

CHAPTER 41.1

STANDARDS FOR THE CONSTRUCTION OF FACILITIES IN THE PUBLIC RIGHTS-OF-WAY

1. PURPOSE AND SCOPE .

A. Purpose. The purpose of this Chapter is to establish policies and procedures for constructing facilities on rights-of-way within the City's jurisdiction, which will provide public benefit consistent with the preservation of the integrity, safe usage, and visual qualities of the City rights-of-way and the City as a whole.

B. Facilities Subject to This Chapter. This Chapter applies to all facilities on, over, above, along, upon, under, across, or within the public rights-of-way within the jurisdiction of the City. A facility lawfully established prior to the effective date of this Chapter may continue to be maintained, repaired and operated by the utility as presently constructed and located, except as may be otherwise provided in any applicable franchise, license or similar agreement.

C. Franchises, Licenses, or Similar Agreements. The City in its discretion and as limited by law may require utilities or other services to enter into a franchise, license or similar agreement for the privilege of locating their facilities on, over, above, along, upon, under, across, or within the City rights-of-way. Utilities authorized by Federal or State law that are not required by law to enter into such an agreement may request that the City enter into such an agreement. In such an agreement, the City may provide for terms and conditions inconsistent with this Chapter.

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

(a) Utilities Other Than Telecommunications Providers. In the event that a utility other than a telecommunications provider has a franchise, license or similar agreement with the City, such franchise, license or similar agreement shall govern and control the installation, operations and maintenance of infrastructure as strictly described in such franchise agreement, during the term of such agreement and any lawful renewal or extension thereof. Installation, operation and maintenance of infrastructure resulting from changed technology not in common usage or reasonably contemplated for use as of the franchise agreement date shall be governed by the requirements of this ordinance.

(b) Telecommunications Providers. In the event of any conflict with, or inconsistency between, the provisions of this Chapter and the provisions of any franchise, license or similar agreement between the City and any telecommunications provider, the provisions of such franchise, license or similar agreement shall govern and control the installation, operations and maintenance of telecommunications infrastructure as strictly described in such franchise agreement, during the term of such agreement and any lawful renewal or extension thereof. Installation, operation and maintenance of telecommunications infrastructure resulting from changed technology not in common usage or reasonably contemplated for use as of the franchise agreement date shall be governed by the requirements of this ordinance.

(c) Other Service Providers. In the event State or Federal law allows for other service providers of a similar type and use as a utility or telecommunication provider, the same rules shall apply. Installation, operation and maintenance of infrastructure resulting from changed technology not in common usage or reasonably contemplated for use as of the date of this ordinance shall be governed by the requirements of this ordinance

E. Conflicts with Other Chapters. This Chapter supersedes all Chapters or parts of Chapters adopted prior hereto that are in conflict herewith, to the extent of such conflict.

F. Conflicts with State and Federal Laws. In the event that applicable Federal or State laws or regulations conflict with the requirements of this Chapter, the utility shall comply with the requirements of this Chapter to the maximum extent possible without violating Federal or State laws or regulations.

G. Sound Engineering Judgment. The City shall use sound engineering judgment when administering this Chapter and may vary the standards, conditions, and requirements expressed in this Chapter when the City so determines. Nothing herein shall be construed to limit the ability of the City to regulate its rights-of-way for the protection of the public health, safety and welfare.

2. 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 § 530.30, unless the context clearly requires otherwise.

"AASHTO" - American Association of State Highway and Transportation Officials.

"ANSI" - American National Standards Institute.

"Applicant" - A person or other legal entity applying for a permit under this Chapter.

"ASTM" - American Society for Testing and Materials.

"Backfill" - The methods or materials for replacing excavated material in a trench or pit.

"Bore" or "Boring" - To excavate an underground cylindrical cavity for the insertion of a pipe or electrical conductor.

"Carrier Pipe" - The pipe enclosing the liquid, gas or slurry to be transported.

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

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

"Coating" - Protective wrapping or mastic cover applied to buried pipe for protection against external corrosion.

"Code" - The City Code of the City of Decatur

"Conductor" - Wire carrying electrical current.

"Conduit" - A casing or encasement for wires or cables.

"Construction" or "Construct" - The installation, repair, maintenance, placement, alteration, enlargement, demolition, modification or abandonment in place of facilities.

"Construction Standards" – City of Decatur Construction Standards as prepared by the Public Works Department, latest version.

"Cover" - The depth of earth or backfill over buried utility pipe or conductor.

"Crossing Facility" - A facility that crosses one or more right-of-way lines of a right-of-way.

"Public Works Director" - The City Public Works Director or the designee.

"Disrupt the Right-of-Way" - For the purposes of this Chapter, any work that obstructs the right-of-way or causes a material adverse effect on the use of the right-of-way for its intended use. Such work may include, without limitation, the following: excavating or other cutting; placement (whether temporary or permanent) of materials, equipment, devices, or structures; damage to

vegetation; and compaction or loosening of the soil, and shall not include the parking of vehicles or equipment in a manner that does not materially obstruct the flow of traffic on a highway.

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

"Encasement" - Provision of a protective casing.

"Engineer" - The City Engineer or the designee.

“Equipment” - Materials, tools, implements, supplies, and/or other items used to facilitate construction of facilities.

"Excavation" - The making of a hole or cavity by removing material, or laying bare by digging.

"Extra Heavy Pipe" - Pipe meeting ASTM standards for this pipe designation.

"Facility" – Any and all structures, devices, objects, and materials including track and rails, wires, pedestals, amplifiers, power supplies, transformers, conduits, grates, covers, pipes, pressure regulators, cables, and appurtenances thereto located on, over, above, along, upon, under, across, or within rights-of-way under this Chapter, except those owned by the City.

“Fiber-Optic or Optical Fiber” – A glass or plastic fiber designed to guide light along its length by confining as much light as possible in a propagating form. Optical fibers are widely used in the fiber-optic communication, which permits digital data transmission over longer distances and at higher data rates than other forms of wired and wireless communications.

“Freestanding Facility” - A facility that is not a crossing facility or a parallel facility, such as an antenna, transformer, pump, pressure regulator or meter station.

"Frontage Road" - Roadway, usually parallel, providing access to land adjacent to the highway where it is precluded by control of access on highway.

