

ORDINANCE NO. 18 - _____

**AN ORDINANCE REPEALING AND REPLACING
ARTICLE A (GENERAL PROVISIONS), ARTICLE B (PRIVATE USE),
ARTICLE C (LICENSURE), SECTION 7 (COMPENSATION FOR USE OF PUBLIC
STREETS, WAYS AND CITY PROPERTY) OF ARTICLE E (FEES, COSTS, AND
COMPENSATION), SECTION 1 (CONDITIONS OF GRANT, LOCATIONS OF
FACILITIES) OF ARTICLE F (DESIGN AND CONSTRUCTION) AND SECTION 23
(MAINTENANCE OF FACILITIES) OF ARTICLE F (DESIGN AND CONSTRUCTION)
OF CHAPTER 1 (STREETS AND SIDEWALKS)
OF TITLE 9 (PUBLIC WAYS AND PROPERTY)
OF THE NAPERVILLE MUNICIPAL CODE**

WHEREAS, the Mayor and the City Council of the City of Naperville, Illinois, have the authority to adopt ordinances and to promulgate rules and regulations that pertain to its government and affairs and protect the public health, safety and welfare of its citizens; and

WHEREAS, the City of Naperville supports the goal of ensuring reliable wireless services in our communities and the advancement of technology in the telecommunications industry; and

WHEREAS, the City of Naperville desires to use its municipal authority to regulate the use of its right-of-ways, which it holds in trust for its residents; and

WHEREAS, the City of Naperville desires to enact an ordinance that updates its codes to address small wireless facilities by establishing reasonable standards for the deployment of wireless facilities;

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF NAPERVILLE, DUPAGE AND WILL COUNTIES, ILLINOIS, in the exercise of its home rule powers that:

SECTION 1: Article A (General Provisions) of Chapter 1 (Streets and Sidewalks) of Title 9 (Public Ways and Property) of the Naperville Municipal Code is hereby repealed in its entirety and replaced in its entirety with the underlined language as follows:

ARTICLE A. - GENERAL PROVISIONS

SECTION:

9-1A-1: - PURPOSE AND INTENT:

This Chapter is adopted for the purpose of improving and protecting the public health, safety, comfort, convenience and general welfare of the people. The fulfillment of this purpose is to be accomplished by seeking the following objectives:

1. Permit and manage reasonable access to the Public Ways of the City for private purposes on a competitively neutral basis.
2. Conserve the limited physical capacity of the Public Ways held in public trust by the City.
3. Assure that the City's current and ongoing costs of granting and regulating private access to and use of the Public Ways are fully paid by the Persons seeking such access and causing such costs.
4. Secure fair and reasonable compensation to the City and the residents of the City for permitting private use of the Public Ways.
5. Assure that all Persons providing Facilities or services within the City comply with the ordinances, rules and regulations of the City.
6. Assure that the City can continue to fairly and responsibly protect the public health, safety and welfare.
7. Establish standards for the siting, design, permitting, construction, operation, inspection, maintenance, repair, modification, removal and replacement of Communications Facilities in recognition of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996); the Middle-Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156, § 6409(a) (2012) (Spectrum Act), codified at 47 U.S.C. § 1455(a), and Federal Communications Commission regulations promulgated thereunder, including Federal Communications Commission's Report and Order of October 21, 2014, FCC 14-153 (rel. Oct. 21, 2014).

9-1A-2: - DEFINITIONS:

For the purpose of this Chapter, and the interpretation and enforcement thereof, and notwithstanding any inconsistent definitions contained elsewhere in this Code, the following words and phrases shall have the following meanings, unless the context of the sentence in which they are used shall indicate otherwise:

<u>AFFILIATE:</u>	<u>A Person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with</u>
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	<u>another Person or is directly involved in the management or operation of the Person's Facilities or system in the City.</u>
<u>CAMOUFLAGE:</u>	<u>The use of placement, location, shape, color, and texture to cause objects such as Communications Facilities to appear to become a part of something else, usually a structure, such as a building, wall or roof. Camouflage does not mean "invisible", but rather appearing as part or exactly like the structure used as a mount.</u>
<u>CELL-ON-WHEELS:</u>	<u>A portable self-contained wireless Communications Facility that can be moved to a location and set up to provide wireless services on a temporary or emergency basis. A Cell-On-Wheels is normally vehicle-mounted and contains a telescoping boom as the Antenna support structure. Cell-on-light-truck is similar in concept.</u>
<u>COMMUNICATIONS FACILITIES:</u>	<u>The plant, equipment and property, including but not limited to, cables, wires, conduits, ducts, pedestals, antennas, dishes, towers, power supply, communications support Facilities including but not limited to base stations (as defined in the Federal Communications Commission's regulations), radios and signal processing, telephone switches, GPS, Internet and electrical equipment, alternative tower structures, electronics and other appurtenances used to transmit, receive, distribute, provide or offer communications services.</u>
<u>CORPORATE AUTHORITIES:</u>	<u>The Mayor and City Council of the City.</u>
<u>DISTRIBUTED ANTENNA SYSTEM:</u>	<u>A type of wireless Communications 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. Generally serves multiple carriers.</u>
<u>EXCESS CAPACITY:</u>	<u>The volume or capacity in any existing or future duct, conduit, manhole, handhole or other utility facility within the Public Way that is or will be available for use for additional similar Facilities; and that portion of the Usable Space on a utility pole which has the necessary clearance from other pole users, as required by the orders and regulations of the Illinois Commerce Commission, to allow its use by any Person for a pole attachment.</u>
<u>FACILITIES:</u>	<u>Any plant, equipment and property, including, but not limited to, pipes, lines, structures, cable, wires, conduits, ducts, pedestals, antennas, power supply, electronics and other appurtenances used or to be used to provide private, public or utility services.</u>

<u>FCC:</u>	<u>The Federal Communications Commission.</u>
<u>FIBER:</u>	<u>A glass strand or strands which is/are protected by a color-coded buffer tube and which is/are used to transmit a communication signal along the glass strand in the form of pulses of light. The strand count of the Fiber optic cable to be installed will be agreed upon between the City and the Applicant.</u>
<u>FIBER OPTIC NETWORK CONDUIT:</u>	<u>A minimum four-inch (4") conduit containing a minimum of number of inner-ducts, as agreed by the parties used to enclose or carry Fiber optic cable or other wires or lines and attendant parts and accessories buried alongside a roadway or surface mounted on bridges, overpasses, and other Facilities where below-ground placement is impractical or impossible, all in accordance with emerging industry standards and as a determined by the Director or his/her designee.</u>
<u>ILLINOIS COMMERCE COMMISSION:</u>	<u>The State administrative agency, or lawful successor, authorized to regulate and oversee telecommunications carrier services and providers in the State of Illinois.</u>
<u>I-88 TECHNOLOGY CORRIDOR</u>	<u>The area contained within one (1) mile of Interstate 88 as measured from the centerline of the Tollway.</u>
<u>JULIE</u>	<u>Joint Utility Locating Information for Excavators, the one-call center serving Illinois to protect underground utilities and public safety.</u>
<u>OTHER WAYS:</u>	<u>The highways, streets, alleys, Utility Easements or other rights-of-way within the City, but under the jurisdiction and control of a governmental entity other than the City.</u>
<u>OVERHEAD FACILITIES:</u>	<u>Poles and Facilities including utility poles and Facilities located above the surface of the ground, including the underground supports and foundations for such Facilities.</u>
<u>PERSON:</u>	<u>Means and includes corporations, companies, associations, joint stock companies or associations, firms, partnerships, limited liability companies and individuals and includes their lessors, trustees and receivers.</u>
<u>PUBLIC STREET:</u>	<u>Any highway, street, alley or other public right-of-way for motor vehicle travel under the jurisdiction and control of the City which has been acquired, established, dedicated or devoted to highway purposes not inconsistent with utility and Communications Facilities.</u>
<u>PUBLIC WAY:</u>	<u>Means and includes all Overhead Facilities and Utility Easements, and City property other than Public Streets or rights-of-way, as those terms are defined herein, now or hereafter owned by the City, but only to the extent of the City's</u>

