

**AN ORDINANCE AMENDING THE NORTH AURORA CODE  
BY CREATING A NEW CHAPTER 12.20 OF TITLE 12  
PERTAINING TO STANDARDS FOR THE CONSTRUCTION OF  
FACILITIES ON THE RIGHTS-OF-WAY**

WHEREAS, the Village of North Aurora (the "Village"@) is an Illinois municipality in accordance with the Illinois Municipal Code (65 ILCS 5/1 et seq.); and

WHEREAS, the Village has the authority to adopt ordinances and to promulgate rules and regulations governing the use of right-of-ways and that protect the public health, safety, and welfare of its citizens; and

WHEREAS, 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 sewer and storm sewer; and

WHEREAS, 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; and

WHEREAS, 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; and

WHEREAS, 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; and

WHEREAS, 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; and

WHEREAS, 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; and

WHEREAS, 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; and

WHEREAS, the corporate authorities of the Village 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 (i) prevent interference with the use of streets, sidewalks, alleys and other public ways and places by the Village and the general public, (ii) protect against visual and physical obstructions to vehicular and pedestrian traffic, (iii) 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, (iv) protect against environmental damage, including damage to trees, from the installation of utility facilities, (v) preserve the character of the neighborhoods in which facilities are installed, (vi) prevent visual blight, and (vii) assure the continued safe use and enjoyment of private properties adjacent to utility facilities locations; and

WHEREAS, this Ordinance is adopted pursuant to the provisions of the Illinois Municipal Code, including, without limitation, Sections 11-20-5, 11-20-10, 11-80-1, 11-80-3, 11-80-6, 11-80-7, 11-80-8, 11-80-10, and 11-80-13, all of which are found in Chapter 65 of the Illinois Compiled Statutes; Section 30 of the Illinois Telecommunications Municipal Infrastructure Maintenance Fee Act, 35 ILCS 635/30; Section 4 of the Telephone Company Act, 220 ILCS 65/4; and the Illinois Highway Code, including, without limitation, Articles 7 and 9 thereof, 605 ILCS 5/1-101 *et seq.*; and

WHEREAS, this Ordinance 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, right-of-ways; and

WHEREAS, in the enactment of this ordinance, the Village has considered a variety of standards for Construction on, over, above, along, under, across, or within, use of and repair of right-of-ways, including, but not limited to, the standards relating to Accommodation of Utilities on Right-of-Way of the Illinois State Highway System promulgated by the Illinois Department of Transportation and found at 92 Ill. Adm. Code Sec. 530.10 *et seq.*; and

WHEREAS, the Village hereby finds that it is in the best interest of the Village, the public and the utilities using the right-of-ways to establish a comprehensive set of Construction standards and requirements to achieve various beneficial goals, including, without limitation, enhancing the planning of new facilities; minimizing interference with, and damage to, right-of-ways and the streets, sidewalks, and other structures and improvements located in, on, over and above the right-of-ways; protecting the public health, safety and welfare; and reducing costs and expenses to the public; and

WHEREAS, the corporate authorities of the Village find that its Municipal Potable Water Lines, Sanitary Sewer Lines and Storm water Sewer Lines within its right-of-ways are the most fundamental, essential and necessary services provided for the health and welfare of the community and merit priority of availability, maintenance and use within the right-of-ways over other services provided in the right-of-ways; and

WHEREAS, as demands increase by users requesting space in finite areas of municipal right-of-ways it becomes increasingly crucial and essential that ordinances regulate the municipal right-of-ways so as to protect essential, fundamental and necessary municipal services that are required for life and health and to promote efficient and reasonable use of the right-of-ways; and

WHEREAS, the corporate authorities have determined that the amendments to the North Aurora Code contained herein are in the public interest and in furtherance of the public safety, health and general welfare of the residents of the Village of North Aurora.

NOW, THEREFORE, BE IT ORDAINED by the President and Board of Trustees of the Village of North Aurora, Kane County, Illinois, as follows:

SECTION ONE: RECITALS. The facts and statements contained in the preambles to this Ordinance are found to be true and correct and are hereby adopted as part of this Ordinance.

SECTION TWO: ADOPTION. The North Aurora Code is hereby amended by adding Chapter 12.20 to Title 12 as follows:

### **Chapter 12.20**

#### **CONSTRUCTION OF FACILITIES IN THE RIGHTS-OF-WAY**

##### **12.20.010 Purpose and Scope.**

###### **A. Purpose.**

The purpose of this Chapter is to establish policies and procedures for the Construction of Facilities on Rights-of-Way within the Village's jurisdiction that 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 Article, 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 stormwater run-off due to structures and materials that increase impermeable surfaces;
6. preserve the character of the neighborhoods in which facilities are installed;
7. preserve open space, particularly the tree-lined parkways that characterize the 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.**

This Chapter applies to all Facilities established or to be established on, over, above, along, upon, under, across, or within the Rights-of-Way within the jurisdiction of the Village. A Facility lawfully established prior to the effective date of this Chapter may continue to be maintained, repaired and operated as presently constructed and located, except that, if any existing Facility is expanded, extended, replaced or upgraded, such expansion, extension, replacement or upgrade shall be done in compliance with this Chapter. Further, if a Facility lawfully established prior to the effective date of this Chapter is subject to a franchise agreement that establishes regulations pertaining to Facilities in the Rights-of-Way, the franchise agreement shall apply until the franchise agreement expires or the parties agree to terminate the provisions of such franchise agreement pertaining to Facilities in the Rights-of-Way.

**D. Franchises, Licenses, or Similar Agreements.**

The Village, in its discretion and as limited by law, may require utilities or service providers having a legal right to use a right-of-way to enter into a franchise, license or similar agreement for the privilege of locating their Facilities on, over, above, along, upon, under, across, or within the Village Rights-of-Way. Utilities that are not required by law to enter into such an agreement may request that the Village enter into such an agreement. In such an agreement, the Village and utility may provide for terms and conditions that differ from this Chapter, but which are not materially inconsistent with this Chapter, and which are in the public interest, as the parties may agree.

**E. Effect of Franchises, Licenses, or Similar Agreements.**

If an Utility has an existing franchise, license or similar agreement with the Village on the effective date of this Chapter, such franchise, license or similar agreement shall govern and control the use of Rights-of-Way during the term of such agreement and any lawful renewal or extension thereof to the extent that the franchise, license or similar agreement sets forth standards and conditions pertaining to the use of the Rights-of-Way. To the extent that an existing franchise, license or similar agreement is silent with regard to standards and conditions for use of Rights-of-Way this Chapter shall apply.

**F. Conflicts with 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 unless preempted by such federal or State laws or regulations.

**G. Sound Engineering Judgment.**

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 consistent with generally accepted engineering principles. 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.

**12.20.020 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 92 Ill. Adm. Code Sec. 530.30, unless the context clearly requires otherwise.

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

“ANSI” means American National Standards Institute.

“Applicant” means a person applying for a permit under this Chapter.

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

“Backfill” means the replacing of excavated material in a Trench or pit.

“Bore” or “Boring” means the Excavation of an underground cylindrical cavity for the insertion of a pipe, electrical conductor or other Facility.

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

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

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

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

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

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

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

“Code” or “North Aurora Code” means the Village of North Aurora Municipal Code.

“Conductor” means the wire carrying electrical current.

“Conduit” means the casing or encasement for wires, cables, and similar Facilities.

“Construction” means the installation, repair, maintenance, placement, alteration, enlargement, demolition, modification, expansion, extension, upgrade or abandonment of Facilities that are intended for use to provide services to the residents and businesses in the Village.

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

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

“Superintendent of Public Works” means the North Aurora Superintendent of Public Works or such other person who is authorized by the corporate authorities to oversee the public works in the Village or his or her designee.

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

“Emergency” means any immediate circumstance that requires present access for maintenance, repair or other work to a Facility in a Right-of-Way required to restore or maintain continuous service or to protect and preserve the health, safety and welfare of the Village residents, businesses and/or the general public.

“Encasement” means the provision of a protective casing.

“Engineer” means the Village Engineer or his or her designee.