“Hazardous Materials” - Any substance or material which, due to its quantity, form, concentration, location, or other characteristics, is determined by the Public Works Director 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" - The Illinois Highway Code, 605 ILCS 5/1-101 et seq., as amended from time to time.

"Highway" - A specific type of right-of-way used for vehicular traffic including rural or urban roads or streets. “Highway” includes all highway land and improvements, including roadways, ditches and embankments, bridges, drainage structures, signs, guardrails, protective structures and appurtenances necessary or convenient for vehicle traffic. See also “Streets.”

"IDOT" - Illinois Department of Transportation.

"ILCC" - Illinois Commerce Commission.

"Jacking" - Pushing a pipe horizontally under a roadway by mechanical means with or without boring.

"Jetting" - Pushing a pipe through the earth using water under pressure to create a cavity ahead of the pipe.

"Joint Use" - The use of pole lines, trenches or other facilities by two or more utilities.

“Major Intersection” - The intersection of two or more major arterial highways.

"Occupancy" - The presence of facilities on, over or under right-of-way.

“Parallel Facility” - A facility that is generally parallel or longitudinal to the centerline of a right-of-way.

"Parkway" - Any portion of the right-of-way not improved by street or sidewalk.

"Pavement Cut" - The removal of an area of pavement for access to facility or for the construction of a facility.

"Permittee" - That entity to which a permit has been issued pursuant to Sections 4 and 5 of this Chapter.

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

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

"Petroleum Products Pipelines" - Pipelines carrying crude or refined liquid petroleum products including, but not limited to, gasoline, distillates, propane, butane, or coal-slurry.

"Prompt" - That which is done within a period of time specified by the City. If no time period is specified, the period shall be 30 days.

"Public Entity" - A legal entity that constitutes or is part of the government, whether at local, State or Federal level.

“Public Utility” - A private business organization, subject to governmental regulation, that provides an essential commodity or service, such as water, electricity, transportation, or communication, to the public.

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

"Right-of-Way" - Any street, alley, other land or waterway, dedicated or commonly used for utility purposes, including utility easements in which the City has the right and authority to authorize, regulate or permit the location of facilities other than those of the City. "Right-of-way" shall not include any real or personal City property that is not specifically described in the previous two sentences and shall not include City buildings, fixtures, and other structures or improvements, regardless of whether they are situated in the right-of-way.

"Roadway" - That part of the highway that includes the pavement and shoulders.

"Sale of Telecommunications at Retail" - The transmitting, supplying, or furnishing of telecommunications and all services rendered in connection therewith for a consideration, other than between a parent corporation and its wholly owned subsidiaries or between wholly owned subsidiaries, when the gross charge made by one such corporation to another such corporation is not greater than the gross charge paid to the retailer for their use or consumption and not for sale.

"Security Fund" - That amount of security required pursuant to this code.

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

"Sound Engineering Judgment" - A decision(s) consistent with generally accepted engineering principles, practices and experience.

"Streets" - A specific type of right-of-way used for vehicular traffic including rural or urban roads or streets. "Streets" include all highway land and improvements, including roadways, ditches and embankments, bridges, drainage structures, signs, guardrails, protective structures and appurtenances necessary or convenient for vehicle traffic. See also "Highway."

"Telecommunications" - This term includes, but is not limited to, messages or information transmitted through use of local, toll, and wide area telephone service, channel services, telegraph services, teletypewriter service, computer exchange service, private line services, specialized mobile radio services, or 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. Unless the context clearly requires otherwise, "telecommunications" shall also include wireless telecommunications as defined in the Illinois Telecommunications Infrastructure Maintenance Fee Act, 35 ILCS 635/1 et seq.

"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. "Telecommunications" shall not include purchase of telecommunications by a telecommunications service provider for use as a component part of the service provided by him or her to the ultimate retail consumer who originates or terminates the end-to-end communications. 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 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 City through an open video system as defined in the Rules of the Federal Communications Commission (47 C.D.F. 76.1550 and following) as now or hereafter amended.

“Telecommunications Provider” - Means any person that installs, owns, operates or controls facilities in the public right-of-way used or designed to be used to transmit telecommunications in any form.

"Telecommunications Retailer" - Means and includes every person engaged in making sales of telecommunications at retail as defined herein.

"Trench" - A relatively narrow open excavation for the installation of an underground facility.

"Utility" - The individual or entity owning or operating any facility as defined in this Chapter.

"Vent" - A pipe to allow the dissipation into the atmosphere of gases or vapors from an underground casing.

“City” - The City of Decatur, Illinois, a municipal corporation.

"Water Lines" - Pipelines carrying raw or potable water.

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

(AMENDED, Ordinance No. 2009-39, May 18, 2009)

3. ANNUAL REGISTRATION REQUIRED. Every utility that occupies right-of-way within the City shall register on May 1 of each year with the Public Works Director, providing the utility's name, address and regular business telephone and facsimile numbers, the name of one or more contact persons who can act on behalf of the utility in connection with emergencies involving the utility's facilities in the right-of-way and a 24-hour telephone number for each such person, and evidence of insurance as required in this Chapter, in the form of a certificate of insurance. A telecommunications provider that has registered under this Section shall be deemed to have satisfied the registration requirement of this Code.

4. PERMIT REQUIRED; APPLICATIONS AND FEES. A. Permit Required.

No person shall construct (as defined in this Chapter) any facility on, over, above, along, upon, under, across, or within any City right-of-way which:

- (a) changes the location of the facility,
- (b) adds a new facility,
- (c) disrupts the right-of-way (as defined in this Chapter), or

(d) materially increases the amount of area or space occupied by the facility on, over, above, along, under across or within the right-of-way, without first filing an application with the Public Works Director and obtaining a permit from the City therefore, except as otherwise provided in this Chapter. No permit shall be required for installation and maintenance of service connections to customers' premises where there will be no disruption of the right-of-way.

(AMENDED, Ordinance No. 2009-39, May 18, 2009)

B. Permit Application. All applications for permits pursuant to this Chapter shall be filed on a form provided by the City and shall be filed in such number of duplicate copies as the City may designate. The applicant may designate those portions of its application materials that it reasonably believes contain proprietary or confidential information as “proprietary” or “confidential” by clearly marking each page of such materials accordingly.