	<u>right, title, interest or authority to grant a license to occupy and use such property for private or public Facilities.</u>
<u>SMALL CELL SITE:</u>	<u>An umbrella term for low-powered radio access nodes, including those that operate in licensed spectrum and unlicensed carrier-grade Wi-Fi. Types of small cells include femtocells, picocells and microcells – broadly increasing in size from femtocells (smallest) to microcells (largest).</u>
<u>STATE:</u>	<u>The State of Illinois.</u>
<u>UNDERGROUND FACILITIES:</u>	<u>Utilities and Facilities located under the surface of the ground, excluding the underground foundations or supports for surface or Overhead Facilities.</u>
<u>USABLE SPACE:</u>	<u>The total distance between the top of a utility pole and the lowest possible attachment point that provides the minimum allowable vertical clearance as specified in the orders and regulations of the Illinois Commerce Commission.</u>
<u>UTILITY EASEMENT:</u>	<u>Any easement owned by the City and acquired, established, dedicated or devoted for public or private utility purposes.</u>
<u>UTILITY FACILITIES:</u>	<u>The plant, equipment and property, including, but not limited to, the poles, pipes, mains, conduits, ducts, cables, wires, plant, antennas, base stations, structures and equipment located under, on or above the surface of the ground within the Public Ways of the City and used or to be used for the purpose of providing any private or public utility services.</u>
<u>VERTICAL INFRASTRUCTURE</u>	<u>Includes City-owned or operated utility poles, street lights, monopoles and any other vertical structure existing or placed in the public right-of-way. Traffic signals and poles are excluded from having wireless equipment installed on them.</u>
<u>WIRELESS COMMUNICATIONS FACILITY</u>	<u>A type of Communications Facility consisting of antenna, transmission equipment (as defined by the Federal Communications Commission’s regulations), towers, base stations, 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. Different types of wireless Communications Facility include Small Cells, Distributed Antenna System, and Facilities used for larger coverage radius such as towers, faux trees, and antennas on buildings and water tanks.</u>

9-1A-3: - SUPERVISION:

All Public Streets, alleys, sidewalks, and other Public Ways in the City shall be under the supervision of the Director of the Department of Public Works and the Director of the Transportation, Engineering and Development Business Group. All references to the Director in this Chapter shall mean the Director of the Department of Public Works or the Director of the Transportation, Engineering and Development Business Group as applicable. He or she shall be charged with the enforcement of all ordinance provisions relating to such public places (except traffic ordinances) and is hereby authorized to enforce such ordinances or to designate such Persons or representatives as he/she deems necessary for such enforcement. In the event the provisions of this Article shall be in conflict with any provision of any other article of this Chapter, or any other applicable ordinance, regulation, standard or code adopted by the City, the more restrictive shall be applicable.

9-1A-4: - PAVEMENT CONSTRUCTION REQUIREMENTS:

1. Permit Required: It shall be unlawful to construct or lay any pavement on any Public Street, sidewalk, alley or other Public Way, or to repair the same, without first having secured a permit therefor. Applications for such permits shall be made to the City Clerk, and shall state the location of the intended pavement or repair, the extent thereof, and the Person or firm who is to do the actual construction work. No such permits shall be issued except on order of the City Council.
2. Bond: Each applicant shall file a bond in the amount of fifty thousand dollars (\$50,000.00) with surety to be approved by the Council, conditioned to indemnify the City for any loss or damage resulting from the work undertaken or the manner of doing the same.
3. Specifications: All street and sidewalk pavements shall be made in conformity with specifications approved by the Council by ordinance.

9-1A-5: - BARRICADES:

1. Required: Any Person laying or repairing any pavement on a street, sidewalk or other public place, or making an excavation in any such place, shall maintain suitable barricades to prevent injury to any Person or vehicle by reason of the work; such barricades shall be protected by lights at nighttime.

Defects in any such pavement shall be barricaded to prevent injury. Any Person properly maintaining any opening or excavation in any such place shall guard such opening or excavation while the same remains open by proper barricades and lights.

2. Disturbing Barricades: It shall be unlawful to disturb or interfere with any barricade or lights lawfully placed to protect or mark any new pavement or excavation or opening in any Public Street, alley or sidewalk.

9-1A-6: - INJURY TO NEW PAVEMENT:

It shall be unlawful to walk upon or drive any vehicle or animal upon, or injure any newly laid street or sidewalk pavement while the same is guarded by a warning sign or barricade, or to knowingly injure any soft newly laid pavement.

9-1A-7: - REPAIRS; DANGEROUS CONDITIONS REPORTED:

1. Repairs: All Public Street, alley and sidewalk pavement shall be kept in good repair. Such repair work, whether done by the City or by the abutting owner shall be under the supervision of the Director.
2. Unreasonably Dangerous Conditions: The City's sidewalk and roadway project inspectors and engineers shall be trained to recognize unreasonably dangerous conditions in public sidewalks along the public path of pedestrian travel. It shall be the duty of every field operations employee becoming cognizant of any unreasonably dangerous condition in any path of public pedestrian travel or any obstruction thereof, to report the same to City dispatch as soon as possible.

9-1A-8: - OPENINGS; PERMIT REQUIRED:

It shall be unlawful to construct or maintain any opening or stairway in any Public Street, sidewalk or alley without a permit from the City Council. All such lawfully maintained openings shall be guarded by a suitable strong cover or a railing, to the approval of the Director.

9-1A-9: - PRIVATE USE:

Except as authorized by the City, federal or state law, it shall be unlawful for any Person to use any street, sidewalk or other public place or right-of-way for any proprietary purpose.

9-1A-10: - BUILDING OPERATIONS, USE OF STREETS:

1. Permit And Bond Required:
 - 1.1. The use of streets for the storage of materials in the process of construction or alteration of a building or structure may be granted where the same will not unduly interfere with traffic and will not reduce the usable width of the roadway to less than eighteen (18) feet. No portion of the street other than that directly abutting on the premises on which work is being done shall be used except with the consent of the owner or occupant of the premises abutting on such portion. Any Person seeking to make such use of the street shall file an application for a permit therefor with the City Clerk, together with a bond with sureties to be approved by the Clerk to indemnify the City for any loss or damage which may be incurred by such occupation.

- 1.2. No sidewalk shall be obstructed in the course of building construction or alteration without a special permit from the Clerk; and whenever removal of a sidewalk is required in such work, a special permit from the Clerk shall be obtained.
2. Safeguards: It shall be the duty of the Person doing any construction, altering or wrecking work in the City to do the same with proper care for the safety of Persons and property. Warnings, barricades and lights shall be maintained whenever necessary for the protection of pedestrians or traffic; and temporary roofs over sidewalks shall be constructed whenever there is danger from falling articles or materials to pedestrians.
3. Night Operations: No construction or altering operations shall be carried on in the nighttime if the same are accompanied by loud noises.

