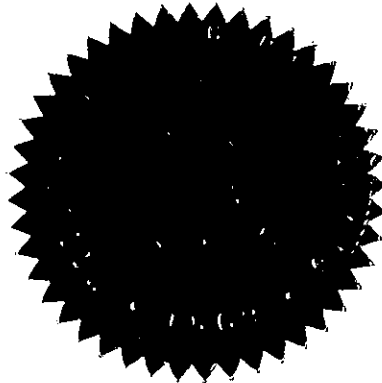


ORDINANCE 4428

PAMPHLET

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AMENDING TITLE 11, CHAPTER 126
OF THE LOMBARD VILLAGE CODE IN
REGARD TO TELECOMMUNICATIONS
INFRASTRUCTURE MAINTENANCE FEE



PUBLISHED IN PAMPHLET FORM THIS 24th DAY OF FEBRUARY, 1998.
BY ORDER OF THE CORPORATE AUTHORITIES OF THE VILLAGE OF LOMBARD,
DUPAGE COUNTY, ILLINOIS.


Lorraine G. Gerhardt
Village Clerk

**AN ORDINANCE AMENDING TITLE 11,
CHAPTER 126, SECTIONS 126.01 THROUGH
126.08 AND DELETING SECTION 126.09 OF THE LOMBARD
VILLAGE CODE IN REGARD TO TELECOMMUNICATIONS**

BE IT ORDAINED by the President and Board of Trustees of the Village of Lombard, DuPage County, Illinois, as follows:

Section 1: That Title 11, Chapter 126, Sections 126.01 through 126.08 of the Lombard Village Code be amended to read in their entirety as follows:

"126.01 Telecommunications Infrastructure Maintenance Fee

(A) Definitions.

As used in this Chapter, the following terms shall have the following meanings:

(1) "Gross Charges" means the amount paid to a telecommunications retailer for the act or privilege of originating or receiving telecommunications within the Village, and for all services rendered in connection therewith, valued in money whether paid in money or otherwise, including cash, credits, services, and property of every kind or nature, and shall be determined without any deduction on account of the cost of such telecommunications, the cost of the materials used, labor or service costs, or any other expense whatsoever. In case credit is extended, the amount thereof shall be included only as and when paid. "Gross charges" for private line service shall include charges imposed at each channel point within the Village, charges for the channel mileage between each channel point within the Village, and charges for that portion of the interstate inter-office channel provided within the Village. However, "gross charges" shall not include:

(a) any amounts added to a purchaser's bill because of a charge made under: (i) the fee imposed by this Section, (ii) additional charges added to a purchaser's bill under Section 9-221 or 9-222 of the Public Utilities Act, (iii) amounts collected under Section 8-11-17 of the Illinois Municipal Code, (iv) the tax imposed by the Telecommunications Excise Tax Act, (v) 911 surcharges, or (vi) the tax imposed by Section 4251 of the Internal Revenue Code;

(b) charges for a sent collect telecommunication received outside the Village;

(c) charges for leased time on equipment or charges for the storage of data or information or subsequent retrieval or the processing of data or information intended to change its form or content. Such

equipment includes, but is not limited to, the use of calculators, computers, data processing equipment, tabulating equipment, or accounting equipment and also includes the usage of computers under a time-sharing agreement;

(d) charges for customer equipment, including such equipment that is leased or rented by the customer from any source, wherein such charges are disaggregated and separately identified from other charges;

(e) charges to business enterprises certified under Section 9-222.1 of the Public Utilities Act to the extent of such exemption and during the period of time specified by the Village;

(f) charges for telecommunications and all services and equipment provided in connection therewith between a parent corporation and its wholly owned subsidiaries or between wholly owned subsidiaries, and only to the extent that the charges between the parent corporation and wholly owned subsidiaries or between wholly owned subsidiaries represent expense allocation between the corporations and not the generation of profit other than a regulatory required profit for the corporation rendering such services;

(g) bad debts ("bad debt" means any portion of a debt that is related to a sale at retail for which gross charges are not otherwise deductible or excludable that has become worthless or uncollectible, as determined under applicable federal income tax standards; if the portion of the debt deemed to be bad is subsequently paid, the retailer shall report and pay the tax on that portion during the reporting period in which the payment is made);

(h) charges paid by inserting coins in coin-operated telecommunications devices; or

(i) charges for telecommunications and all services and equipment provided to the Village.

