity of a public street or utility easement to reasonably accommodate future telecommunications carriers or facilities, the grantee shall provide additional ducts, conduits, manholes and other facilities for nondiscriminatory access to future telecommunications carriers.

**Sec. 68-23. Construction Permits.**

All licensees are required to obtain construction permits for telecommunications facilities as required in Article VII of this Chapter provided, however, that nothing in this Article shall prohibit the City and a licensee from agreeing to alternative plan review, permit and construction procedures in a license agreement, provided such alternative procedures provide substantially equivalent safeguards for responsible construction practices.

**Sec. 68-24. Compensation to City.**

Each license granted under this Article is subject to the City's right, which is expressly reserved, to annually fix a fair and reasonable compensation to be paid for the property rights granted to the licensee; provided, nothing in this Article shall prohibit the City and a licensee from agreeing to the compensation to be paid.

**Sec. 68-25. Service to City Users.**

A licensee may be permitted to offer or provide telecommunications services to persons or areas within the City upon submitting an application for approval pursuant to Article IV hereof.

**Sec. 68-26. Amendment of Grant.**

- (a) A new license application and grant shall be required of any telecommunications carrier that desires to extend or locate its telecommunications facilities in public ways of the City which are not included in a license previously granted under this Chapter

- (b) If ordered by the City to locate or relocate its telecommunications facilities in public ways not included in a previously granted license, the City shall grant a license amendment without further application.

**Sec. 68-27. Renewal Applications.**

A grantee that desires to renew its license under this Article shall, not more than 150 days nor less than 60 days before expiration of the current license, file an application with the City for renewal of its license which shall include the following information:

- (a) The information required pursuant to Section 68-15 of this Article.
- (b) Any information required pursuant to the license agreement between the City and the grantee.

**Sec. 68-28. Renewal Determinations.**

Within 60 days after receiving a complete application under Section 68-27 hereof, the corporate authorities shall issue a written determination granting or denying the renewal application in whole or in part, applying the following standards. If the renewal application is denied, the written determination shall include the reasons for non-renewal.

- (a) The financial and technical ability of the applicant.
- (b) The legal ability of the applicant.
- (c) The continuing capacity of the public ways to accommodate the applicant's existing facilities.
- (d) The applicant's compliance with the requirements of this Chapter and the license agreement.
- (e) Applicable federal, state and local telecommunications laws, rules and policies.
- (f) Such other factors as may demonstrate that the continued grant to use the public ways will serve the community interest.

**Sec. 68-29. Obligation to Cure As a Condition of Renewal.**

No license shall be renewed until any ongoing violations or defaults in the licensee's performance of the license agreement, or of the requirements of this Chapter, have been cured, or a plan detailing the corrective action to be taken by the grantee has been approved by the City Manager.

## ARTICLE IV. TELECOMMUNICATIONS FRANCHISE

### Sec. 68-30. Telecommunications Franchise.

A telecommunications franchise shall be required of any telecommunications carrier who desires to occupy public ways of the City and to provide telecommunications services to any person or area in the City.

### Sec. 68-31. Franchise Application.

Any person that desires a telecommunications franchise pursuant to this Article IV shall file an application with the City on forms provided by the City Clerk which shall include the following information:

- (a) The identity of the franchise applicant, including all affiliates of the applicant.
- (b) A description of the telecommunications services that are or will be offered or provided by the franchise applicant over its existing or proposed facilities.
- (c) A description of the transmission medium that will be used by the franchisee to offer or provide such telecommunications services.
- (d) Preliminary engineering plans, specifications and a network map of the facilities to be located within the City, all in sufficient detail to identify:
  - (1) the location and route requested for applicant's proposed telecommunications facilities.
  - (2) the location of all overhead and underground public utility, telecommunication, cable, water, sewer drainage and other facilities in the public way along the proposed route.
  - (3) the location(s), if any, for interconnection with the telecommunications facilities of other telecommunications carriers.
  - (4) the specific trees, structures, improvements, facilities and obstructions, if any, that applicant proposes to temporarily or permanently remove or relocate.
- (e) If applicant is proposing to install overhead facilities, evidence that surplus space is available for locating its telecommunications facilities on existing utility poles along the proposed route.
- (f) If applicant is proposing an underground installation in existing ducts or conduits

within the public ways, information in sufficient detail to identify:

- (1) the excess capacity currently available in such ducts or conduits before installation of applicant's telecommunications facilities;
- (2) the excess capacity, if any, that will exist in such ducts or conduits after installation of applicant's telecommunications facilities.

(g) If applicant is proposing an underground installation within new ducts or conduits to be constructed within the public ways:

- (1) the location proposed for the new ducts or conduits;
- (2) the excess capacity that will exist in such ducts or conduits after installation of applicant's telecommunications facilities.

(h) A preliminary construction schedule and completion dates.

