

Exhibit A

ARTICLE X. CONSTRUCTION OF FACILITIES IN THE PUBLIC RIGHTS-OF-WAY

Sec. 42-300. Purpose and scope.

- (a) *Purpose.* The purpose of this article is to establish policies and procedures for the construction of facilities on rights-of-way within the city's jurisdiction that will provide public benefit consistent with the preservation of the integrity, safe usage, and visual qualities of the city rights-of-way and the city as a whole.
- (b) *Intent.* In enacting this article, the city intends to exercise its authority over the rights-of-way in the city and, in particular, the use of the public ways and property by utilities, by establishing uniform standards to address issues presented by such facilities in the public rights-of-way, including without limitation:
- (1) Prevent interference with the use of streets, sidewalks, alleys, parkways and other public ways and places;
 - (2) Prevent the creation of visual and physical obstructions and other conditions that are hazardous to vehicular and pedestrian traffic;
 - (3) Prevent interference with the installation, maintenance, and operation of facilities, the city's utilities and of other utilities lawfully located in rights-of-way or public property;
 - (4) Protect against environmental damage, including damage to trees, from the installation of facilities;
 - (5) Protect against increased stormwater run-off due to structures and materials that increase impermeable surfaces;
 - (6) Preserve the character of the neighborhoods in which facilities are installed;
 - (7) Preserve open space, particularly the tree-lined parkways that characterize the city's residential neighborhoods;
 - (8) Prevent visual blight from the proliferation of facilities in the rights-of-way; and
 - (9) Assure the continued safe use and enjoyment of private properties adjacent to facilities locations.
- (c) *Facilities subject to this article.* This article applies to all facilities established or to be established on, over, above, along, upon, under, across, or within the rights-of-way within the jurisdiction of the city. A facility lawfully established prior to the effective date of this article may continue to be maintained, repaired and operated as presently constructed and located, except that, if any existing facility is expanded, extended, replaced or upgraded, such expansion, extension, replacement or upgrade shall be done in compliance with this article. Further, if a facility lawfully established prior to the effective date of this article is subject to a franchise agreement that establishes regulations pertaining to facilities in the public rights-of-way, the franchise agreement shall apply until the franchise agreement expires or the parties agree to terminate the provisions of such franchise agreement pertaining to facilities in the rights-of-way.

- (d) *Franchises, licenses, or similar agreements.* The city, in its discretion and as limited by law, may require utilities or other service providers having a legal right to use a right-of-way to enter into a franchise, license or similar agreement for the privilege of locating their facilities on, over, above, along, upon, under, across, or within the city rights-of-way. Utilities that are not required by law to enter into such an agreement may request that the city enter into such an agreement. In such an agreement, the city and utility may provide for terms and conditions that differ from this article, but which are not materially inconsistent with this article, and which are in the public interest, as the parties may agree.
- (e) *Effect of franchises, licenses, or similar agreements.* If a utility has a franchise, license or similar agreement with the city, such franchise, license or similar agreement shall govern and control the use of public rights-of-way 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 rights-of-way. To the extent that a franchise, license or similar agreement is silent with regard to standards and conditions for use of rights-of-way this chapter shall apply.
- (f) *Conflicts with other code provisions.* This article supersedes all other Aurora Code provisions or parts of provisions adopted prior hereto that are in conflict herewith with respect to facilities of utilities in the rights-of-way, to the extent of such conflict, including chapter 42, article II, division 2, sections 42-40, 42-45, 42-46; chapter 42, article III, division 2, sections 42-101 through 42-105; chapter 42 article IX, sections 42-271 through 42-277; provided that those provisions shall remain applicable to all users of rights-of-way other than utilities, as defined herein.
- (g) *Conflicts with state and federal laws.* In the event that applicable federal or state laws or regulations conflict with the requirements of this article, the utility shall comply with the requirements of this article to the maximum extent possible unless preempted or a violation of such federal or state laws or regulations.
- (h) *Sound engineering judgment.* The city shall use sound engineering judgment when administering this article and may vary the standards, conditions, and requirements expressed in this article when the city so determines consistent with generally accepted engineering principles. Nothing herein shall be construed to limit the ability of the city to regulate its rights-of-way for the protection of the public health, safety and welfare.

Sec. 42-301. Definitions.

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

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

ANSI means American National Standards Institute.

Applicant means a person applying for a permit under this article.

ASTM means the American Society for Testing and Materials.

Backfill means the replacing of excavated material in a trench or pit.

Bore or boring means the excavation of an underground cylindrical cavity for the insertion of a pipe, electrical conductor or other facility.

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

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

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

Carrier pipe means the pipe enclosing a liquid, gas or slurry to be transported.

Casing means the structural protective enclosure for transmittal devices such as, but not limited to, carrier pipes, electrical conductors, and fiber-optic devices.

City means the City of Aurora, Illinois.

City engineer means the Aurora City Engineer or such other person who is authorized by the corporate authorities to oversee the engineering division in the city or his or her designee.

City facilities means the raw or potable water lines, sanitary sewer lines, electrical lines, street lights, storm sewer lines, communication lines, traffic control devices, fiber optic cable, signage and all of the improvements and appurtenances connected thereto that are owned by the City of Aurora.

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

Coating means the protective wrapping or mastic cover applied to buried pipe, conduit and similar facilities for protection against external corrosion.

Code or Aurora Code means the City of Aurora Municipal Code.

Communications Facility or Facilities, as defined in Chapter 19 of the City of Aurora Code of Ordinances which includes communications facilities and/or communications support facilities.

Conductor means the wire carrying electrical current.

Conduit means the casing or encasement for wires, cables, and similar facilities.

Construction or construct means the installation, repair, maintenance, placement, alteration, enlargement, demolition, modification, expansion, extension, upgrade or abandonment (or act thereof) of facilities that are intended for use to provide services to the residents and businesses in the city.

Cover means the depth of earth or backfill over buried pipe, conductor, conduit or similar facilities.

Crossing facility means a facility that extends into or crosses over a right-of-way at a more or less perpendicular angle.

Disrupt or disruption of the right-of-way means, for purposes of this article, any work that obstructs, interferes with or adversely affects the use of the right-of-way for its intended purpose, including, without limitation, the following: the excavation or other cutting into the right-of-way; placement (whether temporary or permanent) of materials, equipment, devices, or structures in the right-of-way; damage to the right-of-way, appurtenances to the right-of-way or vegetation on the right-of-way; the parking of vehicles or equipment in or on the right-of-way; the compaction or loosening of the soil in the right-of-way; and any other activity that obstructs, interferes with or adversely affects the use of the right-of-way for its intended purpose.

Emergency means any immediate circumstance that requires present access for maintenance, repair or other work to a facility in a right-of-way required to restore or maintain continuous service or to protect and preserve the health, safety and welfare of the city residents, businesses and/or the general public.

Encasement means the provision of a protective casing.

Equipment means materials, tools, implements, supplies, and/or other items used to facilitate construction of facilities in rights-of-way.

Excavation means the process of digging, removing or moving material in the ground for the purpose of construction or otherwise.

Extra heavy pipe shall have the meaning ascribed to it by the ASTM.

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

Fiber optic cable means a cable technology that uses glass (or plastic) threads (fibers) to transmit data. A fiber optic cable consists of a bundle of glass threads, each of which is capable of transmitting messages modulated onto light waves.

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

Frontage road means a secondary roadway parallel and providing access to land adjacent to a primary highway where direct access is precluded by control of access to a primary roadway.

Hazardous materials means any substance or material that, due to its quantity, form, concentration, location, or other characteristics, is determined by the city engineer to pose an unreasonable and imminent risk to the life, health or safety of persons or property or to the ecological balance of the environment, including, but not limited to explosives, radioactive

materials, petroleum or petroleum products or gases, poisons, etiology (biological) agents, flammables, corrosives or any substance determined to be hazardous or toxic under any federal or state law, statute or regulation.

Highway code means the Illinois Highway Code (605 ILCS 5/1-101 et seq.) as amended from time to time.

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

IDOT means the Illinois Department of Transportation.

ICC means the Illinois Commerce Commission.

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 any other facilities by two or more utilities or service providers.

J.U.L.I.E. means the Joint Utility Locating Information for Excavators utility notification program.

Large freestanding cabinet facility means a cabinet facility that has a volume freestanding cabinet of greater than twenty-four (24) cubic feet, or a linear size in any single freestanding cabinet dimension of greater than four (4) feet (excluding cables, wires, etc.), or a foot print in square feet greater than five (5) percent of the maximum lot coverage for any contiguous zoning lot on or adjacent to the right-of-way proposed for such structure.

Major intersection means an intersection of two (2) or more major arterial highways.

Non-vehicular way means any path or area, whether paved or not, that is designed, dedicated or otherwise designated for non-vehicular public traffic, including pedestrian, bicycle, and other modes of non-vehicular travel.

Occupancy means the presence of facilities on, over or under right-of-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 a right-of-way that is adjacent to a roadway or shoulder that is improved by vegetative surface.

Pavement cut means the removal of an area of impervious surface on a right-of-way for access to a facility or for the construction of a facility.

Permittee means a utility to which a permit has been issued pursuant to sections 42-303 and 42-304 of this article.

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

Pole, Utility / light pole as defined in Chapter 19 of the City of Aurora Code of Ordinances, excluding poles in a Roadway median, decorative light poles and traffic signals.

Restoration means the restoration of the area in, on or around a right-of-way that is disrupted during the construction, repair or maintenance of a facility to a condition that is substantially similar to the condition of the area prior to the construction, repair or maintenance.