(2) "Public Right-of-Way" means any municipal street, alley, water or public right-of-way dedicated or commonly used for utility purposes, including utility easements wherein the Village has acquired the right and authority to locate or permit the location of utilities consistent with telecommunications facilities (also sometimes referred to herein as "public ways"). "Public Right-of-Way" shall not include any real or personal Village property that is not specifically described in the previous sentence and shall not include Village buildings and other structures or improvements, regardless of whether they are situated in the public right-of-way.

(3) "Retailer maintaining a place of business in this State", or any like term, means and includes any retailer having or maintaining within the State of Illinois, directly or by a subsidiary, an office, distribution facilities, transmission facilities, sales office, warehouse, or other place of business, or any agent or other representative operating

within this State under the authority of the retailer or its subsidiary, irrespective of whether such place of business or agent or other representative is located here permanently or temporarily, or whether such retailer or subsidiary is licensed to do business in this State.

(4) "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.

(5) "Service address" means the location of telecommunications equipment from which telecommunications services are originated or at which telecommunications services are received. If this is not a defined location, as in the case of wireless telecommunications, paging systems, maritime systems, air-to-ground systems, and the like, "service address" shall mean the location of the customer's primary use of the telecommunications equipment as defined by the location in Illinois where bills are sent.

(6) "Telecommunications" 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 services, 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 hereinafter defined. "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 intercompany 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 Village 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.

(7) "Telecommunications provider" means (1) any telecommunications retailer; and (2) any person that is not a telecommunications retailer that installs, owns, operates or controls equipment in the public right-of-way that is used or designed to be used to transmit telecommunications in any form.

(8) "Telecommunications retailer" or "retailer" or "carrier" means and includes every person engaged in the business of making sales of telecommunications at retail as defined in this Section. The Village may, in its discretion, upon application, authorize the collection of the fee hereby imposed by any retailer not maintaining a place of business within this State, who, to the satisfaction of the Village, furnishes adequate security to ensure collection and payment of the fee. When so authorized, it shall be the duty of such retailer to pay the fee upon all of the gross charges for telecommunications in the same manner and subject to the same requirements as a retailer maintaining a place of business within the Village.

(9) "Wireless telecommunications" includes cellular mobile telephone services, personal wireless services as defined in Section 704(C) of the Telecommunications Act of 1996 (Public Law No. 104-104), 42 U.S.C. §332(c)(7), as now or hereafter amended, including all commercial mobile radio services, and paging services.

(B) Registration of telecommunications providers

(1) Every telecommunications provider as defined by this Chapter shall register with the Village within 30 days after the effective date of this Chapter or becoming a telecommunications provider, whichever is later, on a form to be provided by the Village, provided, however, that any telecommunications retailer that has filed a return pursuant to 126.01(D)(5) of this Chapter shall be deemed to have registered in accordance with this Section.

(2) Every telecommunications provider who has registered with the Village pursuant to 126.01(B)(1) has an affirmative duty to submit an amended registration form or current return as required by 126.01(D)(5), as the case may be, to the Village within 30 days from the date of the occurrence of any changes in the information provided by the telecommunications provider in the registration form or most recent return on file with the Village.

(C) Municipal telecommunications infrastructure maintenance fee

(1) A Village telecommunications infrastructure maintenance fee is hereby imposed upon all telecommunications retailers in the amount of 1.0% of all gross charges charged by the telecommunications retailer to service addresses within the Village for telecommunications originating or received in the Village.

(2) Upon the effective date of the infrastructure maintenance fee authorized in this Chapter, the Village infrastructure maintenance fee authorized hereunder shall be the only fee or compensation for the use of all public rights-of-way within the Village by telecommunications retailers. Imposition of the infrastructure maintenance fee provided under this Chapter does not, however, serve as a limitation on the levying of any taxes or imposition of any fees otherwise authorized by law.