(i) Preliminary traffic control plan in accordance with the Illinois Department of Transportation Manual of Uniform Traffic Control Devices.

(j) Financial statements prepared in accordance with generally accepted accounting principles demonstrating the applicant's financial ability to construct, operate, maintain, relocate and remove the facilities.

(k) Information in sufficient detail to establish the applicant's technical qualifications, experience and expertise regarding the telecommunications facilities and services described in the application.

(l) Information to establish that the applicant has obtained all other governmental approvals and permits to construct and operate the facilities and to offer or provide the telecommunications services.

(m) Whether the applicant intends to provide cable service, video dialtone service or other video programming service, and sufficient information to determine whether such service is subject to cable franchising.

(n) An accurate map showing the location of any existing telecommunications facilities in the City that applicant intends to use or lease.

(o) A description of the services or facilities that the applicant will offer or make available to the City and other public, educational and governmental institutions.

(p) A description of applicant's access and line extension policies.



- (q) The area or areas of the City the applicant desires to serve and a schedule for build-out to the entire franchise area.
- (r) All fees, deposits or charges required pursuant to Article VI of this Chapter.
- (s) Such other and further information as may be requested by the City Manager.

**Sec. 68-32. Determination by the City.**

Within ninety (90) days after receiving a complete application under Section 68-31 hereof, the corporate authorities shall issue a written determination granting or denying the application in whole or in part, applying the following standards. If the application is denied, the written determination shall include the reasons for denial.

- (a) The financial and technical ability of the applicant.
- (b) The legal ability of the applicant
- (c) The capacity of the public ways to accommodate the applicant's proposed facilities.
- (d) The capacity of the public ways to accommodate additional utility and telecommunications facilities if the franchise is granted.
- (e) The damage or disruption, if any, of public or private facilities, improvements, service, travel or landscaping if the franchise is granted.
- (f) The public interest in minimizing the cost and disruption of construction within the public ways.
- (g) The service that applicant will provide to the community and region.
- (h) The effect, if any, on public health, safety and welfare if the franchise requested is granted.
- (i) The availability of alternate routes and/or locations for the proposed facilities.
- (j) Applicable federal and state telecommunications laws, regulations and policies.
- (k) Such other factors as may demonstrate that the grant to use the public ways will serve the community interest.

**Sec. 68-33. Agreement.**

No franchise shall be granted hereunder unless the applicant and the City have executed a written agreement setting forth the particular terms and provisions under which the franchise to occupy and use public ways of the City will be granted.

**Sec. 68-34. Nonexclusive Grant.**

No franchise granted under this Article shall confer any exclusive right, privilege, license or franchise to occupy or use the public ways of the City for delivery of telecommunications services or any other purposes.

**Sec. 68-35. Term of Grant.**

Unless otherwise specified in a franchise agreement, a telecommunications franchise granted hereunder shall be valid for a term of ten (10) years.

**Sec. 68-36. Rights Granted.**

No franchise granted under this Article shall convey any right, title or interest in the public ways, but shall be deemed a franchise only to use and occupy the public ways for the limited purposes and term stated in the grant. Further, no franchise shall be construed as any warranty of title.

**Sec. 68-37. Franchise Territory.**

A telecommunications franchise granted under this Article shall be limited to the specific geographic area of the City to be served by the franchise grantee, and the specific public ways necessary to serve such areas.

**Sec. 68-38. Location of Facilities.**

Unless otherwise specified in a franchise agreement, all facilities shall be constructed, installed and located in accordance with the following terms and conditions:

- (a) Telecommunications facilities shall be installed within an existing underground duct or conduit whenever excess capacity exists within such utility facility.
- (b) A franchisee with permission to install overhead facilities shall install its telecommunications facilities on pole attachments to existing utility poles only, and then only if surplus space is available.
- (c) Whenever any existing electric utilities, cable facilities or telecommunications facilities are located underground within a public way of the City, a franchisee

with permission to occupy the same public way must also locate its telecommunications facilities underground.

- (d) Whenever any new or existing electric utilities, cable facilities or telecommunications facilities are located or relocated underground within a public way of the City, a grantee that currently occupies the same public way shall relocate its facilities underground at its sole expense within eighteen (18) months, which in no event shall be later than the end of the grant term. Such relocation shall be made concurrently to minimize the disruption of the public ways.
- (e) Whenever new telecommunications facilities will exhaust the capacity of a public street or utility easement to reasonably accommodate future telecommunications carriers or facilities, the grantee shall provide additional ducts, conduits, manholes and other facilities for nondiscriminatory access to future carriers.

#### **Sec. 68-39. Construction Permits.**

All franchisees are required to obtain construction permits for telecommunications facilities as required in Article VII of this Chapter provided, however, that nothing in this Article shall prohibit the City and a franchisee from agreeing to alternative plan review, permit and construction procedures in a franchise agreement, provided such alternative procedures provide substantially equivalent safeguards for responsible construction practices.