Right-of-way means any property designed, dedicated or otherwise designated and/or used as a roadway, shoulder, parkway, non-vehicular way for pedestrian or vehicular travel by the public; any property designed, dedicated or otherwise designated and/or used for the provision of utilities or other services or benefits to the general public, including the residents of the city; and property designed, dedicated or otherwise designated for use in conjunction with any roadway, parkway, or non-vehicular way. Right-of-way or rights-of-way shall not include any real or personal city property that is not specifically described in the previous two sentences and shall not include city buildings, fixtures, and other structures or improvements, unless they are situated in the right-of-way.

Roadway means a specific type of right-of-way dedicated and/or used for public vehicular traffic, including the municipal system of streets, allies and lanes, state and county highways, and township and district roads as defined in the highway code, in which the city has an interest or regulatory authority. Roadway specifically means, for purpose of this chapter, the impervious surface portion of a street, lane, drive, boulevard, highway, road, thoroughfare, throughway, tollway, freeway, court, and any other way that is designed, dedicated, or otherwise designated for public vehicular travel.

Roadway Median means the median strip or reserved area that separates opposing lanes of traffic on divided roadways. The reserved area may or may not be curbed and be landscaped or paved.

Security fund means that amount of security required pursuant to section 42-309.

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

Small freestanding cabinet facility means a cabinet facility that has a volume freestanding cabinet of less than twenty-four (24) cubic feet, a linear size in any single freestanding cabinet dimension of less than four (4) feet (excluding cables, wires, etc.), and a foot print in square feet less than five (5) percent of the maximum lot coverage for any contiguous zoning lot on or adjacent to the right-of-way freestanding cabinet.

Sound engineering practice means consistent with generally accepted engineering principles, practices and experience.

Telecommunications as defined and referenced in Article III Telecommunication and Data Transfer

Trench means a relatively narrow open excavation for the installation of an underground facility.

Utility means any individual, corporation, partnership, limited liability company, service provider or other legal person or entity owning, controlling or operating any facility regulated by this article.

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

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

Water lines 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.

Sec. 42-302. Annual registration required.

- (a) Every utility that occupies right-of-way within the city shall register on January 1 of each year with the city finance department or other department or person designated by the corporate authorities, providing the utility's name, address and regular business telephone and telecopy numbers, the name and e-mail address of one (1) or more contact persons who can act on behalf of the utility in connection with emergencies involving the utility's facilities in the right-of-way and a twenty-four-hour telephone number for each such person, and evidence of insurance as required in section 42-307 of this article, in the form of a certificate of insurance. Any utility not registered at the time of the filing of an application for a permit must register at the time of application.
- (b) Any utility not doing business within the city as of January 1 of any year shall be required to provide the information required by this section prior to commencing work in the right-of-way in that year, and on January 1 of each year thereafter regardless of its initial registration date.
- (c) Unless otherwise provided by franchise, license or similar agreement with the city, there shall be an annual, non-refundable registration fee of two hundred dollars (\$200.00), to be paid at the time of the utility's registration. If a utility registers after the last day of June in a given calendar year, then the registration fee shall be one-half (1/2) of the annual fee.

Sec. 42-303. Permit required; applications and fees.

- (a) *Permit required.* No utility, including contractors and subcontractors of a utility, shall construct, repair, replace, enlarge or maintain any facility on, over, above, along, upon, under, across, or within any right-of-way or otherwise disrupt the right-of-way, without first filing an application with the city engineer or other person designated by the

corporate authorities for that purpose and obtaining a permit from the city therefore, except as otherwise provided in this chapter.

- (b) *Permit application.* All applications for permits pursuant to this chapter shall be on a form acceptable to the city and shall be filed in such number of duplicate copies as the city may designate.
- (c) *Confidentiality.* An applicant may designate those portions of its application documentation as "proprietary" or "confidential" by clearly marking each page or portion thereof accordingly, and such material shall be treated as confidential by the city, subject to law. If the city receives a request for disclosure of such information, the city shall deny the request as to the material designated "proprietary" or "confidential". If the city is challenged regarding the non-disclosure of such material, the applicant shall indemnify, hold harmless and defend the challenge at the applicant's cost. If the applicant does not indemnify, hold harmless and defend the city in respect to the non-disclosure of such material, the city may defend the challenge, and the applicant shall reimburse the city its reasonable attorneys' fees and costs incurred. The required as-built drawings and the location of facilities in the rights-of-way shall not be subject to the protection of confidentiality.
- (d) *Minimum general application requirements.* An application for a permit required by this chapter shall be filed by a duly authorized representative of the utility and shall contain, at a minimum, the following:
 - (1) The utility's name and address, telephone and telecopy numbers and e-mail address;
 - (2) The name and address of the person completing and signing the application on behalf of the utility, along with a direct telephone number, telecopy number, e-mail address, and representative capacity in respect to the utility, and, if the person completing the application is an agent of a contractor, subcontractor or consultant of the utility, the name and contact information of that contractor, subcontractor or consultant and its interest in the work;
 - (3) The names, addresses and telephone and telecopy numbers and e-mail addresses of all professional consultants, if any, advising the applicant with respect to the application;
 - (4) A general description of the proposed work and the purposes and intent of the facility and the uses to which the facility will be put. The scope and detail of such description shall be appropriate to the nature and character of the work to be performed, with special emphasis on those matters likely to be affected or impacted by the proposed work.
 - (5) The following documentation:
 - a. A written traffic control plan in compliance with IDOT standards for routing traffic in the event of lane blockage and 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. Said plan must be prepared and signed and sealed by an Illinois Registered Professional Engineer; and

- b. Where an application indicates that an applicant's use of the right-of-way may involve situations that pose a potential risk to public health and safety, the applicant shall submit 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 proposed response shall include notification to the city and shall promote protection of the safety and convenience of the public and shall be subject to review by the city's emergency management coordinator and the fire chief with ICC regulations for emergency contingency plans constitutes compliance with this section unless the city finds that additional information or assurances are needed;
 - c. Drawings, plans and specifications showing the work proposed along with all existing utilities (field verified) within thirty (30) feet of proposed work, including the certification of an Illinois licensed professional engineer that such drawings, plans, and specifications comply with applicable codes, rules, and regulations; including but not limited to the city's codes and ordinances for improvements within the public right-of-way;
 - d. Evidence of insurance as required in section 42-307 of this article;
 - e. Evidence of posting of the security fund as required in section 42-309 of this article;
 - f. A statement as to whether a right-of-way or any contiguous private property is the subject of a recorded easement or license agreement for the roadway or right-of-way.
- (6) Any request for a variance from one or more provisions of this article (See section 42-321); and
- (7) Such additional information as may be reasonably required by the city.
- (e) *Supplemental application requirements for specific types of utilities.* In addition to the requirements of subsection (d) 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 the installation of a new electric power, communications, telecommunications, cable service, video service or natural gas distribution system, evidence that any "certificate of public convenience and necessity" or other regulatory authorization that the applicant is required by law to obtain, or has elected to obtain, has been issued by the ICC or other jurisdictional authority;
 - (2) In the case of natural gas systems, state the proposed pipe size, design, construction class, and operating pressures;

- (3) In the case of water lines, indicate that all requirements of the city, and the Illinois Environmental Protection Agency, division of public water supplies, have been satisfied;
 - (4) In the case of sewer line installations, indicate that all requirements of the City of Aurora, Fox Metro Water Reclamation District, and the land and water pollution requirements of the Illinois Environmental Protection Agency, Division of Water Pollution Control and any other local or state utilities with jurisdiction, have been satisfied; or
 - (5) In the case of petroleum products pipelines, state the type or types of petroleum products, pipe size, maximum working pressure, and the design standard to be followed.
 - (6) In the case of communication facilities, the provisions and documentation required in Chapter 19 of the City of Aurora Code of Ordinances shall also be applicable.
- (f) *Applicant's duty to update information.* Throughout the entire permit application review period and the construction period authorized by the permit, any amendments to information contained in a permit application shall be submitted by the utility in writing to the city within fourteen (14) days after the change necessitating the amendment.
- (g) *Application fees.* Unless otherwise provided by franchise, license, or similar agreement, all applications for permits pursuant to this article shall be accompanied by a fee in the amount specified in city fees schedules. No application fee is required to be paid by any telecommunications retailer that is paying the municipal telecommunications infrastructure maintenance fee or the optional state telecommunications infrastructure maintenance fee pursuant to the Simplified Municipal Telecommunications Tax Act, or by any electricity Utility that is paying the municipal electricity infrastructure maintenance fee pursuant to the Electricity Infrastructure Maintenance Fee Act.
- (h) *Permit prohibitions.*
- (1) No large freestanding cabinet facility shall be permitted in any right-of-way contiguous to the front yard or the corner side yard of any private property unless the zoning district in which the private property is located permits the installation of freestanding cabinet facilities in front yards or corner side yards.
 - (2) No large freestanding cabinet facility shall be permitted in a right-of-way contiguous to a transition yard as defined by the zoning ordinance without a variation granted by the corporate authorities through the land use and zoning division.
 - (3) No large freestanding cabinet facility shall be permitted to be installed above or on any existing or planned future raw or potable water line, sanitary sewer improvement, combined sewer improvement, communication line, electrical line, gas line or storm water sewer improvement or city facility.
 - (4) No large freestanding cabinet facility shall be located in such a way that it will interfere with vehicular or non-vehicular traffic on a roadway or non-vehicular way

or other designated use of a right-of-way or in such a way that it adversely affects the public health, safety or welfare.

- (5) No large freestanding cabinet facility shall be located within two hundred fifty (250) feet of any other large freestanding cabinet facility without a variance from zoning.
- (6) No facilities shall be permitted underground where there is inadequate space in the underground portion of a right-of-way to permit access maintenance and replacement of existing underground facilities.

