

ORDINANCE NO. F-1323

CITY OF WHEATON, ILLINOIS

**AN ORDINANCE AMENDING CHAPTER 58 OF THE
WHEATON CITY CODE**

WHEREAS, the City of Wheaton (City) is a home rule unit of local government pursuant to Section 6(a) of Chapter VII of the Illinois Constitution of 1970: and,

WHEREAS, the City finds that regulating the use of public streets and Rights-of-Way pertains to the government and affairs of the City, and is otherwise in the public interest; and,

WHEREAS, in addition to the home rule authority cited above, the City has statutory authority pursuant to Section 11-20-1 et seq. and 11-80-1 et seq. of the Illinois Municipal Code (65 ILCS 11-20-1 et seq., and 11-80-1 et seq.), Section 635/30 et seq. of the Illinois Telecommunications Municipal Infrastructure Maintenance Fee Act (35 ILCS 635/30 et seq.), Section 4 of the Illinois Telephone Company Act (220 ILCS 65/4 et seq.), the Cable and Video Competition Law of 2007 (220 ILCS 5/21-100 et seq.) and the Illinois Highway Code, (605 ILCS 5/1-101 et seq.) to regulate the use of public streets and Rights-of-Way; and,

WHEREAS, this Ordinance establishes generally applicable standards for construction on, over, above along, upon, across, or within public streets and Rights-of-Way, and the use and repair thereof; and,

WHEREAS, the City has considered a variety of standards for construction on, over, above along, upon, across, or within public streets and Rights-of-Way, and the use and repair thereof, including, but not limited to, standards relating to the Accommodation of Utilities on the Right-of-Way of the Illinois State Highway System promulgated by the Illinois Department of Transportation (92 Ill. Adm. Code 530.10 et seq.; and,

WHEREAS, the Mayor and City Council hereby declare that it is in the best interests of the City and its residents, and the users of public streets and Rights-of-Way to establish a comprehensive set of construction standards and requirements to achieve various beneficial goals including but not limited to, enhancing the planning of new Utility Facilities, minimizing interference with, and damage to, public streets, sidewalks, and any other structures or improvements located in, on, over and above public streets and Rights-of-Way, and to regulate the use of public streets and Rights-of-Way, all as provided for in this Ordinance.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and City Council of the City of Wheaton, DuPage County, Illinois, that Chapter 58 "Street, Sidewalks and Other Public Places, of the Wheaton City Code is hereby amended by adding a new Article VIII entitled "Construction of Utility Facilities in the Public Right-of-Way," Sections 58-224 through 246, which shall read as follows:

SECTION ONE:

CHAPTER 58 CONSTRUCTION OF UTILITY FACILITIES IN THE PUBLIC WAYS

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58-224 PURPOSE AND SCOPE

- A. Purpose. The purpose and intent of this Chapter is for the City to exercise its full and complete authority to regulate the Construction of Facilities on public streets and Rights-of-Way within the City's jurisdiction. The regulations set forth in this Chapter are intended to provide a benefit to the public consistent with the preservation of the integrity, safe usage, and visual qualities of said streets and Rights-of-Way, and the City as a whole.
- B. Facilities Subject to this Chapter. This Chapter applies to all Facilities within the "Public Ways" as that term is defined herein, except as otherwise provided in any applicable franchise, license or similar agreement. In no event shall this Chapter apply to the City of Wheaton or utilities owned or operated by the City.
- C. Franchises, Licenses, or Similar Agreements. The City, in its discretion and as limited

by law, may require utilities to enter into a franchise, license or similar agreement for the privilege of locating their Facilities within the City's Public Ways. Utilities that are not required by law to enter into such an agreement may request that the City enter into such an agreement. In such an agreement, the City may provide for terms and conditions inconsistent with this Chapter.

D. Effect of Franchises, Licenses, or Similar Agreements.

Utilities Other Than Telecommunications Retailers, Competitive Cable Service, or Video Service Providers. In the event that a Utility other than a Telecommunications Retailer, Competitive Cable Service, or Video Service Provider has a franchise, license or similar agreement with the City, such franchise, license or similar agreement shall govern and control during the term of such agreement and any lawful renewal or extension thereof to the extent that the franchise, license or similar agreement sets forth standards and conditions pertaining to the use of the Public Ways, or where a clear, consistent and long term course of dealing has been established together during the term of a franchise.

1. Telecommunications Retailers and Competitive Cable Service or Video Service Providers. In the event of any conflict with, or inconsistency between, the provisions of this Chapter and the provisions of any franchise, license or similar agreement between the City and Telecommunications Retailers or Competitive Cable Service or Video Service Providers, or the terms and conditions of a State-issued authorization pursuant to Section 21-401 of the Cable and Video Competition Law of 2007 (220 ILCS 5/21-401), the provisions of the franchise, license or similar shall govern and control during the term of such agreement and any lawful renewal or extension thereof.
2. Notwithstanding anything to the contrary set forth in this Chapter, Telecommunications Retailers and Competitive Cable Service or Video Service Providers as those terms are defined herein, shall be required to obtain a franchise, license, or other similar agreement with the City or a State-issued Authorization.

- E. Conflicts with Other Chapters.** This Chapter supersedes all policies, resolutions, ordinances, or parts thereof adopted prior hereto that are in conflict herewith, to the extent of such conflict.
- F. Conflicts with State and Federal Laws.** In the event that applicable federal or State laws or regulations conflict with the requirements of this Chapter, the requirements of this Chapter shall apply to the maximum extent possible without violating said federal or State laws or regulations.
- G. Sound Engineering Judgment.** The City shall use Sound Engineering Judgment when administering this Chapter and may vary the standards, conditions, and requirements expressed in this Chapter when the City Engineer determines that application of the standards, conditions and requirements set forth herein are substantially impractical and

inconsistent with sound engineering practices. Such variations shall not include variations from the permit prohibitions set forth in 13.22.004(G) of this ordinance. Nothing herein shall be construed to limit the ability of the City to regulate its Public Ways for the protection of the public health, safety and welfare.

58-225 DEFINITIONS

- A. For the purposes of this Chapter, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. Any term not defined in this Section shall have the meaning ascribed to it in 92 Ill. Adm. Code §530.30, the Illinois Municipal Code (65 ILCS 5/1-1-1 et seq.), the Illinois Telecommunications Municipal Infrastructure Maintenance Fee Act (35 ILCS 635/1 et seq.), the Illinois Telephone Company Act (220 ILCS 65/0.01 et seq.), the Cable and Video Competition Law of 2007 (220 ILCS 5/21-100 et seq.) and the Illinois Highway Code, (605 ILCS 5/1-101 et seq.), unless the context clearly requires otherwise. In the event that a term is not defined by this Chapter or the above-cited, said term shall have its common and ordinary meaning.

- B. Definitions:

“AASHTO” means the American Association of State Highway and Transportation Officials.

“Above Ground Service Facility” shall mean a single or clustered group of above ground service structure(s) used by a Telecommunications Retailer, Competitive Cable Service or Video Service Provider, or Utility to provide service to the public which has a volume above ground of greater than twenty four (24) cubic feet, or a linear size in any single above ground dimension of greater than four (4) feet, or a foot print in square feet greater than five percent five (5%) percent of the maximum lot coverage for any contiguous zoning lot, as specified on the application, adjacent to the right of way proposed for installation of a Large Above Ground Service Facility.

“ANSI” means the American National Standards Institute.

“Applicant” means a Person or any other Entity applying for a permit pursuant to this Chapter.

“ASTM” means the American Society for Testing and Materials.

“Backfill” means the methods or materials for replacing excavated material in a Trench or pit.

“Bore” or “Boring” means to excavate an underground cylindrical cavity for the

insertion of a pipe or electrical conductor.

