

## ARTICLE XXX

### ABOVE GROUND SERVICE FACILITIES

#### 30.1 Purpose.

The purpose of this Article is to establish general guidelines for the siting of Above Ground Service Facilities. The goal of this Article is to encourage the location of Above Ground Service Facilities in areas that minimize the total number of Above Ground Service Facilities throughout the community; encourage users of Above Ground Service Facilities to locate them, to the greatest extent possible, in areas where the adverse impact on the community is minimal; encourage users of Above Ground Service Facilities to configure them in a manner that minimizes the adverse visual impact; and provide the owners of Above Ground Service Facilities the ability to provide such services to the community.

#### 30.2 Applicability.

No Above Ground Service Facility shall be erected or installed except in compliance with the provisions of this Article. Above Ground Service Facilities located on property owned, leased or otherwise controlled by the City shall be exempt from the requirements of this Article provided a lease, franchise or other written agreement is entered into after adoption of this ordinance, or where a license authorizing such Above Ground Service Facilities has been approved by City Council. Where conflicts exist between this Article and the remainder of the Zoning Ordinance, the provisions of this Article shall govern.

#### 30.3 Guidelines and Performance Standards.

1. Additional use permitted on lot. For purposes of determining whether the installation of an Above Ground Service Facility complies with district bulk regulations, including but not limited to set-back and lot requirements, the dimensions of the entire zoning lot shall control, even though the Above Ground Service Facility may be located on leased property within such zoning lot(s).
2. Number of Service Facilities. Only one Above Ground Service Facility may be located on any zoning lot.
3. Lighting and Color. No visible or audible signals or lights or illumination shall be permitted on an Above Ground Service Facility. Above Ground Service Facilities shall be of earth tone colors and be maintained in good condition including but not limited to being free of peeling paint, and graffiti.
4. Signage. No signs, advertising, or information shall be allowed on any Above Ground Service Facility, other than a plaque no larger than four inches (4") by six inches (6") identifying the Above Ground Service Entity.

5. **Compatibility with Structure.** When included as part of an existing building or structure, the Above Ground Service Facility shall be of a material and color which substantially matches the exterior of the building or structure and shall be located or screened in an aesthetically acceptable manner so as not to be visible from any adjacent property and/or right of way. The Director of Planning & Economic Development shall determine whether the material and color of an Above Ground Service Facility mounted on a building, structure, or rooftop matches the building, structure, or rooftop and is screened from adjacent right-of-way(s) and/or properties.
6. **Abandonment.** Abandonment will be presumed where a Facility has not been used for the purpose for which it was installed for a period of sixty (60) consecutive days or more, and where there have been no efforts to repair or renew the use during the sixty (60) day period after written notice of abandonment from the City. The Entity owning, controlling or maintaining the Facility shall have the burden of establishing to the Director of Planning & Economic Development that the Facility is still being used within thirty (30) days of the notice. All notices described herein shall be regular U.S. Mail. Failure to respond to the Director of Planning & Economic Development's request for information regarding the abandonment of the Facility shall constitute irrefutable evidence of abandonment. Upon the Director of Planning & Economic Development's determination and final written notification to the Entity of such abandonment the Entity shall have sixty (60) days within which to:
  - a.) Reactivate the use of the Facility or transfer the Facility to another Entity which makes actual use of the Facility promptly; or
  - b.) Dismantle and remove the Facility and notify the Director of Planning & Economic Development in writing of the completion of such removal.

If the Entity believes that the final determination of abandonment by the Director of Planning & Economic Development is incorrect it may file a written appeal with the City Manager within five (5) days of the Director of Planning & Economic Development's final determination. The Director of Planning & Economic Development shall review the matter, take evidence if deemed necessary, and make a determination as to whether the Facility has or has not been abandoned. The City Manager's determination shall be final. If the Entity fails to prevail on appeal, reactivate, transfer to another active user or remove the Facility the City shall have the right to have the Facility removed at the Entity's expense. The City shall be entitled to reimbursement for all costs and expenses associated with the removal and the storage of any Facility thereafter. If a stored Facility is not picked up from the City within twenty-eight (28) days of removal the City may dispose of the Facility in its discretion. The City at that point will also be entitled to the cost of the disposal less any value the City secures for the Facility for scrap or resale. In addition, an administrative fee shall be assessed against the Entity for disposal of the Facility in an amount equal to the staff time related to all activities associated with the removal and disposal of the Facility. Failure to remove an abandoned

Facility in conformance with this Ordinance shall be considered a violation of the Code and subject to its general penalty provisions. No permit for any work in the City shall be granted to an Entity including its successors, which owes any some of money to the City for the removal and disposal of an abandoned Facility.