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

- (a) The utility's name and address and telephone and facsimile numbers;
- (b) The applicant's name and address, if different than the utility, its telephone, facsimile numbers, e-mail address, and its interest in the work;
- (c) The names, addresses and telephone and facsimile numbers and e-mail addresses of

all professional consultants, if any, advising the applicant with respect to the application;

(d) 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 work proposed;

(e) Evidence that the utility has placed on file with the City:

(1) A written traffic control plan demonstrating the protective measures and devices that will be employed consistent with the Illinois Manual on Uniform Traffic Control Devices, to prevent injury or damage to persons or property and to minimize disruptions to efficient pedestrian and vehicular traffic; and

(2) An emergency contingency plan which shall specify the nature of potential emergencies, including, without limitation, construction and hazardous materials emergencies, and the intended response by the applicant. The intended response shall include notification to the City and shall promote protection of the safety and convenience of the public. Compliance with ILCC regulations for emergency contingency plans constitutes compliance with this Section unless the City finds that additional information or assurances are needed;

(f) Drawings, plans and specifications showing the work proposed, including the certification of an engineer that such drawings, plans, and specifications comply with applicable codes, rules, and regulations;

(g) Evidence of insurance as required in this Chapter;

(h) Evidence of posting of the security fund if required;

(i) Any request for a variance from one or more provisions of the City Code of Decatur, and

(j) Such additional information as may be reasonably required by the City.

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

(a) In the case of new electric power, communications or natural gas distribution system installation, evidence that any "Certificate of Public Convenience and Necessity" has been issued by the ILCC that the applicant is required by law, or has elected, to obtain;

(b) In the case of natural gas systems, State the proposed pipe size, design, construction class, and operating pressures;

(c) In the case of water lines, indicate that all requirements of the Illinois Environmental Protection Agency, Division of Public Water Supplies, have been satisfied;

(d) In the case of sewer line installations, indicate that the land and water pollution requirements of the Illinois Environmental Protection Agency, Division of Water Pollution Control and the Sanitary District of Decatur have been satisfied; or

(e) In the case of petroleum products pipelines, State the type or types of petroleum products, pipe size, maximum working pressure, and the design standard to be followed.

E. Applicant's Duty to Update Information. Throughout the entire permit application review period and the construction period authorized by the permit, any amendments to information contained in a permit application shall be submitted by the utility in writing to the City within thirty (30) days after the change necessitating the amendment.

F. Application Fees

(a) No application fee is required to be paid by any telecommunications retailer that is paying the City telecommunications infrastructure maintenance fee pursuant to this Code or the

optional State telecommunications infrastructure maintenance fee pursuant to the Telecommunications City Infrastructure Maintenance Fee Act, or by any electricity utility that is paying the City electricity infrastructure maintenance fee pursuant to the Electricity Infrastructure Maintenance Fee Act.

(b) The application fee for all other types of infrastructure constructed, operated and maintained on the public right-of-way shall be \$100.00 per individual location, unless an alternative application fee is approved by the City Council.

5. ACTION ON PERMIT APPLICATIONS. A. City Review of Permit Applications. Completed permit applications, containing all required documentation, shall be examined by the Public Works Director within a reasonable time after filing. If the application does not conform to the requirements of all applicable ordinances, codes, laws, rules, and regulations, the Public Works Director shall reject such application in writing, stating the reasons therefore. If the Public Works Director is satisfied that the proposed work conforms to the requirements of this Chapter and all applicable ordinances, codes, laws, rules, and regulations, the Public Works Director shall issue a permit therefore as soon as practicable.

B. Additional City Review of Applications of Telecommunications Retailers.

(a) Pursuant to Section 4 of the Telephone Company Act, 220 ILCS 65/4, a telecommunications retailer shall notify the City that it intends to commence work governed by this Chapter for facilities for the provision of telecommunications services. Such notice shall consist of plans, specifications, and other documentation sufficient to demonstrate the purpose and intent of the facilities, and shall be provided by the telecommunications retailer to the City not less than ten (10) business days prior to the commencement of work requiring no excavation and not less than twenty-five (25) business days prior to the commencement of work requiring

excavation. The Public Works Director shall specify the portion of the right-of-way upon which the facility may be placed, used and constructed. A City of Decatur permit is required to be issued prior to work commencing.

(b) In the event that the Public Works Director fails to provide such specification of location to the telecommunications retailer within either (1) ten (10) business days after service of notice to the City by the telecommunications retailer in the case of work not involving excavation for new construction or (2) twenty-five (25) business days after service of notice by the telecommunications retailer in the case of work involving excavation for new construction, the telecommunications retailer may commence work without obtaining a permit under this Chapter.

(c) Upon the provision of such specification by the City, where a permit is required for work pursuant to this Chapter the telecommunications retailer shall submit to the City an application for a permit and any and all plans, specifications and documentation available regarding the facility to be constructed. Such application shall be subject to the requirements of Subsection (A) of this Section.

(Amended, Ordinance No. 2009-39, May 18, 2009)

6. EFFECT OF PERMIT. A. Authority Granted. No Property Right or Other Interest Created. A permit from the City authorizes a permittee to undertake only certain activities in accordance with this Chapter on City rights-of-way, and does not create a property right or grant authority to the permittee to impinge upon the rights of others who may have an interest in the public rights-of-way.

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

7. REVISED PERMIT DRAWINGS. In the event that the actual locations of any facilities deviate in any material respect from the locations identified in the plans, drawings and specifications submitted with the permit application, the permittee shall submit a revised set of drawings or plans to the City within ninety (90) calendar 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. If any deviation from the permit also deviates from the requirements of this Chapter, it shall be treated as a request for variance in accordance with this Chapter. If the City denies the request for a variance, then the permittee shall either remove the facility from the right-of-way or modify the facility so that it conforms to the permit and submit revised drawings or plans therefore.

8. INSURANCE. (a) Required Coverage and Limits. Unless otherwise provided by franchise, license, or similar agreement, each utility occupying right-of-way or constructing any facility in the right-of-way shall secure and maintain the following liability insurance policies insuring the utility as named insured and naming the City, and its elected and appointed officers, officials, agents, and employees as additional insured on the policies listed in paragraphs 1 and 2 below:

(1) Commercial general liability insurance, written on an occurrence basis by an insurer acceptable to the City, including premises-operations, contractual liability, explosion, collapse, and underground hazard (commonly referred to as “X,” “C,” and “U” coverage) and products-completed operations coverage with limits not less than:

(i) Five million dollars (\$5,000,000) for bodily injury or death to each person;

(ii) Five million dollars (\$5,000,000) for property damage resulting from any one accident; and

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

(iv) Ten million dollars (\$10,000,000) for general aggregate and completed operations aggregate.