“Cable and Video Competition Law of 2007” means 220 ILCS 5/21-100 et seq., as the same may be amended from time to time.

“Carrier Pipe” means the pipe enclosing the liquid, gas or slurry to be transported.

“Casing” means the structural protective enclosure for transmittal devices such as Carrier Pipes, electrical conductors, and fiber optic devices.

“City” means the City of Wheaton.

“City Engineer” means the City of Wheaton Director of Engineering or his designee.

“City Standards” are any Codes, ordinances or regulations of the City which are applicable to Construction of Utility Facilities in Public Ways.

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

“Coating” means a protective wrapping or mastic cover applied to buried pipe for protection against external corrosion.

“Code” means the Wheaton City Code, unless the context clearly requires otherwise.

“Competitive Cable Service or Video Service Provider” shall have the meaning ascribed thereto by the Cable and Video Competition Law of 2007, Section 5/21-201(h).

“Conductor” means a wire carrying electrical current.

“Conduit” means a Casing or Encasement for wires or cables.

“Construction” or “Construct” means the installation, repair, maintenance, placement, alteration, enlargement, demolition, modification or abandonment of Facilities.

“Cover” means the depth of earth or Backfill over a buried Utility Pipe or Conductor.

“Crossing Facility” means a Facility that crosses one (1) or more Public Ways.

“Disrupt the Public Way” means any work that obstructs the Public Way or causes a

materially adverse effect on the use of the Public Way for its intended use. Such work may include, without limitation, the following: excavating or other cutting; placement (whether temporary or permanent) of materials, Equipment, devices, or structures; damage to vegetation; and compaction or loosening of the soil, but shall not include the parking of vehicles or Equipment in a manner that does not materially obstruct the flow of traffic on a Public Way.

“Emergency” means any immediate maintenance to a Facility required for the safety of the public using, or in the vicinity of, a Public Way, or immediate maintenance required for the health and safety of the general public served by the Utility.

“Encasement” means the provision of a protective Casing.

“Equipment” means the materials, tools, implements, supplies, and/or other items used to facilitate Construction of Facilities.

“Excavation” means any digging or other penetration below existing grades, including, but not limited to, the removal of surface materials to allow the installation of concrete footing or pads.

“Extra Heavy Pipe” means a Pipe meeting ASTM standards for said designation.

“Facility” means all structures, devices, objects, and materials, including but not limited to: tracks and rails, electrical wires and cables, ducts, fiber optic cables, communications and video cables and wires, poles, conduits, grates, covers, pipes, water, sewer and stormwater lines, cables, pavement, pads, and appurtenances thereto, located in the Public Ways.

“Freestanding Facility” means a Facility such as an antenna, transformer, pump, Equipment cabinet, meter station or similar ground-mounted appurtenance. Freestanding Facility shall not include a Crossing Facility or a Parallel Facility.

“Frontage Road” means a Roadway providing access to land adjacent to a Highway, where said land is inaccessible directly from said Highway.

“Hazardous Material” means any substance or material which, due to its quantity, form, concentration, location, or other characteristic, is determined by the City Engineer to pose an unreasonable or imminent risk to the life, health or safety of Persons or property or to the environment, including, but not limited to, explosives, radioactive materials, petroleum or petroleum products or gases, poisons, etiology (biological) agents, flammables, corrosives or any substance determined to be hazardous or toxic under any federal or State law, statute or regulation.

“Highway Code” means the Illinois Highway Code, 605 ILCS 5/1-101 et seq., as amended from time to time.

“Highway” means a Right-of-Way used for vehicular traffic, including rural or urban roads or streets, whether classified as arterial, collector, minor or local. 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 vehicular traffic.

“IDOT” means the Illinois Department of Transportation and its successor agencies.

“ICC” means the Illinois Commerce Commission and its successor agencies.

“Jacking” means pushing a pipe horizontally under a Roadway by mechanical means with or without Boring.

“Jetting” means pushing a pipe through the earth using water under Pressure to create a cavity ahead of the pipe.

“Joint Use” means the use of pole lines, Trenches or other Facilities by two or more Utilities.

“Major Intersection” means the intersection of two or more arterial Highways.

“Occupancy” means the presence of Facilities on, over or under a Public Way.

“Parallel Facility” means a Facility that is generally parallel or longitudinal to the centerline of a Right-of-Way.

“Parkway” means any portion of the Right-of-Way not improved by street or sidewalk.

“Pavement Cut” means the removal of an area of pavement for access to a Facility or for Construction of a Facility.

“Permittee” means the Person or Entity to which a permit has been issued pursuant this Chapter.

“Person” or “Entity” means any natural individual, firm, trust, estate, partnership, association, joint stock company, joint venture, corporation, limited liability company, a unit of local government, or a receiver, trustee, guardian or other representative appointed by order of court, or any other legally recognized organization, whether for-profit or not-for-profit. The City shall not be considered a “Person” or “Entity.”

“Practicable” means that which is performable, feasible or possible, rather than that which is simply convenient.

“Pressure” means the internal force acting radially against the walls of a Carrier Pipe expressed in pounds per square inch gauge (psig).

“Petroleum Products Pipeline” means pipelines carrying crude or refined liquid petroleum products including, but not limited to, gasoline, distillates, propane, butane, or coal-slurry.

“Prompt” means that which is done within a period of time specified by the City. If no time period is specified by the City, the period shall be thirty (30) days.

“Public Entity” means a unit government, whether at the local, state or federal level.

“Public Way” means the surface, the air space above the surface, and the area below the surface of any right of way, road, highway, lane, path, alley, sidewalk, boulevard, drive, bridge, public driveway, Conduit, tunnel, park, Parkway, square, waterway or easement containing, or which is planned to contain, a publicly owned sanitary sewer, stormwater sewer or water line. No reference herein to the Public Way shall be deemed to be a representation or a guarantee by the City that its title or interest in any property is sufficient to permit its use for such purpose, and the Permittee shall, by the use of such term, be deemed to gain only such rights to use property in the City as the City may have the undisputed right and power to give.

“Restoration” means the repair of a Public Way to its original condition, when said Public Way has been disrupted by the Construction of a Facility.

“Right-of-Way” means any road, highway, lane, path, alley, sidewalk, boulevard, drive, bridge, or public driveway.

“Roadway” means that part of the Highway that includes the pavement and Shoulders.

“Sale of Telecommunications at Retail” shall have the meaning prescribed thereto in the Telecommunications Infrastructure Maintenance Fee Act, as may be amended from time to time (35 ILCS 635/10(f)).

“Security Fund” means that amount of security required pursuant to 58-233.

“Shoulder” means the width of Roadway, adjacent to the pavement, providing lateral support to the pavement edge and providing an area for Emergency vehicular stops and storage of snow removed from the pavement.

“Sound Engineering Judgment” means a decision(s) consistent with generally accepted engineering principles, practices and experience.

“State-issued Authorization” means the authorization to offer or provide cable or

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video service from the ICC pursuant to Section 21-401 of the Competitive Cable and Video Competition Law of 2007.

“Telecommunications Retailer” shall have the meaning prescribed thereto in the Telecommunications Infrastructure Maintenance Fee Act, as may be amended from time to time (35 ILCS 635/10(d)).

“Trench” means a relatively narrow open Excavation for the installation of an underground Facility.

“Utility” means any Person or Entity owning or operating any Facility and is also sometimes referred to as a Permittee.

“Vent” means a pipe that allows the dissipation of gases or vapors into the atmosphere from any underground Casing.

“Water Lines” means pipelines carrying raw or potable water.

“Wet Boring” means Boring using water under Pressure at the cutting auger to soften the earth and to provide a sluice for the excavated material.