9-1A-11: - ENCROACHMENTS AND OBSTRUCTIONS:

1. Encroachments:
 - 1.1. Except as provided by this Subsection or Section 7-4-3 of this Code permitting the construction of driveways along front lot lines, it shall be unlawful to erect or maintain any "building" or "structure" as defined in Section 6-1-6 of this Code, which encroaches upon any Public Street, way, or property.
 - 1.2. Mailboxes and necessary appurtenances thereto may be erected and maintained in the parkway of any street or right-of-way adjacent to the postal patron's property, subject, however, to the provisions of Section 9-1A-11:1.3 of this Article.
 - 1.3. No part of any mailbox or any appurtenance thereto shall be located or maintained closer than eight (8) inches to the back of the curb or edge of pavement on streets without curbs on the parkways. Support structures which hold the mailboxes shall be forty (40) inches in height from the ground to the bottom of the mailbox. Support structures for mailboxes shall be constructed of break-away material, either four-inch by four-inch (4" x 4") lumber or two-inch in diameter, thin wall steel pipe with a wall thickness less than 0.155". The support structure shall be buried no more than twenty-four (24) inches into the ground. Any other mailbox support structure is not acceptable. Unacceptable support structures include, but are not limited to, brick, block, stone or concrete masonry columns, wagon wheels, steel pipes in excess of the previously defined two-inch diameter 0.155" thickness and lumber posts in excess of four (4) inches by four (4) inches (4" x 4"). Support structures which do not conform with this Section and are in existence at the time of enactment are exempt from this provision.

- 1.4. No Person shall install or maintain any aboveground or underground lawn sprinkling system within a City right-of-way, parkway or easement without having secured a permit from the City. Such systems shall be subject to the regulations specified in Section 8-2A-2 of this Code.
- 1.5. It is the owner's sole responsibility to maintain and repair the lawn sprinkling system. The owner shall indemnify and defend the City from any and all liability for damages or injury arising from the installation, operation or location of the sprinkling system.
- 1.6. The lawn sprinkling system and heads shall not be placed within four (4) feet of the back of the curb or within four (4) feet of the edge of the sidewalk and shall be so installed and operated as not to spray water onto the sidewalk, curb, gutter or street.
- 1.7. The permit fee shall be one hundred twenty dollars (\$120.00) for right of way permits requiring engineering review and eighty dollars (\$80.00) for permits not requiring engineering review. A forty-five dollar (\$45.00) fee is due for all permits requiring a resubmittal.
2. Obstructions: It shall be unlawful for any Person to cause, create or maintain any obstruction on any street, alley, sidewalk, parkway or other Public Way, except as may be specifically authorized by ordinance or by the Director when necessary in any emergency or in connection with any lawful construction, repair or removal work.
 - 2.1. Reserved.
 - 2.2. Exceptions: Surface treatment alternatives in the right-of-way:
 - 2.2.1. Permit: A permit issued by the City must be secured before a property owner may construct or install any form of alternative paving in the right-of-way.
 - 2.2.2. Alternative Treatments: Alternative paving treatments include, without limitation, brick pavers, exposed aggregate or concrete, stamped or embossed concrete.
 - 2.2.3. Locations: Alternative paving treatments in the right-of-way shall be limited to locations including driveway approaches, service walks, carriage walks, and those areas on corner lots where two (2) streets meet at right angles.
 - 2.2.4. Public Sidewalks: No alternative paving surface shall be constructed or installed on or over any public sidewalk.

- 2.2.5. Permit Application: Permit application shall include a copy of the applicant's plans and specifications to assure that all surfaces paved with an alternative treatment meet the City's requirements.
- 2.2.6. Indemnification And Waiver: The permit application shall include an indemnification and waiver agreement signed by the applicant, promising to hold harmless and defend the City or any of its agents, officials, and employees from and against any property damage, Personal injury or death that may result from granting the permit or from the construction or installation of an alternative paving surface. The applicant shall also waive and release any claim or action the applicant may have against the City for damage to the paved surface resulting from City maintenance of utilities located within the right-of-way.
- 2.2.7. Indemnification Agreement: The indemnification agreement shall constitute a covenant, running with the land, shall be recorded in the office of the County Recorder and shall be binding on the owner or any successors in interest of the property upon which the alternative paving surface is constructed or installed.

3. Drains: It shall be unlawful to obstruct any drain in any Public Street or alley.

9-1A-12: - POLES AND WIRES:

It shall be unlawful to erect any poles or wires or to maintain any poles or wires over any Public Street, alley or other Public Way without having first secured permission from the City, except as authorized by federal or state law.

9-1A-13: - PROHIBITED ACTS:

1. Gas Pumps: It shall be unlawful to maintain or erect any gasoline pump or tank in any Public Street, alley or sidewalk.
2. Posting Bills: It shall be unlawful to post bills on any public utility pole in the City.
3. Games: It shall be unlawful to play any games upon any street, alley, sidewalk or other public place, where such games cause unnecessary noise, or interfere with traffic or pedestrians.
4. Posting Signs: No signs shall be allowed on Communications Facilities, except warning or notification signs required by federal law or regulations, identification and location markings, or as otherwise required by this Article.

9-1A-14: - BARBED WIRE, ELECTRIC FENCES:

It shall be unlawful to maintain or construct any fence composed in whole or in part of barbed wire, or with any similar material designed to cause injury to any Person, or any wire charged with electric current, anywhere within fifty (50) feet of any Public Street, sidewalk, alley, park or other Public Way or place, unless such barbs or charged wire are at least seven (7) feet above the level of such public place.

9-1A-15: - DAMAGE OR INJURY:

1. It shall be unlawful for any Person to injure or damage or cause to be injured or damaged, in any manner whatever, any public sidewalk, curbing, street or alley paving, or any surface water drainage facility contained in any street or alley. Any Person causing any such injury or damage shall immediately make a written report thereof to the Director. The repair of such injury or damage shall be made in the manner as directed by the Director of the City, at the expense of the Person causing such injury or damage.
2. It shall be unlawful for any Person to move, drive or propel any vehicle, machine or load of any kind over, across or along any sidewalk or curb, except at a permanent or temporary driveway, without placing sufficient planking or other form of protection to avoid possible injury or damage to such sidewalk or curbing.

9-1A-16: - DEPOSITS ON STREETS AND SIDEWALKS:

1. Streets:
 - 1.1. It shall be unlawful to deposit on any street any material which may make said street slippery or which may be harmful to the pavement or storm drain thereof, or any waste material, or other articles which may do injury to any Person, animal or property.
 - 1.2. Where no other place is available, materials may be deposited in the street preparatory to delivery or use, with the permission of the Department of Public Works, and notice to the Police Department; provided, that such deposit does not reduce the usable width of the roadway at the point to less than eighteen (18) feet, and provided that such material, other than material to be used in actual building construction, shall not be permitted to remain on such street for more than three (3) hours.

Any such material shall be guarded by such lights and barricades as the Department of Public Works shall deem necessary.
 - 1.3. It shall be unlawful to remove any snow or ice from any private property and deposit the same upon any Public Street or alley or any part thereof.

- 1.4. It shall be unlawful to operate any vehicle on any street, alley or other improved roadway when the condition of said vehicle is such that soil, clay, mud, stone, gravel or other material drops or falls from the tires or any other part of said vehicle.
- 1.5. The City may, at its election, remove any materials deposited or dropped on any street, alley or other improved roadway within the City in violation of this Subsection, and may charge the cost of said removal to the Person responsible for said violation.

