



## *Village of Gilberts*

Village Hall: 87 Galligan Road, Gilberts, Illinois 60136

Ph. 847-428-2861 Fax: 847-428-2955

[www.villageofgilberts.com](http://www.villageofgilberts.com)

### **SPECIAL VILLAGE BOARD MEETING AGENDA**

**Tuesday July 10, 2018 - 7:00 p.m. - Village Hall Board Room**

#### **ORDER OF BUSINESS**

##### **1. CALL TO ORDER / PLEDGE OF ALLEGIANCE**

##### **2. ROLL CALL / ESTABLISH QUORUM**

##### **3. PUBLIC COMMENT\***

Intended for public comment on issues not otherwise on this agenda, those comments offered when individual issues are discussed

##### **4. APPOINTMENTS**

A. A Motion to approve the appointment of Brian Bourdeau as Village Administrator and to approve an Employment Agreement for a term of July 11, 2018 through April 30, 2021. (Swearing In).

##### **5. CONSENT AGENDA**

A. A Motion to approve Minutes from the June 26, 2018 Village Board Meeting.

B. A Motion to approve Bills & Payroll dated July 6, 2018.

##### **6. ITEMS FOR APPROVAL**

A. A motion to approve Ordinance 11-2018 Amending Ordinance No. 09-19 Regarding the Designation of Freedom of Information Act (FOIA) Officers.

##### **7. ITEMS FOR DISCUSSION**

A. Small Cell Wireless Ordinance.

B. Smoking in Village Parks.

C. Farm Animals and Horses Options.

##### **8. OTHER BUSINESS**

##### **9. STAFF REPORTS**

##### **10. TRUSTEES' REPORTS**

##### **11. PRESIDENTS' REPORT**

##### **12. EXECUTIVE SESSION\***

##### **13. ADJOURNMENT**

##### **\*Executive Session Information**

A portion of the meeting will be closed to the Public, effective immediately as Permitted by 5 ILCS 120/2( c ) (1) to discuss the appointment, employment, compensation, discipline, performance, or dismissal of specific employees of the Village, and as permitted by 5 ILCS 120/2 ( c ) (11) to discuss litigation against, affecting, or on behalf of the Village which has been filed and is pending in a court or administrative tribunal of which is imminent and as permitted by 5 ILCS 120/2( c ) (21) to review and approve closed session minutes and as permitted by 5 ILCS 120/2 ( c ) 2 Collective negotiating matters.

##### **\*Public Comment Policy**

Anyone indicating a desire to speak during Public Comments portion of the Village Board Meeting will be acknowledged by the Village President. All remarks are to be addressed to the Village President and Board of Trustees as a whole, not to any specific person(s). To ensure that everyone who wishes to speak has the opportunity to do so, please limit your comments to five minutes. Additional time may be granted at the discretion of the Village President. If you have written comments, please provide a copy to the Village President. If there are a number of individuals present to speak on the same topic, please designate a spokesperson that can summarize the issue. During Public Comments, the Village President, Trustees and Staff will listen to comments and will not engage in discussion. The Village President or Trustees may ask questions to better understand your concern, suggestion or request. Please direct any personnel concerns to the Village Administrator before or after the meeting. The Village of Gilberts complies with the Americans Disabilities Act (ADA). For accessibility Assistance, please contact the Village Clerk at the Village Hall, telephone number is 847-428-2861". Assistive services will be provided upon request.

## **OATH OF OFFICE**

**“I do solemnly swear that I will support the constitution of the United States, the constitution of the State of Illinois, and I will faithfully discharge the duties of the office of Village Administrator of Gilberts to the best of my ability”.**

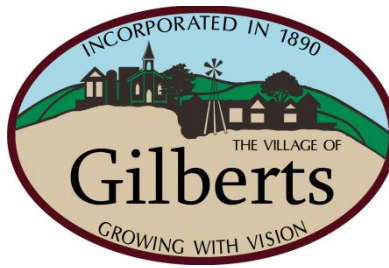
**Name: Brian Bourdeau**

**Appointment Date: July 10th, 2018**

**Signature: \_\_\_\_\_**

**Attest: \_\_\_\_\_**

**Rick Zirk, Village President**



**MINUTES FOR VILLAGE OF GILBERTS  
BOARD OF TRUSTEES MEETING  
Village Hall: 87 Galligan Road, Gilberts, IL 60136  
Meeting Minutes  
Monday, June 26, 2018**

**1. CALL TO ORDER / PLEDGE OF ALLEGIANCE**

President Zirk called the meeting to order at 7:00 p.m. He proceeded to lead those present in the Pledge of Allegiance.

**2. ROLL CALL / ESTABLISH QUORUM**

Village Clerk Courtney Nicholas called the roll. Roll call: Members present: Trustees Kojzarek, Corbett, Farrell, Hacker, and President Zirk. Others present: Interim Village Administrator Anne Marie Gaura, Village Attorney Julie Tappendorf, Interim Finance Director Charles Howard, Chief Building Inspector and Public Works Coordinator John Swedberg, Utilities Superintendent John Castillo, and Senior Project Management Engineer from Robinson Engineering Steve Zehner. For members of the audience, please see the attached copy of the sign-in sheet. Trustee Zambetti arrived at 7:05 p.m.

**3. PUBLIC COMMENT**

Robert King, representing St. Peter Lutheran Church, asked for a follow up on his request for assistance for water and sewer hook-up for their church regarding their expansion. President Zirk apologized that, during recent personnel changes, this item might have not been fully researched. However, President Zirk referred to Public Work Coordinator Swedberg for a summary of what has been done for others in the past. Public Works Coordinator Swedberg explained that, in our Village Code, it does state that churches and non-for-profits may be relieved from permit fees. However, fees that directly cost the Village, must be charged and those fees have been paid by those mentioned entities in the past. President Zirk suggested that the Board extend the same payment plan terms that has been offered to similar entities in the past and that staff would put together more research for Mr. King.

Megan Fischer proposed an ordinance to make the Village's parks smoke-free. She advised that she was visiting the Splash Pad recently and had a disagreement with an individual who refused to stop smoking his cigarette near Mrs. Fischer's children. Mrs. Fischer provided materials such as a copy of the Buffalo Grove ordinance related to non-smoking areas, a listing of park districts in the state of Illinois with non-smoking ordinances, and research articles on the risk of second-hand smoking for children. President Zirk asked Mrs. Fischer to leave the information with Village Clerk Nicholas and

advised that the staff would compile some background information and then present an option to the Board to be voted upon.

#### 4. APPOINTMENTS

- A. President Zirk's appointment of Anne Marie Gaura as Interim Village Administrator. (Swearing In)

**A Motion was made by Trustee Kojzarek and seconded by Trustee Corbett to concur with President Zirk's appointment of Anne Marie Gaura as Interim Village Administrator.** Roll call vote: Trustees Corbett, Zambetti, Farrell, Hacker, voted Aye. 0-nays, 0-abstained. Motion carried.

- B. President Zirk's appointment of Taunya Fischer as Village Finance Director effective July 2<sup>nd</sup>, 2018. (No swearing In)

**A Motion was made by Trustee Farrell and seconded by Trustee Zambetti to concur with President Zirk's appointment of Taunya Fischer as Village Finance Director.** Roll call vote: Trustees Zambetti, Farrell, Hacker, Kojzarek, Corbett voted Aye. 0-nays, 0-abstained. Motion carried.

#### 5. CONSENT AGENDA

- A. A Motion to approve Minutes from the June 5th, 2018 Village Board Meeting
- B. A Motion to approve Minutes from the June 12th, 2018 Committee of the Whole Meeting
- C. A Motion to approve the May 2018 Treasurer's Report
- D. A Motion to approve Bills & Payroll dated June 15th, 2018
- E. A Motion to approve Bills & Payroll dated June 22nd, 2018

President Zirk asked if any of the Board Members wished to remove any item listed on the Consent Agenda for separate consideration. The Board Members offered no comments.

**A Motion was made by Trustee Farrell and seconded by Trustee Zambetti to Approve the Consent Agenda Items A-E as presented.** Roll call vote: Trustees Zambetti, Farrell, Hacker, Kojzarek, Corbett voted Aye. 0-nays, 0-abstained. Motion carried.

#### 6. ITEMS FOR APPROVAL

- A. Repair or replace the Wastewater Treatment Plant blower motor #1 - Utilities Superintendent Castillo asked the board if they would approve either the repair or the replacement of the Eurus motor blower #1. The repair would cost \$6,558 and the replacement would cost \$9,748. Utilities Superintendent Castillo recommended to replace the blower as it is about 17 years old. After brief discussion between the board and President Zirk, it was decided that replacing the blower rather than repairing it would be more efficient.

**A Motion was made by Trustee Zambetti and seconded by Trustee Farrell to approve the replacement of the Wastewater Treatment Plant blower motor #1.** Roll call vote: Trustees Farrell, Hacker, Kojzarek, Corbett, Zambetti voted Aye. 0-nays, 0-abstained. Motion carried.

- B. Waive competitive bidding and approve expenditures not to exceed \$15,000 for repair and replacement of the roof at 84 Tower Hill Road by C3 Construction –

**A Motion was made by Trustee Zambetti and seconded by Trustee Kojzarek to waive competitive bidding and approve expenditures not to exceed \$15,000 for repair and replacement of the roof at 84 Tower Hill Road by C3 Construction.** Roll call vote: Trustees Hacker, Kojzarek, Corbett, Zambetti, Farrell voted Aye. 0-nays, 0-abstained. Motion carried.

- C. Approve Resolution 12-2018 further amending and replacing in its entirety Resolution 10-2018 authorizing and approving the release of a limited number of building permits for Phase 2A1 of the Conservancy Development – Public Works Coordinator Swedberg advised that there are six new models that are currently being reviewed. Attorney Tappendorf advised that there has been a change in the builder commitments that have impacted the marketing of the bonds. She also advised that if there is a builder that has a promise of a certain number of building permits, to keep moving and if those permits are halted then that could affect the underwriter's ability to get a bond purchaser to sign on. Trustee Hacker asked Developer Troy Mertz if he foresees a second builder joining and, if not, does he think that he will be able to sell the bonds. Troy Mertz responded that he has received contact from two other builders who may be interested. Troy Mertz stated that he is confident that they will be able to get the bonds sold, water system constructed, and then begin to develop other neighborhoods. Trustee Kojzarek expressed her apprehension of allowing another 30 days as we have extended the deadline several times for Troy Mertz. Trustee Kojzarek proposed the question of allowing Troy Mertz only several permits at a time instead of the entire 51 permits. Troy Mertz stated that he does not want to limit the sales associates on how many homes they can sell in the month if the permits are limited.

**A Motion was made by Trustee Zambetti and seconded by Trustee Farrell to approve Resolution 11-2018 further amending and replacing in its entirety Resolution 10-2018 authorizing and approving the release of a limited number of building permits for Phase 2A1 of the Conservancy Development.** Roll call vote: Trustees Hacker, Kojzarek, Corbett, Zambetti, Farrell voted Aye. 0-nays, 0-abstained. Motion carried.

- D. Waive competitive bidding and approve expenditures for repair and/or replacement of components of well pump #3 by Water Well Solutions - Project Manager Steve Zehner provided an overview of the proposal provided by Water Well Solutions regarding the repair and/or replacement of well pump #3. Project Manager Zehner recommended proceeding with the proposal from Water Well Solutions as it would expedite the process of having the well back in proper service.

**A motion was made by Trustee Hacker and seconded by Trustee Farrell to waive competitive bidding and approve expenditures for repair and/or replacement of components of well pump #3 by Water Well Solutions not to exceed the dollar amount of \$153,249.00.** Roll call vote: Trustees Kojzarek, Corbett, Zambetti, Farrell, Hacker voted Aye. 0-nays, 0-abstained. Motion carried.

## 7. ITEMS FOR DISCUSSION

There were no items to discuss at this time.

## 8. OTHER BUSINESS

There were no items to discuss at this time.