Sec. 42-304. Action on permit applications.

- (a) *Review of permit applications.* Completed permit applications, containing all required documentation, shall be submitted to the office of the city engineer for review by the city engineer and any other staff or consultant as may be appropriate or necessary to review and process the application. The date of submission shall be the date of receipt as stamped on the application by the city staff receiving it. If the application does not conform to the requirements of applicable ordinances, codes, laws, rules, and regulations, the city engineer shall reject such application in writing, stating the reasons therefor. If the city engineer is satisfied that the proposed work conforms to the requirements of this article and applicable ordinances, codes, laws, rules, and regulations, the city engineer shall issue a permit therefor as soon as practicable. In all instances, it shall be the duty of the applicant to demonstrate, to the satisfaction of the city engineer, that the construction proposed under the application shall be in full compliance with the requirements of this article. The acceptance of the application by the City of Aurora shall in no way release the applicant from their responsibility to follow all applicable federal, state, and local statutes, ordinances and codes. It is the sole responsibility of the applicant to recognize all applicable regulatory authorities that may govern the installation, operation, and maintenance of the particular improvement, and obtain all required permits from same. The issuance of a permit by the city shall not be deemed to waive any codes, ordinances, regulations or laws with which the applicant must comply.
- (b) *Review of applications of telecommunications retailers* shall be subject to Article III. - Telecommunication and Data Transfer.
- (c) *Additional city review of applications of holders of state authorization under the Cable and Video Competition Law of 2007.* Applications by a utility that is a holder of a state-issued authorization under the Cable and Video Competition Law of 2007 shall be deemed granted forty-five (45) days after submission to the city, unless otherwise acted upon by the city, provided the holder has complied with applicable city codes, ordinances, and regulations.
- (d) *Additionally, for Communications Facilities*
 - i. *Site-Specific Permit.* A Site-Specific Permit Application, pursuant to Chapter 19, and application fee shall be completed and filed for every proposed pole site.

- (1) Applications will be processed on a first come, first served basis. The City's office shall stamp Site-Specific Permit Applications on the date of their arrival and, in the case of applications received on the same date, by time stamp. First come, first served shall mean that the first complete application filed shall be processed first. If a first processed application is denied the City shall give the first processed application five (5) business days to correct any correctable issues in the application. If the issues are not corrected within the five (5) business days the City shall move to the next complete application filed which will then be considered first processed application.
- (2) Communication Facility must be operational within nine (9) months following the issuance date of the Site-Specific Permit, otherwise said Permit shall become void and the Site-Specific Location shall be available to other Entities in compliance with City Code.

ii. Installations on Existing Poles. Communications Facilities may be installed under the terms of a license agreement on (1) preferably existing third-party Poles or (2) City's existing Poles. Prior to submitting a Site-Specific Permit Application related to the use of a City Pole, applicant shall verify with the City in writing the eligibility of the specified Pole for attachment of the Communications Facility. Eligibility of a City Pole is subject to the review and approval by the City and said Pole shall:

- (1) Be available meaning the Pole 1) falls under the definition of Pole in Section 2 herein, and is within said City Ways and are under the control or ownership of the City of Aurora and not otherwise occupied by or otherwise committed for City Facilities or to a franchise holder or existing applicant, at the time a Site-Specific Permit Application is submitted for the use of a Site-Specific Location by the Applicant or 2) a third-party Pole with a separate agreement with the owner of such Pole.
- (2) If the existing pole is located in a section of Roadway Median, the median must have barrier curbing, be landscaped, and be a minimum of ten feet (10') wide, and ground level equipment shall not be allowed in any Roadway Median.
- (3) The right of way must be of an Arterial, Major Collector, Minor Collector or Residential roadway as defined in the current city comprehensive plan.
- ~~(4)~~ (4) The Pole shall be no more than fifty (50) feet in total height, ~~and~~.
- ~~(4)~~ (5) The Pole, with the exception of existing ComEd wooden poles, shall be a break away base system in accordance with IDOT standard 838001 Breakaway Devices or approved equal.
- ~~(5)~~ (6) No part of the Communications Facility shall be installed higher than seven (7) feet above the highest point of the Pole or lower than nine (9) feet above grade level measured from the bottom of the Pole; with the exception of electrical meters which may, if required by ComEd to be so, may be lower than nine (9) feet above grade level.
- ~~(6)~~ (7) The Pole shall be straight with adequate strength, and of a design which can withstand the added weight of the Communications Facility.
 - (a) If reinforcement or replacement of an existing Pole is necessary, as determined by a Pole Mount Certification provided by the Applicant,

Applicant shall, at their sole expense, provide engineering design and specification drawings demonstrating the proposed alteration to or replacement of the Pole. Said alteration to or replacement of the Pole may not increase the total height of the Pole by more than seven (7) feet. If a Site-Specific Permit is approved, any required pole reinforcement or replacement shall be completed at the Applicant's sole expense.

- (b) If the Applicant desires to alter or replace an existing Pole which would result in an increase in the total height of the Pole by more than seven (7) feet, this would be considered a new Pole and the provisions of Section 42-304(d).iii would apply.

iii. Installation of New Poles. Applicant shall exercise all reasonable efforts to locate its Communications Facilities on or within existing structures or Poles. Applicant shall not install new Applicant Poles in a City Way unless Applicant demonstrates that all of the following criteria are satisfied: (1) Applicant certifies that a new Pole in the City Way or other property are necessary to fill a coverage or capacity gap in Communications Services, (2) there are no other existing structures in the City Way or other property or buildings near the City Way or other property that are available and capable of supporting the Applicant's Communications Facilities New Poles for Communications Facilities may be installed under the terms of this ordinance and said Pole shall:

- (1) Allow for the maximum number of antenna co-locations on the new Pole, which the Applicant shall make available at a fair market rate.
- (2) Be set so that they will not interfere with the flow of water in any ditch, gutter or drain, and so that they will not interfere with ordinary travel on the streets or sidewalk; and
- (3) New poles or ground level equipment shall not be allowed in any Roadway Median.
- (4) The right of way must be of an Arterial, or Major Collector roadway as defined in the current city comprehensive plan. An application for an installation within lower grade roadway system shall be subject to Chapter 19 Sec 19-71 "Special Use Permits" of the City of Aurora Code of Ordinances; and
- (5) The Pole shall be no more than fifty (50') feet in total height, and shall be a break away base system in accordance with IDOT standard 838001 Breakaway Devices or approved equal.
- (6) No Communications Facility shall be installed lower than nine (9) feet above grade level measured from the bottom of the Pole.
- (7) The Pole shall be of a design acceptable to the City, the City shall reserve the right to request pole type upon site selection so the pole can match the light poles within the vicinity of the site.
- (8) The Pole shall meet at least fifty (50%) percent of the Minimum Clear Sight Distance standards in the Minimum Street Standards table in Section II.A of the City's Standard Specifications for Improvements.

iv. Lack of Space. Unless otherwise provided by law the City reserves the right to refuse to approve or authorize the Site-Specific Permit Application when it determines that space in an available City Way or other property is inadequate to accommodate the proposed Communications Facilities. The City, in its sole discretion, may rearrange or replace existing utilities or Communications Facilities.

v. LicenseeApplicant Cooperation. Communications LicenseeApplicant shall fully cooperate with the City, its franchisees, or any prior communications licenseesApplicants occupying the City Way during the installation and operation of its Communications Facilities so as to minimize conflicts, avoid damage, and threats to the public property, health, safety and welfare. The Communications LicenseeApplicant shall not trim or cut trees, shrubbery or other vegetation without authorization from the City Representative.

vi. Removal or Relocation. Whenever the City deems it necessary to temporarily or permanently remove and/or relocate the Applicant's Communications Facilities in the exercise of its governmental proprietary rights and powers, the City will issue timely notice to the Applicant to permit the Applicant to secure the necessary approvals or authorizations before the removal or relocation must commence. The City reserves the right to require the immediate removal or transfer of the Applicant's Communications Facilities in cases of emergency, as determined by the City.

Within reasonable periods of time established by the City, which shall not be less than sixty (60) days, the Applicant, at its sole cost and expense, shall construct, attach, install, maintain, operate, repair, replace, reattach, reinstall, remove, and relocate the Applicant's Communications Facilities in a safe manner and so as to not physically or electronically interfere with the City's facilities or franchisee's facilities within the City Way. In the event there are mitigating circumstances which prevent the Applicant from meeting the established periods of time, the Applicant may request an extension from the City, which will not be unreasonably withheld. All removal and relocation work shall be performed by the Applicant in a safe and workmanlike manner.