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

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

“Extra Heavy Pipe” shall have the meaning ascribed to it by the ASTM.

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

“Freestanding Facility” means an aboveground Facility that is not a Crossing Facility or a Parallel Facility, such as an antenna, transformer, utility cabinet, pump, or meter station.

“Frontage Road” means a secondary Roadway parallel and providing access to land adjacent to a primary Roadway where direct access to the primary Roadway is limited.

“Hazardous Materials” means any substance or material which, due to its quantity, form, concentration, location, or other characteristics, is determined by the Superintendent of Public Works to pose an unreasonable and imminent risk to the life, health or safety of persons or property or to the ecological balance of the environment, including, but not limited to explosives, radioactive materials, petroleum or petroleum products or gases, poisons, etiology (biological) agents, flammables, corrosives or any substance determined to be hazardous or toxic under any federal or state law, statute or regulation.

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

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

“IDOT” means the Illinois Department of Transportation.

“ICC” means the Illinois Commerce Commission.

“Jacking” means pushing a pipe horizontally under a roadway by mechanical means with or without boring.

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

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

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

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

“Main Distribution System” means any Facility designed to serve ten (10) or more separate buildings or locations.

“Major Intersection” means an intersection of two or more major arterial Roadways.

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

“Occupancy” means the presence of Facilities on, over or under Right-of-Way.

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

“Parkway” means any portion of a Right-of-Way that is adjacent to a Roadway or Shoulder that is improved by vegetative surface.

“Pavement Cut” means the removal of an area of impervious surface on a Right-of-Way for access to a Facility or for the Construction of a Facility.

“Permittee” means a Utility to which a permit has been issued pursuant to Sections 12.20.040 and 12.20.050 of this Chapter.

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

“Pressure” means the internal, radial force acting against the walls of a carrier pipe expressed in pounds per square inch gauge (psig).

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

“Restoration” means the restoration of the area in, on or around a Right-of-Way that is Disrupted during the Construction, repair or maintenance of a Facility to a condition that is substantially similar to the condition of the area prior to the Construction, repair or maintenance.

“Right-of-Way” or “Rights-of-Way” means any property designed, dedicated or otherwise designated and/or used as a Roadway, Shoulder, Parkway, Non-Vehicular Way for vehicular or pedestrian travel; any property designed, dedicated or otherwise designated and/or used for the provision of Utilities or other services or benefits to the general public, including the residents of the Village; and property designed, dedicated or otherwise designated for use in conjunction with any Roadway, Parkway, or Non-Vehicular Way. “Right-of-way” or “Rights-of-way” shall not include any real or personal Village property that is not specifically described in the previous two sentences and shall not include Village buildings, fixtures and other structures or improvements, regardless of whether they are situated in the right-of-way.

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

“Sale of Telecommunications at Retail” means 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” means that amount of security required pursuant to Section 12.20.100.

“Shoulder” means that portion of a width of Roadway, adjacent to the impervious surface, providing lateral support to the pavement edge and providing an area for emergency vehicular stops and storage of snow removed from the pavement.

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

“Sound Engineering Practice” means consistent with generally accepted engineering principles, practices and experience.

“Telecommunications” means, but is not limited to, the transmission of messages or information 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. “Private line” means 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 such channels, from one or more specified locations to one or more other specified locations. 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. Retailer access charges, right of access charges, charges for use of inter-company Facilities, and all telecommunications resold in the subsequent provision and used as a component of, or integrated into, end-to-end Telecommunications service shall not be included in gross charges as sales for resale. Telecommunications shall not include purchase of telecommunications by a telecommunications service provider for use as a component part of the service provided by such provider to the ultimate retail consumer who originates or terminates the end-to-end communications. Telecommunications shall not include the provision of cable services through a cable system as defined in the Cable Communications Act of 1984 (47 U.S.C. Sections 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 C.F.R. §76.1500 and following) as now or hereafter amended. ATelecommunications@ shall not include a CATV provider under section 11-42-11 of the Illinois Municipal Code, 65 ILCS 5/1-1-1 *et seq.*

“Telecommunications Provider” means any person that installs, owns, operates or controls Facilities in a Right-of-Way that are 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.

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



underground Facility.

“Utility” means any individual, corporation, partnership, limited liability company or other legal person or entity owning, controlling or operating any Facility in Right-of-Way regulated by this Ordinance.

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

“Video Service” means that term as defined in section 21-201 (v) of the Illinois Cable and Video Competition Law of 2007, 220 ILCS 21-201(v).

“Village” means the Village of North Aurora, Illinois.

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

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

#### **12.20.030 Annual Registration Required.**

A. Every Utility that occupies Right-of-Way within the Village shall register on January 1 of each year with the Superintendent of Public Works or other person designated by the Corporate Authorities, providing the Utility's name, address and regular business telephone and telecopy numbers, the name and e-mail address of one 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 Section 12.20.080 of this Chapter, in the form of a certificate of insurance.

B. Any Utility not doing business within the Village as of January 1 of any year shall be required to provide the information required by this Section prior to commencing work in the Right-of-Way in that year, and on January 1st of each year thereafter regardless of its initial registration date.

C. There shall be an annual, non-refundable registration fee of \$100, to be paid at the time of the Utility's registration. If a Utility registers after the last day of June in a given calendar year, then the registration fee shall be one-half (1/2) of the annual fee.

#### **12.20.040 Permit Required; Applications and Fees.**

A. Permit Required. No Utility, including contractors and subcontractors of a Utility, shall construct, repair, replace, enlarge or maintain any Facility on, over, above, along, upon, under, across, or within any Right-of-Way or otherwise Disrupt the Right-of-Way, without first filing an application with the Superintendent of Public Works or other person designated by the Corporate Authorities for that purpose and obtaining a permit from the Village therefore, except as otherwise provided in this Chapter.

B. Permit Application. All applications for permits pursuant to this Chapter shall be on a form acceptable to the Village and shall be filed in such number of duplicate copies as the Village may designate.

C. Confidentiality. An Applicant may designate those portions of its application documentation as “proprietary” or “confidential” by clearly marking each page or portion thereof accordingly, and such material shall be treated as confidential by the Village, subject to law. If the Village receives a request for disclosure of such information, the Village shall deny the request as to the material designated “proprietary” or “confidential”. If the Village is challenged regarding the non-disclosure of such material, the Applicant shall indemnify, hold harmless and defend the challenge as the Applicant's cost. If the Applicant does not indemnify, hold harmless and defend the Village in respect to the non-disclosure of such

material, the Village may defend the challenge, and the Applicant shall reimburse the Village its reasonable attorneys' fees and costs incurred.

D. Minimum General Application Requirements. An application for a permit required by this Chapter shall be filed by a duly authorized representative of the Utility and shall contain, at a minimum, the following:

1. The Utility's name and address, telephone and telecopy numbers and e-mail address;
2. The name and address of the person completing and signing the application on behalf of the Utility, along with a direct telephone number, telecopy number, e-mail address, and representative capacity in respect to the Utility, and, if the person is completing the application is an agent of a contractor, subcontractor or consultant of the Utility, the name and contact information of that contractor, subcontractor or consultant and its interest in the work;
3. The names, addresses and telephone and telecopy numbers and e-mail addresses of all professional consultants, if any, advising the Applicant with respect to the application;
4. A general description of the proposed work and the purposes and intent of the Facility and the uses to which the Facility will be put. The scope and detail of such description shall be appropriate to the nature and character of the work to be performed, with special emphasis on those matters likely to be affected or impacted by the proposed work.
5. The following documentation:
  - a. A written traffic control plan in compliance with Section 12.20.050 demonstrating the protective measures and devices that will be employed consistent with the Illinois Manual on Uniform Traffic Control Devices, to prevent injury or damage to persons or property and to minimize disruptions to efficient pedestrian and vehicular traffic; and
  - b. Where an application indicates that an Applicant's use of a Right-of-Way may involve situations that pose a potential risk to public health and safety, the Applicant shall submit an emergency contingency plan that shall specify the nature of potential emergencies, including, without limitation, Construction and hazardous materials emergencies, and the intended response by the Applicant. The proposed response shall include notification to the Village and shall promote protection of the safety and convenience of the public and shall be subject to review by the Village's Emergency Management Coordinator and the local Fire Protection District. Compliance with ICC regulations for emergency contingency plans constitutes compliance with this Section unless the Village finds that additional information or assurances are needed;
  - c. Drawings, plans and specifications showing the work proposed, including the certification of an Illinois licensed professional engineer that such drawings, plans, and specifications comply with applicable codes, rules, and regulations;
  - d. Evidence of insurance consistent with Section 12.20.080 of this Chapter;
  - e. Evidence of posting of the security fund consistent with Section 12.20.100 of this Chapter; and
  - f. A statement as to whether a Right-of-Way or any contiguous private property is the subject of a recorded easement or license agreement for the Roadway or Right-of-Way.
6. Any request for a variance from one or more provisions of this Chapter (See Section 12.20.220) must be included with the initial application; and
7. Such additional information as may be reasonably required by the Village.