(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) for (a) Each Accident, (b) Disease – policy limit and (c) Disease – each employee.

(b) Excess or Umbrella Policies. The coverage 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 any such loss.

(c) Copies Required. The utility shall provide copies of any of the policies required by this Section to the City within ten (10) days following receipt of a written request therefore from the City. Certificates of Insurance may be requested in lieu of policies and must evidence all requirements set forth in this section.

(d) Maintenance and Renewal of Required Coverage. The insurance policies required by this Section shall contain the following endorsement:

“It is hereby understood and agreed that this policy may not be canceled nor the intention not to renew be stated until thirty (30) days after receipt by the City, by registered mail or certified mail, return receipt requested, of a written notice addressed to the City Manager of such intent to cancel or not to renew.” Within ten (10) days after receipt by the City of said notice, and in no event later than ten (10) days prior to said cancellation, the utility shall obtain and furnish to the City evidence of replacement insurance policies meeting the requirements of this Section.

(e) Self-Insurance. A utility may self-insure all or a portion of the insurance coverage and limit requirements required by Subsection (a) of this Section. A utility that self-insures is not required, to the extent of such self-insurance, to comply with the requirement for the naming of additional insured under Subsection (a), or the requirements of Subsections (b), (c) and (d) of this Section. A utility that elects to self-insure shall provide to the City evidence sufficient to demonstrate its financial ability to self-insure the insurance coverage and limit requirements required under Subsection (a) of this Section, such as evidence that the utility is a “private self insurer” under the Workers Compensation Act.

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

9. INDEMNIFICATION. By occupying or constructing facilities in the right-of-way, a utility shall be deemed to agree to defend, indemnify and hold the City and its elected and appointed officials and officers, employees, agents and representatives harmless from and against any and all injuries, claims, demands, judgments, damages, losses and expenses, including reasonable attorney's fees and costs of suit or defense, arising out of, resulting from or

alleged to arise out of or result from the negligent, careless or wrongful acts, omissions, failures to act or misconduct of the utility or its affiliates, officers, employees, agents, contractors or subcontractors in the construction of facilities or occupancy of the rights-of-way, and in providing or offering service over the facilities, whether such acts or omissions are authorized, allowed or prohibited by this 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 City, its officials, officers, employees, agents or representatives.

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

- (a) The faithful performance by the permittee of all the requirements of this Chapter;
- (b) Any expenditure, damage, or loss incurred by the City occasioned by the permittee's failure to comply with any codes, rules, regulations, orders, permits and other directives of the City issued pursuant to this Chapter; and
- (c) The payment by permittee of all liens and all damages, claims, costs, or expenses that the City may pay or incur by reason of any action or non-performance by permittee in violation of this Chapter including, without limitation, any damage to public property or restoration work the permittee is required by this Chapter to perform that the City must perform itself or have completed as a consequence solely of the permittee's failure to perform or complete, and all

other payments due the City from the permittee pursuant to this Chapter or any other applicable law.

B. Form. The permittee shall provide the Security Fund to the City in the form, at the permittee's election, of cash, a surety bond in a form acceptable to the City, or an unconditional letter of credit in a form acceptable to the City. Any surety bond or letter of credit provided pursuant to this Subsection shall, at a minimum:

(a) Provide that it will not be canceled without prior written notice to the City via certified mail and the permittee;

(b) Not require the consent of the permittee prior to the collection by the City of any amounts covered by it; and

(c) Shall provide a location convenient to the City and within the State of Illinois at which it can be drawn.

C. Amount. The dollar amount of the Security Fund shall be sufficient to provide for the reasonably estimated cost to restore the right-of-way to at least as good a condition as that existing prior to the construction under the permit, as determined by the Public Works Director, and may also include reasonable, directly related costs that the City estimates are likely to be incurred if the permittee fails to perform such restoration. Where the construction of facilities proposed under the permit will be performed in phases in multiple locations in the City, with each phase consisting of construction of facilities in one location or a related group of locations, and where construction in another phase will not be undertaken prior to substantial completion of restoration in the previous phase or phases, the Public Works Director may, in the exercise of sound discretion, allow the permittee to post a single amount of security which shall be applicable to each phase of the construction under the permit. The amount of the Security Fund

for phased construction shall be equal to the greatest amount that would have been required under the provisions of this Subsection (c) for any single phase.

(Amended, Ordinance No. 2009-39, May 18, 2009)

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

(a) Fails to make any payment required to be made by the permittee hereunder;

(b) Fails to pay any liens relating to the facilities that are due and unpaid;

(c) Fails to reimburse the City for any damages, claims, costs or expenses which the City has been compelled to pay or incur by reason of any action or non-performance by the permittee; or

(d) Fails to comply with any provision of this Chapter that the City determines can be remedied by an expenditure of an amount in the Security Fund.

E. Replenishment. Within fourteen (14) days after receipt of written notice from the City that any amount has been withdrawn from the Security Fund, the permittee shall restore the Security Fund to the amount specified in this Section.

F. Interest. The funds deposited shall be placed in a non-interest bearing account.

G. Closing and Return of Security Fund. Upon completion of the work authorized under the permit, the permittee shall be entitled to the return of the Security Fund, or such portion thereof as remains on deposit, within a reasonable time after account is taken for all offsets

necessary to compensate the City for failure by the permittee to comply with any provisions of this Chapter or other applicable law. In the event of any revocation of the permit, the Security Fund, and any and all accrued interest therein, shall become the property of the City to the extent necessary to cover any reasonable costs, loss or damage incurred by the City as a result of said revocation, provided that any amounts in excess of said costs, loss or damage shall be refunded to the permittee.

H. Rights Not Limited. The rights reserved to the City with respect to the Security Fund are in addition to all other rights of the City, whether reserved by this Chapter or otherwise authorized by law, and no action, proceeding or exercise of right with respect to said Security Fund shall affect any other right the City may have. Notwithstanding the foregoing, the City shall not be entitled to a double monetary recovery with respect to any of its rights which may be infringed or otherwise violated.

