Passed: July 16, 2018
Signed: July 19, 2018

ORDINANCE NO. 2018-07-049

AN ORDINANCE AMENDING URBANA CITY CODE CHAPTER 20, ARTICLES II AND V

WHEREAS, the City of Urbana ("City") is a home rule unit of local government pursuant to Article VII, Section 6, of the Illinois Constitution, 1970, and may exercise any power and perform any function pertaining to its government and affairs, including the power to regulate for the protection of the public health, safety, and welfare; and

WHEREAS, the City Council heretofore did enact Urbana City Code Chapter 20 to regulate the public right-of-way and other public places within the City for the protection of the public health, safety, and welfare; and

WHEREAS, after due and proper consideration, the City Council finds that amending Chapter 20, as provided herein, will protect the health, safety, and welfare of the public; and

WHEREAS, in April 2018, the General Assembly enacted and the Governor of the State of Illinois signed into law Public Act 100-0585 pertaining to the placement of small cell technology, inter alia, on City-owned poles and property; and

WHEREAS, Public Act 100-0585 requires that the City Council approve certain amendments to Chapter 20, Articles II and V, pertaining to small cell technology and the location thereof on City property including, but not necessarily limited to, City-owned light and traffic light poles by no later than July 31, 2018; and

WHEREAS, the City Council deems it necessary and appropriate to amend Chapter 20, Articles II and V thereof as hereinafter provided, in order to conform the same to Public Act 100-0585.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Urbana, Illinois, as follows:

Section 1.

Urbana City Code Chapter 20, "Public Right-of-Way and Other Public Places," Articles II and V, "General Definitions" and "Construction and Location Standards," respectively, are hereby are amended and as amended shall read as set forth in Exhibit A, which is attached hereto and incorporated herein by reference.

Section 2.

Those sections, paragraphs, and provisions of the Urbana City Code that are not expressly amended or repealed by this Ordinance are hereby re-enacted, and it is expressly declared to be the intention of this Ordinance not to repeal or amend any portions of the Urbana City Code other than those expressly set forth as amended or repealed in this Ordinance. The invalidity of any section or provision of this Ordinance hereby passed and approved shall not invalidate other sections or provisions thereof.

Section 3.

This Ordinance shall not be construed to affect any suit or proceeding pending in any court, or any rights acquired, or a liability incurred, or any cause or causes of action acquired or existing prior to the effective date of this Ordinance; nor shall any right or remedy of any character be lost, impaired, or affected by this Ordinance.

Section 4.

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 meeting of said Council.

PASSED BY THE CITY COUNCIL this 16th day of July, 2018.

AYES: Ammons, Brown, Hazen, Jakobsson, Miller, Roberts, Wu

NAYS:

ABSTENTIONS:

Charles A. Smyth, City Clerk — Deputy clerk

APPROVED BY THE MAYOR this 19th day of July, 2018.

Diane Wolfe Marlin, Mayor

CERTIFICATE OF PUBLICATION IN PAMPHLET FORM

I, Charles A. Smyth, certify that I am the duly elected and acting Municipal Clerk of the City of Urbana, Champaign County, Illinois. I certify that on the 16th day of July 2018 the City Council of the City of Urbana passed and approved Ordinance No. 2018-07-049 , entitled:

AN ORDINANCE AMENDING URBANA CITY CODE CHAPTER 20, SECTION ARTICLES II AND V

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

The pamphlet form of Ordinance No. 2018-07-049 was prepared, and a copy of such Ordinance was posted in the Urbana City Building commencing on the 19th day of July 2018, and continuing for at least ten (10) days thereafter. Copies of such Ordinance were also available for public inspection upon request at the Office of the City Clerk.

Dated at Urbana, Illinois, this 19th day of July , 2018.

Charles A. Smyth, City Clerk

EXHIBIT A

Secs. 20-109—20-199. - Reserved.

ARTICLE II. DEFINITIONS.

Sec. 20-200. Definitions.

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

Applicant. Applicant shall mean the contractor, utility, or individual performing work within the public right-of-way.

City engineer. City engineer shall mean the City of Urbana city engineer.

Construction or *construct*. Construction or construct shall mean the installation, repair, maintenance, placement, alteration, enlargement, demolition, modification, reconstruction, or abandonment in place of facilities.

Control or *controlled*. Control or controlled shall mean the legal relationship of a person to a parcel of land giving such person the right to possession or use of such or the right to lease such parcel of land to another.

Crossing facility. Crossing facility shall mean a facility that crosses one or more lines which define the boundaries of a right-of-way.

Driveway. Driveway shall mean that part of a driveway or of any asphaltic, concrete, brick paver, concrete paver, or aggregate surface located in public right-of-way.

Emergency. Emergency shall mean 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.

Facility. Facility shall mean any and 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, street lights, grates, covers, pipes, cables, and appurtenances, signs thereto, together with any natural vegetation, screening, and other materials installed or planted to hide or otherwise camouflage any of the forgoing) located on, over, above, along, upon, under, across, or within rights-of-way under this chapter.

Freestanding facility. Freestanding facility shall mean a facility that is not a crossing facility or a parallel facility, such as an antenna, transformer, pump utility cabinet, or meter station.

Highway. Highway shall mean 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, but not sidewalks.

Major intersection. Major intersection shall mean the intersection of two or more arterial or collector streets.

Obstruction. Obstruction shall mean any facility that may prevent or impede the full use by the public of the entire sidewalk, street, alley, or public right-of-way.

