

VILLAGE OF LOMBARD
REQUEST FOR BOARD OF TRUSTEES ACTION
For Inclusion on Board Agenda

 X Resolution or Ordinance (Blue) _____ Waiver of First Requested

Recommendations of Boards, Commissions & Committees (Green)
Other Business (Pink)

TO: PRESIDENT AND BOARD OF TRUSTEES

FROM: William T. Lichter, Village Manager

DATE: May 25, 2005 (COW) (B of T) **Date:** 06/02/2005

TITLE: An Ordinance Amending Title 9, Chapter 97, Sections 97.055 Through 97.077 and Repealing Sections 97.080 Through 97.084 of the Lombard Village Code in Regard to Streets and Sidewalks to Establish Standards for Construction on Rights-of-Way and Openings and Excavations

SUBMITTED BY: David A. Dratnol, P.E., Village Engineer *DM*

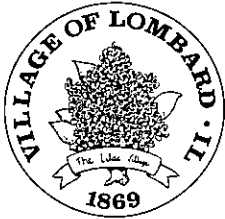
BACKGROUND/POLICY IMPLICATIONS:

See Attached Memo

FISCAL IMPACT/FUNDING SOURCE:

Review (as necessary):
Village Attorney X _____ Date _____
Finance Director X _____ Date _____
Village Manager X *W. Lichter* _____ Date *5/25/05*

NOTE: All materials must be submitted to and approved by the Village Manager's Office by 12:00 noon, Wednesday, prior to the Agenda Distribution.



InterOffice Memo

To: William T. Lichter, Village Manager *WTL*
Through: Wesley B. Anderson, Director of Public Works
From: David A. Dratnol, P.E., Village Engineer *DA*
Date: May 25, 2005
Subject: Ordinance Amending Title 9, Chapter 97,
Sections 97.055 Through 97.077

Attached please find "An Ordinance Amending Title 9, Chapter 97, Sections 97.055 Through 97.077 and Repealing Sections 97.080 Through 97.084 of the Lombard Village Code in Regard to Streets and Sidewalks to Establish Standards for Construction on Rights-of-Way and Openings and Excavations" and the Clerk's Certificate. This ordinance relates to general standards for construction on, over, above, along, upon, under, across or within the Village's rights-of-way.

The changes were prepared by Klein, Thorpe and Jenkins, Ltd. and reviewed by staff. The changes update the ordinance to include the provision of the Simplified Municipal Telecommunications Tax Act (35 ILCS 636/5-60) that Klein, Thorpe and Jenkins, Ltd believes maintains in effect Section 30 of the Telecommunications Municipal Infrastructure Maintenance Fee Act (35 ILCS 636/30). This allows municipalities to impose standards for construction involving rights-of-way to telecommunications' providers as long as those standards are generally applicable to all persons or entities seeking use of the municipality's right-of-way.

Please present this Ordinance to the Village Board for review and approval at their regularly scheduled meeting on June 2, 2005. Staff will be available to answer any questions that the Board may have.

STATE OF ILLINOIS)
)
COUNTY OF DUPAGE)

CLERK'S CERTIFICATE

I, **Brigitte O'Brien**, the duly qualified and acting Clerk of the Village of Lombard, DuPage County, Illinois, and the keeper of the records thereof, do hereby certify that attached hereto is a true and correct copy of Ordinance No. _____ being an Ordinance entitled:

**AN ORDINANCE AMENDING TITLE 9, CHAPTER 97,
SECTIONS 97.055 THROUGH 97.077 AND REPEALING
SECTIONS 97.080 THROUGH 97.084 OF THE LOMBARD VILLAGE
CODE IN REGARD TO STREETS AND SIDEWALKS TO ESTABLISH STANDARDS
FOR CONSTRUCTION ON RIGHTS-OF-WAY AND OPENINGS AND EXCAVATIONS**

which Ordinance was duly adopted at a regular meeting of said Village at which a quorum of the Board of Trustees was present and which was held in compliance with the Illinois Open Meetings Act on the _____ day of _____, 20____.

IN WITNESS WHEREOF, I have hereunto set my hand this ____ day of _____, 20____.

Brigitte O'Brien
Village Clerk

(SEAL)

ORDINANCE NO. _____

**AN ORDINANCE AMENDING TITLE 9, CHAPTER 97,
SECTIONS 97.055 THROUGH 97.077 AND REPEALING
SECTIONS 97.080 THROUGH 97.084 OF THE LOMBARD VILLAGE
CODE IN REGARD TO STREETS AND SIDEWALKS TO ESTABLISH STANDARDS
FOR CONSTRUCTION ON RIGHTS-OF-WAY AND OPENINGS AND EXCAVATIONS**

WHEREAS, the Village of Lombard (the "Village") is a municipal corporation and political subdivision of the State of Illinois; and

WHEREAS, as a municipal corporation and political subdivision, the Village has the authority under the Illinois Municipal Code (65 ILCS 5/1-1-1 *et seq.*) to adopt ordinances and to promulgate rules and regulations that govern the use of public rights-of-ways and that protect the public health, safety, and welfare of its citizens; and

