

070160

## MEMORANDUM

**TO:** Chairperson, Transportation & Safety Committee

**FROM:** David A. Hulseberg, AICP *DAH*  
Assistant Village Manager/Director of Community Development

**DATE:** March 26, 2007

**RE:** **Text Amendments to Chapter 97 of the Village Code:  
Above Ground Utility Cabinets**

The Community Development Department has been working in conjunction with the Public Works Department to address the issue of Above Ground Utility Cabinets (AGUC) that may potentially be placed on private property or within the public rights of way. Recognizing that these cabinets may be installed throughout the Village in the near future, Village staff is attempting to be pro-active in establishing regulations that provide greater flexibility to locate the cabinets within rear yards on private property, but limiting their placement within the public right of way.

The Community Development Department brought forward text amendments pertaining to placement of the cabinets on private property to the Plan Commission at their March 19, 2007 meeting. The Commissioners voted 4-0 recommending approval of the proposed amendments, subject to final review of the draft language by Village Counsel. A copy of the staff report presented to the Plan Commission which also outlines the need for the proposed regulations is attached.

Before the Village Board considers the amendments recommended for approval by the Plan Commission, staff is also seeking a recommendation from the Transportation and Safety Committee pertaining to amendments to Chapter 97 of the Village Code regulation Street and Sidewalks. The proposed amendments to this chapter is to establish regulations that will promote the placement of AGUC on private property (with location discretion) while discouraging AGUC on public rights of way, specifically near intersections and driveways.

Listed below is a new subsection to be added to the existing provisions included in Chapter 97. The proposed text amendments addressing AGUC in public rights of way are as follows:

Draft Amendment to Chapter 97 of the Village Code

Chapter 97: Streets and Sidewalks

**97.012 ABOVE GROUND UTILITY CABINETS**

Above Ground Utility Cabinets, as defined in Section 155.802 of this Code, shall be permitted in the public right-of-way under the following conditions:

- (A) The Above Ground Utility Cabinet shall be located no less than three hundred (300) linear feet from any other Above Ground Utility Cabinet. Notwithstanding the foregoing, the owner of the proposed Above Ground Utility Cabinet can show that utility service cannot be provided if compliance with the foregoing distance restriction is required, a shorter distance, sufficient to allow the provision of utility service, shall be allowed.
- (B) Above Ground Utility Cabinets shall be located no less than twenty (20) feet from any residential driveway, no less than thirty (30) feet from any non-residential driveway and no less than thirty (30) feet from the pavement of intersecting public or private streets. Traffic signal and street light cabinets shall be exempt from the provisions set forth in this subsection, but only to the extent that compliance herewith is not possible.

Per Village Counsel, the following comments have been added pertaining to the aforementioned text amendment:

- 1) Existing franchise agreements, to the extent they have provisions to the contrary in them, will supersede these regulations.
- 2) As to telecommunications, FCC regulations will supersede these regulations.

**ACTION REQUESTED**

Staff recommends that the Transportation and Safety Committee consider and recommend approval of the aforementioned amendments to Chapter 97 of the Village Code at its April 2, 2007 meeting.

**VILLAGE OF LOMBARD**  
**INTER-DEPARTMENTAL REVIEW GROUP REPORT**

TO: Lombard Plan Commission

HEARING DATE: March 19, 2007

FROM: Department of Community  
Development

PREPARED BY: Michael S. Toth  
Associate Planner

**TITLE**

**PC 07-07; Text Amendments to the Zoning Ordinance:** The Village of Lombard is proposing text Amendments to the Lombard Zoning Ordinance, as follows:

- A. Amend Section 155.210 (and other sections as needed for clarity) to establish regulations for the placement of Above Ground Utility Cabinets.
- B. Amend Section 155.212 to establish Above Ground Utility Cabinets as permitted obstructions in certain required yards.
- C. Amend Section 155.803 to establish and/or amend definitions for Private Utilities, Above Ground Utility Cabinet, and Service Entity.