7. Equipment and Non Interference. Mobile or immobile equipment not used in direct support of an Above Ground Service Facility shall not be stored or parked on the site of an Above Ground Service Facility unless and while repairs to such Facility are being made. Backup generators shall only be operated during power outages and for testing and maintenance purposes and shall not be placed on site except when in use or where integrated within the Above Ground Service Facilities cabinet. Noise attenuation measures shall be included to reduce noise levels to satisfy applicable state and city performance standards. Testing and maintenance of generators shall only take place on weekdays between the hours of 8:30 a.m. and 4:30 p.m. Above Ground Service Facilities shall not physically interfere with access to existing structures or utilities.
8. Substantial written evidence of denial. In the course of reviewing any request for any approval required under this Article, the Planning and Zoning Commission or the City Council, as the case may be, shall act within a reasonable period of time after the request is duly filed, taking into account the nature and scope of the request, and any decision to deny such a request shall be in writing and supported by substantial evidence contained in a written record.
9. Petition for amendment. Should the application of this Article have the effect prohibiting an Entity from providing services to all or a portion of the City, such provider may petition the City Council for an amendment to this Article. The City Council, upon receipt of such a petition, shall promptly undertake review of the petition and shall make a determination on the petition within a reasonable period of time and shall take into account the nature and scope of the petition and any decision to deny such a petition shall be in writing and supported by substantial evidence contained in a written record.
10. Nonconformities. Any Above Ground Service Facility installed and operating prior to April 3, 2006 (adoption of Ordinance No. F-1151, An Ordinance Establishing A Temporary Moratorium on the Construction of Certain Ground Mounted Utility Installations), which would be otherwise prohibited by or subject to this Article, shall be considered a lawful existing non-conforming use and/or structure, as the case may be, and shall be subject to the rules on Existing Non-Conforming Uses and Existing Non-Conforming Buildings provided in Article 4 of the Zoning Ordinance.
11. Independent technical expert. The Director of Planning & Economic Development is hereby authorized to employ, on behalf of the City, an independent technical expert to review any technical materials submitted by the Service Entity or by other participants submitting an application or petition,

including, but not limited to, those materials required under this Article. The applicant or petitioner shall pay all reasonable costs of said review, including any administrative costs incurred by the City. Hourly rates charged by the independent technical expert shall not exceed those hourly rates customarily charged by similar technical experts within the engineering industry. Any confidential, proprietary or other such information exempted from disclosure by the Illinois Freedom of Information Act and disclosed to the City or the expert hired shall remain confidential and exempted from public disclosure in accordance with the Illinois Freedom of Information Act.

#### 30.4 Administrative Approvals.

##### 1. General.

- a.) The Director of Planning & Economic Development may administratively approve the uses listed in this Section 30.4. Nevertheless, all such uses shall comply with Section 30.3 of this Article and all other applicable ordinances.
- b.) Each applicant for administrative approval shall apply to the Director of Planning & Economic Development, providing the information set forth in Sections 30.5.2 and 30.5.3 of this Article.
- c.) The Planning & Economic Development Department shall respond to each such application within thirty (30) days after receiving it, providing that the application contains all information necessary for processing, by either approving, approving with conditions, denying the application or requesting additional information. If the Planning & Economic Development Department fails to respond to the applicant within said thirty (30) days, or such additional time as is reasonably necessary to obtain the additional information from the applicant and review it, then the application shall be deemed to be denied.
- d.) If an administrative approval is denied, the applicant may appeal said denial in accordance with the provisions of the Zoning Ordinance concerning appeals of administrative decisions.
- e.) The Director of Planning & Economic Development may refer an application for administrative approval that otherwise meets the standards contained herein to be considered and approved as required by Section 30.5 if the Director of Planning & Economic Development determines in writing that the public interest would be furthered by requiring a Special Use Permit to construct the Facility in question.

30.4.1(f) General - The landscaping requirements of Section 30.6 (3) of this article shall apply to Service Facilities granted an administrative permit.

