

**AN ORDINANCE AMENDING THE CODE OF ORDINANCES
REGARDING, LICENSE AGREEMENTS, PERMITS, AND COMPENSATION
FOR USE OF PUBLIC RIGHTS OF WAY**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF URBANA, ILLINOIS, as follows:

Section 1. That Chapter 20 of the Urbana Code of Ordinances, entitled "Streets, Sidewalks and Other Public Places," is hereby amended to add a new Article VIII, "Obstructions, License Agreements, Permits, and Compensation for Use of the Public Rights of Way and Public Property," as follows:

**ARTICLE VIII. OBSTRUCTIONS, LICENSE AGREEMENTS, PERMITS, AND
COMPENSATION FOR USE OF THE PUBLIC RIGHTS OF WAY AND CITY
PROPERTY.**

Sec. 20-130. Scope and Purpose.

- (a) This Article applies to the placement on or continued occupation of the public rights of way and City property by physical facilities, materials, and equipment of any type, whether on the surface or above or below ground, belonging to any person or entity.
- (b) The purpose of this Article is to establish guidelines for use of the rights of way and public property and to establish compensation to the City of Urbana for regulating the use and occupation of the rights of way and public property.
- (c) Nothing about this Article is intended to supersede agreements already in force, or to supersede other provisions of the Code of Ordinances, or to supersede any laws or regulations, state or federal, that preempt regulation by the City.
- (d) Nothing about this Article shall be construed to prevent the City from entering into agreements with other governmental entities or utilities for use or occupation of the rights of way and public property on terms other than those set forth in this Article.

Sec. 20-131. Prohibition of obstructions, utilities or equipment in right-of-way.

- (a) *In General.*
No utilities, pipeline, poles, wires, fiber-optic cable, conduits, materials, ditches, drains, track, or other equipment or physical appurtenances of any nature, whether permanent or temporary, of any public utility company,

municipal corporation or any other public or private corporation, association or person shall be located or placed for a period of time greater than four (4) hours or constructed upon, under, over or along any City right of way or any City property without first obtaining the written consent of the City as provided for in this Article.

Sec. 20-132. City Council Approval Required.

Except as otherwise provided in this Article, City Council approval, in the form of an ordinance authorizing the execution of a license agreement, is required for any person or entity to use City right of way or other property for the placement, location, or storage of utilities, pipeline, poles, wires, fiber-optic cable, conduits, materials, ditches, drains, track, or other equipment or physical appurtenances of any nature, whether permanent or temporary, upon, under, over or along City rights of way or other City property.

Sec. 20-133. Director of Public Works to promulgate regulations.

The Director of Public Works is authorized to promulgate reasonable rules, regulations and specifications for the use of City streets or other City property not inconsistent with this article.

Sec. 20-134. Consent to temporarily occupy right-of-way.

- (a) The Director of Public Works is empowered to issue a right-of-way occupancy permit for any use of City streets or other public property for periods no longer than one hundred eighty (180) days for construction-related purposes. Such permit may not be issued until the Director of Public Works has received proof of insurance, or in the alternative, proof of an established formal program of self-insurance administered by a professional risk manager, in content and amounts satisfactory to the Director of Public Works.
- (b) The Director of Public Works is empowered to promulgate reasonable regulations for special events to be held on the public rights of way or City property, and to issue permits for such events.
- (c) Upon expiration of the permit, the right-of-way and City property shall be restored to the same or better condition as before the permit was issued. If a person fails to obtain a permit or if the permit holder fails to restore the right-of-way or City property as required after notice by the Director of Public Works to do so, the City may restore the right-of-way and charge the whole cost thereof to the person holding the permit or occupying the right-of-way or City property. Such costs shall include, but not be limited to, an overhead charge based on the personnel and equipment involved in administering this section, as determined in writing by the City Comptroller. The amount so charged shall be billed to said person. The amount shall be paid to the City within twenty-eight (28) days after the date of the bill.

Sec. 20-135. Minimum requirements of License Agreements.