11. PERMIT SUSPENSION AND REVOCATION. A. City Right to Revoke Permit. The City may revoke or suspend a permit issued pursuant to this Chapter for one or more of the following reasons:

(a) Fraudulent, false, misrepresenting, or materially incomplete Statements in the permit application;

(b) Non-compliance with this Chapter;

(c) Permittee's physical presence or presence of permittee's facilities on, over, above, along, upon, under, across, or within the public rights-of-way presents a direct or imminent threat to the public health, safety, or welfare; or

(d) Permittee's failure to construct the facilities substantially in accordance with the permit and approved plans.

B. Notice of Revocation or Suspension. The City shall send written notice of its intent to revoke or suspend a permit issued pursuant to this Chapter stating the reason or reasons for the revocation or suspension and the alternatives available to permittee under this Section 11.

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

(a) Immediately provide the City with evidence that no cause exists for the revocation or suspension;

(b) Immediately correct, to the satisfaction of the City, the deficiencies Stated in the written notice, providing written proof of such correction to the City within five (5) working days after receipt of the written notice of revocation; or

(c) Immediately remove the facilities located on, over, above, along, upon, under, across, or within the public rights-of-way and restore the rights-of-way to the satisfaction of the City providing written proof of such removal to the City within ten (10) days after receipt of the written notice of revocation. The City may, in its discretion, for good cause shown, extend the time periods provided in this Subsection.

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

E. Failure or Refusal of the Permittee to Comply. If the permittee fails to comply with the provisions of Subsection (C) of this Section, the City or its designee may, at the option of the City:

(a) correct the deficiencies;

(b) upon not less than twenty (20) days notice to the permittee, remove the subject facilities or equipment; or

(c) after not less than thirty (30) days notice to the permittee of failure to cure the non-compliance, deem them abandoned and property of the City.

The permittee shall be liable in all events to the City for all costs of removal.

12. CHANGE OF OWNERSHIP OR OWNER'S IDENTITY OR LEGAL STATUS. A. Notification of Change. A utility shall notify the City no less than thirty (30) days prior to the transfer of ownership of any facility in the right-of-way or change in identity of the utility. The new owner of the utility or the facility shall have all the obligations and privileges enjoyed by the former owner under the permit, if any, and all applicable laws, ordinances, rules and regulations, including this Chapter, with respect to the work and facilities in the right-of-way.

B. Amended Permit. A new owner shall request that any current permit be amended show current ownership. If the new owner fails to have a new or amended permit issued in its name, the new owner shall be presumed to have accepted, and agreed to be bound by, the terms and conditions of the permit if the new owner uses the facility or allows it to remain on the City's right-of-way.

C. Insurance and Bonding. All required insurance coverage or bonding must be changed to reflect the name of the new owner upon transfer.

13. GENERAL CONSTRUCTION STANDARDS. A. Standards and Principles. All construction in the right-of-way shall be consistent with applicable ordinances, codes, laws, rules and The City of Decatur Construction Standards, and commonly recognized and accepted

traffic control and construction principles, sound engineering judgment and, where applicable, the principles and standards set forth in the following IDOT publications:

- (a) Standard Specifications for Road and Bridge Construction;
- (b) Supplemental Specifications and Recurring Special Provisions;
- (c) Highway Design Manual;
- (d) Highway Standards Manual;
- (e) Standard Specifications for Traffic Control Items;
- (f) Illinois Manual on Uniform Traffic Control Devices (92 Ill. Adm. Code §545);
- (g) Flagger's Handbook; and
- (h) Work Site Protection Manual for Daylight Maintenance Operations.

B. Interpretation of City of Decatur Construction Standards. If a discrepancy exists between or among differing principles and standards required by this Chapter, the Public Works Director shall determine, in the exercise of sound engineering judgment, which principles apply and such decision shall be final. If requested, the Public Works Director shall state which standard or principle will apply to the construction, maintenance, or operation of a facility in the future. (Amended, Ordinance No. 2009-39, May 18, 2009)

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

B. Warning Signs, Protective Devices, and Flaggers. The utility is responsible for providing and installing warning signs, protective devices and flaggers, when necessary, meeting all applicable Federal, State, and local requirements for protection of the public and the utility's workers when performing any work on the public 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 20 of this Chapter, the utility shall provide such notice as is practicable under the circumstances.

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

15. LOCATION OF FACILITIES. A. Parallel Facilities Located Within Highways.

(a) Overhead Parallel Facilities. Overhead parallel facilities are discouraged and may not be permitted. If permitted, an overhead parallel facility may be located within the right-of-way lines of a highway only if:

(1) Lines are located as near as practicable to the right-of-way line and as nearly parallel to the right-of-way line as reasonable pole alignment will permit;

(2) Where pavement is curbed, poles are as remote as practicable from the curb with a minimum distance of two feet behind the face of the curb, where available;

(3) Where pavement is uncurbed, poles are as remote from pavement edge as practicable with minimum distance of four feet outside the outer shoulder line of the roadway and are not within the clear zone;

(4) No pole is located in the ditch line of a highway; and

(5) Any ground-mounted appurtenance is located within one foot of the right-of-way line or as near as possible to the right-of-way line.

(b) Underground Parallel Facilities. An underground parallel facility may be located within the right-of-way lines of a highway only if:

(1) The facility is located as near the right-of-way line as practicable and not more than eight (8) feet from and parallel to the right-of-way line;

(2) A new facility may be located under the paved portion of a highway only if other locations are impracticable or inconsistent with sound engineering judgment (e.g., a new cable may be installed in existing conduit without disrupting the pavement); and

(3) In the case of an underground power or communications line, the facility shall be located as near the right-of-way line as practicable and not more than five (5) feet 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.

B. Facilities Crossing Highways.

(a) No Future Disruption. The construction and design of crossing facilities installed between the ditch lines or curb lines of City highways may require the incorporation of materials and protections (such as encasement or additional cover) to avoid settlement or future repairs to the roadbed resulting from the installation of such crossing facilities.

(b) Cattle Passes, Culverts, or Drainage Facilities. Crossing facilities shall not be located in cattle passes, culverts, or drainage facilities.

(c) 90 Degree Crossing Required. Crossing facilities shall cross at or as near to a ninety (90) degree angle to the centerline as practicable.

(d) Overhead Power or Communication Facility. An overhead power or communication facility shall not interfere with traffic signalization, sign visibility or City of Decatur enhancement. It may cross a highway only if:

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

(2) Poles are located within one foot of the right-of-way line of the highway and outside of the clear zone; and

(3) Overhead crossings at major intersections are avoided.

