



United City of Yorkville

800 Game Farm Road

Yorkville, Illinois 60560

Telephone: 630-553-4350

www.yorkville.il.us

PLANNING AND ZONING

COMMISSION AGENDA

SPECIAL MEETING

Wednesday, July 18, 2018

7:00 PM

Yorkville City Hall Council Chambers

800 Game Farm Road

Meeting Called to Order: 7:00 p.m.

Roll Call:

Previous Meeting Minutes: June 13, 2018

Citizen's Comments

Public Hearings

1. **PZC 2018-13** The United City of Yorkville, Kendall County, Illinois, petitioner, is proposing a text amendment for consideration of updates to "Chapter 18: Telecommunication Tower and Antenna Regulations" of the United City of Yorkville Zoning Ordinance.

Unfinished Business

New Business

1. **PZC 2018-13** The United City of Yorkville, Kendall County, Illinois, petitioner, is proposing a text amendment for consideration of updates to "Chapter 18: Telecommunication Tower and Antenna Regulations" of the United City of Yorkville Zoning Ordinance.

Action Item

Text Amendment

Additional Business

1. City Council Action Updates
 - a. **PZC 2018-10** James Mcnamara, petitioner, has filed an application with the United City of Yorkville, Kendall County, Illinois, requesting an accessory structure location variance for 515 West Madison Street. The purpose of this request is to allow a detached garage to be placed in the front yard.
City Council Action:
Approved
 - b. **PZC 2018-11** Michael and Dayle Saar have filed an application with Kendall County requesting a rezone from A-1 Agricultural District to R-1 Residential District on 4.2 acres of unincorporated land to market the site for single family residential use.

City Council Action

No Objection

Adjournment

DRAFT

PLANNING & ZONING COMMISSION

City Council Chambers
800 Game Farm Road, Yorkville, IL
Wednesday, June 13, 2018 7:00pm

Meeting Called to Order

Acting Chairman Reagan Goins called the meeting to order at 7:00pm, roll was called and a quorum was established.

Roll Call:

Don Marcum-yes, Bill Gockman-yes, Reagan Goins-yes, Deborah Horaz-yes

Absent: Jeff Olson, Richard Vinyard, Randy Harker

City Staff

Jason Engberg, Senior Planner

Lynn Dubajic, City Consultant

Other Guests

Christine Vitosh, Depo Court

James McNamara

Matt Asselmeier, Kendall County PZB

Mike Saar

Previous Meeting Minutes May 9, 2018

The minutes were approved as presented on a motion and second by Commissioners Marcum and Gockman, respectively. No discussion or questions.

Citizen's Comments None

Public Hearing

Commissioner Goins explained the procedure for the Hearing and swore in those who would present testimony. A motion was made and seconded by Ms. Horaz and Mr. Gockman, respectively, at approximately 7:02pm, to open the Public Hearing.
Roll call: Gockman-yes, Goins-yes, Horaz-yes, Marcum-yes Motion carried 4-0.

- 1. PZC2018-10 James McNamara, petitioner, has filed an application with the United City of Yorkville, Kendall County, Illinois, requesting an accessory structure location variance for 515 W. Madison Street. The purpose of this request is to allow a detached garage to be placed in the front yard. The real property, zoned R-2 Traditional Family Residence District, is located at the west end of West Madison Street.**

(see Court Reporter's Transcript)

The Hearing was closed at approximately 7:07pm on a motion by Mr. Marcum and second by Ms. Horaz.

Roll call: Gockman-yes, Goins-yes, Horaz-yes, Marcum-yes. Motion carried 4-0.

Unfinished Business None

New Business

1. **PZC 2018-10** James McNamara (see above description)

Action Item

Variance

There was no discussion and Ms. Goins reviewed the Findings of Fact with the Commission. Ms. Horaz and Mr. Marcum, respectively, moved and seconded to approve them and made a motion as follows: In consideration of testimony presented during a Public Hearing on June 13, 2018 and approval of the Findings of Fact, the Planning and Zoning Commission recommends approval of a request to vary the accessory structure location regulation contained in Section 10-3-12 of the United City of Yorkville Zoning Ordinance to permit a detached accessory garage located in the front yard of the subject property.

Roll call: Goins-yes, Horaz-yes, Marcum-yes. Gockman-yes. Carried 4-0.

2. **PZC 2018-11 Michael and Dayle Saar have filed an application with Kendall County requesting a rezone from A-1 Agricultural District to R-1 Residential District on 4.2 acres of unincorporated land to market the site for single family residential use. The real property is located along the south edge of Route 71 just south of the Timbercreek Drive and Route 71 intersection.**

Matt Asselmeier said Mr. Saar wishes to retain ownership of the northeast portion of the lot and market the rest of the property as a single site.

Action Item

Mile and One Half Review

The Commissioners had no issue with the request.

Additional Business

Mr. Engberg discussed the Downtown Form Based Code and Streetscape Plan public outreach event to be held during the Summer Solstice festival. They are seeking feedback from the public. Mr. Marcum commented that he saw A WSPY news feed regarding an idea to reduce the number of driving lanes to 3 in downtown Yorkville, to increase parking. However, Mr. Engberg said it will most likely be pulled from the plan due to some opposition.

Adjournment

There was no further business and the meeting was adjourned at 7:18pm on a motion by Commissioners Gockman and Marcum, respectively. Approved on voice vote.

Respectfully submitted by
Marlys Young, Minute Taker

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

UNITED CITY OF YORKVILLE
YORKVILLE, ILLINOIS

PLANNING AND ZONING COMMISSION MEETING
PUBLIC HEARING

800 Game Farm Road
Yorkville, Illinois

Wednesday, June 13, 2018
7:00 p.m.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

PRESENT:

Ms. Reagan Flavin Goins, Chairman,
Ms. Deborah Horaz,
Mr. Bill Gockman,
Mr. Donald Marcum.

ALSO PRESENT:

Mr. Jason Engberg, Senior Planner,
Ms. Marlys Young, Minute Taker.

- - - - -

1 (WHEREUPON, the following
2 proceedings were had in
3 public hearing:)

4 CHAIRMAN GOINS: There is one public
5 hearing scheduled for tonight's Planning and
6 Zoning Commission meeting. The purpose of this
7 hearing is to invite testimony from members of
8 the public regarding the proposed request that is
9 being considered before this commission tonight.

10 Public testimony from persons
11 present who wish to speak may be for or against
12 the request or to ask questions of the petitioner
13 regarding the request being heard.

14 Those persons wishing to testify are
15 asked to speak clearly, one at a time, and state
16 your name and who you represent, if anyone. You
17 are also asked to sign in at the podium.

18 If you plan to speak during
19 tonight's public hearing as a petitioner or as a
20 member of the public, please stand -- anybody
21 wishing to speak, please stand -- raise your
22 right hand, and repeat after me.

23 (Witness sworn.)

24 CHAIRMAN GOINS: The order for receiving

1 testimony will be as follows: First will be the
2 petitioner presentation; second, those who wish
3 to speak in favor of the request; third, those
4 who wish to speak in opposition of the request;
5 fourth, questions from the Planning and Zoning
6 Commissioners to the petitioner.

7 May I have a motion to open the
8 public hearing on Petition number PZC 2018-10?

9 MS. HORAZ: So moved.

10 MR. GOCKMAN: Second.

11 CHAIRMAN GOINS: Roll call vote on the
12 motion please.

13 MS. YOUNG: Gockman.

14 MR. GOCKMAN: Yes.

15 MS. YOUNG: Goins.

16 CHAIRMAN GOINS: Yes.

17 MS. YOUNG: Horaz.

18 MS. HORAZ: Yes.

19 MS. YOUNG: And Marcum.

20 MR. MARCUM: Yes.

21 CHAIRMAN GOINS: Moving on to the public
22 hearing, PZC 2018-10 --

23 MR. ENGBERG: Can we get someone to read
24 the agenda item, or you can do it?

1 CHAIRMAN GOINS: Public hearing PZC
2 2018-10, James McNamara, petitioner, has filed an
3 application with the United City of Yorkville,
4 Kendall County, Illinois, requesting an accessory
5 structure location variance for 515 West Madison
6 Street. The purpose of this request is to allow
7 a detached garage to be placed in the front
8 yard.

9 The real property is zoned R-2
10 Traditional Family Residence District and is
11 located at the west end of West Madison Street.

12 MR. ENGBERG: All right. And I put a
13 memo in here outlining everything. Mr. McNamara
14 is here, if you want to give us a rundown of what
15 you are requesting.

16 MR. McNAMARA: Sure. Do you want me
17 over here?

18 MR. ENGBERG: Sure.

19 MR. McNAMARA: I'm not much of a public
20 speaker, but there's not much public here.

21 My lot is a very unusual shape and
22 size. In order for me to look at putting a
23 garage in, it doesn't fall under the zoning that
24 I had hoped it would have done, so, hence, this

1 is why I'm here today.

2 I think you have copies of where I'm
3 going to put it, and the main issue is everything
4 behind me is unaccessible, so my back yard is --
5 I don't have a driveway that goes to it, and my
6 side yard, it falls off into a valley or a
7 ravine, whichever you'd like to call it, so the
8 only feasible place to put the garage is where
9 I've stated.

10 There is ten houses immediately on
11 West Madison; nine of them have two-car garages,
12 both detached, attached, some of them slightly
13 forward of the house line, some of them -- you
14 know, it's very individual on our street.

15 I understand that the zoning is --
16 if I was in a subdivision and I wanted to put a
17 two-car garage at the front of my house, it would
18 look unusual, but I don't think it does in any
19 way, shape or form. If anything, it ties into my
20 closest neighbor where her garage is, so, yeah.

21 MR. ENGBERG: And, additionally, I added
22 some of the pictures Mr. McNamara gave me of the
23 location. He needs the garage because there is a
24 giant walnut tree sprinkling down walnuts all

1 over the driveway, so he's kind of got a
2 makeshift tent thing.

3 That's kind of where the garage
4 would go, and then the rest of the details on the
5 shape of the lot and how it's sized and why the
6 yards work out the way they do are in the memo to
7 kind of clarify. It's a very unusual way the
8 building is on the lot, as he stated.

9 CHAIRMAN GOINS: Thank you.

10 MR. ENGBERG: All right.

11 MR. McNAMARA: All right. Thank you.

12 CHAIRMAN GOINS: Is there anyone present
13 who wishes to speak in favor of the request of
14 the petition of Mr. McNamara?

15 (No response.)

16 CHAIRMAN GOINS: Seeing as there is no
17 one, anyone who wishes to speak in opposition of
18 the request?

19 (No response.)

20 CHAIRMAN GOINS: There is no one.

21 MR. ENGBERG: You guys can ask
22 questions.

23 CHAIRMAN GOINS: Do any members have
24 questions of Mr. McNamara?

1 MR. MARCUM: No.

2 MR. GOCKMAN: No.

3 MS. HORAZ: I do not.

4 CHAIRMAN GOINS: Okay. No questions for
5 you.

6 MR. ENGBERG: And any questions for me,
7 the memo, anything like that? It is pretty
8 clear; Staff is supporting the variance because
9 of the natural hardship that was brought by the
10 shape of the land.

11 MS. HORAZ: I drove by it, I can see
12 your situation.

13 CHAIRMAN GOINS: Since all public
14 testimony regarding this petition has been taken,
15 may I have a motion to close the taking of
16 testimony in this public hearing?

17 MR. GOCKMAN: So moved.

18 MS. HORAZ: Second.

19 CHAIRMAN GOINS: Roll call vote on the
20 motion, please.

21 MS. YOUNG: Gockman.

22 MR. GOCKMAN: Yes.

23 MS. YOUNG: Goins.

24 CHAIRMAN GOINS: Yes.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

MS. YOUNG: Horaz.

MS. HORAZ: Yes.

MS. YOUNG: Marcum.

MR. MARCUM: Yes.

(Which were all the
proceedings had in the
public hearing portion
of the meeting.)

---o0o---

1 STATE OF ILLINOIS)
) SS.
2 COUNTY OF LASALLE)

3 I, Christine M. Vitosh, a Certified Shorthand
4 Reporter, do hereby certify that I transcribed
5 the proceedings had at the public hearing and
6 that the foregoing, Pages 1 through 10,
7 inclusive, is a true, correct and complete
8 computer-generated transcript of the proceedings
9 had at the time and place aforesaid.

10 I further certify that my certificate annexed
11 hereto applies to the original transcript and
12 copies thereof, signed and certified under my
13 hand only. I assume no responsibility for the
14 accuracy of any reproduced copies not made under
15 my control or direction.

16 As certification thereof, I have hereunto set
17 my hand this 28th day of June, A.D., 2018.

18
19
20
21
22
23
24

Christine M. Vitosh, CSR
Illinois CSR No. 084-002883

0	C	E		
084-002883 [1] - 10:20	car [2] - 6:11, 6:17	end [1] - 5:11	3:7, 3:19, 4:8, 4:22, 5:1, 8:16, 9:7, 10:5	4:19, 9:3
1	certificate [1] - 10:10	Engberg [1] - 2:9	hence [1] - 5:24	Mariys [1] - 2:10
1 [1] - 10:6	certification [1] - 10:16	ENGBERG [7] - 4:23, 5:12, 5:18, 6:21, 7:10, 7:21, 8:6	hereby [1] - 10:4	McNamara [8] - 5:2, 5:13, 5:16, 5:19, 6:22, 7:11, 7:14, 7:24
10 [1] - 10:6	Certified [1] - 10:3		hereto [1] - 10:11	MEETING [1] - 1:9
13 [1] - 1:19	certified [1] - 10:12		hereunto [1] - 10:16	meeting [2] - 3:6, 9:8
2	certify [2] - 10:4, 10:10	F	hoped [1] - 5:24	member [1] - 3:20
2018 [2] - 1:19, 10:17	Chairman [1] - 2:2	fall [1] - 5:23	HORAZ [6] - 4:9, 4:18, 8:3, 8:11, 8:18, 9:2	members [2] - 3:7, 7:23
2018-10 [3] - 4:8, 4:22, 5:2	CHAIRMAN [15] - 3:4, 3:24, 4:11, 4:16, 4:21, 5:1, 7:9, 7:12, 7:16, 7:20, 7:23, 8:4, 8:13, 8:19, 8:24	falls [1] - 6:6	Horaz [3] - 2:3, 4:17, 9:1	memo [3] - 5:13, 7:6, 8:7
28th [1] - 10:17	Christine [2] - 10:3, 10:20	Family [1] - 5:10	house [2] - 6:13, 6:17	Minute [1] - 2:10
5	City [1] - 5:3	Farm [1] - 1:15	houses [1] - 6:10	motion [4] - 4:7, 4:12, 8:15, 8:20
515 [1] - 5:5	CITY [1] - 1:5	favor [2] - 4:3, 7:13	I	moved [2] - 4:9, 8:17
7	clarify [1] - 7:7	feasible [1] - 6:8	ILLINOIS [2] - 1:6, 10:1	moving [1] - 4:21
7:00 [1] - 1:20	clear [1] - 8:8	filed [1] - 5:2	Illinois [3] - 1:16, 5:4, 10:20	MR [18] - 4:10, 4:14, 4:20, 4:23, 5:12, 5:16, 5:18, 5:19, 6:21, 7:10, 7:11, 7:21, 8:1, 8:2, 8:6, 8:17, 8:22, 9:4
8	clearly [1] - 3:15	first [1] - 4:1	immediately [1] - 6:10	MS [14] - 4:9, 4:13, 4:15, 4:17, 4:18, 4:19, 8:3, 8:11, 8:18, 8:21, 8:23, 9:1, 9:2, 9:3
800 [1] - 1:15	close [1] - 8:15	Flavin [1] - 2:2	inclusive [1] - 10:7	N
A	closest [1] - 6:20	following [1] - 3:1	individual [1] - 6:14	name [1] - 3:16
A.D [1] - 10:17	COMMISSION [1] - 1:9	foregoing [1] - 10:6	invite [1] - 3:7	natural [1] - 8:9
accessory [1] - 5:4	commission [1] - 3:9	form [1] - 6:19	issue [1] - 6:3	needs [1] - 6:23
accuracy [1] - 10:14	Commission [1] - 3:6	forward [1] - 6:13	item [1] - 4:24	neighbor [1] - 6:20
added [1] - 6:21	Commissioners [1] - 4:6	fourth [1] - 4:5	J	nine [1] - 6:11
additionally [1] - 6:21	complete [1] - 10:7	front [2] - 5:7, 6:17	James [1] - 5:2	number [1] - 4:8
aforsaid [1] - 10:9	computer [1] - 10:8	G	Jason [1] - 2:9	O
agenda [1] - 4:24	computer-generated [1] - 10:8	Game [1] - 1:15	June [2] - 1:19, 10:17	OF [3] - 1:5, 10:1, 10:2
allow [1] - 5:6	considered [1] - 3:9	garage [7] - 5:7, 5:23, 6:8, 6:17, 6:20, 6:23, 7:3	K	one [4] - 3:4, 3:15, 7:17, 7:20
ALSO [1] - 2:8	control [1] - 10:15	garages [1] - 6:11	Kendall [1] - 5:4	open [1] - 4:7
AND [1] - 1:9	copies [3] - 6:2, 10:12, 10:14	generated [1] - 10:8	kind [3] - 7:1, 7:3, 7:7	opposition [2] - 4:4, 7:17
annexed [1] - 10:10	correct [1] - 10:7	giant [1] - 6:24	L	order [2] - 3:24, 5:22
application [1] - 5:3	COUNTY [1] - 10:2	Gockman [3] - 2:4, 4:13, 8:21	land [1] - 8:10	original [1] - 10:11
applies [1] - 10:11	County [1] - 5:4	GOCKMAN [5] - 4:10, 4:14, 8:2, 8:17, 8:22	LASALLE [1] - 10:2	outlining [1] - 5:13
assume [1] - 10:13	CSR [2] - 10:20, 10:20	Goins [3] - 2:2, 4:15, 8:23	line [1] - 6:13	P
attached [1] - 6:12	D	GOINS [15] - 3:4, 3:24, 4:11, 4:16, 4:21, 5:1, 7:9, 7:12, 7:16, 7:20, 7:23, 8:4, 8:13, 8:19, 8:24	located [1] - 5:11	p.m [1] - 1:20
B	Deborah [1] - 2:3	guys [1] - 7:21	location [2] - 5:5, 6:23	Pages [1] - 10:6
behind [1] - 6:4	detached [2] - 5:7, 6:12	H	look [2] - 5:22, 6:18	persons [2] - 3:10, 3:14
Bill [1] - 2:4	details [1] - 7:4	hand [3] - 3:22, 10:13, 10:17	M	petition [2] - 7:14,
brought [1] - 8:9	direction [1] - 10:15	hardship [1] - 8:9	Madison [3] - 5:5, 5:11, 6:11	
building [1] - 7:8	District [1] - 5:10	heard [1] - 3:13	main [1] - 6:3	
	Donald [1] - 2:5	HEARING [1] - 1:10	makeshift [1] - 7:2	
	done [1] - 5:24	hearing [10] - 3:3, 3:5,	MARCUM [3] - 4:20, 8:1, 9:4	
	down [1] - 6:24		Marcum [3] - 2:5,	
	driveway [2] - 6:5, 7:1			
	drove [1] - 8:11			
	during [1] - 3:18			

