

THE CITY OF BERWYN
COOK COUNTY, ILLINOIS

ORDINANCE
NUMBER 19-21

AN ORDINANCE ADOPTING PART TEN, TITLE TWO, CHAPTER 1010 OF THE CODIFIED ORDINANCES OF BERWYN, REGARDING STANDARDS FOR THE CONSTRUCTION OF FACILITIES IN RIGHTS-OF-WAY IN THE CITY OF BERWYN, COUNTY OF COOK, STATE OF ILLINOIS.

Robert J. Lovero, Mayor
Margaret Paul, City Clerk

James "Scott" Lennon
Jose Ramirez
Jeanine Reardon
Robert Fejt
Cesar A. Santoy
Alicia Ruiz
Rafael Avila
Anthony Nowak
Aldermen

Published in pamphlet form by authority of the Mayor and City Clerk of the City of Berwyn on this 14th day of August, 2019.

ORDINANCE 19-21

AN ORDINANCE ADOPTING PART TEN, TITLE TWO, CHAPTER 1010 OF THE CODIFIED ORDINANCES OF BERWYN, REGARDING STANDARDS FOR THE CONSTRUCTION OF FACILITIES IN RIGHTS-OF-WAY IN THE CITY OF BERWYN, COUNTY OF COOK, STATE OF ILLINOIS.

WHEREAS, the City of Berwyn (the “City”) is a home rule unit of local government as is provided by Article VII, Section 6 of the Illinois Constitution of 1970 and, as such, may exercise various powers and perform numerous functions pertaining to its government and affairs in any manner not otherwise prohibited by law; and

WHEREAS, in addition to the City's power as a home rule municipality, this Ordinance is adopted pursuant to the provisions of the Illinois Municipal Code, including, without limitation, Sections 11-20-5, 11-20-10, 11-80-1, 11-80-3, 11-80-6, 11-80-7, 11-80-8, 11-80-10, and 11-80-13, all of which are found in Chapter 65 of the Illinois Compiled Statutes, 65 ILCS 5/1-1-1 *et seq.*; Section 30 of the Illinois Telecommunications Municipal Infrastructure Maintenance Fee Act, 35 ILCS 635/30; Section 4 of the Telephone Company Act, 220 ILCS 65/4; and the Illinois Highway Code, including, without limitation, Articles 7 and 9 thereof, 605 ILCS 5/1-101 *et seq.*; and

WHEREAS, this Ordinance establishes generally applicable standards for construction on, over, above, along, upon, under, across, or within, use of and repair of, the public right-of-way; and

WHEREAS, in the enactment of this ordinance, the City has considered a variety of standards for construction on, over, above, along, under, across, or within, use of and repair of the public right-of-way, including, but not limited to, the standards relating to Accommodation of Utilities on Right-of-Way of the Illinois State Highway System

promulgated by the Illinois Department of Transportation and found at 92 Ill. Adm. Code § 530.10 et seq.; and

WHEREAS, the City hereby finds that it is in the best interest of the City, the public and the utilities using the public rights-of-way to establish a comprehensive set of construction standards and requirements to achieve various beneficial goals, including, without limitation, enhancing the planning of new utility facilities; minimizing interference with, and damage to, rights-of-way and the streets, sidewalks, and other structures and improvements located in, on, over and above the rights-of-way; and reducing costs and expenses to the public;

WHEREAS, in light of the foregoing, the Corporate Authorities have further determined that it is necessary, advisable and in the best interests of the City and its residents to adopt Part Ten, Title Two, Chapter 1010 for inclusion in the Codified Ordinances of Berwyn, Illinois (the “City Code”) as set forth herein;

NOW, THEREFORE, BE IT ORDAINED by the Mayor and the City Council of the City of Berwyn, County of Cook, State of Illinois, as follows:

**ARTICLE I.
IN GENERAL**

Section 1.00 Findings.

The Corporate Authorities hereby find that all of the recitals hereinbefore stated as contained in the preamble to this Ordinance are full, true and correct and do hereby, by reference, incorporate and make them part of this Ordinance as legislative findings.

Section 2.00 Purpose.

The purpose of this Ordinance is to adopt Part Ten, Title Two, Chapter 1010 for inclusion in the City Code to establish certain rules and regulations as well as fees related to

standards for construction in the right of way and to authorize the Mayor and other City officials to take all action necessary to carry out the intent of this Ordinance.

**ARTICLE II.
ADOPTION OF PART TEN, TITLE TWO, CHAPTER 1010 FOR INCLUSION IN
THE CITY CODE**

Section 3.00 Adoption of Part Ten, Title Two, Chapter 1010.

The City Code is hereby amended, notwithstanding any provision, ordinance, resolution or City Code section to the contrary, by adopting Part Ten, Title Two, Chapter 1010 as follows:

Chapter 1010 Construction of Facilities in the Right-of-Way.

Section 1010.01 Purpose and Scope.

(A) Purpose. The purpose of this chapter is to establish policies and procedures for constructing facilities on rights-of-way within the city's jurisdiction, which will provide benefits to the public, including the preservation of the integrity, safe usage and visual quality of the city's rights-of-way and the city as a whole.

(B) Intent. By enacting this chapter, the city intends to exercise its authority over the rights-of-way located in the city and, in particular, the use of the public ways and property by utilities. The city intends to effectuate the foregoing by establishing uniform standards to address issues presented by utility facilities, which standards seek to accomplish the following:

- (1) Prevent interference with the use of streets, sidewalks, alleys, parkways and other public ways and places; and
- (2) Prevent the creation of visual and physical obstructions and other conditions that are hazardous to vehicular and pedestrian traffic; and
- (3) Prevent interference with the facilities and operations of the city's utilities and of other utilities lawfully located in rights-of-way or public property; and
- (4) Protect against environmental damage, including damage to trees, from the installation of utility facilities; and
- (5) Protect against increased stormwater runoff due to structures and materials that increase impermeable surfaces; and

(6) Preserve the character of the neighborhoods in which facilities are installed; and

(7) Preserve open space, particularly the tree-lined parkways that characterize the city's residential neighborhoods; and

(8) Prevent visual blight from the proliferation of facilities in the rights-of-way; and

(9) Assure the continued safe use and enjoyment of private properties adjacent to utility facilities locations.

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

(D) *Franchises, licenses, or similar agreements.* The city, in its discretion and as limited by law, may require utilities to enter into a franchise, license or similar agreement for the privilege of locating their facilities on, over, above, along, upon, under, across or within the rights-of-way located within the city. Utilities that are not required by law to enter into such an agreement may request that the city enter into such an agreement. In such an agreement, the city may provide for terms and conditions inconsistent with this chapter.