58-226 ANNUAL REGISTRATION REQUIRED

Every Telecommunications Retailer, Competitive Cable Service, Video Service Provider, and Utility that occupies Public Ways within the City shall, on January 1 of each year, update the City Engineer, in writing, with name, address and regular business telephone and facsimile (fax) numbers, the name of one or more contact Persons who can act on behalf of the Telecommunications Retailer, Competitive Cable Service, Video Service Provider, and Utility in connection with Emergencies involving their Facilities in the Public Way, and a 24-hour telephone number for each such Person, together with evidence of insurance as required in 58-231 of this Chapter, in the form of a certificate of insurance.

58-227 PERMIT REQUIRED; APPLICATION AND FEES

- A. Permit Required. No Person shall Construct any Facility on, over, above, along, upon, under, across, or within any Public Way which: 1. changes the size or location of the Facility; 2. adds a new Facility; 3. Disrupts the Public Way; or 4. materially increases the amount of area or space occupied by the Facility without first filing an application with the City Engineer and obtaining a permit therefor, except as otherwise provided in this Chapter. No permit shall be required for installation and maintenance of service connections to customers' premises where there will be no disruption of the Public Way.
- B. Permit Application. All applications for permits pursuant to this Chapter shall be filed on a form approved by the City and shall be filed in such number of duplicate

copies as the City may designate. The Applicant may designate those portions of its application materials that it reasonably believes contain proprietary or confidential information as "proprietary" or "confidential" by clearly marking each page of such materials accordingly.

C. Minimum General Application Requirements. The application shall be made by the Utility or its duly authorized representative and shall contain, at a minimum, the following:

1. The Utility's name and address and telephone and facsimile (fax) numbers; and,
2. The Applicant's name and address, if different than the Utility, its telephone, facsimile (fax) numbers, e-mail address, and its interest in the work; and,
3. The names, addresses and telephone and facsimile (fax) numbers of all professional consultants, if any, advising the Applicant with respect to the application; and,
4. A description of the proposed work and the purposes and intent of the Facility and the uses to which the Facility will be put. The scope and detail of such description shall be appropriate to the nature and character of the work to be performed, as determined by the City Engineer, with special emphasis on those matters likely to be affected or impacted by the work proposed; and,
5. A written traffic control plan demonstrating the protective measures and devices that will be employed consistent with the Illinois Manual on Uniform Traffic Control Devices, to prevent injury or damage to Persons or property and to minimize disruptions to efficient pedestrian and vehicular traffic; and,
6. An Emergency contingency plan which shall specify the nature of potential Emergencies, including, without limitation, Construction and Hazardous Materials Emergencies and the intended response by the Applicant. The intended response shall include notification to the City and shall promote protection of the safety and convenience of the public. Compliance with ICC regulations for Emergency contingency plans constitutes compliance with this Chapter unless the City finds that additional information or assurances are needed; and,
7. Drawings, plans and specifications showing the work proposed, including sufficient information regarding the types and quantities to be installed, the certification of an engineer that such drawings, plans, and specifications comply with applicable Codes, rules, and regulations; and,
8. Evidence of insurance as required in 58-231 of this Chapter; and,

9. Evidence of posting of the Security Fund as required in 58-231 of this Chapter; and,
 10. Any request for a variance from one or more provisions of this Chapter; and,
 11. Such additional information as may be reasonably required by the City Engineer.
- D. Supplemental Application Requirements for Specific Types of Utilities. In addition to the requirements of Subsection C. of this Section, the permit application shall include the following items as applicable to the specific Utility that is the subject of the permit application:
1. In the case of new electric power, communications or natural gas distribution system installation, evidence that a "Certificate of Public Convenience and Necessity" has been issued by the ICC, that the Applicant is required by law, or has elected, to obtain; and,
 2. In the case of natural gas systems, state the proposed pipe size, design, Construction class and operating Pressures; and,
 3. In the case of Petroleum Products Pipelines, state the type or types of petroleum products, pipe size, maximum working Pressure, and the design standard(s) to be followed; and,
 4. Identification of the zoning district or districts contiguous to the Public Way, in which the Above Ground Service Facility is proposed.
- E. Applicant's Duty to Update Information. Throughout the entire permit application review period and the Construction period authorized by the permit, any change in the information set forth in a permit application shall be updated, in writing, to the City Engineer within thirty (30) days after said change occurs.
- F. Application Fees. Unless otherwise provided by franchise, license, or similar agreement, all applications for permits pursuant to this Chapter shall be accompanied by a fee in the amount of one hundred (\$100.00) dollars as compensation to the City for actual costs incurred in processing said application.
- G. Permit Prohibitions.
1. No Above Ground Service Facility shall be permitted in any Public Way contiguous to and having a physical border with the front yard or the corner side yard of any private property unless the zoning district containing the private property permits the installation of Above Ground Service Facilities in front yards or corner side yards.

2. No portion or part of any Above Ground Mounted Service Facility shall be installed over a potable water line, sanitary sewer line, storm water sewer line, underground natural gas line, or underground electrical conduit unless engineering means are approved by the City Engineer and installed to provide adequate access to the lines for inspection, repairs or emergency access. Any applicant for a permit for an Above Ground Mounted service facility will use reasonable engineering methods to design the location of the Above Ground Mounted Service Facility not less than 5 feet from any existing underground potable waterline, sanitary sewer line, storm water sewer line, underground gas line or underground electrical conduit and so as to minimize the probability that the Above Ground Mounted Service facility will subside or cause soils in the area of the line to collapse if the ground is opened to access the line. Distances of less than 5 feet may be authorized by the City Engineer where he determines that the Above Ground Service Facility has been engineered so as to not create an unreasonable risk of harm to the underground lines.
3. No facility shall be installed underground where there is inadequate space to permit access maintenance and replacement of existing underground utilities or Facilities where the placement of an above ground facility threatens the pedestrian or vehicular safety.
4. Where Above Ground Mounted Service Facilities would require a variation for installation on private property within a zoning district contiguous to a Public Way no Large Above Ground mounted Facility shall be installed within a contiguous Public Way without a variation granted by the Corporate Authorities. This variation shall be considered a major variation to be determined by the Corporate Authorities and shall be subject to all procedural and variation standards set forth in the Wheaton Zoning Ordinance.
5. No variations of the foregoing permit prohibitions may be granted by the City Engineer.

58-228 ACTION ON PERMIT APPLICATIONS

- A. City Review of Permit Applications. Fully completed permit applications shall be examined and rejected or approved by the City Engineer within a reasonable time after the filing thereof but in no event later than any period specified for rejection or approval in an applicable State statute. If the application does not conform to the requirements of all applicable ordinances, Codes, laws, rules, and regulations, the City Engineer shall reject such application as incomplete in writing, stating the reasons therefore. If the City Engineer is satisfied that the application conforms to the requirements of this Chapter and all applicable ordinances, Codes, laws, rules, and regulations, the City Engineer shall issue a permit therefor as soon as Practicable.
- B. Additional City Review of Applications by Telecommunications Retailers and

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Competitive Cable Service or Video Service Providers. Pursuant to the Telephone Company Act (220 ILCS 65/4) or The Cable and Video Competition Law of 2007 (220 ILCS 5/21-100 et seq.), as the case may be, Telecommunication Retailers, Competitive Cable Service or Video Service Providers shall notify the City that it intends to commence work governed by this Chapter for Facilities in relation to the provision of telecommunications, cable or video services. Such notice shall consist of plans, specifications, and other documentation sufficient to demonstrate the purpose and intent of the Facilities and shall be provided by the Telecommunications Retailer, Competitive Cable Service or Video Service Providers to the City not less than ten (10) days prior to the commencement of work requiring no Excavation and not less than thirty-five (35) calendar days prior to the commencement of work requiring Excavation. The City Engineer shall specify the portion of the Public Way upon which the Facility may be placed, used and Constructed. Nothing in this paragraph shall be construed as discrimination against Telecommunications, Competitive Cable Service, or Video Service Providers as prohibited in Section 21-1001(c)(1)-(3) of the Cable and Video Competition Law of 2007 (220 ILCS 5/21-100 et seq.).