WHEREAS, this Ordinance is adopted pursuant to the provisions of the Illinois Municipal Code, including, without limitation, Sections 11-20-5, 11-20-10, 11-80-1, 11-80-3, 11-80-6, 11-80-7, 11-80-8, 11-80-10, and 11-80-13, all of which are found in Chapter 65 of the Illinois Compiled Statutes; Section 30 of the Illinois Telecommunications Municipal Infrastructure Maintenance Fee Act, 35 ILCS 635/30; Section 5-60 of the Simplified Municipal Telecommunications Tax Act, 35 ILCS 636/5-60; Section 4 of the Telephone Company Act, 220 ILCS 65/4; and Articles 7 and 9 of the Illinois Highway Code, 605 ILCS 5/7-101 *et seq.*, and 605 ILCS 5/9-101, *et seq.*

WHEREAS, this Ordinance establishes generally applicable standards for construction on, over, above, along, upon, under, across, or within, use of and repair of, the public right-of-way; and

WHEREAS, in the enactment of this ordinance, the Village has considered a variety of standards for construction on, over, above, along, under, across, or within, use of and repair of the

public right-of-way, including, but not limited to, the standards relating to Accommodation of Utilities on Rights-of-Way of the Illinois State Highway System promulgated by the Illinois Department of Transportation and found at 92 Ill. Adm. Code § 530.10 *et seq.*; and

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

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

Section 1: The foregoing recitals are incorporated and made a part of this ordinance as if fully set forth herein.

Section 2: That Title 9, Chapter 97, Sections 97.055 through 97.077 be amended to read in their entirety as follows:

***"STANDARDS FOR CONSTRUCTION
ON RIGHTS OF WAY AND OPENINGS AND EXCAVATIONS***

§ 97.055 PURPOSE AND SCOPE

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

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

D) Franchises, licenses, or similar agreements shall be handled under this Chapter as follows.

(1) In the event that a utility other than a telecommunications provider has a franchise, license or similar agreement with the Village, such franchise, license or similar agreement shall govern and control during the term of such agreement and any lawful renewal or extension thereof.

(2) In the event of any conflict with, or inconsistency between, the provisions of this Chapter and the provisions of any franchise, license or similar agreement between the Village and any telecommunications provider, the provisions of such franchise, license or similar agreement shall govern and control during the term of such agreement and any lawful renewal or extension thereof.

(E) 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.

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

§ 99.056 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 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" - Village of Lombard Code.

"Conductor" - Wire or cable carrying electrical current or transmitting data or information.

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

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

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

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

"Director" - The Director of Public Works of the Village of Lombard, or his 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.

"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" - All structures, devices, objects, and materials (including track and rails, wires, ducts, fiber optic cable, communications and video cables and wires, poles, conduits, grates, covers, pipes, 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 Village.

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

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

"Hazardous Materials" - Any substance or material which, due to its quantity, form, concentration, location, or other characteristics, is determined by the 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" - Any type of right-of-way used for vehicular traffic including all streets within the boundaries of the Village. "Highway" includes all highway land and improvements, including roadways, ditches and embankments, bridges, drainage structures, signs, guardrails, protective structures and appurtenances necessary or convenient for vehicle traffic.

"Highway Code" - The Illinois Highway Code, 605 ILCS 5/1-101 *et seq.*, as amended from time to time.

"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.

"Ordinance(s)" - The Ordinance(s) of the Village of Lombard.

"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 97.058 and 97.059 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 Village. 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.

"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 Village has the right and authority to authorize, regulate or permit the location of facilities other than those of the Village.

"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, 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, shoulders, curb and gutter.

"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 Section 97.064.

"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.

"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 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.

"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.

"Village" - The Village of Lombard.

"Village Code" - The Code of the Village of Lombard.

"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.

§ 97.057 ANNUAL REGISTRATION REQUIRED

Every utility that occupies right-of-way within the Village shall register on January 1 of each year with the Director, providing the utility's name, address and regular business telephone and telecopy numbers, the name of one or more contact persons who can act on behalf of the utility in connection with emergencies involving the utility's facilities in the right-of-way and a 24-hour telephone number for each such person, and evidence of insurance as required in Section 97.062 of 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 any related registration requirement for telecommunications providers under the Village Code.

§ 97.058 PERMIT REQUIRED; APPLICATIONS AND FEES

(A) No person shall construct (as defined in this Chapter) any facility on, over, above, along, upon, under, across, or within any Village right-of-way which (1) adds a new facility, (2) changes the location of an existing facility, (3) disrupts the right-of-way (as defined in this Chapter), or (4) materially increases the amount of area or space occupied by an existing facility on, over, above, along, under across or within the right-of-way, or open or excavate any Village right-of-way, without first filing an application with the Director and obtaining a permit from the Village therefor, 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.