E. Supplemental Application Requirements for Specific Types of Utilities. In addition to the requirements of Subsection D of this Section, the permit application shall include the following items as applicable to the specific Utility that is the subject of the permit application:

1. In the case of the of a new electric power, communications, telecommunications, cable television service, video service or natural gas distribution system installation, evidence that any "Certificate of Public Convenience and Necessity" or other regulatory authorization the ICC 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;

2. In the case of natural gas systems, a statement describing the proposed pipe size, design, Construction class, and operating pressures;

3. In the case of water lines, proof that all requirements of the Illinois Environmental Protection Agency, Division of Public Water Supplies, have been satisfied;

4. In the case of sewer line installations, proof that the land and water pollution requirements of the Illinois Environmental Protection Agency, Division of Water Pollution Control and the Metropolitan Water Reclamation District or any other local or state entities with jurisdiction, have been satisfied; or

5. In the case of Petroleum Products Pipelines, a statement describing the type or types of petroleum products, pipe size, maximum working pressure, and the design standard to be applied to the Construction.

F. Applicant=s Duty to Update Information. Throughout the permit application review period and the Construction period authorized by the permit, the Applicant shall submit to the Village any new information or documentation that is material to the application, shall correct any errors or inaccuracies in the information or documentation provided, and shall otherwise update the information and documentation submitted to the Village within fourteen (14) days after the new information or documentation is received or as soon as practicable in the case of errors and inaccuracies.

G. Application Fees. Unless otherwise provided by franchise, license, or similar agreement, all applications for Permits pursuant to this Chapter shall be accompanied by a fee in the amount specified in a fee schedule established by the Corporate Authorities. No application fee is required to be paid by any electricity Utility that is paying the municipal electricity infrastructure maintenance fee pursuant to the Electricity Infrastructure Maintenance Fee Act. The exception for Telecommunications Retailers only applies to the extent that a Permit is being sought for Telecommunications purposes only.

H. Freestanding Cabinet Facility Restrictions.

1. No Large Freestanding Cabinet Facility shall be permitted in any Right-of-Way contiguous to the front yard of any private property unless the zoning district in which the private property is located allows the installation of Freestanding Cabinet Facilities in front yards.

2. No Large Freestanding Cabinet Facility shall be permitted to be installed above or on a potable water line, sanitary sewer line, gas line or storm water sewer line, or within fifty (50) feet of any fire hydrant.

3. No Large Freestanding Cabinet Facility shall be located in such a way that it will interfere with vehicular or non-vehicular traffic on a Roadway or Non-Vehicular Way or other designated use of a Right-of-Way or in such a way that it adversely affects the public health, safety or welfare.

4. No Large Freestanding Cabinet Facility shall be located within three hundred (300) feet of any other Large Freestanding Cabinet Facility that was installed or constructed after January 1, 2006.

I. No Facilities shall be permitted underground where there is inadequate space in the underground portion of a Right-of-Way to permit access maintenance and replacement of existing underground Facilities.

**12.20.050 Action on Permit Applications.**

A. Pre-Application Conferences/ No Large Freestanding Cabinet Facilities. A pre-application conference with the Superintendent of Public Works and Village engineer shall be required for all Large Freestanding Cabinet Facilities and Main Distribution Systems to review the location of any proposed Large Freestanding Cabinet Facility or Main Distribution System.

B. Submission and Review of Permit Applications. Completed permit applications, containing all required documentation, shall be submitted to the office of the North Aurora Department of Public Works for review by the Superintendent of Public Works, Village engineer and any other staff or consultant as may be appropriate or necessary to review and process the application. The date of submission shall be the date of receipt as stamped on the application by the Village staff receiving it. Review comments shall be forwarded to the Applicant within a reasonable time after submission. If the application does not conform to the requirements of all applicable ordinances, codes, laws, rules, and regulations, the application may be denied in writing, stating the reasons therefore. If the proposed work conforms to the requirements of this Chapter and all applicable ordinances, codes, laws, rules, and regulations, the Superintendent of Public Works shall issue a permit therefore as soon as practicable. In all instances, it shall be the duty of the applicant to demonstrate, to the satisfaction of the Village Superintendent of Public Works, that the Construction proposed under the application shall be in full compliance with the requirements of this Chapter. The issuance of a permit by the Village shall not be deemed to waive any codes, ordinances, regulations or laws with which the Applicant must comply.

C. Review of Applications of Telecommunications Retailers.

1. The application process established in subsections A and B above shall not apply to a Telecommunications Retailer that is constructing, maintaining, altering or extending its poles, wires, and other appliances in the Rights-of-Way pursuant to Section 4 of the Telephone Company Act (220 ILCS 65/4) provided that:

a. The telecommunications retailer notifies the Village that it intends to commence work governed by Section 4 of the Telephone Company Act:

i. not less than ten (10) days prior to the commencement of work if the work to be undertaken requires no Excavation, or

ii. not less than thirty (30) days prior to the commencement of work if the work to be undertaken requires Excavation;

b. The work to be undertaken is for Facilities for the provision of Facilities for Telecommunications Services only; and

c. Such notice includes the plans, specifications, and other documentation sufficient to demonstrate that the design, purpose and intent of the Facilities are for Telecommunications only.

2. The Superintendent of Public Works shall specify the portion of the Right-of-Way upon which the Facility may be placed. If the Superintendent of Public Works fails to provide specify a location to the Telecommunications Retailer within either (i) ten (10) days after service of notice to the Village by the Telecommunications Retailer in the case of work not involving Excavation for new Construction or (ii) twenty-five (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 the need for approval.

3. If the Village determines that Facilities requiring Excavation must be located in a particular place in the Right-of-Way so as to avoid conflict with other Facilities in the Right-of-Way, a permit shall be required pursuant to Section 12.20.040 of this Chapter, and the Telecommunications Retailer shall submit to the Village an application for a permit and any and all plans, specifications and documentation required according to the process provided in Subsection A of this Section.

D. Review of Applications of Holders of State Authorization Under the Cable and Video Competition Law of 2007. Applications by a Utility that is a Holder of a State-issued authorization under the Cable and Video Competition Law of 2007 shall be deemed granted forty-five (45) days after submission to the Village, unless otherwise acted upon by the Village, provided the holder has complied with applicable Village codes, ordinances, and regulations.

E. Additional Fees. The Village may charge additional permit fees for any Construction that requires a pre-application conference pursuant to Subsection A or if any Construction must be revised and re-inspected due to noncompliance with the permit as approved or with the provisions of this Chapter.

#### **12.20.060 Effect of Permit.**

A. Authority Granted; No Property Right or Other Interest Created. A permit from the Village authorizes a Utility to undertake only the work described in the permit application, as conditioned by the permit, in accordance with this Chapter, and does not create a property right or grant authority to the Utility to impinge upon the rights of others who may have an interest in the Rights-of-Way.

B. Duration. No permit issued under this Chapter shall be valid for a period longer than six (6) months unless construction is actually begun within that period and is thereafter diligently pursued to completion.