**DESCRIPTION**

The Planning Services Division is proposing code amendments to address the issue of Above Ground Utility Cabinets (AGUC) that may potentially be placed on private property or within the public rights of way. The Plan Commission will consider amendments pertaining to AGUC on private property while the Transportation and Safety Committee will address the issue in regard to the public rights of way. The Zoning Ordinance amendments must be addressed through the public hearing process.

**INTER-DEPARTMENTAL REVIEW COMMENTS**

**ENGINEERING**

The Private Engineering Services Division has no comment on the subject case.

Public Works Engineering noted that they have a number of utility structures within the public right of way that are similar in height to the proposed cabinets. This issue will be addressed as part of the review of Section 97 of the Village Code, pertaining to Streets and Sidewalks.

**BUILDING AND FIRE**

Building and Fire does not have any comments on the petition at this time.

## **PLANNING**

### **Background**

Currently, Zoning Ordinance regulations pertaining to private utilities can be found in Section 155.217(B) as well as the specific zoning district regulations. Section 155.217 reads as follows:

#### **§155.217 EXEMPTION OF ESSENTIAL SERVICES**

Certain public and private activities intended and used to promote the public health, safety and welfare shall be exempt from the regulations of this ordinance. Provided, however, the equipment erected or installed for such uses shall conform to Federal Communications Commission and Federal Aviation Agency rules and regulations, and to those of other authorities having jurisdiction. Exempted activities are as follows:

##### **(A) Municipal Uses and Facilities**

All municipal uses and facilities, as defined in Section 155.800 of this ordinance, reasonably necessary for the furnishing of adequate municipal services for the public health, safety and welfare including sewer and water transmission lines and facilities, fire stations, governmental buildings, trash collection and disposal facilities, communication facilities, storage yards, and traffic signals and signs.

##### **(B) Private Utilities**

The erection, construction, alteration, or maintenance by private utilities of overhead, surface or underground gas, electrical, telephone, steam, or water distribution systems including mains, drains, sewers, pipes, conduits, tunnels, wires, cables, and poles used to provide direct service to individual properties shall be exempted. However, larger distribution facilities such as electrical substations, gas regulator stations, pumping stations, satellite communications receiving and transmitting stations and other similar facilities used to relay services to individual customers shall be considered a conditional use in all zoning districts and shall conform to the provisions of Section 155.103 (F) of this ordinance. Private utilities are defined in Section 8 of this ordinance.

The aforementioned regulations provide for the general location of public utilities on private property. However, should the utility infrastructure constitute the primary use of the property (such as an electrical or pumping station), the Ordinance would consider such facilities as permissible only through the conditional use process.

### **Project Lightspeed**

Recently, there have been several Chicago area municipalities that have challenged the authority of AT&T to place selected equipment infrastructure in their respective communities as it pertains to their Project Lightspeed. Project Lightspeed is an AT&T plan to upgrade its telecommunications network and distribute video to customers over a fiber-optic network. One of the major issues associated with Project Lightspeed (in regard to land use) is the placement of the AGUC that are intended to house the necessary components to complete the task. AGUC measure approximately 63 inches high, 43 inches wide and 25 inches deep. AT&T officials have said that they would need to install one utility box for every 300 to 400 customers throughout the community. Appendix A depicts sample photographs of AGUC located in other municipalities.

Currently, Village regulations do not specifically address AGUC size and location. Some arguments by municipalities have challenged AT&T's right to claim a blanket exemption for their project (and their associated infrastructure) under the basic municipal franchise agreement, espousing that this project is beyond the scope of services covered under the respective agreements. AT&T has argued that Project Lightspeed is simply a modernization of their existing telecommunication capabilities.

While pending state legislation and ongoing litigation is attempting to provide clarity to this issue. Staff believes it is important to review the land use impacts of AGUC on the Village should the project proceed as proposed. If such an influx of these cabinets were to be proposed, the best course of action would be to have regulations in place that would not allow for such structures to cause a negative visual impact or affect public health and safety.

In order to avoid litigation as well as providing reasonable regulations pertaining to the placing of AGUC equipment, Planning Services wishes to address the issue by accommodating these devices, but only allowing them in desired locations at a maximum allowable size.