(E) *Effect of franchises, licenses or similar agreements.*

(1) *Utilities other than telecommunications providers.* In the event that a utility, other than a telecommunications provider, has a franchise, license or similar agreement with the city, such franchise, license or similar agreement shall govern and control during the term of such agreement and any lawful renewal or extension thereof.

(2) *Telecommunications providers.* In the event of any conflict with or inconsistency between the provisions of this chapter and the provisions of any franchise, license or similar agreement between the city and any telecommunications provider, the provisions of such franchise, license or similar agreement shall govern and control during the term of such agreement and any lawful renewal or extension thereof.

(F) *Conflicts with other chapter.* This chapter supersedes all chapters or parts of chapters adopted prior hereto that are in conflict herewith, to the extent of such conflict.

(G) Conflicts with state and federal laws. In the event that applicable federal or state laws or regulations conflict with the requirements of this chapter, the utility shall comply with the requirements of this chapter to the maximum extent possible without violating federal or state laws or regulations.

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

Section 1010.02 Definitions.

The words and terms used in this chapter shall have the meanings ascribed to them in this chapter, unless the context clearly indicates a different meaning. Any term not defined in this chapter shall have the meaning ascribed to it in Title 92, Section 530.30 of the Illinois Administrative Code (ILL. ADMIN. CODE tit. 92 § 530.30 (1992)), unless the context clearly indicates a different meaning. The use of any term in the present tense shall include the future and past tense of the term, when applicable, and all terms used in the singular shall include the plural and all words used in the masculine gender shall extend to and apply to the feminine gender, when applicable.

AASHTO shall mean the American Association of State Highway and Transportation Officials.

ANSI shall mean the American National Standards Institute.

Applicant shall mean a person applying for a permit under this chapter.

ASTM shall mean the American Society for Testing and Materials.

Backfill shall mean the methods or materials for replacing excavated material in a trench or pit.

Bore or boring shall mean to excavate an underground cylindrical cavity for the insertion of a pipe or electrical conductor.

Cable operator shall have the same meaning as set forth in 47 U.S.C. § 522(5) (2006).

Cable service shall have the same meaning as set forth in 47 U.S.C. § 522(6) (2006).

Cable system shall have the same meaning as set forth in 47 U.S.C. § 522(7) (2006).

Carrier pipe shall mean the pipe enclosing the liquid, gas or slurry to be transported.

Casing shall mean a structural protective enclosure for transmittal devices such as: carrier pipes, electrical conductors and fiber optic devices.

City shall mean the City of Berwyn, Illinois.

City Council shall mean the City council of the City of Berwyn.

City engineer shall mean the city engineer or his or her designee.

Clear zone shall mean the total roadside border area, starting at the edge of the pavement, available for safe use by errant vehicles. This area may consist of a shoulder, a recoverable slope, a non-recoverable slope and a clear run-out area. The desired width is dependent upon traffic volumes and speeds and on the roadside geometry. Distances are specified in the AASHTO roadside design guide and as defined by the Illinois Department of Transportation (“IDOT”).

Coating shall mean a protective wrapping or mastic cover applied to buried pipe for protection against external corrosion.

Code shall mean the Code of Ordinances of the City of Berwyn, Illinois.

Conductor shall mean wire carrying electrical current.

Conduit shall mean a casing or encasement for wires or cables.

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

Corporate authorities shall mean the Mayor and the City Council of the City of Berwyn, Illinois.

Cover shall mean the depth of earth or backfill over buried utility pipe or conductor.

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

Disrupt the right-of-way 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, the following: excavating or other cutting; the placement (whether temporary or permanent) of materials, equipment,

devices or structures; damage to vegetation; and compaction or loosening of the soil, and shall not include the parking of vehicles or equipment in a manner that does not materially obstruct the flow of traffic on a highway.

Emergency 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 served by the utility.

Encasement shall mean a provision of a protective casing.

Equipment shall mean the materials, tools, implements, supplies and/or other items used to facilitate the construction of facilities.

Excavation shall mean the making of a hole or cavity by removing material or laying bare by digging.

Extra heavy pipe shall mean pipe meeting ASTM standards for this pipe designation.

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

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

Frontage road shall mean a roadway, usually parallel, providing access to land adjacent to the highway where it is precluded by control of access to a highway.

Hazardous materials shall mean any substance or material which, due to its quantity, form, concentration, location or other characteristics, is determined by the public works director, fire department, fire marshal, federal or state environmental protection agencies, other applicable entity or regulatory agency and/or qualified city appointed or retained officer or consultant, the fee for said city appointed or retained officer or consultant to be paid by the contractor, to pose an unreasonable and imminent risk to the life, health or safety of persons or property or to the ecological balance of the environment. "Hazardous materials" may include, without limitation, explosives, radioactive materials, petroleum or petroleum products or gases, poisons, etiology (biological) agents, flammables, corrosives or any substance determined to be hazardous or toxic under any federal or state law, statute or regulation.

Highway shall mean a specific type of right-of-way used for vehicular traffic, including rural or urban roads or streets. The term "highway" includes all highway land and improvements, including roadways, ditches and embankments, bridges, drainage structures, signs, guardrails, protective structures and appurtenances necessary or convenient for vehicle traffic.

Highway code shall mean the Illinois Highway Code (605 ILCS 5/1-101, *et seq.*), as amended from time to time.

Historic district or historic landmark means a building, property, or site, or group of buildings, properties, or sites that are either (i) listed in the National Register of Historic Places or formally determined eligible for listing by the Keeper of the National Register, the individual who has been delegated the authority by the federal agency to list properties and determine their eligibility for the National Register, in accordance with Section VI.D.1.a.i through Section VI.D.1.a.v of the Nationwide Programmatic Agreement codified at 47 CFR Part 1, Appendix C; or (ii) designated as a locally landmarked building, property, site, or historic district by an ordinance adopted by the 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.

Holder shall mean a person or entity that has received authorization to offer or provide cable or video service from the ICC pursuant to section 21-401 of the Illinois Cable and Video Competition Law of 2007 (220 ILCS 5/21-401), as now or hereafter amended.

ICC shall mean the Illinois Commerce Commission.

IDOT shall mean the Illinois Department of Transportation.

Jacking shall mean pushing a pipe horizontally under a roadway by mechanical means with or without boring.

Jetting shall mean pushing a pipe horizontally through the earth using water under pressure to create a cavity ahead of the pipe.

Joint use shall mean the use of pole lines, trenches or other facilities by two or more utilities.

J.U.L.I.E. shall mean the Joint Utility Locating Information for Excavators utility notification program.

Major intersection shall mean the intersection of two or more major arterial highways.