## 9. STAFF REPORTS

- A. Interim Village Administrator Gaura reported that she and Management Intern Eric Guzman met with Kane County's Director of Development regarding IntraSoccer's amendment to their Planned Unit Development. The purpose of the meeting was to understand the County's position regarding the request and to explain the Village's concerns. Those concerns related to noise, lighting, police calls and storm water issues. Photos showing standing water at IntraSoccer were provided to the County that will be shared with the Water Resources Department. The amendment request will be reviewed at the next Kane County Development Committee Meeting scheduled for July 17 at 9:30 am.
- B. Public Works Coordinator Swedberg offered an update on unit 2A in Town Center. He advised that he went out to inspect what still needed to be corrected and those items were; about 32 trees planted or replaced, several more trees need to be trimmed back, a crosswalk needs to be back-filled, double arrow sign is buried in trees and needs to be moved 20 feet to the north, and two center lines in the pavement need to be fixed. A landscape architect will be getting involved to also advise on what needs to be done.
- C. Public Works Coordinator Swedberg also stated that we received a building permit a few days ago requested by the owners of 250N288 Tyrell Road, which is a five-acre farmette, for an expansion of the barn to accommodate horses. Swedberg stated that he believes that there is a discrepancy between the zoning code and the village code as it relates to the keeping of livestock such as horses. In the zoning code, it states that in an agricultural zone such as this lot, it is acceptable to keep farm animals. In the village code, it states that no person shall keep any livestock, including cows, horses, pigs, goats or other domesticated animals kept for use on a farm, on any property within the village. Any livestock running loose within the village shall be deemed a public nuisance and shall be promptly impounded. President Zirk and Attorney Tappendorf recommended that staff should draft a resolution to clarify this code.

## 10. STAFF REPORTS

The trustees had no report.

## 11. PRESIDENT'S REPORTS

President Zirk had no report.

## 12. EXECUTIVE SESSION\*

**A Motion was made by Trustee Hacker and seconded by Trustee Farrell to move to Executive Session for the discussion, compensation, and employment of specific personnel with no business after as permitted by 5 ILCS 120/2 (c) (1).** Roll call vote: Trustees Zambetti, Farrell, Hacker, Kojzarek, Corbett voted Aye. 0-nays, 0-abstained. Motion carried.

**Meeting closed to the public at 8:20PM.**

**Meeting opened to the public at 8:28PM.**

**Village Clerk Courtney Nicholas called the roll call and the following Board members were present:** Village President Zirk, Trustees Zambetti, Farrell, Hacker, Kojzarek, Corbett voted Aye. 0-nays, 0-abstain. Motion carried. Administrator Gaura and Attorney Tappendorf were also present.

### **13. ADJOURNMENT**

There being no further public business to discuss, **a Motion was made by Trustee Corbett and seconded by Trustee Kojzarek to adjourn from the public meeting at 8:28 p.m.** Voice vote carried unanimously.

Respectfully submitted,

*Courtney Nicholas*

Courtney Nicholas  
Village Clerk





Village of Gilberts  
87 Galligan Road  
Gilberts Illinois 60136  
Village Board Meeting  
June 26, 2018  
Sign in Sheet

Name

Address

John & Barb Targowski

Tom WADA

David Pasel

Meg Fischer

Bruce + Jackie Kod

George V. Kamy

GL Number	Invoice Line Desc	Vendor	Invoice Description	Amount	Check #
<b>Fund 01 GENERAL FUND</b>					
<b>Dept 01 ADMINISTRATIVE</b>					
01-01-5200	OFFICE SUPPLIES	INTEGRATED PURCHSING OPT	ADMIN OFFICE SUPPLY	92.34	
01-01-5410	MAINTENANCE BUILDING	RICHARD SPINKER	VH CLEANING JUNE	140.00	
01-01-5410	MAINTENANCE BUILDING	RICHARD SPINKER	PW CLEANING JUNE	140.00	
01-01-5450	CONTRACTUAL SERVICES	CENTEGRA PRIMARY CARE, L	EMP TESTING - FISCHER	65.00	
01-01-5450	CONTRACTUAL SERVICES	GOVTEMPS USA	TEMPS - C HOWARD AND A GAURA	6,102.26	
01-01-5450	CONTRACTUAL SERVICES	THE BUG MAN, INC	VH - MONTHLY SERVICE	225.00	
01-01-5661	73 INDUSTRIAL PRINCIPAL	UNION NATIONAL BANK OF E	73 INDUSTRIAL MTG PMT	1,991.30	
01-01-5671	73 INDUSTRIAL INTEREST	UNION NATIONAL BANK OF E	73 INDUSTRIAL MTG PMT	1,519.24	
		Total For Dept 01 ADMINISTRATIVE		10,275.14	
<b>Dept 02 POLICE</b>					
01-02-5370	GAS & OIL	WRIGHT EXPRESS FSC	PD GAS CARD	998.52	
01-02-5400	MAINTENANCE EQUIPMENT	KUSTOM SIGNALS, INC.	RADAR UNIT SQ#2	518.62	
01-02-5410	MAINTENANCE BUILDING	RICHARD SPINKER	PD CLEANING JUNE AND FLOOR STRIP AND	1,339.45	
01-02-5450	CONTRACTUAL SERVICES	CANTEEN REFRESHMENT SERV	PD COFFEE DELIVERY	44.78	
01-02-5450	CONTRACTUAL SERVICES	VERIZON WIRELESS	POLICE PHONES 5/17-6/16	266.07	
		Total For Dept 02 POLICE		3,167.44	
<b>Dept 03 PUBLIC WORKS</b>					
01-03-5180	SMALL TOOLS AND EQUIPMENT	MENARDS - CARPENTERSVILL	23 GAUGE MESH / PUMP W HOSE	95.49	
01-03-5260-OLTN	STREETLIGHTING	COMMONWEALTH EDISON	STREET LIGHTS	17.73	
01-03-5390	MAINTENANCE VEHICLES	DUNDEE NAPA AUTO PARTS	DITCH MOWER OIL	105.39	
01-03-5400	MAINTENANCE EQUIPMENT	B&K POWER EQUIPMENT INC	HUSTLER REPAIR	768.25	
01-03-5450	CONTRACTUAL SERVICES	CANTEEN REFRESHMENT SERV	WATER DELIVERY PW	17.34	
		Total For Dept 03 PUBLIC WORKS		1,004.20	
<b>Dept 04 BUILDING</b>					
01-04-5200	OFFICE SUPPLIES	TPI, INC.	BOND DEPOSIT STAMP	37.65	
		Total For Dept 04 BUILDING		37.65	
<b>Dept 06 PARKS</b>					
01-06-5120-WMPK	UTILITIES	COMMONWEALTH EDISON	MEMORIAL PK	33.78	
		Total For Dept 06 PARKS		33.78	
		Total For Fund 01 GENERAL FUND		14,518.21	

GL Number	Invoice Line Desc	Vendor	Invoice Description	Amount	Check #
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Fund Totals:

Fund 01 GENERAL FUND	14,518.21
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Total For All Funds:	<u>14,518.21</u>
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**Ordinance No. 11-2018**

**ORDINANCE NO. 11-2018  
AN ORDINANCE AMENDING ORDINANCE NO. 09-19 REGARDING THE  
DESIGNATION OF FOIA OFFICERS FOR THE VILLAGE OF GILBERTS**

**WHEREAS**, the Village of Gilberts (“Village”) is an Illinois municipal corporation operating in accordance with the Illinois Municipal Code, 65 ILCS 5/1-1-1 *et seq.*; and

**WHEREAS**, the Village previously adopted Ordinance No. 09-19, which designated the former Village Clerk, Deborah Meadows, as the Village’s Freedom of Information Act Officer; and

**WHEREAS**, the Village desires to amend Ordinance No. 09-19 to designate the Village Clerk and the Deputy Village Clerk as the Village’s Freedom of Information Act Officers.

**NOW, THEREFORE, BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF GILBERTS, ILLINOIS**, as follows:

**Section 1. Recitals.** The recitals set forth above are hereby incorporated into and made a part of this Ordinance as though set forth in this Section 1.

**Section 2. Amendment to Ordinance No.09-19.** Section 2 of Ordinance No.09-19 is hereby amended to read as follows;

*Section 2. Designation of FOIA Officers. The Board of Trustees of the Village of Gilberts hereby designates the Village Clerk and the Deputy Village Clerk as the Village’s Freedom of Information Act Officers.*

**Section 3. Continuing Effect.** Those portions of Ordinance No. 09-19 that are not expressly amended herein shall remain in full force and effect.

**Section 4. Severability.** In the event a court of competent jurisdiction finds this Ordinance or any provision hereof to be invalid or unenforceable as applied, such finding shall not affect the validity of the remaining provisions of this ordinance and the application thereof to the greatest extent permitted by law.

**Section 5. Effective Date.** This Ordinance shall only be effective upon the passage, approval, and publication in the manner required by law.

**PASSED BY ROLL CALL VOTE OF THE BOARD OF TRUSTEES** of the Village of Gilberts, Kane County, Illinois, this \_\_\_\_ day of \_\_\_\_\_2018.

	<u>Ayes</u>	<u>Nays</u>	<u>Absent</u>	<u>Abstain</u>
Trustee Dan Corbett	_____	_____	_____	_____
Trustee Elissa Kojzarek	_____	_____	_____	_____
Trustee Nancy Farrell	_____	_____	_____	_____
Trustee Jeanne Allen	_____	_____	_____	_____
Trustee Lou Hacker	_____	_____	_____	_____
Trustee Guy Zambetti	_____	_____	_____	_____
President Rick Zirk	_____	_____	_____	_____

APPROVED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2018

\_\_\_\_\_  
Village President, Rick Zirk

(SEAL)

ATTEST: \_\_\_\_\_  
Village Clerk, Courtney Nicholas

Published: \_\_\_\_\_

4822-1896-0454, v. 1



DIAMOND BUSH  
DiCIANNI  
& KRAFTHEFER

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(F) 312.782.0943

# MEMORANDUM

**To:** President Zirk and Board of Trustees  
**CC:** Anne Marie Gaura, Interim Village Administrator  
**From:** Julie A. Tappendorf  
**Subject:** Small Cell Wireless Ordinance  
**Date:** July 3, 2018

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On June 1, 2018, the Small Wireless Facilities Deployment Act (“*Act*”) became effective. As a result, the power for municipalities to control the attachment of “small cell” antennas to right-of-way infrastructure, and the installation of new infrastructure to support small wireless facilities, will be limited. However, the Act does authorize municipalities to enact local regulations on small cell wireless facilities by August 1, 2018. We have put together a draft ordinance incorporating regulations that are authorized by state law. This memorandum summarizes the changes to your existing right-of-way management regulations which are incorporated into the attached draft ordinance.

**Definitions.** The added definitions are taken from the terms defined in the Act. We want to highlight a few that are important for the implementation and enforcement of the new rules.

*Historic District/Historic Landmark.* This term requires the district or landmark to be formally designated pursuant to State or federal program guidelines. A community cannot simply designate an area or property as “historic” for the purpose of frustrating the ability for wireless providers to install small wireless facilities. Nonetheless, when a property or district is granted this designation, your community can enforce strong rules to protect the intrinsic characteristics of the property or district.

*Small Wireless Facility.* This definition also serves to regulate the maximum size of a small cell antenna installation. Municipal regulations may not require small wireless facilities to be smaller than the dimensions described in this definition, but wireless providers do not enjoy the benefits of the Act if they elect to make a facility larger than the size described.

**Permits Required; Application and Fees.** Even though the Act deems small wireless facilities as permitted uses in the right-of-way and in areas zoning exclusively for commercial or industrial uses, it does not take away your right to demand a permit application and to review plans. However, when a wireless provider wants to perform routine maintenance, replace an existing small wireless facility with a substantially similar substitute, or install micro wireless facilities,

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no permit or application may be required so long as the wireless provider gives you 10 days prior notice.

The Act permits the community to require specific application materials as part of a complete permit application. Importantly, you may require a site specific structural analysis and engineering drawing for each proposed small wireless facility covered by the application that has been prepared and stamped by a licensed engineer. The plans must demonstrate that the utility pole or municipally-owned infrastructure is safely capable of supporting the small wireless facility in all reasonably foreseeable weather conditions without creating a risk to public health and safety.

The Act limits the amount of permit fees that the community may charge depending on the number of small wireless facilities combined in one application and whether a new pole is required. A wireless provider may combine up to 25 small wireless facilities in one application, but you may accept or deny each location separately.