(B) All applications for permits pursuant to this Chapter shall be filed on a form provided by the Director and shall be filed in such number of duplicate copies as the Village 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) The application made by a utility or its duly authorized representative shall contain, at a minimum, the following:

- (1) The utility’s name and address and telephone and telecopy numbers;
- (2) The applicant’s name and address, if different than the utility, its telephone, telecopy numbers, e-mail address, and its interest in the work;
- (3) The names, addresses and telephone and telecopy numbers and e-mail addresses of all professional consultants, if any, advising the applicant with respect to the application and all contractors and subcontractors that will perform the work;
- (4) A general description of the proposed work and the purposes and intent of the facility and the uses to which the facility will be put. The scope and detail of such description shall be appropriate to the nature and character of the work to be performed, with special emphasis on those matters likely to be affected or impacted by the work proposed;
- (5) Evidence that the utility has placed on file with the Village:
 - (i) 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
 - (ii) 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 Village 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 Village finds that additional information or assurances are needed;
- (6) Drawings, plans and specifications showing the work proposed, including the certification of an engineer that such drawings, plans, and specifications comply with applicable codes, rules, and regulations;

- (7) Evidence of insurance as required in Section 97.062 of this Chapter;
- (8) Evidence of posting of the security fund as required in Section 97.064 of this Chapter;
- (9) Any request for a variance from one or more provisions of this Ordinance (See Section 97.075); and
- (10) J.U.L.I.E. identification number, where the utility is required to be a member and such additional information as may be reasonably required by the Village.

(D) 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:

- (1) 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;
- (2) In the case of natural gas systems, state the proposed pipe size, design, construction class, and operating pressures;
- (3) In the case of water lines, indicate that all requirements of the Illinois Environmental Protection Agency, Division of Public Water Supplies, have been satisfied;
- (4) 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, where applicable, the Glenbard Waste Water Authority or other local or state entities with jurisdiction, have been satisfied; or
- (5) In the case of petroleum products pipelines, state the type or types of petroleum products, pipe size, maximum working pressure, and the design standard to be followed.

(E) Throughout the entire permit application review period and the construction period authorized by the permit, any amendments to information contained in a permit application

shall be submitted by the utility in writing to the Village within thirty (30) days after the change necessitating the amendment.

(F) Unless otherwise provided by franchise, license, or similar agreement, all applications for permits pursuant to this Ordinance shall be accompanied by a fee in the amount of \$50.00 (fifty dollars). No application fee is required to be paid by any telecommunications retailer that is paying the municipal telecommunications tax or by any electricity utility that is paying the municipal electricity infrastructure maintenance fee pursuant to the Electricity Infrastructure Maintenance Fee Act.

§ 97.059 ACTION ON PERMIT APPLICATIONS

(A) Completed permit applications, containing all required documentation, shall be examined by the 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 Director shall reject such application in writing, stating the reasons therefor. If the Director is satisfied that the proposed work conforms to the requirements of this Chapter and all applicable ordinances, codes, laws, rules, and regulations, the Director shall issue a permit as soon as practicable.

(B) Telecommunications retailers applications require the following actions:

- (1) Pursuant to Section 4 of the Telephone Company Act, 220 ILCS 65/4, a telecommunications retailer shall notify the Village that it intends to commence work governed by this Chapter for facilities for the provision of telecommunications services. 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 Village not less than ten (10) days prior to the commencement of work requiring no excavation and not less than thirty (30) days prior to the commencement of work requiring excavation. The Director shall specify the portion of the right-of-way upon which the facility may be placed, used and constructed.
- (2) In the event that the Director fails to provide such specification of location to the telecommunications retailer within either (i) ten (10) days after service of notice to the Village by the telecommunications retailer in the case of work not involving excavation for new construction or (ii) twenty-five (25) days after service of notice by the telecommunications retailer in the case of work involving excavation for new construction, the telecommunications retailer may commence work without obtaining a permit under this Ordinance.

- (3) Upon the provision of such specification by the Village, where a permit is required for work pursuant to Section 97.058 of this Chapter the telecommunications retailer shall submit to the Village an application for a permit and any and all plans, specifications and documentation available regarding the facility to be constructed. Such application shall be subject to the requirements of Subsection (A) of this Section.

§ 97.060 REVISED PERMIT DRAWINGS

In the event that the 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 contact the Village to report such deviation before proceeding with the work and shall submit a revised set of drawings or plans to the Village. The revised drawings or plans shall specifically identify where the locations of the 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 Section 97.075 of this Chapter.

§ 97.061 EFFECT OF PERMIT

(A) A permit from the Village authorizes a permittee to undertake only certain activities in accordance with this Chapter on Village rights-of-way, and does not create a property right or grant authority to the permittee to impinge upon the rights of others who may have an interest in the public rights-of-way.

(B) The issuance of a permit by the Village does not excuse the permittee from complying with other requirements of the Village and all applicable statutes, laws, ordinances, rules, and regulations.