If the removal of a facility exceeds sixty (60) days, and no reasonable alternative site is available, Applicant may terminate the Site-Specific Permit and receive credit for the unused fees prorated for the time in which the facility was temporarily removed.

vii. Undergrounding. Where existing utilities within a City Way are undergrounded, the Applicant shall underground its facilities or shall have the option to move their facilities to another location pursuant to the same Permit requirements set forth in this Agreement.

viii. No proration. No proration or refund of any permit application fee, license fee, or independent contractor costs will be provided after a review of the Permit application or where the City has commenced a review. Subject to the Removal or Relocation section above, there shall also be no proration or refund of any use, costs, or fees based upon removal on a permanent basis unless that removal is based solely upon the City's direction to remove with no relocation site providing substantially similar Communications Services being available for the Applicant's Communications Facilities.

ix. Ongoing Inspections. The City shall have the ongoing right to inspect any Site-Specific Location or work related to the Applicant's Communications Facilities as it deems appropriate. The Applicant shall reimburse the City for the cost of up to two inspections per calendar year per Site-Specific Location. Additionally, if as a result of an initial inspection, subsequent inspections are necessary to resolve a problem or issue, the Applicant shall reimburse the City for the cost of any said follow up inspections.

x. Maintenance and Repair of Communications Facility. Applicant shall keep and maintain all Communications Facilities installed on Public rights-of-way in commercially reasonable condition and repair throughout the term, normal wear and tear and casualty excepted. Applicant shall have the right to conduct testing and maintenance activities, and repair, replace, reattach, reinstall, relocate, and remove damaged or malfunctioning Communications Facilities at any time during the term, as provided herein.

xi. Damage of Communications Facility. Should a Pole with attached Communications Facilities be damaged or fall down, the City shall have no responsibility or liability for any damage to the Communications Facilities that may have occurred. In such an event, the Applicant may request a temporary Site-Specific Permit for a location in the immediate area, which will not be unreasonably withheld, to be effective until the original Pole is re-installed. If said Pole is owned by the City, the City shall reinstall said Pole in a timely manner, however there is no time obligation and the re-installation of the Communications Facilities shall be the responsibility of the Applicant. If said Pole is not owned by the City, the City shall have no obligation to remove or reinstall said Pole, and this should be done by the third-party or Applicant at their sole expense. If the damaged Pole is not restored to usable condition within sixty (60) days after the damage, and no reasonable alternative site is available, Applicant may terminate the Site-Specific Permit and receive credit for the unused fees prorated for the time in which the Pole was unusable.

xii. Coordination of Emergency Events. In case of an emergency due to interference, failure of traffic light signal system, or any unforeseen events, the City will act to protect the public health and safety of its citizens, and to protect public and private property, notwithstanding any provision in this Agreement. The City will make every reasonable effort to coordinate its emergency response with the Applicant.

- (1) Applicant shall maintain the emergency contact information current at all times with the City.
- (2) In case of a network emergency, Applicant may access its Communications Facility without first obtaining a ROW Permit provided Applicant has conducted network trouble-shooting and diagnostic tests and has reasonably identified the point or points of network failure or malfunction. While acting under this provision to address a network emergency, Applicant shall conduct its activities within the Rights-of-Way in such a manner as to protect public and private property, and the health and safety of the public at large. Applicant will make every reasonable effort to coordinate its emergency response with the City. To that end, prior to entering the rights-of-way, Applicant will contact the City and give written notice to the City of the network emergency and an estimated time period to address the situation

xiii. Non-Interference. Applicant agrees that its license is subject at all times to the City's right to use the City Ways and City Facilities for their primary purpose. Applicant, in the performance and exercise of any of its authorizations and obligations under this Agreement or a Site-Specific Permit, shall not obstruct or interfere in any manner with the City Ways, public rights of way, existing utility easements, private rights of way, sanitary sewers, sewer laterals, water mains, storm drains, gas mains, traffic signals, lighting, poles, aerial and underground electric and telephone wires, electrical wires, multi-channel video surface facilities and other communications facilities, and utility and municipal property facilities without the express written approval of the City or the other owners, including franchisees, of the affected property or properties. Written approvals of the owners or franchisees shall be provided to the City Representative prior to the commencement of the installation of Communications Facilities on an existing structure. In the event any after-installed Communications Facilities causes such interference, and after City has notified Applicant in writing of such interference, Applicant will take all reasonable steps necessary to correct and eliminate the interference.

xiv. City Facilities. The City reserves to itself the right to attach, install, maintain, replace, and enlarge City Facilities and operate the same from time to time in such manner as will enable it to provide for the public health, safety, and welfare. The Applicant acknowledges that certain utilities provided by the City, other units of government and franchisees, are essential public services, including but not limited to: water, sanitary and stormwater services, and utilities necessary to provide heat.

xv. Interruptions. The City shall not be liable to the Applicant or its customers for any interruption of service to the Applicant or interference with the Applicant's Communications Facility arising in any manner relating to the City's operations, City Facilities or within City Ways or the operations of utilities by the City's franchisees, or arising in any manner out of the condition or character of City Ways or City's Facilities.

xvi. Condition of Premises. As a material part of the consideration for this Agreement, ~~Licensee~~Applicant takes and accepts the City Ways, City Facilities and Poles "as is" in the condition in which the Applicant finds them, with any and all latent and patent defects and with no express or implied warranties by the City of merchantability, fitness, suitability, or fitness for any particular purpose. The Applicants shall have the right to inspect the City Way, City Facilities or Poles prior to installing its Communications Facilities. The City will be responsible for the regular maintenance of the City Facilities and City Way and will keep the City Facilities and City Way in good repair as required by all federal, state, county and local laws.

xvii. Scope of Site-Specific Permit. The grant of a Site-Specific Permit to the Applicant is subject to prior use and existing and continuing rights, consents and approvals of the City for utilities and any rights of other Applicants, and to existing and future recorded and unrecorded deeds, easements, dedications, grievances, conditions, covenants, restrictions, encumbrances, and claims of title which may affect any right, title, and interest in and to the City Ways or other property and any City owned or controlled facilities located within those City Ways or other property.

xviii. — Routine Work. Except in emergencies requiring restoration within twenty-four (24) hours of loss of function of the ~~Licensee's~~Applicant's Communications

Facilities, the LicenseeApplicant shall give not less than ten (10) days written notice to the City Representative whenever the LicenseeApplicant intends to perform any work on or about the Licensee'sApplicant's Communications Facilities. The City Representative's permission to perform the work shall not be unreasonably withheld or delayed.

xix. Modification of Site-Specific Permit. The City may for consideration of the public health, safety, and welfare including, without limitation: safety, reliability, security, and engineering reasons, terminate or otherwise modify the scope of the Applicant's non-exclusive Site-Specific Permits upon sixty (60) days written notice to the Applicant. If the City exercises its rights under this subsection it will use reasonable efforts to find one or more alternative locations for the Applicant to install its Communications Facilities

Sec. 42-305. Effect of permit.

- (a) *Authority granted; no property right or other interest created.* A permit from the city authorizes a utility to undertake only certain activities in accordance with this article on city rights-of-way, as conditioned by the permit in accordance with this article, and does not create a property right or grant authority to the utility to impinge upon the rights of others who may have an interest in the rights-of-way.
- (b) *Duration.* No permit issued under this chapter shall be valid for a period longer than six (6) months unless construction is actually begun within that period and is thereafter diligently pursued to completion.
- (c) *Notice.* The Utility shall provide the City notice to begin work within forty eight (48) business hours prior to beginning the work. Failure to comply with this provision shall be considered a violation of the permit and thus subject to penalties under Sec 42-322 and/or permit suspension and revocation under Sec 42-311
- (d) *Pre-construction meeting required when indicated on permit.* No construction shall begin pursuant to a permit issued under this chapter prior to attendance by the permittee and all major contractors and subcontractors who will perform any work under the permit at a pre-construction meeting. The pre-construction meeting shall be held at a date, time and place designated by the city with such city representatives in attendance as the city deems necessary. The meeting shall be for the purpose of reviewing the work under the permit, and reviewing special considerations necessary in the areas where work will occur, including, without limitation, presence or absence of other facilities in the area and their locations, procedures to avoid disruption of other utilities, use of rights-of-way by the public during construction, and access and egress by adjacent property owners.
- (e) *Permit display.* A copy of the permit shall be available on-site at all times for the duration of the work. Failure to comply with this provision shall be considered a violation of the permit and thus subject to penalties under Sec 42-322 and/or permit suspension and revocation under Sec 42-311,
- (f) *Compliance with all laws required.* The issuance of a permit by the city does not excuse the Utility from complying with other requirements of the city and all applicable statutes, laws, ordinances, rules, and regulations.

Sec. 42-306. Revised permit drawings.

In the event that the actual location of any facilities deviate in any respect from the location identified in the plans, drawings and specifications approved with a permit, the Utility 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. Any deviation not in violation of this article shall constitute a variation application. Minor deviations may be reviewed and approved by the city engineer. A deviation shall be considered minor if there is no potential adverse effect to any other facility or planned facility in the right-of-way and the location is in substantial conformance with the approved permit. If the city engineer determines that a deviation is not minor, the variation shall be subject to approval or rejection by the corporate authorities. If the city denies the request for a variance, then the Utility shall, within thirty (30) days of said denial, either remove the facility from the right-of-way or modify the facility so that it conforms to the permit and submit revised drawings or plans therefore. Any reasonable out of pocket costs, including but not limited to, city staff costs, outside engineering fees, attorney's fees, document preparation fees, court reporter fees and notice or publication fees incurred by the city as a result of the installation of a facility in violation of this article, and for which no variance is granted, shall be paid to the city prior to the issuance of any other permits to all persons or entities violating this article.

Sec. 42-307. Insurance.

- (a) *Required coverages and limits.* Unless otherwise provided by franchise, license, or similar agreement, each Utility occupying right-of-way or constructing any facility in the right-of-way shall secure and maintain the following liability insurance policies insuring the Utility as named insured and naming the city, and its elected and appointed officers, officials, agents, and employees as additional insureds on the policies listed in subsections (1) and (2) below:
- (1) Commercial general liability insurance, including premises-operations, explosion, collapse, and underground hazard (commonly referred to as "X"; "C"; and "U" coverages) and products-completed operations coverage with limits not less than:
 - a. Five million dollars (\$5,000,000.00) for bodily injury or death to each person;
 - b. Five million dollars (\$5,000,000.00) for property damage resulting from any one (1) accident; and
 - c. Five million dollars (\$5,000,000.00) for all other types of liability;
 - (2) Automobile liability for owned, non-owned and hired vehicles with a combined single limit of one million dollars (\$1,000,000.00) for personal injury and property damage for each accident;
 - (3) Worker's compensation with statutory limits; and,

- (4) Employer's liability insurance with limits of not less than one million dollars (\$1,000,000.00) per employee and per accident.