(3) The Village telecommunications infrastructure maintenance fee authorized by this Section shall be collected, enforced, and administered as set forth in Section 126.01(D) of this Chapter.

(D) Collection, enforcement, and administration of telecommunications infrastructure maintenance fees

(1) A telecommunications retailer shall charge to and collect from each customer an additional charge in an amount equal to the Village infrastructure maintenance fee attributable to that customer's service address.

(2) Unless otherwise approved by the Village Manager the infrastructure maintenance fee shall be remitted by the telecommunications retailer to the Village not later than the last day of the month subsequent to the month in which a bill is issued to the customer; provided, however, that the telecommunications retailer may retain an amount not to exceed 2% of the Village infrastructure maintenance fee collected by it to reimburse itself for expenses incurred in accounting for and remitting the fee.

(3) Notwithstanding the monthly return requirement of subsection (2) above, in the event that a telecommunications retailer would remit between fifty and no/100 dollars (\$50.00) and one hundred and no/100 dollars (\$100.00) in infrastructure maintenance fee revenue to the Village per month, said telecommunications retailer shall make an infrastructure maintenance fee return as required on a semi-annual, rather than monthly, basis. Said returns shall be in compliance with subsection (5) below, except that they shall cover gross receipts during the prior semi-annual (six month) period, and shall be filed on or before the last day of December and June.

(4) Notwithstanding the monthly return requirement of subsection (2) above, in the event that a telecommunications retailer would remit less than fifty and no/100 dollars (\$50.00) in infrastructure maintenance fee revenue to the Village per month, said telecommunications retailer shall make an infrastructure maintenance fee return as required on an annual, rather than a monthly, basis. Said returns shall be in compliance with subsection (5) below, except that they shall cover gross receipts during the prior one year (twelve month) period, and shall be filed on or before the last day of June.

(5) Remittance of the municipal infrastructure fee to the Village shall be accompanied by a return, in a form to be prescribed by the Village Manager, which shall contain such information as the Village Manager may reasonably require.

(6) Any infrastructure maintenance fee required to be collected pursuant to this Chapter and any such infrastructure maintenance fee collected by such telecommunications retailer shall constitute a debt owed by the telecommunications retailer to the Village. The charge imposed under 126.01(D)(1) by the telecommunications retailer pursuant to this Chapter shall constitute a debt of the purchaser to the telecommunications retailer who provides such services until paid and, if unpaid, is recoverable at law in the same manner as the original charge for such services.

(7) If it shall appear that an amount of infrastructure maintenance fee has been paid that was not due under the provisions of this Chapter, whether as a result of a mistake of fact or an error of law, then such amount shall be credited against any infrastructure maintenance fee due, or to become due, under this Chapter, from the telecommunications retailer who made the erroneous payment; provided, however, the Village Manager may request, and telecommunications retailer shall provide, written

substantiation for such credit. However, no claim for such credit may be made more than three years after the date of the erroneous payment unless, (a) the credit is used only to offset a claim of underpayment made by the Village within the applicable statutory period of limitations, and (b) the credit derives from an overpayment made by the same telecommunications retailer during the applicable statutory period of limitations.

(8) Amounts paid under this Chapter by telecommunications retailers shall not be included in the tax base under any of the following acts as described immediately below:

(a) "gross charges" for purposes of the Telecommunications Excise Tax Act;

(b) "gross receipts" for purposes of the municipal utility tax as prescribed in Section 8-11-2 of the Illinois Municipal Code;

(c) "gross charges" for purposes of the municipal telecommunications tax as prescribed in Section 8-11-17 of the Illinois Municipal Code;

(d) "gross revenue" for purposes of the tax on annual gross revenue of public utilities prescribed in Section 2-202 of the Public Utilities Act.

(9) The Village shall have the right, in its discretion, to audit the books and records of all telecommunications retailers subject to this Chapter to determine whether the telecommunications retailer has properly accounted to the Village for the Village infrastructure maintenance fee. Any underpayment of the amount of the Village infrastructure maintenance fee due to the Village by the telecommunications retailer shall be paid to the Village plus five (5%) percent of the total amount of the underpayment determined in an audit, plus any costs incurred by the Village in conducting the audit, in an amount not to exceed five (5%) percent of the total amount of the underpayment determined in an audit. Said sum shall be paid to the Village within twenty-one (21) days after the date of issuance of an invoice for same.