<p>8:14 Petition [1] - 4:8 petitioner [5] - 3:12, 3:19, 4:2, 4:6, 5:2 pictures [1] - 6:22 place [2] - 6:8, 10:9 placed [1] - 5:7 plan [1] - 3:18 Planner [1] - 2:9 PLANNING [1] - 1:9 Planning [2] - 3:5, 4:5 podium [1] - 3:17 portion [1] - 9:7 PRESENT [2] - 2:1, 2:8 present [2] - 3:11, 7:12 presentation [1] - 4:2 pretty [1] - 8:7 proceedings [4] - 3:2, 9:6, 10:5, 10:8 property [1] - 5:9 proposed [1] - 3:8 PUBLIC [1] - 1:10 public [15] - 3:3, 3:4, 3:8, 3:10, 3:19, 3:20, 4:8, 4:21, 5:1, 5:19, 5:20, 8:13, 8:16, 9:7, 10:5 purpose [2] - 3:6, 5:6 put [4] - 5:12, 6:3, 6:8, 6:16 putting [1] - 5:22 PZC [3] - 4:8, 4:22, 5:1</p> <p style="text-align: center;">Q</p> <p>questions [6] - 3:12, 4:5, 7:22, 7:24, 8:4, 8:6</p>	<p>3:13, 4:3, 4:4, 5:6, 7:13, 7:18 requesting [2] - 5:4, 5:15 Residence [1] - 5:10 response [2] - 7:15, 7:19 responsibility [1] - 10:13 rest [1] - 7:4 Road [1] - 1:15 roll [2] - 4:11, 8:19 rundown [1] - 5:14</p> <p style="text-align: center;">S</p> <p>scheduled [1] - 3:5 second [3] - 4:2, 4:10, 8:18 see [1] - 8:11 seeing [1] - 7:16 Senior [1] - 2:9 set [1] - 10:16 shape [4] - 5:21, 6:19, 7:5, 8:10 Shorthand [1] - 10:3 side [1] - 6:6 sign [1] - 3:17 signed [1] - 10:12 situation [1] - 8:12 size [1] - 5:22 sized [1] - 7:5 slightly [1] - 6:12 someone [1] - 4:23 speaker [1] - 5:20 sprinkling [1] - 6:24 SS [1] - 10:1 Staff [1] - 8:8 stand [2] - 3:20, 3:21 STATE [1] - 10:1 state [1] - 3:15 Street [2] - 5:6, 5:11 street [1] - 6:14 structure [1] - 5:5 subdivision [1] - 6:16 supporting [1] - 8:8 sworn [1] - 3:23</p>	<p>third [1] - 4:3 ties [1] - 6:19 today [1] - 6:1 tonight [1] - 3:9 tonight's [2] - 3:5, 3:19 Traditional [1] - 5:10 transcribed [1] - 10:4 transcript [2] - 10:8, 10:11 tree [1] - 6:24 true [1] - 10:7 two [2] - 6:11, 6:17 two-car [2] - 6:11, 6:17</p>	<p>1:6 Yorkville [2] - 1:16, 5:3 YOUNG [8] - 4:13, 4:15, 4:17, 4:19, 8:21, 8:23, 9:1, 9:3 Young [1] - 2:10</p>
		U	Z
		<p>unaccessible [1] - 6:4 under [3] - 5:23, 10:12, 10:14 UNITED [1] - 1:5 United [1] - 5:3 unusual [3] - 5:21, 6:18, 7:7</p>	<p>zoned [1] - 5:9 ZONING [1] - 1:9 zoning [2] - 5:23, 6:15 Zoning [2] - 3:6, 4:5</p>
R		V	
<p>R-2 [1] - 5:9 raise [1] - 3:21 ravine [1] - 6:7 read [1] - 4:23 Reagan [1] - 2:2 real [1] - 5:9 receiving [1] - 3:24 regarding [3] - 3:8, 3:13, 8:14 repeat [1] - 3:22 Reporter [1] - 10:4 represent [1] - 3:16 reproduced [1] - 10:14 request [8] - 3:8, 3:12,</p>		<p>valley [1] - 6:6 variance [2] - 5:5, 8:8 Vitosh [2] - 10:3, 10:20 vote [2] - 4:11, 8:19</p>	
		W	
<p>R-2 [1] - 5:9 raise [1] - 3:21 ravine [1] - 6:7 read [1] - 4:23 Reagan [1] - 2:2 real [1] - 5:9 receiving [1] - 3:24 regarding [3] - 3:8, 3:13, 8:14 repeat [1] - 3:22 Reporter [1] - 10:4 represent [1] - 3:16 reproduced [1] - 10:14 request [8] - 3:8, 3:12,</p>	<p style="text-align: center;">T</p> <p>Taker [1] - 2:10 ten [1] - 6:10 tent [1] - 7:2 testify [1] - 3:14 testimony [5] - 3:7, 3:10, 4:1, 8:14, 8:16 thereof [2] - 10:12, 10:16</p>	<p>walnut [1] - 6:24 walnuts [1] - 6:24 Wednesday [1] - 1:19 West [3] - 5:5, 5:11, 6:11 west [1] - 5:11 WHEREUPON [1] - 3:1 whichever [1] - 6:7 wish [3] - 3:11, 4:2, 4:4 wishes [2] - 7:13, 7:17 wishing [2] - 3:14, 3:21 Witness [1] - 3:23</p>	
		Y	
		<p>yard [3] - 5:8, 6:4, 6:6 yards [1] - 7:6 YORKVILLE [2] - 1:5,</p>	



Memorandum

To: Public Works and Planning and Zoning Commission
From: Erin Willrett, Assistant City Administrator
CC: Bart Olson, City Administrator
Date: July 17, 2018 & July 18, 2018
Subject: Modifying Codified Ordinance Chapter 8, Chapter 10 and 18 for Small Wireless Facilities

Summary

Consideration of updates to the Codified Ordinance Chapter 8 Construction of Utility Facilities in Rights of Way, Chapter 10 Building Permit Fees and Chapter 18 Telecommunication and Antenna Regulations.

Background

Municipalities throughout Illinois have seen a proliferation of small cell antenna applications from wireless/phone companies for both an array of improvements to existing utility poles and new poles within the right of way. The City Council approved changes to Chapter 8 and Chapter 18 in June, 2017 when the Illinois Municipal League (IML) recommended changes to municipal ordinances regarding small cell siting within the rights-of-way in anticipation of the recently approved legislation. Once again, the IML has distributed model documents to assist municipalities in implementing allowed regulations under the newly adopted Small Wireless Facilities Deployment Act (P.A. 100-0585).

Staff took the model and incorporated the recommendations for the Small Wireless Facilities into Chapter 8 Construction of Utility Facilities in Rights of Way, Chapter 10 Building Permit Fees and Chapter 18 Telecommunication and Antenna Regulations of the City's Codified Ordinances. All of these Ordinances will be reviewed by the Public Works Committee on July 17th. Chapter 18 will additionally go to the July 18th Special PZC meeting for a Public Hearing regarding a Text Amendment to the Chapter, because it is a Chapter within the Zoning Code and then back to City Council for a vote on all Ordinances, with the anticipated meeting date of July 24, 2018.

In the attached red-lined version of Chapter 8, staff added several definitions per the IML recommended ordinance. A "Collocate or Collocation" definition was added. This definition is the trend that other municipalities are seeing installed, where the installation of the wireless facilities is on or adjacent to a wireless support structure or existing utility pole. A definition was also added for "Small Wireless Facility" which accompanies the definition which was added in 2017 of Small Cell Facilities, only this is a wireless facility. Within Chapter 8, Section 15, Location of Facilities, Free Standing Facilities – Above Ground, staff deleted the nine additional requirements for above ground free standing facilities that were added in 2017 per the IML. The new section that was added to the chapter regarding small wireless facilities is: 7-8-17: Small Wireless Facilities. This new section includes regulation for permitted uses, the permit process, including the application process, conditions, including height, spacing and design, and exceptions. All other items and processes within the Chapter remain the same. A permit is required for construction and will be reviewed by staff and the variance process also remains the same. The following is a break-down of the new processes:

Type of Facility Most Likely to be Applied for:

Small Wireless Facility: A wireless facility that meets both of the following qualifications: (i) each antenna is located inside an enclosure of no more than 6 cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than 6 cubic feet; and (ii) all other wireless equipment attached directly to a utility pole associated with the facility is cumulatively no more than 25 cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meter, concealment elements, telecommunications demarcation box, ground-based enclosures, grounding equipment, power transfer switch, cut-off switch, and vertical cable runs for the connection of power and other services.

Proposed Application Process:

In order to apply for a permit an application must be received stating:

- The site specific structural integrity and a make-ready analysis of a municipal utility pole as prepared by a structural engineer;
- The location where each proposed small wireless facility or utility pole would be installed including a depiction of the completed facility; specifications and drawings of each facility as it is proposed to be installed by a structural engineer;
- The equipment type and model numbers for the antennas and all other wireless equipment associated with the facility;
- A proposed schedule of the installation and completion of each facility;
- Certification that the collocation complies with the collocation requirements (as written in the ordinance);
- If the facility is to be attached to an existing pole owned by an entity other than the City, the wireless provider shall provide legally competent evidence of the consent of the owner of such pole to the proposed collocation.

Processing Application:

The City shall process the application on a first come first serve basis for collocation on the same utility pole or wireless support structure. It shall be processed on a nondiscriminatory basis and shall be deemed approved if the City fails to approve or deny the application within 90 days after the submission of a completed application. However, if an applicant intends to proceed with the permitted activity on a deemed approved basis, the applicant shall notify the City in writing of its intention to invoke the deemed approved remedy no sooner than 75 days after the submission of the completed application. The permit shall be deemed approved on the latter of the 90th day after submission of the complete application or the 10th day after the receipt of the deemed approved notice by the City. The receipt of the deemed approved notice shall not preclude the City's denial of the permit request within the time limits as provided under this Ordinance.

Denial of Application:

The City shall deny an application which does not meet the requirements of this proposed ordinance. If there is a concern of public safety or if the utility pole or wireless support structure is required to be replaced before the requested collocation approval shall be conditioned on the replacement at the cost of the provider. The City shall document the basis for denial and send the documentation to the applicant on or before the day the City denies an application. The applicant may cure the deficiencies identified by the City and resubmit the revised application once within 30 days after notice of denial is sent to the applicant without paying an additional application fee. The City shall approve or deny the revised application within 30 days after the applicant resubmits the application or it is deemed approved. Failure to resubmit the revised application within 30 days of denial shall require

the applicant to submit a new application with applicable fees and recommencement of the City's review period. If the cure requires a new location, new or different structure to be collocated upon, new antennas or other wireless equipment associated with the small wireless facility the revised application does not apply. Within 30 days after an approved permit to collocate a small wireless facility on a municipal utility pole, the City and the applicant shall enter into a Master Pole Attachment Agreement, provided by the City for the initial collocation on a municipal utility pole by the application. For subsequent approved permits to collocate on a small wireless facility on a municipal utility pole, the City and the applicant shall enter into a License Supplement of the Master Pole Attachment Agreement.

Consideration of Completeness of Application:

Within 30 days after receiving an application, the City shall determine whether the application is complete and notify the applicant. If an application is incomplete, the City must specifically identify the missing information. An application shall be deemed complete if the City fails to provide notification to the applicant within 30 days after all documents, information and fees specifically enumerated in the City's permit application form are submitted by the applicant to the City. Processing deadlines are tolled from the time the City sends the notice of incompleteness to the time the applicant provides the missing information.

Collocation Applications:

An applicant seeking to collocate small wireless facilities within the jurisdiction of the City shall be allowed, at the applicant's discretion, to file a consolidated application and receive a single permit for the collocation of up to 25 small wireless facilities if the collocations each involve substantially the same type of small wireless facility and substantially the same type of structure. If an application includes multiple small wireless facilities, the City may remove small wireless facility collocations from the application and treat separately small wireless facility collocations for which incomplete information has been provided or that do not qualify for consolidated treatment or that are denied. The City may issue separate permits for each collocation that is approved in a consolidated application.

Duration of Permits:

The duration of a permit shall be for a period of not less than 5 years, and the permit shall be renewed for equivalent durations unless the City makes a finding that the small wireless facilities or the new or modified utility pole do not comply with the applicable City codes or any provision, condition or requirement contained in this Ordinance. If the Act is repealed as provided in Section 90 therein, renewals of permits shall be subject to the applicable City code provisions or regulations in effect at the time of renewal.

Maintenance of Facilities:

The wireless provider shall install, maintain, repair and modify its small wireless facilities in safe condition and good repair and in compliance with the requirements and conditions of this Ordinance. The wireless provider shall ensure that its employees, agents or contractors that perform work in connection with its small wireless facilities are adequately trained and skilled in accordance with all applicable industry and governmental standards and regulations.

Height Requirements:

The maximum height of a small wireless facility shall be no more than 10 feet above the utility pole or wireless support structure on which the small wireless facility is collocated.

New or replacement utility poles or wireless support structures on which small wireless facilities are collocated may not exceed the higher of:

- a. 10 feet in height above the tallest existing utility pole, other than a utility pole supporting only wireless facilities, that is in place on the date the application is submitted to the City, that is located within 300 feet of the new or replacement utility pole or wireless support structure and that is in the same right-of-way within the jurisdictional boundary of the City, provided the City may designate which intersecting right-of-way within 300 feet of the proposed utility pole or wireless support structures shall control the height limitation for such facility; or
- b. 45 feet above ground level.

Completion of Collocation Timeframe:

Collocation for which a permit is granted shall be completed within 180 days after issuance of the permit, unless the City and the wireless provider agree to extend this period or a delay is caused by make-ready work for a municipal utility pole or by the lack of commercial power or backhaul availability at the site, provided the wireless provider has made a timely request within 60 days after the issuance of the permit for commercial power or backhaul services, and the additional time to complete installation does not exceed 360 days after issuance of the permit. Otherwise, the permit shall be void unless the City grants an extension in writing to the applicant.

Annual Recurring Rate to Collocate:

A wireless provider shall pay to the City an annual recurring rate to collocate a small wireless facility on a City utility pole located in a right-of-way that equals (i) \$200 per year or (ii) the actual, direct and reasonable costs related to the wireless provider’s use of space on the City utility pole. If the City has not billed the wireless provider actual and direct costs, the fee shall be \$200 payable on the first day after the first annual anniversary of the issuance of the permit or notice of intent to collocate, and on each annual anniversary date thereafter.

Abandonment:

A small wireless facility that is not operated for a continuous period of 12 months shall be considered abandoned. The owner of the facility shall remove the small wireless facility within 90 days after receipt of written notice from the City notifying the wireless provider of the abandonment. The notice shall be sent by certified or registered mail, return receipt requested, by the City to the owner at the last known address of the wireless provider. If the small wireless facility is not removed within 90 days of such notice, the City may remove or cause the removal of such facility pursuant to the terms of its pole attachment agreement for municipal utility poles or through whatever actions are provided for abatement of nuisances or by other law for removal and cost recovery. A wireless provider shall provide written notice to the City if it sells or transfers small wireless facilities within the jurisdiction of the City. Such notice shall include the name and contact information of the new wireless provider.

Additionally, changes to Chapter 10, Building Permit Fees reflect the one-time application fees that were included in the Small Wireless Facilities Deployment Act (P.A. 100-0585). 3 categories were added as follows:

Small wireless facility on an existing utility pole or wireless support structure	\$650.00
Small wireless facility in a consolidated application for more than one facility on existing poles or wireless support structure.	\$350.00
Small wireless facility installation on a new utility pole.	\$1000.00

The changes to Chapter 18, which are also red-lined, include an updated definition of “Small Wireless Facility” to match the approved Act and it also matches the definition proposed to be included in Chapter 8. The definitions were also cleaned up to eliminate items that are no longer relevant. The Ordinance already cross references Chapter 8 if any facility is being constructed is located within the public right-of-way.

Recommendation

Staff recommends approval of the updates to the Codified Ordinance Chapter 8 Construction of Utility Facilities in Rights of Way, Chapter 10 Building Permit Fees and Chapter 18 Telecommunication and Antenna Regulations as it relates to Small Wireless Facilities.

Chapter 18

TELECOMMUNICATION TOWER AND ANTENNA REGULATIONS

10-18-1: DEFINITIONS:

10-18-2: APPLICABILITY:

10-18-3: GENERAL REQUIREMENTS:

10-18-4: PERMITTED USES:

10-18-5: SPECIAL USES AND ACCESSORY USES:

10-18-6: NONCONFORMING USES:

10-18-7: ANNUAL REPORTING OF INFORMATION:

10-18-1: DEFINITIONS:

ALTERNATIVE TOWER STRUCTURE: Manmade trees, clock towers, bell steeples, light poles and similar alternative design mounting structures that camouflage or conceal the presence of antennas and towers.

ANTENNA: Communications equipment that transmits or receives electromagnetic radio signals used in the provision of any type of wireless communications services [not including small wireless facilities](#).

ANTENNA STRUCTURES: Those structures which include the radiating and/or receiving system, its supporting structures (see definition of tower), and any appurtenance mounted thereon as defined by the FCC or any successor agency.

FAA: The Federal Aviation Administration.

FCC: The Federal Communications Commission.

HEIGHT: When referring to a tower or other structure, the distance measured from the finished

grade of the parcel to the highest point on the tower or other structure, including the base pad and antenna structures.

NO-IMPACT ANTENNA AND TOWERS: A tower or antenna which is either: a) virtually invisible to the casual observer, such as an antenna behind louvers on a building, or inside a steeple or similar structure, or b) camouflaged so as to blend in with its surroundings to such an extent that it is no more obtrusive to the casual observer than the structure on which it is: 1) placed, such as a rooftop, lighting standard, or existing tower, or 2) replacing, such as a school athletic field light standard.