Municipal utility pole means a utility pole owned or operated by the City in public rights-of-way.

Occupancy shall mean the presence of facilities on, over or under a right-of-way.

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

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

Pavement cut shall mean the removal of an area of pavement for access to a facility or for the construction of a facility.

Permittee shall mean an entity or individual to which a permit has been issued pursuant to section 1010.04 and 1010.05 of this chapter.

Petroleum products pipelines shall mean pipelines carrying crude or refined liquid petroleum products including, but not limited to, gasoline, distillates, propane, butane or coal-slurry.

Public Works Director shall mean the individual appointed to the office of Public Works Director as provided for by the city code and the Illinois Municipal Code.

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

Pressure shall mean the internal force acting radially against the walls of a carrier pipe expressed in pounds per square inch gauge (psig).

Prompt shall mean that which is done within a period of time specified by the city. If no time period is specified, the period shall be 30 calendar days.

Public entity shall mean a legal entity that constitutes or is part of the government, whether at a local, state or federal level.

Restoration shall mean the repair of a right-of-way, highway, roadway or other area disrupted by the construction of a facility.

Right-of-way shall mean any street, alley, parkway, sidewalk or other land or waterway dedicated or commonly used for pedestrian or vehicular traffic or other similar purposes, including utility easements, in which the city has the right and authority to authorize, regulate or permit the location of facilities other than those

of the city. The term "right-of-way" shall not include any real or personal city property that is not specifically described in the previous two sentences and shall not include city buildings, fixtures and other structures or improvements, regardless of whether they are situated in a right-of-way.

Roadway shall mean that part of the highway that includes the pavement and shoulders, which shall also include but not be limited to the curbs adjacent to the roadway.

Sale of telecommunications at retail shall mean the transmitting, supplying or furnishing of telecommunications and all services rendered in connection therewith for a consideration, other than between a parent corporation and its wholly owned subsidiaries or between wholly owned subsidiaries, when the gross charge made by one such corporation to another such corporation is not greater than the gross charge paid to the retailer for their use or consumption and not for sale.

Security fund shall mean the amount of security required pursuant to section 1010.10.

Shoulder shall mean a width of roadway, adjacent to the pavement, providing lateral support to the pavement edge and providing an area for emergency vehicular stops and storage of snow removed from the pavement.

Sound engineering judgment shall mean a decision or decisions consistent with generally accepted engineering principles, practices and experience.

Telecommunications shall include, but is not limited to, messages or information transmitted through the use of local, toll and wide area telephone service, channel services, telegraph services, teletypewriter service, computer exchange service, private line services, mobile radio services, cellular mobile telecommunications services, stationary two-way radio, paging service and any other form of mobile or portable one-way communication or two-way communications and any other transmission of messages or information by electronic or similar means, between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite or similar facilities. The term "private line" shall mean a dedicated non-traffic sensitive service for a single customer that entitles the customer to exclusive or priority use of a communications channel or a group of such channels from one or more specified locations to one or more other specified locations. The term "telecommunications" shall not include value added services in which computer processing applications are used to act on the form, content, code and protocol of the information for purposes other than transmission. The term "telecommunications" shall not include the purchase of telecommunications by a telecommunications service provider for use as a component part of the service provided by such provider to the ultimate retail consumer who originates or terminates the end-to-end communications. "Telecommunications" shall not

include the provision of cable services through a cable system as defined in the Cable Communications Act of 1984 (47 U.S.C. § 521, et seq. (1984)), as now or hereafter amended, or cable or other programming services subject to an open video system fee payable to the city through an open video system as defined in the Rules of the Federal Communications Commission (47 C.F.R. § 76.1500, et seq. (1999)), as now or hereafter amended.

Telecommunications provider shall mean any person or entity that installs, owns, operates or controls facilities in a right-of-way used or designed to be used to transmit telecommunications in any form.

Telecommunications retailer shall mean, and includes, every person or entity engaged in making sales of telecommunications at retail as defined herein.

Trench shall mean a relatively narrow open excavation for the installation of an underground facility.

Trench compacting or trench compaction shall mean the installation of granular material in 12-inch lifts and compacted mechanically.

Utility shall mean the individual or entity owning or operating any facility as defined in this chapter.

Vent shall mean a pipe to allow the dissipation into the atmosphere of gases or vapors from an underground casing.

Video service shall have the same meaning as set forth in section 21-201(v) of the Illinois Cable and Video Competition Law of 2007 (220 ILCS 5/21-201(v)).

Water lines shall mean pipelines carrying raw or potable water.

Wet boring shall mean a boring using water under pressure at the cutting auger to soften the earth and to provide a sluice for the excavated material.

Section 1010.03 Annual Registration Required.

Every utility that occupies a right-of-way within the city shall register on January 1st of each year with the collector's office, providing the utility's name, address and regular business telephone and telecopy numbers, the name of one or more contact persons who can act on behalf of the utility in connection with emergencies involving the utility's facilities in the right-of-way and a 24 hour telephone number for each person and evidence of insurance as required in section 1010.08 of this chapter, in the form of a certificate of insurance.

Section 1010.04 Permit required; applications and fees.

(A) Permit required. No person shall construct any facility on, over, above, along, upon, under, across or within any city right-of-way which: (1) changes the location of the facility; (2) adds a new facility; (3) disrupts the right-of-way; or (4) materially increases the amount of area or space occupied by the facility on, over, above, along, under, across or within the right-of-way, without first filing an application with the building department and obtaining a permit from the city therefor, except as otherwise provided in this chapter. No permit shall be required for the installation and maintenance of service connections to customers' premises where there will be no disruption of a right-of-way.

(B) Permit application. All applications for permits pursuant to this chapter shall be filed on a form provided by the city and shall be filed in such number of duplicate copies as the city may designate. The applicant may designate those portions of its application materials that it reasonably believes contain proprietary or confidential information as "proprietary" or "confidential" by clearly marking each page of such materials accordingly.

(C) Minimum general application requirements. The application shall be made by the utility or its duly authorized representative and shall contain, at a minimum, the following:

- (1) The utility's name, address and telephone and telecopy numbers; and
- (2) The applicant's name and address, if different than the utility, and the applicant's telephone and telecopy numbers, e-mail address and a statement of the applicant's interest in the work; and
- (3) The names, addresses, telephone and telecopy numbers and e-mail addresses of all professional consultants, if any, advising the applicant with respect to the application; and
- (4) A general description of the proposed work and the purposes and intent of the facility and the uses to which the facility will be put. The scope and detail of such description shall be appropriate to the nature and character of the work to be performed, with special emphasis on those matters likely to be affected or impacted by the work proposed; and
- (5) Evidence that the utility has placed on file with the city:
 - a. A written traffic control plan demonstrating the protective measures and devices that will be employed, which shall be consistent with IDOT's Illinois Manual on Uniform Traffic Control Devices, to

prevent injury or damage to persons or property and to minimize disruptions to efficient pedestrian and vehicular traffic; and

b. An emergency contingency plan, which shall specify the nature of potential emergencies including, without limitation, construction and hazardous materials emergencies and the intended response by the applicant. The intended response shall include notification to the city and shall promote protection of the safety and convenience of the public. Compliance with ICC regulations for emergency contingency plans constitutes compliance with this chapter, unless the city finds that additional information or assurances are needed.