The Community Development Department staff has been working with the Public Works staff to create text amendments that would allow each department to regulate AGUC in regard to size and location. The intent of the amendments is as follows:

1. To minimize the visual impacts of the cabinets along the public rights of way;
2. To prevent visual obstructions created by the cabinets;
3. To prevent conflicts with other underground utilities;
4. To develop regulations that would promote the location of AGUC on private properties (preferable within rear yards) rather than within the public rights of way; and
5. To provide a means of compensation to those parties most affected by the placement of the cabinets near their respective properties

To minimize visibility, the proposed text amendments would regulate AGUC on private property as accessory structures in regard to size, location, and coverage. To avoid the placement of AGUC in undesirable locations across the community, the Village is proposing to accommodate the aforementioned size requirements in return for location discretion. The rationale for providing a proposed six-foot (6') height requirement in private property is to allow the proper screening through fencing or other screening [as a matter of right], while still accommodating their height needs. If the utility company desires to construct a utility cabinet greater in size or height than what is being proposed through this text amendment; they have the option to seek approval as a conditional use. This approach has been previously applied to relief associated with cellular towers.

With regard to the Village right of way, Public Works will amend a portion of their Code to have the authority to regulate the size and location of AGUC. The proposed text amendments set a standard for the spacing of AGUC within the public right of way to avoid potential clustering.

Clustering within the public rights of way is viewed in a negative manner because it not only creates an unappealing aesthetic environment, but also would be a potential visual obstruction for motor vehicles and pedestrians. Because of the size of the AGUC, proper placement of the structures is crucial to ensuring neighborhood compatibility. The text amendments proposed by Public Works will address the location of AGUC in the rights of way as they pertain to the clear line of sight provisions. Appendix B contains sample language from the proposed text amendment to Chapter 97 of the Village Code, which pertains to AGUC in the Village right of way.

### **Proposed Text Amendments**

The proposed text amendment will add various regulations pertaining to Above Ground Utility Cabinets. In addition to the new text, the amendment will only alter one definition - "Private Utilities" in the existing Ordinance text. For regulatory purposes Planning Services will treat Above Ground Utility Cabinets as accessory structures. Section 155.210, which regulates accessory uses, activities, buildings, and structures, currently has no language addressing Above Ground Utility Cabinets. In order to address any potential swell in the number of Utility Cabinets, Section 155.210 "Accessory Uses, Activities, Buildings, and Structures" will now recognize "Above Ground Utility Cabinets" as an accessory structure and regulate it accordingly.

The proposed text amendments are noted below. **Proposed additions to the Zoning Ordinance are underlined and portions that will be extracted are shown with strikethrough.** The Standards for Text Amendments are also included below.

## **SECTION 2: GENERAL PROVISIONS**

### **155.210 "Accessory Uses, Activities, Buildings, and Structures"**

#### **(3) Height of Accessory Buildings and Structures**

Unless otherwise provided for in this ordinance, the height of accessory buildings and structures shall meet the following requirements:

- (a) No detached accessory building or structure shall exceed the height of the principal structure or use, and
- (b) The vertical distance measured from the average grade to the highest point on the roof or Parapet for any detached accessory building or structure shall not exceed seventeen (17) feet.
- (c) The vertical distance of any above ground utility cabinet shall not exceed six (6) feet in height above grade.

### 155.212 "Permitted Obstructions In Required Yards"

Types of Structure or Use Obstruction X = Permitted Obstruction	Front & Corner Side Yard	Interior Side Yards	Rear Yard
Above Ground Utility Cabinet, less than six (6) feet in height.		X	X

## SECTION 2: GENERAL PROVISIONS

### 155.217 "Exemptions of Essential Services"

Certain public and private activities intended and used to promote the public health, safety and welfare shall be exempt from the regulations of this ordinance. Provided, however, the equipment erected or installed for such uses shall conform to Federal Communications Commission and Federal Aviation Agency rules and regulations, and to those of other authorities having jurisdiction. Exempted activities are as follows:

#### (A) Municipal Uses and Facilities

All municipal uses and facilities, as defined in Section 155.800 of this ordinance, reasonably necessary for the furnishing of adequate municipal services for the public health, safety and welfare including sewer and water transmission lines and facilities, fire stations, governmental buildings, trash collection and disposal facilities, communication facilities, storage yards, and traffic signals and signs.

