

CHAPTER 93: PUBLIC RIGHTS-OF-WAY

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§ 93.01 FINDINGS.

- (A) The Village is a non-home rule municipality in accordance with the State of Illinois Constitution of 1970.
- (B) The Village has the authority to adopt ordinances and to promulgate rules and regulations that pertain to its government and affairs and governing the use of public rights-of-way and that protect the public health, safety, and welfare of its citizens.
- (C) The Village uses the public rights-of-way within its corporate limits to provide essential public services to its residents and businesses, including traffic-control signals, water, sanitary sewers, and storm sewers.
- (D) Other utility service providers, including electricity, telephone, natural gas, and cable television and video service providers, have placed or, from time to time, may request to place certain utility facilities in the public rights-of-way within the Village.
- (E) Legislatures and regulatory agencies at the state and federal levels have implemented changes in the regulatory framework to enhance competition in the providing of various utility services.

- (F) The combination of legislative and regulatory changes and the development of new technologies has led additional service providers to seek opportunities to provide services in the Village.
- (G) These regulatory and technological changes have resulted in demands for access to and use of the public rights-of-way in the Village as service providers, particularly in the video and communications services, attempt to provide new or additional services to compete with incumbent service providers.
- (H) Unlike prior deregulations of utility services in which incumbent service providers have been required to make their transmission and/or distribution systems available to competitors, video and communications services seeking to compete with incumbent service providers are seeking to install their own facilities for delivering competing video and communications services; thereby increasing the number of service providers seeking access to and use of the public rights-of-way in the Village.
- (I) The public rights-of-way within the Village are a limited public resource held in trust by the Village for the benefit of its citizens and the Village has a custodial duty to ensure that the public rights-of-way are used, repaired, and maintained in a manner that best serves the public interest.
- (J) The Village President and Board of Trustees find and determine that it is necessary to and in the best interests of the public health, safety, and general welfare to establish uniform standards and regulations for access to and use of the public rights-of-way in the Village by utility service providers and other persons and entities that desire to place structures, facilities, or equipment in the public rights-of-way, so as to:
 - (1) Prevent interference with the use of streets, sidewalks, alleys, and other public ways and places by the Village and the general public;
 - (2) Protect against visual and physical obstructions to vehicular and pedestrian traffic;
 - (3) Prevent interference with the facilities and operations of the Village's utilities and of other utilities lawfully located in public rights-of-way or property;
 - (4) Protect against environmental damage, including damage to trees, from the installation of utility facilities;
 - (5) Preserve the character of the neighborhoods in which facilities are installed;
 - (6) Prevent visual blight; and
 - (7) Assure the continued safe use and enjoyment of private properties adjacent to utility facilities locations.
- (K) This Chapter is adopted pursuant to the provisions of:
 - (1) The Illinois Municipal Code, ILCS Ch. 65, Act 5, §§ 1-1-1 *et seq.*, including, without limitation, §§ 11-20-5, 11-20-10, 11-42-11, 11-42-11.2, 11-80-1, 11-80-3, 11-80-6, 11-80-7, 11-80-8, 11-80-10, and 11-80-13;
 - (2) The Telephone Company Act, ILCS Ch. 220, Act 65, § 4;

- (3) The Illinois Highway Code, including, without limitation, Articles 7 and 9 thereof, ILCS Ch. 605, Act 5, §§ 1-101 *et seq.*;
 - (4) The Simplified Municipal Telecommunications Tax Act, ILCS Ch. 35, Act 636, §§ 5-1 *et seq.*; and
 - (5) The Cable and Video Competition Law of 2007, ILCS Ch. 220, Act 5, §§ 21-100 *et seq.*
- (L) This Chapter establishes generally applicable standards for construction on, over, above, along, upon, under, across, or within the public right-of-way, and for the use of and repair of the public right-of-way.
- (M) In the enactment of this Chapter, the Village has considered a variety of standards for construction on, over, above, along, under, across, or within, and the use of and repair of, the public right-of-way, including, but not limited to, the standards relating to the accommodation of utilities on rights-of-way of the state highway system promulgated by the State of Illinois Department of Transportation and found at 92 Ill. Adm. Code §§ 530.10 *et seq.*
- (N) The Village hereby finds that it is in the best interest of the Village, the public, and the utilities using the public rights-of-way to establish a comprehensive set of construction standards and requirements to achieve various beneficial goals, including, without limitation, enhancing the planning of new utility facilities; minimizing interference with, and damage to, rights-of-way and the streets, sidewalks, and other structures and improvements located in, on, over and above the rights-of-way; and reducing costs and expenses to the public.

(Ord. 4-3-A, passed 12-5-2007)

§ 93.02 PURPOSE AND SCOPE.

- (A) *Purpose.* The purpose of this Chapter is to establish policies and procedures for constructing facilities on, over, above, along, upon, under, across, and/or within rights-of-way within the Village's jurisdiction, which will provide public benefit consistent with the preservation of the integrity, safe usage, and visual qualities of the Village rights-of-way and the Village as a whole.
- (B) *Intent.* In enacting this Chapter, the Village intends to exercise its authority over the rights-of-way in the Village and, in particular, the use of the public ways and property by utilities, by establishing uniform standards to address issues presented by utility facilities, 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 facilities and operations of the Village'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 utility facilities;

- (5) Protect against increased storm water runoff 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 Village'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 utility facilities locations.

(C) *Facilities subject to this Chapter.*

- (1) This Chapter applies to all facilities on, over, above, along, upon, under, across, or within the rights-of-way within the jurisdiction of the Village.
- (2) A facility lawfully established prior to the effective date of this Chapter may continue to be maintained, repaired, and operated by the utility as presently constructed and located, except as may be otherwise provided in any applicable franchise, license, or similar agreement.
- (3) Any substantial modification to, relocation of, and/or installation of any lawfully established facility shall hereafter be subject to all of those applicable provisions of this Code, as may be amended from time to time.

(D) *Franchises, licenses, or similar agreements.*

- (1) The Village, in its discretion and as limited by law, may require utilities to enter into a franchise, license, or similar agreement for the privilege of locating their facilities on, over, above, along, upon, under, across, or within the Village rights-of-way.
- (2) Utilities that are not required by law to enter into an agreement may request that the Village enter into an agreement.
- (3) In such agreement, the Village may provide for terms and conditions inconsistent with this Chapter.

(E) *Effect of franchises, licenses, or similar agreements.*

- (1) *Utilities other than telecommunications providers.* In the event that a utility other than a telecommunications provider has a franchise, license, or similar agreement with the Village, the franchise, license, or similar agreement shall govern and control during the term of the agreement and any lawful renewal or extension thereof.
- (2) *Telecommunications providers.* In the event of any conflict with, or inconsistency between, the provisions of this Chapter and the provisions of any franchise, license, or similar agreement between the Village and any telecommunications provider, the provisions of the franchise, license, or similar agreement shall govern and control during the term of the agreement and any lawful renewal or extension thereof.

- (F) *Conflicts with other ordinances.* This Chapter supersedes all ordinances or parts of ordinances adopted prior hereto that are in conflict herewith, to the extent of the conflict.
- (G) *Conflicts with state and federal laws.* In the event that applicable federal or state laws or regulations conflict with the requirements of this Chapter, the utility shall comply with the requirements of this Chapter to the maximum extent possible without violating federal or state laws or regulations.
- (H) *Sound engineering judgment.*
 - (1) The Village shall use sound engineering judgment when administering this Chapter and may vary the standards, conditions, and requirements expressed in this Chapter when the Village so determines.
 - (2) Nothing herein shall be construed to limit the ability of the Village to regulate its rights-of-way for the protection of the public health, safety, and welfare.

(Ord. 4-3-A, passed 12-5-2007)

§ 93.03 DEFINITIONS.

As used in this Chapter and unless the context clearly requires otherwise, the words and terms listed shall have the meanings ascribed to them in this Section. Any term not defined in this Section shall have the meaning ascribed to it in one of the following authoritative sources, unless the context clearly requires otherwise, and to the extent of any inconsistency among them, the first named source which is applicable shall control: (i) Part 1 of Title 47 U.S.C.; (ii) 47 U.S.C., 151, et seq.; (iii) the FCC Order of September 26, 2018; (iv) Section 10 of Illinois Public Act 100-0585, the “Small Wireless Facilities Deployment Act”; or (v) in 92 Illinois Administrative Code Section 530.30.

AASHTO: American Association of State Highway and Transportation Officials.

ANSI: American National Standards Institute.

ANTENNA: Communications equipment that operates from a fixed location and transmits or receives electromagnetic radio signals used in the provision of any type of wireless communications services and any commingled information services.

ANTENNA EQUIPMENT: Any equipment, switches, wiring, cabling, power sources, shelters or cabinets associated with an antenna, located at the same general fixed location as the antenna and, when collocated on or adjacent to a structure, is mounted or installed at approximately the same time as such antenna.

APPLICANT: A person applying for a permit under this Chapter, including but not limited to any person or entity submitting an application to install small wireless facilities or structures to support the facilities within a Village right-of-way or within any other right-of-way within the Village.

APPLICATION: A written submission to the Village requesting authorization for the deployment of a facility at a specified location.

ASTM: American Society for Testing and Materials.

AUTHORIZATION: Any approval that the Village must issue under applicable law prior to the deployment of a facility, including, but not limited to, any required zoning approvals and one or more building permits at a specified location.

BACKFILL: The methods or materials for replacing excavated material in a trench or pit.

BORE OR BORING: To excavate an underground cylindrical cavity for the insertion of a pipe or electrical conductor.

CABLE OPERATOR: That term as defined in 47 USC 522(5).

CABLE SERVICE: That term as defined in 47 USC 522(6).

CABLE SYSTEM: That term as defined in 47 USC 522(7).

CARRIER PIPE: The pipe enclosing the liquid, gas or slurry to be transported.

CASING: A structural protective enclosure for transmittal devices such as: carrier pipes, electrical conductors, and fiber optic devices.

CLEAR ZONE: 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: Protective wrapping or mastic cover applied to buried pipe for protection against external corrosion.

CODE: The Code of Ordinances of the Village, as amended from time to time.

COLLOCATE: To install, mount, maintain, modify, operate, or replace wireless facilities on or adjacent to a wireless support structure or on or adjacent to a utility pole.

CONDUCTOR: Wire carrying electrical current.

CONDUIT: A casing or encasement for wires or cables.

CONSTRUCTION OR CONSTRUCT: The installation, repair, maintenance, placement, alteration, enlargement, demolition, modification or abandonment in place of facilities.

COVER: The depth of earth or backfill over buried utility pipe or conductor.

CROSSING FACILITY: A facility that crosses one or more right-of-way lines of a right-of-way.

DEPLOYMENT: Deployment means placement, construction, and/or modification of a facility.

DIRECTOR OF PUBLIC WORKS. The Village Director of Public Works, or his or her designee.

DISRUPT THE RIGHT-OF-WAY: For the purposes of this Chapter, any work that obstructs the right-of-way or causes a material adverse effect on the use of the right-of-way for its intended use. Such work may include, without limitation, the following: excavating or other cutting; placement (whether temporary or permanent) of materials, equipment, devices, or structures; damage to vegetation; and compaction or loosening of the soil, and shall not include the parking of vehicles or equipment in a manner that does not materially obstruct the flow of traffic on a highway.

EMERGENCY: Any immediate maintenance to the facility required for the safety of the public using or in the vicinity of the right-of-way or immediate maintenance required for the health and safety of the general public served by the utility.

ENCASEMENT: Provision of a protective casing.

ENFORCEMENT OFFICIAL: The Village President, or the Village officer, employee or agent(s) designated by the Village President to administer, enforce, and/or interpret the provisions of this Chapter.

ENGINEER: An engineer employed by or engaged by the Village, as designated by the Village President, or his or her designee, to assist and consult with the Enforcement Official.