~~**PERSONAL WIRELESS FACILITY:** Any facility for the provision of personal wireless services as defined by the FCC or any successor agency.~~

~~**PERSONAL WIRELESS SERVICES:** Commercial mobile services, unlicensed wireless services and common carrier wireless exchange access services as defined by the FCC or any successor agency.~~

PREEXISTING TOWERS OR ANTENNAS: Any tower or antenna for which a building permit or conditional use permit has been properly issued prior to the effective date hereof, including permitted towers and antennas that have not yet been constructed so long as such approval is current and not expired.

SMALL WIRELESS FACILITY: A wireless facility that meets both of the following qualifications: (i) each antenna is located inside an enclosure of no more than 6 cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than 6 cubic feet; and (ii) all other wireless equipment attached directly to a utility pole associated with the facility is cumulatively no more than 25 cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meter, concealment elements, telecommunications demarcation box, ground-based enclosures, grounding equipment, power transfer switch, cut-off switch, and vertical cable runs for the connection of power and other services. Small wireless facilities are permitted uses if they are collocated in right-of-way in any zoning district or outside rights-of-way in property zoned exclusively for commercial or industrial use.

TOWER: Any structure that is designed and constructed primarily for the purpose of supporting one (1) or more antennas for telephone, radio and similar communications purposes, including self-supporting lattice towers, guyed towers, or monopole towers. The term includes radio and television transmission towers, microwave towers, common carrier towers, cellular telephone towers, alternative tower structures, and the like. The term includes the structure and any support thereto. (Ord. 2014-73, 11-25-2014; amd. Ord. 2017-35, 6-27-2017)

10-18-2: APPLICABILITY:

A. New Towers And Antennas: All new towers or antennas in Yorkville shall be subject to these regulations, except as provided in subsections B through E of this section inclusive.

B. Amateur Radio Station Operator/Receive Only Antennas: This chapter shall not govern any tower, or the installation of any antenna, that is under eighty feet (80') in height and is owned and operated by a Federally licensed amateur radio station operator or is used exclusively for receive

only antennas. No receive only antenna shall exceed the highest point on the nearest residential rooftop of a dwelling by more than ten feet (10').

- C. Preexisting Towers Or Antennas: Existing towers and existing antennas which predated this chapter, shall not be required to meet the requirements of this chapter other than the requirements of subsections [10-18-3F](#), H and R of this chapter. All preexisting towers and antennas shall be subject to the tower and antenna administrative fee.

- D. AM Array: For purposes of implementing this chapter, AM array, consisting of one (1) or more tower units and supporting ground system which functions as one (1) AM broadcasting antenna, shall be considered one (1) tower. Measurements for setbacks and separation distances shall be measured from the outer perimeter of the towers included in the AM array. Additional tower units may be added within the perimeter of the AM array by right. (Ord. 2014-73, 11-25-2014)

- E. Within Public Right-Of-Way: If the tower and/or antenna is situated within the public right-of-way, such tower and/or antenna must meet the requirements of [title 7, chapter 8](#), "Construction Of Utility Facilities In Rights-Of-Way", of this Code. (Ord. 2017-35, 6-27-2017)

10-18-3: GENERAL REQUIREMENTS:

- A. Special Or Accessory Use: Antennas and towers may be considered either special or accessory uses. A different existing use of an existing structure on the same lot shall not preclude the installation of an antenna or tower on such lot.

- B. Lot Size: For purposes of determining whether the installation of a tower or antenna complies with Yorkville's development regulations, including, but not limited to, setback requirements, lot coverage requirements, and other such requirements, the dimensions of the entire lot shall control, even though the antennas or towers may be located on leased parcels within such lot.

- C. Inventory Of Existing Sites: Each applicant for approval of an antenna and/or tower shall provide to the Zoning Officer an inventory of its existing towers, antennas, or sites approved for towers or antennas, that are either within the jurisdiction of Yorkville or within one (1) mile of the border thereof, including specific information about the location, height, and design of each tower. The Zoning Officer may share such information with other applicants applying for administrative approvals or special use permits under this chapter or other organizations seeking to locate antennas within the jurisdiction of Yorkville, provided, however that the Zoning Officer is not, by sharing such information, in any way representing or warranting that such sites are available or suitable.

D. Aesthetics: Towers and antennas shall meet the following requirements:

1. Towers shall either maintain a galvanized steel finish or, subject to any applicable standards of the FAA, be painted a neutral color so as to reduce visual obtrusiveness.
2. At a tower site, the design of the buildings and related structures shall, to the extent possible, use materials, colors, textures, screening, and landscaping that will blend them into the natural settings and surrounding buildings.
3. If an antenna is installed on a structure other than a tower, the antenna and supporting electrical and mechanical equipment must be of a neutral color that is identical to, or closely compatible with, the color of the supporting structure so as to make the antenna and related equipment as visually unobtrusive as possible.

E. Lighting: Towers shall not be artificially lighted, unless required by the FAA or other applicable authority. If lighting is required, the lighting alternatives and design chosen must cause the least disturbance to the surrounding views.

F. State Or Federal Requirements: All towers must meet or exceed current standards or regulations of the FAA, the FCC and any other agency of the state or federal government with the authority to regulate towers and antennas. If such standards and regulations are changed, then the owners of the towers and antennas governed by this chapter shall bring such towers and antennas into compliance with such revised standards and regulations within six (6) months of the effective date of such standards and regulations, unless a more restrictive compliance schedule is mandated by the controlling state or federal agency. Failure to bring towers and antennas into compliance with such revised standards and regulations shall constitute grounds for the removal of the tower or antenna at the owner's expense.

G. Building Codes/Safety Standards: Any owner or operator of an antenna, antenna structure or tower shall maintain the antenna, antenna structure or tower in compliance with the standards contained in the current and applicable state or local building codes and the applicable standards for towers that are published by the national electrical code NFPA 70 and international building code; radio, television sec. 3108, as amended from time to time. If, upon inspection, the city of Yorkville concludes that a tower fails to comply with such codes and standards and constitutes a danger to persons or property, then upon notice being provided to the owner of the tower, the owner shall have thirty (30) days to bring such tower into compliance with such standards. Failure to bring the antenna, antenna structure, or tower into compliance within the thirty (30) day period shall constitute grounds for the removal of the antenna, antenna structure or tower at the owner's expense.

H. Measurement: For purposes of measurement, tower setbacks and tower separation distances shall be calculated and applied to facilities located in Yorkville irrespective of municipal and county jurisdictional boundaries.

I. Not Essential Services: Antennas, antenna structures, and towers shall be regulated and permitted pursuant to this chapter and shall not be regulated or permitted as essential services, public utilities, or private utilities.

J. Public Notice: For purposes of this chapter, any special use request, variance request, or appeal of an administratively approved use or special use shall require public notice and individual notice by the city of Yorkville to all abutting property owners and all properties that are located within two hundred fifty feet (250') of the zoning lot in question. Streets, alleys and watercourses shall not be considered in the determination of "abutting" nor in calculating the two hundred fifty feet (250').

K. Signs: No signs shall be allowed on an antenna or tower other than those required by the FCC.

L. Buildings And Support Equipment: Buildings and support equipment associated with antennas or towers shall comply with the requirements of subsection [10-18-5K](#) of this chapter.

M. Multiple Antenna/Tower Plan: The city of Yorkville encourages all plans for towers and antenna sites to be submitted in a single application for approval of multiple towers and/or antenna sites. Applications for approval of multiple sites shall be given priority in the review process.

N. Antenna On Existing Structures: Any antenna which is not attached to a tower may be approved by the city of Yorkville as an accessory use to any commercial, industrial, professional, institutional, or multi-family structure of eight (8) or more dwelling units, provided:

1. The antenna does not extend more than thirty feet (30') above the highest point of the structure;
2. The antenna complies with all applicable FCC and FAA regulations; and
3. The antenna complies with all applicable building codes and safety standards as referenced in subsection G of this section.

O. Antennas On Existing Towers: An antenna which is attached to an existing tower may be approved by the zoning officer and, to minimize adverse visual impacts associated with the proliferation and clustering of towers, collocation of antennas by more than one carrier on existing towers shall take precedence over the construction of new towers, provided such collocation is accomplished in a manner consistent with the following:

1. Additional Antenna: A tower which is modified or reconstructed to accommodate the collocation of an additional antenna shall be of the same tower type as the existing tower, unless the zoning officer allows reconstruction as a monopole.
2. Height:
 - a. An existing tower may be modified or rebuilt to a taller height, not to exceed thirty feet (30') over the tower's existing height, such height not exceeding one hundred fifty feet (150') in total, to accommodate the collocation of an additional antenna.
 - b. The height change referred to in subsection O2a of this section may only occur one time per communication tower.
 - c. The additional height referred to in subsection O2a of this section shall not require an additional distance separation. The tower's premodification height shall be used to calculate such distance separations.
3. On Site Location:
 - a. A tower which is being rebuilt to accommodate the collocation of an additional antenna may be moved on site within fifty feet (50') of its existing location.
 - b. After the tower is rebuilt to accommodate collocation, only one tower may remain on the site.
 - c. A relocated on site tower shall continue to be measured from the original tower location for purposes of calculating separation distances between towers. The relocation of a tower hereunder shall in no way be deemed to cause a violation of this chapter.
 - d. The on site relocation of a tower which comes within the separation distances to residential units or residentially zoned lands as established in this zoning ordinance shall only be permitted when approved by the zoning officer.
4. New Towers In Nonresidential Zoning Districts: An applicant may locate any new tower in an O, B-1, B-2, B-3, B-4, M-1, M-2, or A-1 zoning district, provided that: a) a licensed professional engineer certifies the tower can structurally accommodate the number of shared users proposed by the applicant; b) the zoning officer concludes the tower is in conformity with the goals set forth in this subsection O and the requirements of this subsection; c) the tower meets the setback and separation requirements in subsection [10-18-5E](#) of this chapter; and d) the tower meets the following height and usage criteria:
 - a. For a single user, up to and including one hundred twenty feet (120') in height;
 - b. For two (2) users, up to one hundred fifty feet (150') in height; and
 - c. For three (3) or more users, up to and including one hundred eighty feet (180') in height.

P. Roadway Access: All sites on which antennas, antenna structures and towers are located must have a passable roadway access of compacted macadam base not less than seven inches (7") thick surfaced with not less than two inches (2") of asphaltic concrete or some comparable dustless material.

Q. Fencing: The structures upon any site upon which an antenna, antenna structure, or tower is located shall be surrounded by an opaque screen which is no less than six feet (6') in height and equipped with an appropriate anticlimbing device. Screening materials shall include either wooden or chainlink fencing. Shrubbery and bushes shall be required, in addition to the wooden or chainlink fence, unless specifically waived by Yorkville in its discretion in appropriate cases.

R. Disguised Structures: The provider of an antenna, antenna structure, or tower may propose to disguise the proposed antenna, antenna structure or tower. Any such disguise must be aesthetically consistent with the character of the surrounding area and environment, and be constructed in such a manner where the health or safety of Yorkville residents shall not be endangered. Yorkville may require the disguise of an antenna, antenna structure or tower as a condition of approval of a building permit or special use permit if the antenna, antenna structure or tower is to be erected on a golf course or other public recreational area.

S. Annual Administrative Fee And Certifications:

1. The annual administration fee payable to the city of Yorkville by any owner and/or operator of an antenna, antenna structure, or tower shall be the sum of thirty five dollars (\$35.00) which shall be due on or before January 10 of each calendar year commencing with calendar year 2001.
2. In the event a tower is inspected and a certification provided by the owner and/or operator of said tower or related facility showing compliance with all regulations, the above fee shall be the only fee charged. In the event the owner and/or operator of an antenna, antenna structure, or tower fails to have the certification as is required annually to be filed with the city under the terms of this subsection, the owner and/or operator shall reimburse the city for the actual cost of the outside consultant the city deems necessary to conduct said inspection which shall be a minimum of three hundred fifty dollars (\$350.00) and any additional cost incurred therein.

The city of Yorkville reserves the right to increase or decrease the amount of the administrative fee as it deems necessary. A separate administrative fee shall be paid by each user or collocater on a tower.

T. Permit Required: Prior to the construction of an antenna, antenna structure or tower the provider of the radio, television, or telecommunications services shall obtain a permit from Yorkville for the erection of such antenna, antenna structure or tower. An applicant for a permit for an antenna, antenna structure, or tower shall pay a fee in accordance with the fee schedule set

forth in [title 8, chapter 10](#) of this code, plus any reasonable legal, engineering, or consulting fees at the conclusion of the review.

U. Waiver Of Provisions: An applicant can request a waiver of any provision of this chapter upon the showing of appropriate justification and benefit to the public. Such request shall be treated as a request for a variance and the appropriate procedures thereto shall apply. (Ord. 2014-73, 11-25-2014)

10-18-4: PERMITTED USES:

A. General: The following uses listed in this section are deemed to be permitted uses and shall not require administrative approval or a special use permit.

B. Uses: Antennas, antenna structures and towers are specifically permitted in any zoning classification, except that part of any zoning district which is located in a floodplain, so long as said antennas or towers conform to the following and all other requirements of this title:

Antennas and towers located on property owned, leased, or otherwise controlled by Yorkville, particularly and expressly including Yorkville's water tower sites, and city hall and police station sites, provided that a lease authorizing such antenna, antenna structure, or tower has been approved by Yorkville.

Antennas or towers are permitted to be located on the Burlington Northern Railroad easement running southwest and northeast through Yorkville, subject to subsections [10-18-3A](#) through U of this chapter.

No-impact antennas and towers. (Ord. 2014-73, 11-25-2014)

10-18-5: SPECIAL USES AND ACCESSORY USES:

A. General Provisions:

1. Radio and telecommunications antennas, antenna structures and towers used for ~~personal-wireless facilities, personal-wireless services,~~ radio transmission, or television transmission shall be subject to the special use provisions contained within section [10-4-9](#) of this title and applications for special use permits shall be subject to the procedures and requirements of this title, except as modified in this chapter.
2. In granting a special use permit, the plan commission may impose conditions to the extent the plan commission concludes such conditions are necessary to minimize any adverse effect of the proposed tower on adjoining properties.
3. Any information of an engineering nature that the applicant submits, whether civil, mechanical, or electrical, shall be certified by a licensed professional engineer.

4. An applicant for a special use permit shall submit the information described in this section and a nonrefundable fee as established by resolution of the city council of Yorkville to reimburse Yorkville for the cost of reviewing the application.
5. Antennas, antenna structures and towers shall be allowed as special uses only consistent with all of the requirements of this chapter in the following zoning districts: R-1, single-family suburban residence - private school, church, golf course, public utility facilities, public service use facilities with radio or TV tower sites only; R-2, single-family traditional residence - private school, church, golf course, public utility facilities, public service use facilities with radio or TV tower sites only; B-1, local business district; B-2, retail commerce business district; B-3, general business district; B-4, service business district; and A-1, agricultural district.
6. Antennas, antenna structures and towers shall be allowed as a special use in the E-1, estate district if it is consistent with all of the requirements of this chapter and the following criteria:
 - a. The parcel that any antennas, antenna structures and towers are located on must be at least two (2) acres.
 - b. The total height of the structure must be less than the distance from the base of the structure to the closest property line of all adjacent parcels.
7. Antennas, antenna structures and towers shall be allowed as accessory uses only consistent with all of the requirements of this chapter in the following zoning districts: M-1, limited manufacturing district, and M-2, general manufacturing district.

B. Information Required: In addition to any information required for applications for special use permits referenced above, each petitioner requesting a special use permit under this chapter for an antenna, antenna structures, and tower shall submit a scaled site plan and a scaled elevation view and other supporting drawings, calculations, and other documentation signed and sealed by appropriate licensed professionals, showing the location, type and dimensions of all improvements, including information concerning topography, radio frequency coverage, tower height requirements, setbacks, drives, proposed means of access, parking, fencing, landscaping, adjacent uses, adjacent roadway, and other information deemed necessary by Yorkville to be necessary to assess compliance for this chapter. In addition, the following information shall be supplied:

1. Legal description of the parent track and leased parcel (if applicable);
2. The setback distance between the proposed structure and the nearest residential unit, platted residentially zoned properties and unplatted residentially zoned property;
3. The separation distance from other structures in the inventory of existing sites submitted pursuant to subsection [10-18-3C](#) of this chapter shall be shown on an updated site plan or map and the applicant shall also identify the type of construction of the existing structure(s) and the owner/operator of the existing structure(s), if known;
4. A landscape plan showing specific landscape materials;
5. The method of fencing and finish color and, if applicable, the method of camouflage and illumination;

6. A description of compliance with subsections [10-18-3C](#), E, F, G, H, I, and M of this chapter and all applicable federal, state or local laws;
7. A notarized statement by the applicant as to whether construction of the tower will accommodate collocation of additional antennas for future users;
8. Identification of the entities providing the backhaul network for the structure(s) described in the application and other cellular sites owned or operated by the applicant in Yorkville;
9. A description of the suitability of the use of existing towers, other structures or alternative technology not requiring the use of towers or structures to provide the services to be provided through the use of the proposed new tower; and
10. A description of the feasible location(s) of future towers or antennas within Yorkville based upon existing physical, engineering, technological or geographical limitations in the event the proposed tower is erected.
11. An applicant shall be notified within thirty (30) days if the application is incomplete. The city shall make a decision on collocation within ninety (90) days and all other siting applications within one hundred fifty (150) days of the receipt of a completed application.

C. Factors Considered In Granting Special Use Permits: The city of Yorkville shall consider the following factors in determining whether to issue a special use permit above and beyond those factors referenced in section [10-4-9](#) of this title. The city of Yorkville may waive or reduce the burden on the petitioner of one or more of these criteria if Yorkville concludes that the goals of this chapter are better served thereby.

1. Height of the proposed antenna, antenna structure or tower;
2. Proximity of the antenna, antenna structure or tower to residential structures and residential district boundaries;
3. Nature of uses on adjacent and nearby properties;
4. Surrounding topography;
5. Surrounding tree coverage and foliage;
6. Design of the antenna, antenna structure or tower, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness;
7. Proposed ingress and egress.

D. Height: No antenna, antenna structure, or tower shall exceed a height of one hundred (100) linear feet in aerial height. Where an arm has been installed to facilitate collocation of an additional antenna on the existing antenna structure or tower, the arm shall not exceed a length of twelve (12) linear feet.

E. Setbacks And Separation:

1. Setbacks: Antennas, antenna structures or towers must be set back a distance equal to the height of the antenna, antenna structure, or tower from any off site, residential structure. Antenna structures, guylines, and equipment shelters must satisfy the minimum setback requirements for E-1, R-1, R-2, R-2D, B-1, B-2, B-3, B-4, M-1, M-2, and A-1 zoning districts.