#### (B) Private Utilities

The erection, construction, alteration, or maintenance by private utilities of overhead, surface or underground gas, electrical, telephone, steam, or water distribution systems including mains, drains, sewers, pipes, conduits, tunnels, wires, cables, and poles used to provide direct service to individual properties shall be exempted. However, larger distribution facilities such as electrical substations, gas regulator stations, pumping stations, satellite communications receiving and transmitting stations and other similar facilities used to relay services to individual customers shall be considered a conditional use in all zoning districts and shall conform to the provisions of Section 155.103 (F) of this ordinance. Private utilities are defined in Section 8 of this ordinance.

#### (C) Above Ground Utility Cabinets

Above ground utility cabinets on private property shall be permitted in all zoning districts and shall be considered as accessory structures, subject to the provisions of Section 155.210. Above ground utility cabinets shall have not exceed six feet (6') in height above grade. Any structure not meeting this provision shall be considered a conditional use and shall conform to the provisions of Section 155.103(F) of this ordinance. Above ground utility cabinets within the public right of way shall be subject to the provisions set forth in Section 97 of the Village Code.

## SECTION 8: RULES AND DEFINITIONS

### 155.802 Rules and Definitions

~~Private Utilities~~ — are facilities for the transmission of gas, electric, telephone, and private sewer and water service located either within public rights of ways, dedicated easements or on private property.

Private Utilities — utilities that are not subject to Village acceptance for operation or maintenance. For purposes of this code, private utilities include, but are not limited to, natural gas lines, electric lines, telecommunication lines, cable television lines, and other communication lines, their appurtenances and any component part(s) thereof.

Above Ground Utility Cabinet — an above ground utility structure, used by a Service Entity to provide communication service to the public, which has a volume above the ground surface of greater than 24 cubic feet, or linear size greater than four feet in any one dimension.

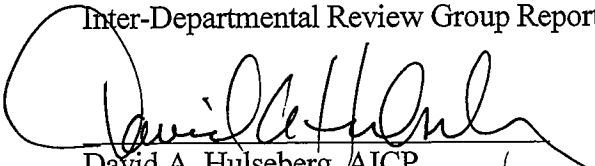
Service Entity — a person owning or operating any Private Utilities and/or Above Ground Utility Cabinets, as defined in this Section.

### RECOMMENDATION

The Inter-Departmental Review Report includes a response to the standards for text amendments and finds that the petition meets the standards. Based on the above considerations, the Inter-Departmental Review Committee recommends that the Plan Commission make the following motion recommending **approval** of the request as proposed:

Based on the submitted petition and the testimony presented, the proposed text amendments comply with the standards required by the Lombard Zoning Ordinance; and, therefore, I move that the Plan Commission find that the findings included as part of the Inter-department Review Report be the findings of the Plan Commission and therefore, I recommend to the Corporate Authorities **approval** of the text amendments described in PC 07-07.

Inter-Departmental Review Group Report Approved By:



David A. Hulseberg, AICP  
Assistant Village Manager/Director of Community Development



## Appendix A

### Standards for Text Amendments

1. *The degree to which the proposed amendment has general applicability within the Village at large and not intended to benefit specific property*

The proposed amendment would be uniformly applied to all properties in the Village.

2. *The consistency of the proposed amendment with the objectives of this ordinance and the intent of the applicable zoning district regulations*

The amendment is intended to give the Village authority to regulate Above Ground Utility Cabinets in all zoning districts to maintain the aesthetic value of neighborhoods within the Village. The proposed amendments are intended to prevent a significant increase in the number of Above Ground Utility Cabinets without considering the land use impacts of the structures in the community.