Owner occupied. Owner occupied shall mean lived in by the property owner of the dwelling.

Parkway. Parkway shall mean any portion of the right-of-way not improved by street or sidewalk.

Parallel facility. Parallel facility shall mean a facility that is generally parallel or longitudinal to the centerline of a right-of-way.

Practicable. Practicable shall mean that which is performable, feasible, or possible, rather than that which is simply convenient.

Privately-owned. Privately-owned shall mean personal property or real property which is not owned by the city or any other unit of government.

Public disruption. Public disruption shall mean 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, excavating or other cutting; placing (whether temporary or permanent) of materials, equipment, devices, or structures; damaging vegetation; and compacting or loosening of the soil, but shall not include the parking of vehicles or equipment in a manner that does not materially obstruct the flow of traffic on a highway.

Public way, right-of-way, or rights-of-way. Public way, right-of-way, or rights-of-way shall mean any street, sidewalk, alley, parking, other land or waterway, dedicated or commonly used for pedestrian, bicycle or vehicular traffic or other public purposes, including utility easements, in which the city has the right and authority to authorize, regulate or permit the location of facilities other than those of the city. "Right-of-way" or "rights-of-way" shall not include any real or personal city property that is not specifically described herein and shall not include city buildings, fixtures, or other structures or improvements, regardless of whether or not they are situated in the right-of-way. "Right-of-way" includes easements dedicated to the city or to the public for any public purpose or where use for utilities is a permitted use.

Roadway. Roadway shall mean that part of the highway consisting of the pavement and shoulders, including curb, if any.

Sidewalk. Sidewalk shall mean the paved or hardened portion of the right-of-way between the curb lines, or the lateral lines of a roadway, and the adjacent property lines, designed, constructed, and intended for the use of pedestrians to the exclusion of vehicles.

User or right-of way user. User or right-of way user shall mean the individual or entity owning a facility, occupying, or disturbing the public right-of-way as defined in this section.

Utility. Utility shall mean the entity owning or operating any facility in the right-of-way to deliver or transmit electricity, natural gas, water, telecommunications, cable television or

broadband internet services, or any sanitary or storm water sewer facility in the right-of-way that is not owned or operated by the City.

Visibility triangle. Visibility triangle shall mean the area within the vertices as identified in the right-of-way standards that includes any physical barrier which impairs visibility within the public right-of-way.

Visual obstruction. Visual obstruction means any physical barrier which impairs visibility; provided, however, it shall not include wire fences or chain link fences which are more than ninety-five (95) percent open. And provided further, it shall not include any physical barrier which is less than two (2) feet or more than seven (7) feet from an elevation line extending between the surface of the pavement at points B and C as described in this chapter of two (2) intersecting pavements in the visibility triangle section of the right-of-way standards. Visual obstruction shall not include traffic controls, illuminators, or utility devices and items which are less than twelve (12) inches in width.

Secs. 20-201—20-299. - Reserved.

Secs. 20-443—20-499. - Reserved.

ARTICLE V. CONSTRUCTION AND LOCATION STANDARDS.

Sec. 20-500. General construction standards.

(a) *Standards and principles*. All construction in the right-of-way shall be consistent with applicable ordinances, codes, laws, rules and regulations, and commonly recognized and accepted traffic control and construction principles, sound engineering judgment and, where applicable, the principles and standards set forth in the following most recent IDOT publications, as amended from time to time, unless these standards have been modified by the City of Urbana Right-of-Way Permit Standard Details:

(1) Standard Specifications for Road and Bridge Construction;

(2) Supplemental Specifications and Recurring Special Provisions;

(3) Highway Design Manual;

(4) Highway Standards Manual;

(5) Standard Specifications for Traffic Control Items;

(6) Illinois Manual on Uniform Traffic Control Devices (92 Ill. Adm. Code §545);

(7) Flagger's Handbook;

(8) Proposed Guidelines for Public Rights-of-Way (PROWAG);

(9) Urbana- Champaign Sanitary Sewer Technical Standards;

(10) Standard Specifications for Water and Sewer Construction in Illinois;

(11) Work Site Protection Manual for Daylight Maintenance Operations; and

(12) Champaign-Urbana Urbanized Area Transportation Study (CUUATS) Access Management Guidelines for the Urbanized Area.

(b) *Interpretation of municipal standards and principles*. If a discrepancy exists between or among differing principles and standards required by this chapter, the city engineer shall determine, in the exercise of sound engineering judgment, which principles apply, and such decision shall be final, subject to appeal as provided in this chapter. If requested, the city engineer shall state which standard or principle will apply to the construction, maintenance, or operation of a facility.

Sec. 20-501. Location of facilities.

(a) *General requirements.* In addition to location requirements applicable to specific types of user or privately-owned facilities in this Chapter, all user and privately-owned facilities, regardless of type, shall be subject to the general location requirements of this section.

(1) *No interference with city owned facilities*. No facilities shall be placed in any location if the city engineer determines that the proposed location will require the relocation or displacement of any city owned facilities or will otherwise interfere with the operation or maintenance of any city owned 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 facility shall be placed in any location that unnecessarily interferes with the usual travel on such right-of-way, including motorists, bicyclists, and pedestrians.

(4) *No limitations on visibility.* No facility shall be placed in any location so as to limit visibility of or by users of the right-of-way.

(5) *Size of user facilities.* The proposed installation of shall be use the smallest suitable vaults, boxes, equipment enclosures, power pedestals, and/or cabinets then in use by the facility user or owner, regardless of location, for the particular application.