C. Pre-construction meeting required. No Construction shall begin pursuant to a permit issued under this Chapter prior to attendance by the permittee and all major contractors and subcontractors who will perform any work under the permit at a pre-construction meeting. The pre-construction meeting shall be held at a date, time and place designated by the Village with such Village representatives in attendance as the Village deems necessary. The meeting shall be for the purpose of reviewing the work under the permit, and reviewing special considerations necessary in the areas where work will occur, including, without limitation, presence or absence of other Facilities in the area and their locations, procedures to avoid disruption of other utilities, use of Rights-of-Way by the public during Construction, and access and egress by adjacent property owners.

D. Compliance with All Laws Required. The issuance of a permit by the Village does not excuse the Utility from complying with other requirements of the Village and all applicable statutes, laws, ordinances, rules, and regulations.

#### **12.20.070 Revised Permit Drawings.**

In the event that the actual locations of any Facilities deviate in any respect from the locations identified in the plans, drawings and specifications approved with a permit, the Utility shall submit a revised set of drawings or plans to the Village within ninety (90) days after the completion of the permitted work. The revised drawings or plans shall specifically identify where the locations of the actual Facilities deviate from the locations approved in the permit. Any deviation not in violation of this Chapter shall constitute a variation application. Minor deviations may be reviewed and approved by the Village Engineer. A deviation shall be considered minor if there is no potential adverse effect to any other Facility or planned Facility in the Right-of-Way and the location is in substantial conformance with the approved permit. If the Village Engineer determines that a deviation is not minor, variation shall be subject to approval or rejection by the Corporate Authorities of. If the Village denies the request for a variance, then the Utility 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 therefore.

#### **12.20.080 Insurance.**

A. Required Coverages and Limits. Unless otherwise provided by franchise, license, or similar agreement, each Utility occupying a Right-of-Way or constructing any Facility in a 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 paragraphs 1 and 2 below:

1. Commercial general liability insurance, including premises-operations, explosion, collapse, and underground hazard (commonly referred to as "X"; "C"; and "U" coverages) and products-completed operations coverage with limits not less than:

- a. Five million dollars (\$5,000,000) for bodily injury or death to each person;
  - b. Five million dollars (\$5,000,000) for property damage resulting from any one accident; and

- c. Five million dollars (\$5,000,000) for all other types of liability;

2. Automobile liability for owned, non-owned and hired vehicles with a combined single limit of one million dollars (\$1,000,000) for personal injury and property damage for each accident;

3. Worker's compensation with statutory limits; and,

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

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

B. Excess or Umbrella Policies. The coverages required by this Section may be in any combination of primary, excess, and umbrella policies. Any excess or umbrella policy must provide excess coverage over underlying insurance on a following-form basis such that when any loss covered by the primary policy exceeds the limits under the primary policy, the excess or umbrella policy becomes effective to cover such loss.

C. Copies Required. The Utility shall provide copies of any of the policies required by this Section to the Village within ten (10) days following receipt of a written request from the Village.

D. Maintenance and Renewal of Required Coverages. The insurance policies required by this Section shall contain the following endorsement:

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

Within ten (10) days after receipt by the Village of notice of cancellation, and in no event later than ten (10) days prior to the cancellation date, the Utility shall obtain and furnish to the Village evidence of replacement insurance policies meeting the requirements of this Section.

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

F. Effect of Insurance and Self-Insurance on Utility's Liability. The legal liability of the Utility to the 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 such insurance policies or self-insurance or by the recovery of any amounts thereunder.

G. Insurance of Contractors and Subcontractors. The Utility shall provide evidence that all contractors and subcontractors are insured and registered with the Village of North Aurora.

H. Insurance Companies. All insurance provided pursuant to this Section shall be affected under valid and enforceable policies, issued by insurers legally able to conduct business with the licensee in the State of Illinois. All insurance carriers and surplus line carriers shall be rated "A-" or better and of a class size "X" or higher by A.M. Best Company.

#### **12.20.090 Indemnification.**

By occupying or constructing Facilities in the Rights-of-Way, a Utility shall be conclusively 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's fees and costs of suit or defense, arising out of, resulting from or alleged to arise out of or result from the negligent, careless or wrongful acts, omissions, failures to act or misconduct of the Utility or its affiliates, officers, employees, agents, contractors or subcontractors in the Construction of Facilities or occupancy of the Rights-of-Way, and in providing or offering service over the Facilities, whether such acts or omissions are authorized, allowed or prohibited by this 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.

**12.20.100 Security.**

A. Purpose. The Utility shall establish a Security Fund in a form and in an amount as set forth in this Section. The Security Fund shall be continuously maintained in accordance with this Section at the Utility's sole cost and expense until the completion of the work authorized under the permit. The Security Fund shall serve as security for:

1. The faithful performance by the Utility of all the requirements of this Chapter;
2. Any expenditure, damage, or loss incurred by the Village to remedy or occasioned by the Utility's failure to complete the work in compliance with all codes, rules, regulations, orders, permits and other directives of the Village issued pursuant to this Chapter; and
3. The payment by Utility of all liens and all damages, claims, costs, or expenses that the Village may pay or incur by reason of any action or non-performance by Utility in violation of this Chapter including, without limitation, any damage to public property or restoration work the Utility is required by this Chapter to perform that the Village must perform itself or have completed as a consequence of the Utility's failure to perform or complete, and all other payments due the Village from the Utility pursuant to this Chapter or any other applicable law.

B. Form. The Utility shall provide the Security Fund to the Village in the form of cash or an unconditional letter of credit in form acceptable to the Village. Any letter of credit provided pursuant to this Subsection shall, at a minimum:

1. Provide that it will not be canceled without prior notice to the Village and the Utility;
2. Not require the consent of the Utility prior to the collection by the Village of any amounts covered by it; and
3. Shall provide a location convenient to the Village and within the State of Illinois at which it can be drawn.

C. Amount Per Permit. The dollar amount of the Security Fund shall be in a minimum amount of one hundred fifty percent (150%) of the cost to restore the affected Rights-of-Way to at least as good a condition as that existing prior to the Construction under the permit based on engineering estimates and to provide screening, as required; and the amount may also include reasonable, directly related costs that the Village estimates are likely to be incurred if the Utility fails to perform such restoration.

D. Withdrawals. The Village, upon fourteen (14) days advance written notice clearly stating the reason for, and its intention to exercise withdrawal rights under this subsection, may withdraw an amount from the Security Fund, provided that the Utility has not reimbursed the Village for such amount within the fourteen (14) day notice period.

Withdrawals may be made if the Utility:

1. Fails to make any payment required to be made by the Utility hereunder;
2. Fails to pay any liens relating to the Facilities that are due and unpaid;
3. Fails to reimburse the 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 Utility; 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. Appeal. A Utility that receives a notice of withdrawal under Subsection E of this Section may appeal the determination that the Village is entitled to withdraw said funds in accordance with the procedures of Section 12.20.240 of this Chapter.

F. Replenishment. Within fourteen (14) days after receipt of written notice from the Village that any amount has been withdrawn from the Security Fund, the Utility shall restore the Security Fund to the amount required per Subsection C, D or K of this Section.

G. Interest. The Utility may request that any and all interest accrued on the amount in the Security Fund be returned to the Utility by the Village, upon written request to the Village, provided that any such withdrawal does not reduce the Security Fund below the minimum balance required in Subsection C, D or K of this Section, and further provided that the Village shall not be required to deposit the Security Fund in an interest bearing account.

H. Closing and Return of Security Fund. Upon completion of the work authorized under the permit, the Utility shall be entitled to the return of the Security Fund, or such portion thereof as remains on deposit, within a reasonable time after account is taken for all offsets necessary to compensate the Village for failure by the Utility to comply with any provisions of this Chapter or other applicable law. In the event of any revocation of the permit, the Security Fund, and any and all accrued interest therein, shall become the property of the Village to the extent necessary to cover any reasonable costs, loss or damage incurred by the Village as a result of said revocation, provided that any amounts in excess of said costs, loss or damage shall be refunded to the Utility.

I. Rights Not Limited. 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 said Security Fund shall affect any other right the Village may have. Notwithstanding the foregoing, the Village shall not be entitled to a double monetary recovery with respect to any of its rights that may be infringed or otherwise violated.