EQUIPMENT: Materials, tools, implements, supplies, and/or other items used as part of or in order to facilitate construction of facilities.

EXCAVATION: The making of a hole or cavity by removing material, or laying bare by digging.

EXTRA HEAVY PIPE: Pipe meeting ASTM standards for this pipe designation.

FACILITY: All structures, devices, objects, and materials (including, but not limited to, track and rails, wires, ducts, fiber optic cable, antennas, vaults, boxes, equipment enclosures, cabinets, pedestals, poles, conduits, grates, covers, pipes, cables, and appurtenances thereto) located in, on, over, above, along, upon, under, across, within or through rights-of-way under this Chapter. For purposes of this Chapter, the term “facility” shall not include any facility owned or operated by the Village.

FCC: The Federal Communications Commission.

FCC ORDER OF SEPTEMBER 26, 2018: FCC Order dated September 26, 2018 in FCC WT Docket No. 17-79 and WC Docket No. 17-84.

FREESTANDING FACILITY: A facility that is not a crossing facility or a parallel facility, such as an antenna, transformer, pump, or meter station.

FRONTAGE ROAD: Roadway, usually parallel, providing access to land adjacent to the highway where it is precluded by control of access to a highway.

HAZARDOUS MATERIALS: Any substance or material which, due to its quantity, form, concentration, location, or other characteristics, is determined by the Village 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: A specific type of right-of-way used for vehicular traffic including rural or urban roads or streets. “Highway” includes all highway land and improvements, including roadways, ditches and embankments, bridges, drainage structures, signs, guardrails, protective structures and appurtenances necessary or convenient for vehicle traffic.

HIGHWAY CODE: The Illinois Highway Code, 605 Illinois Compiled Statutes 5/1-101 et seq., as amended from time to time.

HOLDER: 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 Illinois Compiled Statutes 5/21-401.

ICC: Illinois Commerce Commission.

IDOT: Illinois Department of Transportation.

JACKING: Pushing a pipe horizontally under a roadway by mechanical means with or without boring.

JETTING: Pushing a pipe through the earth using water under pressure to create a cavity ahead of the pipe.

JOINT USE: The use of pole lines, trenches or other facilities by two (2) or more utilities.

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

LANDSCAPE SCREENING: The installation of plantings, shrubbery, bushes and other foliage at grade which is intended to screen a facility or the base of a facility from public view.

MAJOR INTERSECTION: The intersection of two (2) or more major arterial highways.

MONOPOLE: A structure composed of a single spire, pole or tower designed and used to support antennas or related equipment and that is not a utility pole, an alternative antenna structure, or a Village-owned infrastructure.

OCCUPANCY: The presence of facilities on, over or under right-of-way.

OTHER RIGHT(S)-OF-WAY: Any public right(s)-of-way other than a Village right-of-way.

PARALLEL FACILITY: A facility that is generally parallel or longitudinal to the centerline of a right-of-way.

PARKWAY: Any portion of the right-of-way not improved by street or sidewalk.

PAVEMENT CUT: The removal of an area of pavement for access to a facility or for the construction of a facility.

PERMITTEE: An entity to which a permit has been issued pursuant to this Chapter.

PETROLEUM PRODUCTS PIPELINES: Pipelines carrying crude or refined liquid petroleum products including, but not limited to, gasoline, distillates, propane, butane, or coal slurry.

PRACTICABLE: That which is performable, feasible or possible, rather than that which is simply convenient.

PRESSURE: The internal force acting radially against the walls of a carrier pipe expressed in pounds per square inch gauge (psig).

PRIVATE LINE. A dedicated non-traffic sensitive service for a single customer that entitles the customer to exclusive or priority use of a communications channel, or a group of those channels, from one or more specified locations to one or more other specified locations.

PUBLIC ENTITY: A legal entity that constitutes or is part of the government, whether at local, state or federal level.

PUBLIC RIGHT-OF-WAY OR RIGHTS-OF-WAY: The area on, below, or above any street, alley, other land or waterway, dedicated or commonly used for pedestrian or vehicular traffic or other similar purposes, in which a public entity has the right and authority to authorize, regulate or permit the location of facilities of entities other than its own. Such phrase shall not include any real or personal Village property that is not specifically described in the previous sentence or buildings, fixtures and other structures or improvements, including but not limited to municipal aerial lines, regardless of whether they are situated in the right-of-way. (Sometimes referred to as “right-of-way” or “rights-of-way”.)

PUBLIC SAFETY USE: Communication facilities utilized by a functional division of the federal government or of the State, a unit of local government, or a special purpose district located in whole or in part within this State, that provides or has authority to provide firefighting, police, ambulance, medical, or other emergency services to respond to and manage emergency incidents.

RESTORATION: The repair of a right-of-way, highway, roadway, or other area disrupted by the construction of a facility.

ROADWAY: That part of the highway that includes the pavement and shoulders.

SALE OF TELECOMMUNICATIONS AT RETAIL: The transmitting, supplying, or furnishing of telecommunications and all services rendered in connection therewith for a consideration, other than between a parent corporation and its wholly owned subsidiaries or between wholly owned subsidiaries, when the gross charge made by one such corporation to another such corporation is not greater than the gross charge paid to the retailer for their use or consumption and not for sale.

SECURITY FUND: That amount of security required pursuant to § 93.11.

SHOULDER: 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 WIRELESS FACILITY OR FACILITIES: A personal wireless telecommunications facility consisting of an antenna and related equipment either installed singly or as part of a network

to provide coverage or enhance capacity in a limited defined area which generally will be a single-service provider installation.

SMALL WIRELESS FACILITY SYSTEM (Also known as a “DISTRIBUTED ANTENNA SYSTEM (DAS)”): A type of personal wireless telecommunication facility consisting of a network of spatially separated antenna nodes connected to a common source via a transport medium that provides wireless service within a geographic area and often, but not always, will serve multiple carriers.

SMTCT: Simplified Municipal Telecommunication Tax Act, that being 35 ILCS 636/5-1, et seq.

SOUND ENGINEERING JUDGMENT: A decision(s) consistent with generally accepted engineering principles, practices and experience.

STRUCTURE: A pole, tower, base station, or other building, whether or not it has an existing antenna facility, that is used or to be used for the provision of personal wireless service (whether on its own or commingled with other types of services). Also referred to in this Chapter as a “wireless support structure.”

TELECOMMUNICATIONS:

- (1) This term includes, but is not limited to, messages or information transmitted through use of local, toll and wide area telephone service, channel services, telegraph services, teletypewriter service, computer exchange service, private line services, mobile radio services, cellular mobile telecommunications services, stationary two-way radio, paging service and any other form of mobile or portable one-way or two-way communications, and any other transmission of messages or information by electronic or similar means, between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite, or similar facilities.
- (2) “Telecommunications” shall not include value-added services in which computer processing applications are used to act on the form, content, code and protocol of the information for purposes other than transmission.
- (3) “Telecommunications” shall not include purchase of telecommunications by a telecommunications service provider for use as a component part of the service provided by the provider to the ultimate retail consumer who originates or terminates the end to end communications.
- (4) “Telecommunications” shall not include the provision of cable services through a cable system as defined in the Cable Communications Act of 1984 (47 USC Section 521 and following), as now or hereafter amended, or cable or other programming services subject to an open video system fee payable to the Village through an open video system as defined in the rules of the Federal Communications Commission (47 CFR Section 76.1500 and following), as now or hereafter amended.

TELECOMMUNICATIONS PROVIDER: Any person that installs, owns, operates or controls facilities in the right-of-way used or designed to be used to transmit telecommunications in any form.

TELECOMMUNICATIONS RETAILER: Means and includes every person engaged in making sales of telecommunications at retail as defined herein.

TOWER: Any structure that is designed and constructed primarily for the purpose of supporting one or more antennas, including self-supporting lattice towers, guy towers, or monopole towers, and that is not a utility pole, an alternative antenna structure, or a Village-owned infrastructure.

TRENCH: A relatively narrow open excavation for the installation of an underground facility.

UTILITY: The individual or entity owning or operating any “facility” as defined in this Section.

UTILITY POLE: A pole or similar structure that is used in whole or in part by a communications service provider or for electric distribution, lighting, traffic control, or any similar function.

UTILITY POLE, EXISTING: Any utility pole installed on or before June 1, 2018.

UTILITY POLE, NEW: Any utility pole installed after June 1, 2018.

UTILITY POLE, VILLAGE: A utility pole owned or controlled by the Village located on and/or within a public Village right-of-way, or on or within any other public right-of-way.

VARIANCE OR VARIATION: A grant of relief from specific provisions of the Village of Port Barrington Code of Ordinances and/or from the provisions of Chapter 154, “Zoning Code”, thereof by an ordinance approved by the Corporate Authorities of the Village. Also sometimes referred to as a “waiver” or “exception”.

VENT: 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 Illinois Compiled Statutes 21-201(v).

VILLAGE: The Village of Port Barrington, Lake and McHenry Counties, Illinois.

VILLAGE ENGINEER: The Village of Port Barrington Village Engineer, or his or her designee.

VILLAGE FACILITIES: Any road(s), alley(s), paved surface(s), traffic control device(s), water service(s), sanitary sewer service(s), stormwater service(s), and their appurtenances in Village rights-of-way, or a utility pole owned or controlled by the Village.

VILLAGE-OWNED INFRASTRUCTURE: Infrastructure located within a Village right-of-way or within any other right-of-way within the corporate limits of the Village, including, but not limited to, streetlights, traffic signals, towers, utility pole(s), or structures, including the surface of the Village right-of-way owned, operated, controlled, or maintained by the Village.

VILLAGE PROPERTY: All property owned by and/or under the maintenance jurisdiction of the Village.

VILLAGE RIGHT-OF-WAY OR RIGHTS-OF-WAY: Any street, alley, other land or waterway, dedicated or commonly used for pedestrian or vehicular traffic or other similar purposes, including Village utility easements, in which the Village has the right and authority to authorize, regulate or permit the location of facilities other than those of the Village. “Right-of-way” or “rights-of-way” shall not include any real or personal Village property that is not specifically described in the

previous sentence and shall not include Village buildings, fixtures and other structures or improvements, regardless of whether or not they are situated in a Village right-of-way.

WATER LINES: Pipelines carrying raw or potable water.

WET BORING: Boring using water under pressure at the cutting auger to soften the earth and to provide a sluice for the excavated material.

WI-FI ANTENNA: An antenna used to support Wi-Fi broadband Internet access service based on the IEEE 802.11 standard that typically uses unlicensed spectrum to enable communication between devices.

WIRELESS FACILITY: Equipment at a fixed location that enables wireless communications between user equipment and a communications network, including: (i) equipment associated with wireless communications; and (ii) radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration. Wireless facility includes small wireless facilities. Wireless facility does not include: (i) the structure or improvements on, under, or within which the equipment is collocated; or (ii) wireline backhaul facilities, coaxial or fiber optic cable that is between wireless support structures or utility poles or coaxial, or fiber optic cable that is otherwise not immediately adjacent to or directly associated with an antenna.

WIRELESS INFRASTRUCTURE PROVIDER: Any person authorized to provide telecommunications service in the State that builds or installs wireless communication transmission equipment, wireless facilities, wireless support structures, or utility poles and that is not a wireless services provider but is acting as an agent or a contractor for a wireless services provider for the application submitted to the Village.

WIRELESS PROVIDER: A wireless infrastructure provider or a wireless services provider.

WIRELESS SERVICES: Any services provided to the general public, including a particular class of customers, and made available on a nondiscriminatory basis using licensed or unlicensed spectrum, whether at a fixed location or mobile, provided using wireless facilities.

WIRELESS SERVICES PROVIDER: A person who provides wireless services.