58-229 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 City Ordinances to the extent of the City's property rights therein. The permit shall not create a property right or grant authority to the Permittee to impinge upon the rights of others who may have an interest in the Public Ways, including, but not limited to such rights as may exist by virtue of the Illinois Highway Code (605 ILCS 5/9-113).
- B. 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 Code, and all other applicable statutes, laws, ordinances, rules, and regulations.

58-230 REVISED PERMIT DRAWINGS

In the event the actual size, type, material, or location of any Facilities deviate in any material respect from the size, type, material, or location identified in the plans, drawings and specifications submitted with the permit application, the Permittee shall submit a revised set of drawings or plans to the City within thirty (30) days after the completion of the permitted work. The revised drawings or plans shall specifically identify where the locations of the actual Facilities deviate from the locations approved in the permit. This Section shall not be used as a substitute where variations are required by this Chapter. Minor variations may be reviewed and approved by the City Engineer. If the City Engineer deems a variation to be major or material it shall be subject to approval or rejection by the Corporate Authorities of the City. If any such deviation also deviates from the requirements of this Chapter, it shall be treated as a request for a variance in accordance with 58-244 of this Chapter. If the City denies the request for a variance,

then the Permittee shall, within thirty (30) days of said denial, either remove the Facility from the Public Way or modify the Facility so that it conforms to the permit and submit revised drawings or plans therefore. Any reasonable out of pocket costs, including outside engineering fees, attorneys fees, documents preparation fees, court reporters fees, and notice or publication fess incurred by the City as a result of the installation of a facility in violation of this Chapter, and for which no variation is granted, shall be paid to the City prior to the issuance of any other permits to the person or entity violating the Chapter.

58-231 INSURANCE

- A. **Required Coverages and Limits.** Unless otherwise provided by franchise, license, or similar agreement, each Utility occupying Public Way or Constructing any Facility in the Public Way shall secure and maintain the liability insurance policies specified by the City Engineer insuring the Utility as named insured and naming the City and its elected and appointed officers, elected officials, agents, contractors, and employees as additional noncontributory insureds on the policies. The Utility shall provide the City with any and all information necessary to establish coverage including any definitions, limitations or endorsements related to additional insured's. The Utility's insurance shall be primary, and any City policies of insurance shall be deemed non contributory.
- B. **Copies Required.** The Utility shall provide certificates of insurance reflecting the requirements of this Section to the City within ten (10) days following receipt of a written request from the City.
- C. **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, by registered mail or certified mail, return receipt requested, of a written notice addressed to the City Administrator of such intent to cancel or not to renew."

Within ten (10) days after receipt by the City of said notice, and in no event later than ten (10) days prior to said cancellation, the Utility shall obtain and furnish to the City evidence of replacement insurance policies meeting the requirements of this Section. In the event that the Utility fails to obtain or produce evidence of said replacement insurance, any permits issued pursuant to this Chapter shall, without any further notice, be null and void.

- D. **Self-Insurance.** A Utility may self-insure all or a portion of the insurance coverage and limit requirements required by Subsection (A) of this Section. A Utility that self-insures is not required, to the extent of such self-insurance, to comply with the requirement for the naming of additional insureds under Subsection (A) or the requirements of Subsections (B), (C) and (D) of this Section. A Utility that elects to self-insure shall provide to the City evidence sufficient to demonstrate its financial ability to self-insure the insurance coverage and limit required under Subsection (A)

of this Section, such as evidence that the Utility is a "private self-insurer" under the Workers Compensation Act. Self-insurance shall be primary, and any City policies of insurance shall be deemed non contributory.

- E. Effect of Insurance and Self-Insurance on Utility's Liability. The legal liability of the Utility to the City and any Person for any of the matters that are the subject of the insurance policies or self-insurance required by this Section shall not be limited by such insurance policies or self-insurance or by the recovery of any amounts thereunder.

58-232 INDEMNIFICATION

- A. By occupying or Constructing Facilities in the Public Ways, Permittees shall agree to defend, indemnify and hold the City, it Corporate Authorities, officers, officers, employees, agents, contractors, 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 Permittee or its affiliates, officers, employees, agents, contractors or subcontractors in the Construction of Facilities or Occupancy of the Public Ways, and in providing or offering service over the Facilities, whether such acts or omissions are authorized, allowed or prohibited by this Chapter or by a franchise, license, or similar agreement; provided, however, that the Permittee's indemnity obligations hereunder shall not apply to any injuries, claims, demands, judgments, damages, losses or expenses arising out of or resulting from the negligence or misconduct of the City, its officials, officers, employees, agents or representatives.
- B. Where applicable, indemnification of the City shall be in strict accordance with Section 21-1001(f)(8) of the Cable and Video Competition Law of 2007 (220 ILCS 5/21-100 et seq.).

58-233 SECURITY

- A. Purpose. The Permittee shall establish a Security Fund in a form and in an amount as set forth in this Section. The Security Fund shall be continuously maintained in accordance with this Section at the Permittee's sole cost and expense until the completion of the work authorized under the permit. The Security Fund shall serve as security for:
 - 1. The faithful performance by the Permittee of all the requirements of this Chapter; and,
 - 2. Any expenditure, damage, or loss incurred by the City occasioned by the Permittee's failure to comply with any Codes, rules, regulations, orders, permits and other directives of the City issued pursuant to this Chapter; and,
 - 3. The payment by Permittee of all liens and all damages, claims, costs, or expenses that the City may pay or incur by reason of any action or nonperformance by

Permittee in violation of this Chapter including, without limitation, any damage to public property or Restoration work the Permittee is required by this Chapter to perform that the City must perform itself or have completed as a sole consequence of the Permittee's failure to perform or complete, and all other payments due the City from the Permittee pursuant to this Chapter or any other applicable law.

- B. Form. The Permittee shall provide the Security Fund to the City in the form of cash, unconditional letter of credit, or surety bond, in a form acceptable to the City.
- C. Amount. The dollar amount of the Security Fund shall be sufficient to provide for the reasonably estimated cost to restore the Public 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 may also include reasonable, directly related costs that the City estimates are likely to be incurred if the Permittee fails to perform such Restoration. Where the Construction of Facilities proposed under the permit will be performed in phases in multiple locations in the City, with each phase consisting of Construction of Facilities in one location or a related group of locations, and where Construction in another phase will not be undertaken prior to substantial completion of Restoration in the previous phase or phases, the City Engineer may allow the Permittee to post a single amount of security which shall be applicable to each phase of the Construction under the permit. The amount of the Security Fund for phased Construction shall be equal to the greatest amount that would have been required under the provisions of this Subsection (C) for any single phase.
- D. Withdrawals from Security Fund. The City shall provide the Permittee with fourteen (14) days advance written notice stating the reason for, and its intention to, exercise withdrawal rights under this Subsection. Upon such notice, the City may withdraw an amount from the Security Fund, provided that the Permittee has not reimbursed the City for such amount within said 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; or,
 - 2. Fails to pay any liens relating to the Facilities that are due and unpaid; or,
 - 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 nonperformance by the Permittee; or,
 - 4. Fails to comply with any provision of this Chapter that the City determines can be remedied by an expenditure of an amount in the Security Fund.
- E. Replenishment of Security Fund. Within fourteen (14) days after receipt of written notice from the City that any amount has been withdrawn from the Security Fund, the Permittee shall restore the Security Fund to the amount specified in Subsection (C) of this Section.