If the Utility is not providing such insurance to protect the contractors and subcontractors performing the work, then such contractors and subcontractors shall comply with this section.

- (b) *Excess or umbrella policies.* The coverages required by this section may be in any combination of primary, excess, and umbrella policies. Any excess or umbrella policy must provide excess coverage over underlying insurance on a following-form basis such that when any loss covered by the primary policy exceeds the limits under the primary policy, the excess or umbrella policy becomes effective to cover such loss.
- (c) *Copies required.* The Utility shall provide copies of any of the policies required by this section to the city within ten (10) days following receipt of a written request from the city.
- (d) *Maintenance and renewal of required coverages.* The insurance policies required by this section shall contain the following endorsement:

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

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.

- (e) *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 requirements required under subsection (a) of this section, such as evidence that the Utility is a private self insurer under the Workers Compensation Act.
- (f) *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.
- (g) *Insurance of contractors and subcontractors.* The Utility shall provide evidence that all contractors and subcontractors are insured and registered with the City of Aurora.
- (h) *Insurance companies.* All insurance provided pursuant to this section shall be affected under valid and enforceable policies, issued by insurers legally able to conduct business with the ~~licensee~~ [Applicant](#) in the State of Illinois. All insurance carriers and surplus line carriers shall be rated "A-" or better and of a class size "X" or higher by A.M. Best Company.

Sec. 42-308. Indemnification.

By occupying or constructing facilities in the right-of-way, a Utility shall be conclusively deemed to agree to defend, indemnify and hold the city and its elected and appointed officials and officers, employees, agents and representatives harmless from and against any and all injuries, claims, demands, judgments, damages, losses and expenses, including reasonable attorney's fees and costs of suit or defense, arising out of, resulting from or alleged to arise out of or result from the negligent, careless or wrongful acts, omissions, failures to act or misconduct of the Utility or its affiliates, officers, employees, agents, contractors or subcontractors in the construction of facilities or occupancy of the rights-of-way, and in providing or offering service over the facilities, whether such acts or omissions are authorized, allowed or prohibited by this article or by a franchise, license, or similar agreement; provided, however, that the Utility's indemnity obligations hereunder shall not apply to any injuries, claims, demands, judgments, damages, losses or expenses arising out of or resulting from the negligence, misconduct or breach of this article by the city, its officials, officers, employees, agents or representatives.

Sec. 42-309. Security.

- (a) *Purpose.* The Utility 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 Utility'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 Utility of all the requirements of this article;
 - (2) Any expenditure, damage, or loss incurred by the city occasioned by the Utility's failure to complete the work in compliance with all codes, rules, regulations, orders, permits and other directives of the city issued pursuant to this article; and
 - (3) The payment by Utility of all liens and all damages, claims, costs, or expenses that the city may pay or incur by reason of any action or non-performance by Utility in violation of this article including, without limitation, any damage to public property or restoration work the Utility is required by this article to perform that the city must perform itself or have completed as a consequence solely of the Utility's failure to perform or complete, and all other payments due the city from the Utility pursuant to this article or any other applicable law.
- (b) *Form.* The Utility shall provide the security fund to the city at the Utility's election, of cash, an unconditional letter of credit or a surety bond in a form acceptable to the city from a surety licensed to do business in Illinois. Any letter of credit provided pursuant to this subsection shall, at a minimum:
- (1) Provide that it will not be canceled without prior notice to the city and the Utility;
 - (2) Not require the consent of the Utility prior to the collection by the city of any amounts covered by it; and
 - (3) Shall provide a location convenient to the city and within the State of Illinois at which it can be drawn.

- (4) Issued by a United States bank or other financial institution reasonably acceptable to the City of Aurora and having a credit worthiness rating of at least “A” by Standard and Poor’s or “A2” by Moody Investment Services.
- (c) *Amount.* The dollar amount of the security fund shall be sufficient to provide for the reasonably estimated cost to restore the right-of-way to at least as good a condition as that existing prior to the construction under the permit, as determined by the city engineer, and may also include reasonable, directly related costs that the city estimates are likely to be incurred if the Utility fails to perform such restoration. In no event shall the amount of the security fund be less than two thousand five hundred dollars (\$2,500.00).
- (d) *Amount for phased facilities.* 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 Utility may 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 subsection (c) for any single phase.
- (e) *Withdrawals.* The city, upon fourteen (14) days' advance written notice clearly stating the reason for, and its intention to exercise withdrawal rights under this subsection, may withdraw an amount from the security fund, provided that the Utility has not reimbursed the city for such amount within the fourteen-day notice period. Withdrawals may be made if the Utility:
- (1) Fails to make any payment required to be made by the Utility hereunder;
 - (2) Fails to pay any liens relating to the facilities that are due and unpaid;
 - (3) Fails to reimburse the city for any damages, claims, costs or expenses which the city has been compelled to pay or incur by reason of any action or non-performance by the Utility; or
 - (4) Fails to comply with any provision of this article that the city determines can be remedied by an expenditure of an amount in the security fund.
- (f) *Appeal.* A Utility that receives a notice of withdrawal under subsection (e) of this section may appeal the determination that the city is entitled to withdraw said funds in accordance with the procedures of section 42-323 of this article.
- (g) *Replenishment.* Within fourteen (14) days after receipt of written notice from the city that any amount has been withdrawn from the security fund, the Utility shall restore the security fund to the amount specified in subsection (c), (d) or (k) of this section.
- (h) *Interest.* The Utility may request that any and all interest accrued on the amount in the security fund be returned to the Utility by the city, upon written request for said withdrawal to the city, provided that any such withdrawal does not reduce the security fund below the minimum balance required in subsection (c), (d) or (k) of this section, and

further provided that the city shall not be required to deposit the security fund in an interest bearing account.

- (i) *Closing and return of security fund.* Upon completion of the work authorized under the permit, the Utility 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 Utility to comply with any provisions of this article 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 Utility.
- (j) *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 article 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 that may be infringed or otherwise violated.
- (k) Notwithstanding anything to the contrary contained in this section, a Utility may negotiate with the city engineer to maintain one (1) security fund for all permits that Utility requires in the city to be established and reviewed on a yearly basis. Such single security fund shall be established in an amount commensurate with the amount of work estimated to be done in the rights-of-way, which shall, in no case, be less than ten thousand dollars (\$10,000.00), and shall be subject to all of the provisions of this section.

Sec. 42-310. Conflicts.

Where any facilities subject to this article physically conflict with the repair or maintenance of municipal raw or potable water improvements, electrical lines, street lights, sanitary, combined, or street lighting improvements, communication lines, traffic control devices, sewer line or stormwater sewer line, surface improvements, including roadway improvements, it shall be the responsibility of the owner of the facility, at the owners' sole cost and expense to cooperate and coordinate promptly with the city during the municipal repair or maintenance and after notice from the city engineer to relocate the facility or otherwise ameliorate the conflict in a manner consistent with sound engineering practice. In an emergency the city engineer may orally direct relocation, protection or amelioration. Any owner failing to relocate, protect, or otherwise ameliorate in conformance with this paragraph shall reimburse the city all reasonable costs and expenses actually incurred by the city's relocating the facility or otherwise ameliorate the affected owner's facilities. Relocation of facilities must be complete within thirty (30) days of written request by the City of Aurora Engineering Division to relocate. Relocation may take longer than thirty (30) days if the applicant obtains written approval of time extension by the city engineer.

Sec. 42-311. Permit suspension and revocation.

- (a) City right to revoke permit. The city may revoke, suspend a permit issued, or refuse to issue new permits pursuant to this article 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 article or other applicable city ordinances or regulations;
 - (3) Failure to provide accurate design locates of existing facilities within forty-eight (48) hours of request by the City of Aurora Engineering Division;
 - (4) Failure to resolve a conflict in a timely matter within the City of Aurora;
 - (5) A direct or imminent threat to the public health, safety, or welfare by a Utility's physical presence or presence of a Utility's facilities on, over, above, along, upon, under, across, or within the rights-of-ways;
 - (6) A failure to construct the facilities in accordance with the permit and approved plans, or the provisions of this article;
 - (7) A failure to pay fees as required under this article;
 - (8) A failure to complete the work in a timely manner;
 - (9) Failure to provide the City written notice forty eight (48) business hours prior to beginning work in accordance with the approved permit.
 - (10) Failure to have the permit available on-site for the duration of the work
 - (11) Failure to comply with any conditions placed on the permit
 - (12) Failure to comply with Section 42-319 of this Article: Clean up and Restoration
 - (13) A failure to follow the J.U.L.I.E. laws and regulations.
- (b) Notice of revocation or suspension. The city shall send written notice of its intent to revoke or suspend a permit issued pursuant to this article stating the reason or reasons for the revocation or suspension and the alternatives available to a Utility under this section.
- (c) Utility alternatives upon receipt of notice of revocation or suspension. Upon receipt of a written notice of revocation or suspension from the city, the Utility shall have the following options:
- (1) Immediately provide the city with evidence that no cause exists for the revocation or suspension and request an appeal of the determination;
 - (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 receipt of the written notice of revocation; or
 - (3) Immediately remove the facilities located on, over, above, along, upon, under, across, or within the rights-of-way and restore the rights-of-way to the satisfaction

of the city providing written proof of such removal to the city within ten (10) days after receipt of the written notice of revocation.