(10) The Village Manager, or his or her designee, may promulgate such further or additional regulations concerning the administration and enforcement of this Chapter, consistent with its provisions, as may be required from time to time and shall notify all telecommunications retailers that are registered pursuant to 126.01(B) of this Chapter of such regulations.

126.02 Compliance With Other Laws

Nothing in this Chapter shall excuse any person or entity from obligations imposed under any law, including but not limited to:

(a) generally applicable taxes; and

(b) standards for construction on, over, under, or within, use of or repair of the public rights-of-way; including standards relating to free standing towers and other structures upon the public rights-of-way, as provided; and

(c) any liability imposed for the failure to comply with such generally applicable taxes or standards governing construction on, over, under, or within, use of or repair of the public rights-of-way; and

(d) compliance with any ordinance or provision of this Code concerning uses or structures not located on, over, or within the right-of-way.

126.03 Existing Franchises and Licenses

A. Any franchise, license, or similar agreements between telecommunications retailers and the Village entered into before the effective date of this amended Chapter regarding the use of Public Rights-of-Way shall remain valid according to and for their stated terms except for any fees, charges or other compensation to the extent waived.

B. The Village hereby waives all fees, charges, and other compensation that may accrue, after the effective date of the waiver, to the Village by a telecommunications retailer pursuant to any existing Village franchise, license, or similar agreement with a telecommunications retailer during the time the Village imposes the Telecommunications Infrastructure Maintenance Fee. This waiver shall only be effective during the time the Infrastructure Maintenance Fee provided for in Section 126.01 is subject to being lawfully imposed on the telecommunications retailer and collected by the telecommunications retailer from the customer.

C. The Village Clerk shall send a notice of the waiver by certified mail/return receipt requested to each telecommunications retailer with whom the Village has a franchise.

D. The Village infrastructure maintenance fee provided for in this Chapter shall become effective and imposed on the first day of the month not less than ninety (90) days after the Village provides written notice by certified mail to each telecommunications retailer with whom the Village has an existing franchise, license, or similar agreement that the Village waives all compensation under such existing franchise, license, or similar agreement during such time as the fee is subject to being lawfully imposed and collected by the retailer and remitted to the Village. The infrastructure maintenance fee shall apply to gross charges billed on or after the effective date as established in the preceding sentence.

126.04 Construction Standards

A. Location of Facilities. All telecommunications facilities constructed in Public Rights-of-Way by telecommunications providers as defined under this Chapter shall be constructed, installed and located in accordance with the following terms and conditions, unless otherwise specified in an existing franchise agreement:

(1) Telecommunications facilities shall be installed within an

existing underground duct or conduit whenever excess capacity exists within such utility facility.

(2) Telecommunications facilities to be installed overhead shall be installed on pole attachments to existing utility poles only, and then only if surplus space is available.

(3) Whenever any existing electric utilities, cable facilities or telecommunications facilities are located underground within a public right-of-way other telecommunications facilities in the same area which do not require overhead facilities must be constructed underground.

(4) Whenever any new or existing electric utilities, cable facilities or telecommunications facilities are located or relocated underground within a Public Right-of-Way, telecommunications facilities which do not require overhead facilities that currently occupy the same Public Right-of-Way shall relocate underground within a reasonable period of time. Absent extraordinary circumstances or undue hardship as determined by the Village Engineer, such relocation shall be made concurrently to minimize the disruption of the Public Rights-of-Way.

(5) Whenever new telecommunications facilities will exhaust the capacity of a public street or utility easement to reasonably accommodate future telecommunications carriers or facilities, an existing user shall provide additional ducts, conduits, manholes, and other facilities for nondiscriminatory access to future carriers.

B. Membership in J.U.L.I.E.: All telecommunications providers, shall, before commencing any construction in the Public Right-of-Way, comply with all regulations of J.U.L.I.E., and in addition, shall join and maintain an annual membership.