(6) Drawings, plans and specifications and a restoration plan showing the work proposed, including the certification of a professional engineer that such drawings, plans and specifications and restoration work comply with applicable laws, codes, rules and regulations. All work shall comply with all City codes and/or requirements of the Public Works Director or designee; and

(7) Evidence of insurance as required in section 1010.08 of this chapter; and

(8) Evidence of posting of the security fund as required in section 1010.10 of this chapter; and

(9) Any request for a variance from one or more provisions of this chapter (see section 1010.21); and

(10) Such additional information as may be reasonably required by the city.

(D) *Supplemental application requirements for specific types of utilities.* In addition to the requirements of subsection (C) of this section, the permit application shall include the following items, as applicable to the specific utility that is the subject of the permit application:

(1) In the case of the installation of a new electric power, communications, telecommunications, cable television service, video service or natural gas distribution system, evidence that any "Certificate of Public Convenience and Necessity" or other regulatory authorization that the applicant is required by law to obtain, or that the applicant has elected to obtain, has been issued by the ICC or another entity with jurisdictional authority; or

(2) In the case of natural gas systems, state the proposed pipe size, design, construction class, and operating pressures; or

(3) In the case of water lines, indicate that all requirements of the Illinois Environmental Protection Agency, Division of Public Water Supplies, have been satisfied; or

(4) In the case of sewer line installations, indicate that the land and water pollution requirements of the Illinois Environmental Protection Agency, Division of Water Pollution Control and the Metropolitan Water Reclamation District have been satisfied; or

(5) In the case of petroleum products pipelines, state the type or types of petroleum products, pipe size, maximum working pressure and the design standard to be followed.

(E) *Applicant's duty to update information.* Throughout the entire permit application review period and the construction period authorized by the permit, any amendments to information contained in a permit application shall be submitted by the utility in writing to the city within 30 calendar days after the change necessitating the amendment.

(F) *Application fees.* For utility facilities, unless otherwise provided by franchise, license or similar agreement, all applications for permits pursuant to this chapter shall be accompanied by a fee in the amount of \$1,000. No application fee is required to be paid by any electricity utility that is paying the municipal electricity infrastructure maintenance fee pursuant to the Electricity Infrastructure Maintenance Fee Law (35 ILCS 645/15, *et seq.*) or is otherwise exempt for paying said fee, by law.

Section 1010.05 Action on permit applications.

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

(B) *Additional city review of applications of telecommunications retailers.*

(1) Pursuant to chapter four of the Telephone Company Act (220 ILCS 65/4), a telecommunications retailer shall notify the city that it intends to commence work governed by this chapter for facilities for the provision of telecommunications services. Such notice shall consist of plans, specifications and other documentation sufficient to demonstrate the purpose and intent of the facilities, and shall be provided by the telecommunications retailer to the city not less than ten (10) calendar days prior to the commencement of work

requiring no excavation and not less than thirty (30) calendar days prior to the commencement of work requiring excavation. The public works director or designee shall specify the portion of the right-of-way upon which the facility may be placed, used and constructed.

(2) In the event that the public works director or designee fails to specify the location to the telecommunications retailer within either: (i) ten (10) calendar days after service of notice to the city by the telecommunications retailer in the case of work not involving excavation for new construction; or (ii) twenty-five (25) calendar days after service of notice by the telecommunications retailer in the case of work involving excavation for new construction, the telecommunications retailer may commence work without obtaining a permit under this chapter.

(3) Upon the provision of such specification by the city, where a permit is required for work pursuant to section 1010.04 of this chapter, the telecommunications retailer shall submit to the city an application for a permit and any and all plans, specifications and documentation available regarding the facility to be constructed. Such application shall be subject to the requirements of subsection (A) of this section.

(C) Additional city review of applications of holders of state authorization under the Cable and Video Competition Law of 2007. Applications submitted by a utility that is a holder of state-issued authorization shall be deemed granted forty-five (45) calendar days after submission to the city, unless otherwise acted upon by the city, provided the holder has complied with applicable City Codes, ordinances and regulations.

Section 1010.06 Effect of Permit.

(A) Authority granted. No property right or other interest created. A permit from the city authorizes a permittee to undertake only certain activities in accordance with this chapter on city rights-of-way, and does not create a property right or grant authority to the permittee to impinge upon the rights of others who may have an interest in the rights-of-way.

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

(C) Pre-construction meeting required. No construction shall begin pursuant to a permit issued under this chapter prior to attendance by the permittee and all major contractors and subcontractors who will perform any work under the permit at a pre-construction meeting. The pre-construction meeting shall be held at a date, time and place designated by the city with such city representatives in attendance as the city deems necessary. The meeting shall be for the purpose of reviewing the work under

the permit and reviewing special considerations necessary in the areas where work will occur including, without limitation, the presence or absence of other utility facilities in the area and their locations, procedures to avoid disruption of other utilities, use of rights-of-way by the public during construction and access and egress by adjacent property owners.

(D) *Compliance with all laws required.* The issuance of a permit by the city does not excuse the permittee from complying with other requirements of the city and applicable statutes, laws, ordinances, rules and regulations.

Section 1010.07 As built conditions drawings.

In the event that the actual locations of any facilities deviate in any material respect from the locations identified in the plans, drawings and specifications submitted with the permit application, the permittee shall submit as built conditions drawings or plans to the city within sixty (60) calendar days after the completion of the permitted work. All as built conditions drawings shall be provided via electronic submittal and said submissions must include longitude and latitude and shall also be in microstation or auto-cad format. The as built conditions drawings or plans shall specifically identify where the locations of the actual facilities are installed. If the as built conditions drawing deviate from the original permit, said deviations will be treated as a request for a variance as provided for in this chapter. If the city denies the request for a variance, then the permittee shall either remove the facility from the right-of-way or modify the facility so that it conforms to the permit and submit revised drawings or plans therefor.

Section 1010.08 Insurance.