WIRELESS SUPPORT STRUCTURE: A freestanding structure, such as a monopole; tower, either guyed or self-supporting; billboard; or other existing or proposed structure designed to support or capable of supporting wireless facilities, including a portion or portion(s) of a public right-of-way not intended for vehicular use, but not including a utility pole.

WIRELESS SUPPORT STRUCTURE, VILLAGE: A wireless support structure owned or controlled by the Village.

ZONING CODE: The Village of Port Barrington Zoning Code, as amended from time to time, as set forth in Chapter 154, "Zoning Code", of this Code of Ordinances.

(Ord. 4-3-A, passed 12-5-2007; Amd. Ord. 2017-05-17-01, passed 05-17-2017; Amd. Ord. 2018-06-01, passed 06-20-18; Amd. Ord. 2018-11-01, passed 11-21-18)

§ 93.04 FRANCHISE OR LICENSE REQUIRED; ANNUAL REGISTRATION REQUIRED.

- (A) Except as otherwise provided by law, no public utility service, cable television service, telecommunications, personal wireless telecommunication facility or fiber optic service shall be installed or maintained on, in, upon, over, under, along, across, or through any public Village street, road, alley or right-of-way or on any other Village property within the Village, except pursuant to a then valid franchise ordinance or license agreement granted and approved by the Corporate Authorities of the Village.
- (B) Every utility that occupies a right-of-way within the Village shall register on January 1 of each year with the Village, providing the utility's name, address and regular business telephone and telecopy numbers, the name of one 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 24-hour telephone number for each such person, and evidence of insurance as required in § 93.09 in the form of a certificate of insurance.

(Ord. 4-3-A, passed 12-5-2007; Amd. Ord. 2017-05-17-01, passed 05-17-17) Penalty, see § 10.99

§ 93.05 PERMIT REQUIRED; APPLICATION AND FEES.

- (A) *Permit required.*
 - (1) No person shall construct any facility in, on, over, above, along, upon, under, across, within, or through any Village right-of-way which changes the location of the facility, adds a new facility, disrupts the right-of-way, or materially increases the amount of area or space occupied by the facility in, on, over, above, along, under, across, within, or through the right-of-way, without first filing an application with the Enforcement Official, or his or her designee, and obtaining a permit from the Village therefor, except as otherwise provided in this Chapter.
 - (2) No permit shall be required for installation and maintenance of service connections to customers' premises where there will be no disruption of the right-of-way.
- (B) *Permit application.*
 - (1) All applications for permits pursuant to this Chapter shall be filed on a form provided by the Village and shall be filed in the number of duplicate copies as the Village may designate.
 - (2) The applicant may designate those portions of its application materials that it reasonably believes contain proprietary or confidential information as "proprietary" or "confidential" by clearly marking each page of the materials accordingly.
- (C) *Minimum general application requirements.* The application shall be made by the utility or its duly authorized representative and shall contain, at a minimum, the following:
 - (1) The utility's name and address and telephone and telecopy numbers;
 - (2) The applicant's name and address, if different than the utility, its telephone, telecopy numbers, e-mail address, 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) 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.
 - (b) The scope and detail of the 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 work proposed.
 - (5) Evidence that the utility has placed on file with the Village:
 - (a) A written traffic-control plan demonstrating the protective measures and devices that will be employed consistent with the State of Illinois Manual on Uniform Traffic-Control Devices, to prevent injury or damage to persons or property and to minimize disruptions to efficient pedestrian and vehicular traffic; and
 - (b)
 1. 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.
 2. The intended response shall include notification to the Village and shall promote protection of the safety and convenience of the public.
 3. Compliance with ICC regulations for emergency contingency plans constitutes compliance with this section unless the Village finds that additional information or assurances are needed.
 - (6) Drawings, plans, and specifications showing the work proposed, including the certification of an engineer that the drawings, plans, and specifications comply with applicable codes, rules, and regulations;
 - (7) Evidence of insurance as required in § 93.09;
 - (8) Evidence of posting of the security fund as required in § 93.11;
 - (9) Any request for a variance from one or more provisions of this Chapter, as set out in § 93.22; and
 - (10) Any additional information as may be reasonably required by the Village.
- (D) *Supplemental application requirements for specific types of utilities.* In addition to the requirements of division (C) above, the permit application shall include the following items, as applicable to the specific utility that is the subject of the permit application:
- (1)
 - (a) In the case of the installation of a new electric power, communications, telecommunications, cable television 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 that the applicant has elected to obtain, has been issued by the ICC or other jurisdictional authority.

- (b) In the case of natural gas systems, state the proposed pipe size, design, construction class, and operating pressures.
 - (2) In the case of water lines, indicate that all requirements of the State of Illinois Environmental Protection Agency, Division of Public Water Supplies, have been satisfied;
 - (3) In the case of sewer line installations, indicate that the land and water pollution requirements of the State of Illinois Environmental Protection Agency, Division of Water Pollution Control and the Metropolitan Water Reclamation District, have been satisfied; or
 - (4) 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.
- (E) *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 Village within 30 days after the change necessitating the amendment.
- (F) *Application fees.* Unless otherwise provided by franchise, license, or similar agreement, or by the Illinois Simplified Telecommunications Tax Act (35 ILCS 636/5-1, et seq.), or by Section 93.22, "Small Wireless Facilities", of this Chapter, all applications for permits pursuant to this Chapter shall be accompanied by a fee in the amount of \$1,000.00, i.e., other than permits related to the collocation of Small Wireless Facilities.

(Ord. 4-3-A, passed 12-5-2007; Amd. Ord. 2017-05-17-01, passed 05-17-17; Amd. Ord. 2018-06-01, passed 06-20-18; Amd. Ord. 2018-11-01, passed 11-21-18) Penalty, see § 10.99

§ 93.06 ACTION ON PERMIT APPLICATIONS.

- (A) *Village review of permit applications.*
- (1) Completed permit applications, containing all required documentation, shall be examined by the Village Code Enforcement Officer within a reasonable time after filing.
 - (2) If the application does not conform to the requirements of applicable ordinances, codes, laws, rules, and regulations, the Village Code Enforcement Officer shall reject the application, in writing, stating the reasons therefor.
 - (3) If the Village Code Enforcement Officer is satisfied that the proposed work conforms to the requirements of this Chapter and applicable ordinances, codes, laws, rules, and regulations, the Village Code Enforcement Officer shall issue a permit therefor as soon as practicable.
 - (4) In all instances, it shall be the duty of the applicant to demonstrate, to the satisfaction of the Village Code Enforcement Officer, that the construction proposed under the application shall be in full compliance with the requirements of this Chapter.

(B) *Additional village review of applications of telecommunications retailers.*

- (1) (a) Pursuant to the Telephone Company Act, 220 ILCS Ch. 220, Act 65, § 4, a telecommunications retailer shall notify the Village that it intends to commence work governed by this Chapter for facilities for the provision of telecommunications services.
 - (b) The notice shall consist of plans, specifications, and other documentation sufficient to demonstrate the purpose and intent of the facilities, and shall be provided by the telecommunications retailer to the Village not less than ten days prior to the commencement of work requiring no excavation and not less than 30 days prior to the commencement of work requiring excavation.
 - (c) The Village Engineer shall specify the portion of the right-of-way upon which the facility may be placed, used, and constructed.
- (2) In the event that the Village Engineer fails to provide the specification of location to the telecommunications retailer within either ten days after service of notice to the Village by the telecommunications retailer in the case of work not involving excavation for new construction, or 25 days after service of notice by the telecommunications retailer in the case of work involving excavation for new construction, the telecommunications retailer may commence work without obtaining a permit under this Chapter.
- (3) (a) Upon the provision of the specification by the Village, where a permit is required for work pursuant to § 93.05, the telecommunications retailer shall submit to the Village an application for a permit and any and all plans, specifications, and documentation available regarding the facility to be constructed.
 - (b) The application shall be subject to the requirements of division (A) above.

(C) *Additional Village review of applications of holders of State of Illinois 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 45 days after submission to the Village, unless otherwise acted upon by the Village, provided the holder has complied with applicable Village codes, ordinances, and regulations.

(Ord. 4-3-A, passed 12-5-2007)

§ 93.07 EFFECT OF PERMIT.

- (A) *Authority granted; no property right or other interest created.* A permit from the Village authorizes a permittee to undertake only certain activities in accordance with this Chapter on Village rights-of-way, and does not create a property right or grant authority to the permittee to impinge upon the rights of others who may have an interest in the rights-of-way.
- (B) *Duration.* No permit issued under this Chapter shall be valid for a period longer than six months, unless construction is actually begun within that period and is thereafter diligently pursued to completion.
- (C) *Pre-construction meeting required.*

- (1) 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.
 - (2) The pre-construction meeting shall be held at a date, time, and place designated by the Village with the Village representatives in attendance as the Village deems necessary.
 - (3) 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 utility 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.
- (D) *Compliance with all laws required.* The issuance of a permit by the Village does not excuse the permittee from complying with other requirements of the Village and applicable statutes, laws, ordinances, rules, and regulations.

(Ord. 4-3-A, passed 12-5-2007)

§ 93.08 REVISED PERMIT DRAWINGS.

- (A) In the event that the actual locations of any facilities deviate in any material respect from the locations identified in the plans, drawings, and specifications submitted with the permit application, the permittee shall submit a revised set of drawings or plans to the Village within 90 days after the completion of the permitted work.
- (B) The revised drawings or plans shall specifically identify where the locations of the actual facilities deviate from the locations approved in the permit.
- (C) If any deviation from the permit also deviates from the requirements of this Chapter, it shall be treated as a request for variance in accordance with § 93.22.
- (D) If the Village denies the request for a variance, then the permittee shall either remove the facility from the right-of-way or modify the facility so that it conforms to the permit and submit revised drawings or plans therefor.

(Ord. 4-3-A, passed 12-5-2007) Penalty, see § 10.99

§ 93.09 INSURANCE.

- (A) *Required coverages and limits.*

- (1) 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 Village, and its elected and appointed officers, officials, agents, and employees as additional insureds on the policies listed in divisions (A)(1)(a) and (A)(1)(b) below:

- (a) 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:
 - 1. Five million dollars for bodily injury or death to each person;
 - 2. Five million dollars for property damage resulting from any one accident; and
 - 3. Five million dollars for all other types of liability.
 - (b) Automobile liability for owned, non-owned, and hired vehicles with a combined single limit of \$1,000,000 for personal injury and property damage for each accident;
 - (c) Worker's compensation with statutory limits; and
 - (d) Employer's liability insurance with limits of not less than \$1,000,000 per employee and per accident.
- (2) If the utility is not providing any insurance to protect the contractors and subcontractors performing the work, then the contractors and subcontractors shall comply with this section.
- (B) *Excess or umbrella policies.*
- (1) The coverages required by this section may be in any combination of primary, excess, and umbrella policies.
 - (2) 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 the loss.
- (C) *Copies required.* The utility shall provide copies of any of the policies required by this section to the Village within ten days following receipt of a written request therefor from the Village.
- (D) *Maintenance and renewal of required coverages.*
- (1) 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 30 days after receipt by the Village, by registered mail or certified mail, return receipt requested, of a written notice addressed to the Village President of the intent to cancel or not to renew.”
 - (2) Within ten days after receipt by the Village of the notice, and in no event later than ten days prior to the cancellation, the utility shall obtain and furnish to the Village evidence of replacement insurance policies meeting the requirements of this section.
- (E) *Self-insurance.*
- (1) A utility may self-insure all or a portion of the insurance coverage and limit requirements required by division (A) above.
 - (2) A utility that self-insures is not required, to the extent of the self-insurance, to comply with the requirement for the naming of additional insureds under division (A) above, or the requirements of divisions (B), (C), and (D) above.