The city may, in its sole discretion, for good cause shown, 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 discovery of any of the reasons for revocation set forth within subsection (a) of this section.
- (e) Failure or refusal of the Utility to comply. If the Utility fails to comply with the provisions of subsection (c) of this section, the city or its designee may, at the option of the city: (1) correct the deficiencies; (2) upon not less than twenty (20) days' notice to the Utility, remove the subject facilities or equipment; or (3) after not less than thirty (30) days' notice to the Utility of failure to cure the non-compliance, deem them abandoned and property of the city. The Utility shall be liable in all events to the city for all costs of removal.
- (f) Appeal. The Utility may appeal the revocation or suspension of a permit under this section in accordance with the procedures of section 42-323 of this article.

Sec. 42-312. Change of ownership, 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 right-of-way or change in the ownership 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 right-of-way, subject to subsections (b) and (c) below and providing that the new owner registers with the city and as provided in section 42-302. Any merger, acquisition or transfer of shares or ownership interest in the Utility affecting twenty (20) percent of such ownership interest shall be considered a change in ownership for purposes of this section.
- (b) Amended permit. A new owner may request an amendment to any current permit within fourteen (14) days from the effective date of any change in ownership of the Utility or facility, and such request for amendment shall be processed promptly by the city within fourteen (14) days of receipt of any such request in writing. The new owner shall be presumed to have accepted, and agreed to be bound by, the terms and conditions of any existing permit if the new owner proceeds with any work pursuant to an existing permit, uses the facility or allows it to remain on the city's right-of-way without seeking an amendment to the permit.
- (c) Insurance and security. All required insurance coverage along with any bonds or letter(s) of credit shall be changed to reflect the name of the new owner upon transfer.

Sec. 42-313. General construction standards.

- (a) Standards and principles. All construction in the right-of-way shall be consistent with applicable ordinances, codes, laws, rules and regulations, and commonly recognized and accepted traffic control and construction principles, sound engineering practice and, where applicable, the principles and standards set forth in the following IDOT publications and related materials, as amended from time to time:
- (1) Standard Specifications for Road and Bridge Construction, Latest Edition;
 - (2) Supplemental Specifications and Recurring Special Provisions, Latest Edition;
 - (3) Bureau of Design and Environment Manual, Latest Edition;
 - (4) Bureau of Local Roads and Streets Manual, Latest Edition;
 - (5) Highway Standards, Latest Revisions;
 - (6) Illinois Manual on Uniform Traffic Control Devices (92 Ill. Adm. Code Sec. 545);
 - (7) Flagger's Handbook;
 - (8) Work Site Protection Manual for Daylight Maintenance Operations;
 - (9) City of Aurora, Standard Specifications for Improvements, Latest Revision; and
 - (10) APPA - American Public Power Association.
- b) Interpretation of municipal standards and principles. If a discrepancy exists between or among differing principles and standards required by this article, the city engineer shall determine, in the exercise of sound engineering judgment, which 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.

Sec. 42-314. 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, IDOT Standards, 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 rights-of-way.
- (c) *Interference with traffic.* All work shall be phased so that there is minimum interference with pedestrian and vehicular traffic. When a lane closure is required, written notification must be provided to the city engineer forty-eight (48) hours prior to beginning the work.
- (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 provide written notification to the resident, business or institution of the approximate beginning time and duration of such work; provided, however, that in cases

involving emergency repairs pursuant to section 42-320 of this article, 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. If such deficiencies are not corrected within two (2) hours, the city engineer is authorized to direct a contractor to install the proper traffic control and charge the associated cost to the Utility.

Sec. 42-315. Location of facilities.

(a) General requirements. In addition to location requirements applicable to specific types of facilities, all facilities, regardless of type, shall be subject to the general location requirements of this subsection.

- (1) *No interference with city facilities.* No facilities shall be placed in any location if the city engineer or director of public works determines that the proposed location will require the relocation or displacement of any of the city's facilities or will otherwise interfere with the operation or maintenance of any of the city's facilities.
- (2) *Minimum interference and impact.* The proposed location shall cause only the minimum possible interference with the use of a right-of-way and shall cause only the minimum possible impact upon, and interference with, the rights and reasonable convenience of property owners who adjoin said right-of-way.
- (3) *No interference with travel.* No facility shall be placed in any location that interferes with the usual travel on such right-of-way.
- (4) *No limitations on visibility.* No facility shall be placed in any location so as to limit visibility of or by users of a right-of-way.
- (5) *Size of facilities.* The proposed installation shall use the smallest suitable handholds, vaults, boxes, equipment enclosures, power pedestals, and/or cabinets then in use by the facility owner, regardless of location, for the particular application being subject to review and approval by the City.

(b) *Parallel facilities located within roadways.*

- (1) *Overhead parallel facilities.* An overhead parallel facility may be located within the boundaries lines of a right-of-way containing a roadway only if:
 - a. The facilities are located as near as practicable to the right-of-way line and as nearly parallel to the right-of-way line as reasonable pole alignment will permit;
 - b. Poles should be installed as remote from pavement edge as practicable with minimum distance of ten (10) feet (3.0 m) from the edge of pavement and are not within the clear zone;
 - c. No pole is located in the ditch line of a roadway; and,

- d. Any ground-mounted appurtenance is located within one (1) foot (0.3 m) of the right-of-way line or as near as possible to the right-of-way line.
- (2) *Underground parallel facilities.* An underground parallel facility may be located within the right-of-way lines of a roadway only if:
- a. The facilities are located as near 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;
 - b. New facilities may be located under the paved portion of a roadway 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 underground power or communications facilities, the facilities 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, and any above-grounded appurtenance shall be located within one (1) foot (0.3 m) of the right-of-way line or as near as practicable.
- (c) *Facilities crossing roadways.*
- (1) *No future disruption.* The construction and design of crossing facilities installed between the ditch lines or curb lines of city roadways may require the incorporation of materials and protections (such as encasement or additional cover) to avoid settlement or future repairs to the roadways resulting from the installation of such crossing facilities.
 - (2) *Culverts, or drainage facilities.* Crossing facilities shall not be located in culverts or drainage facilities.
 - (3) *Ninety-degree crossing required.* Crossing facilities shall cross at or as near to a ninety (90) degree angle to the centerline of a right-of-way as practicable.
 - (4) *Overhead power or communication facility.* An overhead power or communication facility may cross a roadway only if:
 - a. It has a minimum vertical line clearance as required by ICC's rules entitled, "Construction of Electric Power and Communication Lines" (83 Ill. Adm. Code 305);
 - b. Poles are located within one (1) foot (0.3 m) of the outer boundary of a right-of-way containing a roadway and outside of the clear zone; and
 - c. Overhead crossings at major intersections shall be avoided.
 - (5) *Underground power or communication facility.* An underground power or communication facility may cross a roadway only if:
 - a. The design materials and construction methods will provide maximum maintenance-free service life;

- b. Capacity for the Utility's foreseeable future expansion needs is provided in the initial installation;
 - c. Such power or communications facilities are installed in conduit at the time of burial; and
 - d. The crossing is directionally bored, and there is no open cut disruption.
- (6) *Markers.* The city may require the Utility to provide a marker at each right-of-way line where an underground facility other than a power or communication facility crosses a roadway. Each marker shall identify the type of facility, the Utility, and an emergency phone number. Markers may also be eliminated as provided in current federal regulations. (49 C.F.R. Sec. 192.707 (1989)).
- (d) *Facilities to be located within particular rights-of-way.* The city may require that facilities be located within the parkway portion of rights-of-way containing roadways.
- (e) *Freestanding facilities.*
- (1) The city may restrict the location and size of any freestanding facility located within a right-of-way.
 - (2) The city may require any freestanding facility located within a right-of-way to be screened from view.
- (f) *Freestanding cabinet facility installation.* Freestanding cabinet facilities may be installed only if:
- (1) No other existing facilities in the area are located underground;
 - (2) New underground installation is not technically feasible; and,
 - (3) The proposed installation will be made at a location, and will employ suitable design and materials, to provide the greatest protection of aesthetic qualities of the area being traversed without adversely affecting safety. Suitable designs include, but are not limited to, self-supporting armless, single-pole construction with vertical configuration of conductors and cable. Existing poles and light standards shall be used wherever practicable; the installation of additional poles is strongly discouraged.
- (g) *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 and there shall be no additional danger to the public health, safety and welfare likely to occur from the improvement. Other means shall include, but are not limited to, underground, underwater, independent pole, cable support and tower support facilities, all of which are completely separated from the bridge or roadway structure. Facilities transmitting commodities that are volatile, flammable, corrosive, or energized, especially those under significant pressure or potential, present high degrees of risk and such installations are not permitted on a bridge or roadway structure.

- (2) A Utility shall include in its request to accommodate a facility installation on a bridge or roadway structure supporting data demonstrating the impracticability of alternate routing. Approval or disapproval of an application for facility attachment to a bridge or roadway structure will be based upon the following considerations:
- a. The type, volume, pressure or voltage of the commodity to be transmitted and an evaluation of the resulting risk to persons and property in the event of damage to or failure of the facility;
 - b. The type, length, value, and relative importance of the roadway structure in the transportation system;
 - c. The alternative routings available to the Utility and their comparative practicability;
 - d. The proposed method of attachment;
 - e. The ability of the structure to bear the increased load of the proposed facility;
 - f. The degree of interference with bridge or roadway maintenance and painting;
 - g. The effect on the visual quality of the structure; and
 - h. The public benefit expected from the Utility's service as compared to the risk involved.