**Action on Permit Application.** Much like with large-scale cellular installations, the Act creates a shot clock for how long you may review an application. The Act expresses that an application to collocate a small wireless facility on an existing pole will be **deemed approved** if no action is taken within 90 days from when it is submitted. The deadline is extended to 120 days for new poles. It is very important to promptly determine if each application is complete because the community may toll the shot clock only if it gives notice to the applicant within the first 30 days that the application is incomplete. The shot clock is then extended for so long as it takes for the applicant to supplement the application.

If your permit officer determines the application should be denied, the decision must be communicated to the applicant in writing with citations to the specific code requirements that the application fails to satisfy. A denied application may be resubmitted, in response to which the community must make a decision within only 30 days.

**Effect of Permit.** A permit to install a small wireless facility is only valid for 180 days, after which it shall expire and the applicant must start from scratch. Permits must grant authority for the small wireless facility for not less than five years.

**Annual Recurring Rates for Small Wireless Facilities.** In the event the applicant wants to install a small wireless facility on municipally-owned infrastructure (e.g. light pole), the community may charge rent at a rate no greater than \$200 per year. The rent may be higher only if the municipality can demonstrate its actual, direct and reasonable costs for hosting the equipment. The statute does contain a provision which avoids the nullification of any existing pole attachment agreement which provides for other rate schedules, but only for facilities which are installed before the second anniversary of the effective date of the Act.

**Public Safety and Traffic Control.** The Act protects the operation of wireless dispatch radios and allows the municipality to order the wireless provider to eliminate any unacceptable

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interference. Because the wireless radio spectrum is closely regulated by the FCC, it is unlikely that such interference will occur, but if it does the public safety system is given first priority.

**Location of Facilities.** It is in this section of the amended ordinance where the community may exercise its greatest control over small wireless facilities. Unfortunately, you may not require the placement of small wireless facilities on a particular utility pole. However, should the application necessitate the installation of a new utility pole, the Village may propose that the small wireless facility be collocated on an existing utility pole or existing support structure within 100 feet of the proposed collocation.

To qualify as a small wireless facility, the new antenna attachment may be no greater than 10 feet above the height of the pole to which it is attached. New poles may not exceed 45 feet in height or 10 feet taller than the height of the tallest existing pole located within 300 feet along the same road, whichever is higher.

It is very important to recognize that the Act grants authority to apply generally applicable design and appearance standards to facilities located in the right-of-way. As a result, we have incorporated into the ordinance special aesthetic regulations for three categories of neighborhoods in the community: (1) residential zones, (2) areas identified in your planning or economic development ordinances as having special aesthetic or economic significance to the community, and (3) historic districts and landmarks. The ordinance also contains images that are intended to be examples of small wireless facilities that have implemented a stealth or camouflage design. While the Act allows you to enforce this type of design, the rule must be balanced with the permitted dimensions for a small wireless facility (6 cubic feet in volume). Therefore, you could create incentives for the use of stealth or camouflage designs by granting administrative height variances in consideration for the diminished aesthetic impact. Furthermore, if an existing pole has been erected with a design intended to conceal the appearance of an attachment in accordance with the Village's written design standards, a new small wireless facility may not be attached in a way which defeats the concealment.

**Removal, Relocation or Modification.** The Act provides for special rules applicable to the removal of abandoned small wireless facilities which have been incorporated into the amendments. A small wireless facility shall be deemed abandoned if it is not operated for a continuous period of 12 months. Once it is deemed abandoned, it must be removed within 180 days.

**Variations.** The Act emphasizes the availability of variance procedures to avoid the strict enforcement of your rules in a way which would result in a *de facto* denial, even where the rules do not represent a ban on the facilities. Because the state has declared that small wireless facilities are a permitted and intended use of the right-of-way, you will develop a better relationship with wireless providers, and perhaps receive more cooperation in return, if you administer your rules as a partner rather than an enemy combatant.



ANCEL, GLINK, DIAMOND, BUSH, DICIANNI & KRAFTHEFER, P.C.

July 3, 2018

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**ZONING NOTE:** The draft ordinance presented for Village Board consideration amends the right of way regulations in the Village Code, which need to be adopted by August 1<sup>st</sup>. It does not address small cell wireless facilities on property outside of the right of way. We recommend that the Village begin the process of amending its UDO to incorporate regulations for small wireless facilities proposed to be located on property zoned for commercial or industrial uses, which the Act designates as permitted uses.



DIAMOND BUSH  
DiCIANNI  
& KRAFTHEFER

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# MEMORANDUM

**To:** President Zirk and Board of Trustees  
**CC:** Anne Marie Gaura, Interim Village Administrator  
**From:** Julie A. Tappendorf  
**Subject:** Small Cell Wireless Ordinance  
**Date:** July 3, 2018

---

On June 1, 2018, the Small Wireless Facilities Deployment Act (“*Act*”) became effective. As a result, the power for municipalities to control the attachment of “small cell” antennas to right-of-way infrastructure, and the installation of new infrastructure to support small wireless facilities, will be limited. However, the Act does authorize municipalities to enact local regulations on small cell wireless facilities by August 1, 2018. We have put together a draft ordinance incorporating regulations that are authorized by state law. This memorandum summarizes the changes to your existing right-of-way management regulations which are incorporated into the attached draft ordinance.

**Definitions.** The added definitions are taken from the terms defined in the Act. We want to highlight a few that are important for the implementation and enforcement of the new rules.

*Historic District/Historic Landmark.* This term requires the district or landmark to be formally designated pursuant to State or federal program guidelines. A community cannot simply designate an area or property as “historic” for the purpose of frustrating the ability for wireless providers to install small wireless facilities. Nonetheless, when a property or district is granted this designation, your community can enforce strong rules to protect the intrinsic characteristics of the property or district.

*Small Wireless Facility.* This definition also serves to regulate the maximum size of a small cell antenna installation. Municipal regulations may not require small wireless facilities to be smaller than the dimensions described in this definition, but wireless providers do not enjoy the benefits of the Act if they elect to make a facility larger than the size described.

**Permits Required; Application and Fees.** Even though the Act deems small wireless facilities as permitted uses in the right-of-way and in areas zoning exclusively for commercial or industrial uses, it does not take away your right to demand a permit application and to review plans. However, when a wireless provider wants to perform routine maintenance, replace an existing small wireless facility with a substantially similar substitute, or install micro wireless facilities,

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no permit or application may be required so long as the wireless provider gives you 10 days prior notice.

The Act permits the community to require specific application materials as part of a complete permit application. Importantly, you may require a site specific structural analysis and engineering drawing for each proposed small wireless facility covered by the application that has been prepared and stamped by a licensed engineer. The plans must demonstrate that the utility pole or municipally-owned infrastructure is safely capable of supporting the small wireless facility in all reasonably foreseeable weather conditions without creating a risk to public health and safety.

The Act limits the amount of permit fees that the community may charge depending on the number of small wireless facilities combined in one application and whether a new pole is required. A wireless provider may combine up to 25 small wireless facilities in one application, but you may accept or deny each location separately.

**Action on Permit Application.** Much like with large-scale cellular installations, the Act creates a shot clock for how long you may review an application. The Act expresses that an application to collocate a small wireless facility on an existing pole will be **deemed approved** if no action is taken within 90 days from when it is submitted. The deadline is extended to 120 days for new poles. It is very important to promptly determine if each application is complete because the community may toll the shot clock only if it gives notice to the applicant within the first 30 days that the application is incomplete. The shot clock is then extended for so long as it takes for the applicant to supplement the application.

If your permit officer determines the application should be denied, the decision must be communicated to the applicant in writing with citations to the specific code requirements that the application fails to satisfy. A denied application may be resubmitted, in response to which the community must make a decision within only 30 days.

**Effect of Permit.** A permit to install a small wireless facility is only valid for 180 days, after which it shall expire and the applicant must start from scratch. Permits must grant authority for the small wireless facility for not less than five years.

**Annual Recurring Rates for Small Wireless Facilities.** In the event the applicant wants to install a small wireless facility on municipally-owned infrastructure (e.g. light pole), the community may charge rent at a rate no greater than \$200 per year. The rent may be higher only if the municipality can demonstrate its actual, direct and reasonable costs for hosting the equipment. The statute does contain a provision which avoids the nullification of any existing pole attachment agreement which provides for other rate schedules, but only for facilities which are installed before the second anniversary of the effective date of the Act.

**Public Safety and Traffic Control.** The Act protects the operation of wireless dispatch radios and allows the municipality to order the wireless provider to eliminate any unacceptable

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interference. Because the wireless radio spectrum is closely regulated by the FCC, it is unlikely that such interference will occur, but if it does the public safety system is given first priority.

**Location of Facilities.** It is in this section of the amended ordinance where the community may exercise its greatest control over small wireless facilities. Unfortunately, you may not require the placement of small wireless facilities on a particular utility pole. However, should the application necessitate the installation of a new utility pole, the Village may propose that the small wireless facility be collocated on an existing utility pole or existing support structure within 100 feet of the proposed collocation.

To qualify as a small wireless facility, the new antenna attachment may be no greater than 10 feet above the height of the pole to which it is attached. New poles may not exceed 45 feet in height or 10 feet taller than the height of the tallest existing pole located within 300 feet along the same road, whichever is higher.

It is very important to recognize that the Act grants authority to apply generally applicable design and appearance standards to facilities located in the right-of-way. As a result, we have incorporated into the ordinance special aesthetic regulations for three categories of neighborhoods in the community: (1) residential zones, (2) areas identified in your planning or economic development ordinances as having special aesthetic or economic significance to the community, and (3) historic districts and landmarks. The ordinance also contains images that are intended to be examples of small wireless facilities that have implemented a stealth or camouflage design. While the Act allows you to enforce this type of design, the rule must be balanced with the permitted dimensions for a small wireless facility (6 cubic feet in volume). Therefore, you could create incentives for the use of stealth or camouflage designs by granting administrative height variances in consideration for the diminished aesthetic impact. Furthermore, if an existing pole has been erected with a design intended to conceal the appearance of an attachment in accordance with the Village's written design standards, a new small wireless facility may not be attached in a way which defeats the concealment.

**Removal, Relocation or Modification.** The Act provides for special rules applicable to the removal of abandoned small wireless facilities which have been incorporated into the amendments. A small wireless facility shall be deemed abandoned if it is not operated for a continuous period of 12 months. Once it is deemed abandoned, it must be removed within 180 days.

**Variations.** The Act emphasizes the availability of variance procedures to avoid the strict enforcement of your rules in a way which would result in a *de facto* denial, even where the rules do not represent a ban on the facilities. Because the state has declared that small wireless facilities are a permitted and intended use of the right-of-way, you will develop a better relationship with wireless providers, and perhaps receive more cooperation in return, if you administer your rules as a partner rather than an enemy combatant.

ANCEL, GLINK, DIAMOND, BUSH, DICIANNI & KRAFTHEFER, P.C.

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**ZONING NOTE:** The draft ordinance presented for Village Board consideration amends the right of way regulations in the Village Code, which need to be adopted by August 1<sup>st</sup>. It does not address small cell wireless facilities on property outside of the right of way. We recommend that the Village begin the process of amending its UDO to incorporate regulations for small wireless facilities proposed to be located on property zoned for commercial or industrial uses, which the Act designates as permitted uses.