#### **Sec. 68-40. Compensation to City.**

Each franchise granted under this Article is subject to the City's right, which is expressly reserved, to annually fix a fair and reasonable compensation to be paid for the property rights granted to the franchisee; provided, nothing in this Article shall prohibit the City and a franchisee from agreeing to the compensation to be paid.

#### **Sec. 68-41. Nondiscrimination.**

A franchisee shall make its telecommunications services available to any customer within its franchise area who shall request such service, without discrimination as to the terms, conditions, rates or charges for grantee's services; provided, however, that nothing in this Article shall prohibit a franchisee from making any reasonable classifications among differently situated customers.

#### **Sec. 68-42. Service to the City.**

A franchisee shall make its telecommunications services available to the City at its most favorable rate for similarly situated users, unless otherwise provided in a license or franchise agreement.

**Sec. 68-43. Amendment of Grant.**

- (a) A new franchise application and grant shall be required of any telecommunications carrier that desires to extend its franchise territory or to locate its telecommunications facilities in public ways of the City which are not included in a franchise previously granted under this Chapter.
- (b) If ordered by the City to locate or relocate its telecommunications facilities in public ways not included in a previously granted franchise, the City shall grant a franchise amendment without further application.

**Sec. 68-44. Renewal Applications.**

A grantee that desires to renew its franchise under this Article shall, not more than 240 days nor less than 150 days before expiration of the current franchise, file an application with the City for renewal of its franchise which shall include the following information:

- (a) The information required pursuant to Section 68-31 of this Article.
- (b) Any information required pursuant to the franchise agreement between the City and the grantee.

**Sec. 68-45. Renewal Determinations.**

Within 150 days after receiving a complete application under Section 68-44 hereof, the corporate authorities shall issue a written determination granting or denying the renewal application in whole or in part, applying the following standards. If the renewal application is denied, the written determination shall include the reasons for non-renewal.

- (a) The financial and technical ability of the applicant.
- (b) The legal ability of the applicant.
- (c) The continuing capacity of the public ways to accommodate the applicant's existing facilities.
- (d) The applicant's compliance with the requirements of this Chapter and the franchise agreement.
- (e) Applicable federal, state and local telecommunications laws, rules and policies.
- (f) Such other factors as may demonstrate that the continued grant to use the public ways will serve the community interest.

**Sec. 68-46. Obligation to Cure As a Condition of Renewal.**

No franchise shall be renewed until any ongoing violations or defaults in the grantee's performance of the franchise agreement, or of the requirements of this Chapter, have been cured, or a plan detailing the corrective action to be taken by the grantee has been approved by the City.

**ARTICLE V. CABLE FRANCHISE**

- Reserved -

**ARTICLE VI. FEES AND COMPENSATION****Sec. 68-47. Purpose.**

It is the purpose of this Article to provide for the payment and recovery of all direct and indirect costs and expenses of the City related to the enforcement and administration of this Chapter.

**Sec. 68-48. Application Review Fee.**

- (a) Any applicant for a license or franchise pursuant to Articles III or IV of this Chapter shall pay a fee of One Thousand Dollars (\$1,000.00).
- (b) The Application Review Fee shall be deposited with the City as part of the application filed pursuant to Article III or Article IV of this Chapter.
- (c) An applicant whose license or franchise application has been withdrawn or abandoned shall, within one hundred and twenty (120) days of its application, be refunded the balance of its deposit under this section, less:
  - (1) Two Hundred Fifty Dollars (\$250.00); and
  - (2) All ascertainable costs and expenses incurred by the City in connection with the application.

**Sec. 68-49. Other City Costs.**

All license or franchise grantees shall, within thirty (30) days after written demand therefor, reimburse the City for all direct and indirect costs and expenses incurred by the City in connection with any modification, amendment, renewal or transfer of the license or franchise or

any license or franchise agreement.

**Sec. 68-50. Reserved Compensation for Public Ways.**

The City reserves its right to annually fix a fair and reasonable compensation to be paid for the property rights granted to a telecommunications license or franchise grantee. Nothing in this Article shall prohibit the City and a grantee from agreeing to the compensation to be paid for the granted property rights.

**Sec. 68-51. Compensation for City Property.**

If the right is granted, by lease, license, franchise or other manner, to use and occupy City Property for the installation of telecommunications facilities, the compensation to be paid shall be fixed by the City.

**Sec. 68-52. Review of Construction Plans and Observation of Construction Fee.**

Prior to issuance of a construction permit, the permittee shall pay a permit fee equal to two percent (2%) of the estimated cost of constructing the telecommunication facilities, as certified by the applicant's engineer and approved by the City Engineer.

**Sec. 68-53. Annual Fees.**

Unless otherwise agreed in a license or franchise grant agreement, each license or franchise grantee shall pay an annual license fee to the City equal to Ten Dollars (\$10.00) per mile of public ways occupied by applicant and certified by applicant's professional engineer as reimbursement for the City's costs in connection with reviewing, inspecting and supervising the use and occupancy of the public ways in behalf of the public and existing or future users.