- F. **Closing and Return of Security Fund.** Upon completion of the work authorized under the permit, the Permittee shall be entitled to the return of the Security Fund, or such portion thereof as remains on deposit, within a reasonable time after account is taken for all offsets necessary to compensate the City for failure by the Permittee to comply with any provisions of this Chapter or other applicable law. In the event of any revocation of the permit, the Security Fund, and any and all accrued interest therein, shall become the property of the City to the extent necessary to cover any reasonable costs, loss or damage incurred by the City as a result of said revocation, provided that any amounts in excess of said costs, loss or damage shall be refunded to the Permittee.
- G. **Rights Not Limited.** The rights reserved to the City with respect to the Security Fund are in addition to all other rights of the City, whether reserved by this Chapter or otherwise authorized by law, and no action, proceeding or exercise of right with respect to said Security Fund shall affect any other right the City may have. Notwithstanding the foregoing, the City shall not be entitled to a double monetary recovery with respect to any of its rights which may be infringed or otherwise violated.

58-234 PERMIT SUSPENSION AND REVOCATION

- A. **Right to Revoke Permit.** The City Engineer may revoke or suspend a permit issued pursuant to this Chapter for one or more of the following reasons:
 - 1. Fraudulent, false, misrepresenting, or materially incomplete statements in the permit application;
 - 2. Non-compliance with this Chapter;
 - 3. Permittee's physical presence or presence of Permittee's Facilities on, over, above, along, upon, under, across, or within the Public Way presents a direct or imminent threat to the public health, safety, or welfare; or
 - 4. Permittee's failure to Construct the Facilities substantially in accordance with the permit and approved plans.
- B. **Notice of Revocation or Suspension.** The City Engineer shall send written notice of its intent to revoke or suspend a permit issued pursuant to this Chapter stating the reason or reasons for the revocation or suspension and the alternatives available to Permittee under this Section.
- C. **Permittee Alternatives upon Receipt of Notice of Revocation or Suspension.** Upon receipt of a written notice of revocation or suspension from the City Engineer, the Permittee shall have the following options:

1. Immediately provide the City with evidence that no cause exists for the revocation or suspension; or,
 2. Immediately correct, to the satisfaction of the City, the deficiencies stated in the written notice, providing written proof of such correction to the City within five (5) working days after the receipt of the written notice of revocation; or,
 3. Immediately remove the Facilities located on, over, above, along, upon, under, across, or within the Public Ways and restore the Public Ways to the satisfaction of the City providing written proof of such removal to the City within ten (10) days after receipt of the written notice of revocation. The City may, in its discretion, extend the time periods provided in this Subsection.
- D. **Stop Work Order.** In addition to the issuance of a notice of revocation or suspension, the City may issue a stop work order immediately upon the discovery of any of the reasons for revocation set forth within Subsection (A) of this Section.
- 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 or a contractor designated by the City 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 non-compliance, deem them abandoned and therefore property of the City. The Permittee shall be liable in all events to the City for all costs of correction, removal or abandonment.

58-235 CHANGE OF OWNERSHIP, OWNER'S IDENTITY, OR LEGAL STATUS

- A. **Notification of Change.** A Utility shall notify the City no less than thirty (30) days prior to the transfer of ownership of any Facility in the Public Way or change in identity of the Utility. The new owner of the Utility or the Facility shall have all the obligations and privileges enjoyed by the former owner under the permit, if any, and all applicable laws, ordinances, rules and regulations, including this Chapter, with respect to the work and Facilities in the Public Way.
- B. **Amended Permit.** A new owner shall request that any current permit be amended to show current ownership. If the new owner fails to have a new or amended permit issued in its name, the new owner shall be presumed to have accepted, and agreed to be bound by, the terms and conditions of the permit if the new owner uses the Facility or allows it to remain on the City's Public Way.
- C. **Insurance and Security Fund.** Insurance and the Security Fund as required herein shall be changed to reflect the name of the new owner no less than thirty (30) days after a change of ownership, identity, or legal status.

58-236 GENERAL CONSTRUCTION STANDARDS

- A. Standards and Principles. All Construction in the Public Way shall be consistent with applicable ordinances and Codes (including but not limited to the Wheaton City Code), laws, rules, regulations, and commonly recognized and accepted traffic control and Construction principles, Sound Engineering Judgment and, where applicable, the principles and standards set forth in the following IDOT publications (excluding indemnification and insurance requirements which shall be governed by the Ordinance,) and Illinois Statutes:
1. IDOT Standard Specifications for Road and Bridge Construction; and,
 2. IDOT Supplemental Specifications and Recurring Special Provisions; and,
 3. Highway Design Manual; and,
 4. IDOT Highway Standards Manual; and,
 5. IDOT Standard Specifications for Traffic Control Items; and,
 6. IDOT Illinois Manual on Uniform Traffic Control Devices (92 Ill. Adm. Code §545); and,
 7. IDOT Flagger's Handbook; and,
 8. IDOT Work Site Protection Manual for Daylight Maintenance Operations; and,
 9. The Illinois Cable and Video Service Competition Law of 2007 (220 ILCS 5/21-101 et seq.).
- B. Interpretation of Standards and Principles. If a discrepancy exists between or among differing standards and principles required by this Chapter, the City Engineer shall determine, in the exercise of Sound Engineering Judgment, which standards or principles apply, and such decision shall be final. If requested, the City Engineer shall state which standard or principle will apply to the Construction, maintenance, or operation of a Facility in the future.

58-237 TRAFFIC CONTROL

- A. Minimum Requirements. The City's minimum requirements for traffic protection are contained in IDOT'S Illinois Manual on Uniform Traffic Control Devices and this Code.

- B. Warning Signs, Protective Devices, and Flaggers. The Utility is responsible for providing and installing warning signs, protective devices and flaggers, when necessary, meeting all applicable federal, state, and local requirements for protection of the public and the Utility's workers when performing any work on the Public Ways.
- C. Interference with Traffic. All work shall be phased so that there is minimum interference with pedestrian and vehicular traffic.
- D. Notice When Access is Blocked. At least forty-eight (48) hours prior to beginning work that will partially or completely block access to any residence, business or institution, the Utility shall notify the resident, business or institution of the approximate beginning time and duration of such work; provided, however, that in cases involving Emergency repairs pursuant to 13.22.020 of this Chapter, the Utility shall provide such notice as is Practicable under the circumstances.
- E. Compliance. The Utility shall take immediate action to correct any deficiencies in traffic protection requirements that are brought to the Utility's attention by the City.

58-238 LOCATION OF FACILITIES

- A. Parallel Facilities Located Within Highways.
 - 1. Underground Parallel Facilities Required except as to "above ground service facilities," or as otherwise provided in State law, unless a variance is otherwise granted, as provided hereinafter, all facilities or installations located in that portion of a Right-of-Way parallel to a Highway after the adoption of this Chapter shall be located underground.
 - 2. Underground Parallel Facilities. An underground parallel Facility may be located within the Right-of-Way lines of a Highway only if:
 - a. The Facility is located as close to the Right-of-Way line as Practicable and not more than eight (8) feet (2.4 m) from, and parallel to, the Right-of-Way line; and,
 - b. A new Facility may be located under the paved portion of a Highway only if other locations are impracticable or inconsistent with Sound Engineering Judgment (e.g., a new cable may be installed in existing Conduit without disrupting the pavement); and,
 - c. In the case of an underground power or communications line, the Facility shall be located as near the Right-of-Way line as Practicable and not more than five(5) feet (1.5 m) from the Right-of-Way line.
 - d. Maintain a 36 inch horizontal and/or 18 inch vertical separation

from any City sanitary sewer, storm water sewer or water line.