(C) Every permit shall expire at the time stated in the permit. If the permittee does not complete the work within that specified time, the permittee shall, prior to the expiration of the permit, present in writing to the Director a request for extension of time setting forth therein the reasons for the requested extension. If, in the opinion of the Director, such an extension is necessary and not contrary to the public interest, the permittee may be granted additional time for the completion of the work.

§ 97.062 INSURANCE

(A) Unless otherwise provided by franchise, license, or similar agreement, each utility occupying right-of-way or constructing any facility in the right-of-way and any contractor or

subcontractor performing the work shall secure and maintain the following liability insurance policies insuring the utility as named insured and naming the Village, and its elected and appointed officers, officials, agents, and employees as additional insureds on the policies listed in paragraphs 1 and 2 below and shall provide certificates of insurance evidencing such requirements:

- (1) Commercial general liability insurance, including premises-operations, explosion, collapse, and underground hazard (commonly referred to as “X,” “C,” and “U” coverages) and products-completed operations coverage with limits not less than:
 - (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;
- (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) Workers' compensation with statutory limits; and
- (4) Employer's liability insurance with limits of not less than one million dollars (\$1,000,000) per employee and per accident.

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

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

(D) The insurance policies required by this Section shall contain the following endorsement:

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

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

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

(F) The legal liability of the utility to the Village and any person for any of the matters that are the subject of the insurance policies or self-insurance required by this Section shall not be limited by such insurance policies or self-insurance or by the recovery of any amounts thereunder.

§ 97.063 INDEMNIFICATION

By occupying or constructing facilities in the right-of-way, a utility shall be deemed to agree to defend, indemnify and hold the Village and its elected and appointed officials and officers, employees, agents and representatives harmless from and against any and all injuries, claims, demands, judgments, damages, losses and expenses, including reasonable attorneys' 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 solely from the negligence, misconduct or breach of this Chapter by the Village, its officials, officers, employees, agents or representatives.

§ 97.064 SECURITY

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

- (1) The faithful performance by the permittee of all the requirements of this Chapter;
- (2) Any expenditure, damage, or loss incurred by the Village occasioned by the permittee's failure to comply with any codes, rules, regulations, orders, permits and other directives of the Village issued pursuant to this Chapter; and
- (3) The payment by permittee of all liens and all damages, claims, costs, or expenses that the Village may pay or incur by reason of any action or 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 Village must perform itself or have completed as a consequence solely of the permittee's failure to perform or complete, and all other payments due the Village from the permittee pursuant to this Chapter or any other applicable law.

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

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

(C) 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 Director, and may

also include reasonable, directly related costs that the Village 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 Village, with each phase consisting of construction of facilities in one location or a related group of locations, and where construction in another phase will not be undertaken prior to substantial completion of restoration in the previous phase or phases, the 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.

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

- (1) Fails to make any payment required to be made by the permittee hereunder;
- (2) Fails to pay any liens relating to the facilities that are due and unpaid;
- (3) Fails to reimburse the Village for any damages, claims, costs or expenses which the Village has been compelled to pay or incur by reason of any action or non-performance by the permittee; or
- (4) Fails to comply with any provision of this Chapter that the Village determines can be remedied by an expenditure of an amount in the Security Fund.

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

(F) The permittee may request that any and all interest accrued on the amount in the Security Fund be returned to the permittee by the Village, upon written request for said withdrawal to the Village, provided that any such withdrawal does not reduce the Security Fund below the minimum balance required in Subsection (C) of this Section.

(G) 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 Village 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 Village to the extent necessary to cover any reasonable costs, loss or damage incurred by the Village as a result of said revocation, provided that any amounts in excess of said costs, loss or damage shall be refunded to the permittee.

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

§ 97.065 PERMIT SUSPENSION AND REVOCATION

(A) The Village may revoke or suspend a permit issued pursuant to this Chapter for one or more of the following reasons:

- (1) Fraudulent, false, misrepresenting, or materially incomplete statements in the permit application;
- (2) Non-compliance with this Chapter, applicable ordinances, laws, regulations or provisions of the Village Code;
- (3) 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
- (4) Permittee's failure to construct the facilities substantially in accordance with the permit and approved plans.

(B) The Village shall send written notice of its intent to revoke or suspend a permit issued pursuant to this Chapter stating the reason or reasons for the revocation or suspension and the alternatives available to permittee under this Section 97.065.

(C) Upon receipt of a written notice of revocation or suspension from the Village, the permittee shall have the following options:

- (1) Immediately provide the Village with evidence that no cause exists for the revocation or suspension;

- (2) Immediately correct, to the satisfaction of the Village, the deficiencies stated in the written notice, providing written proof of such correction to the Village within five (5) working days after receipt of the written notice of revocation; or
- (3) Immediately remove the facilities located on, over, above, along, upon, under, across, or within the public rights-of-way and restore the rights-of-way to the satisfaction of the Village providing written proof of such removal to the Village within ten (10) days after receipt of the written notice of revocation.