**Sec. 68-54. Cable Fees.**

Cable television franchisees shall be subject to the franchise fees, payments and costs provided in Article V of this Chapter.

**Sec. 68-55. Regulatory Fees and Compensation Not a Tax.**

The regulatory fees and costs provided for in this Article, and any compensation charged and paid for the public ways provided for in Section 68-50 of this Chapter, are separate from, and additional to, any and all federal, state, local and city taxes as may be levied, imposed or due from a telecommunications carrier or provider, its customers or subscribers, or on account of the lease, sale, delivery or transmission of telecommunications services.

## ARTICLE VII. CONDITIONS OF GRANT

### Sec. 68-56. Location of Facilities.

All facilities shall be constructed, installed and located in accordance with the following terms and conditions, unless otherwise specified in a license or franchise agreement:

- (a) A grantee shall install its telecommunications facilities within an existing underground duct or conduit whenever excess capacity exists within such utility facility.
- (b) A grantee with permission to install overhead facilities shall install its telecommunications facilities on pole attachments to existing utility poles only, and then only if surplus space is available.
- (c) Whenever any existing electric utilities, cable facilities or telecommunications facilities are located underground within a public way of the City, a grantee with permission to occupy the same public way must also locate its telecommunications facilities underground.
- (d) Whenever any new or existing electric utilities, cable facilities or telecommunications facilities are located or relocated underground within a public way of the City, a grantee that currently occupies the same public way shall relocate its facilities underground at its sole expense within eighteen (18) months, which in no event shall not be later than the end of the grant term. Such relocation shall be made concurrently to minimize the disruption of the public ways.
- (e) A grantee will relocate its overhead telecommunication facilities in or on public ways and public property in the City, by placing the telecommunication facilities underground, or rerouting them, if necessary, if so requested by the City. The overhead telecommunication facilities to be placed underground or relocated shall not exceed 500 feet annually. Scheduling of the requested work to be performed will be in accordance with the grantee's normal work scheduling practices. The number of feet available to be undergrounded or rerouted in any one year which are not utilized, may be carried forward for utilization in future years.
- (f) Whenever new telecommunications facilities will exhaust the capacity of a public street or utility easement to reasonably accommodate future telecommunications carriers or facilities, the grantee shall provide additional ducts, conduits, manholes and other facilities for nondiscriminatory access to future carriers.

### **Sec. 68-57. Compliance with J.U.L.I.E.**

All license or franchise grantees shall, before commencing any construction in the public ways, comply with all regulations of J.U.L.I.E.

- (a) All grantees shall, either directly or through another company from which it leases or subleases telecommunication equipment or facilities, become a member of J.U.L.I.E. or its successors.

### **Sec. 68-58. Construction Permits.**

All license or franchise grantees are required to obtain construction permits for telecommunications facilities as required in Article VIII of this Chapter. However, nothing in this Article shall prohibit the City and a grantee from agreeing to alternative plan review, permit and construction procedures in a license or franchise agreement, provided such alternative procedures provide substantially equivalent safeguards for responsible construction practices.

### **Sec. 68-59. Interference with the Public Ways.**

No license or franchise grantee may locate or maintain its telecommunications facilities so as to interfere with the use of the public ways by the City, by the general public or by other persons authorized to use or be present in or upon the public ways. All such facilities shall be moved by the grantee, temporarily or permanently, as determined by the City Engineer.

### **Sec. 68-60. Damage to Property.**

No license or franchise grantee nor any person acting on a grantee's behalf shall take any action or permit any action to be done which may impair or damage any City Property, public ways of the City, Other Ways or other property located in, on or adjacent thereto.

### **Sec. 68-61. Notice of Work.**

Unless otherwise provided in a license or franchise agreement, no license or franchise grantee, nor any person acting on the grantee's behalf, shall commence any non-emergency work in or about the Public Ways of the City or Other Ways without ten (10) working days advance notice to the City Engineer.

### **Sec. 68-62. Repair and Emergency Work.**

In the event of an unexpected repair or emergency, a grantee may commence such repair and emergency response work as required under the circumstances, provided the Grantee shall notify the City Engineer as promptly as possible, before such repair or emergency work or as soon thereafter as possible if advance notice is not practicable.

**Sec. 68-63. Maintenance of Facilities.**

Each license or franchise grantee shall maintain its facilities in good and safe condition and in a manner that complies with all applicable federal, state and local requirements.

**Sec. 68-64. Relocation or Removal of Facilities.**

Within thirty (30) days following written notice from the City, a license or franchise grantee shall, at its own expense, temporarily or permanently remove, relocate, change or alter the position of any telecommunications facilities within the public ways whenever the corporate authorities shall have determined that such removal, relocation, change or alteration is reasonably necessary for:

- (a) The construction, repair, maintenance or installation of any City or other public improvement in or upon the public ways.
- (b) The operations of the City or other governmental entity in or upon the public ways.