- (3) A utility that elects to self-insure shall provide to the Village evidence sufficient to demonstrate its financial ability to self-insure the insurance coverage and limit requirements required under division (A) above, 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 Village 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 the insurance policies or self-insurance or by the recovery of any amounts thereunder.
- (G) *Insurance companies.*
 - (1) All insurance provided pursuant to this section shall be effected under valid and enforceable policies, issued by insurers legally able to conduct business with the licensee in the state.
 - (2) 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.

(Ord. 4-3-A, passed 12-5-2007)

§ 93.10 INDEMNIFICATION.

By occupying or constructing facilities in the right-of-way, a utility shall be deemed to agree to defend, indemnify, and hold the Village 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 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 the acts or omissions are authorized, allowed, or prohibited by this Chapter 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 Chapter by the Village, its officials, officers, employees, agents, or representatives.

(Ord. 4-3-A, passed 12-5-2007)

§ 93.11 SECURITY.

- (A) *Purpose.* The permittee shall establish a security fund in a form and in an amount as set forth in this section. The security fund shall be continuously maintained in accordance with this section at the permittee's sole cost and expense until the completion of the work authorized under the permit. The security fund shall serve as security for:
 - (1) The faithful performance by the permittee of all the requirements of this Chapter;
 - (2) Any expenditure, damage, or loss incurred by the Village occasioned by the permittee's failure to comply with any codes, rules, regulations, orders, permits, and other directives of the Village issued pursuant to this Chapter; and

- (3) The payment by permittee of all liens and all damages, claims, costs, or expenses that the Village may pay or incur by reason of any action or nonperformance by permittee in violation of this Chapter, including, without limitation, any damage to public property or restoration work the permittee is required by this Chapter to perform that the Village must perform itself or have completed as a consequence solely of the permittee's failure to perform or complete, and all other payments due the Village from the permittee pursuant to this Chapter or any other applicable law.
- (B) *Form.* The permittee shall provide the security fund to the Village in the form, at the permittee's election, of cash, a surety bond in a form acceptable to the Village, or an unconditional letter of credit in a form acceptable to the Village. Any surety bond or letter of credit provided pursuant to this division (B) shall, at a minimum:
- (1) Provide that it will not be canceled without prior notice to the Village and the permittee;
 - (2) Not require the consent of the permittee prior to the collection by the Village of any amounts covered by it; and
 - (3) Provide a location convenient to the Village and within the State of Illinois at which it can be drawn.
- (C) *Amount.*
- (1) 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 Village Code Enforcement Officer, and may also include reasonable, directly related costs that the Village estimates are likely to be incurred if the permittee fails to perform the restoration.
 - (2) Where the construction of facilities proposed under the permit will be performed in phases in multiple locations in the Village, 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 Village Code Enforcement Officer may, in the exercise of sound discretion, allow the permittee to post a single amount of security which shall be applicable to each phase of the construction under the permit.
 - (3) The amount of the security fund for phased construction shall be equal to the greatest amount that would have been required under the provisions of this division (C) for any single phase.
- (D) *Withdrawals.* The Village, upon 14-days' advance written notice clearly stating the reason for and its intention to exercise withdrawal rights under this division (D), may withdraw an amount from the security fund, provided that the permittee has not reimbursed the Village for the amount within the 14-day notice period. Withdrawals may be made if the permittee:
- (1) Fails to make any payment required to be made by the permittee hereunder;
 - (2) Fails to pay any liens relating to the facilities that are due and unpaid;

- (3) Fails to reimburse the Village for any damages, claims, costs, or expenses which the Village has been compelled to pay or incur by reason of any action or non-performance by the permittee; or
 - (4) Fails to comply with any provision of this Chapter that the Village determines can be remedied by an expenditure of an amount in the security fund.
- (E) *Replenishment.* Within 14 days after receipt of written notice from the Village that any amount has been withdrawn from the security fund, the permittee shall restore the security fund to the amount specified in division (C) above.
- (F) *Interest.* The permittee may request that any and all interest accrued on the amount in the security fund be returned to the permittee by the Village, upon written request for the withdrawal to the Village, provided that the withdrawal does not reduce the security fund below the minimum balance required in division (C) above.
- (G) *Closing and return of security fund.*
- (1) Upon completion of the work authorized under the permit, the permittee shall be entitled to the return of the security fund, or any portion thereof as remains on deposit, within a reasonable time after account is taken for all offsets necessary to compensate the Village for failure by the permittee to comply with any provisions of this Chapter or other applicable law.
 - (2) 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 Village to the extent necessary to cover any reasonable costs, loss, or damage incurred by the Village as a result of the revocation, provided that any amounts in excess of the costs, loss, or damage shall be refunded to the permittee.
- (H) *Rights not limited.*
- (1) The rights reserved to the Village with respect to the security fund are in addition to all other rights of the Village, whether reserved by this Chapter or otherwise authorized by law, and no action, proceeding, or exercise of right with respect to the security fund shall affect any other right the Village may have.
 - (2) Notwithstanding the foregoing, the Village shall not be entitled to a double monetary recovery with respect to any of its rights which may be infringed or otherwise violated.

(Ord. 4-3-A, passed 12-5-2007)

§ 93.12 PERMIT SUSPENSION AND REVOCATION.

- (A) *Village right to revoke permit.* The Village may revoke or suspend a permit issued pursuant to this Chapter for one or more of the following reasons:
- (1) Fraudulent, false, misrepresenting, or materially incomplete statements in the permit application;
 - (2) Non-compliance with this Chapter;

- (3) Permittee's physical presence or presence of permittee's facilities on, over, above, along, upon, under, across, or within the rights-of-way presents a direct or imminent threat to the public health, safety, or welfare; and/or
 - (4) Permittee's failure to construct the facilities substantially in accordance with the permit and approved plans.
- (B) *Notice of revocation or suspension.* The Village shall send written notice of its intent to revoke or suspend a permit issued pursuant to this Chapter stating the reason or reasons for the revocation or suspension and the alternatives available to permittee under this section.
- (C) *Permittee alternatives upon receipt of notice of revocation or suspension.*
- (1) Upon receipt of a written notice of revocation or suspension from the Village, the permittee shall have the following options:
 - (a) Immediately provide the Village with evidence that no cause exists for the revocation or suspension;
 - (b) Immediately correct, to the satisfaction of the Village, the deficiencies stated in the written notice, providing written proof of the correction to the Village within five working days after receipt of the written notice of revocation; or
 - (c) 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 Village providing written proof of the removal to the Village within ten days after receipt of the written notice of revocation.
 - (2) The Village may, in its discretion, for good cause shown, extend the time periods provided in this division (C).
- (D) *Stop-work order.* In addition to the issuance of a notice of revocation or suspension, the Village may issue a stop-work order immediately upon discovery of any of the reasons for revocation set forth within division (A) above.
- (E) *Failure or refusal of the permittee to comply.*
- (1) If the permittee fails to comply with the provisions of division (C) above, the Village or its designee may, at the option of the Village:
 - (a) Correct the deficiencies;
 - (b) Upon not less than 20-days' notice to the permittee, remove the subject facilities or equipment; or
 - (c) After not less than 30-days' notice to the permittee of failure to cure the non-compliance, deem them abandoned and property of the Village.
 - (2) The permittee shall be liable in all events to the Village for all costs of removal.

(Ord. 4-3-A, passed 12-5-2007)

§ 93.13 CHANGE OF OWNERSHIP OR OWNER'S IDENTITY OR LEGAL STATUS.

- (A) *Notification of change.*

- (1) A utility shall notify the Village no less than 30 days prior to the transfer of ownership of any facility in the right-of-way or change in identity of the utility.
 - (2) 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 applicable laws, ordinances, rules, and regulations, including this Chapter, with respect to the work and facilities in the right-of-way.
- (B) *Amended permit.*
- (1) A new owner shall request that any current permit be amended to show current ownership.
 - (2) If the new owner fails to have a new or amended permit issued in its name, the new owner shall be presumed to have accepted, and agreed to be bound by, the terms and conditions of the permit if the new owner uses the facility or allows it to remain on the Village's right-of-way.
- (C) *Insurance and bonding.* All required insurance coverage or bonding must be changed to reflect the name of the new owner upon transfer.
- (Ord. 4-3-A, passed 12-5-2007)

§ 93.14 GENERAL CONSTRUCTION STANDARDS.

- (A) *Standards and principles.* All construction in the right-of-way shall be consistent with applicable ordinances, codes, laws, rules, and regulations, and commonly recognized and accepted traffic-control and construction principles, sound engineering judgment and, where applicable, the principles and standards set forth in the following IDOT publications, as amended from time to time:
- (1) *Standard Specifications for Road and Bridge Construction;*
 - (2) *Supplemental Specifications and Recurring Special Provisions;*
 - (3) *Highway Design Manual;*
 - (4) *Highway Standards Manual;*
 - (5) *Standard Specifications for Traffic Control Items;*
 - (6) *Flagger's Handbook;* and
 - (7) *Work Site Protection Manual for Daylight Maintenance Operations.*
- (B) *Interpretation of municipal standards and principles.*
- (1) If a discrepancy exists between or among differing principles and standards required by this Chapter, the Village Code Enforcement Officer shall determine, in the exercise of sound engineering judgment, which principles apply and any decision shall be final.
 - (2) If requested, the Village Code Enforcement Officer shall state which standard or principle will apply to the construction, maintenance, or operation of a facility in the future.

(Ord. 4-3-A, passed 12-5-2007)

§ 93.15 TRAFFIC CONTROL.

- (A) *Minimum requirements.* The Village's minimum requirements for traffic protection are contained in IDOT's State Manual on Uniform Traffic-Control Devices and this Code.
- (B) *Warning signs, protective devices, and flaggers.* The utility is responsible for providing and installing warning signs, protective devices, and flaggers, when necessary, meeting applicable

federal, state, and local requirements for protection of the public and the utility's workers when performing any work on the rights-of-way.

- (C) *Interference with traffic.* All work shall be phased so that there is minimum interference with pedestrian and vehicular traffic.
- (D) *Notice when access is blocked.* At least 48 hours prior to beginning work that will partially or completely block access to any residence, business, or institution, the utility shall notify the resident, business, or institution of the approximate beginning time and duration of the work; provided, however, that in cases involving emergency repairs pursuant to § 93.21, the utility shall provide any 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 Village.

(Ord. 4-3-A, passed 12-5-2007) Penalty, see § 10.99

§ 93.16 LOCATION OF FACILITIES.

- (A) *General requirements.* In addition to location requirements applicable to specific types of utility facilities, all utility facilities, regardless of type, shall be subject to the general location requirements of this division (A).
 - (1) *No interference with Village facilities.* No utility facilities shall be placed in any location if the Village Code Enforcement Officer determines that the proposed location will require the relocation or displacement of any of the Village's utility facilities or will otherwise interfere with the operation or maintenance of any of the Village's utility facilities.
 - (2) *Minimum interference and impact.* The proposed location shall cause only the minimum possible interference with the use of the right-of-way and shall cause only the minimum possible impact upon, and interference with, the rights and reasonable convenience of property owners who adjoin the right-of-way.
 - (3) *No interference with travel.* No utility facility shall be placed in any location that interferes with the usual travel on the right-of-way.
 - (4) *No limitations on visibility.* No utility facility shall be placed in any location so as to limit visibility of or by users of the right-of-way.
 - (5) *Size of utility facilities.* The proposed installation shall use the smallest suitable vaults, boxes, equipment enclosures, power pedestals, and/or cabinets then in use by the facility owner, regardless of location, for the particular application.
- (B) *Parallel facilities located within highways.*
 - (1) *Overhead parallel facilities.* An overhead parallel facility may be located within the right-of-way lines of a highway, only if:
 - (a) Lines are located as near as practicable to the right-of-way line and as nearly parallel to the right-of-way line as reasonable pole alignment will permit;

- (b) Where pavement is curbed, poles are as remote as practicable from the curb with a minimum distance of two feet behind the face of the curb, where available;
 - (c) Where pavement is uncurbed, poles are as remote from pavement edge as practicable with minimum distance of four feet outside the outer shoulder line of the roadway and are not within the clear zone;
 - (d) No pole is located in the ditch line of a highway; and
 - (e) Any ground-mounted appurtenance is located within one foot of the right-of-way line or as near as possible to the right-of-way line.
- (2) *Underground parallel facilities.* An underground parallel facility may be located within the right-of-way lines of a highway, only if:
- (a) The facility is located as near the right-of-way line as practicable and not more than eight feet from and parallel to the right-of-way line;
 - (b) A new facility may be located under the paved portion of a highway only if other locations are impracticable or inconsistent with sound engineering judgment (e.g., a new cable may be installed in existing conduit without disrupting the pavement); and
 - (c) In the case of an underground power or communications line, the facility shall be located as near the right-of-way line as practicable and not more than five feet from the right-of-way line and any above-grounded appurtenance shall be located within one foot of the right-of-way line or as near as practicable.