(6) *General location plan drawings.* Plan drawings drawn to scale for the proposed facilities shall be submitted to and approved by the city engineer prior the start of any construction activities. The general location plan drawings at a minimum shall include:

a. Edges of pavement, edges of sidewalk, right-of-way lines, street names, and known utilities;

b. Proposed location of facilities relative to the public right-of-way shown as a distance off the right-of-way line;

c. Proposed depth of the facilities; and

d. Proposed size of facilities (e.g. diameter of conduit or diameter or pipe).

(7) *As-built plan drawings.* As-built plan drawings drawn to scale for the facilities shall be submitted to the city engineer within thirty (30) days of completion of construction activities. The as-built plan drawings at a minimum shall include:

a. Edges of pavement, edges of sidewalk, right-of-way lines, street names, and known utilities;

b. Installed location of facilities relative to the public right-of-way shown as a distance off the right-of-way line;

c. Installed depth of facilities; and

d. Installed size of facilities (e.g. diameter of conduit or diameter or pipe).

Both paper and electronic as-built drawings shall be submitted to the city engineer. Electronic as-built drawings shall be submitted to the city engineer in a digital format that is acceptable to the city engineer. The city engineer shall review the as-built drawings within thirty (30) days after completed drawings are submitted.

(b) *Parallel facilities located along highways.*

(1) *Overhead parallel facilities*. An overhead user or privately-owned 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 (2) feet behind the face of the curb to the face of the pole, where available;

c. Where pavement is uncurbed, poles are as remote from pavement edge as practicable with minimum distance of four (4) feet outside the outer shoulder line of the roadway to the face of the pole and are not within the clear zone;

d. No new pole is located in the ditch line of a highway; and

e. Any ground-mounted appurtenance is located within one (1) foot of the right-of-way line or as near as possible to the right-of-way line and does not obstruct any public sidewalk.

(2) *Underground parallel facilities.* An underground user or privately-owned parallel facility may be located within the right-of-way lines of a highway.

a. The facility shall be located as near the right-of-way line as physically practicable and not more than eight (8) feet from and parallel to the right-of-way line.

b. In the case of an underground power or communications line, the facility shall be located as near the right-of-way line as physically practicable and not more than five (5) feet from the right-of-way line and any above-grounded appurtenance shall be located within one foot of the right-of-way line or as near as physically practicable; and

c. Minimum depth of the facility shall be three (3) feet deep as physically practicable.

d. If it is demonstrated to be physically impractical to locate a facility in accordance with subsections (b)(2)a. and b. of this section, a new facility may be located elsewhere within the parkway with the approval of the city engineer.

e. A new facility may be located under the paved portion of a highway only if all other locations are demonstrated as being physically impracticable. Such locations must be approved by the city engineer.

(c) *Privately-owned and user facilities crossing highways.*

(1) *Incorporation of materials.* The construction and design of crossing facilities installed between the ditch lines or curb lines of city streets may require the incorporation of materials and protections (such as encasement or alternative fill materials) 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 (90) degree 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 83 Ill. Adm. Code 305 *et seq.*, as amended;

b. Poles are located within one foot 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 under a highway only if:

a. The design materials and construction methods will provide maximum maintenance-free service life; and

b. Capacity for the user's foreseeable future expansion needs is provided in the initial installation.

(d) Privately-owned and user facilities *to be located within particular rights-of-way.* The city may require that facilities be located within particular rights-of-way that are not highways, rather than within particular highways.

(e) *Privately-owned and user freestanding facilities.*

(1) The city may restrict the location and size of any freestanding facility located within a right-of-way to promote one or more of the purposes set forth in Section 20-100.

(2) Any new above ground box, equipment enclosure, cabinet or other similar freestanding facility that is otherwise authorized to be located within a right-of-way ~~to~~ having two (2) or more dimensions equal to or greater than four (4) feet in length shall be screened from view by landscaping installed in accordance with a landscaping plan approved by the City Engineer. Notwithstanding the foregoing, such landscape screening shall not be required if such screening cannot be provided with a clearance of three (3) feet in all directions from the freestanding facility. A wireless provider as defined in Section 20-501 (i) can request a variance from this requirement in accordance with Section 20-412.

(3) No new freestanding facility may be installed at a particular location in the right-of-way unless it complies with the provisions of this Chapter.

(f) P*rivately-owned facilities installed above ground general.* Above ground privately-owned and user facilities may be installed only if:

(1) No existing facilities of the same type as that being proposed are located underground in the area of the proposed installation;

(2) New underground installation is not technically feasible.

(g) *Privately-owned and user facility attachments to bridges or roadway structures.*

(1) Facilities may be installed as attachments to bridges or roadway structures only where the user has demonstrated that all other means of accommodating the facility are not physically practicable. Other means shall include, but shall not be 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 present potential high degrees of risk are not permitted as attachments to bridges or roadway structures.

(2) A utility shall include in its request to accommodate a facility installation on a bridge or roadway structure supporting data demonstrating the capability of the bridge or roadway structure to adequately support the installation and the physical 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 user 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 user service as compared to the risk involved.

(h) *Appearance standards.*

(1) Unless otherwise prohibited by law, the city engineer may prohibit the installation of privately-owned or user facilities in particular locations in order to preserve visual quality.

(2) A privately-owned or user 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, in the opinion of the city engineer, the construction does not impair the aesthetic quality of the lands being traversed.