The minimum requirements for an agreement referred to in section 20-132, in addition to such other provisions determined by the City to be necessary or convenient for the protection of the public health, safety, and welfare, are as follows:

- (a) *Agreement.* No license granted hereunder shall be effective until the applicant and the City have executed a written agreement setting forth the particular items and provisions under which the license to occupy and use rights-of-way or public property will be granted and said agreement is properly recorded pursuant to Illinois law.
- (b) *Location.* The license shall specify the length and width, and depth if determined necessary by the Director of Public Works, of licensed property and include an accurate map of the exact location.
- (c) *Term.* The term of the license shall not exceed twenty-five (25) years.
- (d) *Plans and specifications.* The plans and specifications shall be subject to the approval of the Director of Public Works and all ordinances and regulations of the City. The Licensee shall be required to provide, to the Director of Public Works, accurate maps of all work as built. The maps shall be provided promptly after completion of work or stages of work, and shall be provided in both printed ("hard copy") form as well as in an electronic format to be specified by the Director of Public Works and which shall be compatible with the City's Geographic Information System ("GIS") database.
- (e) *Compensation.*

Annual payments shall be made to the City in the amount of one dollar and fifty-seven cents (\$1.57) per lineal foot of licensed property. The amounts set for compensation shall, on January first of each year beginning January 1, 2002, be adjusted by the Consumer Price Index published by the United States Department of Labor, Chicago area, all items for all urban consumers, or other generally recognized index which succeeds the Consumer Price Index. Such adjustment shall be calculated from time to time, as needed, by the Chief Administrative Officer or designee.

Compensation for uses involving surface cuts to paved surfaces such as streets and alleys may be set at a rate higher than the per-lineal-foot rate set forth above. Compensation for all uses, including but not limited to structures, that occupy broader, non-linear, areas may be set on the basis of square footage of area occupied.

- (f) *Transfer.* The license granted pursuant to this article may not be transferred without the express written consent of the City.

- (g) *Installation and maintenance.* The license shall require the licensee to comply with all ordinances or regulations of the City. The licensee shall be required to promptly restore any pavement disturbed in the course of construction as well as any non-pavement surface. Such restoration shall be to the satisfaction of the Director of Public Works. The license shall require the licensee to pay to the City any costs occasioned to the City because of the licensee's failure to promptly restore.
- (h) *Removal.* The license shall require the licensee to remove the equipment, facilities, and related appurtenances upon termination of the license at the licensee's expense.
- (i) *Indemnification.* The license shall require the licensee to defend, indemnify and hold the City and its employees, officers, attorneys, agents, and contractors harmless from and against any claims, suits, or actions of any kind brought against the City arising from any alleged claims, acts, or omissions in connection with the license, whether or not a claim, suit, or action is filed unless such claim, suit, or cause of action was based solely upon the negligence of the City, its employees, officers, attorneys, agents, or contractors. Additionally, the license shall require the licensee to indemnify and hold the City harmless from any sums the City becomes obligated to pay as penalties, awards, damages, fees, costs, and expenses arising out of such circumstances except to the extent such sums are due to the negligence of the City, or the City's employees, officers, attorneys, agents, or contractors.
- (j) *Insurance.* The license shall require the licensee to maintain insurance in content and amounts satisfactory to the Director of Public Works or in the alternative, an established formal program of self-insurance administered by a professional risk manager.
- (k) *Bond.* The license shall require the licensee to post a surety bond by a surety licensed to do business in Illinois in an amount deemed appropriate by the Director of Public Works, given the nature and scope of the project, but no less than ten thousand dollars (\$10,000.00), conditioned on the payment of all money and compliance with all other obligations under the license.
- (l) *Non-exclusivity.* The license shall be non-exclusive. No license granted under this authority shall confer any exclusive right, privilege, or license to occupy the rights-of-way or City property for any purpose.
- (m) *Rights granted.* No license granted under this authority shall convey any right, title, or interest in rights-of-way or City property but shall be deemed a license only to use and occupy the right-of-way or City property for the limited purposes and term stated on the grant. No license granted under this authority shall be construed as any warranty of title.