#### **12.20.110 Conflicts.**

Where any Facilities subject to this Chapter physically conflict with the repair or maintenance of a municipal potable water line, sanitary sewer line or stormwater sewer line, it shall be the responsibility of the owner of the Facility, at the owner's sole cost and expense, to cooperate and coordinate promptly with the Village during the municipal repair or maintenance and after notice from the Superintendent of Public Works or the Village Engineer to relocate the Facility or otherwise ameliorate the conflict in a manner consistent with Sound Engineering Practice. Any owner of a Facility that fails to relocate, protect, or otherwise ameliorate in conformance with this paragraph shall reimburse the Village all reasonable costs and expenses actually incurred by the Village relocate the Facility or otherwise ameliorate the affected owner's Facilities.

#### **12.20.120 Permit Suspension and Revocation.**

A. Village Right to Revoke Permit. The Village may revoke, suspend, or refuse to issue new permits 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 or other applicable Village ordinances or regulations;

3. A direct or imminent threat to the public health, safety, or welfare by a Utility=s physical presence or presence of a Utility=s Facilities on, over, above, along, upon, under, across, or within the Rights-of-Ways;

4. A failure to Construct the Facilities in accordance with the permit and approved plans, or the provisions of this Chapter;

5. A failure to pay fees as required under this Chapter;

6. A failure to complete the work in a timely manner.

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 Utility under this Section 12.20.120.

C. Utility Alternatives Upon Receipt of Notice of Revocation or Suspension. Upon receipt of a written notice of revocation or suspension from the Village, the Utility shall have the following options:

1. Immediately provide the Village with evidence that no cause exists for the revocation or suspension and request an appeal of the determination;

2. Immediately correct, to the satisfaction of the Village, the deficiencies stated in the written notice, providing written proof of such correction to the Village within five (5) working days after receipt of the written notice of revocation; or

3. Immediately remove the Facilities located on, over, above, along, upon, under, across, or within the Rights-of-Way and restore the Rights-of-Way to the satisfaction of the Village providing written proof of such removal to the Village within ten (10) days after receipt of the written notice of revocation.

The Village may, in its discretion, for good cause shown, extend the time periods provided in this Subsection.

D. Stop Work Order. In addition to the issuance of a notice of revocation or suspension, the Village may issue a stop work order immediately upon discovery of any of the reasons for revocation set forth within Subsection A of this Section.

E. Failure or Refusal of the Utility to Comply. If the Utility fails to comply with the provisions of Subsection C of this Section, the Village or its designee may, at the option of the Village: (1) correct the deficiencies; (2) upon not less than twenty (20) days notice to the Utility, remove the subject Facilities or equipment; or (3) after not less than thirty (30) days notice to the Utility of failure to cure the non-compliance, deem them abandoned and property of the Village. The Utility shall be liable in all events to the Village for all costs of removal.

F. Appeal. A Utility may appeal the revocation or suspension of a permit under this Section 12.20.120 in accordance with the procedures of Section 12.20.240 of this Chapter.

### **12.20.130 Change of Ownership, Identity or Legal Status.**

A. Notification of Change. A Utility shall notify the Village in writing no less than thirty (30) days prior to the transfer of ownership of any Facility in the Right-of-Way or change in ownership of the Utility. The new owner of the Utility or the Facility shall have all the obligations and privileges enjoyed by the former owner under the permit, if any, and all applicable laws, ordinances, rules and regulations, including this Chapter, with respect to the work and Facilities in the Right-of-Way, subject to subsections B and C below and providing that the new owner registers with the Village and as provided in Section

12.20.030. Any merger, acquisition or transfer of shares or ownership interest in the Utility affecting twenty percent (20%) of such ownership interest shall be considered a change in ownership for purposes of this Section.

B. Amended Permit. A new owner may request an amendment to any current permit within fourteen (14) days from the effective date of any change in ownership of the Utility or Facility, and such request for amendment shall be processed promptly by the Village within fourteen (14) days of receipt of any such request in writing. The new owner shall be presumed to have accepted, and agreed to be bound by, the terms and conditions of any existing permit if the new owner proceeds with any work pursuant to an existing permit, uses the Facility or allows it to remain on the Village's Right-of-Way without seeking an amendment to the permit.

C. Insurance and Security. All required insurance coverage along with any bonds or letter(s) of credit shall be changed to reflect the name of the new owner immediately upon any change in ownership.

#### **12.20.140 General Construction Standards.**

A. Standards and Principles. All Construction in the Rights-of-Way shall be consistent with applicable ordinances, codes, laws rules and regulations, and commonly recognized and accepted traffic control and construction principles, Sound Engineering Practice and, where applicable, the principles and standards set forth in the following IDOT publications and related materials, as amended from time to time:

1. Standard Specifications for Road and Bridge Construction;
2. Supplemental Specifications and Recurring Special Provisions;
3. Roadway Design Manual;
4. Roadway Standards Manual;
5. Standard Specifications for Traffic Control Items;
6. Illinois Manual on Uniform Traffic Control Devices (92 Ill. Adm. Code Sec. 545);
7. Flagger's Handbook;
8. Work Site Protection Manual for Daylight Maintenance Operations; and
9. Village Design Standards.

B. Interpretation of Municipal Standards and Principles. If a discrepancy exists between or among differing principles and standards required by this Chapter, the Village engineer shall determine, in the exercise of Sound Engineering Practice, which principles apply and such decision shall be final. If requested, the Village engineer shall state which standard or principle will apply to the Construction, maintenance, or operation of a Facility in the future.

C. Permit Conditions. All Construction shall be undertaken in compliance with all conditions contained in the approved permits.

#### **12.20.150 Traffic Control.**

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

B. Warning Signs, Protective Devices, and Flaggers. The Utility is responsible for providing and installing warning signs, protective devices and flaggers when necessary in compliance with all 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 forty-eight (48) hours prior to beginning work that will partially or completely block access to any residence, business or institution, the Utility shall notify the resident, business or institution of the approximate beginning time and duration of such work; provided, however, that in cases involving emergency repairs pursuant to Section 12.20.210 of this Chapter, the Utility shall provide such notice as is Practicable under the circumstances.

E. Compliance. The Utility shall take immediate action to correct any deficiencies in traffic protection requirements that are brought to the Utility's attention by the Village.

#### **12.20.160 Location of Facilities.**

A. General Requirements. In addition to location requirements applicable to specific types of Facilities, all Facilities, regardless of type, shall be subject to the general location requirements of this Subsection.

1. No Interference with Village Facilities. No Facilities shall be placed in any location if the Village Superintendent of Public Works determines that the proposed location will require the relocation or displacement of any of the Village's Facilities or will otherwise interfere with the operation or maintenance of any of the Village's 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 said Right-of-Way.

3. No Interference with Travel. No Facility shall be placed in any location that interferes with the usual travel on such Right-of-Way.

4. No Limitations on Visibility. No Facility shall be placed in any location so as to limit visibility of or by users of 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 Roadways.**

1. Overhead Parallel Facilities. An overhead Parallel Facility may be located within the boundaries lines of a Right-of-Way containing a Roadway only if:

a. The overhead Parallel Facilities are located as near as practicable to the Right-of-Way line and as nearly parallel to the Right-of-Way line as reasonable pole alignment will permit;

b. Where pavement is uncurbed, poles are as remote from pavement edge as practicable with a minimum distance of four feet (1.2 m) outside the outer shoulder line of the Roadway and are not within the clear zone;

c. No pole is located in the ditch line of a Roadway; and,

d. Any ground-mounted appurtenance is located within one foot (0.3 m) of the Right-of-Way line or as near as possible to the Right-of-Way line.