(i) *Small cell wireless facilities.*

(1) *Definitions.* As used in this section 20-501(i), the words and terms listed shall have the meanings ascribed to them in this subsection.

Antenna. Antenna shall mean any communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of wireless services.

Applicable codes. Applicable codes shall mean uniform building, fire, electrical, plumbing, or mechanical codes published by a recognized national code organization and adopted by the city as amended by the city.

Applicant. Applicant shall mean any person who submits an application and is a wireless provider.

Application. Application shall mean a request submitted by an applicant to the city for a permit to collocate small wireless facilities, and a request that includes the installation of a new utility pole for such collocation, as well as any applicable fee for the review of such application.

Collocate or collocation. Collocate or collocation shall mean to install, mount, maintain, modify, operate, or replace wireless facilities on or adjacent to a wireless support structure or utility pole.

Communications service. Communications service shall mean cable service, as defined in 47 U.S.C. 522(6), as amended; information service, as defined in 47 U.S.C. 153(24), as amended; telecommunications service, as defined in 47 U.S.C. 153(53), as amended; mobile service, as defined in 47 U.S.C. 153(53), as amended; or wireless service other than mobile service.

Communications service provider. Communications service provider shall mean 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.

FCC. FCC shall mean the Federal Communications Commission of the United States.

Fee. Fee shall mean a one-time charge.

Historic district or historic landmark. Historic district or historic landmark shall mean 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 city 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 city 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.

Law. Law shall mean a federal or State statute, common law, code, rule, regulation, order, or local ordinance or resolution.

Micro wireless facility. Micro wireless facility shall mean a small wireless facility that is not larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height and that has an exterior antenna, if any, no longer than 11 inches.

Permit. Permit shall mean a written authorization required by the city to perform an action or initiate, continue, or complete a project.

Person. Person shall mean an individual, corporation, limited liability company,

partnership, association, trust, or other entity or organization, including the city.

Public safety agency. Public safety agency shall mean the functional division of the federal government, the State, a unit of local government, or a special purpose district located in whole or in part within this State, that provides or has city to provide firefighting, police, ambulance, medical, or other emergency services to respond to and manage emergency incidents.

Rate. Rate shall mean a recurring charge.

Right-of-way. Right-of-way shall mean the area on, below, or above a public roadway, highway, street, public sidewalk, alley, or utility easement dedicated for compatible use. Right-of-way does not include city-owned aerial lines.

Small wireless facility. Small wireless facility shall mean 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.

Utility pole. Utility pole shall mean a pole or similar structure that is used in whole or in part by a communications service provider or for electric distribution, lighting, traffic control, or a similar function.

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

Wireless infrastructure provider. Wireless infrastructure provider shall mean any person authorized to provide telecommunications service in the State that builds or installs wireless communication transmission equipment, wireless facilities, wireless support structures, or utility poles and that is not a wireless services provider but is acting as an agent or a contractor for a wireless services provider for the application submitted to the city.

Wireless provider. Wireless provider shall mean a wireless infrastructure provider or a wireless services provider.

Wireless services. Wireless services shall mean 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. Wireless services provider shall mean a person who provides wireless services.

Wireless support structure. Wireless support structure shall mean 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.

(2) *Regulation of small wireless facilities.*

a. *Permitted use.* Small wireless facilities shall be permitted uses and subject to administrative review, except as provided in subsection 20-501(i)4 regarding height exceptions or variances. However, small wireless facilities are not subject to zoning review or approval if they are collocated (i) in rights-of-way in any zone, or (ii) outside rights-of-way in property zoned exclusively for commercial or industrial use.

b. *Permit required.* A permit shall be required as a condition for collocating any small wireless facility on any utility pole or wireless support structure.

1. *Public safety space reservation.* The city may reserve space on city utility poles for future public safety uses or for the city's electric utility uses. However, the city's reservation of space will not preclude the collocation of a small wireless facility unless the city reasonably determines that the its utility pole cannot accommodate both uses.

2. *Application requirements.* A wireless provider shall provide the following information when applying for a permit to collocate small wireless facilities on a utility pole or wireless support structure:

i. Site specific structural integrity and, for a city utility pole, make-ready analysis prepared by a structural engineer, as that term is defined in Section 4 of the Structural Engineering Practice Act of 1989;

ii. The location where each proposed small wireless facility or utility pole would be installed and photographs of the location and its immediate surroundings depicting the utility poles or structures on which each proposed small wireless facility would be mounted or location where utility poles or structures would be installed;

iii. Specifications and drawings prepared by a structural

engineer, as that term is defined in Section 4 of the Structural Engineering Practice Act of 1989, for each proposed small wireless facility covered by the application as it is proposed to be installed;

iv. The equipment type and model numbers for the antennas and all other wireless equipment associated with the small wireless facility;

v. A proposed schedule for the installation and completion of each small wireless facility covered by the application, if approved;

vi. Certification that the collocation complies with subsection 20-501(i)5., Requirements, to the best of the applicant's knowledge; and

vii. Such other information as the city may require and as provided on the city's application form.

3. *Alternate placements*. With respect to an application for the collocation of a small wireless facility associated with a new utility pole, the city may propose that the small wireless facility be collocated on an existing utility pole or existing wireless support structure within 100 feet of the proposed collocation, which the applicant shall accept if it has the right to use the alternate structure on reasonable terms and conditions, and the alternate location and structure does not impose technical limits or additional material costs as determined by the applicant.