In addition to the operator of the offending vehicle, both the owner of the vehicle, the owner of the property from which the offending vehicle has proceeded, the general contractor and other Persons responsible for the job site, shall be considered responsible for said violation. Muddy tire tracks or other deposit trails leading from a parcel of property shall be considered prima facie evidence of violation of this Subsection by the owner of said property.

If the City should remove said material and charge for said removal, the violator shall not be deemed to have complied with this Subsection and shall remain liable for the fine provided for violation of this Subsection in addition to the removal charge.

2. Sidewalks: It shall be unlawful to deposit on any public sidewalk any material which may be harmful to the pavement thereof, or any waste material, glass or other articles which might cause injury to Persons, animals or property.

Merchandise or other articles may be deposited on sidewalks preparatory to delivery; provided, that the usable width is not thereby reduced to less than four (4) feet; and provided, that no such article shall remain on such walk for more than one-half (½) hour.

SECTION 2: Article B (Private Use) of Chapter 1 (Streets and Sidewalks) of Title 9 (Public Ways and Property) of the Naperville Municipal Code is hereby repealed in its entirety and replaced in its entirety with the underlined language as follows:

ARTICLE B. - PRIVATE USE

SECTION:

9-1B-1: - LICENSE:

Except as otherwise provided herein or prohibited by law, any Person other than the City who desires to construct, install, operate, maintain, or otherwise locate Facilities in, under, over or across any Public Street of the City under the City's jurisdiction, or in any City Utility Easement, overhead facility or other property of the City, unless such Person is also a grantee of the easement, Overhead Facilities or other property of the City, for the purpose of providing any service(s) to itself or other Persons and areas within or outside the City shall first obtain a right-of-way use license. Placement or use of Cell-On-Wheels is prohibited in all zoning districts unless otherwise authorized through a Special Event Permit pursuant to the provisions of Title 3, Chapter 4, Article C (Special Event Permits) or in the case of response to an emergency.

9-1B-2: - APPLICATION TO EXISTING LICENSE AND FRANCHISE ORDINANCES AND AGREEMENTS:

This Article shall have no effect on any existing license or franchise, or license or franchise agreement until:

1. The expiration of the particular license or franchise, or license or franchise agreement, or
2. An amendment to an unexpired license or franchise, or license or franchise agreement, unless both parties agree to defer full compliance to a specific date not later than the present expiration date.

9-1B-3: - APPLICATION FOR RIGHT-OF-WAY USE LICENSE:

Any Person that desires a right-of-way use license pursuant to this Chapter shall file an application with the City on forms to be provided by the City Clerk, which shall include the following information:

1. The identity and address of the applicant, including all Affiliates of the applicant.
2. A description of the services that are or will be offered or provided by the applicant over or through its Facilities.
3. A description of the transmission medium and capacities that will be used by the applicant to offer or provide such services, both within and outside the City's corporate boundaries.
4. Engineering plans, specifications and a network map in both paper and electronic GIS-compatible file format of the Facilities to be located within the City and any franchise or license area, all in sufficient detail to identify:
 - 4.1. A site plan showing the exact location and route requested for applicant's proposed Facilities, including other improvements in the area.

- 4.2. The location(s) and depth of all overhead and underground public utility, cable, water, sewer drainage, Fiber optic, and other Facilities in the Public Way along the proposed route.
- 4.3. The location(s), if any, for interconnection with the Facilities of any other Persons.
- 4.4. The specific trees, structures, improvements, Facilities and obstructions, if any, that applicant proposes to temporarily or permanently remove or relocate.
5. If applicant is proposing to install Overhead Facilities, evidence that surplus space is available for locating its Facilities on existing Vertical Infrastructure along the proposed route.
6. If applicant is proposing an underground installation in existing ducts or conduits within the Public Ways, information in sufficient details to identify:
 - 6.1. The Excess Capacity currently available in such ducts or conduits before installation of applicant's Facilities.
 - 6.2. The Excess Capacity, if any, that will exist in such ducts or conduits after installation of applicant's Facilities.
7. If applicant is proposing an underground installation within new ducts or conduits to be constructed within the Public Ways:
 - 7.1. The location proposed for the new ducts or conduits.
 - 7.2. The Excess Capacity that will exist in such ducts or conduits after installation of applicant's Facilities.
8. A preliminary construction schedule and completion date.
9. A preliminary traffic-control plan in accordance with the Illinois Department of Transportation (IDOT) Manual on Uniform Traffic Control Devices.
10. Financial statements prepared in accordance with generally accepted accounting principles demonstrating the applicant's financial ability to construct, operate, maintain, relocate and remove the Facilities.
11. Information in sufficient detail to establish the applicant's technical qualifications, experience and expertise regarding the Facilities and services described in the application.
12. Information to establish that the applicant has obtained all other governmental approvals, permits and certifications to construct and operate the Facilities and to offer or provide the subject services.

13. A description of the services or Facilities that the applicant will offer or make available to the City and other public, educational and governmental institutions.
14. A description of applicant's access and line extension policies.
15. The area or areas of the City the applicant desires to serve and a schedule for build-out to the entire license area.
16. All fees, deposits or charges required pursuant to Article D of this Chapter.
17. Such other and further information as may be required by City Manager.

9-1B-4: - DETERMINATION BY THE CITY:

Within ninety (90) days after receiving a complete application under Section 9-1B-3 of this Article, the Corporate Authorities shall issue a written determination granting or denying the application in whole or in part, applying the following standards; provided however, the Corporate Authorities may extend the deadline for a written determination when reasonably necessary to protect the public interest. If the application is denied, the written determination shall include the reasons for denial.

1. The financial and technical ability of the applicant to provide the services permitted and perform its obligations under the license agreement and applicable laws and ordinances.
2. The legal ability of the applicant to provide the services permitted and perform its obligations under the license agreement and applicable laws and ordinances.
3. The capacity of the Public Ways or other City property to accommodate the applicant's proposed Facilities.
4. The capacity of the Public Ways to accommodate additional Facilities and/or utilities if the license is granted.
5. The damage or disruption, if any, of public or private Facilities, improvements, service travel or landscaping if the license is granted.
6. The public interest in minimizing the cost and disruption of construction within the Public Ways.
7. The service that applicant will provide to the community and region.
8. The effect, if any, on public health, safety and welfare if the license is granted.
9. The availability of alternate routes and/or locations for the proposed Facilities.

10. Applicable Federal and State telecommunications laws, regulations and policies.
11. Lack of a mutually agreeable license agreement.
12. Such other factors as may demonstrate that the grant to use the Public Ways will serve the community interest.

9-1B-5: - AGREEMENT:

No license granted hereunder shall be effective until the applicant and the City have executed a written agreement setting forth the particular terms and provisions under which the license to occupy and use Public Ways or property of the City will be granted. The provisions of this Chapter establish the minimum requirements for license, and do not preclude any additional terms agreed upon.

9-1B-6: - NONEXCLUSIVE GRANT:

No license granted under this Chapter shall confer any exclusive right, privilege, license or franchise to occupy or use the Public Ways or property of the City for the provision of any services or any other purposes.

9-1B-7: - RIGHTS GRANTED:

No license granted under this Chapter shall convey any right, title or interest in the Public Ways, but shall be deemed a license only to use and occupy the public property, Public Streets or Public Ways for the limited purposes and term stated in the grant. Further, no license shall be construed as any warranty of title.

9-1B-8: - TERM OF LICENSE GRANT:

Unless otherwise specified in a license agreement, a right-of-way use license granted hereunder shall be in effect for a term of five (5) years.