3. *The degree to which the proposed amendment would create nonconformity;*

The Ordinance would not create any nonconformities, as the cabinets are emerging technology and have not been located in the Village to date.

4. *The degree to which the proposed amendment would make this ordinance more permissive*

Assuming that the cabinets are not permitted as part of the blanket exemption of utility services within Section 155.207 of the Zoning Ordinance, the proposed additions would actually provide greater flexibility to locate such structures within required interior side and rear yards (as well as the buildable area of the lot) by treating the structures as another type of accessory structure. The only limitation would be upon the overall height limitation of six feet, which is intended to ensure that the structure could be effectively screened from adjacent properties, if so desired.

5. *The consistency of the proposed amendment with the Comprehensive Plan*

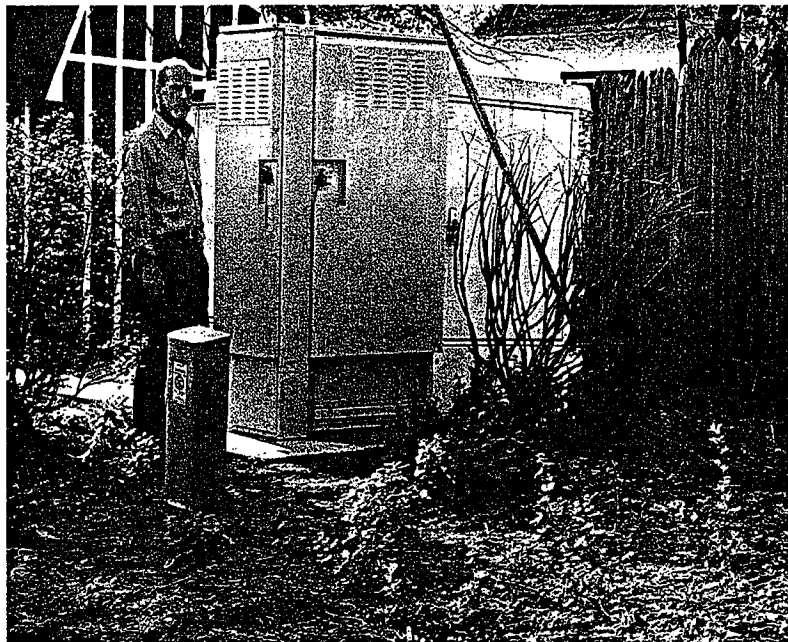
The Comprehensive Plan offers a number of recommendations pertaining to property maintenance as well as the protection/enhancement of identity and character of residential neighborhoods. The addition of the aforementioned regulations will further increase the Village's ability to keep with the Comprehensive Plan.

6. *The degree to which the proposed amendment is consistent with Village policy as established in previous rulings on petitions involving similar circumstances.*

This amendment would be consistent with staff and Board policies. The Village has adopted previous amendment regulating the location of accessory structures within the front yard or within clear line of sight areas. Moreover, this regulation attempt to address the potential impact of a plethora of such cabinets being located throughout the Village without regard to their ultimate location and impact on neighboring properties. This amendment is intended to be consistent with past Board actions to ensure that the public rights of way present a favorable appearance in the community.

## Appendix B

### Pictures of Above Ground Utility Cabinets



## Appendix C

### Draft Amendment to Chapter 97 of the Village Code

#### Chapter 97: Streets and Sidewalks

##### **97.005 “Items on Village Right-of-Way”**

##### 97.005(D) “Above Ground Utility Cabinet”

- (D) All Above Ground Utility Cabinets shall be located so as to not be unsightly or hazardous to the public. Above Ground Utility Cabinets are permitted in the public right-of-way under the following condition:
- 1) Above Ground Utility Cabinets located on public right-of-way shall be located a distance no less than three hundred (300’) linear feet from any adjacent Above Ground Utility Cabinets.
    - a. If engineering techniques as approved by the Village do not allow a distance of three hundred (300’) linear feet, the village may approve a shorter distance.
  - 2) Above Ground Utility Cabinets shall be located a distance of no less than twenty (20) feet from any residential driveway and no less than thirty (30) feet from any commercial driveway.