(A) *Required coverages and limits.* Unless otherwise provided by a franchise, license or similar agreement, each utility occupying a right-of-way or constructing any facility in a right-of-way shall secure and maintain the following liability insurance policies insuring the utility as a named insured and naming the city and its elected and appointed officers, officials, agents and employees as additional insureds on the policies listed in subsections (1) and (2) below:

(1) Commercial general liability insurance, including premises-operations, explosion, collapse and underground hazard (commonly referred to as "X," "C" and "U" coverages) and products-completed operations coverage with limits not less than:

a. Five million dollars (\$5,000,000.00) for bodily injury or death to each person;

b. Five million dollars (\$5,000,000.00) for property damage resulting from any one accident; and

c. Five million dollars (\$5,000,000.00) for all other types of liability.

(2) Automobile liability for owned, non-owned and hired vehicles with a combined single limit of \$1,000,000.00 for personal injury and property damage for each accident;

(3) Worker's compensation with statutory limits; and

(4) Employer's liability insurance with limits of not less than \$1,000,000.00 per employee and per accident.

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

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

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

(D) Maintenance and renewal of required coverages. The insurance policies required by this section shall contain the following endorsement:

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

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

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

under subsection (A) of this section, which evidence may include that the utility is a "private self insurer" under the Workers' Compensation Act (820 ILCS 305/1, et seq.).

(F) *Effect of insurance and self-insurance on a utility's liability.* The legal liability of a utility to the city and any person for any of the matters that are the subject of the insurance policies or self-insurance required by this section shall not be limited by such insurance policies or self-insurance or by the recovery of any amounts thereunder.

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

Section 1010.09 Indemnification.

By occupying or constructing facilities in the right-of-way, a utility shall be deemed to agree to defend, indemnify and hold the city and its elected and appointed officials and officers, employees, agents, independent contractors, attorneys and representatives harmless from and against any and all injuries, claims, demands, judgments, damages, losses and expenses, including reasonable attorneys' fees and costs of suit or defense, arising out of, resulting from or alleged to arise out of or result from the negligent, careless or wrongful acts, omissions, failures to act or misconduct of the utility or its affiliates, officers, employees, agents, contractors or subcontractors in the construction of facilities or occupancy of the rights-of-way, and in providing or offering service over the facilities, whether such acts or omissions are authorized, allowed or prohibited by this chapter or by a franchise, license or similar agreement; provided, however, that the utility's indemnity obligations hereunder shall not apply to any injuries, claims, demands, judgments, damages, losses or expenses arising out of or resulting from the negligence, misconduct or breach of this chapter by the city, its officials, officers, employees, agents or representatives.

Section 1010.10 Security and Performance Bond.

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

- (1) The faithful performance by the permittee of all of the requirements contained in this chapter;

(2) Any expenditure, damage or loss incurred by the city occasioned by the permittee's failure to comply with any codes, rules, regulations, orders, permits and other directives of the city issued pursuant to this chapter;

(3) The payment by the permittee of all liens and all damages, claims, costs or expenses that the city may pay or incur by reason of any action or non-performance by the permittee in violation of this chapter including, without limitation, any damage to public property or restoration work that the permittee is required to perform pursuant to this chapter or work that the city must perform itself or have completed as a consequence solely of the permittee's failure to perform or complete, and all other payments due the city from the permittee pursuant to this chapter or any other applicable law.

A performance bond shall be an amount of money filed with or placed with the city or bonded by the permittee to provide for any repair, replacements or restoration in the event that the permittee's maintenance and restoration of the right-of-way and adjacent facilities or city-owned properties fails and timely repairs are not made as defined in this section.

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

(1) Provide that it will not be canceled without prior notice to the city and the permittee;

(2) Not require the consent of the permittee prior to the collection by the city of any amounts covered by it;

(3) Shall provide a location convenient to the city and within the State of Illinois at which it can be drawn.

(C) *Amount.* The dollar amount of the security fund shall be sufficient to provide for the reasonably estimated cost to restore the right-of-way, which shall include but not be limited to streets, sidewalks, parkways, alleys, curbs and other structures, appurtenances or implements that are standard to and/or existing in the right of way, to at least as good a condition as that existing prior to the construction under the permit, as determined by the public works building director or designee, and may also include reasonable, directly related costs that the city estimates are likely to be incurred if the permittee fails to perform such restoration. Where the construction of facilities proposed under the permit will be performed in phases in multiple locations in the city, with each phase consisting of construction of facilities in one location or a related group of locations, and where construction in another phase will not be undertaken prior to substantial completion of restoration in the previous phase or

phases, the public works director or designee may, in the exercise of sound discretion, allow the permittee to post a single amount of security which shall be applicable to each phase of the construction under the permit. The amount of the security fund for phased construction shall be equal to the greatest amount that would have been required under the provisions of this subsection (C) for any single phase.

The amount of the performance bond shall be 5% of the total project but no less than a minimum of \$5,000., whichever is higher.

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

(1) Fails to make any payment required to be made by the permittee hereunder;

(2) Fails to pay any liens relating to the facilities that are due and unpaid;

(3) Fails to make acceptable repairs or if the repairs are performed by the city, fails to reimburse the city for any damages, claims, costs or expenses which the city has been compelled to pay or incur by reason of any action, inaction or non-performance by the permittee; or

(4) Fails to comply with any provision of this chapter that the city determines can be remedied by an expenditure of an amount in the security fund.

The performance bond shall be held by the City for three (3) years and shall only be used by the City in the event that the permittee's maintenance and restoration of the right-of-way and adjacent facilities or city-owned properties fails and the party refuses to repair or remedy the failed item within five (5) calendar days of receiving notice of the failure.

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

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

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

The performance bond shall be returned to the party after three (3) years has passed from the date of the completion of the construction and after final inspection by the City.

(H) Rights not limited. The rights reserved to the city with respect to the security fund or performance bond are in addition to all other rights of the city, whether reserved by this chapter or otherwise authorized by law or provided by city code, and no action, proceeding or exercise of a right with respect to said security fund or performance bond shall affect any other right that the city may have. Notwithstanding the foregoing, the city shall not be entitled to a double monetary recovery with respect to any of its rights which may be infringed or otherwise violated.

Section 1010.11 Permit suspension and revocation.

(A) City right to revoke or suspend a permit. The city may revoke or suspend a permit issued pursuant to this chapter for one or more of the following reasons:

- (1) Fraudulent, false, misrepresenting or materially incomplete statements in the permit application;
- (2) Non-compliance with this chapter;
- (3) The permittee's physical presence or presence of the permittee's facilities on, over, above, along, upon, under, across or within a right-of-way presents a direct or imminent threat to the public health, safety or welfare; or
- (4) The permittee's failure to construct the facilities substantially in accordance with the permit and approved plans.