9-1B-9: - LICENSE ROUTE:

A right-of-way use license granted under this Chapter shall be limited to a grant of specific Public Streets and defined portions thereof.

9-1B-10: - LOCATION OF FACILITIES:

Unless otherwise specified in a license agreement, all Facilities shall be constructed, installed and located in accordance, with the following terms and conditions:

1. Facilities shall be installed within an existing underground duct or conduit whenever Excess Capacity exists within such facility. Facilities will be individually metered for consumption of power.
2. Any license grantee's Facilities permitted to be installed underground shall be installed within an existing underground duct or conduit owned by a license grantee whenever surplus capacity is reasonably available within such existing Facilities. If no surplus capacity is available, a license grantee's Facilities shall be installed within an existing underground duct or conduit owned by other licensee or Person using or occupying the right-of-way, street or other property whenever surplus capacity is reasonably available within such existing Facilities, and permission for such use is reasonably available from the other Person. If no such duct or conduit is reasonably available, the license grantee shall so construct and install new Facilities within Public Streets, utilities or easements to industry standards so as to provide additional capacity in the form of ducts, conduits, manholes and other Facilities to reasonably accommodate future Persons on a nondiscriminatory access basis, and shall reasonably permit such use by such future Persons; provided however, the City shall pass any necessary ordinances and take all reasonable steps legally available to require any such future Persons to utilize such license grantee's Excess Capacity if the license grantee's Excess Capacity will reasonably accommodate such future Person's needs, and such future Person pays the license grantee compensation in accordance with the Federal Communications Commission, Illinois Commerce Commission or other applicable regulatory standards.
3. Whenever any existing utilities or Facilities are located underground within a Public Way of the City, a licensee with permission to occupy the same Public Way must also locate its Facilities underground.
4. Whenever any new or existing City-owned utilities or other Facilities are located or relocated underground within a Public Way of the City, a grantee that currently occupies the same Public Way shall relocate its Facilities underground, at its sole expense within eighteen (18) months, which in no event shall be later than the end of the grant term. Such relocation shall be made concurrently to minimize the disruption of the Public Ways.
5. A grantee shall relocate its Overhead Facilities in or on Public Streets or ways and public property in the City and license area, by placing the Facilities underground, or by rerouting them, if necessary, if so requested by the City. Scheduling of the requested work to be performed will be in accordance with the grantee's normal work scheduling practices, but subject to the Director's approval.
6. Communications Facilities, including Small Cell Sites, may be permitted in the right-of-way within the City's jurisdiction subject to the following regulations:

- 6.1. City-Owned Infrastructure. Communications Facilities shall only be mounted to City-owned streetlights if authorized by a license or other agreement between the grantee and the City. The following City-owned infrastructure are not eligible for locating Communications Facilities unless, in the City's sole discretion, the grantee has exhausted all other options and has provided clear and convincing evidence that locating the Communications Facilities on said infrastructure is necessary to close a significant coverage or capacity gap in the grantee's services or to otherwise provide adequate services to customers:
- 6.1.1. Historic or decorative streetlights;
 - 6.1.2. Utility poles; and
 - 6.1.3. Traffic lights including combination traffic signal mast arm and streetlight poles.
- 6.2. Non-City-Owned Infrastructure. The operator of Communications Facilities to be mounted on a non-City-owned infrastructure, such as a ComEd or AT&T pole must submit to the City written copies of the approval from the owner of the infrastructure to mount the Communications Facilities prior to issuance of City permits. Any such installations shall comply with the regulations provided in this Title.
- 6.3. Replacement Poles. The City may require, in its sole discretion, that the existing City-owned infrastructure be replaced with a new pole or infrastructure that complies with the requirements of this Chapter and that is manufactured with special features to accommodate the installation of Communications Facilities.
- 6.4. New Poles. When existing City-owned or non-City-owned infrastructure has been exhausted for Communications Facilities, the City may require that the grantee provide new infrastructure such as a street light, on which the Facilities may be installed. In such cases, the new infrastructure shall be dedicated to the City and will have a primary purpose other than as Communications Facilities and communications will be the secondary use. No new monopole or tower with a primary purpose of Communications Facilities is permitted to be installed in the right-of-way in the jurisdiction of the City unless, in the City's sole discretion, has provided clear and convincing evidence that locating the Communications Facilities on a new monopole or tower in the right-of-way is necessary to close a significant coverage or capacity gap in the grantee's services or to otherwise provide adequate services to customer, and the proposed new monopole or other tower within the right-of-way is the least intrusive means to do so.

- 6.5. Number Limitation and Co-Location. Up to four (4) communications antennas will be permitted on a City-owned infrastructure in the public right-of-way subject to the Director's sole discretion.
- 6.6. Separation and Clearance Requirements. Communications Facilities may be attached to City-owned or non-City-owned infrastructure only where such pole, structure or infrastructure is located no closer than a distance equal to two hundred (200%) percent of the height of such facility to any residential building and no closer than three hundred (300) feet from any other Communications Facilities. A separation or lesser clearance may be allowed by the Director or his/her designee as an administrative variance to this Section when the grantee establishes that the lesser separation or clearance is necessary to close a significant coverage or capacity gap in the grantee's services or to otherwise provide adequate services to customers, and the proposed antenna or facility is the least intrusive means to do so within the right-of-way.
- 6.7. Communication Facilities Limitations. No Communications Facilities within the right-of-way shall be installed or attached to City-owned or non-City-owned infrastructure unless all the following conditions are satisfied:
- 6.7.1. Size of Communication Facilities Equipment: The total combined volume of all equipment and appurtenances comprising Communications Facilities, exclusive of the antenna, cannot exceed seventeen (17) cubic feet.
 - 6.7.2. Size of Antenna: Communications Facilities antennas, including antenna panels, whip antennas or dish-shaped antennas, shall be the smallest possible volume, but in no case, shall the cumulative size of all antennas associated with Communications Facilities be greater than four (4) cubic feet.
 - 6.7.3. Priorities for Locating Communication Facilities: Communication Facilities shall be located in the City's right-of-way based on the following priorities: 1) Major arterial. 2) Minor arterial. 3) Collector street. 4) Neighborhood collector street. 5) Local street.
 - 6.7.4. Location of Communication Facilities: All Communications Facilities shall be installed below grade except for the antennas and any necessary ancillary equipment (e.g. remote radio units and diplexers), including wiring and cabling. Upon good cause shown, as determined in the sole discretion of the Director, said Communications Facilities equipment may be located at grade, but in no case, shall said Communications Facilities equipment be attached to a pole.

6.7.5. Communication Facilities Equipment Mounted at Grade: If Communications Facilities equipment or appurtenances are allowed to be installed at grade, screening must be installed to minimize the visibility of said equipment or appurtenances. Screening must be installed at least three (3) feet from the equipment or appurtenances installed at grade and eight (8) feet from a roadway.

If screening is required, it must be natural landscaping material or a fence subject to the approval of the Director and must comply with all regulations of the City. Appropriate landscaping must be located and maintained and must provide the maximum achievable screening, as determined by the Director, from view of adjoining properties and public or private streets. Notwithstanding the foregoing, no such screening shall obstruct vision of drivers of motor vehicles.

6.7.6. Minimum Antenna Height: No portion of any antenna shall be mounted at a height of less than eighteen feet, six inches (18'6") above grade.

6.7.7. Maximum Antenna Height: No portion of any antenna shall be mounted at a height of more than five feet (5') above the highest point of the existing City-owned or non-City-owned infrastructure upon which it is mounted. If necessary, the replacement or new infrastructure located within the public right-of-way may be no more than five feet (5') higher than existing poles adjacent to the replacement or new pole or infrastructure.