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

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

(E) If the permittee fails to comply with the provisions of Subsection (C) of this Section, the Village or its designee may, at the option of the Village: (1) correct the deficiencies; (2) upon not less than twenty (20) days notice to the permittee, remove the subject facilities or equipment; or (3) 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 Village. The permittee shall be liable in all events to the Village for all costs of removal.

§ 97.066 CHANGE OF OWNERSHIP OR OWNER'S IDENTITY OR LEGAL STATUS

(A) A utility shall notify the Village 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) A new owner shall request that any current permit be amended to 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 Village's right-of-way.

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

§ 97.067 GENERAL CONSTRUCTION STANDARDS

(A) All construction in the right-of-way shall be consistent with applicable ordinances, codes, laws, rules, regulations, the Village's Design Specifications Manual and commonly recognized and accepted traffic control and construction principles, sound engineering judgment and, where applicable, the principles and standards set forth in the following IDOT publications, as revised from time to time:

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

(B) If a discrepancy exists between or among differing principles and standards required by this Ordinance, the Director shall determine, in the exercise of sound engineering judgment, which principles apply and such decision shall be final. If requested, the Director shall state which standard or principle will apply to the construction, maintenance, or operation of a facility in the future.

§ 97.068 TRAFFIC CONTROL

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

(B) 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) All work shall be phased so that there is minimum interference with pedestrian and vehicular traffic.

(D) 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 97.074 of this Chapter, the utility shall provide such notice as is practicable under the circumstances.

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

§ 97.069 LOCATION OF FACILITIES

(A) Parallel Facilities:

(1) Overhead Parallel Facilities. An existing overhead parallel facility may be located within the right-of-way lines of a highway only if:

- (i) 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;
- (ii) Where pavement is curbed, poles are as remote as practicable from the curb with a minimum distance of two feet (0.6 m) behind the back of the curb, where available and are not within clear zones;
- (iii) Where pavement is uncurbed, poles are as remote from pavement edge as practicable with minimum distance of four feet (1.2 m) outside the outer shoulder line of the roadway and are not within the clear zone;
- (iv) No pole is located in the ditch line of a highway; and

- (v) Any ground-mounted appurtenance is located within one foot (0.3 m) of the right-of-way line or as near as possible to the right-of-way line.
- (2) Underground Parallel Facilities. An underground parallel facility may be located within the right-of-way lines of a highway only if:
 - (i) The facility is located as near the right-of-way line as practicable and not more than eight (8) feet (2.4 m) from and parallel to the right-of-way line;
 - (ii) 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
 - (iii) 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 (1.5 m) from the right-of-way line and any above-grounded appurtenance shall be located within one foot (0.3 m) of the right-of-way line or as near as practicable.

(B) Facilities Crossing Highways:

- (1) The construction and design of crossing facilities installed between the ditch lines or curb lines of Village highways may require the incorporation of materials and protections (such as encasement or additional cover) to avoid settlement or future repairs to the roadbed resulting from the installation of such crossing facilities.
- (2) Crossing facilities shall not be located in culverts, or drainage facilities.
- (3) Crossing facilities shall cross at or as near to a ninety (90) degree angle to the centerline as practicable.
- (4) An overhead power or communication facility may cross a highway only if:
 - (i) 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);

- (ii) Poles are located within one foot (0.3 m) of the right-of-way line of the highway and outside of the clear zone; and
 - (iii) Overhead crossings at major intersections are avoided.
- (5) An underground power or communication facility may cross a highway only if:
- i) The design, materials and construction methods will provide maximum maintenance-free service life;
 - ii) Capacity for the utility's foreseeable future expansion needs is provided in the initial installation; and
 - iii) All conduit under a roadway or commercial driveway shall be rigid galvanized steel (except for foundation raceways and control cabinet foundation raceway which can be PVC) a minimum of two (2) inches in diameter and complying with Underwriter's Laboratories, Inc. Standard U.L. 6 and ASA specification C80-1 or approved equal. Each length of conduit shall bear an Underwriter's Laboratories label. All conduit shall be either pushed or trenched.
- (6) The Village may require the utility to provide a marker at each right-of-way line where an underground facility other than a power or communication facility crosses a highway. Each marker shall identify the type of facility, the utility, and an emergency phone number. Markers may also be eliminated as provided in current Federal regulations. (49 C.F.R. 192.707 (1989)).

(C) Facilities to be Located Within Particular Rights-of Way: The Village may require that facilities be located within particular rights-of-way.

(D) Freestanding Facilities:

- (1) The Village may restrict the location and size of any freestanding facility located within a right-of-way.
- (2) The Village may require any freestanding facility located within a right-of-way to be screened from view.

(E) Appearance Standards:

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

(F) Above Ground Installation:

- (1) Will be allowed only if no other existing facilities in the area are located underground;
- (2) New underground installation is not technically feasible; and
- (3) The proposed installation will be made at a location, and will employ suitable design and materials, to provide the greatest protection of aesthetic qualities of the area being traversed without adversely affecting safety. Suitable designs include, but are not limited to, self-supporting armless, single-pole construction with vertical configuration of conductors and cable.