(B) Notice of revocation or suspension. The city shall send written notice of its intent to revoke or suspend a permit issued pursuant to this chapter stating the reason or reasons for the revocation or suspension and the alternatives available to the permittee under this section.

(C) The permittee's alternatives upon receipt of notice of revocation or suspension. Upon receipt of a written notice of revocation or suspension from the chapter, the permittee shall have the following options:

(1) Immediately providing the city with evidence that no cause exists for the revocation or suspension;

(2) Immediately correcting, to the satisfaction of the city, the deficiencies stated in the written notice, providing written proof of such correction to the city within five (5) working days after receipt of the written notice of revocation; or

(3) Immediately removing the facilities located on, over, above, along, upon, under, across or within the rights-of-way and restoring the rights-of-way to the satisfaction of the city, providing written proof of such removal to the city within ten (10) calendar days after receipt of the written notice of revocation.

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

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

(E) Failure or refusal of the permittee to comply. If the permittee fails to comply with the provisions of subsection (C) of this section, the city or its designee may, at the option of the city: (1) correct the deficiencies; (2) upon not less than twenty (20) calendar days notice to the permittee, remove the subject facilities or equipment; or (3) after not less than thirty (30) calendar days notice to the permittee of the failure to cure the non-compliance, deem the rights-of-way abandoned and property of the city. The permittee shall be liable in all events to the city for all costs of removal.

Section 1010.12 Change of ownership or owner's identity or legal status.

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

(B) Amended permit. A new owner shall request that any current permit be amended to show current ownership. If the new owner fails to have a new or amended permit issued in its name, the new owner shall be presumed to have accepted and agreed to be

bound by the terms and conditions of the permit if the new owner uses the facility or allows it to remain on the city's right-of-way.

(C) Insurance and bonding. All required insurance coverage or bonding must be changed to reflect the name of the new owner upon transfer.

Section 1010.13 General construction standards.

(A) Standards and principles. All construction in rights-of-way shall be consistent with applicable ordinances, codes, laws, rules and regulations and shall comply with commonly recognized and accepted traffic control and construction principles, sound engineering judgment and, where applicable, the principles and standards set forth in the most current version of the following IDOT publications, as the same may be amended from time to time:

- (1) Standard Specifications for Road and Bridge Construction;
- (2) Supplemental Specifications and Recurring Special Provisions;
- (3) Highway Design Manual;
- (4) Highway Standards Manual;
- (5) Standard Specifications for Traffic Control Items;
- (6) Illinois Manual on Uniform Traffic Control Devices;
- (7) Flaggers Handbook;
- (8) Standard Specifications for Water and Sewer Construction in Illinois;
and
- (9) Work Site Protection Manual for Daylight Maintenance Operations.

(B) Additional General Construction Standards. In addition, the public works director shall publish certain standards of construction, which include but are not limited to the following:

- (1) All contractors performing work under this chapter shall be insured, bonded and licensed with the city.
- (2) All curb and gutter, sidewalk, driveway pavement, alley pavement and street patches scheduled for removal shall be saw cut full depth on all edges prior to starting removal.

- (3) Contractor is required to notify residents/businesses, Police and Fire Departments of any road closure needed or permitted due to construction.
- (4) All water use must be metered and the contractor is required to arrange for a fire hydrant meter with the Public Works Department. A \$1,500.00 deposit is required for the use of said meter.
- (5) All contractors, subcontractors and other persons desiring to perform construction in the right of way shall give the city 48-hour notice prior to construction.
- (6) All replacements shall be of equal or better condition to what existed prior to construction.

(7) Concrete

- a. All curbs and gutters damaged or undermined during construction shall be removed and replaced in accordance with IDOT standards, as amended (currently 9" minimum gutter thickness required).
- b. All concrete sidewalks damaged during construction shall be removed and replaced in accordance with IDOT Standards, as amended (currently 5" minimum thickness for standard locations and 7" minimum thickness for sidewalk subject to vehicular traffic).
- c. All public sidewalks shall be removed and replaced control joint to control joint and the replacements shall be 5' x 5' minimum squares slabs. All service and carriage sidewalk shall be removed and replaced from contraction joint to contraction joint. Partial square removal and replacement will not be allowed.
- d. Detectable warnings, where required, shall be cast-iron tiles.
- e. All concrete driveways damaged during construction shall be removed and replaced in accordance with IDOT standards, as amended (currently 7" minimum thickness over 4" of compacted aggregate base).
- f. All concrete driveways shall be removed and replaced from contraction joint to contraction joint. Partial slab removal and replacement will not be allowed.
- g. All alley pavement damaged during construction shall be removed and replaced in accordance with IDOT standards, as amended (currently 8" minimum thickness with No. 6 epoxy coated tie bars

grouted in place on 30" centers to tie the new pavement to the existing curb and gutter or pavement).

- h. All alley pavements shall be removed and replaced from contraction joint to contraction joint at a minimum width of one half of the alley. Partial slab removal and replacement will not be allowed.
- i. Expansion joints shall be placed where the sidewalk abuts existing sidewalks, between driveway pavement and sidewalk, and between sidewalk accessibility ramps and curbs where the ramp abuts a curb.
- j. All concrete referenced above shall be a six (6) bag mix or greater. Fiberglass may be used in place of wire mesh where applicable.

(8) Hot-Mix Asphalt ("HMA") Pavements

- a. All HMA driveway damage during utility installation shall be removed and replaced in accordance with IDOT standards, as amended (currently 1 ½" HMA surface course over 1 ½" HMA leveling binder over 10" compacted aggregate base).
- b. All HMA pavement on collector roadways shall be removed and replaced in accordance with the City's Standard (2" HMA surface course, Mix D, and 1" HMA leveling binder over 10" reinforced concrete base with No. 6 epoxy coated tie bars grouted in place on 30" centers to tie the new pavement to the existing curb and gutter or pavement).
- c. All HMA pavement on residential roadways shall be removed and replaced in accordance with the City's Standard (2 – 1 ½" lifts of HMA surface course, Mix D, over 8" reinforced concrete base with No. 6 epoxy coated tie bars grouted in place on 30" centers to tie the new pavement to the existing curb and gutter or pavement).
- d. All HMA alley pavement shall be removed and replaced in accordance with the City's Standard (2" HMA surface course, Mix D, over 6" reinforced concrete base with No. 6 epoxy coated tie bars grouted in place on 30" centers to tie the new pavement to the existing curb and gutter or pavement).

- (9) All brick pavers damaged during utility installation shall be removed and replaced in accordance with the City's standard as provided for in this Section, or as otherwise provided for in the city code or as required by the building department or the public works department. All new standard

paver installations must utilize a 4" concrete base under the pavers for stability. Replacement brick pavers shall be identical to existing pavers.