(h) *Appearance standards.*

- (1) The city may prohibit the installation of freestanding facilities in particular locations in order to preserve visual quality.
- (2) A facility may be constructed only if its construction does not require extensive removal or alteration of trees or vegetation or terrain features visible right-of-way user or to adjacent residents and property owners, and if it does not impair the aesthetic quality of the lands being traversed.

Sec. 42-316. 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 specified by the city engineer from the edge of the pavement. 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 and construction fencing. 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 the roadway.
- c. Borings with diameters greater than six (6) inches. Borings over six (6) inches (0.15 m) in diameter shall be accomplished with an auger and following pipe, and the diameter of the auger shall not exceed the outside diameter of the following pipe by more than one (1) inch (25 mm).
- 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 to be located within five (5) feet of the drip line of any tree designated by the city to be preserved or protected shall be reviewed and must be approved by the city engineer, and any such facility to be located within five (5) feet of the drip line of any tree shall be bored under or around the root system, unless permission is granted in writing to provide otherwise, and provided that the facility is located without damage to the tree or its root system.

(2) *Trenching.* Trenching for facility installation, repair, or maintenance on rights-of-way shall be done in accordance with the City of Aurora's Standard Specifications for Improvements, the Standard Specifications for Water and Sewer Construction in Illinois, applicable portions of Section 603 of IDOT's "Standard Specifications for Road and Bridge Construction."

- a. Length. The length of open trench shall be kept to the practicable minimum consistent with requirements for pipe-line testing. Only one-half (1/2) 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 windrowed excavated material shall be protected as required by Chapter 6 of the Illinois Manual on Uniform Traffic Control Devices. Excavated material shall not be allowed to remain on the paved portion of the roadway. Where right-of-way width does not allow for windrowing excavated material off the paved portion of the roadway, excavated material shall be hauled to an off-road location.
- c. Drip line of trees. The Utility shall not trench within the drip line of any tree designated by the city to be preserved or protected.

(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." When excavated material is hauled away or is unsuitable for backfill, suitable granular backfill shall be used.

- b. For a period of three (3) years from the date construction of a facility is completed, the Utility shall be responsible to remove and restore any backfilled area that has settled due to construction of the facility. If so ordered by the city engineer, the Utility, at its expense, shall remove any pavement and backfill material to the top of the installed facility, place and properly compact new backfill material, and restore new pavement, sidewalk, curbs, and driveways to the proper grades, as determined by the city engineer.

(4) *Pavement cuts.* Pavement cuts for facility installation or repair shall be permitted on a roadway only if that portion of the roadway is closed to traffic. If a variance to the limitation set forth in this subsection is permitted under section 42-321, the following requirements shall apply:

- a. Any excavation under roadways or other impervious surfaces shall be backfilled and compacted as soon as practicable with CA crushed limestone or crushed gravel, as designated by the city engineer.
- b. Restoration of pavement, in kind, shall be accomplished as soon as practicable, and temporary repair with bituminous mixture shall be provided immediately. Permanent pavement restoration shall conform to the City of Aurora's Standard Specifications. Temporary pavement repair shall consist of two-inch thick course of either UPM cold patch, or Hot Mix Asphalt (HMA). Any subsequent failure of either the temporary repair or the restoration shall be rebuilt upon notification by the city.
- c. All saw cuts shall be full depth, except where City of Aurora owned electrical and traffic signal lines are located.
- d. For all rights-of-way that have been reconstructed with a concrete surface/base in the last seven (7) years, or resurfaced in the last three (3) years, permits shall not be issued unless such work is determined to be an emergency repair or other work considered necessary and unforeseen before the time of the reconstruction or unless a pavement cut is necessary for a J.U.L.I.E. locate.

(5) *Encasement.*

- a. Casing pipe shall be designed to withstand the load of the roadway and any other superimposed loads. The casing shall be continuous, either by one-piece fabrication or by welding or jointed installation approved by the city.
- b. The venting, if any, of any encasement shall extend within one (1) foot (0.3 m) of the right-of-way line. No above-ground vent pipes shall be located in the area established as clear zone for that particular section of the roadway.

- c. In the case of water main or service crossing, encasement shall be furnished between bore pits unless continuous pipe or city approved jointed pipe is used under the roadway. Casing may be omitted only if pipe is installed prior to roadway construction and carrier pipe is continuous or mechanical joints are of a type approved by the city. Bell and spigot type pipe shall be encased regardless of installation method.
- d. In the case of gas pipelines of sixty (60) psig or less, encasement may be eliminated.
- e. In the case of gas pipelines or petroleum products pipelines with installations of more than sixty (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.
- f. If encasement is eliminated for a gas or petroleum products pipeline, the facility shall be located so as to provide that construction does not disrupt the right-of-way.

(6) Minimum cover of underground facilities. Cover shall be provided and maintained at least in the amount specified in the following table for minimum cover for the type of facility:

TABLE INSET:

TYPE OF FACILITY	MINIMUM COVER
Electric Lines Power Communication, Cable or Video Service Lines	30 Inches (0.8 m) 24 18 to 24 Inches (0.6 m) As determined by the city engineer
Gas or Petroleum Products	30 Inches (0.8 m)
Water Line	Sufficient Cover to Provide Freeze Protection
Sanitary Sewer, Storm Sewer, or Drainage Line	Sufficient Cover to Provide Freeze Protection

(7) Standards and requirements for particular types of facilities.

- a. *Electric power or communication lines.*
- (i) *Code compliance.* Electric power or communications facilities within city rights-of-way shall be constructed, operated, and maintained in conformity with the provisions of 83 Ill. Adm. Code Part 305 (formerly General Order 160 of the Illinois Commerce Commission) entitled "Rules for Construction of Electric Power and Communications Lines," and the National Electrical Safety Code.
 - (ii) *Overhead facilities.* Overhead power or communication facilities shall use single pole construction and, where practicable, joint use of poles shall be used. Utilities shall make every reasonable effort to design the installation so guys and braces will not be needed. Variances may be allowed if there is no feasible alternative and if guy wires are equipped with guy guards for maximum visibility.
 - (iii) *Underground facilities.* (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 jacking or bore pits. Encasement may be eliminated only if: (a) the crossing is installed by the use of "moles," "whip augers," or other approved method that compresses 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 Safety Code.
 - (iv) *Burial of drops.* All temporary service drops placed between November 1 of the prior year and March 15 of the current year, also known as snowdrops, shall be buried by May 31 of the current year, weather permitting, unless otherwise permitted by the city.

Weather permitting, utilities shall bury all temporary drops, excluding snowdrops, within ten (10) business days after placement.

- b. *Underground facilities other than electric power or communication lines.* Underground facilities other than electric power or communication lines may be installed by:
- (i) The use of "moles," "whip augers," or other approved methods which compress the earth to move the opening for the pipe;
 - (ii) Jacking or boring with vented encasement provided between the ditch lines or toes of slopes of the roadway;
 - (iii) Open trench with vented encasement between ultimate ditch lines or toes of slopes, but only if prior to roadway construction; or,

(iv) Tunneling with vented encasement, but only if installation is not possible by other means.

- c. *Gas transmission, distribution and service.* Gas pipelines within rights-of-way shall be constructed, maintained, and operated in a city approved manner and in conformance with the Federal Code of the Office of Pipeline Safety Operations, Department of Transportation, Part 192 B Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards (49 C.F.R. Sec. 192), IDOT's "Standard Specifications for Road and Bridge Construction" and all other applicable laws, rules, and regulations.
- d. *Petroleum products pipelines.* Petroleum products pipelines within rights-of-way shall conform to the applicable sections of ANSI Standard Code for Pressure Piping. (Liquid Petroleum Transportation Piping Systems ANSI-B 31.4).
- e. *Waterlines, sanitary sewer lines, storm water sewer lines or drainage lines.* Water lines, sanitary sewer lines, storm sewer lines, and drainage lines within rights-of-way shall meet or exceed the recommendations of the current "Standard Specifications for Water and Sewer Main Construction in Illinois" or city ordinance, whichever is most restrictive.
- f. *Ground mounted appurtenances and freestanding cabinet facilities.* Ground mounted appurtenances, including large and small freestanding cabinet facilities to overhead or underground facilities, when permitted within a right-of-way, shall be provided with a vegetation-free area extending three (3) feet (915 mm) in width beyond the appurtenance in all directions. The vegetation-free area may be provided by an extension of the mounting pad, or by heavy duty plastic or similar material approved by the city engineer. With the approval of the city engineer shrubbery surrounding the appurtenance may be used in place of vegetation-free area. The housing for ground-mounted appurtenances shall be painted a neutral color to blend with the surroundings.

(c) *Materials.*

- (1) *General standards.* The materials used in constructing facilities within rights-of-way shall be those meeting the accepted standards of the appropriate industry, the applicable portions of IDOT's "Standards Specifications for Road and Bridge Construction" 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.* No material shall be stored on a right-of-way without the prior written approval of the city engineer. When such storage is permitted, all pipe, conduit, wire, poles, cross arms, or other materials shall be distributed along the right-of-way prior to and during installation in a manner to minimize hazards to the public, interference with right-of-way maintenance and 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, and proper protection with barricades shall be used.

- (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 rights-of-way may, at the discretion of the city, be required to be discontinued when such operations would create hazards to the public health, safety, and welfare. Such operations may also be required to be discontinued or restricted when conditions are such that construction would result in extensive damage to the right-of-way or other property.
 - (2) Hours of construction shall be those set forth in the city ordinances except in cases of emergency when work is required to restore vital services.
- (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 underground facilities within the rights-of-way to be occupied by its proposed facilities. The city will make its permit records available to a Utility for the purpose of identifying possible facilities. When notified of an excavation or when requested by the city or by J.U.L.I.E., a Utility shall locate and physically mark its underground facilities within forty-eight (48) hours, excluding weekends and holidays, in accordance with the Illinois Underground Facilities Damage Prevention Act (220 ILCS 50/1 et seq.)