B. Facilities Crossing Highways.

1. **Underground Crossing Facilities Required.** Unless a variance is granted, all new installations of Utility Facilities that cross a Highway shall be located underground.
2. **No Future Disruption.** The Construction and design of crossing Facilities installed between the ditch lines or curb lines of City highways may require the incorporation of materials and protections (such as Encasement or additional cover) to avoid settlement or future repairs to the roadbed resulting from the installation of such crossing Facilities.
3. **Culverts or Drainage Facilities.** Crossing Facilities shall not be located in culverts or drainage Facilities.
4. **Ninety (90) Degree Crossing Required.** Crossing Facilities shall cross at or as near to a ninety (90) degree angle to the centerline as Practicable.
5. **Overhead Power or Communication Facility.** If a variance has been granted, an overhead power or communication Facility may cross a Highway only if:
 - a. It has a minimum vertical line clearance as required by the Illinois Commerce Commission's rules entitled, "Construction of Electric Power and Communication Lines" (83 Ill. Adm. Code 305) and the National Electrical Code adopted by the City; and,
 - b. Poles are located within one foot (0.3 m) of the Right-of-Way line of the Highway and outside of the Clear Zone; and,
 - c. Overhead crossings at Major Intersections are avoided.
6. **Underground Power or Communication Facility.** An underground power or communication Facility may cross a Highway only if:
 - a. The design materials and Construction methods will provide maximum maintenance-free service life; and,
 - b. Capacity for the Utility's foreseeable future expansion needs is provided in the initial installation.
7. **Markers.** The City Engineer may require the person or entity to provide a marker at each Right-of-Way line where an underground Facility other than a power or communication Facility crosses a highway. Each marker shall

identify the type of Facility, the Utility, and an emergency phone number. Markers may be eliminated as provided in current Federal regulations. (49 C.F.R. 192.707 (1989)).

C. The City may require that Facilities be located within a particular Public Way.

D. Above Ground Mounted Facilities.

1. All Above Ground Mounted Facility shall be permitted to be installed in conformance with Section 58-227 G (2) of this ordinance.
2. The City Engineer may require any Above Ground Facility located within a Right-of-Way to be screened from view by landscaping or other means acceptable to the City.
3. The City Engineer shall require such other conditions as are appropriate to mitigate the impact upon the Public Way and adjoining properties, including, but not limited to, landscape screening.

E. Appearance Standards.

1. The City may prohibit the installation of Facilities in particular locations in order to preserve the aesthetic character of the surrounding area.
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 user of the Public Way or impair the aesthetic quality of the lands being traversed.

F. Facility Attachments to Bridges or Roadway Structures.

1. Facilities may be installed as attachments to bridges or Roadway structures only where the Utility has demonstrated that all other means of accommodating the Facility are not Practicable. Other means shall include, but are not limited to, underground, underwater, independent poles, cable supports and tower supports, all of which are completely separated from the bridge or Roadway structure. Facilities transmitting commodities that are volatile, flammable, corrosive, or energized, especially those under significant Pressure, or have a potential or present high degrees of risk, are not permitted.
2. A Permittee shall include in its request to accommodate a Facility installation on a bridge or Roadway structure supporting data demonstrating the impracticability of alternate routing. Approval or disapproval of an application for Facility attachment to a bridge or Roadway structure will be based upon the following considerations:

- a. The type, volume, Pressure or voltage of the commodity to be transmitted and an evaluation of the resulting risk to Persons and property in the event of damage to or failure of the Facility; and,
- b. The type, length value, and relative importance of the structure to the transportation system; and,
- c. The alternative routings available to the Utility and the relative practicability thereof; and,
- d. The proposed method of attachment; and,
- e. The ability of the structure to bear the increased load of the proposed Facility; and,
- f. The degree of interference with the maintenance, including but not limited to painting of the structure; and,
- g. The effect on the visual quality of the bridge or roadway structure; and,
- h. The public benefit expected from the Utility service as compared to the risk involved.

58-239 CONSTRUCTION METHODS AND MATERIALS

A. Standards and Requirements for Particular Types of Construction Methods.

1. Boring or Jacking.

- a. **Pits and Shoring.** Boring or Jacking under Rights-of-Way shall be accomplished from pits located at a minimum distance from the edge of the pavement as specified by the City Engineer. Pits for Boring or Jacking shall be excavated no more than forty-eight (48) hours in advance of Boring or Jacking operations, and backfilled within forty-eight (48) hours after Boring or Jacking operations are completed. While pits are open, they shall be clearly marked and protected by barricades. Shoring shall be designed, erected, supported, braced, and maintained so that it will safely support all vertical and lateral loads that may be imposed upon it during the Boring or Jacking operation.
- b. **Wet Boring or Jetting.** Wet Boring or Jetting shall not be permitted under any Public Way.
- c. **Borings with Diameters Greater than Six (6) Inches.** Borings over six (6) inches (0.15m) in diameter shall be accomplished with an auger and following pipe, and the diameter of the auger shall not exceed

the outside diameter of the following pipe by more than one (1) inch.

- d. Borings with Diameters Six (6) Inches or Less. Borings of six (6) inches or less in diameter may be accomplished by either Jacking, guided with auger or auger and following pipe method.
 - e. Tree Preservation. Any Facility located within the drip line of any tree shall be Bored under or around the root system.
2. Trenching. Trenching for Facility installation, repair, or maintenance on Public Ways shall be done in accordance with all applicable provisions Section 603 of IDOT'S "Standard Specifications for Road and Bridge Construction" or with City Standards, whichever standards are more restrictive.
- a. Length. The length of open Trench shall be kept to the Practicable minimum consistent with requirements for pipeline testing. Only one-half of any intersection may have an open Trench at any time unless special permission is obtained from the City Engineer.
 - b. Open Trench and Excavated Material. Open Trench and excavated material shall be protected as required by the Illinois Manual on Uniform Traffic Control Devices. Where Practicable, the excavated material shall be deposited between the Roadway and the Trench as added protection. Excavated material shall not be allowed to remain on the paved portion of the Right-of-Way. Where it is impossible to keep excavated material off of the Right-of-Way, said material shall be hauled to an off-road location.
 - c. The Permittee shall not Trench within the drip line of any tree designated by the City to be preserved.
3. Backfilling.
- a. Any pit, Trench, or Excavation created during the installation of Facilities shall be backfilled for its full width, depth, and length using methods and materials in accordance with IDOT'S "Standard Specifications for Road and Bridge Construction" or with City Standards, whichever standards are more restrictive. When excavated material is hauled away or is unsuitable for Backfill, suitable granular Backfill as determined by the City Engineer shall be used.
 - b. For a period of four (4) years from the date that the Permit is issues, the Permittee shall be responsible to remove and restore any backfilled area that has settled due to Construction of the Facility. If so ordered by the City Engineer, the Permittee, at its expense, shall remove any pavement

and Backfill material to the top of the installed Facility, place and properly compact new Backfill material, and restore new pavement, sidewalk, curbs, and driveways to the proper grades, as determined by the City Engineer.