2. Underground Parallel Facilities. Where applicable, Utility cables, wires, etc. shall be placed in the outer five feet (5') of the Right-of-Way on the opposite side of the Roadway from the Village watermain. The exact placement in the Right-of-Way shall be determined

by the Village. An underground parallel Facility may be located within the Right-of-Way lines of a Roadway only if:

a. The Facilities are located as near the Right-of-Way line as practicable and not more than eight (8) feet (2.4 m) from and parallel to the Right-of-Way line;

b. New Facilities may be located under the paved portion of a Roadway only if other locations are impracticable or inconsistent with sound engineering practice (e.g., a new cable may be installed in existing conduit without disrupting the pavement); and

c. In the case of underground power or communications Facilities, the Facilities shall be located as near the Right-of-Way line as practicable and not more than five (5) feet (1.5 m) from the Right-of-Way line, and any above-grounded appurtenance shall be located within one foot (0.3 m) of the Right-of-Way line or as near as practicable.

C. Facilities Crossing Roadways.

1. No Future Disruption. The Construction and design of crossing Facilities installed between the ditch lines or curb lines of Roadways may require the incorporation of materials and protections (such as encasement or additional cover) to avoid settlement or future repairs to the Roadways resulting from the installation of such crossing Facilities.

2. Culverts or Drainage Facilities. Crossing Facilities shall not be located in culverts or drainage Facilities.

3. Ninety (90) Degree Crossing Required. Crossing Facilities shall cross at or as near to a ninety (90) degree angle to the centerline Right-of-Way as Practicable.

4. Overhead Power or Communication Facility. An overhead power or communication Facility may cross a Roadway only if:

a. It has a minimum vertical line clearance as required by ICC's rules entitled, AConstruction of Electric Power and Communication Lines@ (83 Ill. Adm. Code 305);

b. Poles are located within one foot (0.3 m) of the outer boundary of a Right-of-Way containing a Roadway and outside of the clear zone; and

c. Overhead crossings at major intersections shall be avoided.

5. Underground Power or Communication Facility. An underground power or communication Facility may cross a Roadway only if:

a. The design materials and construction methods will provide maximum maintenance-free service life;

b. Capacity for the Utility's foreseeable future expansion needs is provided in the initial installation; and,

c. Such power or communications Facilities are installed in conduit at the time of burial.

d. The crossing is directionally bored, and there is no open cut disruption.

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

D. Facilities to be Located Within Particular Rights-of-Way. The Village may require that Facilities be located in the Parkway portion of Rights-of-Way containing Roadways.

E. Freestanding Facilities.

1. The Village may restrict the location of any freestanding Facility located within a Right-of-Way, including any Large Freestanding Cabinet Facility.

2. The Village may require any Freestanding Facility located within a Right-of-Way or easement to be screened from view in order to preserve the aesthetic character of the area in which the Freestanding Facility is to be located.

F. Freestanding Facility Installation. Freestanding Facilities may be installed only if:

1. No other existing Facilities in the area are located underground;
2. New underground installation is not technically feasible; and,
3. The proposed installation will be made at a location, and will employ suitable design and materials, to provide the greatest protection of aesthetic qualities of the area being traversed without adversely affecting safety. Suitable designs include, but are not limited to, self-supporting armless, single-pole construction with vertical configuration of conductors and cable. Existing utility poles and light standards shall be used wherever practicable; the installation of additional utility poles is strongly discouraged.

G. Facility Attachments to Bridges or Roadway Structures.

1. Facilities may be installed as attachments to bridges or Roadway structures only where the Utility has demonstrated that all other means of accommodating the Facility are not Practicable and there shall be no additional danger to the public health, safety and welfare likely to occur from the improvement. Other means shall include, but are not limited to, underground, underwater, independent pole, cable support and tower support Facilities, all of which are completely separated from the bridge or Roadway structure. Facilities transmitting commodities that are volatile, flammable, corrosive, or energized, especially those under significant pressure or potential, present high degrees of risk and such installations are not permitted on a bridge or Roadway structure.

2. A Utility shall include in its request to accommodate a Facility installation on a bridge or Roadway structure supporting data demonstrating the impracticability of alternate routing. Approval or disapproval of an application for Facility attachment to a bridge or Roadway structure will be based upon the following considerations:

- a. The type, volume, pressure or voltage of the commodity to be transmitted and an evaluation of the resulting risk to persons and property in the event of damage to or failure of the Facility;
- b. The type, length, value, and relative importance of the Roadway structure in the transportation system;
- c. The alternative routings available to the Utility and their comparative practicability;
- d. The proposed method of attachment;
- e. The ability of the structure to bear the increased load of the proposed Facility;
- f. The degree of interference with bridge or Roadway maintenance and painting;
- g. The effect on the visual quality of the structure; and
- h. The public benefit expected from the Utility service as compared to the risk involved.

H. Screening.

1. Freestanding Facilities on Rights-of-Way and easements shall be screened:
  - a. In residential districts;
  - b. On or adjacent to residential properties in other districts;
  - c. In central business districts; and
  - d. In any area in which screening is reasonably required to preserve the aesthetic character of the area.

2. The Superintendent of Public Works shall designate screening as a condition on permits in compliance with this Section, and the screening shall consist of either:

- a. A minimum of three (3) pine trees such as Austrian Spruce or Norway Spruce;
- b. A minimum of four (4) Arborvitae Techny; or
- c. A similar screening that may be approved at the discretion of the Superintendent of Public Works.

3. The Superintendent of Public Works may waive screening only if no adverse impact to the aesthetic character of the area may occur or if the natural environment of the area is such that screening is not necessary.

4. All vegetative screening will require a one (1) year maintenance period during which time the applicant shall be liable for all replacement of any failed vegetation.

I. Appearance Standards.

1. The Village may prohibit the installation of Freestanding Facilities in particular locations in order to preserve the aesthetic characteristics of the area.

2. A Freestanding 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.

**12.20.170 Construction Methods and Materials.**

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

1. Boring or Jacking.

a. Pits and Shoring. Boring or jacking under Rights-of-Way shall be accomplished from pits located at a minimum distance specified by the Superintendent of Public Works from the edge of the pavement. Pits for boring or jacking shall be excavated no more than 48 hours in advance of boring or jacking operations and backfilled within forty eight (48) hours after boring or jacking operations are completed. While pits are open, they shall be clearly marked and protected by barricades. Shoring shall be designed, erected, supported, braced, and maintained so that it will safely support all vertical and lateral loads that may be imposed upon it during the boring or jacking operation.

b. Wet Boring or Jetting. Wet boring or jetting shall not be permitted under the Roadway.

c. Borings with Diameters Greater Than Six (6) Inches. Borings over six (6) inches (0.15 m) in diameter shall be accomplished with an auger and following pipe, and the diameter of the auger shall not exceed the outside diameter of the following pipe by more than one inch (25 mm).

d. Borings with Diameters 6 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 to be located within five feet (5') of the drip line of any tree designated by the Village to be preserved or protected shall be reviewed and must be approved by the Superintendent of Public Works and/or Village Engineer, and any such Facility to be located within five feet (5') of the drip line of any tree shall be bored under or around the root system, unless permission is granted in writing to provide otherwise, and provided that the Facility is located without damage to the tree or its root system.

2. Trenching. Trenching for Facility installation, repair, or maintenance on Rights-of-Way shall be done in accordance with the applicable portions of Section 603 of IDOT's "standard Specifications for Road and Bridge Construction."

a. Length. The length of open Trench shall be kept to the practicable minimum consistent with requirements for pipe-line testing. Only one-half of any intersection may have an open Trench at any time unless special written permission is obtained from the Superintendent of Public Works.

b. Open Trench and Excavated Material. Open Trench and windrowed excavated material shall be protected as required by Chapter 6 of the Illinois Manual on Uniform Traffic Control Devices. 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 Roadway. Where right-of-way width does not allow for windrowing excavated material off 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. Any pit, Trench, or Excavation created during the installation of Facilities shall be backfilled for its full width, depth, and length using methods and materials in accordance with IDOT's "standard Specifications for Road and Bridge Construction." When excavated material is hauled away or is unsuitable for backfill, suitable granular backfill shall be used.