**Sec. 68-65. Removal of Unauthorized Facilities.**

Within thirty (30) days following written notice from the City, any grantee, telecommunications carrier, or other person that owns, controls or maintains any unauthorized telecommunications system, facility or related appurtenances within the public ways of the City shall, at its own expense, remove such facilities or appurtenances from the public ways of the City. A telecommunications system or facility is unauthorized and subject to removal in the following circumstances:

- (a) Upon expiration or termination of the grantee's telecommunications license or franchise.
- (b) Upon abandonment of a facility within the public ways of the City.
- (c) If the system or facility was constructed or installed without the prior grant of a telecommunications license or franchise.
- (d) If the system or facility was constructed or installed without the prior issuance of a required construction permit.
- (e) If the system or facility was constructed or installed at a location not permitted by the grantee's telecommunications license or franchise.

**Sec. 68-66. Emergency Removal or Relocation of Facilities.**

The City retains the right and privilege to cut or move any telecommunications facilities located within the public ways of the City, as the City may determine to be necessary, appropriate or useful in response to any public health or safety emergency.

**Sec. 68-67. Damage to Grantee's Facilities.**

Unless directly and proximately caused by the wilful, intentional or malicious acts by the City, the City shall not be liable for any damage to or loss of any telecommunications facility within the public ways of the City as a result of or in connection with any public works, public improvements, construction, excavation, grading, filling, or work of any kind in the public ways by or on behalf of the City.

**Sec. 68-68. Restoration of Public Ways, Other Ways and City Property.**

- (a) When a license or franchise grantee, or any person acting on its behalf, does any work in or affecting any Public Ways, Other Ways or City Property, it shall, at its own expense, promptly remove any obstructions therefrom and restore such ways or property to as good a condition as existed before the work was undertaken, unless otherwise directed by the City.
- (b) If weather or other conditions do not permit the complete restoration required by this Section, the grantee shall temporarily restore as directed by the City Engineer the affected ways or property. Such temporary restoration shall be at the grantee's sole expense and the grantee shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration.
- (c) A grantee or other person acting in its behalf shall use suitable barricades, flags, flagmen, lights, flares and other measures as required for the safety of all members of the general public and to prevent injury or damage to any person, vehicle or property by reason of such work in or affecting such ways or property.

**Sec. 68-69. Facilities Maps.**

Each license or franchise grantee shall provide the City with an accurate map or maps certifying the location of all telecommunications facilities within the public ways. Each grantee shall provide updated maps annually. Should the City hereafter institute a unified computerized utility mapping system, the grantee shall participate in providing all necessary information; including such mapping system information maintained by the grantee in an electronic format.

**Sec. 68-70. Duty to Provide Information.**

Within ten (10) days of a written request from the City Manager, each license or franchise grantee shall furnish the City with information sufficient to demonstrate:

- (a) That grantee has complied with all requirements of this Chapter.
- (b) That all municipal sales, message and/or telecommunications taxes due the City in connection with the telecommunications services and facilities provided by the grantee have been properly collected and paid by the grantee.
- (c) All books, records, maps and other documents, maintained by the grantee with respect to its facilities within the public ways shall be made available for inspection by the City at reasonable times and intervals.

**Sec. 68-71. Leased Capacity.**

A license or franchise grantee shall have the right, without prior City approval, to offer or provide capacity or bandwidth to its customers; provided:

- (a) Grantee shall furnish the City with a copy of any such lease or agreement.
- (b) The customer or lessee has complied, to the extent applicable, with the requirements of this Chapter.

**Sec. 68-72. Grantee Insurance.**

Unless otherwise provided in a license or franchise agreement, each grantee shall, as a condition of the grant, secure and maintain the following liability insurance policies insuring both the grantee and the City, and its elected and appointed officers, officials, agents and employees as coinsureds:

- (a) Comprehensive general liability insurance with limits not less than
  - (1) Five Million Dollars (\$5,000,000) for bodily injury or death to each person;
  - (2) Five Million Dollars (\$5,000,000) for property damage resulting from any one accident; and,
  - (3) Five Million Dollars (\$5,000,000) for all other types of liability
- (b) Automobile liability for owned, non-owned and hired vehicles with a limit of

Three Million Dollars (\$3,000,000) for each person and Three Million Dollars (\$3,000,000) for each accident.