(C) *Facilities crossing highways.*

- (1) *No future disruption.* The construction and design of crossing facilities installed between the ditch lines or curb lines of Village highways may require the incorporation of materials and protections (such as encasement or additional cover) to avoid settlement or future repairs to the roadbed resulting from the installation of the crossing facilities.
- (2) *Cattle passes, culverts, or drainage facilities.* Crossing facilities shall not be located in cattle passes, culverts, or drainage facilities.
- (3) *Ninety-degree crossing required.* Crossing facilities shall cross at or as near to a 90-degree angle to the centerline as practicable.
- (4) *Overhead power or communication facility.* An overhead power or communication facility may cross a highway only if:
 - (a) It has a minimum vertical line clearance as required by ICC's rules entitled, "Construction of Electric Power and Communication Lines" (83 Ill. Adm. Code § 305);
 - (b) Poles are located within one foot of the right-of-way line of the highway and outside of the clear zone; and
 - (c) Overhead crossings at major intersections are avoided.
- (5) *Underground power or communication facility.* An underground power or communication facility may cross a highway only if:
 - (a) The design materials and construction methods will provide maximum maintenance-free service life; and
 - (b) Capacity for the utility's foreseeable future expansion needs is provided in the initial installation.

- (6) *Markers.* The Village 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 highway. 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. § 192.707).
- (D) *Facilities to be located within particular rights-of-way.* The Village may require that facilities be located within particular rights-of-way that are not highways, rather than within particular highways.
- (E) *Freestanding facilities.*
- (1) The Village may restrict the location and size of any freestanding facility located within a right-of-way.
 - (2) The Village may require any freestanding facility located within a right-of-way to be screened from view.
- (F) *Facilities installed above ground.* Above-ground 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)
 - (a) 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.
 - (b) Suitable designs include, but are not limited to, self-supporting armless, single-pole construction with vertical configuration of conductors and cable.
 - (c) Existing utility poles and light standards shall be used wherever practicable.
 - (d) The installation of additional utility poles is strongly discouraged.
- (G) *Facility attachments to bridges or roadway structures.*
- (1)
 - (a) 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.
 - (b) Other means shall include, but are not limited to, underground, underwater, independent poles, cable supports and tower supports, all of which are completely separated from the bridge or roadway structure.
 - (c) Facilities transmitting commodities that are volatile, flammable, corrosive, or energized, especially those under significant pressure or potential, present high degrees of risk, and the installations are not permitted.
 - (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 highway 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 maintenance and painting;
- (g) The effect on the visual quality of the structure; and
- (h) The public benefit expected from the utility service as compared to the risk involved.

(H) *Appearance standards.*

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

(Ord. 4-3-A, passed 12-5-2007) Penalty, see § 10.99

§ 93.17 CONSTRUCTION METHODS AND MATERIALS.

(A) *Standards and requirements for particular types of construction methods.*

(1) *Boring or jacking.*

(a) *Pits and shoring.*

- 1. Boring or jacking under rights-of-way shall be accomplished from pits located at a minimum distance specified by the Village Engineer from the edge of the pavement.
- 2. Pits for boring or jacking shall be excavated no more than 48 hours in advance of boring or jacking operations and backfilled within 48 hours after boring or jacking operations are completed.
- 3. While pits are open, they shall be clearly marked and protected by barricades.
- 4. 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 inches.* Borings over six inches 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 inch.

(d) *Borings with diameters six inches or less.* Borings of six inches or less in diameter may be accomplished by either jacking, guided with auger, or auger and following pipe method.

- (e) *Tree preservation.* Any facility located within the drip line of any tree designated by the Village to be preserved or protected shall be bored under or around the root system.
- (2) *Trenching.* Trenching for facility installation, repair, or maintenance on rights-of-way shall be done in accordance with the applicable portions of § 603 of IDOT's *Standard Specifications for Road and Bridge Construction*.
 - (a) *Length.*
 - 1. The length of open trench shall be kept to the practicable minimum consistent with requirements for pipeline testing.
 - 2. Only one-half of any intersection may have an open trench at any time unless special permission is obtained from the Village Engineer or Village Director of Public Works.
 - (b) *Open trench and excavated material.*
 - 1. Open trench and windrowed excavated material shall be protected as required by Chapter 6 of the *State Manual on Uniform Traffic-Control Devices*.
 - 2. Where practicable, the excavated material shall be deposited between the roadway and the trench as added protection. Excavated material shall not be allowed to remain on the paved portion of the roadway.
 - 3. 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 Village to be preserved.
- (3) *Backfilling.*
 - (a)
 - 1. 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*.
 - 2. When excavated material is hauled away or is unsuitable for backfill, suitable granular backfill shall be used.
 - (b)
 - 1. For a period of three 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.
 - 2. If so ordered by the 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, sidewalks, curbs, and driveways to the proper grades, as determined by the Engineer.
- (4) *Pavement cuts.* Pavement cuts for facility installation or repair shall be permitted on a highway only if that portion of the highway is closed to traffic. If a variance to the limitation set forth in this division (A)(4) is permitted under § 93.22, the following requirements shall apply.
 - (a) Any excavation under pavements shall be backfilled and compacted as soon as practicable with granular material of CA-6 or CA-10 gradation, as designated by the Engineer.

- (b) 1. Restoration of pavement, in kind, shall be accomplished as soon as practicable, and temporary repair with bituminous mixture shall be provided immediately.
- 2. Any subsequent failure of either the temporary repair or the restoration shall be rebuilt upon notification by the Village Engineer.
- (c) All saw cuts shall be full depth.
- (d) For all rights-of-way which have been reconstructed with a concrete surface/base in the last seven years, or resurfaced in the last three years, permits shall not be issued unless the 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) 1. Casing pipe shall be designed to withstand the load of the highway and any other superimposed loads.
- 2. The casing shall be continuous either by one-piece fabrication or by welding or jointed installation approved by the Village.
- (b) 1. The venting, if any, of any encasement shall extend within one foot of the right-of-way line.
- 2. No above-ground vent pipes shall be located in the area established as clear zone for that particular section of the highway.
- (c) 1. In the case of water main or service crossing, encasement shall be furnished between bore pits unless continuous pipe or Village approved jointed pipe is used under the roadway.
- 2. Casing may be omitted only if pipe is installed prior to highway construction and carrier pipe is continuous or mechanical joints are of a type approved by the Village.
- 3. Bell- and spigot-type pipe shall be encased regardless of installation method.
- (d) In the case of gas pipelines of 60 psig or less, encasement may be eliminated.
- (e) In the case of gas pipelines or petroleum products pipelines with installations of more than 60 psig, encasement may be eliminated only if:
 - 1. Extra heavy pipe is used that precludes future maintenance or repair; and
 - 2. Cathodic protection of the pipe is provided.
- (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:

<i>Type of Facility</i>	<i>Minimum Cover</i>
Communication, cable, or video service lines	18 to 24 inches, as determined by the Village
Electric lines	30 inches
<i>Type of Facility</i>	<i>Minimum Cover</i>
Gas or petroleum products	30 inches
Sanitary sewer, storm sewer, or drainage line	Sufficient cover to provide freeze protection
Water lines	Sufficient cover to provide freeze protection

(B) *Standards and requirements for particular types of facilities.*

(1) *Electric power or communication lines.*

(a) *Code compliance.* Electric power or communications facilities within Village 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.

(b) *Overhead facilities.*

1. Overhead power or communication facilities shall use single pole construction and, where practicable, joint use of poles shall be used.
2. Utilities shall make every reasonable effort to design the installation so guys and braces will not be needed.
3. Variances may be allowed if there is no feasible alternative and if guy wires are equipped with guy guards for maximum visibility.

(c) *Underground facilities.*

1. Cable may be installed by trenching or plowing, provided that special consideration is given to boring in order to minimize damage when crossing improved entrances and side roads.
2. If a crossing is installed by boring or jacking, encasement shall be provided between 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 which compress the earth to make the opening for cable installation; or
 - b. The installation is by the open trench method, which is only permitted prior to roadway construction.
3. Cable shall be grounded in accordance with the National Electrical Safety Code.

- (d) *Burial of drops.*
1. 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 Village.
 2. Weather permitting, utilities shall bury all temporary drops, excluding snowdrops, within ten business days after placement.
- (2) *Underground facilities other than electric power or communication lines.* Underground facilities other than electric power or communication lines may be installed by:
- (a) The use of “moles,” “whip augers,” or other approved methods which compress the earth to move the opening for the pipe;
 - (b) Jacking or boring with vented encasement provided between the ditch lines or toes of slopes of the highway;
 - (c) Open trench with vented encasement between ultimate ditch lines or toes of slopes, but only if prior to roadway construction; or
 - (d) Tunneling with vented encasement, but only if installation is not possible by other means.
- (3) *Gas transmission, distribution, and service.* Gas pipelines within rights-of-way shall be constructed, maintained, and operated in a Village-approved manner and in conformance with the Federal Code of the Office of Pipeline Safety Operations, Department of Transportation, Part 192 - *Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards* (49 C.F.R. § 192), IDOT’s *Standard Specifications for Road and Bridge Construction*, and all other applicable laws, rules, and regulations.
- (4) *Petroleum products pipelines.* Petroleum products pipelines within rights-of-way shall conform to the applicable sections of *ANSI Standard Code for Pressure Piping* (Liquid Petroleum Transportation Piping Systems ANSI-B31.4).
- (5) *Water lines, 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*.
- (6) *Ground-mounted appurtenances.*
- (a) Ground-mounted appurtenances to overhead or underground facilities, when permitted within a right-of-way, shall be provided with a vegetation-free area extending one foot in width beyond the appurtenance in all directions.
 - (b) 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 Engineer or Director of Public Works.
 - (c) With the approval of the Engineer or Director of Public Works, shrubbery surrounding the appurtenance may be used in place of vegetation-free area.
 - (d) 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 Illinois Commerce Commission, or the standards established by other official regulatory agencies for the appropriate industry.
- (2) *Material storage on right-of-way.*
 - (a) No material shall be stored on the right-of-way without the prior written approval of the Village Engineer.
 - (b) When the 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 or an obstacle to right-of-way maintenance or damage to the right-of-way and other property.
 - (c) If material is to be stored on right-of-way, prior approval must be obtained from the Village.
- (3) *Hazardous materials.* The plans submitted by the utility to the Village 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)
 - (a) Construction operations on rights-of-way may, at the discretion of the Village, be required to be discontinued when the operations would create hazards to traffic or the public health, safety, and welfare.
 - (b) The 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) These restrictions may be waived by the Engineer when emergency work is required to restore vital utility services.
- (3) Unless otherwise permitted by the Village, the hours of construction are those set forth in §§ 91.045 through 91.047.