- (10) All grass parkways disturbed during utility installation shall be restored with 4" of pulverized topsoil with sod and watered regularly to promote growth.
- (11) Sprinkler systems are not permitted in the public right of way. Sprinkler systems may be placed on private property provided that all permit requirements are adhered to.
- (12) All pavement markings, curb painting and reflective pavement markers need to be restored to their original condition. Pavement markings must be thermoplastic or an approved comparable material.
- (13) All excavations within the roadway shall be backfilled with CA-7, compacted in 12-inch lifts (flowable fill may be substituted for CA-7).
- (14) All roadway excavations must be restored in accordance with the City of Berwyn Engineering Standards, as amended.
- (15) All abandoned sewer service must be terminated at the point of connection at the main and inspected by the City of Berwyn's Plumbing Inspector prior to backfill.
- (16) Projects located within a combined sewer area require a vapor barrier to be installed on the last storm sewer catch basin before entering the combined sewer system.
- (17) Fire hydrants shall be Mueller Super Centurion 250 Fire Hydrant, model A-423 (5 1/4" Barrel) with Mueller Valves/Hardware and Auxiliary Valve 6" Gate Valve No. 2360-23-9020 Modified Wedge Resilient Seat, or approved equal.
- (18) All hydrants shall be painted with two coats of Rust-Oleum Fire Hydrant Enamel (Fire Hydrant Red).
- (19) All commercial sewer repairs shall also require a permit from the Metropolitan Water Reclamation District of Greater Chicago (the "MWRD").
- (20) Green Alley pavements shall consist of a 3-foot wide center strip of permeable articulating blocks with 2.35 inches of CA-7 base course under the blocks. The remaining width will consist of 8 inches of concrete pavement with a minimum 2% slope to the center permeable blocks. This

entire alley section will be placed on top of 12 inches of aggregate base course wrapped in filter fabric.

(21) The pavement standards related to construction in the right-of-way are as follows:

PAVEMENT SUMMARY			
CONCRETE TYPE	REINFORCEMENT	CONC. DEPTH	STONE DEPTH
PUBLIC SIDEWALK (non-driveway)	None	5"	2"
DRIVEWAY IN RIGHT-OF-WAY	Wire Mesh/Fiberglass	7"	4"
ALLEY PAVEMENT	Wire Mesh/Fiberglass	8"	4"
ASPHALT TYPE THICKNESS STONE			
COMMERCIAL	1.5" Binder / 1.5" Surface		10"
ROADWAY-RESIDENTIAL	1.5" Binder / 1.5" Surface / 8" Concrete		4"
ROADWAY-COLLECTOR	1" Binder / 2" Surface / 10" Concrete		4"
ALLEY PAVEMENT	2" Surface / 8" Concrete		4"
PAVER TYPE STONE DEPTH BEDDING TYPE			
STANDARD-RIGHT OF WAY	4" CA-6 & 4" Concrete		1" Sand
PERMEABLE	12" min CA-7		1" CA-16

NOTE: Stone base must be compacted before pre-pour inspection is conducted.

(C) Interpretation of municipal standards and principles. If a discrepancy exists between or among differing principles and standards required by this chapter, the public works director or designee shall determine, in the exercise of sound engineering judgment, which principles apply and such decision shall be final. If requested, the public works director or designee shall state which standard or principle will apply to the construction, maintenance or operation of a facility in the future.

(D) Identification. All personnel working at any construction site in the city on behalf of a utility shall carry identification cards and copies of all required permits for the execution of said construction. All identification cards shall identify the laborer's or other employee's employer and the utility by which he or she has been contracted to perform the construction services.

Section 1010.14 Traffic control.

(A) Minimum requirements. The city's minimum requirements for traffic protection are contained in IDOT's Illinois Manual on Uniform Traffic Control Devices and this Code.

(B) Warning signs, protective devices and flaggers. The utility is responsible for providing and installing warning signs, protective devices and flaggers, when necessary, which shall meet applicable federal, state and local requirements for the protection of the public and the utility's workers when performing any work on rights-of-way.

(C) Interference with traffic. All work shall be phased so that there is minimum interference with pedestrian and vehicular traffic.

(D) Notice when access is blocked. At least 48 hours prior to beginning work that will partially or completely block access to any residence, business or institution, the utility shall notify the resident, business or institution of the approximate beginning time and duration of such work; provided, however, that in cases involving emergency repairs pursuant to section 1010.20 of this chapter, the utility shall provide such notice as is practicable under the circumstances.

(E) Compliance. The utility shall take immediate action to correct any deficiencies in traffic protection requirements that are brought to the utility's attention by the city or by any other person or entity.

Section 1010.15 Location of Facilities.

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

(1) No interference with city facilities. No utility facilities shall be placed in any location if the public works director or designee determines that the proposed location will require the relocation or displacement of any of the city's utility facilities or will otherwise interfere with the operation or maintenance of any of the city's utility facilities.

(2) Minimum interference and impact. The proposed location shall cause only the minimum possible interference with the use of the right-of-way and shall cause only the minimum possible impact upon and interference with the rights and reasonable convenience of property owners who adjoin said right-of-way.

(3) No interference with travel. No utility facility shall be placed in any location that interferes with the usual travel on such right-of-way.

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

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

(B) Parallel facilities located within highways.

(1) Overhead parallel facilities. An overhead parallel facility may be located within the right-of-way lines of a highway only if:

a. Lines are located as near as practicable to the right-of-way line and as nearly parallel to the right-of-way line as reasonable pole alignment will permit;

b. Where pavement is curbed, poles are as remote as practicable from the curb with a minimum distance of two feet (0.6 m) behind the face of the curb, where available;

c. Where pavement is uncurbed, poles are as remote from pavement edge as practicable with minimum distance of four feet (1.2 m) outside the outer shoulder line of the roadway and are not within the clear zone;

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

e. Any ground-mounted appurtenance is located within one foot (0.3 m) of the right-of-way line or as near as possible to the right-of-way line.

(2) Underground parallel facilities. An underground parallel facility may be located within the right-of-way lines of a highway only if:

a. The facility is located as near to the right-of-way line as practicable and not more than eight feet (2.4 m) from and parallel to the right-of-way line;

b. A new facility may be located under the paved portion of a highway only if other locations are impracticable or inconsistent with sound engineering judgment (e.g., a new cable may be installed in an existing conduit without disrupting the pavement); and

c. In the case of an underground power or communications line, the facility shall be located as near to the right-of-way line as practicable

and not more than five feet (1.5 m) from the right-of-way line and any above grounded appurtenance shall be located within one foot (0.3 m) of the right-of-way line or as near as practicable.