4. **Pavement Cuts.** Pavement cuts for Facility installation or repair shall be permitted on a Highway only if:
 - a. Required by Sound Engineering Judgment, as determined by the City Engineer; and,
 - b. Appropriate traffic control measures are approved by the City Engineer.
5. If a variance to the limitations set forth in this Section is permitted under 58-244, the following requirements shall apply:
 - a. Any Excavation under pavements shall be backfilled as soon as Practicable with granular material of CA-6 or CA-10 gradation, as designated by the Director of Public Works; and,
 - b. Restoration of pavement shall be accomplished as soon as Practicable and temporary repair with bituminous mixture shall be provided immediately. Any subsequent failure of either the temporary repair or the Restoration shall be rebuilt upon notification by the City; and,
 - c. All pavement saw cuts shall be full depth; and,
 - d. For all Rights-of-Way which have been reconstructed in the last seven (7) years, or resurfaced in the last five (5) years, permits shall not be issued unless such work is determined to be an Emergency repair or other work considered necessary and unforeseen before the time of the reconstruction
6. **Encasement.**
 - a. Casing pipe shall be designed to withstand the load of the Highway and any other superimposed loads. The Casing shall be continuous either by one (1) piece fabrication or by welding or jointed installation in a manner approved by the City Engineer.
 - b. The Venting, if any, of any Encasement shall extend within one foot (0.3m) of the Right-of-Way line. No above-ground Vent pipes shall be located in the area established as Clear Zone for that particular section of the highway.

- c. In the case of gas pipelines of 60 psig or less, Encasement may be eliminated.
- d. In the case of gas pipelines or Petroleum Products Pipelines with installations of more than 60 psig, Encasement may be eliminated only if: (1) Extra Heavy Pipe is used that precludes future maintenance or repair; and, (2) cathodic protection of the pipe is provided.
- e. If Encasement is eliminated for a gas or Petroleum Products Pipeline, the Facility shall be located so as to provide that Construction does not Disrupt the Public Way.

7. Minimum Cover of Underground Facilities.

- a. Cover shall be provided and maintained at least in the amount specified in the following table for minimum Cover for the type of Facility:

TYPE OF FACILITY	MINIMUM COVER
Power or Communication Line (in General)	30 inches (0.8 m)
Communication Line Installed by the Plowed Method	24 inches (0.6 m)
Gas or Petroleum Products	30 inches (0.8 m)

B. Standards and Requirements for Particular Types of Facilities.

1. Electric Power or Communication Facilities.

- a. Code Compliance. Electric power or communications Facilities within Public Ways shall be Constructed, operated, and maintained in conformity with the provisions of 83 Ill.Adm.Code 305 (formerly General Order 160 of the ICC) entitled "Rules for Construction of Electric Power and Communications Lines," the National Electric code as adopted by the City of Wheaton,
- b. Overhead Facilities. If overhead Facilities have been permitted by the City pursuant to 58-238, the overhead power or communication Facilities shall use single pole Construction and, where Practicable, Joint Use of poles shall be used. Utilities shall make every reasonable effort to design the installation so guy wires and braces will not be needed. Variances may be allowed if there is no feasible alternative

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and guy wires are equipped with guy guards for maximum visibility.

- c. Underground Facilities. (1) Cable may be installed by Trenching or plowing, provided that special consideration is given to Boring in order to minimize damage when crossing improved entrances and side roads. (2) If a crossing is installed by Boring or Jacking, Encasement shall be provided between pits. Encasement may be eliminated only if: (a) the crossing is installed by the use of "moles," "whip augers," or other approved method which compress the earth to make the opening for cable installation; or (b) the installation is by the open Trench method which is only permitted prior to Roadway Construction. (3) Cable shall be grounded in accordance with the National Electrical Code.

2. Underground Facilities Other than Electric Power or Communication Lines. Underground Facilities other than electric power or communication lines may be installed by:

- a. The use of "moles," "whip augers," or other approved methods which compress the earth to move the opening for the pipe; or,
- b. Jacking or Boring with Vented Encasement provided between the ditch lines or toes of slopes of the highway; or,
- c. Open Trench with Vented Encasement between ultimate ditch lines or toes of slopes, but only if prior to Roadway Construction; or,
- d. Tunneling with Vented Encasement, but only if installation is not possible by other means.

3. Gas Transmission, Distribution and Service. Gas pipelines within Public Ways shall be Constructed, maintained, and operated in a City approved manner and in conformance with the Federal Code of the Office of Pipeline Safety Operations, Department of Transportation, Part 192 - Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards (49 C.F.R. 192), IDOT'S "Standard Specifications for Road and Bridge Construction," and all other applicable laws, rules, and regulations.

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

5. Appurtenances. Above ground appurtenances to overhead or underground Facilities, shall be provided with a vegetation-free area extending one foot (305 mm) in width beyond the appurtenance in all directions. The vegetation-free area

may be provided by an extension of the mounting pad, approved by the City Engineer. With the approval of the City Engineer, shrubbery surrounding the appurtenance may be used in place of a vegetation-free area. The housing for ground mounted appurtenances shall be painted a natural color so as to blend with the surroundings.

C. Materials.

1. General Standards. The materials used in Constructing Facilities within Public Ways shall be those meeting the accepted standards of the appropriate industry, the applicable portions of IDOT'S "Standards Specifications for Road and Bridge Construction" and City Standards, the requirements of the ICC, or the standards established by other official regulatory agencies for the appropriate industry.
2. Material Storage on Right-of-Way. All pipe, Conduit, wire, poles, cross arms, or other materials shall be distributed along the Right-of-Way prior to and during installation in a manner to minimize hazards to the public or an obstacle to right-of-way maintenance or damage to the Right-of-Way and other property. If material is to be stored on Right-of-Way, prior approval must be obtained from the City. No materials may be stored for more than fifteen (15) days without approval of the City Engineer or his designee. No materials may be stored in a floodway or floodplain.
3. Hazardous Materials. The plans submitted by the Utility to the City shall identify any Hazardous Materials that may be involved in the Construction of the new Facilities or removal of any existing Facilities.

D. Operational Restrictions.

1. Construction operations on Public Ways may, at the discretion of the City, be required to be discontinued when such operations would create hazards to traffic or the public health safety, and welfare. Such operations may also be required to be discontinued or restricted when conditions are such that Construction would result in extensive damage to the Public Way or other property.
2. These restrictions may be waived by the City Engineer when Emergency work is required to restore Utility services.
3. Unless otherwise permitted by the City, the hours of Construction shall be between 7:00 a.m. and 7:00 p.m.

E. Location of Existing Facilities. Any Utility proposing to Construct Facilities in the City shall contact J.U.L.I.E. and ascertain the presence and location of existing aboveground and underground Facilities within the Public Ways to be occupied by its proposed Facilities. The City will make its permit records available to a Utility

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for the purpose of assisting in the identification of possible Facilities. The permit records information shall not be considered a warranty of the accuracy of the information provided. When notified of an Excavation or when requested by the City or by J.U.L.I.E., a Utility shall locate and physically mark its underground Facilities within 48 hours, excluding weekends and holidays, in accordance with the Illinois Underground Facilities Damage Prevention Act (Section 220 ILCS 50/1 et seq.)

58-240 VEGETATION CONTROL

- A. Tree Trimming Permit Required. Notwithstanding any other provision to the contrary of this Municipal Code, tree trimming shall not be considered a normal maintenance operation, but shall require the application for, and the issuance of, a permit, in addition to any other permit required under this Chapter.
1. Application for Tree Trimming Permit. Applications for tree trimming permits shall include assurance that the work will be accomplished by competent workers with supervision who are experienced in accepted tree pruning practices. Tree trimming permits shall designate an expiration date in the interest of assuring that the work will be expeditiously accomplished.
 2. Damage to Trees. Poor pruning practices resulting in damaged or misshapen trees will not be tolerated and shall be grounds for cancellation of the tree trimming permit and for assessment of damages. The City will require compensation for trees extensively damaged and for trees removed without authorization. The formula developed by the International Society of Arboriculture will be used as a basis for determining the compensation for damaged trees or unauthorized removal of trees. The City may require the removal and replacement of trees if trimming or radical pruning would leave them in an unacceptable condition.
- B. Specimen Trees or Trees of Special Significance. The City may require that special measures be taken to preserve specimen trees or trees of special significance. The required measures may consist of higher poles, side arm extensions, covered wire or other means.
- C. Chemical Use. Spraying of any type of brush-killing chemicals will not be permitted on Public Ways unless the Utility demonstrates to the satisfaction of the City Engineer that such spraying is the only Practicable method of vegetation control.