(G) Facility Attachments to Bridges or Roadway Structures:

- (1) Facilities may be installed as attachments to bridges or roadway structures only where the utility has demonstrated that all other means of accommodating the facility are not practicable. 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.
- (2) A utility shall include in its request to accommodate a facility installation on a bridge or roadway structure supporting data demonstrating the impracticability of alternate routing. Approval or disapproval of an application for facility attachment to a bridge or roadway structure will be based upon the following considerations:

- (i) 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;
- (ii) The type, length, value, and relative importance of the highway structure in the transportation system;
- (iii) The alternative routings available to the utility and their comparative practicability;
- (iv) The proposed method of attachment;
- (v) The ability of the structure to bear the increased load of the proposed facility;
- (vi) The degree of interference with bridge maintenance and painting;
- (vii) The effect on the visual quality of the structure; and
- (viii) The public benefit expected from the utility service as compared to the risk involved.

§ 97.070 CONSTRUCTION METHODS AND MATERIALS

(A) Standards and requirements for particular types of construction methods are included in the Village's Design Specifications Manual and herein:

- (1) Whenever and wherever deemed possible by the Director, the use of "guide auger" or "bore and pull" installation methods shall be used for all utilities 6" outside diameter or less.
 - (i) Pits and Shoring. Boring or jacking under rights-of-way shall be accomplished from pits located at a minimum distance specified by the 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.

- (ii) Wet boring or jetting shall not be permitted under the roadway.
 - (iii) Borings over six inches (0.15 m) in diameter shall be accomplished with an auger and following pipe, and the diameter of the auger shall not exceed the outside diameter of the following pipe by more than one inch (25 mm).
 - (iv) Borings of six inches or less in diameter may be accomplished by either jacking, guided with auger, or auger and following pipe method.
 - (v) Any facility located within the drip line of any tree designated by the Village to be preserved shall be bored under or around the root system.
- (2) Trenching for facility installation, repair, or maintenance on rights-of-way shall be done in accord with the applicable portions of Section 550 of IDOT's "Standard Specifications for Road and Bridge Construction."
- (i) 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 Director.
 - (ii) 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.
 - (iii) The utility shall not trench within the drip line of any tree designated by the Village to be preserved.
- (3) Backfilling shall be accomplished in the following manner:
- (i) 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.

- (ii) 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 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 Director.
- (4) 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 97.075, the following requirements shall apply:
- (i) Any excavation under pavements shall be backfilled and compacted as soon as practicable with granular material of CA-6 or CA-10 gradation, as designated by the Director.
 - (ii) Restoration of pavement, in kind, shall be accomplished as soon as practicable, and temporary repair with bituminous mixture shall be provided immediately. All restoration specifications shall be certified by an engineer as meeting all applicable ordinances, codes, rules and regulations. Any subsequent failure of either the temporary repair or the restoration shall be rebuilt upon notification by the Village.
 - (iii) All saw cuts shall be full depth with no overcuts beyond the limits of removal.
 - (iv) No permit shall be issued by the Director which would allow an excavation or opening in a paved and improved street surface less than five years old unless the applicant can clearly demonstrate that public health or safety require that the proposed work be permitted or unless an emergency condition exists.

If by special action of the Director, a permit is issued to open any paved and improved street surface less than five years old, a penalty charge shall be made for the opening, except that the penalty shall be

waived in the event the work is of an emergency nature. The penalty charge shall be on a sliding scale and shall be equal to 2% of the cost of restoring the opening for each unelapsed month or fraction thereof of the five-year restricted period.

- (v) All bituminous pavement repairs shall have a minimum thickness of bituminous concrete of 9" or the thickness of the existing pavement, whichever is greater, over a 4" compacted granular subbase. The total thickness of bituminous concrete shall include a 1 ½" thick bituminous concrete surface course over a bituminous concrete base course. Bituminous pavement repairs shall be rectangular in shape, extending the full lane width. The length of repair shall extend one (1) foot beyond the limits of excavation or four (4) feet, whichever is greater.
 - (vi) All concrete pavement repairs shall be a minimum of 7 ½" in thickness or the thickness of the existing pavement, whichever is greater. Concrete pavement patches shall be the full lane width wide and shall be from existing pavement joint to existing pavement joint in length. Concrete patches shall be full pavement panels.
- (5) Encasement shall be accomplished as follows:
- (i) 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 Village.
 - (ii) 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.
 - (iii) In the case of water main or service crossing, encasement shall be furnished between bore pits unless continuous pipe or Village approved jointed pipe is used under the roadway. Casing may be omitted only if pipe is installed prior to highway construction and carrier pipe is continuous or mechanical joints are of a type approved by the Village. Bell and spigot type pipe shall be encased regardless of installation method.