2. Separation: The following separation requirements shall apply to all towers and antennas for which a special use permit is required; provided, however, that the plan commission may reduce the standard separation requirements if the goals of this chapter would be better served thereby, or if enforcement of said setback would effectively prohibit said tower:

a. Separation From Off Site Uses/Designated Area:

(1) Tower separation shall be measured from the base of the tower to the lot line of the off site uses and/or designated areas as specified in table 10.18.01 of this section, except as otherwise provided in table 10.18.01 of this section.

(2) Separation requirements for towers shall comply with the minimum standards established in table 10.18.01 of this section.

TABLE 10.18.01
SEPARATION REQUIREMENTS

Off Site Use/Designated Area	Separation Distance
Single-family or duplex residential units principal building	500 feet
Vacant single-family or duplex residentially zoned land which is either platted or has preliminary subdivision plan approval which is not expired	500 feet
Vacant unplatted residentially zoned lands, including unplatted residential use property without a valid preliminary subdivision plan or valid development plan approval and any multi-family residentially zoned land greater than duplex	500 feet
Existing multi-family residential units greater than duplex	100 feet or 100 percent of the tower height, whichever is greater
Nonresidentially zoned lands or nonresidential uses	None
The Fox River or any watercourse	500 feet, as measured

	from the shore
Major highways (as defined in the Yorkville comprehensive plan)	500 feet from the right of way

b. Separation Distances Between Towers:

(1) Separation distances between towers shall be applicable for and measured between the proposed tower and preexisting towers. The separation distances shall be measured by drawing or following a straight line between the base of the existing tower and the proposed base, pursuant to a site plan, of the proposed tower. The separation distances (listed in linear feet) shall be as shown in table 10.18.02 of this section.

TABLE 10.18.02
EXISTING TOWER SEPARATION DISTANCES

Existing Tower Type	Separation Distance			
	Lattice	Guyed	Monopole (Taller Than 75 Feet)	Monopole (Shorter Than 75 Feet)
Lattice	1,000	1,500	500	250
Guyed	1,000	1,750	1,500	1,250
Monopole (taller than 75 feet)	500	1,500	250	250
Monopole (shorter than 75 feet)	250	1,250	250	250

F. Siting On Wetland Prohibited: No antenna, antenna structure, or tower shall be located in an area which has been designated as a wetland either by the city of Yorkville, Kendall County, the state of Illinois department of natural resources, the United States department of the interior or the United States army corps of engineers, and any and all governmental bodies and agencies having jurisdiction.

G. FCC Signage: To the extent that signage is required by the FCC on an antenna structure, or tower, that signage shall constitute no more than five percent (5%) of the square footage of the antenna, antenna structure, or tower or shall be no larger than is required by the FCC, whichever shall constitute the smallest signage area.

H. Preservation Of Landscape: Existing mature tree growth and natural landforms on the proposed antenna, antenna structure, or tower site shall be preserved to the maximum extent possible.

I. Utilities And Access Required: Radio and telecommunications antennas, antenna structures, and towers, including, but not limited to, those used for personal wireless services, personal wireless facilities and unlicensed wireless services, shall be required to include adequate utilities, access, and/or other facilities necessary for the servicing of the antenna, antenna structure or tower. All such utilities shall be buried.

J. Signal Interference: No signal transmission from any antenna, antenna structure, or tower shall interfere with police, fire, public works or any other governmental radio band signals. In the case of the possibility of such interference based upon the frequencies selected for the proposed antenna, antenna structure, or tower, the petition for special use shall be denied.

K. Equipment Shelter And Equipment Cabinets:

1. Equipment Shelter: A provider of a radio, television, or telecommunications antenna, antenna structure, or tower may provide an equipment shelter on the site of the antenna, antenna structure, or tower. The square footage of the equipment shelter may not exceed more than twenty percent (20%) of the total square footage of the antenna, antenna structure or tower ground site or four hundred fifty (450) square feet, whichever is greater. At any antenna, antenna structure, or tower site in which more than one antenna has been collocated, no more than three (3) equipment shelters shall be allowed. Multiple equipment shelters shall be contained under one roof if at all practicably possible. No equipment shelter shall be approved as part of the site plan unless appropriate electrical power and road ingress and egress facilities are planned for inclusion at the equipment shelter site.

2. Equipment Cabinets:

a. In residential districts, the equipment cabinet or structure may be located in a front or side yard provided the cabinet or structure is no greater than four feet (4') in height or twenty four (24) square feet of gross floor area and the cabinet/structure is located a minimum of six feet (6') from all lot lines. The cabinet/structure shall be screened by hedging or shrubbery with an ultimate height of at least forty two (42) to forty eight inches (48") and a planted height of at least thirty six inches (36").

b. In a rear yard, provided the cabinet or structure is no greater than six feet (6') in height or sixty four (64) square feet in gross floor area. The structure or cabinet shall be screened by hedging or shrubbery with an ultimate height of eight feet (8') and a planted height of at least thirty six inches (36"). In all other instances, structures or cabinets shall be screened from view of all residential properties which abut or are directly across the street from the structure or cabinet by a solid fence six feet (6') in height or a hedge with an ultimate height of eight feet (8') and a planted height of thirty six inches (36").

c. In commercial or industrial districts the equipment cabinet or structure shall be no greater than six feet (6') in height or sixty four (64) square feet in gross floor area. The structure or cabinet shall be screened by a hedge or shrubbery with an ultimate height of eight feet (8') and a planted height of at least thirty six inches (36"). In all other instances, structures or cabinets shall be screened from view of all residential properties which abut or are directly across the street from the structure or cabinet

by a solid fence six feet (6') in height or a hedge with an ultimate height of eight feet (8') and a planted height of at least thirty six inches (36").

L. Code Requirements: Any antenna, antenna structure, or tower must meet code requirements established by the national electrical code, NFPA 70 and international building code; radio, television towers codes currently in effect as required by Yorkville and all applicable marking and lighting standards as established by the federal aviation administration.

M. Removal Of Abandoned Antennas, Antenna Structures, Or Towers: Any antenna, antenna structure, or tower that is not operated for a continuous period of twelve (12) months or for which the annual administrative fee is not paid within a twelve (12) month period shall be considered abandoned, and the owner of such antenna, antenna structure, or tower shall remove same from within ninety (90) days of receipt of written notice from Yorkville notifying the owner of such abandonment. If such antenna, antenna structure, or tower is not removed within said ninety (90) days Yorkville shall remove such antenna, antenna structure, or tower at the owner's expense and file a lien against the real estate for the cost of removal or such other action as provided by law. If there are two (2) or more users of a single antenna, antenna structure, or tower, then this provision shall not become effective until all users cease using the antenna, antenna structure, or tower.

N. Collocation: A request for approval of a special use permit for the installation of an antenna, alternative antenna, antenna structure or tower, the zoning board may by express condition require that the applicant shall allow, on a commercially reasonable basis, other providers of personal wireless telecommunications services to collocate additional antennas or antenna structures on a freestanding pole which is part of applicant's proposed personal wireless facility, where collocation is technologically feasible. (Ord. 2014-73, 11-25-2014)

10-18-6: NONCONFORMING USES:

A. Prohibited Expansion Of Nonconforming Use: Towers that are constructed and antennas that are installed in accordance with the provisions of this chapter shall not be deemed to constitute the expansion of a nonconforming use or structure.

B. Preexisting Towers: Preexisting towers shall be allowed to continue their usage as they presently exist. Routine maintenance (including replacement with a new tower of like construction and height) shall be permitted on such preexisting towers. New construction other than routine maintenance on a preexisting tower shall comply with the requirements of this chapter.

C. Rebuilding Damaged Or Destroyed Nonconforming Antennas, Antenna Structures Or Towers: Notwithstanding any provision in this chapter to the contrary, bona fide nonconforming antennas,

antenna structures or towers or antennas that are damaged or destroyed may be rebuilt without having first obtained administrative approval or a special use permit and without having to meet the separation requirements specified elsewhere in this chapter. The type, height, and location of the tower on site shall be of the same type and intensity as the original facility approved. Building permits to rebuild a facility shall comply with the then applicable building codes and shall be obtained within one hundred eighty (180) days from the date the facility is damaged or destroyed. If no permit is obtained within the time specified or if said permit expires, the tower or antenna shall be deemed abandoned as specified in subsection [10-18-5M](#) of this chapter. (Ord. 2014-73, 11-25-2014)

10-18-7: ANNUAL REPORTING OF INFORMATION:

Each owner of an antenna, antenna structure, or tower regulated under this chapter, and including those previously existing structures which would have been regulated under this chapter, shall, on an annual basis, furnish Yorkville with such information as is required by Yorkville to aid with the administration of this chapter, such as changes in availability of space on any tower for collocation of additional antennas, plans to abandon a position on a tower, thereby leaving space for the possible collocation of another antenna, plans and/or willingness to modify said tower and antenna structure so as to provide for the possibility of collocation, or intentions to abandon a tower structure, or other nonproprietary information as may be required by Yorkville. Upon written notice from the city of Yorkville to the owner thereof, the effective date of this chapter, which tower and/or antenna structure would otherwise be regulated by this chapter, shall register with Yorkville, and shall provide such nonproprietary information as is deemed useful by Yorkville for administration of this chapter. This section is specifically deemed to have retroactive effect. (Ord. 2014-73, 11-25-2014)

Chapter 10

BUILDING PERMIT FEES

8-10-1: FEE SCHEDULE; PAYMENT OF FEES; FEE WAIVER; MISCELLANEOUS FEES; SURCHARGE; STOP WORK ORDER; REFUNDS; CERTIFICATE OF OCCUPANCY; SEWER CONNECTION FEE:
8-10-2: EFFECT ON EXISTING FEES:

8-10-1: FEE SCHEDULE; PAYMENT OF FEES; FEE WAIVER; MISCELLANEOUS FEES; SURCHARGE; STOP WORK ORDER; REFUNDS; CERTIFICATE OF OCCUPANCY; SEWER CONNECTION FEE:  

The hereinafter set forth fee schedule for the building department is the applicable fee rate schedule for the United City Of Yorkville:

A. Fee Schedule:

Building permit fee:		
	New - commercial	\$750.00, plus \$0.20 per square foot
	Addition - commercial	\$500.00, plus \$0.20 per square foot
	Alteration - commercial	\$350.00, plus \$0.10 per square foot
	New - multiple-family residential	\$350.00, plus \$0.15 per square foot
	Alteration - multiple-family residential	\$175.00, plus \$0.10 per square foot
	New - one- and two-family residential	\$650.00, plus \$0.20 per square foot
	Addition - one- and two-family residential	\$125.00, plus \$0.10 per square foot
	Alteration - one- and two-family residential	\$50.00, plus \$0.05 per square foot

Improvements requiring a permit (plan review fee included):

Commercial/residential roofing	\$ 50.00
Fence, patio, window replacement, or siding	50.00
Deck	135.00
Residential driveway	50.00
Commercial driveway/parking lot	\$90.00, plus any additional engineering review fees (per resolution 2002-27), plus any additional consultant fees
Storage shed, pergola, arbor, or gazebo	\$ 50.00
Inground swimming pool	135.00
Aboveground swimming pool	90.00
Portable (temporary) swimming pool	No charge
Electrical service panel replacement	\$ 50.00
Electrical alteration (excluding fixture replacement)	50.00
Sign permit (without electric)	50.00
Sign permit (with electric)	100.00
Plumbing alteration (excluding fixture replacement)	\$135.00, plus any additional consultant fees
Detached garage	\$180.00
Demolition permit	90.00
Building relocation	50.00
Temporary parking (travel trailers)	200.00
Tent or similar type structure	50.00
Elevator/escalator units	\$50.00 per unit, plus any additional consultant fees
"Other" permits not listed that require code	\$ 50.00

	compliance or inspection approval	
	"Occupancy permit"	50.00
	"Temporary occupancy permit"	200.00
	Telecommunication tower	750.00
	Equipment shelter building for tower	750.00
	Additional antenna or a single user group of antennas on existing tower	250.00
	Small wireless facility on an existing utility pole or wireless support structure	\$650.00
	Small wireless facility in a consolidated application for more than one facility on existing poles or wireless support structure.	\$350.00
	Small wireless facility installation on a new utility pole.	\$1000.00

Plan review fees:

New - commercial: Plan review fee based on the size of the building in cubic feet		
	<u>Building Size</u>	<u>Plan Review Fee</u>
	Up to 60,000 cubic feet	\$355.00
	60,001 to 80,000 cubic feet	400.00
	80,001 to 100,000 cubic feet	475.00
	100,001 to 150,000 cubic feet	550.00
	150,001 to 200,000 cubic feet	650.00
	Over 200,000 cubic feet	\$650.00, plus \$6.50 per 10,000 cubic feet over
	Or, any consultant plan review fees	

Alteration - commercial: Plan review fee based on the size of the building in cubic feet		
	<u>Building Size</u>	<u>Plan Review Fee</u>
	Up to 60,000 cubic feet	\$177.50

	60,001 to 80,000 cubic feet	200.00
	80,001 to 100,000 cubic feet	237.50
	100,001 to 150,000 cubic feet	275.00
	150,001 to 200,000 cubic feet	325.00
	Over 200,000 cubic feet	\$325.00, plus \$3.25 per 10,000 cubic feet over
	Or, any consultant plan review fees	
	New - residential	\$100.00 per "dwelling unit", or any consultant plan review fees
	Engineering review fee	See section 11-8-2 of this code
Fire protection systems:		
	Fire detection/alarm systems	\$115.00 per 10,000 square feet of floor area, or any consultant fees
Fire sprinkler systems: This fee based on the following criteria:		
	<u>Number Of Sprinkler Heads</u>	<u>Permit Fee</u>
	Up to 200	\$250.00
	201 to 300	300.00
	301 to 500	400.00
	Over 500	\$450.00, plus \$0.60 per sprinkler over 500, or any consultant fees
Alternate fire suppression systems:		
	Standpipe	\$175.00 per standpipe riser
	Specialized extinguisher agent (dry or other chemical agent)	\$125.00 per 50 pounds agent
	Hood and duct cooking extinguisher agent	\$150.00 flat rate, per system, or any consultant fees

(Ord. 2010-23, 5-25-2010; amd. Ord. 2011-08, 3-22-2011)

B. Payment Of Fees: A permit shall not be valid until the fees prescribed by law have been paid. Nor shall an amendment to a permit be released until the additional fee, if any, has been paid.

C. Fee Waiver For Public Governmental Agencies: Permit fees associated with construction, alteration, or addition to any public governmental agency may be subject to a fifty (50) to one hundred percent (100%) discount with approval and consent of the city administrator. All out of pocket expenses and charges by outside agencies or consultants shall be paid in full prior to final approval and/or issuance of the certificate of occupancy.

D. Miscellaneous Fees: During the construction or remodeling process, inspections shall be made to ensure compliance with applicable building codes, ordinances, or any state and federal regulations.

Plumbing inspection fee	\$45.00 each, or any consultant fees
Miscellaneous inspection fee	\$35.00 each

In the event that a building official or city engineer determines, after a requested inspection, that the work fails to comply with the approved plans associated with the permit or fails to meet the requirements imposed by a local ordinance or a state statute, the permit holder may be subject to reinspection fees in accordance with the following schedule:

Building department:	
First reinspection	\$ 50.00
Second reinspection	75.00
3 or more reinspections	100.00 each
Engineering department reinspections	100.00 each

E. Surcharge: It shall be unlawful for any person, firm or corporation to erect, construct, alter, extend, repair, move, remove, demolish or occupy any building, structure or equipment regulated by the building code, or cause same to be done, in conflict with or in violation of any of the provisions of the building code. Any work performed prior to obtaining the appropriate permit shall be subject to a permit fee surcharge in the amount of fifty percent (50%) of the permit fee at a minimum charge of fifty dollars (\$50.00).

F. Stop Work Order: Upon notice from the building official that work on any building or structure is being prosecuted contrary to the provisions of the locally adopted building code or in an unsafe and dangerous manner, such work shall be immediately stopped. The stop work order shall be in writing and shall be given to the owner of the property involved, or to the owner's agent, or to the person doing the work; and shall state the conditions under which work will be permitted to resume. Any person who shall continue any work in or about the structure after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be subject to fines in the amount of two hundred dollars (\$200.00) to seven hundred fifty dollars (\$750.00) per offense. Each and every day constitutes a separate offense and shall be fined accordingly.

G. Refunds: Any and all permits subject to a refund shall be subject to review and approval by the city administrator.

H. Certificate Of Occupancy: No building or structure shall be used or occupied, and no change in the existing occupancy classification of a building or structure or portion thereof shall be made until the building official has issued a certificate of occupancy therefor as provided herein. Issuance of a certificate of occupancy shall not be construed as an approval of a violation of the provisions of the building code or of other ordinances of the United City Of Yorkville. Certificates presuming to give authority to violate or cancel the provisions of the building code or other ordinances of the United City Of Yorkville shall not be valid.

I. Sewer Connection Fee:

1. A fee is hereby established payable for each PE or drain unit at the issuance of every building permit issued by the city, for any parcel of real property located within the sanitary sewer service area depicted in exhibit A attached to the ordinance codified herein and incorporated herein by reference.
 - a. For purposes of residential sanitary sewer conversions, PE shall be calculated at the rate of twenty five dollars (\$25.00) per PE for single-family residential properties.
 - b. For all other properties the fee shall be calculated on the basis of twenty five dollars (\$25.00) per drain unit, as calculated per section [7-6-4-1](#) of this code.
 - c. The above fees will, in addition, accumulate interest from the time of expenditure by the city at a rate of eight percent (8%) per annum.

2. The above fees are to be paid for all building permits issued on real property located within the sanitary sewer service area depicted in exhibit A attached to the ordinance codified herein and incorporated herein by reference, for which a new sanitary sewer connection is required.
3. The fee is applicable to both property within the city and property outside the city boundaries which hook on to the city sanitary sewer system and are serviced by Yorkville-Bristol sanitary district plant.
4. This fee shall be required to be paid on all affected real properties after the ordinance codified herein is passed and approved by the city council; and due publication thereof.
5. The fees to be charged under the terms of the ordinance codified herein shall be imposed for a period of twenty (20) years from the passage date hereof.