**ORDINANCE NO. 12-2018**

**AN ORDINANCE AMENDING THE VILLAGE CODE  
REGARDING SMALL CELL WIRELESS FACILITIES**

**WHEREAS**, the Village of Gilberts is an Illinois municipal corporation;

**WHEREAS**, the Village is authorized under the Illinois Municipal Code, 65 ILCS 5/1-1-1 *et seq.*, and Illinois law to adopt ordinances pertaining to the public health, safety and welfare; and

**WHEREAS**, the Village is further authorized to adopt the amendments contained in this Ordinance pursuant to its authority to regulate the public right-of-way under section 11-80-1 *et seq.*, of the Illinois Municipal Code; and

**WHEREAS**, the Village uses the public right-of-way within its Village limits to provide essential public services to its residents and businesses. The public right-of-way within the Village is a limited public resource held by the Village for the benefit of its citizens and the Village has a custodial duty to ensure that the public right-of-way is used, repaired, and maintained in a manner that best serves the public interest; and

**WHEREAS**, growing demand for personal wireless telecommunications services has resulted in increasing requests nationwide and locally from the wireless industry to place small wireless facilities on Village-owned structures in the public right-of-way. While State and federal law limit the authority of local governments to enact laws that unreasonably discriminate among providers of functionally equivalent services, prohibit, or have the effect of prohibiting the provision of telecommunications services by wireless service providers, the Village is authorized, under existing State and federal law, to enact appropriate regulations and design standards relative to small wireless facility installations in the public right-of-way; and

**WHEREAS**, in anticipation of continued increased demand for placement of small wireless facility installations within the public right-of-way and in accordance with the Small Wireless Facilities Deployment Act, the Village Board finds that it is in the best interests of the public health, safety and general welfare of the Village to amend its current right of way construction standards in Title 8, Chapter 1 of the Village Code to establish generally applicable standards for the use of such facilities and installations within the public right-of-way in the Village so as to, among other things: (i) preserve the character of the neighborhoods in which small wireless facilities are installed; (ii) minimize any adverse visual impact of small wireless facilities and prevent visual blight in the neighborhoods in which facilities are installed; (iii) codify the application and permitting procedure for the installation of small wireless facilities in the Village; (iv) establish the annual recurring rates for small wireless facilities; and (v) codify the removal, relocation, or modification requirements for small wireless facilities placed in the Village right-of-way, as set forth in this Ordinance.

**THEREFORE, BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES** of the Village of Gilberts, Kane County, Illinois as follows:

**Section 1. Recitals.** The recitals are incorporated into this Section 1 as if fully set forth.

**Section 2. Amendment.** Article C, entitled “Construction of Facilities in Rights of Way,” of Chapter 8, entitled “Streets, Sidewalks, and Public Ways, of Title 9, “Building and Construction,” of the Gilberts Village Code is deleted in its entirety and replaced with the new Article 8C attached to this Ordinance as Exhibit A.

**Section 3. Severability.** In the event a court of competent jurisdiction finds this Ordinance or any provision hereof to be invalid or unenforceable as applied, such finding shall not affect the validity of the remaining provisions of this ordinance and the application thereof to the greatest extent permitted by law.

**Section 4. Repeal and Saving Clause.** All ordinances or parts of ordinances in conflict herewith are hereby repealed; provided, however, that nothing herein contained shall affect any rights, actions, or cause of action which shall have accrued to the Village of Gilberts prior to the effective date of this Ordinance.

**Section 5. Effective Date.** Upon its passage and approval according to law, this Ordinance shall, by authority of the Board of Trustees, be published in pamphlet form.

**PASSED BY ROLL CALL VOTE OF THE BOARD OF TRUSTEES** of the Village of Gilberts, Kane County, Illinois, this \_\_\_\_ day of \_\_\_\_\_ 2018.

	<u>Ayes</u>	<u>Nays</u>	<u>Absent</u>	<u>Abstain</u>
Trustee Dan Corbett	_____	_____	_____	_____
Trustee Elissa Kojzarek	_____	_____	_____	_____
Trustee Nancy Farrell	_____	_____	_____	_____
Trustee Jeanne Allen	_____	_____	_____	_____
Trustee Lou Hacker	_____	_____	_____	_____
Trustee Guy Zambetti	_____	_____	_____	_____
President Rick Zirk	_____	_____	_____	_____

APPROVED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2018

\_\_\_\_\_  
Village President, Rick Zirk

(SEAL)

ATTEST: \_\_\_\_\_  
Village Clerk, Debra Meadows

Published: \_\_\_\_\_

Exhibit A

Amendment to Title 8, Chapter 1 of Gilberts Village Code

[additions shown in **bold, double-underlined**; deletions in ~~striketrough~~]

**ARTICLE C. CONSTRUCTION OF FACILITIES IN PUBLIC RIGHTS OF WAY**

**9-8C-1: PURPOSE; SCOPE; INTERPRETATION:**

- A. Purpose: The purpose of this article is to establish policies and procedures for constructing facilities on rights of way within the village jurisdiction which will provide public benefit consistent with the preservation of the integrity, safe usage, and visual qualities of the village rights of way and the village as a whole.
- B. Intent: In enacting this article, the village intends to exercise its authority over the rights of way in the village and, in particular, the use of the public ways and property by **wireless providers or** 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 village 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 stormwater 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 village 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. Scope: This article applies to all facilities on, over, above, along, upon, under, across, or within the rights of way within the jurisdiction of the village. A facility lawfully established prior to the effective date hereof may continue to be maintained, repaired and operated by



the wireless provider or 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:

1. The village, in its discretion and as limited by law, may require utilities to enter into a franchise, license or similar agreement for the privilege of locating their facilities on, over, above, along, upon, under, across, or within the village rights of way. Utilities that are not required by law to enter into such an agreement may request that the village enter into such an agreement. In such an agreement, the village may provide for terms and conditions inconsistent with this article.
2. In the event that a utility other than a telecommunications provider has a franchise, license or similar agreement with the village, such franchise, license or similar agreement shall govern and control during the term of such agreement and any lawful renewal or extension thereof.
3. In the event of any conflict with, or inconsistency between, the provisions of this article and the provisions of any franchise, license or similar agreement between the village and any telecommunications provider, the provisions of such franchise, license or similar agreement shall govern and control during the term of such agreement and any lawful renewal or extension thereof.

E. Conflicting Provisions:

1. This article supersedes all sections or parts of sections adopted prior hereto that are in conflict herewith, to the extent of such conflict.
2. In the event that applicable federal or state laws or regulations conflict with the requirements of this article, the wireless provider or utility shall comply with the requirements of this article to the maximum extent possible without violating federal or state laws or regulations.

F. Sound Engineering Judgment: The village shall use sound engineering judgment when administering this article and may vary the standards, conditions, and requirements expressed in this article when the village so determines. Nothing herein shall be construed to limit the ability of the village to regulate its rights of way for the protection of the public health, safety and welfare.

**9-8C-2: DEFINITIONS:**

As used in this article 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 thereto in 92 Illinois administrative code 530.30 unless the context clearly requires otherwise.

AASHTO: American Association of State Highway and Transportation Officials.

ANSI: American National Standards Institute.

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

ASTM: American Society for Testing and Materials.

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

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.

BUILDING OFFICIAL: The village building official or his or her designee.

CABLE OPERATOR: That term as defined in 47 USC 522(5).

CABLE SERVICE: That term as defined in 47 USC 522(6).

CABLE SYSTEM: That term 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.

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 runout 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 village code of the village of Gilbert.s

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

**COMMUNICATION 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(33), as amended; or wireless service other than mobile service.**

**COMMUNICATION SERVICES 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 or more right of way lines of a right of way.

DIRECTOR OF PUBLIC WORKS: The village director of public works or his or her designee.

DISRUPT THE RIGHT OF WAY: Any work that obstructs the right of way or causes a material adverse effect on the use of the right of way for its intended use. Such work may include, without limitation, the following: excavating or other cutting; placement (whether temporary or permanent) of materials, equipment, devices, or structures; damage to vegetation; and compaction or loosening of the soil, and shall not include the parking of vehicles or equipment in a manner that does not materially obstruct the flow of traffic on a highway.

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

ENCASEMENT: Provision of a protective casing.

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

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

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

FACILITY: All structures, devices, objects, and materials (including, 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, **small wireless facilities, as defined in this chapter**, and appurtenances thereto) located on, over, above, along, upon, under, across, or within rights of way under this article. For purposes of this article, the term "facility" shall not include any facility owned or operated by the village.

FREESTANDING FACILITY: A facility that is not a crossing facility or a parallel facility, such as an antenna, **monopole, utility pole**, transformer, pump, or meter station.

FRONTAGE ROAD: A 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 building official 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.

**HISTORIC DISTRICT OR HISTORIC LANDMARK: A building, property, or site, or group of buildings, properties, or sites that are either (i) listed in the National Register of Historic Places or formally determined eligible for listing by the Keeper of the National Register, the individual who has been delegated the authority by the federal agency to list properties and determine their eligibility for the National Register, in accordance with Section VI.D.1.a.i through Section VI.D.1.a.v of the Nationwide Programmatic Agreement codified at 47 CFR Part 1, Appendix C; or (ii) designated as a locally landmarked building, property, site, or historic district by an ordinance adopted by the village pursuant to a preservation program that meets the requirements of the Certified Local Government Program of the Illinois State Historic Preservation Office or where such certification of the preservation program by the Illinois State Historic Preservation Office is pending.**

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.

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

**MONOPOLE: A structure composed of a single spire, pole or tower designed and principally used to support antennas or related equipment and that is not a utility pole.**

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

OCCUPANCY: The presence of facilities on, over or under a 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 a 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 section [9-8C-4](#) of this article.

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 village. If no time period is specified, the period shall be thirty (30) business days.

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

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

RIGHT OF WAY 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 village has the right and authority to authorize, regulate or permit the location of facilities other than those of the village. "Right of way" or "rights of way" shall not include any real or personal village property that is not specifically described in this definition and shall not include village buildings, fixtures and other structures or improvements, regardless of whether they are situated in the right of way.

ROADWAY: That part of the highway that includes the pavement 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 its use or consumption and not for sale.

SECURITY FUND: That amount of security required pursuant to subsection [9-8C-5C](#) of this article.

SHOULDER: A width of the 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 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: 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 or more specified locations to one 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 village 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: Means and includes every person engaged in making "sales of telecommunications at retail" as defined in this section.

TRENCH: A relatively narrow open excavation for the installation of an underground facility.

UTILITY: The individual or entity owning or operating any "facility" that is not a small wireless facility as defined in this section.

**UTILITY POLE: An upright pole designed and used to support electric cables, telephone cables, telecommunication cables, cable service cables, 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: That term as defined in section 21-201(v) of the Illinois cable and video competition law of 2007, 220 Illinois Compiled Statutes 5/21-201(v).

VILLAGE: The village of Gilberts.

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.

**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 structure 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 village.**

**WIRELESS PROVIDER: A wireless infrastructure provider or a wireless service provider.**

**WIRELESS SERVICES: Any services provided to the general public, including a particular class of customers, and made available on a nondiscriminatory basis using licensed or unlicensed spectrum, whether at a fixed location or mobile, provided using wireless facilities.**

**WIRELESS SERVICES PROVIDER: A person who provides wireless services.**

**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.**

### 9-8C-3: ANNUAL REGISTRATION REQUIRED:

Every wireless provider or utility that occupies a right of way within the village shall register on January 1 of each year with the building official, providing the wireless provider's or utility's name, address and regular business telephone and teletcopy numbers, the name of one or more contact persons who can act on behalf of the wireless provider or utility in connection with emergencies involving the wireless provider's or 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 subsection 9-8C-5A of this article, in the form of a certificate of insurance.