Sec. 42-317. Vegetation control.

- (a) *Electric utilities--Compliance with state laws and regulations.* An electric Utility shall conduct all tree-trimming and vegetation control activities in the rights-of-way in accordance with applicable Illinois laws and regulations, and additionally, with such local franchise or other agreement with the city as permitted by law.
- (b) *Other utilities--Tree trimming permit required.* Tree trimming that is done by any other Utility with facilities in right-of-way, and that is not performed pursuant to applicable Illinois laws and regulations specifically governing same, shall not be considered a normal maintenance operation, but shall require the application for, and the issuance of, a permit, in addition to any other permit required under this article.
 - (1) *Application for tree trimming permit.* Applications for tree trimming permits shall include assurance that the work will be accomplished by competent workers that are experienced in accepted tree pruning practices and under the supervision of a certified arborist. 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 shall be grounds for cancellation of the tree-trimming permit and for assessment of damages. The city shall receive 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.

- (c) *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.
- (d) *Chemical use.*
 - (1) Except as provided in the following paragraph, no Utility shall spray, inject or pour any chemicals on or near any trees, shrubs or vegetation in the city for any purpose, including the control of growth, insects or disease.
 - (2) Spraying of any type of brush-killing chemicals will not be permitted on rights-of-way unless the Utility demonstrates to the satisfaction of the city engineer that such spraying is the only practicable method of vegetation control.

Sec. 42-318. Removal, relocation, or modifications of facilities.

- (a) *Notice.* Within ninety (90) days following written notice from the city, a Utility shall, at its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change or alter the position of any facilities within the rights-of-way whenever the corporate authorities have determined that such removal, relocation, change or alteration, is reasonably necessary for the construction, repair, maintenance, or installation of any city improvement in or upon, or the operations of the city in or upon, the rights-of-way. A facility owner shall be responsible for any costs incurred due to inaccurate information provided during the design phase of a city improvement project.
- (b) *Removal of unauthorized facilities.* Within thirty (30) days following written notice from the city, any Utility that owns, controls, or maintains any unauthorized facility or related appurtenances within the rights-of-way shall, at its own expense, remove all or any part of such facilities or appurtenances from the rights-of-way. A facility is unauthorized and subject to removal in the following circumstances:
 - (1) Upon expiration or termination of the Utility's license or franchise, unless otherwise permitted by applicable law;
 - (2) If the facility was constructed or installed without the prior grant of a license or franchise, if required;
 - (3) If the facility was constructed or installed without prior issuance of a required permit in violation of this article; or
 - (4) If the facility was constructed or installed at a location not permitted by the Utility's license or franchise.

- (c) *Emergency removal or relocation of facilities.* The city retains the right and privilege to cut or move any facilities located within the rights-of-way of the city, as the city may determine to be necessary, appropriate or useful in response to any public health or safety emergency. If circumstances permit, the city shall attempt to notify the Utility, if known, prior to cutting or removing a facility, and shall notify the Utility, if known, after cutting or removing a facility. All costs associated with the repair, replacement, or relocation of the facilities cut or removed by the city, shall be borne by the facility owner.
- (d) *Abandonment of facilities.* In the event the use of a facility has been discontinued for a period of one hundred and eighty (180) consecutive days, within the rights-of-way of the city, the facility shall be deemed to be abandoned. Determination of the date of abandonment shall be made by the city engineer, who shall have the right to request documentation and/or affidavits from the Utility regarding the issue of the facility's use. Upon the city engineer's determination and written notification to the Utility of such abandonment, the Utility shall have ninety (90) days within which to: (1) reactivate the actual use of the facility or transfer the facility to another Utility which makes actual use of the facility; or (2) dismantle and remove the facility and notify the city engineer in writing of the completion of such removal. Following the end of the ninety-day period from the date of receipt of such notice from the city, if no action has been taken under subsections (1) or (2) hereinabove, the city engineer may direct the Utility to remove all or any portion of the facility if it is determined that such removal will be in the best interest of the public health, safety and welfare. At the earlier date of either (1) two hundred and seventy (270) days from the date of discontinuance without reactivation, or (2) upon completion of dismantling or removal, any special exception or variance approval for the facility shall automatically expire without further action by the city. In the event that the city does not direct the Utility that abandoned the facility to remove it, by giving notice of abandonment to the city, the abandoning Utility shall be deemed to consent to the alteration or removal of all or any portion of the facility by another Utility or person.

Sec. 42-319. Clean-up and restoration.

The Utility shall remove all excess material and restore all turf and terrain and other property within ten (10) days after any portion of the rights-of-way are disturbed, damaged or destroyed due to construction or maintenance by the Utility, all to the satisfaction of the city, including restoration of private driveways and 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, re-sodding, or any other requirement to restore the right-of-way to a condition substantially equivalent to that which existed prior to the commencement of the project. The time period provided in this section may be extended by the city engineer for good cause shown.

Sec. 42-320. Maintenance and emergency maintenance.

- (a) *General.* Facilities on, over, above, along, upon, under, across, or within rights-of-way are to be maintained by or for the Utility in a manner satisfactory to the city and at the Utility's expense.
- (b) *Emergency maintenance procedures.* Emergencies may justify non-compliance with normal procedures for securing a permit:
- (1) If an emergency creates a hazard on the traveled portion of the right-of-way, the Utility shall take immediate steps to provide all necessary protection for traffic on the roadway or the public on the right-of-way including the use of signs, lights, barricades or flaggers. If a hazard does not exist on the traveled way, but the nature of the emergency is such as to require the parking on the shoulder of equipment required in repair operations, adequate signs and lights shall be provided. Parking on the shoulder in such an emergency will only be permitted when no other means of access to the facility is available.
 - (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. 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, including immediate repairs of damaged street lights and traffic signal lights.
- (c) *Emergency repairs.* The Utility must file in writing with the city of a description of the repairs undertaken in the right-of-way within twenty-four (24) hours after an emergency repair.

Sec. 42-321. Variances.

- (a) *Request for variance.* A Utility requesting a variance from one (1) or more of the provisions of this article must do so in writing to the city engineer as a part of the permit application or as otherwise specified in this article. The request shall identify each provision of this article 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 article identified in the variance request on an individual basis.
- (c) *Conditions for granting of variance.* The city engineer may authorize a variance only if the Utility requesting the variance has demonstrated that:
- (1) One (1) 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 with the provision from which a variance is requested are impracticable in relation to the requested approach.
- (d) *Additional conditions for granting of a variance.* As a condition for authorizing a variance, the city engineer may require the Utility requesting the variance to meet reasonable standards and conditions that may or may not be expressly be contained within this article but which carry out the purposes of this article.
- (e) *Right to appeal.* Any Utility aggrieved by any order, requirement, decision or determination, including denial of a variance, made by the city engineer under the provisions of this article shall have the right to appeal to the city council, or such other board or commission as it may designate. The application for appeal shall be submitted in writing to the city clerk within thirty (30) days after the date of such order, requirement, decision or determination. The city council shall commence its consideration of the appeal at the council's next regularly scheduled meeting occurring at least seven (7) days after the filing of the appeal. The city council shall timely decide the appeal.

Sec. 42-322. Penalties.

Any person who violates, disobeys, omits, neglects or refuses to comply with any of the provisions of this article shall be subject to a fine of not less than one thousand dollars (\$1000.00) nor more than ten thousand dollars (\$10,000.00) for each day that the Utility remains in violation of this article. Each day a violation continues shall be considered a separate offense.

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 article. Unless the Utility shows that another allocation of the cost of undertaking the requested action is appropriate, the Utility shall bear the city's costs of damages and its costs of installing, maintaining, modifying, relocating, or removing the facility that is the subject of the permit. No other administrative agency or commission may review or overrule a permit related cost apportionment of the city. Sanctions may be imposed upon a Utility that does not pay the costs apportioned to it.

Sec. 42-323. Appeals of withholding permits.

If the city engineer determines that a Utility is in violation of any provision of this article and refuses to issue other permits under this article pending the Utility bringing itself into compliance, the Utility may appeal in conformance with this subsection. Any denial of a permit under this subsection shall set forth in writing the reason(s) for the denial. The appeal of a denial of a permit under this section shall be filed with the city engineer who shall conduct an evidentiary hearing and issue a ruling within fourteen (14) days of receipt of a notice of appeal from the Utility. The burden of presentation and proof, which shall be by clear and convincing evidence, shall be on the Utility. The city engineer's ruling shall be in writing setting forth the reasons for the ruling. Denials of an appeal by the city engineer shall be appealable to the corporate authorities who shall rule based on the record before the city engineer. The corporate authorities shall rule in writing setting forth the reasons for the ruling.

Sec. 42-324. Movement of buildings.

Each Utility shall, upon request by any person holding a building moving permit or other approval issued by the city, temporarily remove, raise or lower its wire to permit the movement of buildings. The expense of such removal, raising or lowering shall be paid by the person requesting same, and a Utility shall be authorized to require such payment in advance. A utility shall be given not less than thirty (30) days' written notice to arrange for such temporary wire changes. This section is subject to those provisions of state law that are constitutionally binding upon home rule units.

Sec. 42-325. Enforcement.

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

Sec. 42-326. Severability.

If any section, subsection, sentence, clause, phrase or portion of this article is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions hereof.