This fee is in addition to any other fees charged by the city for any other purpose including any other sanitary sewer fees. (Ord. 2010-23, 5-25-2010)

8-10-2: EFFECT ON EXISTING FEES:

All existing building permit fees enacted by the city are hereby revoked. Prior ordinances affecting zoning, utility, sewer, water, and other hookup fees, land cash fees, and the like shall remain in full force and effect. (Ord. 2002-05, 3-26-2002)

Chapter 8

CONSTRUCTION OF UTILITY FACILITIES IN RIGHTS OF WAY

7-8-1: PURPOSE AND SCOPE:

7-8-2: DEFINITIONS:

7-8-3: ANNUAL REGISTRATION REQUIRED:

7-8-4: PERMIT REQUIRED; APPLICATIONS AND FEES:

7-8-5: ACTION ON PERMIT APPLICATIONS:

7-8-6: EFFECT OF PERMIT:

7-8-7: REVISED PERMIT DRAWINGS:

7-8-8: INSURANCE:

7-8-9: INDEMNIFICATION:

7-8-10: SECURITY:

7-8-11: PERMIT SUSPENSION AND REVOCATION:

7-8-12: CHANGE OF OWNERSHIP OR OWNER'S IDENTITY OR LEGAL STATUS:

7-8-13: GENERAL CONSTRUCTION STANDARDS:

7-8-14: TRAFFIC CONTROL:

7-8-15: LOCATION OF FACILITIES:

7-8-16: CONSTRUCTION METHODS AND MATERIALS:

7-8-17: SMALL WIRELESS FACILITIES

7-8-18: VEGETATION CONTROL:

7-8-19: REMOVAL, RELOCATION, OR MODIFICATIONS OF UTILITY FACILITIES:

7-8-20: CLEANUP AND RESTORATION:

7-8-21: MAINTENANCE AND EMERGENCY MAINTENANCE:

7-8-22: VARIANCES:

7-8-23: PENALTIES:

7-8-24: ENFORCEMENT:

7-8-1: PURPOSE AND SCOPE:  

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

B. Intent: In enacting this chapter, the city intends to exercise its authority over the rights of way in the city and, in particular, the use of the public ways and property by utilities, by establishing uniform standards to address issues presented by utility facilities, including, without limitation:

1. Prevent interference with the use of streets, sidewalks, alleys, parkways and other public ways and places;

2. Prevent the creation of visual and physical obstructions and other conditions that are hazardous to vehicular and pedestrian traffic;
3. Prevent interference with the facilities and operations of the city's utilities and of other utilities lawfully located in rights of way or public property;
4. Protect against environmental damage, including damage to trees, from the installation of utility facilities;
5. Protect against increased storm water runoff due to structures and materials that increase impermeable surfaces;
6. Preserve the character of the neighborhoods in which facilities are installed;
7. Preserve open space, particularly the tree lined parkways that characterize the city's residential neighborhoods;
8. Prevent visual blight from the proliferation of facilities in the rights of way; and
9. Assure the continued safe use and enjoyment of private properties adjacent to utility facilities locations.

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

D. Franchises, Licenses, Or Similar Agreements: The city, 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 City rights-of-way. Utilities that are not required by law to enter into such an agreement may request that the City enter into such an agreement. In such an agreement, the City may provide for terms and conditions inconsistent with this chapter.

E. Effect Of Franchises, Licenses, Or Similar Agreements:

1. Utilities Other Than Telecommunications Providers: In the event that a utility other than a telecommunications provider has a franchise, license or similar agreement with the City, such franchise, license or similar agreement shall govern and control during the term of such agreement and any lawful renewal or extension thereof.
2. Telecommunications Providers: In the event of any conflict with, or inconsistency between, the provisions of this chapter and the provisions of any franchise, license or similar agreement between the City and any telecommunications provider, the provisions of such franchise, license or similar

agreement shall govern and control during the term of such agreement and any lawful renewal or extension thereof.

F. Conflicts With Other Chapters: This chapter supersedes all chapters or parts of chapters adopted prior hereto that are in conflict herewith, to the extent of such conflict.

G. Conflicts With State And Federal Laws: In the event that applicable Federal or State laws or regulations conflict with the requirements of this chapter, the utility shall comply with the requirements of this chapter to the maximum extent possible without violating Federal or State laws or regulations.

H. Sound Engineering Judgment: The City shall use sound engineering judgment when administering this chapter and may vary the standards, conditions, and requirements expressed in this chapter when the City so determines. Nothing herein shall be construed to limit the ability of the City to regulate its rights-of-way for the protection of the public health, safety and welfare. (Ord. 2007-97, 12-18-2007)

7-8-2: DEFINITIONS:

As used in this chapter and unless the context clearly requires otherwise, the words and terms listed shall have the meanings ascribed to them in this section. Any term not defined in this section shall have the meaning ascribed to it in 92 Illinois Administrative Code section 530.30, unless the context clearly requires otherwise.

AASHTO: American Association of State Highway and Transportation Officials.

ANSI: American National Standards Institute.

ASTM: American Society for Testing and Materials.

ALTERNATIVE ANTENNA STRUCTURE: An existing pole or other structure within the public right-of-way that can be used to support an antenna and is not a utility pole or a City-owned infrastructure that may be designed to shield, conceal or disguise the presence of antennas or towers and blend with the surrounding setting. Alternative structures may include, but are not limited to, unobtrusive architectural features on new or existing structures, clock towers, flagpoles and church steeples.

ANTENNA: Communications equipment that transmits or receives electromagnetic radio signals used in the provision of any type of wireless communications services.

APPLICANT: A person applying for a permit under this chapter.

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.

CABLE OPERATOR: As defined in 47 USC 522(5).

CABLE SERVICE: As defined in 47 USC 522(6).

CABLE SYSTEM: As defined in 47 USC 522(7).

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.

CITY: The United City of Yorkville, Illinois.

CITY-OWNED INFRASTRUCTURE: Infrastructure in public right-of-way within the boundaries of the City, including, but not limited to, streetlights, traffic signals, towers, structures, or buildings owned, operated or maintained by the City.

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 nonrecoverable slope, and a clear run out area. The desired width is dependent upon the traffic volumes and speeds, and on the roadside geometry. Distances are specified in the AASHTO "Roadside Design Guide".

COATING: Protective wrapping or mastic cover applied to buried pipe for protection against external corrosion.

CODE: The Municipal Code of the United City of Yorkville, Illinois.

COLLOCATE or COLLATION: To install, mount, maintain, modify, operate, or replace wireless facilities on or adjacent to a wireless support structure or utility pole.

COMMUNICATIONS SERVICE: Cable service, as defined in 47 U.S.C. 522(6), as amended; information service, as defined in 47 U.S.C. 153(24), as amended; telecommunications service, as defined in 47 U.S.C. 153(53), as amended; mobile service, as defined in 47 U.S.C. 153(53), as amended; or wireless service other than mobile service.

COMMUNICATION SERVICE PROVIDER: A cable operator, as defined in 47 U.S.C. 522(5), as amended; a provider of information service, as defined in 47 U.S.C. 153(24), as amended; a telecommunications carrier, as defined in 47 U.S.C. 153(51), as amended; or a wireless provider.

CONDUCTOR: Wire carrying electrical current.

CONDUIT: A casing or encasement for wires or cables.

CONSTRUCTION OR CONSTRUCT: The installation, repair, maintenance, placement, alteration, enlargement, demolition, modification or abandonment in place of facilities.

COVER: The depth of earth or backfill over buried utility pipe or conductor.

CROSSING FACILITY: A facility that crosses one (1) or more right-of-way lines of a right-of-way.

DIRECTOR OF PUBLIC WORKS: The City Director of Public Works or his or her 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.

DISTRIBUTED ANTENNA SYSTEM (DAS): A type of personal wireless telecommunication facility consisting of a network of spatially separated antenna nodes connected to a common source via a transport medium that provides wireless service within a geographic area.

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

ENCASEMENT: Provision of a protective casing.

ENGINEER: The City Engineer or his or her designee.

EQUIPMENT: Materials, tools, implements, supplies, and/or other items used to facilitate construction of facilities.

EXCAVATION: The making of a hole or cavity by removing material, or laying bare by digging.

EXTRA HEAVY PIPE: Pipe meeting ASTM standards for this pipe designation.

FACILITY: All structures, devices, objects, and materials (including, but not limited to, track and rails, wires, ducts, fiber optic cable, antennas, vaults, boxes, equipment enclosures, cabinets, pedestals, poles, conduits, grates, covers, pipes, cables, and appurtenances thereto) located on, over, above, along, upon, under, across, or within rights-of-way under this chapter. For purposes of this chapter, the term "facility" shall not include any facility owned or operated by the City.

FCC: The Federal Communications Commission of the United States.

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 to a highway.

HAZARDOUS MATERIALS: Any substance or material which, due to its quantity, form, concentration, location, or other characteristics, is determined by the City Engineer 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: A specific type of right-of-way used for vehicular traffic including rural or urban roads or streets. "Highway" includes all highway land and improvements, including roadways, ditches and embankments, bridges, drainage structures, signs, guardrails, protective structures and appurtenances necessary or convenient for vehicle traffic.

HIGHWAY CODE: The Illinois Highway Code, 605 Illinois Compiled Statutes 5/1-101 et seq., as amended from time to time.

HOLDER: A person or entity that has received authorization to offer or provide cable or video service from the ICC pursuant to the Illinois Cable and Video Competition Law, 220 Illinois Compiled Statutes 5/21-401.

ICC: Illinois Commerce Commission.

IDOT: Illinois Department of Transportation.

JULIE: The Joint Utility Locating Information for Excavators Utility Notification Program.

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 (2) or more utilities.

LANDSCAPE SCREENING: The installation at grade of plantings, shrubbery, bushes or other foliage intended to screen the base of a personal wireless telecommunication facility from public view.

MAJOR INTERSECTION: The intersection of two (2) or more major arterial highways.

MICRO WIRELESS FACILITY: A small wireless facility that is not larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height and that has an exterior antenna, if any, no longer than 11 inches.

MONOPOLE: A structure composed of a single spire, pole or tower designed and used to support antennas or related equipment and that is not a utility pole, an alternative antenna structure, or a City-owned infrastructure.

MUNICIPAL UTILITY POLE: A utility pole owned or operated by the City in public rights-of-way.

OCCUPANCY: The presence of facilities on, over or under right-of-way.

PARALLEL FACILITY: A facility that is generally parallel or longitudinal to the centerline of a right-of-way.

PARKWAY: Any portion of the right-of-way not improved by street or sidewalk.

PAVEMENT CUT: The removal of an area of pavement for access to a facility or for the construction of a facility.

PERMITTEE: That entity to which a permit has been issued pursuant to sections [7-8-4](#) and [7-8-5](#) of this chapter.

PERSONAL WIRELESS TELECOMMUNICATION ANTENNA: An antenna that is part of a personal wireless telecommunications facility.

PERSONAL WIRELESS TELECOMMUNICATION EQUIPMENT: Equipment, exclusive of an antenna, that is part of a personal wireless telecommunications facility.

PERSONAL WIRELESS TELECOMMUNICATION FACILITY: An antenna, equipment, and related improvements used, or designed to be used, to provide wireless transmission of voice, data video streams, images, or other information including, but not limited to, cellular phone service, personal communication service, paging, and Wi-Fi antenna service.

PETROLEUM PRODUCTS PIPELINES: Pipelines carrying crude or refined liquid petroleum products including, but not limited to, gasoline, distillates, propane, butane, or coal slurry.

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).

PROMPT: That which is done within a period of time specified by the City. If no time period is specified, the period shall be thirty (30) days.

PUBLIC ENTITY: A legal entity that constitutes or is part of the government, whether at local, State or Federal level.

[PUBLIC SAFETY AGENCY: The functional division of the federal government, the State, a unit of local government, or a special purpose district located in whole or in part within this State, that provides or has authority to provide firefighting, police, ambulance, medical, or other emergency services to respond to and manage emergency incidents.](#)

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

RIGHT-OF-WAY OR RIGHTS-OF-WAY: Any street, alley, other land or waterway, dedicated or commonly used for pedestrian or vehicular traffic or other similar purposes, including utility easements, in which the City has the right and authority to authorize, regulate or permit the location of facilities other than those of the City. "Right-of-way" or "rights-of-way" shall not include any real or personal City property that is not specifically described in the previous two (2) sentences and shall not include City buildings, fixtures and other structures or improvements, regardless of whether they are situated in the right-of-way.

ROADWAY: That part of the highway that includes the pavement and shoulders.

SALE OF TELECOMMUNICATIONS AT RETAIL: The transmitting, supplying, or furnishing of telecommunications and all services rendered in connection therewith for a consideration, other than between a parent corporation and its wholly owned subsidiaries or between wholly owned

subsidiaries, when the gross charge made by one such corporation to another such corporation is not greater than the gross charge paid to the retailer for their use or consumption and not for sale.

SECURITY FUND: That amount of security required pursuant to section [7-8-10](#) of this chapter.

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.

SMALL CELL FACILITIES: A personal wireless telecommunications facility consisting of an antenna and related equipment either installed singly or as part of a network to provide coverage or enhance capacity in a limited defined area.

SMALL WIRELESS FACILITY: A wireless facility that meets both of the following qualifications: (i) each antenna is located inside an enclosure of no more than 6 cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than 6 cubic feet; and (ii) all other wireless equipment attached directly to a utility pole associated with the facility is cumulatively no more than 25 cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meter, concealment elements, telecommunications demarcation box, ground-based enclosures, grounding equipment, power transfer switch, cut-off switch, and vertical cable runs for the connection of power and other services.

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, mobile radio services, cellular mobile telecommunications services, stationary two-way radio, paging service and any other form of mobile or portable one-way or two-way communications, and any other transmission of messages or information by electronic or similar means, between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite, or similar facilities. "Private line" means a dedicated nontraffic sensitive service for a single customer that entitles the customer to exclusive or priority use of a communications channel, or a group of such channels, from one (1) or more specified locations to one (1) or more other specified locations. "Telecommunications" shall not include value added services in which computer processing applications are used to act on the form, content, code and protocol of the information for purposes other than transmission.

"Telecommunications" shall not include purchase of telecommunications by a telecommunications service provider for use as a component part of the service provided by such provider to the ultimate retail consumer who originates or terminates the end to end communications. "Telecommunications" shall not include the provision of cable services through a cable system as defined in the Cable Communications Act of 1984 (47 USC section 521 and following), as now or hereafter amended, or cable or other programming services subject to an open video system fee payable to the City through an open video system as defined in the Rules of the Federal Communications Commission (47 CFR section 76.1500 and following), as now or hereafter amended.

TELECOMMUNICATIONS PROVIDER: Any person that installs, owns, operates or controls facilities in the right-of-way used or designed to be used to transmit telecommunications in any form.

TELECOMMUNICATIONS RETAILER: Every person engaged in making sales of telecommunications at retail as defined herein.

TOWER: Any structure that is designed and constructed primarily for the purpose of supporting one (1) or more antennas, including self-supporting lattice towers, guy towers, or monopole towers, and that is not a utility pole, an alternative antenna structure, or a City-owned infrastructure.

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.

UTILITY POLE: An upright pole designed and used to support electric cables, telephone cables, telecommunication cables, cable service cables, communication service provider, which are used to provide lighting, traffic control, signage, or a similar function.

VENT: A pipe to allow the dissipation into the atmosphere of gases or vapors from an underground casing.

VIDEO SERVICE: As defined in section 21-201(v) of the Illinois Cable and Video Competition Law of 2007, 220 Illinois Compiled Statutes 21-201(v).

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.

WI-FI ANTENNA: An antenna used to support Wi-Fi broadband internet access service based on the IEEE 802.11 standard that typically uses unlicensed spectrum to enable communication between devices. (~~Ord. 2007-97, 12-18-2007; amd. Ord. 2017-35, 6-27-2017~~)

WIRELESS FACILITY: Equipment at a fixed location that enables wireless communications between user equipment and a communications network, including: (i) equipment associated with wireless communications; and (ii) radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration. Wireless facility includes small wireless facilities. Wireless facility does not include: (i) the structure or improvements on, under, or within which the equipment is collocated; or (ii) wireline backhaul facilities, coaxial or fiber optic cable that is between wireless support structures or utility poles or coaxial, or fiber optic cable that is otherwise not immediately adjacent to or directly associated with an antenna.

WIRELESS INFRASTRUCTURE PROVIDER: Any person authorized to provide telecommunications service in the State that builds or installs wireless communication transmission equipment, wireless facilities, wireless support structures, or utility poles and that is not a wireless services provider but is acting as an agent or a contractor for a wireless services provider for the application submitted to the City.

WIRELESS PROVIDER: A wireless infrastructure provider or a wireless services provider.

WIRELESS SERVICES: Any person authorized to provide telecommunications service in the State that builds or installs wireless communication transmission equipment, wireless facilities, wireless support structures, or utility poles and that is not a wireless services provider but is acting as an agent or a contractor for a wireless services provider for the application submitted to the City.

WIRELESS SUPPORT STRUCTURE: A freestanding structure, such as a monopole; tower, either guyed or self-supporting; billboard; or other existing or proposed structure designed to support or capable of supporting wireless facilities. Wireless support structure does not include a utility pole.

(Ord. 2007-97, 12-18-2007; amd. Ord. 2017-35, 6-27-2017)

7-8-3: ANNUAL REGISTRATION REQUIRED:  

Every utility that occupies right-of-way within the City shall register on January 1 of each year with the engineer, providing the utility's name, address and regular business telephone and telecopy numbers, the name of one (1) 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 twenty four (24) hour telephone number for each such person, and evidence of insurance as required in section [7-8-8](#) of this chapter, in the form of a certificate of insurance. (Ord. 2007-97, 12-18-2007)

7-8-4: PERMIT REQUIRED; APPLICATIONS AND FEES:  

A. Permit Required: No person shall construct (as defined in this chapter) any facility on, over, above, along, upon, under, across, or within any City right-of-way which: 1) changes the location of the facility, 2) adds a new facility, 3) disrupts the right-of-way (as defined in this chapter), or 4) materially increases the amount of area or space occupied by the facility on, over, above, along, under, across or within the right-of-way, without first filing an application with the City Engineer and obtaining a permit from the City 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. Permit Application: All applications for permits pursuant to this chapter shall be filed on a form provided by the City and shall be filed in such number of duplicate copies as the City may designate. The applicant may designate those portions of its application materials that it reasonably believes contain proprietary or confidential information as "proprietary" or "confidential" by clearly marking each page of such materials accordingly.