- (c) Worker's compensation within statutory limits and employer's liability insurance with limits of not less than One Million Dollars (\$1,000,000).
- (d) Comprehensive form premises-operations, explosions and collapse hazard, underground hazard and products completed hazard with limits of not less than Three Million Dollars (\$3,000,000).
- (e) The liability insurance policies required by this section shall be maintained by the grantee throughout the term of the telecommunications license or franchise, and such other period of time during which the grantee is operating without a franchise or license hereunder, or is engaged in the removal of its telecommunications facilities. Each such insurance policy shall contain the following endorsement:

"It is hereby understood and agreed that this policy may not be cancelled nor the intention not to renew be stated until 90 days after receipt by the City, by registered mail, of a written notice addressed to the City Manager of such intent to cancel or not to renew."
- (f) Within sixty (60) days after receipt by the City of said notice, and in no event later than thirty (30) days prior to said cancellation, the grantee shall obtain and furnish to the City replacement insurance policies meeting the requirements of this Section.

#### **Sec. 68-73. General Indemnification.**

Each license or franchise agreement shall include, to the extent permitted by law, grantee's express undertaking to defend, indemnify and hold the City and its officers, employees, agents and representatives harmless from and against any and all 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 grantee or its affiliates, officers, employees, agents, contractors or subcontractors in the construction, operation, maintenance, repair or removal of its telecommunications facilities, and in providing or offering telecommunications services over the facilities or network, whether such acts or omissions are authorized, allowed or prohibited by this Chapter or by a grant agreement made or entered into pursuant to this Chapter.

#### **Sec. 68-74. Performance and Construction Surety.**

Before a license or franchise granted pursuant to this Chapter is effective, and as necessary thereafter, the grantee shall provide and deposit such monies, bonds, letters of credit or other

instruments in form and substance acceptable to the City as may be required by this Chapter or by an applicable license or franchise agreement.

**Sec. 68-75. Cash Deposit.**

Each grantee shall establish a permanent cash deposit with the City by depositing the amount of \$50,000 with the City in which such deposit shall be maintained at the sole expense of grantee so long as any of grantee's telecommunications facilities are located within the public ways of the City.

- (a) The fund shall serve as security for the full and complete performance of this Chapter, including any costs, expenses, damages or loss the City pays or incurs because of any failure attributable to the grantee to comply with the codes, ordinances, rule, regulations or permits of the City.
- (b) Before any sums are withdrawn from the security fund, the City shall give written notice to the grantee:
  - (1) describing the act, default or failure to be remedied, or the damages, cost or expenses which the City has incurred by reason of grantee's act or default; and providing an opportunity to review the described act, default or failure with the City Manager or his designee;
  - (2) providing a ten (10) day period for grantee to first remedy the existing or ongoing default or failure, if applicable;
  - (3) providing ten (10) days upon receipt of notice for grantee to pay any monies due the City before the City withdraws the amount thereof from the security fund, if applicable;
  - (4) Grantees shall replenish the security fund within fourteen (14) days after written notice from the City that there is a deficiency in the amount of the fund.

**Sec. 68-76. Construction and Completion Bond.**

Unless otherwise provided in a license or franchise agreement, a performance bond written by a corporate surety acceptable to the City equal to at least 100% of the estimated cost of constructing grantee's telecommunications facilities within the public ways of the City shall be deposited before construction is commenced.

- (a) The construction bond shall remain in force until sixty (60) days after substantial completion of the work, as determined by the City Engineer, including restoration

of public ways and other property affected by the construction.

- (b) The construction bond shall guarantee, to the satisfaction of the City:
  - (1) timely completion of construction;
  - (2) construction in compliance with applicable plans, permits, technical codes and standards;
  - (3) proper location of the facilities as specified by the City;
  - (4) restoration of the public ways and other property affected by the construction;
  - (5) the submission of "as-built" drawings after completion of the work as required by this Chapter;
  - (6) timely payment and satisfaction of all claims, demands or liens for labor, material or services provided in connection with the work.

**Sec. 68-77. Coordination of Construction Activities.**

All grantees are required to cooperate with the City and with each other.

- (a) By February 1 of each year, grantees shall provide the City with a schedule of their proposed construction activities in, around or that may affect the public ways.
- (b) Each grantee shall meet with the City, other grantees and users of the public ways annually or as determined by the City to schedule and coordinate construction in the public ways.
- (c) All construction locations, activities and schedules shall be coordinated, as ordered by the City Engineer, to minimize public inconvenience, disruption or damages.
- (d) Each grantee shall adjust to depth, line, and/or grade at its sole expense all appurtenances related to their telecommunication system in the street or public way at the time the street or public way rehabilitation, repair or reconstruction occurs.

**Sec. 68-78. Transfer and Assignment.**

Except in the event of the merger, consolidation or reorganization of the grantee, the grantee shall not have the right to assign its rights and privileges under this chapter or to otherwise transfer it in any manner whatsoever without the prior written approval of the City, pursuant to an

ordinance enacted by corporate authorities. In the event of a transfer or assignment of the grantee's rights and privileges under this chapter, all provisions of this chapter which are obligatory upon or which inure to the benefit of, the grantee shall also be obligatory upon and shall inure to the benefit of any and all successor and assigns of the grantee.