58-241 REMOVAL, RELOCATION, OR MODIFICATION OF UTILITY FACILITIES

- A. Notice. Within thirty (30) days following written notice from the City, any person or entity installing, controlling or maintaining any facility shall, at its own expense, temporarily or permanently remove, relocate, change or alter the position of any

Utility Facilities within the Public Ways whenever the City Engineer determines 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 Public Ways.

- B. Removal of Unauthorized Facilities. Within thirty (30) days following written notice from the City Engineer, to any person or entity that owns, controls, or maintains any unauthorized Facility or related appurtenances within the Public Way shall, at its own expense, remove all or any part of such Facilities or appurtenances from the Public Ways. 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; or,
 2. If the Facility was Constructed or installed without the prior grant of a license or franchise, if required; or,
 3. If the Facility was Constructed or installed without prior issuance of a required permit in violation of this Chapter; or,
 4. If the Facility was Constructed or installed at a location not permitted by the Permittee's license or franchise.
 5. Upon abandonment of the facility. Abandonment shall be presumed where the facility has not been used for the purpose for which it was installed for a period of 30 days, or more, and there have been no efforts to repair or renew the use during the 30 day period. The person or entity owning, controlling or maintaining the facility shall have the burden of proving to the City Engineer that the facility is still being used within 10 days of issuance of the written notice from the City Engineer if the person or entity maintains that the facility remains in use.
- C. Emergency Removal or Relocation of Facilities. The City retains the right and privilege to cut or move any 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. 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.

58-242 CLEANUP AND RESTORATION

Upon completion of all Construction or maintenance of Facilities, the Utility shall remove all excess material and restore all turf and terrain in a timely manner and 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, regrading, reseeding, resodding, or any other requirement to restore the Public Way to a condition substantially equivalent to that which existed prior to the commencement of the project and as per City Standards.

58-243 MAINTENANCE AND EMERGENCY MAINTENANCE

- A. General. Facilities on, over, above, along, upon, under, across, or within Public Ways are to be maintained by or for the Utility at the Utility's sole expense.
- B. Emergency Maintenance Procedures. Emergencies may justify noncompliance with normal procedures for securing a permit:
 - 1. If an Emergency creates a hazard on the traveled portion of the Public Way, the Utility shall take immediate steps to provide all necessary protection for traffic on the Highway or the public on the Public Way including the use of signs, lights, barricades or flaggers. If a hazard does not exist on the traveled way but the nature of the Emergency is such as to require the parking on the Shoulder of Equipment required in repair operations, adequate signs and lights shall be provided. Parking on the Shoulder in such an Emergency will only be permitted when no other means of access to the Facility is available.
 - 2. In an Emergency, the Utility shall, as soon as possible, notify the City Engineer or his or her duly authorized agent of the Emergency, informing him or her as to what steps have been taken for protection of the traveling public and what will be required to make the necessary repairs. On weekends the utility shall notify the Police of an emergency with the City Engineer is unavailable. If the nature of the Emergency is such as to interfere with the free movement of traffic, the City police shall be notified immediately.
 - 3. In an Emergency, the Utility shall use all means at hand to complete repairs as rapidly as Practicable and with the least inconvenience to the traveling public immediately.
- C. Emergency Repairs. The Utility shall file in writing with the City of a description of the repairs undertaken in the Public Way within 48 hours after an Emergency repair.
- D. Landscape Maintenance. All landscaping installed pursuant to this Chapter shall be maintained by the person or entity owning, controlling or maintaining the adjacent facility in good and reasonable condition. Any person or entity failing to maintain any such landscaping after receiving written notice from the City Engineer that the landscaping is in need of maintenance shall not be issued any permits for the installation of new facilities until the deficient landscaping has been restored to good and reasonable condition.

58-244 VARIANCES

- A. Request for Variance. A Utility requesting a variance from one or more of the provisions of this Chapter must do so in writing to the City Engineer 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 whether a variance is authorized for each provision of this Chapter identified in the variance request on an individual basis.
- C. Conditions for Granting of Variance. The City Engineer may authorize a minor variance only if the Utility requesting the variance has demonstrated that:
 - 1. One or more conditions not under the control of the Utility (such as terrain features or an irregular Right-of-Way line) create a special hardship that would make enforcement of the provision unreasonable, given the public purposes to be achieved by the provision; and
 - 2. All other designs, methods, materials, locations or Facilities that would conform to 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 the Utility requesting the variance to meet reasonable standards and conditions that may or may not be expressly contained within this Chapter but which carry out the purposes of this Chapter.
- E. If the City Engineer determines that the variance request is a major variance the variation request shall be determined by the Corporate Authorities of the City in conformance with the Sub sections C 1 and 2 of this Section and the variation standards set forth in the Wheaton Zoning Code.

58-245 PENALTIES

Any Person or entity who violates, disobeys, omits, neglects or refuses to comply with any of the provisions of this Chapter shall be subject to a fine of not less than \$250.00 nor more than \$750.00 for each offense, and a separate offense shall be deemed committed for each and every day during which a violation continues or exists. There may be times when the City will incur delay or other costs, including third party claims, because the Utility will not or cannot perform its duties under its permit and this Chapter. Unless the Utility shows that another allocation of the cost of undertaking the requested action is appropriate, the Utility shall bear the City's costs of damages and its costs of installing, maintaining, modifying, relocating, or removing the Facility that is the subject of the permit. No other administrative agency or commission may review or overrule a permit related cost apportionment of the City. Sanctions may be imposed upon a Utility who does not pay the costs apportioned to it.

58-246 ENFORCEMENT

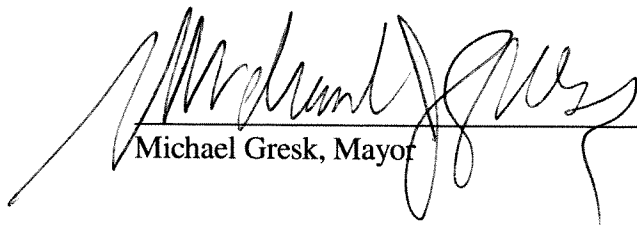
Nothing in this Chapter shall be construed as limiting any additional or further remedies that the City may have for enforcement of this Chapter.

SECTION TWO: That all ordinances and resolutions, or parts thereof, in conflict with the provisions of this Ordinance are, to the extent of such conflict, expressly repealed.

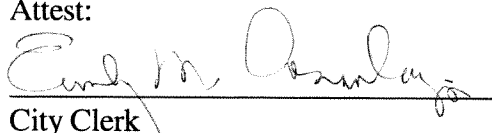
SECTION THREE: That this Ordinance shall be in full force and effect from and after its passage and approval as provided by law.

SECTION FOUR: Should any portion of this ordinance be deemed invalid by a court of competent jurisdiction it shall not affect the validity of the remaining portions of the Ordinance.

ADOPTED by the City Council of the City of Wheaton DuPage County, Illinois this 3rd day of December, 2007.


Michael Gresk, Mayor

Attest:


City Clerk

Ayes:

Roll Call Vote:

Councilman Suess
Councilwoman Corry
Councilman Johnson
Mayor Gresk
Councilman Mouhelis
Councilman Prendiville

Nays:

None

Absent:

Councilman Levine

Motion Carried Unanimously

Passed: December 3, 2007
Published: December 4, 2007

PASSED THIS 3rd day of December, 2007.