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

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 and 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;

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 City:
 - a. 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
 - b. An emergency contingency plan which shall specify the nature of potential emergencies, including, without limitation, construction and hazardous materials emergencies, and the intended response by the applicant. The intended response shall include notification to the City and shall promote protection of the safety and convenience of the public. Compliance with ICC regulations for emergency contingency plans constitutes compliance with this section unless the city finds that additional information or assurances are needed;
6. Drawings, plans and specifications showing the work proposed, including the certification of an Illinois licensed professional engineer that such drawings, plans, and specifications comply with applicable codes, rules, and regulations;
7. Evidence of insurance as required in section [7-8-8](#) of this chapter;
8. Evidence of posting of the security fund as required in section [7-8-10](#) of this chapter;
9. Any request for a variance from one or more provisions of this chapter (see section [7-8-21](#) of this chapter); and
10. Such additional information as may be reasonably required by the city.

D. Supplemental Application Requirements For Specific Types Of Utilities: In addition to the requirements of subsection C of this section, the permit application shall include the following items, as applicable to the specific utility that is the subject of the permit application:

1. In the case of the installation of a new electric power, communications, telecommunications, cable television service, video service or natural gas distribution system, evidence that any "certificate of public convenience and necessity" or other regulatory authorization that the applicant is required by law to obtain, or that the applicant has elected to obtain, has been issued by the ICC or other jurisdictional authority;
2. In the case of natural gas systems, 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, the metropolitan water reclamation district, and the Yorkville-Bristol sanitary district 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. Applicant's Duty To Update Information: Throughout the entire permit application review period and the construction period authorized by the permit, any amendments to information contained in a permit application shall be submitted by the utility in writing to the city within thirty (30) days after the change necessitating the amendment.

F. Application Fees: Unless otherwise provided by franchise, license, or similar agreement, all applications for permits pursuant to this chapter shall be accompanied by a fee in the amount of fifty dollars (\$50.00). No application fee is required to be paid by any electricity utility that is paying the municipal electricity infrastructure maintenance fee pursuant to the electricity infrastructure maintenance fee act. (Ord. 2007-97, 12-18-2007)

7-8-5: ACTION ON PERMIT APPLICATIONS:

A. City Review Of Permit Applications: Completed permit applications, containing all required documentation, shall be examined by the city engineer within a reasonable time after filing. If the application does not conform to the requirements of applicable ordinances, codes, laws, rules, and regulations, the city engineer shall reject such application in writing, stating the reasons therefor. If the city engineer is satisfied that the proposed work conforms to the requirements of this chapter and applicable ordinances, codes, laws, rules, and regulations, the city engineer shall issue a permit therefor as soon as practicable. In all instances, it shall be the duty of the applicant to demonstrate, to the satisfaction of the city engineer, that the construction proposed under the application shall be in full compliance with the requirements of this chapter.

B. Additional City Review Of Applications Of Telecommunications Retailers:

1. Pursuant to section 4 of the telephone company act, 220 Illinois Compiled Statutes 65/4, a telecommunications retailer shall notify the city that it intends to commence work governed by this chapter for facilities for the provision of telecommunications services. Such notice shall consist of plans, specifications, and other documentation sufficient to demonstrate the purpose and intent of the facilities, and shall be provided by the telecommunications retailer to the city not less than forty five (45) days prior to the commencement of work requiring no excavation and not less than forty five (45) days prior to the commencement of work requiring excavation. The city engineer 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 city engineer fails to provide such specification of location to the telecommunications retailer within either: a) forty five (45) days after service of notice to the city by the telecommunications retailer in the case of work not involving excavation for new construction or

b) forty five (45) days after service of notice by the telecommunications retailer in the case of work involving excavation for new construction, the telecommunications retailer may commence work without obtaining a permit under this chapter.

3. Upon the provision of such specification by the city, where a permit is required for work pursuant to section [7-8-4](#) of this chapter the telecommunications retailer shall submit to the city an application for a permit and any and all plans, specifications and documentation available regarding the facility to be constructed. Such application shall be subject to the requirements of subsection A of this section.

C. Additional City Review Of Applications Of Holders Of State Authorization Under The Cable And Video Competition Law Of 2007: Applications by a utility that is a holder of a state issued authorization under the cable and video competition law of 2007 shall be deemed granted forty five (45) days after submission to the city, unless otherwise acted upon by the city, provided the holder has complied with applicable city codes, ordinances, and regulations. (Ord. 2007-97, 12-18-2007)

7-8-6: EFFECT OF PERMIT:

A. Authority Granted; No Property Right Or Other Interest Created: A permit from the city authorizes a permittee to undertake only certain activities in accordance with this chapter on city rights of way, and does not create a property right or grant authority to the permittee to impinge upon the rights of others who may have an interest in the rights of way.

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

C. Preconstruction Meeting Required: No construction shall begin pursuant to a permit issued under this chapter prior to attendance by the permittee and all major contractors and subcontractors who will perform any work under the permit at a preconstruction meeting. The preconstruction meeting shall be held at a date, time and place designated by the city with such city representatives in attendance as the city deems necessary. The meeting shall be for the purpose of reviewing the work under the permit, and reviewing special considerations necessary in the areas where work will occur, including, without limitation, presence or absence of other utility facilities in the area and their locations, procedures to avoid disruption of other utilities, use of rights of way by the public during construction, and access and egress by adjacent property owners.

D. Compliance With All Laws Required: The issuance of a permit by the city does not excuse the permittee from complying with other requirements of the city and applicable statutes, laws, ordinances, rules, and regulations. (Ord. 2007-97, 12-18-2007)

7-8-7: REVISED PERMIT DRAWINGS:

In the event that the actual locations of any facilities deviate in any material respect from the locations identified in the plans, drawings and specifications submitted with the permit application, the permittee shall submit a revised set of drawings or plans to the city within ninety (90) days after the completion of the permitted work. The revised drawings or plans shall specifically identify where the locations of the actual facilities deviate from the locations approved in the permit. If any deviation from the permit also deviates from the requirements of this chapter, it shall be treated as a request for variance in accordance with section [7-8-21](#) of this chapter. If the city denies the request for a variance, then the permittee shall either remove the facility from the right of way or modify the facility so that it conforms to the permit and submit revised drawings or plans therefor. (Ord. 2007-97, 12-18-2007)

7-8-8: INSURANCE:

A. Required Coverages And Limits: Unless otherwise provided by franchise, license, or similar agreement, each utility occupying right of way or constructing any facility in the right of way shall secure and maintain the following liability insurance policies insuring the utility as named insured and naming the city, and its elected and appointed officers, officials, agents, and employees as additional insureds on the policies listed in subsections A1 and A2 of this section:

1. Commercial general liability insurance, including premises-operations, explosion, collapse, and underground hazard (commonly referred to as "X", "C", and "U" coverages) and products-completed operations coverage with limits not less than:
 - a. Five million dollars (\$5,000,000.00) for bodily injury or death to each person;
 - b. Five million dollars (\$5,000,000.00) for property damage resulting from any one accident; and
 - c. Five million dollars (\$5,000,000.00) for all other types of liability;
2. Automobile liability for owned, nonowned and hired vehicles with a combined single limit of one million dollars (\$1,000,000.00) 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 (\$1,000,000.00) per employee and per accident.

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

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

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

D. Maintenance And Renewal Of Required Coverages: The insurance policies required by this section shall contain the following endorsement:

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

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

E. Self-Insurance: A utility may self-insure all or a portion of the insurance coverage and limit requirements required by subsection A of this section. A utility that self-insures is not required, to the extent of such self-insurance, to comply with the requirement for the naming of additional insureds under subsection A of this section, or the requirements of subsections B, C and D of this section. A utility that elects to self-insure shall provide to the city evidence sufficient to demonstrate its financial ability to self-insure the insurance coverage and limit requirements required under subsection A of this section, such as evidence that the utility is a "private self-insurer" under the workers' compensation act.

F. Effect Of Insurance And Self-Insurance On Utility's Liability: The legal liability of the utility to the city and any person for any of the matters that are the subject of the insurance policies or self-insurance required by this section shall not be limited by such insurance policies or self-insurance or by the recovery of any amounts thereunder.

G. Insurance Companies: All insurance provided pursuant to this section shall be effected under valid and enforceable policies, issued by insurers legally able to conduct business with the licensee in the state of Illinois. All insurance carriers and surplus line carriers shall be rated "A-" or better and of a class size "X" or higher by A.M. Best Company. (Ord. 2007-97, 12-18-2007)

7-8-9: INDEMNIFICATION:

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

or wrongful acts, omissions, failures to act or misconduct of the utility or its affiliates, officers, employees, agents, contractors or subcontractors in the construction of facilities or occupancy of the rights of way, and in providing or offering service over the facilities, whether such acts or omissions are authorized, allowed or prohibited by this chapter or by a franchise, license, or similar agreement; provided, however, that the utility's indemnity obligations hereunder shall not apply to any injuries, claims, demands, judgments, damages, losses or expenses arising out of or resulting from the negligence, misconduct or breach of this chapter by the city, its officials, officers, employees, agents or representatives. (Ord. 2007-97, 12-18-2007)

7-8-10: SECURITY:

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

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

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

1. Provide that it will not be canceled without ninety (90) day prior cancellation notice to the city and the permittee;
2. Not require the consent of the permittee prior to the collection by the city of any amounts covered by it; and
3. Shall provide a location convenient to the city and within the state of Illinois at which it can be drawn.

C. Amount: The dollar amount of the security fund shall be sufficient to provide for the reasonably estimated cost to restore the right of way to at least as good a condition as that existing prior to the construction under the permit, as determined by the city engineer, and may also include reasonable, directly related costs that the city estimates are likely to be incurred if the permittee

fails to perform such restoration. Where the construction of facilities proposed under the permit will be performed in phases in multiple locations in the city, with each phase consisting of construction of facilities in one location or a related group of locations, and where construction in another phase will not be undertaken prior to substantial completion of restoration in the previous phase or phases, the city engineer 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 for any single phase.

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

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 city for any damages, claims, costs or expenses which the city has been compelled to pay or incur by reason of any action or nonperformance by the permittee; or
4. Fails to comply with any provision of this chapter that the city determines can be remedied by an expenditure of an amount in the security fund.

E. Replenishment: Within fourteen (14) days after receipt of written notice from the city that any amount has been withdrawn from the security fund, the permittee shall restore the security fund to the amount specified in subsection C of this section.

F. Interest: The permittee may request that any and all interest accrued on the amount in the security fund be returned to the permittee by the city, upon written request for said withdrawal to the city, provided that any such withdrawal does not reduce the security fund below the minimum balance required in subsection C of this section.

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

H. Rights Not Limited: The rights reserved to the city with respect to the security fund are in addition to all other rights of the city, whether reserved by this chapter or otherwise authorized by law, and no action, proceeding or exercise of right with respect to said security fund shall affect any other right the city may have. Notwithstanding the foregoing, the city shall not be entitled to a double monetary recovery with respect to any of its rights which may be infringed or otherwise violated. (Ord. 2007-97, 12-18-2007)

7-8-11: PERMIT SUSPENSION AND REVOCATION:

A. City Right To Revoke Permit: The city may revoke or suspend a permit issued pursuant to this chapter for one or more of the following reasons:

1. Fraudulent, false, misrepresenting, or materially incomplete statements in the permit application;
2. Noncompliance with this chapter;
3. Permittee's physical presence or presence of permittee's facilities on, over, above, along, upon, under, across, or within the 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. Notice Of Revocation Or Suspension: The city shall send written notice of its intent to revoke or suspend a permit issued pursuant to this chapter stating the reason or reasons for the revocation or suspension and the alternatives available to permittee under this section.

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

1. Immediately provide the city with evidence that no cause exists for the revocation or suspension;
2. Immediately correct, to the satisfaction of the city, the deficiencies stated in the written notice, providing written proof of such correction to the city within five (5) working days after receipt of the written notice of revocation; or
3. Immediately remove the facilities located on, over, above, along, upon, under, across, or within the rights of way and restore the rights of way to the satisfaction of the city providing written proof of such removal to the city within ten (10) days after receipt of the written notice of revocation.

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

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

E. Failure Or Refusal Of The Permittee To Comply: If the permittee fails to comply with the provisions of subsection C of this section, the city or its designee may, at the option of the city: 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 noncompliance, deem them abandoned and property of the city. The permittee shall be liable in all events to the city for all costs of removal. (Ord. 2007-97, 12-18-2007)

7-8-12: CHANGE OF OWNERSHIP OR OWNER'S IDENTITY OR LEGAL

STATUS:  

A. Notification Of Change: A utility shall notify the city no less than thirty (30) days prior to the transfer of ownership of any facility in the right of way or change in identity of the utility. The new owner of the utility or the facility shall have all the obligations and privileges enjoyed by the former owner under the permit, if any, and applicable laws, ordinances, rules and regulations, including this chapter, with respect to the work and facilities in the right of way.

B. Amended Permit: A new owner shall request that any current permit be amended 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 city's right of way.

C. Insurance And Bonding: All required insurance coverage or bonding must be changed to reflect the name of the new owner upon transfer. (Ord. 2007-97, 12-18-2007)

7-8-13: GENERAL CONSTRUCTION STANDARDS:

A. Standards And Principles: All construction in the right of way shall be consistent with applicable ordinances, codes, laws, rules and regulations, 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 amended 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 section 545);
7. "Flagger's Handbook"; and
8. "Work Site Protection Manual For Daylight Maintenance Operations".

B. Interpretation Of Municipal Standards And Principles: If a discrepancy exists between or among differing principles and standards required by this chapter, the city engineer shall determine, in the exercise of sound engineering judgment, which principles apply and such decision shall be final. If requested, the city engineer shall state which standard or principle will apply to the construction, maintenance, or operation of a facility in the future. (Ord. 2007-97, 12-18-2007)

7-8-14: TRAFFIC CONTROL:

A. Minimum Requirements: The city's minimum requirements for traffic protection are contained in IDOT's "Illinois Manual On Uniform Traffic Control Devices" and this code.

B. Warning Signs, Protective Devices, And Flaggers: The utility is responsible for providing and installing warning signs, protective devices and flaggers, when necessary, meeting applicable federal, state, and local requirements for protection of the public and the utility's workers when performing any work on the rights of way.

C. Interference With Traffic: All work shall be phased so that there is minimum interference with pedestrian and vehicular traffic.

D. Notice When Access Is Blocked: At least forty eight (48) hours prior to beginning work that will partially or completely block access to any residence, business or institution, the utility shall notify the resident, business or institution of the approximate beginning time and duration of such work; provided, however, that in cases involving emergency repairs pursuant to section [7-8-20](#) of this chapter, the utility shall provide such notice as is practicable under the circumstances.

E. Compliance: The utility shall take immediate action to correct any deficiencies in traffic protection requirements that are brought to the utility's attention by the city. (Ord. 2007-97, 12-18-2007)

7-8-15: LOCATION OF FACILITIES:

A. General Requirements: In addition to location requirements applicable to specific types of utility facilities, all utility facilities, regardless of type, shall be subject to the general location requirements of this subsection.

1. No Interference With City Facilities: No utility facilities shall be placed in any location if the city engineer determines that the proposed location will require the relocation or displacement of any of the city's utility facilities or will otherwise interfere with the operation or maintenance of any of the city's utility facilities.
2. Minimum Interference And Impact: The proposed location shall cause only the minimum possible interference with the use of the right of way and shall cause only the minimum possible impact upon, and interference with the rights and reasonable convenience of property owners who adjoin said right of way.
3. No Interference With Travel: No utility facility shall be placed in any location that interferes with the usual travel on such right of way.
4. No Limitations On Visibility: No utility facility shall be placed in any location so as to limit visibility of or by users of the right of way.
5. Size Of Utility Facilities: The proposed installation shall use the smallest suitable vaults, boxes, equipment enclosures, power pedestals, and/or cabinets then in use by the facility owner, regardless of location, for the particular application.

B. Parallel Facilities Located Within Highways:

1. Overhead Parallel Facilities: An overhead parallel facility may be located within the right of way lines of a highway only if:
 - a. 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;
 - b. Where pavement is curbed, poles are as remote as practicable from the curb with a minimum distance of two feet (2') (0.6 m) behind the face of the curb, where available;
 - c. Where pavement is uncurbed, poles are as remote from pavement edge as practicable with minimum distance of four feet (4') (1.2 m) outside the outer shoulder line of the roadway and are not within the clear zone;
 - d. No pole is located in the ditch line of a highway; and

- e. Any ground mounted appurtenance is located within one foot (1') (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:
- a. The facility is located as near the right of way line as practicable and not more than eight feet (8') (2.4 m) from and parallel to the right of way line;
 - b. 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
 - c. 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 feet (5') (1.5 m) from the right of way line and any above grounded appurtenance shall be located within one foot (1') (0.3 m) of the right of way line or as near as practicable.

C. Facilities Crossing Highways:

- 1. No Future Disruption: The construction and design of crossing facilities installed between the ditch lines or curb lines of city highways may require the incorporation of materials and protections (such as encasement or additional cover) to avoid settlement or future repairs to the roadbed resulting from the installation of such crossing facilities.
- 2. Cattle Passes, Culverts, Or Drainage Facilities: Crossing facilities shall not be located in cattle passes, culverts, or drainage facilities.
- 3. Ninety Degree Crossing Required: Crossing facilities shall cross at or as near to a ninety degree (90°) angle to the centerline as practicable.
- 4. Overhead Power Or Communication Facility: An overhead power or communication facility may cross a highway only if:
 - a. It has a minimum vertical line clearance as required by ICC's rules entitled, "Construction of Electric Power and Communication Lines" (83 Ill. Adm. Code 305);
 - b. Poles are located within one foot (1') (0.3 m) of the right-of-way line of the highway and outside of the clear zone; and
 - c. Overhead crossings at major intersections are avoided.
- 5. Underground Power Or Communication Facility: An underground power or communication facility may cross a highway only if:
 - a. The design materials and construction methods will provide maximum maintenance free service life; and
 - b. Capacity for the utility's foreseeable future expansion needs is provided in the initial installation.

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

D. Facilities To Be Located Within Particular Rights-Of-Way: The City may require that facilities be located within particular rights-of-way that are not highways, rather than within particular highways.