6.7.8. Color: Communications Facilities, including all related equipment and appurtenances, must be a color that blends with the surroundings of the 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.

6.7.9. Antenna Panel Covering: Communications Facilities antennas may include a radome, cap or other antenna panel covering or shield, to the extent such covering would not result in a larger or more noticeable facility and, if proposed, such covering must be of a color that blends with the color of the pole, structure, tower or infrastructure on which it is mounted.

6.7.10. Wiring and Cabling: Communications Facilities wires and cables must run in conduit inside the pole unless, in the City's sole discretion, the Grantee has provided clear and convincing evidence that locating the Communications Facilities wires and cables inside the pole or inside a new pole is not feasible. Underground entry into

the pole through the foundation is required. Wires and cables connecting the antenna to the remainder of the facility must be installed in accordance with the electrical code currently in effect. No wiring and cabling serving the facility will be allowed to interfere with any wiring or cabling installed by a cable television or video service operator, electric utility or telephone utility.

- 6.7.11. Grounding: Communications Facilities must be grounded in accordance with the requirements of the electrical code currently in effect in the City.
- 6.7.12. Guy Wires: No guy or other support wires will be used in connection with Communications Facilities in the public right-of-way.
- 6.7.13. Pole Extensions: Extensions to City-owned or non-City-owned infrastructure utilized for connecting Communications Facilities antennas and related equipment and appurtenances must have a degree of strength capable of supporting the antenna and any related equipment and appurtenances and cabling and be capable of withstanding wind forces and ice loads in accordance with the applicable structural integrity standards as set forth in Section 6.7.13 below. An extension must be securely bound in accordance with applicable engineering standards for the design and attachment of such extensions.
- 6.7.14. Structural Integrity: Communications Facilities, including the antennas, poles, and all related equipment and appurtenances must be designed to withstand a wind force and ice loads in accordance with applicable standards established in the National Electric Code (NFPA 70), Chapter 25 of the National Electric Safety Code for utility poles, Rule 250-B and 250-C standards governing wind, ice, and loading forces on utility poles, in the American National Standards Institute (ANSI) in TIA/EIA Section 222-G established by the Telecommunications Industry Association (TIA) and the Electronics Industry Association (EIA) for steel wireless support structures and the applicable industry standard for other existing structures. For any facility attached to City-owned or non-City-owned infrastructure, the grantee of the Communications Facilities must provide the City with a structural evaluation of each specific location containing a recommendation that the proposed installation passes the standards described above. Said evaluation must be prepared by a professional structural engineer licensed in the State of Illinois.
- 6.7.15. All Communications Facilities equipment and appurtenances installed by the grantee shall be labeled by the grantee with the

grantee's name, equipment identification number, and phone number.

7. Signage. Other than signs required by federal law or regulations or identification and location markings, installation of signs on Communications Facilities is prohibited.
8. Pursuant to provisions of the Illinois Administrative Code, Title 83, Part 305, within fourteen (14) days of the City's request, the grantee shall provide all pertinent data and information, including data relative to proposed and existing construction, and changes in operating conditions which may affect or likely affect situations of proximity.
9. Additional restrictions or conditions may be imposed by the Director for new Facilities within the City's I-88 Technology Corridor, downtown area, and historic district.

9-1B-11: - CONSTRUCTION PERMITS:

All licensees are required to obtain construction permits for Facilities as required in Section 9-1E-8 of this Title, provided, however, that nothing in this Section shall prohibit the City and a licensee from agreeing to alternative plan review, permit and construction procedures in a license agreement, provided such alternative procedures provide substantially equivalent safeguards for responsible construction practices.

9-1B-12: - NONDISCRIMINATION:

All licensees shall make their services available to any customer within their area who shall request such service, without discrimination as to the terms, conditions, rates or charges for grantee's services; provided, however, that nothing in this Chapter shall prohibit a licensee from making any reasonable classifications among differently situated customers consistent with public utility, Federal Communications Commission, or Illinois Commerce Commission standards.

9-1B-13: - SERVICE TO THE CITY:

Licensees shall make their services available to the City at its most favorable rate for similarly situated users, unless otherwise provided in a license agreement.

9-1B-14: - USE OF PUBLIC PROPERTY AND PUBLIC WAYS BY LICENSEES:

A licensee may be permitted to use specific public property and specific Public Ways other than or in addition to Public Streets upon approval of an amended application for approval pursuant to Section 9-1B-4 of this Article.

9-1B-15: - AMENDMENT OF GRANT:

1. A new license application and grant shall be required of any Person that desires to extend its license area, or extend or locate its Facilities in Public Streets, ways or property of the City which are not included in a previous grant under this Chapter.
2. If ordered by the City to locate or relocate its Facilities in Public Streets or ways not included in a previously granted license, the City shall grant a license amendment without further application.
3. The Director shall be permitted to approve in writing appropriate field changes requested by a license grantee in the plans and specifications approved by the City, without requiring an amendment to the license agreement. Decisions on requests by a license grantee for field changes shall be made not more than ten (10) business days after the license grantee provides all information and/or documentation requested by the Director.

9-1B-16: - RENEWAL APPLICATIONS:

A grantee that desires to renew its license under this Chapter shall, not more than one hundred fifty (150) days, nor less than sixty (60) days before expiration of the current license, file an application with the City for renewal, which shall include the following information:

1. The information required pursuant to Section 9-1B-4 of this Article.
2. Any information required pursuant to the license agreement between the City and the grantee.

9-1B-17: - RENEWAL DETERMINATIONS:

Within ninety (90) days after receiving a complete license application, the Corporate Authorities shall issue a written determination granting or denying the renewal application in whole or in part, applying the following standards. If the renewal application is denied, the written determination shall include the reasons for nonrenewal.

1. The financial and technical ability of the applicant.
2. The legal ability of the applicant.
3. The continuing capacity of the Public Streets or ways to accommodate the applicant's existing Facilities.
4. The applicant's compliance with the requirements of this Chapter and the license agreement.

5. Applicable Federal, State and local laws, rules and policies.
6. Such other factors as may demonstrate whether the continued grant for use of the Public Ways will serve the community interest.

9-1B-18: - OBLIGATION TO CURE AS A CONDITION OF RENEWAL:

No license shall be renewed until all ongoing violations or defaults in the licensee's performance of the license agreement, as the case may be, or of the requirements of this Chapter, have been cured, or a plan detailing the corrective action to be taken has been approved by the City Manager.

9-1B-19: - DUTY TO PROVIDE INFORMATION:

Within ten (10) days of a written request from the City Manager or his/her designee, each license grantee shall furnish the City with information sufficient to demonstrate:

1. That grantee has complied with all requirements of this Chapter.
2. That all Municipal taxes and fees due the City in connection with the facility services and Facilities provided by the grantee have been properly collected and paid by the grantee.
3. All books, records, maps and other documents, maintained by the grantee with respect to its Facilities within the Public Streets and ways shall be made available for inspection by the City at reasonable times and intervals.

9-1B-20: - LEASED CAPACITY:

A licensee shall have the right, without prior City approval, to offer or provide surplus or Excess Capacity to its customers; provided:

1. Grantee shall furnish the City with a copy of any such lease or agreement; and
2. The customer or lessee has complied, to the extent applicable, with the requirements of this Chapter.