C. Interference with the Public Ways: No telecommunications provider may locate or maintain its telecommunications facilities so as to unreasonably interfere with the use of the Public Rights-of-Way, by the Village, the general public or other persons authorized to use or be present in or upon the public ways. All such facilities shall be moved by the telecommunications provider, temporarily or permanently, as determined by the Village Engineer.

D. Damage to Property: No telecommunications provider nor any person acting on its behalf shall take any action to be done which may impair or damage any Village-owned property, Public Rights-of-Way or other public or private property located in, on or adjacent thereto.

E. Notice of Work: No telecommunications provider, nor any person acting on its behalf, shall commence any non-emergency work in or about the Public Rights-of-Way, Village or other publicly-owned or private property without ten (10) working days advance notice to the Village or the property owner.

F. Repair and Emergency Work: In the event of an unexpected repair or

emergency, such repair and emergency response work as required under the circumstances, may commence provided the Village, or the other public or private property owner shall be notified as promptly as possible, before such repair or emergency work or as soon thereafter as possible if advance notice is not practicable.

G. Maintenance of Facilities: Each telecommunications provider shall maintain its facilities in good and safe condition and in a manner that complies with all applicable federal, state and local requirements.

H. Relocation or Removal of Facilities: Within thirty (30) days following written notice from the Village, a telecommunications provider shall, at its own expense, temporarily or permanently remove, relocate, change or alter the position of any telecommunications facilities within the Public Right-of-Way whenever the Village shall have determined that such removal, relocation, change or alteration is reasonably necessary for:

- (1) The construction, repair, maintenance or installation of any Village or other public improvement in or upon the Public Right-of-Way.
- (2) The operations of the Village or other governmental entity in or upon the public ways.

The Village reserves the right to place Village owned utilities in priority over any telecommunications provider in regard to the location (vertical or horizontal) of present or future utilities.

I. Removal of Unauthorized Facilities: Within thirty (30) days following written notice from the Village, any telecommunications provider or other person that owns, controls or maintains any unauthorized telecommunications system, facility or related appurtenances within the Public Rights-of-Way shall, at its own expense, remove such facilities or appurtenances. A telecommunications system or facility is unauthorized and subject to removal in the following circumstances:

- (1) Upon abandonment of a facility within the Public Rights-of-Way of the Village.
- (2) If the system or facility was constructed or installed without the prior issuance of a required construction permit.

J. Emergency Removal or Relocation of Facilities: The Village retains the right and privilege to cut or move any telecommunications facilities located within the Public Rights-of-Way, as the Village may determine to be necessary, appropriate or useful in response to any public health or safety measure.

K. Damage to Facilities: Unless directly caused by the willful, intentional or malicious acts by the Village, the Village shall not be liable for any damage to or loss of any telecommunications facility within the Public Rights-of-Way as a result of or in connection with any public works, public improvements, construction, excavation,

grading, filling, or work of any kind in the public ways by or on behalf of the Village.

L. Restoration:

(1) When a telecommunications provider or any person acting on its behalf does any work in or affecting any Public Rights-of-Way, Village property or other public or private property, it shall, at its own expense, promptly remove any obstructions therefrom and restore such ways or property to as good a condition as existed before the work was undertaken, unless otherwise directed by the Village, or the property owner. Complete restoration shall be completed within one hundred and twenty (120) days.

(2) If weather or other conditions do not permit the complete restoration required by this Section, the telecommunications provider shall temporarily restore the affected ways or property. Such temporary restoration shall be at its sole expense and it shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration.

(3) A telecommunications provider or other person acting in its behalf shall use suitable barricades, flags, flagmen, lights, flares and other measures as required for the safety of all members of the general public and to prevent injury or damage to any person, vehicle or property by reason of such work in or affecting such ways or property.

M. Facilities Maps: Each telecommunications provider shall provide the Village with an accurate map or maps certifying the location of all telecommunications facilities within the Public Rights-of-Way. Maps shall be updated annually.

N. Insurance: Each telecommunications provider shall secure and maintain the following liability insurance policies insuring both itself and the Village, its elected and appointed officers, officials, agents and employees as co-insureds.