E. Freestanding Facilities:

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

F. Facilities Installed Aboveground: Aboveground facilities may be installed only if:

1. No other existing facilities in the area are located underground;
2. New underground installation is not technically feasible;
3. The proposed installation will be made at a location, and will employ suitable design and materials, to provide the greatest protection of aesthetic qualities of the area being traversed without adversely affecting safety. Suitable designs include, but are not limited to, self-supporting armless, single pole construction with vertical configuration of conductors and cable. Existing utility poles and light standards shall be used wherever practicable; the installation of additional utility poles is strongly discouraged; (Ord. 2007-97, 12-18-2007)
4. ~~No more than two (2) personal wireless telecommunications facilities will be permitted on utility poles or alternative antenna structure of ninety feet (90') or less;~~
5. ~~No more than three (3) personal wireless telecommunications facilities will be permitted on utility poles or alternative antenna structure in excess of ninety feet (90') and less than one hundred twenty feet (120');~~
6. ~~Personal wireless telecommunication facilities may be attached to a utility pole, alternative antenna structure, monopole, or City-owned infrastructure only where such pole, structure or infrastructure is located no closer than a distance equal to one hundred percent (100%) of the height of such a facility to any residential building and no closer than five hundred feet (500') from any other personal wireless telecommunication facility;~~
7. ~~The personal wireless telecommunication antenna, including antenna panels, whip antennas or dish-shaped antennas, cannot have a surface area of more than seven (7) cubic feet in volume;~~

- ~~8. The total combined volume of all above-ground equipment and appurtenances comprising a personal wireless telecommunication facility, exclusive of the antenna itself, cannot exceed thirty two (32) cubic feet;~~
- ~~9. The operator of a personal wireless telecommunication facility must, whenever possible, locate the base of the equipment or appurtenances at a height of no lower than eight feet (8') above grade;~~
- ~~10. The top of the highest point of the antenna cannot extend more than seven feet (7') above the highest point of the utility pole, alternative antenna support structure, tower or City-owned infrastructure. If necessary, the new replacement or new utility pole, alternative antenna support structure, or City-owned infrastructure located within the public right-of-way may be no more than ten feet (10') higher than existing poles adjacent to the replacement or new pole structure, or no more than ninety feet (90') in height overall, whichever is less;~~
- ~~11. A personal wireless telecommunication facility, including all related equipment and appurtenances, must be a color that blends with the surrounding pole, structure tower or infrastructure on which it is mounted and use non-reflective materials which blend with the materials and colors of the surrounding area and structures. Any wiring must be covered with an appropriate cover;~~
- ~~12. Extensions to utility poles, alternative support structures, towers and City-owned infrastructure utilized for the purpose of connecting a personal wireless telecommunications antenna and its related personal wireless telecommunications equipment must have a degree of strength capable of supporting the antenna and any related appurtenances and cabling and capable of withstanding wind forces and ice loads in accordance with the applicable structural integrity standards (National Electric Safety Code, ANSI, and EIA). The evaluation of the structural integrity must be prepared by a professional structural engineer licensed in the State of Illinois. An extension must be securely bound to the utility pole, alternative antenna structure, tower or City-owned infrastructure in accordance with applicable engineering standards for the design and attachment of such extensions; and~~
- ~~13. No new monopole or other tower to support personal wireless telecommunication facilities shall be installed on rights-of-way within the corporate limits of the City unless specifically authorized by the Corporate Authorities based on clear and convincing evidence provided by the applicant, that locating the personal wireless telecommunications facilities on the right-of-way is necessary to close a significant coverage or capacity gap in the applicant's services or to otherwise provide adequate services to customers, and the proposed new monopole or other tower within the right-of-way is the least intrusive means to do so. (Ord. 2017-35, 6-27-2017)~~

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:

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

H. Appearance Standards:

1. The city 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 right of way user or to adjacent residents and property owners, and if it does not impair the aesthetic quality of the lands being traversed. (Ord. 2007-97, 12-18-2007)

7-8-16: CONSTRUCTION METHODS AND MATERIALS:

A. Standards And Requirements For Particular Types Of Construction Methods:

1. Boring Or Jacking:
 - a. Pits And Shoring: Boring or jacking under rights of way shall be accomplished from pits located at a minimum distance specified by the city director of public works from the edge of the pavement. Pits for boring or jacking shall be excavated no more than forty eight (48) hours in advance of boring or jacking operations and backfilled within forty eight (48) hours after boring or jacking operations are completed. While pits are open, they shall be clearly marked and protected by barricades. Shoring shall be designed, erected, supported, braced, and maintained so that it will safely support all vertical and lateral loads that may be imposed upon it during the boring or jacking operation.
 - b. Wet Boring Or Jetting: Wet boring or jetting shall not be permitted under the roadway.

- c. Borings With Diameters Greater Than Six Inches: Borings over six inches (6") (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 (1") (25 mm).
 - d. Borings With Diameters Six Inches Or Less: Borings of six inches (6") or less in diameter may be accomplished by either jacking, guided with auger, or auger and following pipe method.
 - e. Tree Preservation: Any facility located within the drip line of any tree designated by the city to be preserved or protected shall be bored under or around the root system.
2. Trenching: Trenching for facility installation, repair, or maintenance on rights of way shall be done in accord with the applicable portions of section 603 of IDOT's "Standard Specifications For Road And Bridge Construction".
- a. Length: The length of open trench shall be kept to the practicable minimum consistent with requirements for pipe/line testing. Only one-half ($1/2$) of any intersection may have an open trench at any time unless special permission is obtained from the city engineer.
 - b. Open Trench And Excavated Material: Open trench and windrowed excavated material shall be protected as required by [chapter 6](#) of the "Illinois Manual On Uniform Traffic Control Devices". Where practicable, the excavated material shall be deposited between the roadway and the trench as added protection. Excavated material shall not be allowed to remain on the 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.
 - c. Drip Line Of Trees: The utility shall not trench within the drip line of any tree designated by the city to be preserved.
3. Backfilling:
- a. Any pit, trench, or excavation created during the installation of facilities shall be backfilled for its full width, depth, and length using methods and materials in accordance with IDOT's "Standard Specifications For Road And Bridge Construction". When excavated material is hauled away or is unsuitable for backfill, suitable granular backfill shall be used.
 - b. For a period of three (3) 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 engineer, 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 engineer.
4. Pavement Cuts: Pavement cuts for facility installation or repair shall be permitted on a highway only if that portion of the highway is closed to traffic. If a variance to the limitation set forth in this subsection A4 is permitted under section [7-8-21](#) of this chapter, the following requirements shall apply:
- a. Any excavation under pavements shall be backfilled and compacted as soon as practicable with granular material of CA-7 gradation, as designated by the engineer.

b. Restoration of pavement, in kind, shall be accomplished as soon as practicable and at twice the amount of the existing pavement depth, and temporary repair with bituminous mixture shall be provided immediately. Any subsequent failure of either the temporary repair or the restoration shall be rebuilt upon notification by the city.

c. All saw cuts shall be full depth.

d. For all rights of way which have been reconstructed with a concrete surface/base in the last seven (7) years, or resurfaced in the last three (3) years, permits shall not be issued unless such work is determined to be an emergency repair or other work considered necessary and unforeseen before the time of the reconstruction or unless a pavement cut is necessary for a JULIE locate.

5. Encasement:

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

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

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

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

e. In the case of gas pipelines or petroleum products pipelines with installations of more than sixty (60) psig, encasement may be eliminated only if: 1) extra heavy pipe is used that precludes future maintenance or repair and 2) cathodic protection of the pipe is provided.

f. If encasement is eliminated for a gas or petroleum products pipeline, the facility shall be located so as to provide that construction does not disrupt the right of way.

6. Minimum Cover Of Underground Facilities: Cover shall be provided and maintained at least in the amount specified in the Yorkville subdivision control ordinances 2000-2, as amended from time to time.

B. Standards And Requirements For Particular Types Of Facilities:

1. Electric Power Or Communication Lines:

a. Code Compliance: Electric power or communications facilities within city rights of way shall be constructed, operated, and maintained in conformity with the provisions of 83 Illinois administrative code part 305 (formerly general order 160 of the Illinois commerce commission) entitled "rules for construction of electric power and communication lines", and the national electrical safety code.

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

c. Underground Facilities:

(1) Cable may be installed by trenching or plowing, provided that special consideration is given to boring in order to minimize damage when crossing improved entrances and side roads.

(2) If a crossing is installed by boring or jacking, encasement shall be provided between jacking or bore pits. Encasement may be eliminated only if: a) the crossing is installed by the use of "moles", "whip augers", or other approved methods which compress the earth to make the opening for cable installation or b) the installation is by the open trench method which is only permitted prior to roadway construction.

(3) Cable shall be grounded in accordance with the national electrical safety code.

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

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

a. The use of "moles", "whip augers", or other approved methods which compress the earth to move the opening for the pipe;

b. Jacking or boring with vented encasement provided between the ditch lines or toes of slopes of the highway;

c. Open trench with vented encasement between ultimate ditch lines or toes of slopes, but only if prior to roadway construction; or

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

3. Gas Transmission, Distribution And Service: Gas pipelines within rights of way shall be constructed, maintained, and operated in a city approved manner and in conformance with the federal code of the office of pipeline safety operations, department of transportation, part 192 - transportation of natural and other gas by pipeline: minimum federal safety standards (49 CFR section 192), IDOT's "Standard Specifications For Road And Bridge Construction", and all other applicable laws, rules, and regulations.

4. Petroleum Products Pipelines: Petroleum products pipelines within rights of way shall conform to the applicable sections of ANSI standard code for pressure piping (liquid petroleum transportation piping systems ANSI-B 31.4).

5. Water Lines, Sanitary Sewer Lines, Storm Water Sewer Lines Or Drainage Lines: Water lines, sanitary sewer lines, storm sewer lines, and drainage lines within rights of way shall meet or exceed

the recommendations of the current "Standard Specifications For Water And Sewer Main Construction In Illinois" and "Yorkville's Standard Specifications For Improvements".

6. Ground Mounted Appurtenances: Ground mounted appurtenances to overhead or underground facilities, when permitted within a right of way, shall be provided with a vegetation free area extending one foot (1') (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 engineer. With the approval of the engineer, shrubbery surrounding the appurtenance may be used in place of vegetation free area. The housing for ground mounted appurtenances shall be painted a neutral color to blend with the surroundings.

C. Materials:

1. General Standards: The materials used in constructing facilities within rights of way shall be those meeting the accepted standards of the appropriate industry, the applicable portions of IDOT's "Standard Specifications For Road And Bridge Construction", the requirements of the Illinois commerce commission, or the standards established by other official regulatory agencies for the appropriate industry.
2. Material Storage On Right Of Way: No material shall be stored on the right of way without the prior written approval of the city engineer. When such storage is permitted, all pipe, conduit, wire, poles, cross arms, or other materials shall be distributed along the right of way prior to and during installation in a manner to minimize hazards to the public or an obstacle to right of way maintenance or damage to the right of way and other property. If material is to be stored on right of way, prior approval must be obtained from the city.
3. Hazardous Materials: The plans submitted by the utility to the city shall identify any hazardous materials that may be involved in the construction of the new facilities or removal of any existing facilities.

D. Operational Restrictions:

1. Construction operations on rights of way may, at the discretion of the city, be required to be discontinued when such operations would create hazards to traffic or the public health, safety, and welfare. Such operations may also be required to be discontinued or restricted when conditions are such that construction would result in extensive damage to the right of way or other property.
2. These restrictions may be waived by the engineer when emergency work is required to restore vital utility services.
3. Unless otherwise permitted by the city, the hours of construction are those set forth in section [8-1-2B](#) of this code.

E. Location Of Existing Facilities: Any utility proposing to construct facilities in the city shall contact JULIE and ascertain the presence and location of existing aboveground and underground

facilities within the rights of way to be occupied by its proposed facilities. The city will make its permit records available to a utility for the purpose of identifying possible facilities. When notified of an excavation or when requested by the city or by JULIE, a utility shall locate and physically mark its underground facilities within forty eight (48) hours, excluding weekends and holidays, in accordance with the Illinois underground facilities damage prevention act¹. (Ord. 2007-97, 12-18-2007)

7-8-17: SMALL WIRELESS FACILITIES **Regulation of Small Wireless Facilities.**

Permitted Use. Small wireless facilities shall be classified as permitted uses and subject to administrative review, except as provided in paragraph (9) regarding Height Exceptions or Variances, but not subject to zoning review or approval if they are collocated (i) in rights-of-way in any zoning district, or (ii) outside rights-of-way in property zoned exclusively for commercial or industrial use.

Permit Required. An applicant shall obtain one or more permits from the City to collocate a small wireless facility. An application shall be received and processed, and permits issued shall be subject to the following conditions and requirements:

- (1) Application Requirements. A wireless provider shall provide the following information to the City, together with the City's Small Cell Facilities Permit Application, as a condition of any permit application to collocate small wireless facilities on a utility pole or wireless support structure:

 - a. Site specific structural integrity and, for a municipal utility pole, make-ready analysis prepared by a structural engineer, as that term is defined in Section 4 of the Structural Engineering Practice Act of 1989;
 - b. The location where each proposed small wireless facility or utility pole would be installed and photographs of the location and its immediate surroundings depicting the utility poles or structures on which each proposed small wireless facility would be mounted or location where utility poles or structures would be installed. This should include a depiction of the completed facility;
 - c. Specifications and drawings prepared by a structural engineer, as that term is defined in Section 4 of the Structural Engineering Practice Act of 1989, for each proposed small wireless facility covered by the application as it is proposed to be installed;
 - d. The equipment type and model numbers for the antennas and all other wireless equipment associated with the small wireless facility;
 - e. A proposed schedule for the installation and completion of each small wireless facility covered by the application, if approved; and
 - f. Certification that the collocation complies with the Collocation Requirements and Conditions contained herein, to the best of the applicant's knowledge.
 - g. In the event that the proposed small wireless facility is to be attached to an existing pole owned by an entity other than the City, the wireless provider

shall provide legally competent evidence of the consent of the owner of such pole to the proposed collocation.

(2) Application Process. The City shall process applications as follows:

a. The first completed application shall have priority over applications received by different applicants for collocation on the same utility pole or wireless support structure.

b. An application to collocate a small wireless facility on an existing utility pole or wireless support structure, or replacement of an existing utility pole or wireless support structure shall be processed on a nondiscriminatory basis and shall be deemed approved if the City fails to approve or deny the application within 90 days after the submission of a completed application.

However, if an applicant intends to proceed with the permitted activity on a deemed approved basis, the applicant shall notify the City in writing of its intention to invoke the deemed approved remedy no sooner than 75 days after the submission of a completed application.

The permit shall be deemed approved on the latter of the 90th day after submission of the complete application or the 10th day after the receipt of the deemed approved notice by the City. The receipt of the deemed approved notice shall not preclude the City's denial of the permit request within the time limits as provided under this Ordinance.

c. An application to collocate a small wireless facility that includes the installation of a new utility pole shall be processed on a nondiscriminatory basis and deemed approved if the City fails to approve or deny the application within 120 days after the submission of a completed application.

However, if an applicant intends to proceed with the permitted activity on a deemed approved basis, the applicant shall notify the City in writing of its intention to invoke the deemed approved remedy no sooner than 105 days after the submission of a completed application.

The permit shall be deemed approved on the latter of the 120th day after submission of the complete application or the 10th day after the receipt of the deemed approved notice by the City. The receipt of the deemed approved notice shall not preclude the City's denial of the permit request within the time limits as provided under this Ordinance.

d. The City shall deny an application which does not meet the requirements of this Ordinance.

If the City determines that applicable codes, ordinances or regulations that concern public safety, or the Collocation Requirements and Conditions contained herein require that the utility pole or wireless support structure be replaced before the requested collocation, approval shall be conditioned on

the replacement of the utility pole or wireless support structure at the cost of the provider.

The City shall document the basis for a denial, including the specific code provisions or application conditions on which the denial is based, and send the documentation to the applicant on or before the day the City denies an application.

The applicant may cure the deficiencies identified by the City and resubmit the revised application once within 30 days after notice of denial is sent to the applicant without paying an additional application fee. The City shall approve or deny the revised application within 30 days after the applicant resubmits the application or it is deemed approved. Failure to resubmit the revised application within 30 days of denial shall require the applicant to submit a new application with applicable fees, and recommencement of the City's review period.

The applicant must notify the City in writing of its intention to proceed with the permitted activity on a deemed approved basis, which may be submitted with the revised application.

Any review of a revised application shall be limited to the deficiencies cited in the denial. However, this revised application does not apply if the cure requires the review of a new location, new or different structure to be collocated upon, new antennas, or other wireless equipment associated with the small wireless facility.

- e. Pole Attachment Agreement. Within 30 days after an approved permit to collocate a small wireless facility on a municipal utility pole, the City and the applicant shall enter into a Master Pole Attachment Agreement, provided by the City for the initial collocation on a municipal utility pole by the application. For subsequent approved permits to collocate on a small wireless facility on a municipal utility pole, the City and the applicant shall enter into a License Supplement of the Master Pole Attachment Agreement.

(3) Completeness of Application. Within 30 days after receiving an application, the City shall determine whether the application is complete and notify the applicant. If an application is incomplete, the City must specifically identify the missing information. An application shall be deemed complete if the City fails to provide notification to the applicant within 30 days after all documents, information and fees specifically enumerated in the City's permit application form are submitted by the applicant to the City.

Processing deadlines are tolled from the time the City sends the notice of incompleteness to the time the applicant provides the missing information.

(4) Tolling. The time period for applications may be further tolled by:

- a. An express written agreement by both the applicant and the City; or
- b. A local, State or federal disaster declaration or similar emergency that causes the delay.

(5) Consolidated Applications. An applicant seeking to collocate small wireless facilities within the jurisdiction of the City shall be allowed, at the applicant's discretion, to file a consolidated application and receive a single permit for the collocation of up to 25 small wireless facilities if the collocations each involve substantially the same type of small wireless facility and substantially the same type of structure.

If an application includes multiple small wireless facilities, the City may remove small wireless facility collocations from the application and treat separately small wireless facility collocations for which incomplete information has been provided or that do not qualify for consolidated treatment or that are denied. The City may issue separate permits for each collocation that is approved in a consolidated application.

(6) Duration of Permits. The duration of a permit shall be for a period of not less than 5 years, and the permit shall be renewed for equivalent durations unless the City makes a finding that the small wireless facilities or the new or modified utility pole do not comply with the applicable City codes or any provision, condition or requirement contained in this Ordinance.

If the Act is repealed as provided in Section 90 therein, renewals of permits shall be subject to the applicable City code provisions or regulations in effect at the time of renewal.

(7) Means of Submitting Applications. Applicants shall submit applications, supporting information and notices to the City by personal delivery at the City's designated place of business, by regular mail postmarked on the date due or by any other commonly used means, including electronic mail or via the City's website.

Collocation Requirements and Conditions.

(1) Public Safety Space Reservation. The City may reserve space on municipal utility poles for future public safety uses, for the City's electric utility uses, or both, but a reservation of space may not preclude the collocation of a small wireless facility unless the City reasonably determines that the municipal utility pole cannot accommodate both uses.