(e) Underground Power or Communication Facility. An underground power or communication facility may cross a highway only if:

(1) The design materials and construction methods will provide maximum maintenance-free service life; and

(2) Capacity for the utility's foreseeable future expansion needs is provided in the initial installation.

(f) Markers. The City may require the utility to provide a marker at each right-of-way line where an underground facility other than a power or communication facility crosses a highway. Each marker shall identify the type of facility, the utility, and an emergency phone number. Markers may also be eliminated as provided in current Federal regulations. (49 C.F.R. 192.707 (1989)).

C. Facilities to be Located Within Particular Rights-of-Way. The City may require that facilities be located within particular rights-of-way that are not highways, rather than within particular highways.

D. Freestanding Facilities.

(a) The City may restrict the location and size of any freestanding facility located within a right-of-way.

(b) The City may require any freestanding facility located within a right-of-way to be screened from view.

E. Appearance Standards.

(a) The City may prohibit the installation of facilities in particular locations in order to preserve visual quality.

(b) A facility may be constructed only if its construction does not require extensive removal or alteration of trees or terrain features visible to the highway user or impair the aesthetic quality of the lands being traversed.

F. Above Ground Installation. Above ground facilities may be installed only if:

(a) No other existing facilities in the area are located underground;

(b) New underground installation is not technically feasible; and

(c) 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.

G. Facility Attachments to Bridges or Roadway Structures.

(a) Facilities may be installed as attachments to bridges or roadway structures only where the utility has demonstrated that all other means of accommodating the facility are not practicable. Other means shall include, but are not limited to, underground, underwater, independent poles, cable supports and tower supports, all of which are completely separated from the bridge or roadway structure. Facilities transmitting commodities that

are volatile, flammable, corrosive, or energized, especially those under significant pressure or potential, present high degrees of risk and such installations are not permitted.

(b) 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:

(1) 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;

(2) The type, length, value, and relative importance of the highway structure in the transportation system;

(3) The alternative routings available to the utility and their comparative practicability;

(4) The proposed method of attachment;

(5) The ability of the structure to bear the increased load of the proposed facility;

(6) The degree of interference with bridge maintenance and painting;

(7) The effect on the visual quality of the structure; and

(8) The public benefit expected from the utility service as compared to the risk involved.

H. PUBLIC UTILITIES IN RESIDENTIAL SUBDIVISIONS.

(Amended, Ordinance No. 2009-39, May 18, 2009)

(a) All public, quasi-public or private utility lines for telecommunications, electrical, gas, cable TV or similar services shall be placed in easements and entirely underground in residential subdivisions. Where public, quasi-public or private service lines are placed underground entirely

throughout a subdivided area, said conduits or cable shall be placed within easements or dedicated public ways in a manner which will not conflict with other underground services.

(b) Utility Installation: All utility equipment boxes shall be located so as to not be unsightly or hazardous to the public. Utility equipment exceeding a volume of 160 cubic feet in size shall be placed a minimum of 25 feet away from the edge of the pavement when located along a public roadway. When installed in a residential district, utility equipment shall be placed within easements or public right of ways adjacent to rear or side yards. Utility equipment boxes shall be grouped in clusters to the greatest extent possible. No more than four (4) utility equipment boxes shall be placed in a cluster. Clusters shall not occupy more than 160 square feet of surface area when a rectangular perimeter is measured around all boxes.

(c) No more than one cluster of utility boxes shall be located on a public utility easement on a lot of record or public right of way adjacent to one lot of record. Utility boxes shall be one hundred fifty feet (150') apart, unless clustered. If engineering techniques as approved by the City do not allow a distance of one hundred fifty feet (150'), the City may approve a shorter distance.

(d) All gas mains shall be placed within the street right of way or within easements.

(e) Underground work, either the installation of or the repair of existing sewer and water systems, cannot commence until the appropriate public or quasi-public utilities are staked and the Public Works Director.

16. CONSTRUCTION METHODS AND MATERIALS. All construction shall meet the requirements of the City of Decatur Construction Standards except as may be modified herein.

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

(a) Boring or Jacking. (Amended, Ordinance No. 2009-39, May 18, 2009)

(1) Pits and Shoring. Boring or jacking under rights-of-way shall be accomplished from pits located at a minimum distance specified by the Public Works Director 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 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.

(2) Wet Boring or Jetting. Wet boring or jetting shall not be permitted under the roadway.

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

(4) 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.

(5) Tree Preservation. Any facility located within the drip line of any tree designated by the Public Works Director to be preserved shall be bored under or around the root system.

(b) Trenching. Trenching for facility installation, repair, or maintenance on rights-of-way shall be done in accord with the applicable portions of Section 603 of IDOT's "Standard Specifications for Road and Bridge Construction."

(1) 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 permission is obtained from the Public Works Director.

(2) 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 paved portion of the roadway. Where right-of-way width does not allow for windrowing excavated material off the paved portion of the roadway, excavated material shall be hauled to an off-road location.

(3) The utility shall not trench within the drip line of any tree designated by the Public Works Director to be preserved.

(c) Backfilling.

(1) Any pit, trench, or excavation created during the installation of facilities shall be backfilled for its full width, depth, and length using methods and materials in accordance with IDOT's "Standard Specifications for Road and Bridge Construction." When excavated material is hauled away or is unsuitable for backfill, suitable granular backfill shall be used.

(2) 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 Public Works Director, 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 Public Works Director.

(d) Pavement Cuts. Pavement cuts for facility installation or repair shall be permitted on a highway only if that portion of the highway is closed to traffic. If a variance to the limitation set forth in this paragraph (4) is permitted under Section 21, the following requirements shall apply:

(1) Any excavation under pavements shall be backfilled as soon as practicable in accordance with City of Decatur Construction Standards for Trench Backfill and Bedding (Std 2050) or as designated by the Public Works Director and compacted in accordance with IDOT standards.

(2) Restoration of pavement, in kind and in accordance with City of Decatur Construction Standards, shall be accomplished as soon as practicable, and temporary repair with bituminous mixture shall be provided immediately. Any subsequent failure of either the temporary repair or the restoration shall be rebuilt upon notification by the City.

(3) All saw cuts shall be full depth.