- (iv) In the case of gas pipelines of 60 psig or less, encasement may be eliminated.
 - (v) 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;
 - (vi) If encasement is eliminated for a gas or petroleum products pipeline, the facility shall be located so as to provide that construction does not disrupt the right-of-way.
- (6) 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 (In General)	30 Inches (0.8 m)
Communication Line Installed by the Plowed Method	24 Inches (0.6 m)
Gas or Petroleum Products	30 Inches (0.8 m)
Water Line	5.5 Feet
Sanitary Sewer, Storm Sewer, or Drainage Line	5.5 Feet

(B) Standards and requirements for particular types of facilities are as follows:

- (1) Electric power or communication lines must meet the following standards:
 - (i) Electric power or communications facilities within Village rights-of-way shall be constructed, operated, and maintained in conformity with the provisions of 83 Ill. Adm. Code 305 (formerly General Order 160 of the Illinois Commerce Commission) entitled "Rules for Construction of Electric Power and Communications Lines," and the National Electrical Safety Code.
 - (ii) Overhead power or communication facilities shall use single pole construction and, where practicable, joint use of poles shall be used. Utilities shall make every reasonable effort to design the installation so guys and braces will not be needed. Variances may be allowed if

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

- (iii) 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. If a crossing is installed by boring or jacking, encasement shall be provided between jacking or bore pits. Cable shall be grounded in accordance with the National Electrical Safety Code.
- (2) Underground facilities other than electric power or communication lines may be installed by:
- (i) the use of “moles,” “whip augers,” or other approved methods which compress the earth to move the opening for the pipe;
 - (ii) jacking or boring with vented encasement provided between the ditch lines or toes of slopes of the highway;
 - (iii) open trench with vented encasement between ultimate ditch lines or toes of slopes, but only if prior to roadway construction; or
 - (iv) tunneling with vented encasement, but only if installation is not possible by other means.
- (3) Gas pipelines within rights-of-way shall be constructed, maintained, and operated in a Village-approved manner and in conformance with the Federal Code of the Office of Pipeline Safety Operations, Department of Transportation, Part 192 – Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards (49 CFR 192), IDOT’s “Standard Specifications for Road and Bridge Construction,” and all other applicable laws, rules, and regulations.
- (4) 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).
- (5) Water lines, sanitary sewer lines, storm sewer lines, and drainage lines within rights-of-way shall meet or exceed the recommendations of the current “Standard Specifications for Water and Sewer Main Construction in Illinois.”

- (6) Ground mounted appurtenances 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 Director. With the approval of the Director, shrubbery surrounding the appurtenance may be used in place of vegetation-free area. The housing for ground-mounted appurtenances shall be painted a neutral color to blend with the surroundings.
- (C) Materials that may be used are as follows:
- (1) The materials used in constructing facilities within rights-of-way shall be those meeting the accepted standards of the appropriate industry, the applicable portions of IDOT's "Standard Specifications for Road and Bridge Construction," the requirements of the Illinois Commerce Commission, the standards established by other official regulatory agencies for the appropriate industry, and any requirements set forth in the Village Code. Where there is a conflict, the more stringent standard shall apply unless waived by the Director in writing.
 - (2) 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 Village.
 - (3) The plans submitted by the utility to the Village shall identify any hazardous materials that may be involved in the construction of the new facilities or removal of any existing facilities.
- (D) Restrictions on construction are as follows:
- (1) Construction operations on rights-of-way may, at the discretion of the Village, be required to be discontinued when such operations would create hazards to 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.

- (2) These restrictions may be waived by the Director when emergency work is required to restore vital utility services.
- (3) Work authorized by a permit shall be performed between the hours of 7:00 a.m. and 7:00 p.m. Monday through Saturday unless the permittee obtains written consent from the Director to do the work at an earlier or later hour. Such permission shall be granted only in a case of an emergency or in the event that the work authorized by the permit has to be performed in a traffic congested area.

(E) Any utility proposing to construct facilities in the Village shall contact J.U.L.I.E. and ascertain the presence and location of existing above-ground and underground facilities within the rights-of-way to be occupied by its proposed facilities. The Village 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 Village or by J.U.L.I.E., a utility shall locate and physically mark its underground facilities within 48 hours, excluding weekends and holidays, in accordance with the Illinois Underground Facilities Damage Prevention Act (220 ILCS 50/1 *et seq.*)

§ 97.071 VEGETATION CONTROL

A) 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 Ordinance.

- (1) 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. Chapter 99, Sections 99.10 through 99.12 of the Village Code shall also govern tree trimming.
- (2) 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 Village 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 Village may require the removal and replacement of trees if trimming or radical pruning would leave them in an unacceptable condition.

(B) The Village may require that special measures be taken to preserve specimen trees or trees of special significance. The required measures may consist of higher poles, side arm extensions, covered wire or other means.

(C) 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 Director that such spraying is the only practicable method of vegetation control.