The applicant shall provide the city with a written certification describing the property rights, technical limits or material cost reasons the alternate location does not satisfy the criteria in this paragraph.

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

Subject to any applicable waiver, zoning, or other process that addresses wireless provider requests for an exception or variance, the city may limit the height of new or replacement utility poles or wireless support structures on which small wireless facilities are collocated to the higher of:

i. 10 feet in height above the tallest existing utility pole, other than a utility pole supporting only wireless facilities, that is in place on the date the application is submitted to the City, that is located within 300 feet of the new or replacement utility pole or wireless support structure and that is in the same right-of-way within the city, provided the city may designate which intersecting right-of-way

within 300 feet of the proposed utility pole or wireless support structures shall control the height limitation for such facility; or

ii. 45 feet above ground level.

5. *Requirements*.

i. The wireless provider's operation of the small wireless facilities shall not interfere with the frequencies used by any public safety agency for public safety communications.

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

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

If a small wireless facility causes such interference, and the wireless provider has been given written notice of the interference by the public safety agency, the wireless provider, at its own expense, shall take all reasonable steps necessary to correct and eliminate the interference, including, but not limited to, powering down the small wireless facility and later powering up the small wireless facility for intermittent testing, if necessary.

The city may terminate a permit for a small wireless facility based on such interference if the wireless provider is not making a good faith effort to remedy the problem in a manner consistent with the abatement and resolution procedures for interference with public safety spectrum established by the FCC including 47 CFR 22.970 through 47 CFR 22.973 and 47 CFR 90.672 through 47 CFR 90.675.

ii. The wireless provider shall comply with requirements that are created by a contract between the city and a private property owner that concern design or construction standards applicable to utility poles and ground-mounted equipment located in the right-of-way.

iii. The wireless provider shall comply with applicable spacing requirements in applicable codes and ordinances concerning the location of ground-mounted equipment located in the right-of-way if the requirements include a waiver, zoning, or other process that addresses wireless

provider requests for exception or variance and do not prohibit granting of such exceptions or variances.

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

v. The wireless provider shall comply with generally applicable standards that are consistent with Public Act 100-0585 and adopted by the city for construction and public safety in the rights-of-way, including, but not limited to, reasonable and nondiscriminatory wiring and cabling requirements, grounding requirements, utility pole extension requirements, and signage limitations; and shall comply with reasonable and nondiscriminatory requirements that are consistent with Public Act 100-0585 and adopted by the city regulating the location, size, surface area and height of small wireless facilities, or the abandonment and removal of small wireless facilities.

vi. The wireless provider shall not collocate small wireless facilities on any city utility pole that is part of an electric distribution or transmission system within the communication worker safety zone of the pole or the electric supply zone of the pole.

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

For purposes of this subsection 20-501(i)**b.5.vi., the terms "communications space", "communication worker safety zone", and "electric supply zone" have the meanings given to those terms in the National Electric Safety Code as published by the Institute of Electrical and Electronics Engineers.

vii. The wireless provider shall comply with the applicable codes and local code provisions or regulations that concern public safety.

viii. The wireless provider shall comply with written design standards that are generally applicable for

decorative utility poles, or reasonable stealth, concealment, and aesthetic requirements that are identified by the city in an ordinance, written policy adopted by the governing board of the authority, a comprehensive plan, or other written design plan that applies to other occupiers of the rights-of-way, including on a historic landmark or in a historic district.

ix. Subject to the subsection 20-501(i)(2)(a), permitted use , and except for facilities excluded from evaluation for effects on historic properties under 47 CFR 1.1307(a)(4), the city requires reasonable, technically feasible and non-discriminatory design or concealment measures in a historic district or on a historic landmark.

Any such design or concealment measures, including restrictions on a specific category of poles, may not have the effect of prohibiting any provider's technology. Such design and concealment measures shall not be considered a part of the small wireless facility for purposes of the size restrictions of a small wireless facility.

This paragraph may not be construed to limit the city's enforcement of historic preservation in conformance with the requirements adopted pursuant to the Illinois State Agency Historic Resources Preservation Act or the National Historic Preservation Act of 1966, 54 U.S.C. Section 300101 et seq., and the regulations adopted to implement those laws.

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

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

7. *Application process*. The city shall process applications as follows:

i. An application to collocate a small wireless facility on an existing utility pole or wireless support structure shall be processed on a nondiscriminatory basis and deemed approved if the city fails to approve or deny the application within 90 days.

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

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

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

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

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

iii. The city shall approve an application unless the application does not meet the requirements of this Ordinance.

If the city determines that applicable codes, local code provisions or regulations that concern public safety, or the Requirements of subsection 20-501(i)(2)(b)5. require that the utility pole or wireless support structure be replaced before the requested collocation, approval may be conditioned on the replacement of the utility pole or wireless support structure at the cost of the provider.

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

The applicant may cure the deficiencies identified by the

city and resubmit the revised application once within 30 days after notice of denial is sent to the applicant without paying an additional application fee. The city shall approve or deny the revised application within 30 days after the applicant resubmits the application or it is deemed approved.

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

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

8. *Tolling*. The time period for applications may be further tolled by:

i. The express agreement in writing by both the applicant and the City; or

ii. A local, State or federal disaster declaration or similar emergency that causes the delay

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

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

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

after issuance of the permit. Otherwise, the permit shall be void unless the city grants an extension in writing to the applicant.

11. *Duration of permits*. The duration of a permit shall be for a period of not less than 5 years, and the permit shall be renewed for equivalent durations unless the city makes a finding that the small wireless facilities or the new or modified utility pole do not comply with the applicable codes or local code provisions or regulations in paragraphs (5) and (7)c.