(1) Comprehensive general liability insurance 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 limit of Three Million Dollars (\$3,000,000) for each person and Three Million Dollars (\$3,000,000) for each accident.

(3) Worker's compensation within statutory limits and employer's liability insurance with limits of not less than One Million Dollars (\$1,000,000).

(4) Comprehensive form premises-operations, explosions and collapse hazard, underground hazard, and products completed hazard with limits of not less than Three Million Dollars (\$3,000,000).

(5) The liability insurance policies required by this Subsection shall be maintained by the telecommunications provider while installing, using or removing telecommunications facilities. Each such insurance policy 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 ninety (90) days after receipt by the Village, by registered mail, of a written notice addressed to the Village Manager of such intent to cancel or not to renew. This insurance is primary to any insurance now or hereafter carried by the Village of Lombard, and not contributory."

(6) Within sixty (60) days after receipt by the Village of said notice, and in no event later than thirty (30) days prior to said cancellation, the grantee shall obtain and furnish to the Village replacement insurance policies meeting the requirements of this Subsection.

O. General Indemnification. Each telecommunications provider shall, to the extent permitted by law, undertake to defend, indemnify and hold the Village and its officers, employees, agents and representatives harmless from and against any and all 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 telecommunications provider or its affiliates, officers, employees, agents, contractors or subcontractors in the construction, operation, maintenance, repair or removal of its telecommunications facilities, and in providing or offering telecommunications services over the facilities or network, whether such acts or omissions are authorized, allowed or prohibited by this Chapter or by an existing franchise agreement.

P. Construction and Completion Bond: Unless otherwise provided in an existing franchise agreement, a performance bond written by a corporate surety acceptable to the Village equal to at least 100% of the estimated cost of constructing telecommunications facilities within the Public Rights-of-Way shall be deposited before construction is commenced.

(1) The construction bond shall remain in force until sixty (60) days after substantial completion of the work, as determined by the Village Engineer, including restoration of public ways and other property affected by the construction.

(2) The construction bond shall guarantee, to the satisfaction of the Village:

- (a) Timely completion of construction;
- (b) Construction in compliance with applicable plans, permits, technical codes and standards;
- (c) Proper location of the facilities as specified by the Village;
- (d) Restoration of the public ways and other property affected by the construction;
- (e) The submission of "as-built" drawings after completion of the work as required by this Section;
- (f) Timely payment and satisfaction of all claims, demands or liens for labor, material or services provided in connection with the work.

Q. Coordination of Construction Activities: All telecommunications providers are required to cooperate with the Village and with each other.

(1) By February 1 of each year, all telecommunications providers shall provide the Village with a schedule of their proposed construction activities in, around or that may affect the Public Right-of-Ways.

(2) Each telecommunications provider shall meet with the Village and other users of the public ways annually or as determined by the Village to schedule and coordinate construction in the public ways.

(3) All construction locations, activities, and schedules shall be coordinated, as ordered by the Village Engineer, to minimize public inconvenience, disruption, or damages.

R. Construction Permits. No telecommunications provider shall construct or install any telecommunications facilities within the Village without first obtaining a construction permit therefore, provided; however, no permit shall be issued for construction or installation of telecommunications facilities within the Village unless the telecommunications provider has filed a registration statement with the Village pursuant to Section 126.01(B). Construction permits shall be issued upon payment of the specified fee and compliance with the requirements of this Section.

(1) Applications. Applications for permits to construct telecommunications facilities shall be submitted upon forms to be provided by the Village and shall be accompanied by drawings, plans, and

specifications in sufficient detail to demonstrate:

(a) That the facilities will be constructed in accordance with all applicable codes, rules, and regulations.

(b) The location and route of all facilities to be installed on existing utility poles.

(c) The location and route of all facilities to be located under the surface of the ground, including the line and grade proposed for the burial at all points along the route which are within the public ways.

(d) The location of all existing underground utilities, conduits, ducts, pipes, mains and installations which are within the public ways along the underground route proposed by the public ways.

(e) The location of all other facilities to be constructed within the Village, but not within the public ways.

(f) The construction methods to be employed for protection of existing structures, fixtures, and facilities within or adjacent to the public ways.