(E) *Location of existing facilities.*

- (1) Any utility proposing to construct facilities in the Village shall contact J.U.L.I.E. and ascertain the presence and location of existing above-ground and underground facilities within the rights-of-way to be occupied by its proposed facilities.
- (2) The Village will make its permit records available to a utility for the purpose of identifying possible facilities.
- (3) When notified of an excavation or when requested by the Village or by J.U.L.I.E., a utility shall locate and physically mark its underground facilities within 48 hours, excluding weekends and holidays, in accordance with the State of Illinois Underground Facilities Damage Prevention Act, being ILCS Ch. 220, Act 50, §§ 1 *et seq.*

(Ord. 4-3-A, passed 12-5-2007) Penalty, see § 10.99

§ 93.18 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 right-of-way in accordance with applicable Illinois state laws and regulations, and, additionally, with the local franchise or other agreement with the Village as permitted by law.
- (B) *Other utilities; tree trimming permit required.* Tree trimming that is done by any other utility with facilities in the right-of-way and that is not performed pursuant to applicable Illinois state 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 Chapter.
- (1) *Application for tree trimming permit.*
- (a) Applications for tree trimming permits shall include assurance that the work will be accomplished by competent workers with supervision who are experienced in accepted tree-pruning practices.
 - (b) Tree trimming permits shall designate an expiration date in the interest of assuring that the work will be expeditiously accomplished.
- (2) *Damage to trees.*
- (a) Poor pruning practices resulting in damaged or misshapen trees will not be tolerated and shall be grounds for cancellation of the tree trimming permit and for assessment of damages.
 - (b) The Village will require compensation for trees extensively damaged and for trees removed without authorization.
 - (c) 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.
 - (d) The Village 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.*
- (1) The Village may require that special measures be taken to preserve specimen trees or trees of special significance.
 - (2) The required measures may consist of higher poles, side arm extensions, covered wire, or other means.
- (D) *Chemical use.*
- (1) Except as provided in division (D)(2) below, no utility shall spray, inject, or pour any chemicals on or near any trees, shrubs, or vegetation in the Village 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 Engineer that the spraying is the only practicable method of vegetation control.

(Ord. 4-3-A, passed 12-5-2007) Penalty, see § 10.99

§ 93.19 REMOVAL, RELOCATION, OR MODIFICATION OF UTILITY FACILITIES.

- (A) *Notice.* Within 90 days following written notice from the Village, a utility shall, at its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change, or alter the position of any utility facilities within the rights-of-way whenever the corporate authorities have determined that the removal, relocation, change, or alteration is reasonably necessary for the construction, repair, maintenance, or installation of any Village improvement in or upon, or the operations of the Village in or upon, the rights-of-way.
- (B) *Removal of unauthorized facilities.* Within 30 days following written notice from the Village, 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 the facilities or appurtenances from the rights-of-way. A facility is unauthorized and subject to removal in the following circumstances:
- (1) Upon expiration or termination of the permittee's license or franchise, unless otherwise permitted by applicable law;
 - (2) If the facility was constructed or installed without the prior grant of a license or franchise, if required;
 - (3) If the facility was constructed or installed without prior issuance of a required permit in violation of this Chapter; or
 - (4) If the facility was constructed or installed at a location not permitted by the permittee's license or franchise.
- (C) *Emergency removal or relocation of facilities.*
- (1) The Village retains the right and privilege to cut or move any facilities located within the rights-of-way of the Village, as the Village may determine to be necessary, appropriate, or useful in response to any public health or safety emergency.
 - (2) If circumstances permit, the municipality shall attempt to notify the utility, if known, prior to cutting or removing a facility and shall notify the utility, if known, after cutting or removing a facility.
- (D) *Abandonment of facilities.*
- (1) Upon abandonment of a facility within the rights-of-way of the Village, the utility shall notify the Village within 90 days.
 - (2) Following receipt of the notice, the Village may direct the utility to remove all or any portion of the facility if the Village Engineer determines that the removal will be in the best interest of the public health, safety, and welfare.
 - (3) In the event that the Village does not direct the utility that abandoned the facility to remove it, by giving notice of abandonment to the Village, 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.

(Ord. 4-3-A, passed 12-5-2007) Penalty, see § 10.99

§ 93.20 CLEANUP AND RESTORATION.

- (A) The utility shall remove all excess material and restore all turf and terrain and other property within ten 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 Village, which includes restoration of entrances and side roads.
- (B) Restoration of roadway surfaces shall be made using materials and methods approved by the Village Engineer.
- (C) The cleanup and repair may be required to consist of backfilling, regrading, reseeding, resodding, 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.
- (D) The time period provided in this section may be extended by the Village Engineer for good cause shown.

(Ord. 4-3-A, passed 12-5-2007) Penalty, see § 10.99

§ 93.21 MAINTENANCE AND EMERGENCY MAINTENANCE.

- (A) *Generally.* 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 Village and at the utility's expense.
- (B) *Emergency maintenance procedures.* Emergencies may justify non-compliance with normal procedures for securing a permit.
 - (1) (a) 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 highway or the public on the right-of-way, including the use of signs, lights, barricades, or flaggers.
 - (b) 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.
 - (c) Parking on the shoulder in such an emergency will only be permitted when no other means of access to the facility is available.
 - (2) (a) In an emergency, the utility shall, as soon as possible, notify the Village 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.
 - (b) If the nature of the emergency is such as to interfere with the free movement of traffic, the Village 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.
- (C) *Emergency repairs.* The utility must file in writing with the Village a description of the repairs undertaken in the right-of-way within 48 hours after an emergency repair.

(Ord. 4-3-A, passed 12-5-2007) Penalty, see § 10.99

§ 93.22: SMALL WIRELESS FACILITIES:

(A) *Purpose and Scope:*

- (1) *Small Wireless Facilities Deployment Act.* This Section is adopted pursuant to Public Act 100-0585, the “Small Wireless Facilities Deployment Act (“the Act”), pursuant to which the Village regulates and charges for small wireless facilities as and to the extent permitted by the Act, and pursuant to the FCC Order of September 26, 2018.
- (2) *Savings Clause:* To the extent permitted by any decisions of a court of competent jurisdiction, any provisions of the Act and/or of the FCC Order of September 26, 2018, and any corresponding provisions of this Ordinance, which are exclusively dependent upon such provisions of the Act and/or of the FCC Order of September 26, 2018 for authority, shall be and are automatically suspended, pending final decision on any such issue upon appellate review.
- (3) *Purpose.* The purpose of this Section 93.22 is to establish regulations, and procedures for the siting and collocation of small wireless facilities on public rights-of-way within the Village, or outside public rights-of-way on private property zoned by the Village exclusively for commercial or industrial use, in a manner that is consistent with the Act and/or of the FCC Order of September 26, 2018.
- (4) *Conflicts with State and Federal Laws.* In the event that applicable federal or State laws or regulations are inconsistent with the requirements of this Section 93.22, the wireless services provider shall comply with the more restrictive requirements.

(B) *Definitions:*

All terms used in this Section 93.22 have the meaning provided in Section 93.03, “Definitions” of this Chapter.

(C) *Regulation of Small Wireless Facilities:*

- (1) *Permitted Use:* A small wireless facility shall be classified as a permitted use and subject to administrative review, but not subject to zoning review or approval if they are collocated (i) in rights-of-way in any zone, or (ii) outside of rights-of-way on property zoned exclusively for commercial or industrial use, and (iii) if such wireless facility meets both of the following qualifications: (a) each antenna is located inside an enclosure of no more than 3 cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna, excluding associated antenna equipment as defined in this Chapter, could fit within an imaginary enclosure of no more than 3 cubic feet in volume; and (b) all other wireless equipment attached directly to or installed adjacent to a utility pole, or other support structure, including pre-existing equipment, associated with the facility is, in the aggregate, no more than 28 cubic feet in volume.
- (2) *Permit Required:* An applicant is required to obtain one or more permits to collocate a small wireless facility. An application is received and processed, and permits are issued subject to the following requirements:
 - (a) *Public Safety Use Space Reservation:* The Village does hereby reserve space on all Village utility poles and Village wireless support structures for future public safety uses, and funds shall be and are hereby tentatively appropriated or budgeted for such purposes, but a reservation of space will not preclude the collocation of a small

wireless facility unless the Village reasonably determines that the Village utility pole or Village wireless support structure cannot accommodate both uses.

- (b) *Application Requirements:* A wireless services provider shall be required to provide the following information to the Enforcement Official when seeking a permit to collocate small wireless facilities on or adjacent to a Village utility pole or on or adjacent to a Village wireless support structure, or any public right-of-way within the Village:
- (i) Site-specific structural integrity for such Village utility pole and/or for other Village wireless support structure, and a make-ready analysis prepared by a structural engineer, as that term is defined in Section 4 of the Structural Engineering Practice Act of 1989;
 - (ii) The location where each proposed small wireless facility or utility pole would be installed and photographs of the location and its immediate surroundings depicting the utility poles or structures on which each proposed small wireless facility would be mounted or location where utility poles or structures would be installed;
 - (iii) Specifications and drawings prepared by a structural engineer, as that term is defined in Section 4 of the Structural Engineering Practice Act of 1989, for each proposed small wireless facility covered by the application as it is proposed to be installed;
 - (iv) The equipment type and model numbers for the antennas and all other wireless equipment associated with the small wireless facility;
 - (v) A proposed schedule for the installation and completion of each small wireless facility covered by the application, if approved;
 - (vi) Certification that the collocation complies with paragraph (C)(2)(d), “Other Requirements”, to the best of the applicant’s knowledge; and
 - (vii) In the event that the proposed small wireless facility is to be attached to an existing pole owned by an entity other than the Village, the wireless provider shall provide to the Enforcement Official legally competent written evidence of the consent of the owner of such pole to the proposed collocation.
- (c) *Height Limitations:* The maximum height of a small wireless facility within the Village shall be limited as follows:
- (i) Each small wireless facility shall be mounted on structures 50 feet or less in height, including their antennas.
 - (ii) Each small wireless facility shall be mounted on structures no more than 10 percent taller than other adjacent structures; or
 - (iii) Each small wireless facility shall not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater.

(d) *Other Requirements:*

- (i) A wireless services provider's operation of the small wireless facilities shall not interfere with the frequencies used by a public safety agency for public safety communications as determined by the Enforcement Official.

Wireless services providers shall not cause unacceptable interference with a public safety agency's communications equipment.

Unacceptable interference shall be determined by the Enforcement Official and measured in accordance with industry standards and the FCC's regulations addressing unacceptable interference to public safety spectrum or any other spectrum licensed by a public safety agency.

If a small wireless facility causes such interference, and the wireless services provider has been given written notice of the interference by the public safety agency, or by the Enforcement Official, the wireless services provider, at its own expense, shall take all reasonable steps necessary, as determined by the Enforcement Official, to correct and eliminate the interference, including, but not limited to, powering down the small wireless facility and later powering up the small wireless facility for intermittent testing, if necessary.

The Enforcement Official may terminate a permit for a small wireless facility if such small wireless facility causes interference and if the wireless services provider is not making a good faith effort to remedy the problem in a manner consistent with the abatement and resolution procedures for interference with public safety spectrum established by the FCC including 47 CFR 22.970 through 47 CFR 22.973 and 47 CFR 90.672 through 47 CFR 90.675, and/or other applicable FCC standards, or if after such good faith efforts, the Enforcement Official concludes that such interference cannot be resolved. Failure to remedy the interference as required herein shall constitute a public nuisance.

- (ii) Each wireless services provider shall comply with requirements that are imposed by a contract between the Village and a private property owner that concern design or construction standards applicable to utility poles and ground-mounted equipment located in the right-of-way.
- (iii) Each wireless services provider shall comply with all applicable spacing requirements in the Village Code concerning the location of ground-mounted equipment located in the Village rights-of-way, if any.
- (iv) Each wireless services provider shall comply with the provisions of the Village Code concerning undergrounding requirements that prohibit the installation of new or the modification of existing utility poles in a right-of-way without prior approval, but an applicant may apply to the Enforcement Official for one or more exceptions to such undergrounding requirements, and, in any event, the installation of replacement poles is not prohibited.
- (v) A wireless services provider shall comply with this Section and such other applicable provisions of this Village Code adopted by the Village from time to time for construction and public safety in the rights-of-way, including, but not

limited to, wiring and cabling requirements, grounding requirements, utility pole extension requirements, and signage limitations, and the requirements of this Chapter regulating the location, size, and height of small wireless facilities, related to the abandonment and removal of small wireless facilities.