9-1B-21: - GRANTEE INSURANCE:

Unless otherwise provided in a license agreement, each grantee shall, as a condition of the grant, secure and maintain the following liability insurance policies insuring both the grantee and the City, and its elected and appointed officers, officials, agents and employees as coinsureds:

1. Comprehensive general liability insurance with limits not less than:

- 1.1. Five million dollars (\$5,000,000.00) for bodily injury or death to each Person;
- 1.2. Five million dollars (\$5,000,000.00) for property damage resulting from any one accident; and
- 1.3. Five million dollars (\$5,000,000.00) for all other types of liability.
2. Automobile liability for owned, nonowned and hired vehicles with a limit of three million dollars (\$3,000,000.00) for each Person and three million dollars (\$3,000,000.00) for each accident.
3. Workers' compensation within statutory limits and employer's liability insurance with limits of not less than one million dollars (\$1,000,000.00).
4. Comprehensive form premises-operations, explosions and collapse hazard, underground hazard and products completed hazard with limits of not less than three million dollars (\$3,000,000.00).
5. The liability insurance policies required by this Section shall be maintained by the grantee throughout the term of the license, and such other period of time during which the grantee is operating without a license hereunder, or is engaged in the removal of its Facilities. Each such insurance policy shall contain the following endorsement:

It is hereby understood and agreed that this policy may not be canceled nor the intention not to renew be stated until ninety (90) days after receipt by the City, by registered mail of a written notice addressed to the City Manager of such intent to cancel or not to renew.
6. Within sixty (60) days after receipt by the City of said notice, and in no event later than thirty (30) days prior to said cancellation, the grantee shall obtain and furnish to the City replacement insurance policies meeting the requirements of this Section. The termination or expiration of insurance without replacement insurance as provided herein, shall automatically terminate the grantee's license.

9-1B-22: - GENERAL INDEMNIFICATION:

Each license agreement shall include, to the extent permitted by law, grantee's express undertaking to defend, indemnify and hold the City and its officers, employees, agents and representatives harmless from and against challenges to the grantee's license, and against any and all 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 grantee or its Affiliates, officers, employees, agents, contractors or subcontractors in the construction, operation, maintenance, repair or removal of its Facilities, and in providing or offering service over the Facilities, system or network,

whether such acts or omissions are authorized, allowed or prohibited by this Chapter or by a grant agreement made or entered into pursuant to this Chapter.

9-1B-23: - PERFORMANCE, CONSTRUCTION AND RESTORATION SURETY:

Before a license granted pursuant to this Chapter is effective, and as necessary thereafter, the grantee shall provide to the City and deposit such monies, bonds, letters of credit or other instruments in form and substance acceptable to the City as may be required by this Chapter or by an applicable license agreement.

1. Unless otherwise provided in a license agreement, a construction and performance bond written by a corporate surety acceptable to the City equal to at least one hundred ten percent (110%) of the estimated cost of the constructing grantee's Facilities within the Public Streets or ways of the City shall be deposited before construction is commenced.
 - 1.1. The construction bond shall remain in force until sixty (60) days after substantial completion of the work, as determined by the Director, including restoration of Public Streets, ways and other property affected by the construction.
 - 1.2. The construction bond shall guarantee, to the satisfaction of the City:
 - 1.2.1. Timely completion of construction;
 - 1.2.2. Construction in compliance with applicable plans, permits, technical codes and standards;
 - 1.2.3. Proper location of the Facilities as specified by the City;
 - 1.2.4. Restoration of the Public Streets, ways and other property affected by the construction;
 - 1.2.5. The submission of "as-built" drawings after completion of the work as required by this Chapter, in both paper and GIS-compatible electronic file format, including attribute data such as type of Fiber, strand count, Fiber color, access points; and
 - 1.2.6. Timely payment and satisfaction of all claims, demands or liens for labor, material or services provided in connection with the work.
2. Unless otherwise provided in a license agreement, a restoration bond written by a corporate surety payable to the City equal to at least one hundred ten percent (110%) of the estimated cost of removing grantee's Facilities from the Public Streets or way and restoring them to their condition prior to issuance following issuance of a license granted pursuant to this Chapter.

2.1. The restoration bond shall guarantee, to the satisfaction of the City:

2.1.1. Timely removal of Facilities;

2.1.2. Restoration of the Public Streets, ways, other property affected by construction;

2.1.3. Timely payment and satisfaction of all claims, demands or liens for labor, material or services provided in connection with the work.

9-1B-24: - COORDINATION OF CONSTRUCTION ACTIVITIES:

All grantees are required to cooperate with the City and each other. To the maximum extent possible and as permitted by law, a grantee shall design and schedule its work so as to coordinate with other Persons installing, constructing, or maintaining Facilities in the public right-of-way.

1. By February 1 of each year, each license or franchise grantee shall provide the City with an updated map or maps certifying the location of all Facilities within the Public Streets and ways, including such mapping system information in the City's electronic format. Such map shall show, but not be limited to showing, the number, size, and locations of antennas, pipelines, conduits, cables, vaults, pedestals, Fiber optic and all other associated Facilities located within the Public Street and ways.

1.1. If a grantee's Facilities map or maps have not changed from the map or maps submitted in a previous year, in lieu of submitting a new map or maps, a grantee may, at its election, provide an affidavit to the City certifying that the previous year's map has not changed. The certification shall also include the date that the previous map was submitted to the City.

2. By February 1 of each year, or the first regular business day thereafter, each grantee shall file an annual construction plan with the City showing all work within the Public Streets and ways that it anticipates it will begin the next one (1) year that will include installation, relocation, or removal of a facility exceeding the lesser of one city block or four-hundred (400) feet in length.

2.1. If a grantee does not propose such work in the next one (1) year, the grantee shall submit a plan with a statement that the grantee anticipates no such work but thereafter shall report any such work to the City as soon as it becomes reasonably foreseeable. The plan shall be in a format the City deems necessary to facilitate the coordination within the Public Streets and ways.

- 2.2. Each grantee shall file with the City any amendments to information contained in the annual construction plan no more than thirty (30) calendar days after approving the change necessitating the amendment.
3. The City may disclose information in a grantee's master excavation plan to any public or private entity planning on conducting excavation activities in the Public Streets or ways only on a need-to-know basis in order to facilitate coordination among grantees and to avoid unnecessary excavation in the Public Streets and ways. To the maximum extent permissible under the Illinois Freedom of Information Act (5 ILCS 140/), as amended, the City shall not otherwise disclose the public any information contained in a construction plan submitted by grantee that is proprietary, trade secret, or is otherwise protected from disclosure; provided, however that the City shall have no duty to decline to disclosure any information that grantee has not identified on its face as proprietary, trade secret or otherwise protected from disclosure.
 4. Each grantee shall meet with the City, other grantees and users of the Public Streets and ways annually or as determined by the City to schedule and coordinate construction in the Public Streets and ways.
 5. All construction locations, activities and schedules shall be coordinated, as ordered by the Director, to maximize cost savings and efficiencies, and minimize public inconvenience, disruption or damages.
 6. Each grantee shall adjust to depth, line, and/or grade at its sole expense all appurtenances related to their Communications Facilities in the street or Public Way at the time the street or Public Way rehabilitation, repair or reconstruction occurs.
 7. Each license or franchise grantee may be required when installing, constructing, or maintaining Facilities in the public right-of-way, in the sole discretion of the Director, to also install conduit, inner duct, and Fiber optic cable ("underground communications infrastructure") on behalf of the City. A grantee is required to obtain confirmation in writing from the City about whether the City requires the installation of underground communications infrastructure for areas located within the grantee's proposed construction plan.
 - 7.1. In addition, to the installation of underground communications infrastructure, the grantee may be required, in the sole discretion of the Director, to install such vaults, manholes, hand-holes, and other appurtenances and Facilities as are necessary or needed to accommodate installation and connection of underground communications infrastructure.
 - 7.2. All construction and installation required in this Section shall be accomplished by the construction standards set forth in this Chapter.