### 9-8C-4: PERMIT REQUIREMENTS:

A. Permit Required; Exemptions: No person shall "construct" (as defined in section 9-8C-2 of this article) any facility on, over, above, along, upon, under, across, or within any village 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 section 9-8C-2 of this article); 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 village building official and obtaining a permit from the village therefor, except as otherwise provided in this article. 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. Application For Permit:

1. All applications for permits pursuant to this article shall be filed on a form provided by the village and shall be filed in such number of duplicate copies as the village may designate. The applicant may designate those portions of its application materials that it reasonably believes contain proprietary or confidential information as "proprietary" or "confidential" by clearly marking each page of such materials accordingly. **The application for a small wireless facility, along with supporting information and notices, must be submitted to the village engineer.**

**No application, approval, or permit shall be required for routine maintenance, the replacement of small wireless facilities that are substantially similar, the same size or smaller, if the wireless provider notifies the village at least 10 days prior to the planned replacement, or the installation, placement, maintenance, operation, or replacement of micro wireless facilities that are suspended on cables strung between existing utility poles in compliance with applicable safety codes. The village may require a permit to work within the right-of-way for activities that affect traffic patterns or that require lane closures.**

2. The application shall be made by the wireless provider or utility or its duly authorized representative and shall contain, at a minimum, the following:
  - a. The utility's applicant's name and address and telephone and teletcopy numbers;
  - b. The applicant's name and address, if different than the wireless provider or utility, its telephone and teletcopy numbers, e-mail address, and its interest in the work;



- c. 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;
  - d. 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;
  - e. Evidence that the wireless provider or utility has placed on file with the village:
    - (1) 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
    - (2) An emergency contingency plan which shall specify the nature of potential emergencies including, without limitation, construction and hazardous materials emergencies, and the intended response by the applicant. The intended response shall include notification to the village and shall promote protection of the safety and convenience of the public. Compliance with ICC regulations for emergency contingency plans constitutes compliance with this article unless the village finds that additional information or assurances are needed;
  - f. Drawings, plans and specifications showing the work proposed, including the certification of an engineer that such drawings, plans, and specifications comply with applicable codes, rules, and regulations;
  - g. Electronic versions of the application, plans and specifications, submitted in a format specified by the village building official;
  - h. Evidence of insurance as required in subsection [9-8C-5A](#) of this article;
  - i. Evidence of posting of the security fund as required in subsection [9-8C-5C](#) of this article;
  - j. Any request for a variance from one or more provisions of this article (see section [9-8C-15](#) of this article); and
  - k. Such additional information as may be reasonably required by the village.
3. In addition to the requirements of subsection B2 of this section, the permit application shall include the following items, as applicable to the specific utility facility that is the subject of the permit application:
- a. 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;

- b. In the case of natural gas systems, state the proposed pipe size, design, construction class, and operating pressures;
- c. In the case of water lines, indicate that all requirements of the Illinois environmental protection agency, division of public water supplies, have been satisfied;
- d. In the case of sewer line installations, indicate that the land and water pollution requirements of the Illinois environmental protection agency, division of water pollution control, and the metropolitan water reclamation district (other local or state entities with jurisdiction) have been satisfied; or
- e. 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.

**f. In the case of small wireless facilities, include the following:**

**(1) Drawings and site plans for each proposed small wireless facility covered by the application;**

**(2) The location where each proposed small wireless facility or utility pole will be installed and photographs of the location and its immediate surroundings;**

**(3) A site specific structural analysis and engineering drawing for each proposed small wireless facility covered by the application, prepared and stamped by a professional engineer, which demonstrates the utility pole or municipally-owned infrastructure is safely capable of supporting the small wireless facility in all reasonably foreseeable weather conditions without creating a risk to public health and safety. The structural analysis will also describe the method by which the facility is designed to fail and demonstrate that any structural failure to the facility shall not cause harm to any residential structure;**

**(4) The equipment type and model numbers for the antennas and all other wireless equipment associated with the small wireless facility;**

**(5) A proposed schedule for the installation and completion of each small wireless facility covered by the application;**

**(6) Certification that the collocation complies with this chapter; and**

**(7) Applications must include the screening and stealth concealment methods used for each proposed small wireless facility covered by the application.**

- 4. 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 **applicant** in writing to the village within thirty (30) business days after the change necessitating the amendment.

C. Fees; Exemption: Unless otherwise provided by franchise, license, or similar agreement, all applications for permits pursuant to this article shall be accompanied by a fee in the amount established by section [2-4-28](#) of this code except that for small wireless facilities, the following fees shall apply:

1. All applications for the collocation of a single small wireless facility on an existing utility pole or wireless support structure shall be accompanied by a fee in the amount of \$650. All applications for the collocation of more than one small wireless facility on an existing utility pole or wireless support structure shall be accompanied by a fee in the amount of \$350 for each small wireless facility addressed in said application. An application for the installation of a small wireless facility that will require a new utility pole must be accompanied by a fee in the amount of \$1,000.

2. Applications for small wireless facilities may be submitted on a consolidated basis provided they involve the same type of small wireless facility and the same type of structure. The village may, at its discretion, remove small wireless facility collocations from the consolidated application and treat them separately for purposes of deeming the application incomplete or denied.

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<sup>1</sup>

D. Action On Applications:

1. Application Deadlines for Small Wireless Facilities: Applications are deemed complete if the village does not notify the applicant otherwise within 30 days of receipt of the application. If the application to collocate a small wireless facility is to be placed on an existing utility pole, the village will notify the applicant of its approval or denial within 90 days. If the village fails to notify the applicant within that timeframe, the application will be deemed approved. If the application to collocate a small wireless facility requires the installation of a new utility pole, the village will notify the applicant of its approval or denial within 120 days. If the village fails to notify the applicant within that timeframe, the application will be deemed approved.

4. 2 Review Of Applications; Grant Or Denial Of Permit: Completed permit applications, containing all required documentation, shall be examined by the village building official on a nondiscriminatory basis within a reasonable time after filing. If the application does not conform to the requirements of all applicable ordinances, codes, laws, rules, and or regulations that concern public safety, the village building official shall notify the applicant of the basis for a denial, including specific code provisions upon which the denial was based. The applicant may cure the deficiencies and resubmit a revised application without paying additional application fees. ~~reject such application in writing, stating the reasons therefor.~~ If the village building official is satisfied that the proposed work conforms to the requirements of this chapter and all applicable ordinances, codes, laws, rules, and regulations, the village building official 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 village building official, that the construction proposed under the

application shall be in full compliance with the requirements of this article. **When reviewing applications for small wireless facilities, the village will approve or deny the revised application within 30 days after the applicant resubmits the application or it will be deemed approved.**

2- **3.** Additional Review Of Telecommunications Retailers' Applications:

- a. Pursuant to section 4 of the telephone company act, 220 Illinois Compiled Statutes 65/4, a telecommunications retailer shall notify the village that it intends to commence work governed by this article for facilities for the provision of telecommunications services. Such notice shall consist of plans, specifications, and other documentation sufficient to demonstrate the purpose and intent of the facilities, and shall be provided by the telecommunications retailer to the village not less than ten (10) business days prior to the commencement of work requiring no excavation and not less than thirty (30) business days prior to the commencement of work requiring excavation. The village building official shall specify the portion of the right of way upon which the facility may be placed, used and constructed.
- b. In the event that the village building official fails to provide such specification of location to the telecommunications retailer within either: 1) ten (10) business days after service of notice to the village by the telecommunications retailer in the case of work not involving excavation for new construction; or 2) twenty five (25) business 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 article.
- c. Upon the provision of such specification by the village, where a permit is required for work pursuant to subsection A of this section, the telecommunications retailer shall submit to the village an application for a permit and any and all plans, specifications and documentation available regarding the facility to be constructed. Such application shall be subject to the requirements of subsection D1 of this section.

3- **4.** Additional Review Of Holders Of State Authorization Under The Cable And Video Competition Law: 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) business days after submission to the village, unless otherwise acted upon by the village, provided the holder has complied with applicable village codes, ordinances, and regulations.

E. Effect Of Permit:

1. A permit from the village authorizes a permittee to undertake only certain activities in accordance with this article on village rights of way, and does not create a property right or grant authority to the permittee to impinge upon the rights of others who may have an interest in the rights of way.
2. No permit issued under this article 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.

3. No construction shall begin pursuant to a permit issued under this article 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 village with such village representatives in attendance as the village 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.
4. The issuance of a permit by the village does not excuse the permittee from complying with other requirements of the village and applicable statutes, laws, ordinances, rules, and regulations. (Ord. 07-24, 12-18-2007)

**5. Collocation of small wireless facilities must be completed within 180 days after the issuance of the permit. If collocation is not complete, the permit will be void. Permits for small wireless facilities are valid for 5 years from the time of issuance.**

F. 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 village within ninety (90) business 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 article, it shall be treated as a request for variance in accordance with section [9-8C-15](#) of this article. If the village 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.

G. Suspension Or Revocation Of Permit:

1. Grounds: The village may revoke or suspend a permit issued pursuant to this article for one or more of the following reasons:
  - a. Fraudulent, false, misrepresenting, or materially incomplete statements in the permit application;
  - b. Noncompliance with this article;
  - c. 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
  - d. Permittee's failure to construct the facilities substantially in accordance with the permit and approved plans.

2. Notice Requirements: The village shall send written notice of its intent to revoke or suspend a permit issued pursuant to this article stating the reason or reasons for the revocation or suspension and the alternatives available to permittee under this article.
3. Options Of Permittee:
  - a. Upon receipt of a written notice of revocation or suspension from the village, the permittee shall have the following options:
    - (1) Immediately provide the village with evidence that no cause exists for the revocation or suspension;
    - (2) Immediately correct, to the satisfaction of the village, the deficiencies stated in the written notice, providing written proof of such correction to the village within five (5) business 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 village, providing written proof of such removal to the village within ten (10) business days after receipt of the written notice of revocation.
  - b. The village may, in its discretion, for good cause shown, extend the time periods provided in this subsection G3.
4. Stop Work Order: In addition to the issuance of a notice of revocation or suspension, the village may issue a stop work order immediately upon discovery of any of the reasons for revocation set forth within subsection G1 of this section.
5. Failure Or Refusal Of Permittee To Comply: If the permittee fails to comply with the provisions of subsection G3 of this section, the village or its designee may, at the option of the village: a) correct the deficiencies; b) upon not less than twenty (20) business days' notice to the permittee, remove the subject facilities or equipment; or c) after not less than thirty (30) business days' notice to the permittee of failure to cure the noncompliance, deem them abandoned and the property of the village. The permittee shall be liable in all events to the village for all costs of removal.

**6. Annual Recurring Rates for Small Wireless Facilities. The village shall charge an annual recurring rate for the collocation of small wireless facilities on municipally-owned infrastructure located in its right-of-way equal to either \$200 per utility pole, or the actual, direct, and reasonable costs related to the wireless provider's use of space on the village utility pole, whichever is greater. If the village elects to charge the actual, direct, and reasonable costs related to the wireless provider's use of space on the municipally-owned infrastructure, it shall adopt a fee schedule on an annual basis.**

#### **9-8C-5: INSURANCE; INDEMNITY; SECURITY:**

##### **A. Insurance Requirements:**

1. Coverages And Limits:

a. Unless otherwise provided by franchise, license, or similar agreement, each **wireless provider or** utility occupying the 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 village and its elected and appointed officers, officials, agents, and employees as additional insureds on the policies listed in subsections A1a(1) and A1a(2) 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;~~ **Property insurance for replacement costs against all risks; and**

~~(3) Workers' compensation with statutory limits; and~~

~~(4) Employers' liability insurance with limits of not less than one million dollars (\$1,000,000.00) per employee and per accident.~~

b. If the **wireless provider or** utility is not providing such insurance to protect the contractors and subcontractors performing the work, then such contractors and subcontractors shall comply with this subsection.

2. Excess Or Umbrella Policies: The coverages required by this subsection 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.

3. Copies Required: The **wireless provider or** utility shall provide copies of any of the policies required by this subsection to the village within ten (10) business days following receipt of a written request therefor from the village.