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

4. Pavement Cuts. Pavement cuts for Facility installation or repair, when approved consistent with this Chapter, shall be permitted on a Roadway only if that portion of the Roadway is closed to traffic. If a variance to the limitation set forth in this paragraph 4 is permitted under Section 12.20.220, the following requirements shall apply:

a. Any Excavation under Roadways or other impervious surfaces shall be backfilled and compacted as soon as practicable with granular material of CA-6 or CA-10 gradation, as designated by the Superintendent of Public Works.

b. Restoration of pavement in kind shall be accomplished as soon as Practicable, and temporary repair with bituminous mixture shall be provided immediately. Any subsequent failure of either the temporary repair or the Restoration shall be rebuilt upon notification by the Village.

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 (7) years, or resurfaced in the last three (3) years, permits shall not be issued unless such work is determined to be an emergency repair or other work considered necessary and unforeseen before the time of the reconstruction or unless a pavement cut is necessary for a J.U.L.I.E. locate.

5. Encasement.

a. Casing pipe shall be designed to withstand the load of the Roadway and any other superimposed loads. The casing shall be continuous, either by one-piece fabrication or by welding or jointed installation approved by the Village.



b. The venting, if any, of any encasement shall extend within one (1) foot (0.3 m) of the right-of-way line. No above-ground vent pipes shall be located in the area established as clear zone for that particular section of the Roadway.

c. In the case of water main or service crossing, encasement shall be furnished between bore pits unless continuous pipe or Village approved jointed pipe is used under the Roadway. Casing may be omitted only if pipe is installed prior to Roadway Construction and carrier pipe is continuous or mechanical joints are of a type approved by the Village. 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:

TYPE OF FACILITY	MINIMUM COVER
<b>Electric Lines</b>	<b>30 Inches (0.8 m)</b>
<b>Communication, Cable or Video Service Lines</b>	<b>18 to 24 Inches (0.6 m) as determined by Village</b>
<b>Gas or Petroleum Products</b>	<b>30 Inches (0.8 m)</b>
<b>Water Line</b>	<b>Sufficient Cover to Provide Freeze Protection</b>
<b>Sanitary Sewer, Storm Sewer, or Drainage Line</b>	<b>Sufficient Cover to Provide Freeze Protection</b>

7. Standards and Requirements for Particular Types of Facilities.

a. Electric Power or Communication Lines.

i. 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.

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

iii. Underground Facilities. (1) Cable may be installed by trenching or plowing, provided that special consideration is given to boring in order to minimize damage when crossing improved entrances and side roads. (2) If a crossing is installed by boring or jacking, encasement shall be provided between jacking or bore pits. Encasement may be

eliminated only if: (a) the crossing is installed by the use of “moles,” “whip augers,” or other approved method that compresses the earth to make the opening for cable installation or (b) the installation is by the open Trench method which is only permitted prior to Roadway Construction. (3) Cable shall be grounded in accordance with the National Electrical Safety Code.

iv. Burial of Drops. All temporary service drops placed between November 1 of the prior year and March 15 of the current year, also known as snowdrops, shall be buried by May 31 of the current year, weather permitting, unless otherwise permitted by the Village. Weather permitting, utilities shall bury all temporary drops, excluding snowdrops, within ten (10) business days after placement.

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

- i. The use of “moles,” “whip augers,” or other approved methods which compress the earth to move the opening for the pipe;
- ii. Jacking or boring with vented encasement provided between the ditch lines or toes of slopes of the Roadway;
- iii. Open Trench with vented encasement between ultimate ditch lines or toes of slopes, but only if prior to Roadway construction; or,

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

c. Gas Transmission, Distribution and Service. Gas pipelines within Rights-of-Way shall be constructed, maintained, and operated in a Village approved manner and in conformance with the Federal Code of the Office of Pipeline Safety Operations, Department of Transportation, Part 192 B Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards (49 C.F.R. Sec. 192), IDOT’s “Standard Specifications for Road and Bridge Construction,” and all other applicable laws, rules, and regulations.

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

e. Waterlines, Sanitary Sewer Lines, Storm Water Sewer Lines or Drainage Lines. Water lines, sanitary sewer lines, storm sewer lines, and drainage lines within Rights-of-Way shall meet or exceed the recommendations of the current “Standard Specifications for Water and Sewer Main Construction in Illinois or Village ordinance whichever is most restrictive”

f. Ground Mounted Appurtenances and Freestanding Cabinet Facilities. Ground mounted appurtenances, including Large and Small Freestanding Cabinet Facilities to overhead or underground Facilities, when permitted within a Right-of-Way, shall be provided with a vegetation-free area extending three (3) feet (915 mm) in width beyond the appurtenance in all directions. The vegetation-free area may be provided by an extension of the mounting pad, or by heavy duty plastic or similar material approved by the Superintendent of Public Works. With the approval of the Superintendent of Public Works shrubbery surrounding the appurtenance may be used in place of vegetation-free area. The housing for ground-mounted appurtenances shall be painted a neutral color to blend with the surroundings.

C. Materials.

1. General Standards. The materials used in constructing Facilities within Rights-of-Way shall be those meeting the accepted standards of the appropriate industry, the applicable portions of IDOT's "Standards Specifications for Road and Bridge Construction," the requirements of the ICC, or the standards established by other official regulatory agencies for the appropriate industry.

2. Material Storage on Right-of-Way. No material shall be stored on the right-of-way without the prior written approval of the Village Superintendent of Public Works. When such storage is permitted, all pipe, conduit, wire, poles, cross arms, or other materials shall be distributed along the right-of-way prior to and during installation in a manner to minimize hazards to the public, interference with Right-of-Way maintenance and damage to the Right-of-Way and other property. If material is to be stored on Right-of-Way, prior approval must be obtained from the 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. Construction operations on Rights-of-Way may, at the discretion of the Village, be required to be discontinued when such operations would create hazards to the public health, safety, and welfare. Such operations may also be required to be discontinued or restricted when conditions are such that Construction would result in extensive damage to the right-of-way or other property.

2. Hours of Construction shall be those set forth in the Village Noise Ordinance except in cases of emergency when work is required to restore vital services.

E. Location of Existing Facilities. Any Utility proposing to construct Facilities in the Village shall contact J.U.L.I.E. and ascertain the presence and location of existing aboveground and underground Facilities within the Rights-of-Way to be occupied by its proposed Facilities. The Village will make its permit records available to a Utility for the purpose of identifying existing Facilities. 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 forty eight (48) hours, excluding weekends and holidays, in accordance with the Illinois Underground Facilities Damage Prevention Act (220 ILCS 50/1 *et seq.*)

**12.20.180 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 laws and regulations, and additionally, with such 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 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. Applications for tree trimming permits shall include assurance that the work will be accomplished by competent workers that are experienced in accepted tree pruning practices and under the supervision of a certified

arborist. Tree trimming permits shall designate an expiration date in the interest of assuring that the work will be expeditiously accomplished.

2. Damage to Trees. Poor pruning practices resulting in damaged or misshapen trees shall be grounds for cancellation of the tree-trimming permit and for assessment of damages.

The Village shall receive compensation for trees extensively damaged and for trees removed without authorization. The formula developed by the International Society of Arboriculture will be used as a basis for determining the compensation for damaged trees or unauthorized removal of trees. The 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. The Village may require that special measures be taken to preserve specimen trees or trees of special significance. The required measures may consist of higher poles, side arm extensions, covered wire or other means.

D. Chemical Use.

1. Except as provided in the following paragraph, no Utility shall spray, inject or pour any chemicals on or near any trees, shrubs or vegetation in the Village for any purpose, including the control of growth, insects or disease.

2. Spraying of any type of brush-killing chemicals is not be permitted on Rights-of-Way unless the Utility demonstrates to the satisfaction of the Superintendent of Public Works that such spraying is the only practicable method of vegetation control.

#### **12.20.190 Removal, Relocation, or Modifications of Facilities.**

A. Notice. Within ninety (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 such 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 thirty (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 such Facilities or appurtenances from the Rights-of-Way. A Facility is unauthorized and subject to removal in the following circumstances:

1. Upon expiration or termination of the Utility's license or franchise, unless otherwise permitted by applicable law;

2. If the Facility was constructed or installed without the prior grant of a license or franchise, if required;

3. If the Facility was constructed or installed without prior issuance of a required permit in violation of this Chapter; or

4. If the Facility was constructed or installed at a location not permitted by the Utility's license or franchise.

5. If the Facility was constructed or installed in violation of the standards and criteria established in this ordinance, any applicable codes, laws or regulations or any conditions contained in a permit and the deviation from the applicable standards and criteria are not minor and variation is not sought and obtained.