- 7.3. All underground communications infrastructure installed by grantees shall be conveyed and dedicated to the City either with or as part of the dedication of the Public Street and/or right-of-way to the City.
- 7.4. The City will bear a pro rata share of the materials costs associated solely with underground communications infrastructure that is installed for the City's use and management.
- 7.5. All grantees shall be required to use available dark Fiber (currently unused Fiber optic strands) within then existing infrastructure or to locate their cable, wire, or lines within such available existing conduit unless it can be demonstrated to the reasonable satisfaction of the Director that such use or location is not technologically feasible or reasonably practicable. Fiber optic cable and strands as well as conduit shall be allocated to the grantees on a first-come, first-served basis; provided, that the City may reserve capacity within such Fiber and conduits for its own use; and provided further, that the Director may reasonably adopt additional rules for Fiber optic cable or strand and conduit allocation in order to ensure that all grantees have reasonable access to the City's rights of ways and that no barrier to entry or competition result from the allocation of cable, strand, or conduit space.
- 7.6. The City reserves the right to charge reasonable fees for the use of Fiber optic cable and Fiber Optic Network Conduit and attendant accessories, Facilities, and infrastructure installed pursuant to this Section, to the extent consistent with and as limited by federal and state laws and resolutions.
8. Except in an emergency or in the case of a new service connections to a new constructed or substantially remodeled building, there shall be no excavation in Public Streets and ways completely resurfaced or reconstructed by the City within the preceding three (3) years.

9-1B-25: - TRANSFER AND ASSIGNMENT:

Except in the event of the merger, consolidation or reorganization of the grantee, the grantee shall not have the right to assign its rights and privileges under this Chapter or to otherwise transfer it in any manner whatsoever without the prior written approval of the City, pursuant to an ordinance enacted by the Corporate Authorities. In the event of a transfer or assignment of the grantee's rights and privileges under this Chapter, all provisions of this Chapter which are obligatory upon or which inure to the benefit of the grantee shall also be obligatory upon and shall inure to the benefit of any and all successors and assigns of the grantee.

9-1B-26: - TRANSACTIONS AFFECTING CONTROL OF GRANT:

Any transactions which singularly or collectively result in a change of ten percent (10%) or more of the ownership or working control of the grantee, of the ownership or working

control of a license, of the ownership or working control of Affiliated entities having ownership or working control of the grantee or of a licensed system, or of control of the capacity or bandwidth of grantee's system, Facilities or substantial parts thereof, shall be considered an assignment or transfer requiring City approval pursuant to Section 9-1B-25 of this Article. Transactions between Affiliated entities are not exempt from City approval.

9-1B-27: - PENALTIES:

Any Person found guilty of violating, disobeying, omitting, neglecting or refusing to comply with any of the provisions of this Article may have their license suspended or revoked and/or shall be fined not less than five hundred dollars (\$500.00), nor more than one thousand five hundred dollars (\$1,500.00) for each offense; provided, any Person constructing, locating, maintaining or operating Facilities, or providing or offering services without a license required under this Article shall be fined not less than one thousand dollars (\$1,000.00) for each offense. A separate and distinct offense shall be deemed committed each day on which a violation occurs or continues.

9-1B-28: - OTHER REMEDIES:

Nothing in this Chapter shall be construed as limiting any judicial remedies that the City may have, at law or in equity, for enforcement of this Chapter.

9-1B-29: - UNLAWFUL ACTS:

It shall be unlawful to:

1. Make or permit any unauthorized connection, whether physically, electronically, acoustically, inductively or otherwise, with any part of another Person's system or Facilities within the corporate boundaries of the City for the purposes of taking of Facilities or services, or for the purpose of enabling others to take or receive such Facilities or services, without the consent of the owner of the Facilities; or
2. Willfully tamper with, remove or injure any other Person's Facilities or system without the consent of the owner.

9-1B-30: - SEVERABILITY:

If any section, subsection, sentence, clause, phrase, or other portion of this Chapter, or its application to any Person, is, for any reason, declared invalid, in whole or in part by any court or agency of competent jurisdiction, same shall be severed from the remainder of this Chapter and said decision shall not affect the validity of the remaining portions hereof.

SECTION 3: Article C (Licensure) of Chapter 1 (Streets and Sidewalks) of Title 9 (Public Ways and Property) of the Naperville Municipal Code is hereby repealed in its entirety and replaced in its entirety with the underlined language as follows:

ARTICLE C. – RESERVED.

SECTION 4: Section 7 (Compensation for Use of Public Streets, Ways and City Property) of Article E (Fees, Costs and Compensation) of Chapter 1 (Streets and Sidewalks) of Title 9 (Public Ways and Property) of the Naperville Municipal Code is hereby repealed in its entirety and replaced in its entirety with the underlined language as follows:

9-1E-7: - COMPENSATION FOR USE OF PUBLIC STREETS, WAYS AND CITY PROPERTY:

In lieu of the annual fees provided for in Section 9-1D-5 of this Title, the City reserves the right, to the extent not prohibited by federal or state law, or as otherwise provided in this Code, to annually fix a competitively neutral fee and nondiscriminatory fee for use or occupancy of the Public Street(s) and way(s), which may be a percentage of the licensee's annual gross revenue, to the maximum extent permitted by law; provided, nothing in this Chapter shall prohibit the city and a licensee from agreeing to the compensation to be paid.

SECTION 5: Section 1 (Conditions of Grant, Locations of Facilities) of Article F (Design and Construction) of Chapter 1 (Streets and Sidewalks) of Title 9 (Public Ways and Property) of the Naperville Municipal Code is hereby repealed in its entirety and replaced in its entirety with the underlined language as follows:

9-1F-1: - RESERVED

SECTION 6: Section 23 (Maintenance of Facilities) of Article F (Design and Construction) of Chapter 1 (Streets and Sidewalks) of Title 9 (Public Ways and Property) of the Naperville Municipal Code is hereby repealed in its entirety and replaced in its entirety with the underlined language as follows:

9-1F-23: - MAINTENANCE OF FACILITIES, INSPECTION AND REPORTING:

Each license grantee shall maintain its Facilities in good and safe condition and in a manner that complies with all applicable Federal, State and local requirements. The license grantee shall perform an inspection of the Facilities on a biennial (or more frequent basis at the discretion of the license grantee) basis, or when otherwise requested by the City. Inspection reports shall be submitted to the Director upon written request, and should include any identified concerns and corrective actions taken. As City crews perform maintenance on City infrastructure they may identify maintenance concerns. These will be reported to the owner of the Communications Facilities. The City shall give the applicant thirty (30) calendar days to correct the identified maintenance concerns after which the City reserves the right to take any action it deems necessary, which could include revocation of the permit. The burden is on the permittee to demonstrate that it complies with the requirements herein. The City has no duty to inform the grantee of any damage to their Facilities by a third-party.

SECTION 7: This Ordinance shall be in full force and effect upon its passage and approval.

PASSED this _____ day of _____, 2018.

AYES:

NAYS:

ABSENT:

APPROVED this _____ day of _____, 2018.

Steve Chirico
Mayor

ATTEST:

Pam Gallahue, Ph.D.
City Clerk