(2) Installation and Maintenance. The wireless provider shall install, maintain, repair and modify its small wireless facilities in safe condition and good repair and in compliance with the requirements and conditions of this Ordinance. The wireless provider shall ensure that its employees, agents or contracts that perform work in connection with its small wireless facilities are adequately trained and skilled in accordance with all applicable industry and governmental standards and regulations.

(3) No interference with public safety communication frequencies. The wireless provider's operation of the small wireless facilities shall not interfere with the frequencies used by a public safety agency for public safety communications.

A wireless provider shall install small wireless facilities of the type and frequency that will not cause unacceptable interference with a public safety agency's communications equipment.

Unacceptable interference will be determined by and measured in accordance with industry standards and the FCC's regulations addressing unacceptable interference to public safety spectrum or any other spectrum licensed by a public safety agency.

If a small wireless facility causes such interference, and the wireless provider has been given written notice of the interference by the public safety agency, the wireless provider, at its own expense, shall remedy the interference in a manner consistent with the abatement and resolution procedures for interference with public safety spectrum established by the FCC including 47 CFR 22.970 through 47 CFR 22.973 and 47 CFR 90.672 through 47 CFR 90.675.

The City may terminate a permit for a small wireless facility based on such interference if the wireless provider is not in compliance with the Code of Federal Regulations cited in the previous paragraph. Failure to remedy the interference as required herein shall constitute a public nuisance.

(4) The wireless provider shall not collocate small wireless facilities on City utility poles that are part of an electric distribution or transmission system within the communication worker safety zone of the pole or the electric supply zone of the pole.

However, the antenna and support equipment of the small wireless facility may be located in the communications space on the City utility pole and on the top of the pole, if not otherwise unavailable, if the wireless provider complies with applicable codes for work involving the top of the pole.

For purposes of this subparagraph, the terms "communications space", "communication worker safety zone", and "electric supply zone" have the meanings given to those terms in the National Electric Safety Code as published by the Institute of Electrical and Electronics Engineers.

(5) The wireless provider shall comply with all applicable codes and local code provisions or regulations that concern public safety.

(6) The wireless provider shall comply with written design standards that are generally applicable for decorative utility poles, or reasonable stealth, concealment and aesthetic requirements that are set forth in a City ordinance, written policy adopted by the City, a comprehensive plan or other written design plan that applies to other occupiers of the rights-of-way, including on a historic landmark or in a historic district.

(7) Alternate Placements. Except as provided in this Collocation Requirements and Conditions Section, a wireless provider shall not be required to collocate small

wireless facilities on any specific utility pole, or category of utility poles, or be required to collocate multiple antenna systems on a single utility pole. However, with respect to an application for the collocation of a small wireless facility associated with a new utility pole, the City may propose that the small wireless facility be collocated on an existing utility pole or existing wireless support structure within 100 feet of the proposed collocation, which the applicant shall accept if it has the right to use the alternate structure on reasonable terms and conditions, and the alternate location and structure does not impose technical limits or additional material costs as determined by the applicant.

If the applicant refuses a collocation proposed by the City, the applicant shall provide written certification describing the property rights, technical limits or material cost reasons the alternate location does not satisfy the criteria in this paragraph.

(8) Height Limitations. The maximum height of a small wireless facility shall be no more than 10 feet above the utility pole or wireless support structure on which the small wireless facility is collocated.

New or replacement utility poles or wireless support structures on which small wireless facilities are collocated may not exceed the higher of:

- a. 10 feet in height above the tallest existing utility pole, other than a utility pole supporting only wireless facilities, that is in place on the date the application is submitted to the City, that is located within 300 feet of the new or replacement utility pole or wireless support structure and that is in the same right-of-way within the jurisdictional boundary of the City, provided the City may designate which intersecting right-of-way within 300 feet of the proposed utility pole or wireless support structures shall control the height limitation for such facility; or
- b. 45 feet above ground level.

(9) Height Exceptions or Variances. If an applicant proposes a height for a new or replacement pole in excess of the above height limitations on which the small wireless facility is proposed for collocation, the applicant shall apply for a variance in conformance with procedures, terms and conditions set forth in section 7-8-22 below.

(10) Contractual Design Requirements. The wireless provider shall comply with requirements that are imposed by a contract between the City and a private property owner that concern design or construction standards applicable to utility poles and ground-mounted equipment located in the right-of-way.

(11) Ground-mounted Equipment Spacing. The wireless provider shall comply with applicable spacing requirements in applicable codes and ordinances concerning the location of ground-mounted equipment located in the right-of-way if the requirements include a waiver, zoning or other process that addresses wireless provider requests for exception or variance and do not prohibit granting of such exceptions or variances.

(12) Undergrounding Regulations. The wireless provider shall comply with local code provisions or regulations concerning undergrounding requirements that prohibit the installation of new or the modification of existing utility poles in a right-of-way without prior approval if the requirements include a waiver, zoning or other process that addresses requests to install such new utility poles or modify such existing utility poles and do not prohibit the replacement of utility poles.

(13) Collocation Completion Deadline. Collocation for which a permit is granted shall be completed within 180 days after issuance of the permit, unless the City and the wireless provider agree to extend this period or a delay is caused by make-ready work for a municipal utility pole or by the lack of commercial power or backhaul availability at the site, provided the wireless provider has made a timely request within 60 days after the issuance of the permit for commercial power or backhaul services, and the additional time to complete installation does not exceed 360 days after issuance of the permit. Otherwise, the permit shall be void unless the City grants an extension in writing to the applicant.

Application:

(1) The City shall not require an application, approval or permit, or require any fees or other charges, from a communications service provider authorized to occupy the rights-of-way, for:

a. routine maintenance;

b. the replacement of wireless facilities with wireless facilities that are substantially similar, the same size, or smaller if the wireless provider notifies the City at least 10 days prior to the planned replacement and includes equipment specifications for the replacement of equipment consistent with subsection d. under the Section titled Application Requirements; or

c. the installation, placement, maintenance, operation or replacement of micro wireless facilities suspended on cables that are strung between existing utility poles in compliance with applicable safety codes.

(2) Wireless providers shall secure a permit from the City to work within rights-of-way for activities that affect traffic patterns or require lane closures.

Exceptions to Applicability. Nothing in this Ordinance authorizes a person to collocate small wireless facilities on:

(1) property owned by a private party or property owned or controlled by the City or another unit of local government that is not located within rights-of-way, or a privately owned utility pole or wireless support structure without the consent of the property owner;

(2) property owned, leased, or controlled by a park district, forest preserve district, or conservation district for public park, recreation or conservation purposes without the consent of the affected district, excluding the placement of facilities on rights-of-way

located in an affected district that are under the jurisdiction and control of a different unit of local government as provided by the Illinois Highway Code; or

(3) property owned by a rail carrier registered under Section 18c-7201 of the Illinois Vehicle Code, Metra Commuter Rail or any other public commuter rail service, or an electric utility as defined in Section 16-102 of the Public Utilities Act, without the consent of the rail carrier, public commuter rail service, or electric utility. The provisions of this Ordinance do not apply to an electric or gas public utility or such utility's wireless facilities if the facilities are being used, developed and maintained consistent with the provisions of subsection (i) of Section 16-108.5 of the Public Utilities Act.

For the purposes of this subsection, "public utility" has the meaning given to that term in Section 3-105 of the Public Utilities Act. Nothing in this Ordinance shall be construed to relieve any person from any requirement (a) to obtain a franchise or a State-issued authorization to offer cable service or video service or (b) to obtain any required permission to install, place, maintain, or operate communications facilities, other than small wireless facilities subject to this Ordinance.

Pre-Existing Agreements. Existing agreements between the City and wireless providers that relate to the collocation of small wireless facilities in the right-of-way, including the collocation of small wireless facilities on City utility poles, that are in effect on June 1, 2018, remain in effect for all small wireless facilities collocated on the City's utility poles pursuant to applications submitted to the City before June 1, 2018, subject to applicable termination provisions contained therein. Agreements entered into after June 1, 2018, shall comply with this Ordinance.

A wireless provider that has an existing agreement with the City on the effective date of the Act may accept the rates, fees and terms that the City makes available under this Ordinance for the collocation of small wireless facilities or the installation of new utility poles for the collocation of small wireless facilities that are the subject of an application submitted two or more years after the effective date of the Act by notifying the City that it opts to accept such rates, fees and terms. The existing agreement remains in effect, subject to applicable termination provisions, for the small wireless facilities the wireless provider has collocated on the City's utility poles pursuant to applications submitted to the City before the wireless provider provides such notice and exercises its option under this paragraph.

Annual Recurring Rate. A wireless provider shall pay to the City an annual recurring rate to collocate a small wireless facility on a City utility pole located in a right-of-way that equals (i) \$200 per year or (ii) the actual, direct and reasonable costs related to the wireless provider's use of space on the City utility pole.

If the City has not billed the wireless provider actual and direct costs, the fee shall be \$200 payable on the first day after the first annual anniversary of the issuance of the permit or notice of intent to collocate, and on each annual anniversary date thereafter.

Abandonment. A small wireless facility that is not operated for a continuous period of 12 months shall be considered abandoned. The owner of the facility shall remove the small

wireless facility within 90 days after receipt of written notice from the City notifying the wireless provider of the abandonment.

The notice shall be sent by certified or registered mail, return receipt requested, by the City to the owner at the last known address of the wireless provider. If the small wireless facility is not removed within 90 days of such notice, the City may remove or cause the removal of such facility pursuant to the terms of its pole attachment agreement for municipal utility poles or through whatever actions are provided for abatement of nuisances or by other law for removal and cost recovery.

A wireless provider shall provide written notice to the City if it sells or transfers small wireless facilities within the jurisdiction of the City. Such notice shall include the name and contact information of the new wireless provider.

Section 4. Dispute Resolution.

The Circuit Court of Kendall County shall have exclusive jurisdiction to resolve all disputes arising under the Small Wireless Facilities Deployment Act. Pending resolution of a dispute concerning rates for collocation of small wireless facilities on municipal utility poles within the right-of-way, the City shall allow the collocating person to collocate on its poles at annual rates of no more than \$200 per year per municipal utility pole, with rates to be determined upon final resolution of the dispute.

Indemnification.

A wireless provider shall indemnify and hold the City harmless against any and all liability or loss from personal injury or property damage resulting from or arising out of, in whole or in part, the use or occupancy of the City improvements or right-of-way associated with such improvements by the wireless provider or its employees, agents, or contractors arising out of the rights and privileges granted under this Ordinance and the Act. A wireless provider has no obligation to indemnify or hold harmless against any liabilities and losses as may be due to or caused by the sole negligence of the City or its employees or agents. A wireless provider shall further waive any claims that they may have against the City with respect to consequential, incidental, or special damages, however caused, based on the theory of liability.

Insurance.

The wireless provider shall carry, at the wireless provider's own cost and expense, the following insurance:

(i) property insurance for its property's replacement cost against all risks;

(ii) workers' compensation insurance, as required by law;

OR

(iii) commercial general liability insurance with respect to its activities on the City improvements or rights-of-way to afford minimum protection limits consistent with its requirements of other users of City improvements or rights-of-way, including coverage for bodily injury and property damage.

The wireless provider shall include the City as an additional insured on the commercial general liability policy and provide certification and documentation of inclusion of the City in a commercial general liability policy prior to the collocation of any wireless facility.

A wireless provider may self-insure all or a portion of the insurance coverage and limit requirement required by the City. A wireless provider that self-insures is not required, to the extent of the self-insurance, to comply with the requirement for the name of additional insureds under this Section. A wireless provider that elects to self-insure shall provide to the City evidence sufficient to demonstrate its financial ability to self-insure the insurance coverage limits required by the City.

7-8-~~47~~18: VEGETATION CONTROL:

A. Electric Utilities; Compliance With State Laws And Regulations: An electric utility shall conduct all tree trimming and vegetation control activities in the right of way in accordance with applicable Illinois laws and regulations, and additionally, with such local franchise or other agreement with the city as permitted by law.

B. Other Utilities; Tree Trimming Permit Required: Tree trimming that is done by any other utility with facilities in the right of way and that is not performed pursuant to applicable Illinois laws and regulations specifically governing same, shall not be considered a normal maintenance operation, but shall require the application for, and the issuance of, a permit, in addition to any other permit required under this chapter.

1. Application For Tree Trimming Permit: Applications for tree trimming permits shall include assurance that the work will be accomplished by competent workers 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.

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

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

D. Chemical Use:

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

2. 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 engineer that such spraying is the only practicable method of vegetation control. (Ord. 2007-97, 12-18-2007)

7-8-~~18~~19: REMOVAL, RELOCATION, OR MODIFICATIONS OF UTILITY

FACILITIES:

A. Notice: Within ninety (90) days following written notice from the city, a utility shall, at its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change or alter the position of any utility facilities within the rights of way whenever the corporate authorities have determined that such removal, relocation, change or alteration, is reasonably necessary for the construction, repair, maintenance, or installation of any city improvement in or upon, or the operations of the city in or upon, the rights of way.

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

1. Upon expiration or termination of the 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. Emergency Removal Or Relocation Of Facilities: The city retains the right and privilege to cut or move any facilities located within the rights of way of the city, as the city may determine to be necessary, appropriate or useful in response to any public health or safety emergency. If circumstances permit, the 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. Abandonment Of Facilities: Upon abandonment of a facility within the rights of way of the city, the utility shall notify the city within ninety (90) days. Following receipt of such notice the city may direct the utility to remove all or any portion of the facility if the city engineer determines that such removal will be in the best interest of the public health, safety and welfare. In the event that the city does not direct the utility that abandoned the facility to remove it, by giving notice of abandonment to the city, the abandoning utility shall be deemed to consent to the alteration or removal of all or any portion of the facility by another utility or person. (Ord. 2007-97, 12-18-2007)

7-8-~~19~~20: CLEANUP AND RESTORATION:

The utility shall submit a landscape restoration plan to the city engineer for approval. The utility shall remove all excess material and restore all turf and terrain and other property within ten (10) days after any portion of the rights of way are disturbed, damaged or destroyed due to construction or maintenance by the utility, all to the satisfaction of the city engineer. This includes restoration of entrances and side roads. Restoration of roadway surfaces shall be made using materials and methods approved by the city engineer in the landscape restoration plan. Such cleanup and repair may be required to consist of backfilling, regrading, reseeding, resodding, or any other requirement to restore the right of way to a condition substantially equivalent to that which existed prior to the commencement of the project. The time period provided in this section may be extended by the city engineer for good cause shown. (Ord. 2007-97, 12-18-2007)

7-8-~~2021~~: MAINTENANCE AND EMERGENCY MAINTENANCE:

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

B. Emergency Maintenance Procedures: Emergencies may justify noncompliance 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 city engineer or his or her duly authorized agent of the emergency, informing him or her as to what steps have been taken for protection of the traveling public and what will be required to make the necessary repairs. If the nature of the emergency is such as to interfere with the free movement of traffic, the city police shall be notified immediately.
3. In an emergency, the utility shall use all means at hand to complete repairs as rapidly as practicable and with the least inconvenience to the traveling public.

C. Emergency Repairs: The utility must file in writing with the city a description of the repairs undertaken in the right of way within forty eight (48) hours after an emergency repair. (Ord. 2007-97, 12-18-2007)

7-8-~~2122~~: VARIANCES:

A. Request For Variance: A utility requesting a variance from one or more of the provisions of this chapter must do so in writing to the city engineer 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. Authority To Grant Variances: The city engineer shall decide whether a variance is authorized for each provision of this chapter identified in the variance request on an individual basis.

C. Conditions For Granting Of Variance: The city engineer may authorize a variance only if the utility requesting the variance has demonstrated that:

1. One or more conditions not under the control of the utility (such as terrain features or an irregular right of way line) create a special hardship that would make enforcement of the provision unreasonable, given the public purposes to be achieved by the provision; 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. Additional Conditions For Granting Of A Variance: As a condition for authorizing a variance, the city engineer may require the utility requesting the variance to meet reasonable standards and conditions that may or may not be expressly contained within this chapter but which carry out the purposes of this chapter.

E. Right To Appeal: Any utility aggrieved by any order, requirement, decision or determination, including denial of a variance, made by the city engineer under the provisions of this chapter shall have the right to appeal to the city council, or such other board or commission as it may designate. The application for appeal shall be submitted in writing to the city clerk within thirty (30) days after the date of such order, requirement, decision or determination. The city council shall commence its consideration of the appeal at the council's next regularly scheduled meeting occurring at least seven (7) days after the filing of the appeal. The city council shall timely decide the appeal. (Ord. 2007-97, 12-18-2007)

7-8-~~2223~~: 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 penalty provisions of this code. There may be times when the city will incur delay or other costs, including third party claims, because the utility will not or cannot perform its duties under its permit and this chapter. Unless the utility shows that another allocation of the cost of undertaking the requested action is appropriate, the utility shall bear the city's costs of damages and its costs of installing, maintaining, modifying, relocating, or removing the facility that is the subject of the permit. No other administrative agency or commission may review or overrule a permit related cost apportionment of the city. Sanctions may be imposed upon a utility that does not pay the costs apportioned to it. (Ord. 2007-97, 12-18-2007)

7-8-~~23~~24: ENFORCEMENT:

Nothing in this chapter shall be construed as limiting any additional or further remedies that the city may have for enforcement of this chapter. (Ord. 2007-97, 12-18-2007)

Footnotes - Click any footnote link to go back to its reference.

[Footnote 1](#): 220 ILCS 50/1 et seq.

PUBLIC NOTICE OF A HEARING BEFORE
THE UNITED CITY OF YORKVILLE
PLANNING AND ZONING COMMISSION

NOTICE IS HEREWITH GIVEN THAT the United City of Yorkville, Kendall County, Illinois, petitioner, is proposing a text amendment for consideration of updates to “Chapter 18: Telecommunication Tower and Antenna Regulations” of the United City of Yorkville Zoning Ordinance.

NOTICE IS HEREWITH GIVEN THAT the Planning and Zoning Commission for the United City of Yorkville will conduct a public hearing at a special meeting on said amendments on Wednesday, July 18, 2018 at 7 p.m. at the Yorkville City Hall, located at 800 Game Farm Road, Yorkville, Illinois 60560.

The public hearing may be continued from time to time to dates certain without further notice being published.

All interested parties are invited to attend the public hearing and will be given an opportunity to be heard. Any written comments should be addressed to the United City of Yorkville Community Development Department, City Hall, 800 Game Farm Road, Yorkville, Illinois, and will be accepted up to the date of the public hearing.

By order of the Corporate Authorities of the United City of Yorkville, Kendall County, Illinois.

BETH WARREN
City Clerk

BY: Lisa Pickering
Deputy Clerk