- (vi) A wireless services provider shall not collocate small wireless facilities on or adjacent to Village utility poles that are part of an electric distribution or transmission system within the communication worker safety zone of the pole or the electric supply zone of the pole.

However, the antenna and support equipment of the small wireless facility may be located in the communications space on the Village utility pole and on the top of the pole, if not otherwise unavailable, if the wireless services provider complies with applicable codes for work involving the top of the pole.

For purposes of this subparagraph (vi), the terms “communications space”, “communication worker safety zone”, and “electric supply zone” have the meanings given to those terms in the National Electric Safety Code as published by the Institute of Electrical and Electronics Engineers.

- (vii) Each wireless services provider shall comply with all generally applicable provisions of this Village Code, including but not limited to those that relate to public safety, except to the extent expressly preempted in this Chapter.
- (viii) Each wireless services provider shall comply with written design standards that are generally applicable for decorative utility poles, or reasonable stealth, concealment, and aesthetic requirements which may be adopted by the Corporate Authorities of this Village from time to time as an appendix to this Section, Chapter, and Title, which may include restrictions relative to design and/or concealment measures in a historic district or historic landmark, but such design and/or concealment measures shall not have the effect of prohibiting any of a wireless services provider’s technology and shall not be considered part of the small wireless facility for purposes of determining height and/or volume restrictions on a small wireless facility.

Exceptions and/or Waivers: The Corporate Authorities of the Village, after receiving a specific recommendation from the Enforcement Official, may by ordinance grant an exception and/or waiver from the requirements of this Section and/or of this Chapter, which shall be based upon good cause shown by an applicant which shall include unique circumstances or undue hardship in the application of this Section and/or of this Chapter in a specific case or cases, and subject to the other provisions of this Village Code, and subject to the other applicable ordinances of the Village. Such waiver(s) and/or exception(s) are not prohibited by this Chapter.

- (ix) To be considered a small wireless facility, such facility shall not require antenna structure registration under 47 U.S.C. Part 17.
- (x) A small wireless facility shall not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in Section 47 U.S.C. 1.1307(b).

- (e) *Completeness of Application:* Within 10 days after receiving an application, the Enforcement Official will determine whether the application is complete and notify the applicant. If an application is incomplete, the Enforcement Official will provide a notice of deficiency to the applicant specifically identifying the missing information. An application will be deemed complete if the Village fails to provide notification to the applicant within 10 days after when all documents, information, and fees specifically enumerated in the Village's permit application form are submitted by the applicant to the Village.

Processing deadlines will be tolled from the time the Village sends the notice of deficiency until the time the applicant provides the missing information.

- (f) *Application Process:* The Village shall process applications as follows:

- (i) An application to collocate a small wireless facility on or adjacent to an existing utility pole or on or adjacent to a wireless support structure will be processed on a nondiscriminatory basis. The first fully-completed application received by the Enforcement Official shall have priority over incomplete applications received from other applicants for collocation on the same utility pole or wireless support structure. Such a fully-completed application will be deemed approved if the Enforcement Official fails to approve or deny the application within 90 days of the Enforcement Official's receipt of such application.

However, if an applicant intends to proceed with the permitted activity on a deemed approved basis, the applicant shall notify the Enforcement Official in writing of its intention to invoke the deemed approved remedy no sooner than 75 days after the submission to the Enforcement Official of a fully-completed application.

The permit shall be deemed approved on the latter of the 90th day after submission to the Enforcement Official of the complete application or the 10th day after the receipt of the deemed approved notice by the Enforcement Official. The receipt of the deemed approved notice shall not preclude the Enforcement Official's denial of the permit request within the specific approval time limits as provided above in this Section.

- (ii) An application to collocate a small wireless facility that includes the installation of a new utility pole will be processed on a nondiscriminatory basis and deemed approved only if the Enforcement Official fails to approve or deny the application within 120 days.

However, if an applicant intends to proceed with the permitted activity on a deemed approved basis, the applicant shall notify the Enforcement Official in writing of its intention to invoke the deemed approved remedy no sooner than 105 days after the submission of a completed application.

The permit will be deemed approved on the latter of the 120th day after submission of the complete application or the 10th day after the receipt of the deemed approved notice by the Enforcement Official. The receipt of the deemed

approved notice shall not preclude such Enforcement Official's denial of the permit request within the time limits as provided under this Section.

- (iii) The Enforcement Official will approve an application unless the application does not meet the requirements of this Section.

If the Enforcement Official determines that applicable provisions of this Code which relate to the public safety, or the provisions of this Section require that a utility pole or wireless support structure be replaced before the requested collocation, approval may be conditioned upon the replacement of the utility pole or wireless support structure at the cost of the applicant.

The Enforcement Official will document the basis for a denial, including the specific provisions of the Village Code or application conditions on which the denial was based, and send the documentation to the applicant on or before the day the Enforcement Official denies an application.

The applicant may cure the deficiencies identified by the Enforcement Official and resubmit the revised application to the Enforcement Official once within 30 days after notice of denial is sent to the applicant without paying an additional application fee. The Enforcement Official will approve or deny the revised application within 30 days after the applicant resubmits the application or it is deemed approved.

However, the applicant shall notify the Enforcement Official in writing of its intention to proceed with the permitted activity on a deemed approved basis, which may be submitted with the resubmitted application.

Any subsequent review will be limited to the deficiencies cited by the Enforcement Official in the denial. However, this revised application cure does not apply if the cure requires the review of a new location, new or different structure to be collocated upon, new antennas, or other wireless equipment associated with the small wireless facility.

- (g) *Tolling*: The "deemed approved" time period for applications may be further tolled by:
 - (i) The express agreement in writing by both the applicant and the Enforcement Official; or
 - (ii) A local, State or federal disaster declaration or similar emergency that causes a delay in approval by the Village.
- (h) *Consolidated Applications*: An applicant seeking to collocate two (2) or more small wireless facilities within the jurisdiction of the Village may file with the Village a consolidated application for the proposed facilities, and upon review and approval of said application by the Enforcement Official, the Village will issue a single permit therefor upon the applicant's payment to the Village of all required fee(s) therefor as specified from time to time in Section 93.22(D) of this Village Code.

If an application for collocation of multiple small wireless facilities is denied in part by the Enforcement Official and/or the application is determined to be incomplete in any

way, the Enforcement Official may remove from the application any small wireless facility collocations which are denied and/or for which incomplete information has been provided and treat separately any remaining requests for small wireless facility collocations. In such event, the Enforcement Official may require separate applications and separate application fees for each collocation that is reviewed and/or approved separately from a consolidated application.

(i) *Timely Village Review of Applications:*

(i) *Timely Review Required:* If the Enforcement Official fails to act on an application on or before the “shot clock” date for the application, as defined in subparagraph (v) of this subsection, it will be presumed that the Village did not act within a reasonable period of time.

(ii) *Shot Clock Period:* The shot clock period for an application is the sum of:

(a) The maximum number of days allowed for the review (“maximum reasonable review period”) for the specific type of application, pursuant to paragraph (iii) of this subsection, plus

(b) The number of days of the tolling period, if any, pursuant to paragraph (iv) of this subsection.

(iii) *Maximum Reasonable Review Periods for Specific Types of Application:*

(a) Applications seeking permits and other authorization for deployments of facilities in the categories set forth below:

(i) Review of an application to collocate a small wireless facility on or adjacent to an existing structure: A 60 day review period shall be considered a reasonable review period.

(ii) Review of an application to collocate a facility other than a small wireless facility on or adjacent to an existing structure: A 90 day review period shall be considered a reasonable review period.

(iii) Review of an application to deploy a small wireless facility using a new structure: A 90 day review period shall be considered a reasonable review period.

(iv) Review of an application to deploy a facility other than a small wireless facility using a new structure: A 150 day review period shall be considered a reasonable review period.

(b) *Batching:*

(i) If a single application seeks authorization for multiple deployments, all of which fall within a category set forth in either subparagraph (iii)(a)(i) or subparagraph (iii)(a)(iii) of this subsection, then the maximum reasonable review period for the application as a whole shall be equal to that for a single deployment within that category.

- (ii) If a single application seeks authorization for multiple deployments, the components of which are a mix of deployments that fall within subparagraph (iii)(a)(i) and deployments that fall within subparagraph (iii)(a)(iii) of this subsection, then the reasonable review period for the application as a whole shall be 90 days.
 - (iii) The Village will accept applications for multiple deployments under subparagraphs (iii)(b)(i) or under (iii)(b)(ii).
- (iv) *Tolling Period for Determining Maximum Reasonable Review Period:* Unless a written agreement between the applicant and the Enforcement Official provides otherwise, the tolling period for determining the maximum reasonable review period of an application for deployment (if any) is as set forth below:
- (a) For an initial application to deploy small wireless facilities, if the Enforcement Official notifies the applicant on or before the 10th day after submission that the application is materially incomplete, and clearly and specifically identifies the missing documents or information (a “notice of deficiency”) and the specific rule or regulation creating the obligation to submit such documents or information, the shot clock date calculation shall restart at zero on the date on which the applicant submits all the documents and information identified by the Village in the notice of deficiency to render the application complete.
 - (b) For all other initial applications, the tolling period shall be the number of days from:
 - (i) The day after the date when the Enforcement Official notifies the applicant in writing that the application is materially incomplete and clearly and specifically identifies the missing documents or information that the applicant must submit to render the application complete and the specific rule or regulation creating this obligation (a “notice of deficiency”) until
 - (ii) The date when the applicant submits all the documents and information identified by the Enforcement Official in the notice of deficiency to render the application complete,
 - (iii) But only if the notice of deficiency pursuant to subparagraph (iv)(b)(i) is effectuated on or before the 30th day after the date when the application was submitted; or
 - (c) For resubmitted applications following a notice of deficiency, the tolling period shall be the number of days from:
 - (i) The day after the date when the Enforcement Official notifies the applicant in writing that the applicant’s supplemental submission was not sufficient to render the application complete and clearly and specifically identifies the missing documents or information that need to be submitted based on the Enforcement Official’s initial

notice of deficiency (i.e., original request under subparagraph (iv)(a) or subparagraph (iv)(b) of this subsection), until

- (ii) The date when the applicant submits all the documents and information identified by the Enforcement Official in the initial notice of deficiency to render the application complete,
 - (iii) But only if the notice of deficiency pursuant to paragraph (iv)(c)(i) is effectuated on or before the 10th day after the date when the applicant makes a supplemental submission in response to the Enforcement Official's initial notice of deficiency (i.e., the Enforcement Official's request under paragraph (iv)(a) or paragraph (iv)(b) of this subsection).
- (v) *Shot Clock Date:* The shot clock date for an application is determined by counting forward, beginning on the day after the date when the application was submitted, by the number of calendar days of the shot clock period identified pursuant to paragraph (ii) of this section and including any pre-application period identified by the Enforcement Official, provided that if the date calculated in this manner is a Saturday or a Sunday, or a legal holiday, the shot clock date is the next business day after such date.

The Enforcement Official will use a reasonable effort to approve or deny an application within the shot clock period.