**Sec. 68-79. Transactions Affecting Control of Grant.**

Any transactions which singularly or collectively result in a change of ten percent (10%) or more of the ownership or working control of the grantee, of the ownership or working control of a telecommunications license or franchise, of the ownership or working control of affiliated entities having ownership or working control of the grantee or of a telecommunications system, or of control of the capacity or bandwidth of grantee's telecommunication system, facilities or substantial parts thereof, shall be considered an assignment or transfer requiring City approval pursuant to Section 68-78 hereof. Transactions between affiliated entities are not exempt from City approval.

**Sec. 68-80. Revocation or Termination of Grant.**

A license or franchise granted by the City to use or occupy public ways of the City may be revoked for the following reasons:

- (a) Construction or operation in the City or in the public ways of the City without a license or franchise grant of authorization.
- (b) Construction or operation at an unauthorized location.
- (c) Unauthorized substantial transfer of control of the grantee.
- (d) Unauthorized assignment of a license or franchise.
- (e) Unauthorized sale, assignment or transfer of grantee's franchise or license assets, or a substantial interest therein.
- (f) Misrepresentation or lack of candor by or on behalf of a grantee in any application to the City.
- (g) Abandonment of telecommunications facilities in the public ways.
- (h) Failure to relocate or remove facilities as required in this Chapter.
- (i) Failure to pay taxes, compensation, fees or costs when and as due the City.
- (j) Insolvency or bankruptcy of the grantee.

- (k) Violation of material provisions of this Chapter.
- (l) Violation of the material terms of a license or franchise agreement.

**Sec. 68-81. Notice and Duty to Cure.**

In the event that the City Manager believes that grounds exist for revocation of a license or franchise, the City Manager shall give the grantee written notice of the apparent violation or noncompliance, providing a short and concise statement of the nature and general facts of the violation or noncompliance, and providing the grantee a reasonable period of time not exceeding thirty (30) days to furnish evidence:

- (a) That corrective action has been, or is being actively and expeditiously pursued, to remedy the violation or noncompliance.
- (b) That rebuts the alleged violation or noncompliance.
- (c) That it would be in the public interest to impose some penalty or sanction less than revocation.

**Sec. 68-82. Hearing.**

In the event that a grantee fails to provide evidence reasonably satisfactory to the City Manager as provided in Section 68-81 hereof, the City Manager shall refer the apparent violation or noncompliance to the corporate authorities. The corporate authorities shall provide the grantee with notice and a reasonable opportunity to be heard concerning the matter.

**Sec. 68-83. Standards for Revocation or Lesser Sanctions.**

If persuaded that the grantee has violated or failed to comply with material provisions of this Chapter, or of a franchise or license agreement, the corporate authorities shall determine whether to revoke the license or franchise, or to establish some lesser sanction and cure, considering the nature, circumstances, extent and gravity of the violation as reflected by one or more of the following factors:

- (a) Whether the misconduct was egregious.
- (b) Whether substantial harm resulted.
- (c) Whether the violation was intentional.
- (d) Whether there is a history of prior violations of the same or other requirements.
- (e) Whether there is a history of overall compliance.

(f) Whether the violation was voluntarily disclosed, admitted or cured.

Upon the finding of a violation by the corporate authorities penalties shall be imposed in conformance with Section 68-8 of this Chapter.

## ARTICLE VIII. CONSTRUCTION STANDARDS

### Sec. 68-84. General.

No person shall commence or continue with the construction, installation or operation of telecommunications facilities within the City except as provided in this Article.

### Sec. 68-85. Construction Codes.

Telecommunications facilities shall be constructed, installed, operated and maintained in accordance with all applicable federal, state and local codes, rules and regulations including the National Electrical Safety Code.

### Sec. 68-86. Construction Permits.

No person shall construct or install any telecommunications facilities within the City without first obtaining a construction permit therefore, provided, however:

- (a) No permit shall be issued for the construction or installation of telecommunications facilities within the City unless the telecommunications carrier has filed a registration statement with the City pursuant to Article II of this Chapter.
- (b) No permit shall be issued for the construction or installation of telecommunications facilities in the public ways unless the telecommunications carrier has applied for and received a license or franchise pursuant to Articles III, IV or V of this Chapter.
- (c) No permit shall be issued for the construction or installation of telecommunications facilities without payment of the construction permit fee established in Section 68-52 of this Chapter.

### Sec. 68-87. Applications.

Applications for permits to construct telecommunications facilities shall be submitted upon forms to be provided by the City and shall be accompanied by drawings, plans and specifications in sufficient detail to demonstrate:

- (a) That the facilities will be constructed in accordance with all applicable codes, rules

and regulations.