4. Maintenance And Renewal Of Required Coverages:

a. The insurance policies required by this subsection 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) business days after receipt by the Village, by*

*registered mail or certified mail, return receipt requested, of a written notice addressed to the Village President of such intent to cancel or not to renew.*

- b. Within ten (10) business days after receipt by the village of said notice, and in no event later than ten (10) business days prior to said cancellation, the **wireless provider or** utility shall obtain and furnish to the village evidence of replacement insurance policies meeting the requirements of this subsection.
5. Self-Insurance: A **wireless provider or** utility may self-insure all or a portion of the insurance coverage and limit requirements required by subsection A1 of this section. A **wireless provider or** 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 A1 of this section, or the requirements of subsections A2, A3 and A4 of this section. A **wireless provider or** utility that elects to self-insure shall provide to the village evidence sufficient to demonstrate its financial ability to self-insure the insurance coverage and limit requirements required under subsection A1 of this section, such as evidence that the **wireless provider or** utility is a "private self-insurer" under the workers' compensation act<sup>2</sup>.
6. Effect Of Insurance And Self-Insurance On **Wireless Provider's or** Utility's Liability: The legal liability of the **wireless provider or** utility to the village and any person for any of the matters that are the subject of the insurance policies or self-insurance required by this subsection shall not be limited by such insurance policies or self-insurance or by the recovery of any amounts thereunder.
7. Insurance Companies: All insurance provided pursuant to this subsection 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.)
- B. Indemnification: By occupying or constructing facilities in the right of way, a **wireless provider or** utility shall be deemed to agree to defend, indemnify and hold the village and its elected and appointed officials and officers, employees, agents and representatives harmless from and against any and all injuries, claims, demands, judgments, damages, losses and expenses, including reasonable 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 **wireless provider or** 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 article or by a franchise, license, or similar agreement; provided, however, that the **wireless provider's or** 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 article by the village, its officials, officers, employees, agents or representatives.
- C. Security:
  1. Purpose: The permittee shall establish a security fund in a form and in an amount as set forth in this subsection. The security fund shall be continuously maintained in accordance



with this subsection 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:

- a. The faithful performance by the permittee of all the requirements of this article;
  - b. Any expenditure, damage, or loss incurred by the village occasioned by the permittee's failure to comply with any codes, rules, regulations, orders, permits and other directives of the village issued pursuant to this article; and
  - c. The payment by the permittee of all liens and all damages, claims, costs, or expenses that the village may pay or incur by reason of any action or nonperformance by the permittee in violation of this article including, without limitation, any damage to public property or restoration work the permittee is required by this article to perform that the village must perform itself or have completed as a consequence solely of the permittee's failure to perform or complete, and all other payments due the village from the permittee pursuant to this article or any other applicable law.
2. Form: The permittee shall provide the security fund to the village in the form, at the permittee's election, of cash, a surety bond in a form acceptable to the village, or an unconditional letter of credit in a form acceptable to the village. Any surety bond or letter of credit provided pursuant to this subsection C2 shall, at a minimum:
- a. Provide that it will not be canceled without prior notice to the village and the permittee;
  - b. Not require the consent of the permittee prior to the collection by the village of any amounts covered thereby; and
  - c. Provide a location convenient to the village and within the state of Illinois from which it can be drawn.
3. 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 village building official, and may also include reasonable, directly related costs that the village estimates are likely to be incurred if the permittee fails to perform such restoration. Where the construction of facilities proposed under the permit will be performed in phases in multiple locations in the village, with each phase consisting of construction of facilities in one location or a related group of locations, and where construction in another phase will not be undertaken prior to substantial completion of restoration in the previous phase or phases, the village building official 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 C3 for any single phase.
4. Withdrawals: The village, upon fourteen (14) business days' advance written notice clearly stating the reason for, and its intention to exercise withdrawal rights under this subsection C4, may withdraw an amount from the security fund; provided, that the permittee has not reimbursed the village for such amount within the fourteen (14) day notice period. Withdrawals may be made if the permittee:

- a. Fails to make any payment required to be made by the permittee hereunder;
  - b. Fails to pay any liens relating to the facilities that are due and unpaid;
  - c. Fails to reimburse the village for any damages, claims, costs or expenses which the village has been compelled to pay or incur by reason of any action or nonperformance by the permittee; or
  - d. Fails to comply with any provision of this article that the village determines can be remedied by an expenditure of an amount in the security fund. (Ord. 07-24, 12-18-2007)
5. Replenishment: Within fourteen (14) business days after receipt of written notice from the village that any amount has been withdrawn from the security fund, the permittee shall restore the security fund to the amount specified in subsection C3 of this section.
6. 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 village, upon written request for said withdrawal to the village; provided, that any such withdrawal does not reduce the security fund below the minimum balance required in subsection C3 of this section.
7. 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 village for failure by the permittee to comply with any provisions of this article or other applicable law. In the event of any revocation of the permit, the security fund, and any and all accrued interest therein, shall become the property of the village to the extent necessary to cover any reasonable costs, loss or damage incurred by the village as a result of said revocation; provided, that any amounts in excess of said costs, loss or damage shall be refunded to the permittee.
8. Rights Not Limited: The rights reserved to the village with respect to the security fund are in addition to all other rights of the village, whether reserved by this article or otherwise authorized by law, and no action, proceeding or exercise of right with respect to said security fund shall affect any other right the village may have. Notwithstanding the foregoing, the village shall not be entitled to a double monetary recovery with respect to any of its rights which may be infringed or otherwise violated.)

**9-8C-6: UTILITY CHANGE OF OWNERSHIP, IDENTITY OR LEGAL STATUS:**

- A. Notification Of Change: A utility shall notify the village no less than thirty (30) business 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 article, 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 village 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.

**9-8C-7: GENERAL CONSTRUCTION STANDARDS:**

- A. Standards And Principles: All construction in the rights 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 Illinois administrative code section 545);
7. "Flagger's Handbook"; and
8. "Work Site Protection Manual For Daylight Maintenance Operations". (Ord. 07-24, 12-18-2007)

- . Interpretation Of Standards And Principles: If a discrepancy exists between or among differing principles and standards required by this article, the village building official shall determine, in the exercise of sound engineering judgment, which principles apply, and such decision shall be final. If requested, the village building official shall state which standard or principle will apply to the construction, maintenance, or operation of a facility in the future.)

**9-8C-8: PUBLIC SAFETY AND TRAFFIC CONTROL:**

**The placement of any antenna, wireless facility or small wireless facilities located in the village right-of-way may not interfere with the frequencies used by public safety agencies for public safety communications. Unacceptable interference will be determined in accordance with industry standards and the Federal Communications Commission's regulations addressing unacceptable interference to public safety spectrum. If an antenna, wireless facility or small wireless facility causes such interference, the owner must take all steps necessary to correct and eliminate the interference at its own costs. The village may terminate a permit for any antenna,**

**wireless facility or small wireless facility based on such interference if the interference is not corrected.**

**The village may reserve space on its utility pole for future public safety uses. This reservation of space may preclude the collocation of a small wireless facility where the village determines that the utility pole cannot accommodate both uses.**

- A. Minimum Requirements: The village 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 **wireless provider or** 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 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 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 **wireless provider or** 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 [9-8C-14](#) of this article, the **wireless provider or** utility shall provide such notice as is practicable under the circumstances.
- E. Compliance Required: The **wireless provider or** utility shall take immediate action to correct any deficiencies in traffic protection requirements that are brought to the **wireless provider's or** utility's attention by the village.

#### **9-8C-9: 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 Village Facilities: No utility facilities shall be placed in any location if the village building official determines that the proposed location will require the relocation or displacement of any of the village utility facilities or will otherwise interfere with the operation or maintenance of any of the village 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 the pavement edge as practicable with a 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 an 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 aboveground 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 village highways may require the incorporation of materials and protections (such as encasement or additional cover) to avoid settlement or future repairs to the roadbed resulting from the installation of such crossing facilities.

2. 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 ICU's rules entitled, "Construction Of Electric Power And Communication Lines" (83 Illinois administrative 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 village may require the wireless provider or 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 wireless provider or utility, and an emergency phone number. Markers may also be eliminated as provided in current federal regulations (49 CFR section 192.707 (1989)).
- D. Located Within Particular Rights Of Way: The village 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 village may restrict the location and size of any freestanding facility located within a right of way.~~
  - ~~2. The village may require any freestanding facility located within a right of way to be screened from view.~~
- 1. Small Wireless Facilities.**
- a. The village may not require the placement of a small wireless facility on a specific utility pole or category of poles. However, should the application necessitate the instillation of a new utility pole, the village may propose that the small wireless**

facility be collocated on an existing utility pole or existing support structure within 100 feet of the proposed collocation. Should the applicant reject the proposed relocated collocation, it must provide a written certification describing the property rights, technical limits or material cost reasons the alternative location will not satisfy the wireless provider's needs. The village may require any monopole, utility pole or other freestanding facility located within a right-of-way to be screened from view in compliance with the appearance standards described in paragraph (h) below.

b. If all existing monopoles, utility poles and other aboveground facilities are located on one side of the right-of-way, all new monopoles, utility poles and other freestanding facilities shall be located on the same side of the right-of-way as the existing aboveground facilities. If there exist above ground facilities on both sides, new freestanding facilities shall be located on the side where the above ground facilities most closely match the scale of the new freestanding facility.

## 2. Other Facilities.

a. The village may restrict the location and size of any monopole, utility pole or other freestanding facility located within a right-of-way. No freestanding facility located within a right-of-way may be constructed or modified so that the height of the free standing facility is higher by more than ten feet or more than 10%, whichever is greater, than any other existing, freestanding facility located within the right-of-way within three hundred (300) feet of the proposed facility, measured along the center line of the respective right-of-way. Where there are no other freestanding facilities located within three hundred (300) feet of the proposed facility, the maximum height of the freestanding facility shall be forty five (45) feet.

b. The village may require any monopole, utility pole or other freestanding facility located within a right-of-way to be screened from view.

c. If all existing monopoles, utility poles and other aboveground facilities are located on one side of the right-of-way, all new monopoles, utility poles and other freestanding facilities shall be located on the same side of the right-of-way as the existing aboveground facilities. If there exist above ground facilities on both sides, new freestanding facilities shall be located on the side where the above ground facilities most closely match the scale of the new freestanding facility.

F. Aboveground Facilities: 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; and
3. The proposed installation will be made at a location, and will employ suitable design and materials, to provide the greatest protection of aesthetic qualities of the area being traversed without adversely affecting safety. Suitable designs include, but are not limited to, self-supporting armless, single pole construction with vertical configuration of conductors and cable. Existing utility poles and light standards shall be used wherever practicable; the installation of additional utility poles is strongly discouraged. Existing utility poles and municipally-owned infrastructure shall be used wherever

**practicable; the installation of additional utility poles or monopoles is strongly discouraged.**

**4. The village is not required to install or maintain any specific utility pole or to continue to install or maintain utility poles in any location if it makes a non-discriminatory decision to eliminate above-ground utility poles of a particular type. For village utility poles with collocated small wireless facilities in place when the village makes a decision to eliminate above-ground utility poles, the village will, at its discretion, either maintain the utility pole or install and maintain an alternative utility pole for the collocation of the small wireless facility, or offer to sell the utility pole to the wireless provider.**

G. Facility Attachments To Bridges Or Roadway Structures:

1. **Utility facilities** 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 village may prohibit the installation of facilities in particular locations in order to preserve visual quality.
2. A facility may be constructed only if its construction does not require extensive removal or alteration of trees or terrain features visible to the 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.

E. **Design and** Appearance Standards:

1. The village may ~~prohibit~~ **discourage** the installation of facilities in particular locations in order to preserve visual quality.
2. A facility may be constructed only if its construction does not require extensive removal or alteration of trees or terrain features visible to the highway user **or conflicts with the applicable design standards set forth below.** or impair the aesthetic quality of the lands being traversed

**3. Design Standards:**

**a. Residential Design Standards.**

**(1) Applicability: These design standards shall apply to each facility located in the right of way in a district zoned for residential uses.**

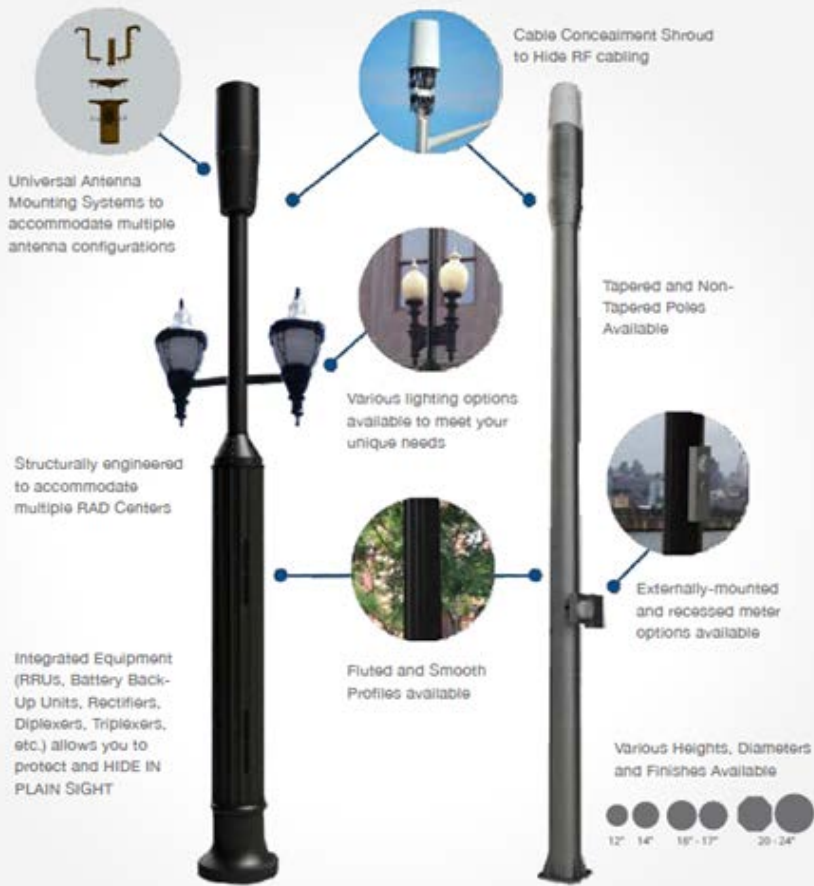
**(2) Purpose: ensure visually acceptable facility design and to provide discretion on required and preferred design of small wireless facilities.**