If Public Act 100-0585 is repealed as provided in Section 90 of the Act, renewals of permits shall be subject to the applicable authority code provisions or regulations in effect at the time of renewal.

12. *Means of submitting applications*. Applicants shall submit applications, supporting information, and notices by personal delivery or as otherwise required by the city. All applications and supporting materials shall be submitted, whether by regular mail, personal delivery, or other reasonable means, including electronic mail, to the city's public works director at the office of the public works department.

(3) *Application fees*. Application fees are subject to the following requirements:

a. The city's application fee for an application to collocate a single small wireless facility on an existing utility pole or wireless support structure shall be the maximum allowed by Public Act 100-0585 and for each small wireless facility addressed in an application to collocate more than one small wireless facility on existing utility poles or wireless support structures shall be the maximum allowed by Public Act 100-0585. Said fees may be subject to change as permitted by state statute.

b. The city's application fee for each small wireless facility addressed in an application that includes the installation of a new utility pole for such collocation shall be the maximum allowed by Public Act 100-0585. Said fees may be subject to change as permitted by state statute.

c. Notwithstanding any contrary State law or local ordinance, applications must be accompanied by the required application fee.

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

1. routine maintenance;

2. the replacement of wireless facilities with wireless facilities that are substantially similar, the same size, or smaller if the wireless provider notifies the City at least 10 days prior to the planned replacement and includes equipment specifications for the replacement of equipment consistent with the requirements of (2)d under the subsection titled Application Requirements; or

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

However, the City may require a permit to work within rights-of-way for activities that affect traffic patterns or require lane closures.

(4) *Exceptions to applicability*. Nothing in this Ordinance authorizes a person to collocate small wireless facilities on:

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

b. property owned, leased, or controlled by a park district, forest preserve district, or conservation district for public park, recreation, or conservation purposes without the consent of the affected district, excluding the placement of facilities on rights-of-way located in an affected district that are under the jurisdiction and control of a different unit of local government as provided by the Illinois Highway Code; or

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

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

(5) *Existing agreements grandfathered for existing locations*. Agreements between the city and wireless providers that relate to the collocation of small wireless facilities in the right-of-way, including the collocation of small wireless facilities on authority utility poles, that are in effect on June 1, 2018, remain in effect for all small wireless facilities collocated on the city's utility poles pursuant to applications submitted to the city before June 1, 2018, subject to applicable termination provisions.

(6) *Annual recurring rate*. The city may charge an annual recurring rate to collocate a small wireless facility on a City utility pole located in a right-of-way that equals (i) the maximum amount per year as provided by Public Act 100-

0585, or (ii) the actual, direct, and reasonable costs related to the wireless provider's use of space on the city utility pole.

Rates for collocation on city utility poles located outside of a right-of-way are not subject to these limitations.

In any controversy concerning the appropriateness of a cost-based rate for a city utility pole located within a right-of-way, the city shall have the burden of proving that the rate does not exceed the actual, direct, and reasonable costs for the applicant's proposed use of the authority utility pole.

(7) *Aerial facilities*

For City utility poles that support aerial facilities used to provide communications services or electric service, wireless providers shall comply with the process for make-ready work under 47 U.S.C. 224 and its implementing regulations, and the City shall follow a substantially similar process for make-ready work except to the extent that the timing requirements are otherwise addressed in this Ordinance. The good-faith estimate of the City for any make-ready work necessary to enable the pole to support the requested collocation shall include City utility pole replacement, if necessary.

For City utility poles that do not support aerial facilities used to provide communications services or electric service, the City shall provide a good-faith estimate for any make-ready work necessary to enable the City utility pole to support the requested collocation, including pole replacement, if necessary, within 90 days after receipt of a complete application. Make-ready work, including any City utility pole replacement, shall be completed within 60 days of written acceptance of the good-faith estimate by the applicant at the wireless provider's sole cost and expense. Alternatively, if the City determines that applicable codes or public safety regulations require the City utility pole to be replaced to support the requested collocation, the City may require the wireless provider to replace the City utility pole at the wireless provider's sole cost and expense.

The City shall not require more make-ready work than required to meet applicable codes or industry standards. Make-ready work may include work needed to accommodate additional public safety communications needs that are identified in a documented and approved plan for the deployment of public safety equipment as specified in (i)(2)(b)(1) of this Section and included in an existing or preliminary City or public service agency budget for attachment within one year of the application. Fees for make-ready work, including any City utility pole replacement, shall not exceed actual costs or the amount charged to communications service providers for similar work and shall not include any consultants' fees or expenses for City utility poles that do not support aerial facilities used to provide communications services or electric service. Make-ready work, including any pole replacement, shall be completed within 60 days of written acceptance of the good-faith estimate by the wireless provider, at its sole cost and expense.

The City shall authorize the collocation of small wireless facilities on utility poles owned or controlled by the City that are not located within rights-of-way to the same extent the authority currently permits access to utility poles for other

commercial projects or uses. The collocations shall be subject to reasonable and nondiscriminatory rates, fees, and terms as provided in an agreement between the City and the wireless provider.

(8) *Abandonment*. A small wireless facility that is not operated for a continuous period of 12 months shall be considered abandoned and the owner of the facility must remove the small wireless facility within 90 days after receipt of written notice from the City notifying the owner of the abandonment.