- (n) *Construction permits.* The license shall require the licensee to obtain construction permits and pay all generally applicable fees as required by the City, provided, however, that nothing in this section shall prohibit the City and a licensee from agreeing to alternative plan review, permit and construction procedures in a license agreement, provided such alternative procedures provide substantially equivalent safeguards for reasonable construction practices.
- (o) *Amendment of grant.* The license shall require that:
1. A new license application and grant shall be required of any licensee that desires to extend or locate its facilities in rights-of-way or City property which are not included in a license previously granted hereunder.
 2. If a licensee is ordered by the City to locate or relocate its facilities in rights-of-way or City property not included in a previously granted license, the City shall grant a license amendment to that extent without further application.
- (p) *Renewal application.* The license shall require that if the licensee desires to renew its license hereunder the licensee shall, not more than one hundred eighty (180) days nor less than ninety (90) days before expiration of the current license, file an application with the city for renewal of its license which shall include the following information:
- (1) The applicable information required pursuant to the license application.
 - (2) Any other information required by City.
- (q) *Obligation to cure as a condition of renewal.* The license shall provide that it shall not be renewed until any ongoing violations or defaults in the licensee's performance of the license agreement of the requirements of this chapter and all applicable laws, statutes, codes, ordinances, rules and regulations have been cured or a plan detailing the corrective action to be taken by the licensee has been approved by the Director of Public Works or designee.
- (r) *Interference with the rights-of-way and property.* The license shall require that the licensee must locate and maintain its facilities, equipment, and appurtenances so as not to unreasonably interfere with the use of the rights-of-way, City property, or private property by the city, by the general public or other persons authorized to use or be present in or upon the rights-of-way, City property, or private property. All such facilities, equipment and appurtenances that fail to comply with this requirement shall be moved by and at the expense of the licensee, temporarily or permanently, as determined by the City. If the licensee fails to promptly move them they may be moved by the City at the licensee's expense.
- (s) *Relocation or removal of facilities.* The license shall require that, within thirty (30) days following written notice from the City, the licensee shall, at its own expense,

temporarily or permanently remove, relocate, change or alter the position of any of its facilities within the rights-of-way or City property whenever the chief administrative officer or designee shall have determined that such removal, relocation, change or alteration is reasonably necessary for:

- (1) The construction, repair, maintenance, or installation of any City or other public improvement in or upon the rights-of-way or City property.
 - (2) The operations of the City or other governmental entity in or upon the rights-of-way or City property.
 - (3) The vacation of a public street or alley or the release of an easement, provided, however, that the city may in appropriate circumstances allow the vacation of a public street or alley to remain subject to the easement.
 - (4) The use of the right of way or public property for its intended purpose, including, without limiting the generality of the foregoing, use of the rights of way or property for moving structures such as buildings from one location to another.
- (t) *Removal of unauthorized facilities.* The license shall require that, within thirty (30) days following written notice from the city, any licensee that controls, owns, or maintains any unauthorized facility or related appurtenances within the rights-of-way or City property shall at its own expense, remove such facilities or appurtenances from the rights-of-way or City property. The license shall further require that, if such licensee fails to remove such facilities or appurtenances, the Director of Public Works may cause the removal and charge the licensee for the costs incurred. The license shall provide that the facilities and related appurtenances are unauthorized and subject to removal in the following circumstances:
- (1) Upon expiration or termination of the license.
 - (2) Upon abandonment of a facility within the rights-of-way or City property.
 - (3) If the system or facility was constructed or installed without the prior grant of a license or franchise.
 - (4) If the system or facility was constructed or installed without the prior issuance of a required construction permit.
 - (5) If the system or facility was constructed or installed at a location not permitted by the licensee's license or franchise.
 - (6) Any such other reasonable circumstances deemed necessary by the City's Chief Administrative Officer or designee in order to protect public health, safety and welfare.
- (u) *Emergency removal or relocation of facilities.* The license shall require that the City retains the right and privilege to cut or move any facilities located within the rights-of-way as the city may determine to be necessary, appropriate or useful in response to any public health or safety emergency.
- (v) *Damage to licensee's facilities.* The license shall require that, unless directly and proximately caused by the willful

and malicious acts of the City, the City shall not be liable for any damage to or loss of any facility within the rights-of-way as a result of or in connection with any public works, public improvements, construction, excavation, grading, filling, or work of any kind in the rights-of-way by or on behalf of the City.