(g) The location, dimension and types of all trees within or adjacent to the public ways along the route proposed by the applicant, together with a landscape plan for protecting, trimming, removing, replacing and restoring any trees or areas to be disturbed during construction.

(2) Engineer's Certification. All permit applications shall be accompanied by the certification of a registered professional engineer that the drawings, plans, and specifications submitted with the application comply with applicable technical codes, rules, and regulations.

(3) Traffic Control Plan: All permit applications which involve work on, in, under, across or along any Public Right-of-Way shall be accompanied by a traffic control plan demonstrating the protective measures and devices that will be employed, consistent with Uniform Manual or Traffic Control Devices, to prevent injury or damage to persons or property and to minimize disruptions to efficient pedestrian and vehicular traffic.

(4) Issuance of Permit: If practicable, within forty-five (45) days after submission of all plans and documents required of the applicant and payment of the permit fees required by this Section, the Village Engineer, if satisfied that the applications, plans and document comply

with all requirements of this Section, shall issue a permit authorizing construction of the facilities, subject to such further conditions, restrictions or regulations affecting the time, place and manner of performing the work as he/she may deem necessary or appropriate.

(5) Construction of Schedule: The permittee shall submit a written construction schedule to the Village Engineer ten (10) working days before commencing any work in or about the Public Rights-of-Way. The permittee shall further notify the Village Engineer not less than two (2) working days in advance of any excavation of work in the Public Rights-of-Way.

(6) Compliance with Permit: Any construction practices and activities shall be in accordance with the permit and approved final plans and specifications for the telecommunications facilities. The Village Engineer and his or her representatives shall be provided access to the work and such further information as he or she may require to ensure compliance with such requirements.

(7) Display of Permit: The permittee shall maintain a copy of the construction permit and approved plans at the construction site, which shall be displayed and made available for inspection by the Village Engineer or his/her representatives at all times when construction work is occurring.

(8) Survey of Underground Facilities: If the construction permit specifies the location of facilities by depth, line, grade, proximity to other facilities or other standard, the permittee shall cause the location of such facilities to be verified by a registered Illinois land surveyor. The permittee shall relocate any facilities which are not located in compliance with permit requirements.

(9) Non-Complying Work: Upon order of the Village Engineer, all work which does not comply with the permit, the approved plans and specifications for the work, or the requirements of this Section, shall be removed.

(10) Completion of Construction: The permittee shall promptly complete all construction activities so as to minimize disruption of the public ways and other public and private property. All construction work authorized by a permit within public ways, including restoration, must be completed within one hundred twenty (120) days of the date of issuance.

(11) As-Built Drawings: Within sixty (60) days after completion of construction, the permittee shall furnish the Village with two (2) complete sets of plans, drawn to scale and certified to the Village as accurately depicting the location of all telecommunications facilities constructed pursuant to the permit.

126.05 Penalties.

Any telecommunications provider who violates, disobeys, omits, neglects, or refuses to comply with any of the provisions of this Chapter shall be subject to fine in accordance with the general penalty provisions of the Village Code.

126.06 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.

126.07 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.

126.08 Conflict.

This Chapter supersedes all Chapters or parts of Chapters adopted prior hereto which are in conflict herewith, to the extent of such conflict.”

Section 2: That Title 11, Chapter 126, Section 126.09 of the Lombard Village Code be and hereby is deleted in its entirety.

Section 3: That this Ordinance shall be in full force and effect from and after its passage, approval and publication in pamphlet form as provided by law.

Passed on first reading this ____ day of _____, 1998.

First reading waived by action of the Board of Trustees this 19th day of February, 1998.


Passed on second reading this 19th day of February, 1998.

AYES: Trustees Borgatell, Tross, Schaffer, Jaugilas, Gatz and Kufrin

NAYS: None

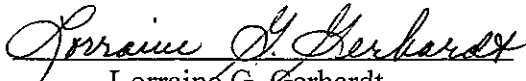
ABSENT: None

APPROVED this 19th day of February, 1998.



William J. Mueller
Village President

ATTEST:



Lorraine G. Gerhardt
Village Clerk

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