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

(9) A wireless provider is required to give the city written notice of any sale, transfer, or assignment of the wireless provider's small wireless facilities located within the jurisdictional boundary of the city. Such notice shall include the name and contact information of the new wireless provider.

(10) *Dispute resolution*. The Circuit Court for the Sixth Judicial Circuit, Champaign, Illinois has jurisdiction to resolve all disputes arising under the Small Wireless Facilities Deployment Act in so far as disputes involving the city and a wireless provider. Pending resolution of a dispute concerning rates for collocation of small wireless facilities on city utility poles within the right-of-way, the city shall allow the collocating person to collocate on its poles at annual rates of no more than $200 per year per city utility pole, with rates to be determined upon final resolution of the dispute

(11) *Indemnification.* A wireless provider shall indemnify and hold the city harmless against any and all liability or loss from personal injury or property damage resulting from or arising out of, in whole or in part, the use or occupancy of the city's improvements or right-of-way associated with such improvements by the wireless provider or its employees, agents, or contractors arising out of the rights and privileges granted under this Ordinance and Public Act 100-0585. A wireless provider has no obligation to indemnify or hold harmless against any liabilities and losses as may be due to or caused by the sole negligence of the city or its employees or agents. A wireless provider shall further waive any claims that they may have against the city with respect to consequential, incidental, or special damages, however caused, based on the theory of liability.

(12) *Insurance*. The wireless provider shall, at its own cost and expense, provide the following insurance coverages: property insurance for its property's replacement cost against all risks; workers' compensation insurance, as required by law; and commercial general liability insurance with respect to its activities on the authority improvements or rights-of-way to afford minimum protection limits consistent with its requirements of other users of authority improvements or rights-of-way, including coverage for bodily injury and property damage.

The wireless provider shall include the city as an additional insured on the commercial general liability policy and provide certification and documentation of inclusion of the city in a commercial general liability policy.

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

(13) *Severability*. If any provision of this ordinance or application thereof to any person or circumstances is ruled unconstitutional or otherwise invalid, such invalidity shall not affect other provisions or applications of this ordinance that can be given effect without the invalid application or provision, and each invalid provision or invalid application of this ordinance is severable.

Sec. 20-502. Construction methods and materials.

All construction methods and materials shall be in conformance with the City of Urbana Right-of-Way Permit Standard Details.

Sec. 20-503. Vegetation control.

An electric utility shall conduct all tree-trimming and vegetation control activities in the right-of-way in accordance with applicable Illinois laws and regulations, and additionally, with such local franchise or other agreement with the city as permitted by law.

Sec. 20-504. Additional requirements.

(a) *Compliance with laws.* All construction, maintenance, or repair under this chapter will be in accordance with applicable local, state, and federal laws, ordinances, rules, and regulations.

(b) *Existing brick sidewalks.*

(1) When any portion of the public sidewalk that is constructed of brick is reconstructed or replaced, that portion shall be replaced with brick, unless all of the following conditions are found by the city engineer to exist:

a. The particular section of sidewalk constructed of brick to be replaced is neither located within a "major brick walk block," as defined below, nor in a "downtown streetscape area";

b. The particular section of sidewalk or adjacent property has not been designated as "historic" by the city council under the city's historic preservation ordinance, and;

c. The adjacent property owner has agreed to replacement of the brick walk with a concrete walk.

(2) Major brick walk block is defined as any block zoned R1, R2 or R3 on a local street in "Old West" or "Near East" as such areas are defined below, where the sidewalk on one side or the average of both sides is sixty (60) percent or more brick sidewalk.

a. Old West is defined as that area encompassed from the south curb of University Avenue to the north curb of Washington Street and from the east curb of Lincoln Avenue to the west curb of Vine Street.

b. Near East area is defined as that area encompassed by the south curb of University Avenue and the north curb of Washington Street and the east curb of Vine Street and the west curb of Cottage Grove Avenue.

(3) Notwithstanding the restrictions set forth in this section concerning the retention of brick sidewalks, those sections of brick sidewalk need not be retained where the city council finds that due to changes in the vicinity of a specific request for waiver, a brick sidewalk no longer serves as an enhancement. In such cases, waiver may be granted by a motion passed by a majority vote of the alderpersons then holding office.

(c) *Brick street and sidewalk excavation.* When an excavation is made upon any portion of a street or sidewalk constructed of brick, maintenance or repair shall include salvage and restoration of the brick street to its original condition by replacement of any removed material with salvaged or purchased brick. Such restoration shall be at the sole expense of the permittee.

(d) *Time limit on open excavation.* No excavation in any street, sidewalk, or other public way or place shall be allowed to remain open for a period longer than ten (10) days without prior written approval of the city engineer.

Sec. 20-505. Unused curb openings to be closed.

(a) *Unused curb openings.* Whenever any person applies for a demolition or right-of-way permit, for a zoning lot with a driveway approach, such permit shall not be issued unless the permit requires the closing of all unused curb openings in the right-of-way adjacent to the zoning lot or lot for which the permit is issued.

(b) *Defining unused.* Provided that there is at least one curb opening remaining in the right-of-way adjacent to the zoning lot or lot, a curb opening or driveway not included in any site plan approved for the permit as part of the traffic flow in and out of the lot shall be considered to be "unused" in any of the following cases:

(1) It is not connected to a paved surface off the right-of-way large enough to park a car; or

(2) It has not been regularly used on a monthly basis by motor vehicles for more than one year; or

(3) There is more than the maximum number of access points permitted onto the lot by zoning and subdivision regulations, or the access points do not comply with the CUUATS) Access Management Guidelines for the Urbanized Area; or

(4) No redevelopment activity is anticipated on a zoning lot within eighteen (18) months of demolition activities.