(w) *Location of Facilities above or below ground.*

The license may not provide for the location of facilities including but not limited to poles, wires, cables, rails, conduit, or equipment of any kind overhead or above ground, except in accordance with all of the following:

- (1) No facilities may be placed above ground except as expressly authorized by the license agreement and as detailed in the map accompanying the agreement, and in accordance with this section.
- (2) The license shall require that the licensee may install overhead facilities on pole attachments to existing utility poles only, and then only if surplus space is available. Except for temporary, emergency situations, and then only upon the approval of the Director of Public Works, wherever overhead facilities do not exist in a public right-of-way, or wherever such facilities exist but have no surplus space, a licensee shall locate its facilities underground only.
- (3) The license shall require that whenever all existing telephone, electric utilities, cable facilities or telecommunications facilities are located underground within rights-of-way, a licensee with written authorization to occupy the same rights-of-way must also locate its facilities underground.
- (4) The license shall require that whenever all new or existing telephone, electric utilities, cable facilities, telecommunications facilities or other facilities and utilities are located or relocated underground within rights-of-way, a franchisee or licensee that currently occupies the same rights-of-way shall concurrently relocate its facilities underground at its expense.

(x) *Notices.* The license shall specify that notices to the City are to be addressed to the Director of Public Works and to the Chief Administrative Officer. The license shall specify at least one address and officer for the licensee for receipt of notices by the licensee, and shall require that notice addressed to that person shall suffice as notice to the licensee. In addition, whether or not so stated in the license, notice to the licensee's registered agent shall suffice as notice to the licensee.

Sec. 20-136. Implied agreement.

Any person or entity maintaining utilities, pipeline, poles, wires, fiber-optic cable, conduits, materials, ditches, drains, track, or any other equipment or physical appurtenances upon, under, over, or along City rights of way or City property without the written consent of the City in accordance with this Article shall, in addition to other penalties provided for herein, be irrebutably presumed to have consented to the formation of a contract between the City and that person or entity for the time period when no express written consent of the City was in effect. The provisions of section 20-135 shall be deemed to have been in effect except that the City may direct immediate removal of such equipment and except that the compensation for the time period where no express written consent was in effect shall be double the cost referred to in section 20-135.

Section 2. That Chapter 22.5 of the Urbana Code of Ordinances, entitled "Telecommunications," is hereby deleted in its entirety, and is reserved for future use.

Section 3. The City Clerk is directed to publish this Ordinance in pamphlet form by authority of the corporate authorities, and this Ordinance shall be in full force and effect from and after its passage and publication in accordance with Section 1-2-4 of the Illinois Municipal Code.

This Ordinance is hereby passed by the affirmative vote, the "ayes" and "nays" being called, of a majority of the members of the Council of the City of Urbana, Illinois, at a regular meeting of said Council.

PASSED by the City Council this 20th day of October,
2003.


AYES: Chynoweth, Hayes, Huth, Otto, Patt

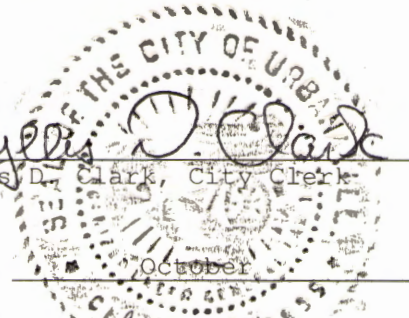
NAYS:

ABSTAINS:

APPROVED by the Mayor this 31st day of October,
2003.


Phyllis D. Clark, City Clerk


Tod Satterthwaite, Mayor





CERTIFICATE OF PUBLICATION IN PAMPHLET FORM



I, PHYLLIS D. CLARK, certify that I am the duly elected and acting Municipal Clerk of the City of Urbana, Champaign County, Illinois.

I certify that on the 20th day of October, 2003, the Corporate Authorities of the City of Urbana passed and approved Ordinance No. 2003-08-091, entitled:

"AN ORDINANCE AMENDING THE CODE OF ORDINANCES REGARDING LICENSE AGREEMENTS, PERMITS, AND COMPENSATION FOR USE OF PUBLIC RIGHTS OF WAY"

which provided by its terms that it should be published in pamphlet form.

The pamphlet form of Ordinance No. 2003-08-091 was prepared, and a copy of such Ordinance was posted in the Urbana City Building commencing on the 3rd day of November, 2003, and continuing for at least ten (10) days thereafter. Copies of said Ordinance were also available for public inspection upon request at the Office of the City Clerk.

Dated at Urbana, Illinois, this 3rd day of November, 2003.

Phyllis D. Clark

City Clerk

by *Robert J. Robert*

Deputy Clerk

(SEAL)