(4) 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) City has the right to perform patching and be reimbursed by the utility if the utility fails to do so within a reasonable period of time and after written notification to utility via fax, mail or personal service.

(e) Encasement.

(1) Casing pipe shall be designed to withstand the load of the highway and any other superimposed loads. The casing shall be continuous either by one-piece fabrication or by welding or jointed installation approved by the City.

(2) The venting, if any, of any encasement shall extend within one 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 highway.

(3) In the case of water main or service crossing, encasement shall be furnished between bore pits unless continuous pipe or City approved jointed pipe is used under the roadway. Casing may be omitted only if pipe is installed prior to highway construction and carrier pipe is continuous or mechanical joints are of a type approved by the City. Bell and spigot type pipe shall be encased regardless of installation method.

(4) In the case of gas pipelines of 60 psig or less, encasement may be eliminated.

(5) 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;

(6) 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.

(f) Minimum Cover of Underground Facilities.

(1) Cover shall be provided and maintained at least in the amount specified in the following table for minimum cover for the type of facility:

TYPE OF FACILITY	MINIMUM COVER
Power or Communication Line	30 Inches

(In General)	
Communication Line Installed by the Plowed Method	24 Inches
Gas or Petroleum Products	30 Inches
Water Line	42 inches.
Sanitary Sewer, Storm Sewer, or Drainage Line	Sufficient cover to provide freeze protection.

B. Standards and Requirements for Particular Types of Facilities.

(Amended, Ordinance No. 2009-39, May 18, 2009)

(a) Electric Power or Communication Lines.

(1) Code Compliance. Electric power or communications facilities within City rights-of-way shall be constructed, operated, and maintained in conformity with the provisions of 83 Ill. Adm. Code 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.

(2) 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.

Variations may be allowed if there is no feasible alternative and if guy wires are equipped with guy guards for maximum visibility.

(3) Underground Facilities.

(i) 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.

(ii) If a crossing is installed by boring or jacking, encasement shall be provided between jacking or bore pits. Encasement may be eliminated only if:

(a) the crossing is installed by the use of "moles," "whip augers," or other approved method which compress the earth to make the opening for cable installation or

(b) the installation is by the open trench method which is only permitted prior to roadway construction.

(iii) Cable shall be grounded in accordance with the National Electrical Safety Code.

(b) Underground Facilities Other than Electric Power or Communication Lines.

Underground facilities other than electric power or communication lines may be installed by:

(1) the use of "moles," "whip augers," or other approved methods which compress the earth to move the opening for the pipe;

(2) jacking or boring with vented encasement provided between the ditch lines or toes of slopes of the highway;

(3) open trench with vented encasement between ultimate ditch lines or toes of slopes, but only if prior to roadway construction; or

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

(c) Gas Transmission, Distribution and Service. Gas pipelines within rights-of-way shall be constructed, maintained, and operated in a City approved manner and in conformance with the

Federal Code of the Office of Pipeline Safety Operations, Department of Transportation, Part 192 – Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards (49 CFR 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.”

(f) Ground Mounted Appurtenances. Ground mounted appurtenances to overhead or underground facilities, when permitted within a right-of-way, shall be provided with a vegetation-free area extending one foot (305 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 Public Works Director. With the approval of the Public Works Director, shrubbery surrounding the appurtenance may be used in place of vegetation free area. The housing for ground-mounted appurtenances shall be painted black or neutral color as approved by the Public Works Director to blend with the surroundings, per City rules and regulations.

C. Materials.

(a) General Standards. The materials used in constructing facilities within rights-of-way shall be those meeting the City of Decatur Construction Standards, accepted standards of the

appropriate industry, the applicable portions of IDOT's "Standards Specifications for Road and Bridge Construction," the requirements of the Illinois Commerce Commission, or the standards established by other official regulatory agencies for the appropriate industry.

(b) Material Storage on Right-of-Way. All pipe, conduit, wire, poles, cross arms, or other materials shall be distributed along the right-of-way prior to and during installation in a manner to minimize hazards to the public or an obstacle to right-of-way maintenance or damage to the right-of-way and other property. If material is to be stored on right-of-way, prior approval must be obtained from the City.

(c) Hazardous Materials. The plans submitted by the utility to the City shall identify any hazardous materials that may be involved in the construction of the new facilities or removal of any existing facilities.

D. Operational Restrictions. (AMENDED, Ordinance No. 2009-39, May 18, 2009)

(a) Construction operations on rights-of-way may, at the discretion of the City, be required to be discontinued when such operations would create hazards to traffic or the public health, safety, and welfare. Such operations may also be required to be discontinued or restricted when conditions are such that construction would result in extensive damage to the right-of-way or other property.

(b) These restrictions may be waived by the Public Works Director when emergency work is required to restore vital utility services.

(c) Unless otherwise permitted by the City, the hours of construction are those set forth in Chapter 48, Section 11 of the City Code of Decatur.

E. Location of Existing Facilities. Any utility proposing to construct facilities in the City shall contact J.U.L.I.E. and ascertain the presence and location of existing aboveground and

underground facilities within the rights-of-way to be occupied by its proposed facilities. The City will make its permit records available to a utility for the purpose of identifying possible facilities. When notified of an excavation or when requested by the City or by J.U.L.I.E., a utility shall locate and physically mark its underground facilities within 48 hours, excluding weekends and holidays, in accordance with the Illinois Underground Facilities Damage Prevention Act (220 ILCS 50/1 et seq.).

17. VEG E T A T I O N C O N T R O L . A. Tree Trimming Permit Required. Tree trimming shall not be considered a normal maintenance operation, but shall require the application for, and the issuance of, a permit, in addition to any other permit required under this Chapter.

(a) Application for Tree Trimming Permit. Applications for tree trimming permits shall include assurance that the work will be accomplished by competent workers with supervision who are experienced in accepted tree pruning practices. Tree trimming permits shall designate an expiration date in the interest of assuring that the work will be expeditiously accomplished.

(b) Damage to Trees. Poor pruning practices resulting in damaged or misshapen trees will not be tolerated and shall be grounds for cancellation of the tree trimming permit and for assessment of damages. The City will require compensation for trees extensively damaged and for trees removed without authorization. The formula developed by the International Society of Arboriculture will be used as a basis for determining the compensation for damaged trees or unauthorized removal of trees. The City may require the removal and replacement of trees if trimming or radical pruning would leave them in an unacceptable condition.