(c) *Installation of replacement curb.* The permittee, as a condition of any of the permits authorized by this chapter, shall install the replacement curb to match the shape of the existing curb unless the existing curb is substandard, in which case the replacement curb shall be installed as prescribed by the city engineer.

(d) *Parkway.* The permittee, as a condition of any of the permits authorized by this chapter, shall remove the apron pavement or other driving surface material behind the unused curb opening from the curb or edge of pavement to the sidewalk or right-of-way line and replace it with topsoil, seed, and mulch to match the adjacent parkway, unless otherwise directed by the city engineer.

(e) *Waiver of requirement.* If, in the opinion of the city engineer, it is in the best interest of the city to do so, the city engineer may waive the requirement to close a curb opening if the existing driveway is in regular use or will be utilized as part of future redevelopment activities.

Sec. 20-506. Removal, relocation, or modifications of user facilities.

(a) Notice. Within sixty (60) days following written notice from the city, a user shall, at its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change, or alter the position of any user facilities within the rights-of-way whenever the city engineer has determined that such removal, relocation, change, or alteration, is reasonably necessary for the construction, repair, maintenance, or installation of any city improvement in or upon, or the operations of the city in or upon, the rights-of-way.

(b) *Removal of unauthorized facilities.* Within thirty (30) days following written notice from the city, any user that owns, controls, or maintains any unauthorized facilities 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, franchise, or agreement;

(3) If the facility was constructed or installed without prior issuance of a required permit in violation of this chapter; or

(4) If the facility was constructed or installed at a location within the right-of-way not permitted by the permittee's license or franchise.

(c) *Emergency removal or relocation of facilities.* All agreements, licenses, permits, or franchises are subservient to the city's right to cut or move any facilities located within the rights-of-way of the city, as the city may determine to be necessary, appropriate, or useful in response to any public health or safety emergency. If circumstances permit, the city shall attempt to notify the utility, if known, prior to

cutting or removing a facility and shall notify the utility, if known, after cutting or removing a facility.

(d) *Lack of use, abandonment, and removal.*

(1) If an above ground utility facility is no longer being used for the purpose of providing utility services, the owner of the facility shall notify the city within sixty (60) days of the time the use ceases.

(2) If an above ground utility facility is believed to be inoperable, the city shall contact the owner of the facility and seek written proof that the above ground utility facility is still in operation.

(3) In the event that an above ground utility facility becomes inactive for more than sixty (60) days, the above ground facility shall be removed by the owner within ninety (90) days after written notification from the city that such removal will be in the best interest of the public.

(4) In the event that an above ground facility has not been removed within one hundred twenty (120) days after notification by the city, the above ground facility is hereby declared a public nuisance, and the provisions in chapter 15 of this code shall apply.

(5) In the event the city does not direct the user that abandoned the facility to remove it, the abandoning user shall be deemed to consent to the alteration or removal of all or any portion of the facility by another user or person by giving notice of abandonment to the city.

Sec. 20-507. Clean-up and restoration.

(d) Requirement for clean-up. The user shall remove all excess material and restore all turf and terrain and other property within ten (10) days after any portion of the rights-of-way are disturbed, damaged, or destroyed due to construction or maintenance by the user, all to the satisfaction of the city. This includes restoration of entrances and side roads. Restoration of roadway surfaces shall be made using materials and methods approved by the city engineer. Such cleanup and repair may be required to consist of backfilling, re-grading, re-seeding, re-sodding, or any other requirement to restore the right-of-way to a condition substantially equivalent to that which existed prior to the commencement of the project. The time period provided in this section may be extended by the city engineer for good cause shown.

(e) Remedies. If, after receiving notice from the city engineer:

(1) The user required to restore the public right-of-way within the time period set by the city engineer fails to restore the right-of-way to the same condition as it was before the surface was disturbed, or to such other condition as approved by the city engineer; or

(2) If the efforts to restore the public right-of-way fail within a six month period after such excavation; then

The city may perform or cause such restoration work to be performed and charge the whole cost thereof to the user. Such costs shall include an overhead charge based on the personnel involved in administering this section, as determined in writing by the city comptroller. The amount so charged shall be billed to the user. The amount billed shall be paid to the city within twenty-eight (28) days after the date of the bill.

Sec. 20-508. Maintenance and emergency maintenance.

(d) General. Facilities on, over, above, along, upon, under, across, or within rights-of-way are to be maintained by or for the user in a manner satisfactory to the city engineer and at the user's expense.

(e) Emergency maintenance procedures. Emergencies may excuse compliance with normal procedures for securing a permit.

(1) If an emergency creates a hazard on the traveled portion of the right-of-way, the user 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 is permitted only when no other means of access to the facility is available.

(2) In an emergency, the user shall, as soon as practicable, notify the city engineer or his or her duly authorized agent of the emergency, informing him or her of the steps taken to protect the traveling public and the actions that 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 user shall notify the city police department as soon as practicable.

(3) In an emergency, the user shall use all means at hand to complete repairs as rapidly as practicable and with the least inconvenience to the traveling public.

(f) Emergency repairs. The user shall file in writing with the city engineer a description of the repairs undertaken in the right-of-way within 48 hours after an emergency repair is completed.

Secs. 20-509—20-599. - Reserved.