- (b) The location and route of all facilities to be installed on existing utility poles.
- (c) The location and route of all facilities to be located under the surface of the ground, including the line and grade proposed for the burial at all points along the route which are within the public ways.
- (d) The location of all existing underground utilities, conduits, ducts, pipes, mains and installations which are within the public ways along the underground route proposed by the applicant.
- (e) The location of all other facilities to be constructed within the City, but not within the public ways.
- (f) The construction methods to be employed for protection of existing structures, fixtures, and facilities within or adjacent to the public ways.
- (g) The location, dimension and types of all trees within or adjacent to the public ways along the route proposed by the applicant, together with a landscape plan for protecting, trimming, removing, replacing and restoring any trees or areas to be disturbed during construction.

**Sec. 68-88. Engineer's Certification.**

All permit applications shall be accompanied by the certification of an Illinois licensed professional engineer that the drawings, plans and specifications submitted with the application comply with applicable technical codes, rules and regulations.

**Sec. 68-89. Traffic Control Plan.**

All permit applications which involve work on, in, under, across or along any public ways shall be accompanied by a traffic control plan demonstrating the protective measures and devices that will be employed, consistent with Illinois Department of Transportation Manual of Uniform Traffic Control Devices, to prevent injury or damage to persons or property and to minimize disruptions to efficient pedestrian and vehicular traffic.

**Sec. 68-90. Issuance of Permit.**

Within ten (10) days after written approval by the corporate authorities as required by Section 68-16, and submission of all plans and documents required of the applicant and payment of the permit fees required by this Chapter, the City Engineer, if satisfied that the applications, plans and document comply with all requirements of this Chapter, shall issue a permit authorizing construction of the facilities, subject to such further conditions, restrictions or regulations

affecting the time, place and manner of performing the work as the City Engineer may deem necessary or appropriate.

**Sec. 68-91. Construction Schedule.**

The permittee shall submit a written construction schedule to the City Engineer 10 working days before commencing any work in or about the public ways. The permittee shall further notify the City Engineer not less than 2 working days in advance of any excavation or work in the public ways.

**Sec. 68.92. Compliance with Permit.**

All construction practices and activities shall be in accordance with the permit and approved final plans and specifications for the facilities. The City Engineer and designee(s) shall be provided access to the work and such further information as he or she may require to ensure compliance with such requirements.

**Sec. 68-93. Display of Permit.**

The permittee shall maintain a copy of the construction permit and approved plans at the construction site, which shall be displayed and made available for inspection by the City Engineer or his designee at all times when construction work is occurring.

**Sec. 68-94. Survey of Underground Facilities.**

If the construction permit specifies the location of facilities by depth, line, grade, proximity to other facilities or other standard, the permittee shall cause the location of such facilities to be verified by a registered Illinois land surveyor. The permittee shall relocate any facilities which are not located in compliance with permit requirements.

**Sec. 68-95. Noncomplying Work.**

Upon order of the City Engineer, all work which does not comply with the permit, the approved plans and specifications for the work, or the requirements of this Chapter, shall be removed.

**Sec. 68-96. Completion of Construction.**

The permittee shall promptly complete all construction activities so as to minimize disruption of the city ways and other public and private property. All construction work authorized by a permit within city ways, including restoration, must be completed within 120 days of the date of issuance.

**Sec. 68-97. As-Built Drawings.**

Within sixty (60) days after completion of construction, the permittee shall furnish the City with two (2) complete sets of plans, drawn to scale and certified to the City as accurately depicting the location of all telecommunications facilities constructed pursuant to the permit.

**Sec. 68-98. Restoration of Improvements.**

Upon completion of any construction work, the permittee shall promptly repair any and all public property and provide improvements, fixtures, structures and facilities in the public ways or otherwise damaged during the course of construction, restoring the same as nearly as practicable to its condition before the start of construction.

### Sec. 68-99. Landscape Restoration.

- (a) All trees, landscaping and grounds removed, damaged or disturbed as a result of the construction, installation maintenance, repair or replacement of telecommunications facilities, whether such work is done pursuant to a franchise, license, permit replaced or restored as nearly as may be practicable, to the condition existing prior to performance of work.
- (b) All restoration work within the public ways shall be done in accordance with landscape plans approved by the City Engineer.

**Sec. 68-100. Construction Surety.**

Prior to issuance of a construction permit, the permittee shall provide a performance bond, as provided in Section 68-76 of this Chapter.

**Sec. 68-101. Exceptions.**

Unless otherwise provided in a license or franchise agreement, all telecommunications carriers are subject to the requirements of this Article VIII.

**Sec. 68-102. Responsibility of Owner.**

The owner of the facilities to be constructed and, if different, the license or franchise grantee, are responsible for performance of and compliance with all provisions of this Article.

James Carr  
Mayor

ATTEST:

Carolyn M. Cansler-Jago  
City ClerkRoll Call Vote:

Ayes: Councilwoman Davenport  
Mayor Carr  
Councilman Gresk  
Councilwoman Johnson  
Councilman Mork  
Councilwoman Culler

Nays: None

Absent: Councilman Eckhoff

MOTION CARRIED UNANIMOUSLY

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