- (j) *Collocation Completion Deadline:* Collocation for which a permit is granted by the Enforcement Official shall be completed within 180 days after issuance of the permit therefor, unless the Enforcement Official agrees to extend this period for good cause shown or a delay is caused by events including but not limited to make-ready work for a Village utility pole or by the lack of commercial power or backhaul availability at the site, provided the wireless services provider has made a timely request within 60 days after the issuance of the permit for commercial power or backhaul services, and the additional time to complete installation does not exceed a total of 360 days after issuance of the permit by the Enforcement Official. Otherwise, the permit shall be void unless the Enforcement Official grants an extension in writing to the applicant for good cause shown.
- (k) *Duration of Permits:* The duration of a permit issued by the Enforcement Official shall be for a period of not less than 5 years, and the permit will be renewed for equivalent durations unless the Village makes a finding that the small wireless facilities provider has failed to comply with any of the applicable provisions of the Village Code, including but not limited to the payment of any fee(s) and/or the required "annual recurring rate", and/or the small wireless facilities or the new or modified utility pole do not comply with the applicable provisions of the Village Code, including but not limited to the provisions of this Chapter, but otherwise collocation of small wireless facilities and/or renewals of permits shall remain subject to the applicable provisions of this Village Code, as amended from time to time, and/or in effect at the time of renewal.

- (l) *Means of Submitting Applications:* Applicants shall submit applications, supporting information, and notices by personal delivery to the Enforcement Official, or as otherwise required by the Village.

The Enforcement Official may require that applications for permits, supporting information, and notices be submitted by personal delivery to the Enforcement Official at the Village Hall, by regular mail postmarked on the date due, or by any other commonly used means, including electronic mail, or overnight carrier.

- (m) *Pole Attachment Agreement:* Within thirty (30) days after the Village has approved a permit to collocate a small wireless facility on or adjacent to a Village utility pole, and prior to an applicant commencing installation of any small wireless facilities on or adjacent to any Village utility pole, the Village and the applicant may enter into a Master Pole Attachment Agreement provided by the Village for the initial collocation on a Village utility pole by the applicant. For subsequent approved permits to collocate a small wireless facility on a Village utility pole, the Village and the applicant shall enter into a License Supplement of the Master Pole Attachment Agreement.

(D) *Application Fees:* Applicants shall be required to pay the following application fees to the Village at the time of the filing of the Application with the Enforcement Official:

- (1) An application fee of \$500.00 for an application to collocate up to five (5) separate small wireless facilities on or adjacent to an existing utility pole or on or adjacent to a wireless support structure within any public right-of-way or on or adjacent to any Village utility pole or on or adjacent to any Village wireless support structure;
- (2) An application fee of \$100.00 for each small wireless facility addressed in an application to collocate more than five (5) separate small wireless facilities on or adjacent to existing utility poles or on or adjacent to a wireless support structures within any public right-of-way or on or adjacent to any Village utility pole within the Village or on or adjacent to any Village wireless support structure.
- (3) Notwithstanding any contrary provision of State law or this Village Code, applications pursuant to this Section must be accompanied by the required application fee(s).
- (4) The Village shall not require an application, approval, or permit, or require any fees or other charges, from a communications service provider and/or any wireless services provider authorized to occupy the rights-of-way, for:
 - (a) routine maintenance;
 - (b) the replacement of wireless facilities with wireless facilities that are substantially similar, the same size, or smaller if the wireless services provider notifies the Village at least 10 days prior to the planned replacement and includes equipment specifications for the replacement of equipment consistent with the requirements of this Section; or
 - (c) the installation, placement, maintenance, operation, or replacement of micro wireless facilities that are suspended on cables that are strung between existing utility poles in compliance with applicable safety codes.

- (5) The Village may require separate permit(s) or approval(s) to work within public rights-of-way for activities that affect traffic patterns or require lane closures.
- (E) *Exceptions to Applicability:* Nothing in this Section or in the Act and/or in the FCC Order of September 26, 2018 authorizes a person to collocate small wireless facilities on:
- (1) property owned by a private party or property owned or controlled by the Village or another unit of local government that is not located within rights-of-way, or a privately owned utility pole or wireless support structure without the consent of the property owner;
 - (2) property owned, leased, or controlled by a park district, forest preserve district, or conservation district for public park, recreation, or conservation purposes without the consent of the affected district, except for the placement of facilities on rights-of-way located in an affected district that are under the jurisdiction and control of a different unit of local government as provided by the Illinois Highway Code; or
 - (3) property owned by a rail carrier registered under Section 18c-7201 of the Illinois Vehicle Code, Metra Commuter Rail or any other public commuter rail service, or an electric utility as defined in Section 16-102 of the Public Utilities Act, without the consent of the rail carrier, public commuter rail service, or electric utility. The provisions of this Section do not apply to an electric or gas public utility or such utility's wireless facilities if the facilities are being used, developed, and maintained consistent with the provisions of subsection (i) of Section 16-108.5 of the Public Utilities Act.

For the purposes of this subsection, "public utility" has the meaning given to that term in Section 3-105 of the Public Utilities Act. Nothing in this Section shall be construed to relieve any person from any requirement (a) to obtain a franchise or a State-issued authorization to offer cable service or video service or (b) to obtain any required permission to install, place, maintain, or operate communications facilities, other than small wireless facilities subject to this Section.

- (F) *Existing Agreements Grandfathered for Existing Locations, If Any:* Agreements between the Village and wireless services providers that relate to the collocation of small wireless facilities in a right-of-way, including the collocation of small wireless facilities on Village utility poles and/or on any other Village wireless support structure(s), that are in effect on June 1, 2018, if any, remain in effect for all small wireless facilities collocated on the Village's utility poles pursuant to applications submitted to and approved by the Village before June 1, 2018, if any, subject to applicable termination provisions of such Agreements.
- (G) *Annual Recurring Rate:*
- (1) For each small wireless facility located on or adjacent to a Village utility pole or on or adjacent to a Village wireless support structure located in a right-of-way the respective small wireless facility provider shall be required to pay to the Village on or before January 1 of each year, for each respective fiscal year, an "annual recurring rate" in the amount of \$200.00 per year for each such small wireless facility located within the Village, unless such fee is hereafter modified by a final order of a court of competent jurisdiction.
 - (2) Collocation on Village utility poles located outside of a public right-of-way shall not be permitted.

(H) *Aerial Facilities:* For Village utility poles that support aerial facilities used to provide communications services or other utility service(s), wireless services providers shall comply with the process for make-ready work under 47 U.S.C. 224 and its implementing regulations.

(I) *Abandonment:*

A small wireless facility that is not operated for a continuous period of 12 months shall be considered abandoned, and the owner of such facility is and shall be required to promptly remove the small wireless facility within 90 days after receipt of written notice from the Village notifying the owner of the abandonment.

The notice will be sent by certified or registered mail, return receipt requested, by the Village to the owner at the last known address of the owner of the respective small wireless facility. If the small wireless facility is not removed within 90 days of such notice, the Village may remove or cause the removal of such facility pursuant to the terms of its pole attachment agreement for Village utility poles or through whatever actions are provided for abatement of nuisances or by other law for removal and cost recovery, including but not limited to removal of such small wireless facility(ies) at the sole cost and expense of the respective owner, which shall become a debt owed by such owner to the Village.

A wireless services provider shall be required to provide written notice to the Village if it sells or transfers small wireless facilities within the jurisdictional boundary of the Village. Such notice shall include the name, address, and contact information of the new wireless services provider.

(J) *Indemnification:*

A wireless services provider shall indemnify and hold the Village, its elected and appointed officials, officers, employees, and agents (“indemnitees”) harmless from and against any and all liability or loss from personal injury or property damage resulting from or arising out of, in whole or in part, the use or occupancy of any Village improvements or Village right-of-way associated with such improvements by the wireless services provider or its employees, agents, or contractors arising out of the rights and privileges granted under this Section, P.A. 100-0585, and/or pursuant to the FCC Order of September 26, 2018 provided, however, a wireless services provider has no obligation to indemnify or hold harmless against any liabilities and losses as may be due to or caused by the sole negligence of the Village or the other indemnitees. A wireless services provider shall further waive any claims that they may have against the Village with respect to consequential, incidental, or special damages, however caused, based on the theory of liability.

(K) *Insurance:*

Each wireless services provider making application to the Village for a permit for the collocation of a small wireless facility shall carry, at the wireless services provider’s own cost and expense, the following insurance: (i) property insurance for its property’s replacement cost against all risks; (ii) workers’ compensation insurance, as required by Illinois law; and (iii) commercial general liability insurance with respect to its activities on any Village improvements or Village rights-of-way to afford minimum protection limits consistent with the Village’s requirements of other users of Village improvements or rights-of-way, as set forth in Section 93.09 of this Chapter.

A wireless services provider shall be required to include the Village and its officers, employees, and agents (the “indemnities”) as additional insureds on the commercial general liability policy and provide a certificate of insurance evidencing inclusion of such commercial general liability

coverage. All such insurance coverage shall be required to be in full force and effect during the entire term of any collocation agreement with the Village. If there is a potential loss of coverage, the small wireless services provider shall give notice thereof to the Enforcement Official not less than thirty (30) days prior to any such loss of coverage.

(Ord. 2017-05-17-01, passed 05-17-17; Amd. Ord. 2018-06-01, passed 06-20-18; Amd. Ord. 2018-11-01, Passed 11-21-18)

§ 93.23 VARIANCES.

(A) *Request for variance.*

- (1) A utility requesting a variance from one or more of the provisions of this Chapter must do so in writing to the Village Engineer as a part of the permit application.
- (2) The request shall identify each provision of this Chapter from which a variance is requested and the reasons why a variance should be granted.

(B) *Authority to grant variances.* The Village Engineer shall decide whether a variance is authorized for each provision of this Chapter identified in the variance request on an individual basis.

(C) *Conditions for granting of variance.* The Village Engineer may authorize a variance only if the utility requesting the variance has demonstrated that:

- (1) One or more conditions not under the control of the utility (such as terrain features or an irregular right-of-way line) create a special hardship that would make enforcement of the provision unreasonable, given the public purposes to be achieved by the provision; and
- (2) All other designs, methods, materials, locations, or facilities that would conform 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 Village Engineer may require the utility requesting the variance to meet reasonable standards and conditions that may or may not be expressly contained within this Chapter but which carry out the purposes of this Chapter.

(E) *Right to appeal.*

- (1) Any utility aggrieved by any order, requirement, decision, or determination, including denial of a variance, made by the Village Engineer under the provisions of this Chapter shall have the right to appeal to the Village Board, or any other board or commission as it may designate.
- (2) The application for appeal shall be submitted in writing to the Village Clerk within 30 days after the date of the order, requirement, decision, or determination.
- (3) The Village Board shall commence its consideration of the appeal at the Board's next regularly scheduled meeting occurring at least seven days after the filing of the appeal.

(4) The Village Board shall timely decide the appeal.

(Ord. 4-3-A, passed 12-5-2007)

§ 93.24 VIOLATIONS.

- (A) Any person who violates, disobeys, omits, neglects, or refuses to comply with any of the provisions of this Chapter shall be subject to fine in accordance with the penalty provisions of Section 10.99 of this Code.
- (B) There may be times when the Village will incur delay or other costs, including third party claims, because the utility will not or cannot perform its duties under its permit and this Chapter.
- (C) Unless the utility shows that another allocation of the cost of undertaking the requested action is appropriate, the utility shall bear the Village's costs of damages and its costs of installing, maintaining, modifying, relocating, or removing the facility that is the subject of the permit.
- (D) (1) No other administrative agency or commission may review or overrule a permit related cost apportionment of the Village.
(2) Sanctions may be imposed upon a utility that does not pay the costs apportioned to it.

(Ord. 4-3-A, passed 12-5-2007) Penalty, see § 10.99

§ 93.25 ENFORCEMENT.

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

(Ord. 4-3-A, passed 12-5-2007)

§ 93.26 EFFECTIVE DATE.

This Chapter shall take effect ten days after its passage, approval, and publication in pamphlet form.

(Ord. 4-3-A, passed 12-5-2007)