B. Specimen Trees or Trees of Special Significance. The City may require that special measures be taken to preserve specimen trees or trees of special significance. The required measures may consist of higher poles, side arm extensions, covered wire or other means.

C. Chemical Use. Spraying of any type of brush-killing chemicals will not be permitted on rights-of-way unless the utility demonstrates to the satisfaction of the Public Works Director that such spraying is the only practicable method of vegetation control.

(Amended, Ordinance No. 2009-39, May 18, 2009)

18. REMOVAL, RELOCATION, OR MODIFICATIONS OF UTILITY FACILITIES. A. Notice. Within ninety (90) days following written notice from the City, a utility shall, at its own expense, temporarily or permanently 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 City improvement in or upon, or the operations of the City in or upon, the rights-of-way.

B. Removal of Unauthorized Facilities. Within thirty (30) days following written notice from the City, any utility that owns, controls, or maintains any unauthorized facility or related appurtenances within the public rights-of-way shall, at its own expense, remove all or any part of such facilities or appurtenances from the public rights-of-way. A facility is unauthorized and subject to removal in the following circumstances:

(a) Upon expiration or termination of the permittee's license or franchise, unless otherwise permitted by applicable law;

(b) If the facility was constructed or installed without the prior grant of a license or franchise, if required;

(c) If the facility was constructed or installed without prior issuance of a required permit in violation of this Chapter; or

(d) If the facility was constructed or installed at a location not permitted by the permittee's license or franchise.

C. Emergency Removal or Relocation of Facilities. The City retains the right and privilege to cut or move any facilities located within the rights-of-way of the City, as the City may determine to be necessary, appropriate or useful in response to any public health or safety emergency. If circumstances permit, the City shall attempt to notify the utility, if known, prior to cutting or removing a facility and shall notify the utility, if known, after cutting or removing a facility. The cost to restore the facilities shall be borne totally by the utility.

D. Abandonment of Facilities. Upon abandonment of a facility within the public rights-of-way of the City, the utility shall notify the City within ninety (90) days. Following receipt of such notice the City may direct the utility to remove all or any portion of the facility if the Public Works Director determines that such removal will be in the best interest of the public health, safety and welfare. In the event that the City does not direct the utility that abandoned the facility to remove it, by giving notice of abandonment to the City, the abandoning utility shall be deemed to consent to the alteration or removal of all or any portion of the facility by another utility or person. (Amended, Ordinance No. 2009-39, May 18, 2009)

19. CLEANUP AND RESTORATION. Upon completion of all construction or maintenance of facilities, the utility shall remove all excess material and restore all turf and terrain in a timely manner and to the satisfaction of the City. This includes restoration of entrances and side roads. Restoration of roadway surfaces shall be made using materials and methods approved by the Public Works Director. Such cleanup and repair may be required to consist of backfilling, re-grading, reseeded, re-sodding, or any other requirement to restore the

right-of-way to a condition substantially equivalent to that which existed prior to the commencement of the project. (Amended, Ordinance No. 2009-39, May 18, 2009)

20. MAINTENANCE AND EMERGENCY MAINTENANCE. A. General. Facilities on, over, above, along, upon, under, across, or within rights-of-way are to be maintained by or for the utility in a manner satisfactory to the City and at the utility's expense.

B. Emergency Maintenance Procedures. Emergencies may justify non-compliance with normal procedures for securing a permit: (Amended, Ordinance No. 2009-39, May 18, 2009)

(a) If an emergency creates a hazard on the traveled portion of the right-of-way, the utility shall take immediate steps to provide all necessary protection for traffic on the highway or the public on the right-of-way including the use of signs, lights, barricades or flaggers. 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.

(b) In an emergency, the utility shall, as soon as possible, notify the Public Works Director or his or her duly authorized agent of the emergency, informing him or her as to what steps have been taken for protection of the traveling public and what will be required to make the necessary repairs. If the nature of the emergency is such as to interfere with the free movement of traffic, the City police shall be notified immediately.

(c) 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 City of a description of the repairs undertaken in the right-of-way within 48 hours after an emergency repair.

21. 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 Public Works Director as a part of the permit application. The request shall identify each provision of this Chapter from which a variance is requested and the reasons why a variance should be granted.

(Amended, Ordinance No. 2010-03, February 1, 2010)

B. Authority to Grant Variances. The Public Works Director shall decide whether a variance is authorized for each provision of this Chapter identified in the variance request on an individual basis. (Amended, Ordinance No. 2009-39, May 18, 2009)

C. Conditions for Granting of Variance. The Public Works Director may authorize a variance only if the utility requesting the variance has demonstrated that:

(Amended, Ordinance No. 2009-39, May 18, 2009)

(a) One or more conditions not under the control of the utility (such as terrain features or an irregular right-of-way line) create a special hardship that would make enforcement of the provision unreasonable, given the public purposes to be achieved by the provision; and

(b) All other designs, methods, materials, locations or facilities that would conform with the provision from which a variance is requested are impracticable in relation to the requested approach.

D. Additional Conditions for Granting of a Variance. As a condition for authorizing a variance, the Public Works Director 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 carries out the purposes of this Chapter.

(Amended, Ordinance No. 2009-39, May 18, 2009)

22. P E N A L T I E S. Any person who violates, disobeys, omits, neglects or refuses to comply with any of the provisions of this Chapter shall be subject to a fine of not less than One Hundred Fifty Dollars (\$150.00) nor more than Five Hundred Dollars (\$500.00). There may be times when the City will incur delay or other costs, including third party claims, because the utility will not or cannot perform its duties under its permit and this Chapter. Unless the utility shows that another allocation of the cost of undertaking the requested action is appropriate, the utility shall bear the City's costs of damages and its costs of installing, maintaining, modifying, relocating, or removing the facility that is the subject of the permit. No other administrative agency or commission may review or overrule a permit related cost apportionment of the City. Sanctions may be imposed upon a utility that does not pay the costs apportioned to it.

(Amended, Ordinance No. 2011-69, October 31, 2011)

23. E N F O R C E M E N T . Nothing in this Chapter shall be construed as limiting any additional or further remedies that the City may have for enforcement of this Chapter.

24. S E V E R A B I L I T Y . 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.

25. E F F E C T I V E D A T E . This Ordinance shall take effect ten (10) days after its passage, approval and publication in pamphlet form.