C. Emergency Removal or Relocation of Facilities. 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. If circumstances permit, the Village 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. In the event the use of a Facility has been discontinued for a period of one hundred and eighty (180) consecutive days, within the Rights-of-Way of the Village, the Facility shall be deemed to be abandoned. Determination of the date of abandonment shall be made by the Superintendent of Public Works, who shall have the right to request documentation and/or affidavits from the Utility regarding the issue of the Facility's use. Upon the Superintendent's determination and written notification to the Utility of such abandonment, the Utility shall have ninety (90) days within which to: (1) reactivate the actual use of the Facility or transfer the Facility to another Utility which makes actual use of the Facility; or (2) dismantle and remove the Facility. The Utility shall notify the Superintendent of Public Works in writing of the reactivation or completion of such removal of the abandoned Facility. If no action has been taken by the Utility within the ninety (90) day period following notice of abandonment from the Village, the Superintendent of Public Works may (1) direct the Utility to remove all or any portion of the Facility; or (2) seek an injunction in court requiring the removal of the Facility; or (3) remove the Facility if it is determined that such removal is in the best interest of the public health, safety and welfare. At the earlier date of either (1) two hundred and seventy (270) days from the date of discontinuance without reactivation, or (2) upon completion of dismantling or removal, any special exception or variance approval for the Facility shall automatically expire without further action by the Village. 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.

#### **12.20.200 Clean-up and Restoration.**

The Utility shall remove all excess material and restore the Right-of-Way and other property within ten (10) days after any portion of the rights-of-way are disturbed, damaged or destroyed due to Construction or maintenance by the Utility, all to the satisfaction of the Village, including restoration of entrances, driveways and side roads. All non-paved surfaces shall be sod restored. Cracked, damaged or removed sidewalks shall be fully replaced with six inch (6") thick, five foot (5') wide PCC sidewalks on a four inch (4") aggregate base. Restoration of Roadway surfaces shall be made using materials and methods approved by the Superintendent of Public Works. Such cleanup and repair shall 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. The time period provided in this Section may be extended by the Village Superintendent of Public Works for good cause shown.

#### **12.20.210 Maintenance and Emergency Maintenance.**

A. General. Facilities on, over, above, along, upon, under, across, or within Rights-of-Way are to be maintained by or for the Utility in a good and workmanlike manner and to

protect the public health, safety and welfare to the satisfaction of the Village at the Utility's expense.

B. Emergency Maintenance Procedures. Emergencies may justify non-compliance with normal procedures for securing a permit:

1. If an emergency creates a hazard on the traveled portion of the Right-of-Way, the Utility shall take immediate steps to provide all necessary protection for traffic on the Roadway or the public on the Right-of-Way including the use of signs, lights, barricades or flaggers. If a hazard does not exist on the traveled way, but the nature of the emergency is such as to require the parking on the shoulder of equipment required in repair operations, adequate signs and lights shall be provided. Parking on the shoulder in such an emergency will only be permitted when no other means of access to the Facility is available.

2. In an emergency, the Utility shall, as soon as possible, notify the Superintendent of Public Works or his or her duly authorized agent of the emergency, informing him or her as to what steps have been taken for protection of the traveling public and what will be required to make the necessary repairs. If the nature of the emergency is such as to interfere with the free movement of traffic, the 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 of a description of the repairs undertaken in the right-of-way within forty eight (48) hours after an emergency repair.

#### **12.20.220 Variances.**

A. Request for Variance. A Utility requesting a variance from one or more of the provisions of this Chapter must do so in writing to the Superintendent of Public Works as a part of the permit application or as otherwise specified in this Ordinance. 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 Superintendent of Public Works 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 Superintendent of Public Works 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;

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; and

3. There will be no adverse effect to the public health, safety and welfare, or appropriate measures will be taken to minimize any possible adverse effect

D. Additional Conditions for Granting of a Variance. As a condition for authorizing a variance, the Superintendent of Public Works 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. Any Utility aggrieved by any order, requirement, decision or determination, including denial of a variance, made by the Village Superintendent of Public Works under the provisions of this Chapter shall have the right to appeal to the Village Board, or such other board or commission as it may designate. The application for appeal shall be submitted in writing to the Village Clerk within thirty (30) days after the date of such order, requirement, decision or determination. The Village Board shall commence its consideration of the appeal at the Board's next regularly scheduled meeting occurring at least seven (7) days after the filing of the appeal. The Village Board shall timely decide the appeal.

#### **12.20.230 Penalties.**

Any person who violates, disobeys, omits, neglects or refuses to comply with any of the provisions of this Chapter shall be subject to fine not less than \$100.00 nor more than \$750.00 for each violation. Each day of a violation shall be considered a separate offence.

If the Village incurs costs, including the cost of consultants and third party claims, because the Utility delays in performing the work pursuant to a permit or fails to perform the work in compliance with the permit conditions and the requirements of this Chapter, the Utility shall reimburse the Village for those costs that are attributed to the delay or violation.

A Utility shall bear and/or reimburse the Village's costs of damages and the cost of installing, maintaining, modifying, relocating, or removing the Facility, if required pursuant to this Chapter. No other administrative agency or commission may review or overrule a permit related cost apportionment of the Village. Sanctions may be imposed upon a Utility that does not pay the costs apportioned to it.

#### **12.20.240 Appeals of Withholding Permits.**

If the Superintendent of Public Works determines that a Utility is in violation of any provision of this Chapter and denies or refuses to issue other permits under this Ordinance pending the Utility bringing itself into compliance, the Utility may appeal in conformance with this Subsection. Any denial of or refusal to issue a permit shall be communicated in writing and shall set forth the reason(s) for the denial. The appeal of any decision by the Superintendent of Public Works shall be filed with the Village Administrator who shall conduct an evidentiary hearing and issue a ruling within fourteen (14) days of receipt of a notice of appeal from the Utility. The burden of presentation and proof, which shall be made by clear and convincing evidence, shall be on the Utility. The Administrator's ruling shall be in writing within seven (7) days from the hearing setting forth the reasons for the ruling. A Utility may appeal a ruling of the Village Administrator by notice in writing to the Administrator given three (3) days from receipt of the written ruling. The Corporate Authorities shall consider appeals from the Administrator's ruling at the next Village Board meeting or within seven (7) days, whichever is later, based on the record made to the Village Administrator. The Corporate Authorities ruling shall be final.

#### **12.20.250 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

#### **12.20.260 Severability.**

If any section, subsection, sentence, clause, phrase or portion of this Chapter is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion

shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions hereof.

SECTION THREE: SEVERABILITY. The various provisions of this Ordinance are to be considered as severable, and if any part or portion of this Ordinance shall be held invalid by any Court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this Ordinance.

SECTION FOUR: REPEAL OF PRIOR ORDINANCES. All prior Ordinances and Resolutions in conflict or inconsistent herewith are hereby expressly repealed only to the extent of such conflict or inconsistency.

SECTION FIVE: EFFECTIVE DATE. This Ordinance shall take effect ten (10) days after its passage, approval and publication in pamphlet form.

Presented to the Board of Trustees of the Village of North Aurora, Kane County, Illinois this 22 day of October 2007 A.D.

Passed by the Board of Trustees of the Village of North Aurora, Kane County, Illinois this 22 day of October 2007 A.D.

Dale Berman

Yes  
Yes  
Yes

Mark Gaffino

Yes  
Yes  
Yes

Michael Herlihy III

Max Herwig

Linda Mitchell

Bob Strusz

Approved and signed by me as President of the Board of Trustees of the Village of North Aurora, Kane County, Illinois this 22 day of October, 2007, A.D.

  
John Hansen, Village President

ATTEST:

  
Lori Murray, Village Clerk