§ 97.072 REMOVAL, RELOCATION, OR MODIFICATIONS OF UTILITY FACILITIES

(A) Within ninety (90) days following written notice from the Village, 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 Village improvement in or upon, or the operations of the Village in or upon, the rights-of-way.

(B) Within thirty (30) days following written notice from the Village, any utility that owns, controls, or maintains any unauthorized facility or related appurtenances within the 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:

- (1) Upon expiration or termination of the permittee's license or franchise, unless otherwise permitted by applicable law;
- (2) If the facility was constructed or installed without the prior grant of a license or franchise, if required;
- (3) If the facility was constructed or installed without prior issuance of a required permit in violation of this Chapter; or
- (4) If the facility was constructed or installed at a location not permitted by the permittee's license or franchise.

(C) The Village retains the right and privilege to cut or move any facilities located within the rights-of-way of the Village, as the Village may determine to be necessary, appropriate or useful in response to any public health or safety emergency. If circumstances permit, the

municipality shall attempt to notify the utility, if known, prior to cutting or removing a facility and shall notify the utility, if known, after cutting or removing a facility.

(D) Upon abandonment of a facility within the public rights-of-way of the Village, the utility shall notify the Village within ninety (90) days. Following receipt of such notice the Village may direct the utility to remove all or any portion of the facility if the Director determines that such removal will be in the best interest of the public health, safety and welfare. Such removal shall be at the sole expense of the utility. In the event that the Village does not direct the utility that abandoned the facility to remove it, by giving notice of abandonment to the Village, the abandoning utility shall be deemed to consent to the alteration or removal of all or any portion of the facility by another utility or person.

§ 97.073 CLEANUP AND RESTORATION

Upon completion of all excavation, construction or maintenance of facilities, the permittee shall remove all excess material and restore all turf and terrain in a timely manner and to the satisfaction of the Village. This includes restoration of entrances and side roads. Restoration of roadway surfaces shall be made using materials and methods approved by the Director. Such cleanup and repair may be required to consist of backfilling, regrading, resodding, or any other requirement to restore the right-of-way to a condition substantially equivalent to that which existed prior to the commencement of the project.

§ 97.074 MAINTENANCE AND EMERGENCY MAINTENANCE

(A) Facilities on, over, above, along, upon, under, across, or within rights-of-way are to be maintained by or for the utility in a manner satisfactory to the Village and at the utility's expense.

(B) Emergencies may justify non-compliance with normal procedures for securing a permit:

- (1) If an emergency creates a hazard on the traveled portion of the right-of-way, the utility shall take immediate steps to provide all necessary protection for traffic on the 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.

- (2) In an emergency, the utility shall, as soon as possible, notify the 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 Village police shall be notified immediately.
- (3) In an emergency, the utility shall use all means at hand to complete repairs as rapidly as practicable and with the least inconvenience to the traveling public.

(C) The utility must file in writing with the Village a description of the repairs undertaken in the right-of-way within 48 hours after an emergency repair.

§ 97.075 VARIANCES

(A) A person requesting a variance from one or more of the provisions of this Chapter must do so in writing to the 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.

(B) The Director shall decide whether a variance is authorized for each provision of this Chapter identified in the variance request on an individual basis.

(C) The Director may authorize a variance only if the person requesting the variance has demonstrated that:

- (1) One or more conditions not under the control of the person (such as terrain features or an irregular right-of-way line) create a special hardship that would make enforcement of the provision unreasonable, given the public purposes to be achieved by the provision; and
- (2) All other designs, methods, materials, locations or facilities that would conform with the provision from which a variance is requested are impracticable in relation to the requested approach.

(D) As a condition for authorizing a variance, the Director may require the person requesting the variance to meet reasonable standards and conditions that may or may not be expressly contained within this Chapter but which carry out the purposes of this Chapter.

§ 97.076 PENALTIES

Any person who violates, disobeys, omits, neglects or refuses to comply with any of the provisions of this Chapter shall be subject to fine in accordance with the general penalty provisions of the Village Code. There may be times when the Village will incur delay or other costs, including third party claims, because a 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 Village'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 Village. Sanctions may be imposed upon a utility who does not pay the costs apportioned to it.

§ 97.077 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."

Section 3: That Title 9, Chapter 97, Sections 97.078 through 97.084 are hereby repealed in their entirety.

Section 4: If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions hereof.

Section 5: This Ordinance supersedes all Ordinances or parts of Ordinances adopted prior hereto that are in conflict herewith, to the extent of such conflict.

Section 6: That this Ordinance shall be in full force and effect from and after its passage, approval and publication as provided by law.

Passed on first reading this ____ day of _____, 2005

First reading waived by action of the Board of Trustees this ____ day of _____, 2005

Passed on second reading this _____ day of _____, 2005.

AYES: _____

NAYS: _____

ABSENT: _____

APPROVED this _____ day of _____, 2005.

William J. Mueller
Village President

ATTEST:

Brigitte O'Brien
Village Clerk

Published by me in pamphlet form this _____ day of _____, 2005.

Brigitte O'Brien
Village Clerk

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