- **Applicants must use architectural treatments and stealth techniques to reduce potential visual impacts from all small wireless facilities.**
- **All new utility poles installed for the purpose of mounting a facility must be stealth or camouflaged to blend into the surrounding environment. Examples of stealth of camouflage designs are presented in Figure 1 below.**
- **Small wireless facilities and all ancillary equipment associated with the facility must not emit sound.**
- **Cables must be routed directly from the ground through the pole and equipment enclosures must completely enclose or hide cabling. No exposed cable is allowed.**
- **No flashing lights or unnecessary, non-essential stickers are allowed to be placed on any facility. Stickers must be designed in the same color as the pole to which they are attached.**
- **In no case shall equipment block the sidewalk or pedestrian pathway. All installations must maintain accessibility requirements and standards.**

- All newly installed equipment must be painted with graffiti-resistant paint to match pole color and surroundings.
- Colors and materials for small wireless facilities shall be chosen to minimize the visibility of the facility.
- Antennas attached to existing poles or municipally-owned infrastructure shall be painted and textured to match the existing structure.
- Any ground-mounted facility shall be painted with non-reflective matte finish paint using color shades that are comparable or blend with surrounding natural elements such as soil, trees, or grasslands. Any ground-mounted facility shall be screened from the yard of the property in front of which it is located using year-round landscaping materials. The owner of the ground-mounted facility shall guarantee the landscaping materials for a period of one-year from planting.
- All disturbed pavement and landscaping shall be replaced and areas of bare or disturbed soils must be re-vegetated. If replacement landscape is determined to be infeasible the village may accept mitigation funds to use elsewhere. The owner of the ground-mounted facility shall guarantee the restoration work or reseeded for a period of one-year.
- No facility may display any signage or advertisements unless expressly allowed by the village in a written approval, recommended under FCC regulations or required by law or permit condition. Every facility shall at all times display signage that accurately identifies the facility owner and provides the facility owner's unique site number, and also provides a local or toll-free telephone number to contact the facility owner's operations center. All required or permitted signage must face toward the street or otherwise placed to minimize visibility from adjacent sidewalks and structures.

Figure 1: Sample Stealth Designs for Small Cell Utility Poles

## Integrated Concealment Poles



SHOWN: 17" Fluted Integrated Pole

SHOWN: 12" Smooth Pole (NON-M Radios)



**b. Design Standards in Special Aesthetic/Economic Purpose Zones.**

**(1) Applicability: These design standards shall apply to facilities in the right of way located in (a) each area, district, neighborhood or zone expressly designated in the village's comprehensive plan as having special aesthetic or economic impacts on the welfare of the community; and (b) each redevelopment area designed under the Tax Increment Allocation Redevelopment Act or the Business District Development and Redevelopment Act.**

**(2) Purpose: to protect and promote the village's unique character in a manner consistent with state and federal laws and regulations.**

- Siting of small wireless facilities in special aesthetic/economic purpose zones must respect the existing character or design ordinance of established zone.**

- Applicants must include proposed stealth and concealment measures in their applications.

Concealment of all small wireless facilities so that the facility is completely hidden from view when view from ground-level.

- Effective camouflage so as to disguise the facility so that it appears to be something other than a facility and is at the same time compatible with its surroundings (for example, designed to look like a tree).
- Small wireless facilities must be designed so that the facilities silhouette, mass and color are masked in such a way as to be virtually indistinguishable from their background.
- Examples of stealth of camouflage designs are presented in Figure 1.

### c. Design Standards in Historic Districts.

(1) Applicability: These design standards apply in facilities in the right of way located in any historic district or on any historic landmark.

(2) Purpose: to promote the educational, cultural, economic and general welfare of the village by identifying, preserving, protecting, enhancing and encouraging the continued utilization and the rehabilitation of such areas, properties, structures, sites and objects having a special historical interest or value to the village and its citizens.

- Districts, sites, buildings, structures or objects, significant in American history, architecture, archeology, engineering or culture, that are listed, or are eligible for listing, in the National Register of Historic Places are to be avoided, to the greatest extent possible. Local landmarked buildings, properties, sites, or historic districts that are so recognized by an ordinance that meets the requirements of the certified Local Government Program of the Illinois State historic Preservation Office are also to be avoided, to the greatest extent possible.
- Applicants must include proposed stealth and concealment measures in their applications.
- Applicant must implement said village-approved design concepts, and the use of camouflage or stealth materials as necessary in order to achieve compliance with historic preservation review.
- Prior to submitting an application, where the applicant submits an application to site facilities in a historic district, the applicant must meet with the village to discuss any potential design modifications appropriate for the installation.

- When siting a facility in a historic district, wireless provider must avoid removing, obscuring or altering any historic material or significant architectural features. Rehabilitation and make-ready work must not destroy the distinguishing character of the property or its environment.
- Deteriorated architectural features should be repaired rather than replaced, wherever possible by means such as rust removal, calking, limited paint removal and reapplication of paint.

4. All small wireless facilities not governed by the preceding design standards must be placed so as to minimize visibility. The small wireless facility, including all ancillary equipment and appurtenances, must be a color that blends with the surroundings of the utility pole or municipally-owned 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 concealed within the freestanding facility or covered with an appropriate cover.

5. A facility may not be installed in a manner which defeats any existing concealment elements of the utility pole or municipally-owned infrastructure to which it is attached.

6. Facilities under common ownership or operated on the same radio frequency shall be separated as far as practicable.

7. Small wireless facilities are limited to a maximum height of 10 feet above the utility pole or wireless structure on which it is collocated. The height limit of a new or replacement utility pole or wireless support structure on which small wireless facilities are collocated is limited to the higher of: (i) 10 feet higher than the tallest existing utility pole within 300 feet of the new or replacement utility pole or wireless support structure that is in the same right-of-way; or (ii) 45 feet above ground level. The village shall designate which intersecting right-of-way within 300 feet of the proposed utility pole or wireless support structure shall control the height limitation.

#### **9-8C-10: 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 village building official 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 village 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 pipeline testing. Only one-half ( $1/2$ ) of any intersection may have an open trench at any time unless special permission is obtained from the village building official.
  - b. Open Trench And Excavated Material: Open trench and windrowed excavated material shall be protected as required by chapter 5 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 permittee shall not trench within the drip line of any tree designated by the village 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 permittee shall be responsible to remove and restore any backfilled area that has settled due to construction of the facility. If so ordered by the building official, the utility permittee, 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 building official.
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 [9-8C-15](#) of this article, the following requirements shall apply:

- a. Any excavation under pavements shall be backfilled and compacted as soon as practicable with granular material of CA-6 or CA-10 gradation, as designated by the building official. b. Restoration of pavement, in kind, shall be accomplished as soon as practicable, 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 village.
- 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 village.
- 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 a 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 village approved jointed pipe is used under the roadway. Casing may be omitted only if pipe is installed prior to highway construction and carrier pipe is continuous or mechanical joints are of a type approved by the village. Bell and spigot type pipe shall be encased regardless of installation method.
- 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 a minimum height, measured after finished grading and completion of required landscaping, as specified in the following table for minimum cover for the type of facility:

Type Of Facility	Minimum Cover
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	<b>At Finished Grade</b>
Electric lines	30 inches (0.8 m)
Communication, cable or video service lines	18 to 24 inches (0.6 m, as determined by village)
Gas or petroleum products	30 inches (0.8 m)
Water line	Sufficient cover to provide freeze protection
Sanitary sewer, storm sewer, or drainage line	Sufficient cover to provide freeze protection

**B. Standards And Requirements For Particular Types Of Facilities:**

**1. Electric Power Or Communication Lines:**

a. **Code Compliance:** Electric power or communications facilities within village 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 communications lines", and the national electrical 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 method which compresses 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 code. (Ord. 07-24, 12-18-2007)

- 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 village. Weather permitting, utilities shall bury all temporary drops, excluding snow drops, within ten (10) business days after placement. (Ord. 07-24, 12-18-2007; amd. 2010 Code)
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 village approved manner and in conformance with the federal code of the office of pipeline safety operations, department of transportation, part 192, "transportation of natural and other gas by pipeline: minimum federal safety standards" (49 CFR 192), IDOT's "Standard Specifications For Road And Bridge Construction", and all other applicable laws, rules, and regulations.
  4. Petroleum Products Pipelines: 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, Stormwater Sewer Lines Or Drainage Lines: Water lines, sanitary sewer lines, stormwater sewer lines, and drainage lines within rights of way shall meet or exceed the recommendations of the current "Standard Specifications For Water And Sewer Main Construction In Illinois".
  6. Ground Mounted Appurtenances: 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 building official. With the approval of the building official, shrubbery surrounding the appurtenance may be used in place of a 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 "Standards 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 village building official. 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 the right of way, prior approval must be obtained from the village.
3. Hazardous Materials: The plans submitted by the utility permittee to the village shall identify any hazardous materials that may be involved in the construction of the new facilities or removal of any existing facilities.

D. Operational Restrictions:

1. Construction operations on rights of way may, at the discretion of the village, be required to be discontinued when such operations would create hazards to traffic or the public health, safety, and welfare. Such operations may also be required to be discontinued or restricted when conditions are such that construction would result in extensive damage to the right of way or other property.
2. These restrictions may be waived by the building official when emergency work is required to restore vital utility services.
3. Unless otherwise permitted by the village, the hours of construction are those set forth in section [9-3-3](#) of this title.

- E. Existing Facilities: Any wireless provider or utility proposing to construct facilities in the village 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 village will make its permit records available to a wireless provider or utility for the purpose of identifying possible facilities. When notified of an excavation or when requested by the village or by JULIE, a wireless provider or 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 act, 220 Illinois Compiled Statutes 50/1 et seq.

**9-8C-11: 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 village as permitted by law.

- B. Other Utilities; Tree Trimming Permit:

1. Permit Requirements:

- a. Tree trimming that is done by any other **wireless provider or** utility with facilities in the right of way and that is not performed pursuant to applicable Illinois laws and regulations specifically governing the 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 article.
- b. 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 village will require compensation for trees extensively damaged and for trees removed without authorization. The formula developed by the International Society of Arboriculture will be used as a basis for determining the compensation for damaged trees or unauthorized removal of trees. The village may require the removal and replacement of trees if trimming or radical pruning would leave them in an unacceptable condition.

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

D. Chemical Use:

1. Except as provided in subsection D2 of this section, no **wireless provider or** utility shall spray, inject or pour any chemicals on or near any trees, shrubs or vegetation in the village 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 **wireless provider or** utility demonstrates to the satisfaction of the building official that such spraying is the only practicable method of vegetation control.

**9-8C-12: REMOVAL, RELOCATION OR MODIFICATIONS OF UTILITY FACILITIES:**

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

**Wireless providers are required to provide the village with written notice of its intent to sell or transfer small wireless facilities. Such notice must include the name and contact information of the new wireless provider.**

B. Within thirty (30) business days following written notice from the village, any **wireless provider or** 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 article; or
  4. If the facility was constructed or installed at a location not permitted by the permittee's license or franchise.
- C. The village retains the right and privilege to cut or move any facilities located within the rights of way of the village, as the village may determine to be necessary, appropriate or useful, in response to any public health or safety emergency. If circumstances permit, the village shall attempt to notify the wireless provider or utility, if known, prior to cutting or removing a facility and shall notify the wireless provider or utility, if known, after cutting or removing a facility.
- D. Upon abandonment of a utility facility within the rights of way of the village, the utility shall notify the village within ninety (90) business days. Following receipt of such notice, the village may direct the utility to remove all or any portion of the facility if the village building official determines that such removal will be in the best interest of the public health, safety and welfare. In the event that the village does not direct the utility that abandoned the facility to remove it, by giving notice of abandonment to the village, the abandoning utility shall be deemed to consent to the alteration or removal of all or any portion of the facility by another utility or person.