30.4.2 Specific Administratively Approved Uses. The following uses shall be approved by the Planning & Economic Development Department after conducting an administrative review unless the Director of Planning & Economic Development

concludes that the public interest would be furthered by requiring a special use permit in conformance with Section 30.4.1(e) of this Article.

- a) Above Ground Service Facilities installed within the rear yard in any zoning district provided the Above Ground Service Facility is set back three feet (3') from the side and three feet (3') rear property lines and further provided:
  1. An Above Ground Service Facility shall not be located within a two hundred and fifty feet (250') radius from any existing or approved Above Ground Service Facility.
  2. The separation requirement of Section 30.4.2(a)(1) may be waived by the Director of Planning & Economic Development for the M-1 Manufacturing; C1, C-2, C-3, C-4, and C-5 Commercial; or O-R or R-R zoning districts provided that the applicant establishes:
    - a. No other site or current technology could be used to provide intended services to the residents of the City; and
    - b. A denial of a permit for the proposed site would create a gap in providing intended services to the residents of the City.
    - c. If one or more of the foregoing factors do not exist the Director of Planning & Economic Development shall inform the applicant that it may request a Special Use Permit in conformance with Section 30.5 of this Article.
- b) Above Ground Service Facilities installed within the side or front yard in any nonresidential district, the R-7 and R-6 districts, and in any residential zoning lot that maintains a nonresidential principal use and/or structure (school, park, or church) and further provided that:
  1. The Above Ground Service Facility is set back three feet (3') from the side property line.
  2. An Above Ground Service Facility shall not be located within two hundred and fifty feet (250') radius of any existing or approved Above Ground Service Facility.
- c) Above Ground Service Facilities installed within the rear yard extended through the side yard on any corner lot within any zoning district except those lots where the main entrance to the building faces said side yard and further provided:
  1. An Above Ground Service Facility shall not be located within two hundred fifty feet (250') radius of any existing or approved Above Ground Service Facility.

2. The Above Ground Service Facility is set back three feet (3') from the rear yard property line.

30.5 Prohibited use. Above Ground Service Facilities are prohibited in the front yard, corner side yard, except as provided for in Section 30.4.2(c), or any corner lot where the main entrance to the building faces the side yard of any lot used for residential purposes within the R-1, R-2, R-3, R-4 and R-5 zoning districts.

30.6 Special Use Permits.

1. General.

The following provisions shall govern the issuance of special use permits.

- a.) Above Ground Service Facilities not permitted to be approved administratively pursuant to Section 30.4 of this Article and not otherwise prohibited by Section 30.5 of this Article, shall require a special use permit. Special use applications for Above Ground Service Facilities shall be processed and heard in conformance with the requirements of the Zoning Ordinance.
- b.) Where located in a front yard the special use permit shall require that the Above Ground Service Facility be no closer than five feet (5') inside a front lot line or five feet (5') inside a side yard lot line abutting a street, or such greater distance as determined by the City Council.
- c.) In granting a special use permit, conditions may be imposed to the extent the City Council determines necessary to minimize any adverse effect of the proposed Above Ground Service Facilities.
- d.) Any information of an engineering nature that the applicant submits, whether civil, mechanical, or electrical shall be certified by a professional engineer licensed in the State of Illinois.

2. Factors considered in granting special use permits.

- a.) Size of proposed Above Ground Service Facility;
- b.) Proximity of the Above Ground Service Facility to residential district boundaries;
- c.) Nature and intensity of uses on adjacent and nearby properties;
- d.) Topography of site and surrounding areas;
- e.) Surrounding tree coverage and foliage;
- f.) Design of the Above Ground Service Facility, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness; and

g.) The physical relationship between the Above Ground Service Facility and existing structures and utilities.

3. Landscaping/Screening.

- a.) An Above Ground Service Facility shall be landscaped/screened with a variety of plant materials that effectively screens the view of the Above Ground Service Facility from adjacent property and public right-of-way on a year round basis in accordance with the design criteria set forth in Article 6.4 of this Ordinance. In some cases, such as an Above Ground Service Facility sited on a large, wooded lot, natural growth around the property perimeter may be a sufficient buffer.
- b.) In locations where the visual impact of the Above Ground Service Facility would be and is likely to remain minimal for the foreseeable future, the landscaping requirement may be reduced or waived by the Director of Planning & Economic Development.
- c.) Provisions of Section 6.11, "Tree Preservation of the City Zoning Ordinance" shall apply.