**With respect to small wireless facilities, a small wireless facility that is not operated for a continuous period of 12 months shall be considered abandoned. The owner of an abandoned small wireless facility shall notify the village within ninety (90) days of it being abandoned and the owner of that small wireless facility must remove the small wireless facility within 90 days after sending such written notice to the village. The village may direct the wireless provider to remove all or any portion of the facility if the village engineer determines that such removal will be in the best interest of the public health, safety and welfare. If the small wireless facility is not removed within 90 days of such notice, the village may remove or cause the removal of the facility pursuant to the terms of its pole attachment agreement for village utility poles or through whatever actions are provided for abatement of nuisances or by other law for removal and cost recovery.**

#### **9-8C-13: CLEANUP AND RESTORATION:**

The wireless provider or utility shall remove all excess material and restore all turf and terrain and other property within ten (10) business days after any portion of the right of way is disturbed, damaged or destroyed due to construction or maintenance by the wireless provider

or utility, all to the satisfaction of the village. This includes restoration of entrances and side roads. Restoration of roadway surfaces shall be made using materials and methods approved by the village building official. 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 village building official for good cause shown.

**9-8C-14: MAINTENANCE AND REPAIRS:**

- A. General Maintenance Requirements: Facilities on, over, above, along, upon, under, across, or within rights of way are to be maintained by or for the wireless provider's or utility in a manner satisfactory to the village and at the wireless provider's or 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 wireless provider or 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 wireless provider or utility shall, as soon as possible, notify the village building official or his or her duly authorized agent of the emergency, informing him or her as to what steps have been taken for protection of the traveling public and what will be required to make the necessary repairs. If the nature of the emergency is such as to interfere with the free movement of traffic, the village police shall be notified immediately.
  - 3. In an emergency, the wireless provider or 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 wireless provider or utility must file with the village, in writing, a description of the repairs undertaken in the right of way within forty eight (48) hours after an emergency repair.

**9-8C-15: VARIANCES:**

- A. Request For Variance: A wireless provider or utility requesting a variance from one or more of the provisions of this article must do so in writing to the village building official as a part of the permit application. The request shall identify each provision of this article from which a variance is requested and the reasons why a variance should be granted.
- B. Authority To Grant Variances: The village building official shall decide, on an individual basis, whether a variance is authorized for each provision of this article identified in the variance request.

C. Conditions:

1. The village building official may authorize a variance only if the **wireless provider or utility** requesting the variance has demonstrated that:
  - a. One or more conditions not under the control of the **wireless provider or 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
  - b. 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.
2. As a condition for authorizing a variance, the village building official may require the **wireless provider or utility** requesting the variance to meet reasonable standards and conditions that may or may not be expressly contained within this article but which carry out the purposes of this article.

D. Appeals: Any **wireless provider or utility** aggrieved by any order, requirement, decision or determination, including denial of a variance, made by the village building official under the provisions of this article shall have the right to appeal to the village board, or such other board or commission as it may designate. The application for appeal shall be submitted in writing to the village clerk within thirty (30) business days after the date of such order, requirement, decision or determination. The village board shall commence its consideration of the appeal at the board's next regularly scheduled meeting occurring at least seven (7) business days after the filing of the appeal. The village board shall timely decide the appeal.

**9-8C-16: PENALTIES:**

- A. Any person who violates, disobeys, omits, neglects or refuses to comply with any of the provisions of this article shall be subject to fine in accordance with the penalty provisions of this code. There may be times when the village will incur delay or other costs, including third party claims, because the **wireless provider or utility** will not or cannot perform its duties under its permit and this article. Unless the **wireless provider or utility** shows that another allocation of the cost of undertaking the requested action is appropriate, the **wireless provider or utility** shall bear the village costs of damages and its costs of installing, maintaining, modifying, relocating, or removing the facility that is the subject of the permit. No other administrative agency or commission may review or overrule a permit related cost apportionment of the village. Sanctions may be imposed upon a **wireless provider or utility** that does not pay the costs apportioned thereto.
- B. Nothing in this article shall be construed as limiting any additional or further remedies that the village may have for enforcement of this article.

[Footnote 1:](#) 35 ILCS 645/5-1 et seq.

[Footnote 2:](#) 820 ILCS 305/1 et seq.



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# MEMORANDUM

**To:** President Zirk and Board of Trustees  
**CC:** Anne Marie Gaura, Interim Administrator  
**From:** Julie A. Tappendorf  
**Subject:** Smoking in Village Parks  
**Date:** July 3, 2018

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At the last Village Board meeting, a resident requested that the Village Board consider banning smoking in Village parks. The Board asked that the issue be researched and brought back for further discussion.

The Village has the authority to enact regulations and restrictions on the use of public parks and recreation areas that the Village owns and operates, including restricting or banning smoking in public parks. Municipalities and park districts in Illinois have enacted smoking bans in public parks and recreational areas such as beaches, and some communities have expanded those bans to include “vaping” or e-cigarette use.

Since the Village has the authority to establish a smoking ban in its parks, the question is a policy one for the Board. If the Village Board determines that a smoking ban is desirable, it might consider amending section 7-2-6 of the Village Code to enact the ban. Sample language is provided below. Note that this language includes a ban on “e-cigarette” or vaping but that is a policy decision for the Village.

**“7-2-6: MISCELLANEOUS OFFENSES:**

It shall be unlawful for any person in any public park or recreation area in the village to:

- A. Swim or wade.
- B. Skate, sled, toboggan, ski, or slide except in designated areas.
- C. Throw, cast or shoot stones, arrows or other missiles except in designated areas.
- D. Utilize any motorized or other watercraft.



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E. Cause or permit any animal to run loose. All pets within a village park or recreation area shall be leashed, and no leash shall be longer than six feet (6'). Pet excrement shall be recovered and placed in trash receptacles by the possessor of such pet<sup>1</sup>.

F. Hunt, harm, trap, pursue, or shoot wildlife<sup>2</sup>.

**G. Smoke in any building, structure, or outdoor area of any public park or recreation area in the village.**

**For the purposes of this subsection G, "Smoke" or "Smoking" shall include inhaling, exhaling, burning or carrying any lighted or burning cigarette, cigar, pipe, hookah pipe, pipe weed, or other lighted tobacco product in any manner or in any form; or the use of any alternative nicotine product causing the user to exhale any smoke, vapor, or other substance other than those produced by unenhanced human exhalation.**

**For the purposes of this subsection G, "Alternative Nicotine Product" shall include any product or device not consisting of or containing tobacco that provides for the ingestion into the body of nicotine, whether by chewing, smoking, absorbing, dissolving, inhaling, snorting, sniffing, or by any other means. "Alternative nicotine product" excludes cigarettes, smokeless tobacco, or other tobacco products as these terms are defined in Section 1 of the Prevention of Tobacco Use by Minors and Sale and Distribution of Tobacco Products Act (720 ILCS 675/1) and any product approved by the United States Food and Drug Administration as a non-tobacco product for sale as a tobacco cessation product, as a tobacco dependence product, or for other medical purposes, and is being marketed and sold solely for that approved purpose."**

# MEMORANDUM

**To:** President Zirk and Board of Trustees  
**CC:** Anne Marie Gaura, Interim Village Administrator  
**From:** Julie A. Tappendorf  
**Subject:** Horses  
**Date:** July 3, 2018

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At the last Village Board meeting, John Swedberg reported on an issue relating to the keeping of horses on property in the Village. Currently, the UDO allows the keeping of farm animals and private stables as permitted uses in the A-1 Agriculture District. However, section 5-2-3B of the Village Code prohibits the keeping of livestock, including horses, on any property in the Village. The Village Board asked that staff conduct a survey of properties zoned in the A-1 district, which John will present at the upcoming Village Board meeting. The Board also asked for a summary of its options in amending the Village Code or UDO as appropriate to bring these ordinances into consistency with one another, which are summarized below:

## **Option 1 - Ban Farm Animals and Horses Throughout the Village**

The Village Board could amend the UDO to eliminate the language allowing private stables and the keeping of farm animals in the A-1 District. If the Village Board eliminated this language (depicted below), then farm animals and horses would not be permitted in any zoning district per section 5-2-3 of the Village Code. Because this requires an amendment to the UDO, this option would require public notice, a public hearing before the Plan Commission, and then an ordinance adopted by the Village Board.

2. ~~Breeding, keeping, and grazing of livestock, poultry, and other farm animals.~~
4. ~~Private stables.~~

## **Option 2 - Allow Farm Animals and Horses in the A-1 District**

Currently, farm animals and horses are allowed in the A-1 District under the UDO; however, section 5-2-3 of the Village Code prohibits them. If the Village Board desires to allow farm animals and horses in the A-1 District, it could amend section 5-2-3 of the Village Code as follows:

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B. Livestock: No person shall keep any livestock, including cows, horses, pigs, goats or other domesticated animals kept for use on a farm, on any property within the village, **except as otherwise allowed in the A-1 District pursuant to the Village's Unified Development Ordinance.** Any livestock running loose within the village shall be deemed a public nuisance and shall be promptly impounded.

If the Village Board is interested in this option, no public hearing is needed since the Village Board can amend its Village Code simply by adopting an ordinance. This option would open up all A-1 zoned properties to the keeping of farm animals and horses.

### **Option 3 - Allow Farm Animals and Horses in the A-1 District With Lot Acreage Requirements**

The Board discussed an alternative approach that would allow farm animals and horses on A-1 zoned property, but only if the property met certain acreage requirements. That is not uncommon in communities – for example, the Village of Wadsworth allows farm animals only on certain zoned properties that are at least 200,000 square feet in lot area. If the Village Board wanted to take this approach, it would need to amend both the Village Code and the UDO.

First, the Village Code would need to be amended as noted in Option 2 above to allow horses and farm animals as permitted in the UDO.

Second, the UDO would need to be amended to modify the A-1 District regulations that currently state that farm animals and private stables are allowed on all properties in the A-1 district. Those provisions could be modified to add a property size restriction, something along the following lines:

2. Breeding, keeping, and grazing of livestock, poultry, and other farm animals, **but only on a lot consisting of more than [ ] acres.**
4. Private stables, **but only on a lot consisting of more than [ ] acres.**

If the Board is interested in this option, it would need to determine the appropriate lot size minimum. This option would require public notice and a hearing before the Plan Commission for the UDO amendment, and then presentation of 2 ordinances to the Village Board, one to amend the UDO and the other to amend the Village Code.

### A-1 Zoned Properties

1)	Lot 02-23-200-013	2.98 acres	Tower Hill Rd. north of homes
2)	Lot 02-23-226-002	2.97 acres	Tower Hill Rd. north of above lot
3)	Lot 02-23-200-010	50.31 acres	Tower Hill Rd. behind 4 houses
4)	Lot 02-23-227-006	20.36 acres	Galligan Rd. north of 214 Galligan
5)	Lot 02-23-276-008	3.56 acres	Waitcus Park
6)	38W600 Rt. 72	3.17 acres	Old Swanson Farm
7)	38W564 Rt. 72	0.89 acres	House east of Old Swanson Farm
8)	38W530 Rt. 72	0.89 acres	House east of 38W564 Rt. 72
9)	Lot 02-23-400-020	9.82 acres	Barancik Parcel south of I-90
10)	Lot 02-26-200-003	20.07 acres	Barancik Parcel south of I-90
11)	Lot 02-24-300-072	4.09 acres	Barancik Parcel south of I-90
12)	Lot 02-25-100-009	38.30 acres	Barancik Parcel south of I-90
13)	325 Raymond Drive	9.45 acres	Eagles Club
14)	15N288 Tyrrell Rd.	5.45 acres	Jesus Alvarado