(C) *Facilities crossing highways.*

(1) *No future disruption.* The construction and design of crossing facilities installed between the ditch lines or curb lines of city highways may require the incorporation of materials and protections (such as encasement or additional cover) to avoid settlement or future repairs to the roadbed resulting from the installation of such crossing facilities.

(2) *Cattle passes, culverts or drainage facilities.* Crossing facilities shall not be located in cattle passes, culverts or drainage facilities.

(3) *Ninety-degree crossing required.* Crossing facilities shall cross at or as near to a ninety-degree angle to the centerline as practicable.

(4) *Overhead power or communication facility.* An overhead power or communication facility may cross a highway only if:

a. It has a minimum vertical line clearance as required by ICC's rules titled, "Construction of Electric Power and Communication Lines" (ILL. ADMIN. CODE tit. 83 § 305 (2003));

b. Poles are located within one foot (0.3 m) of the right-of-way line of the highway and outside of the clear zone; and

c. Overhead crossings at major intersections are avoided.

(5) *Underground power or communication facility.* An underground power or communication facility may cross a highway only if:

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

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

(6) *Markers.* The city may require the utility to provide a marker at each right-of-way line where an underground facility, other than a power or communication facility, crosses a highway. Each marker shall identify the type of facility, the utility and an emergency telephone number. Markers may also be eliminated as provided in current federal regulations. (49 C.F.R. § 192.707 (1989)).

(D) Facilities to be located within particular rights-of-way. The city may require that facilities be located within particular rights-of-way that are not highways, rather than within particular highways.

(E) Freestanding facilities.

(1) The city may restrict the location and size of any freestanding facility located within a right-of-way.

(2) The city may require any freestanding facility located within a right-of-way to be screened from view.

(F) Facilities installed aboveground. Aboveground facilities may be installed only if:

(1) No other existing facilities in the area are located underground;

(2) New underground installation is not technically feasible; and

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

(4) The proposed installation shall comply with all applicable city codes and regulations, including but not limited to any and all lighting standards provided for in the zoning code.

(G) Facility attachments to bridges or roadway structures.

(1) Facilities may be installed as attachments to bridges or roadway structures only where the utility has demonstrated that all other means of accommodating the facility are not practicable. Other means shall include, but are not limited to, underground, underwater, independent poles, cable supports and tower supports, all of which are completely separated from the bridge or roadway structure. Facilities transmitting commodities that are volatile, flammable, corrosive or energized, especially those under significant pressure or potential, present high degrees of risk and such installations are not permitted.

(2) A utility shall include in its request to accommodate a facility installation on a bridge or roadway structure supporting data demonstrating the impracticability of alternate routing. Approval or disapproval of an application

for facility attachment to a bridge or roadway structure will be based upon the following considerations:

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

(H) Appearance standards.

- (1) Unless otherwise prohibited by law, the city may prohibit the installation of facilities in particular locations in order to preserve visual quality.
- (2) A facility may be constructed only if its construction does not require extensive removal or alteration of trees or terrain features visible to the right-of-way users or to adjacent residents and property owners, and if it does not impair the aesthetic quality of the lands being traversed.

Section 1010.16 Construction methods and materials.

(A) Standards and requirements for particular types of construction methods.

- (1) Boring or jacking.
 - a. Pits and shoring. Boring or jacking under rights-of-way shall be accomplished from pits located at the minimum distance specified by the public works director or designee from the edge of the pavement. Pits for boring or jacking shall be excavated no more than 48 hours in advance of boring or jacking operations and backfilled within 48 hours

after boring or jacking operations are completed. While pits are open, they shall be clearly marked and protected by barricades. Shoring shall be designed, erected, supported, braced and maintained so that it will safely support all vertical and lateral loads that may be imposed upon it during the boring or jacking operation.

b. *Wet boring or jetting.* Wet boring or jetting shall not be permitted under the roadway.

c. *Borings with diameters greater than six inches.* Borings over six inches in diameter shall be accomplished with an auger and following pipe and the diameter of the auger shall not exceed the outside diameter of the following pipe by more than one inch.

d. *Borings with diameters six inches or less.* Borings of six inches or less in diameter may be accomplished by either jacking, guided with auger, or auger and following pipe method.

e. *Tree preservation.* Any facility located within the drip line of any tree designated by the city to be preserved or protected shall be bored under or around the root system.

(2) *Trenching.* Trenching for facility installation, repair or maintenance on rights-of-way shall be done in accordance with the applicable portions of the current edition of IDOT's "Standard Specifications for Road and Bridge Construction."

a. *Length.* The length of open trench shall be kept to the practicable minimum consistent with requirements for pipe-line testing. Only one-half of any intersection may have an open trench at any time unless special permission is obtained from the public works director or designee.

b. *Open trench and excavated material.* Open trench and windrowed excavated material shall be protected as required by the current edition of IDOT's Illinois Manual on Uniform Traffic Control Devices. Where practicable, the excavated material shall be deposited between the roadway and the trench as added protection. Excavated material shall not be allowed to remain on the paved portion of the roadway. Where a right-of-way width does not allow for windrowing excavated material off the paved portion of the roadway, excavated material shall be hauled to an off-road location.

c. *Drip line of trees.* The utility shall not trench within the drip line of any tree designated by the city to be preserved.

(3) Backfilling.

a. Any pit, trench or excavation created during the installation of facilities shall be backfilled for its full width, depth and length using methods and materials in accordance with IDOT's "Standard Specifications for Road and Bridge Construction." When excavated material is hauled away or is unsuitable for backfill, suitable granular backfill shall be used.

b. For a period of three (3) years from the date that the construction of a facility is completed, the utility shall be responsible for removing and restoring any backfilled area that has settled due to construction of the facility. If so ordered by the building director or the public works director, the utility, at its sole expense, shall remove any pavement and backfill material to the top of the installed facility, place and properly compact new backfill material and restore new pavement, sidewalk, curbs and driveways to the proper grades, as determined by the public works director or designee.

(4) Pavement cuts. Pavement cuts for facility installation or repair shall be permitted on a highway only if that portion of the highway is closed to traffic. If a variance to the limitation set forth in this section (4) is permitted under section 1010.21 the following requirements shall apply:

a. Any excavation under pavements shall be backfilled and compacted as soon as practicable with granular material of CA-7 or CA-10 gradation, as designated by the public works director or designee. The public works director may, at his or her discretion, approve other materials and/or applications;

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

c. All saw cuts shall be full depth; and

d. For all rights-of-way that have been reconstructed with a concrete surface/base in the last seven years, or resurfaced in the last three years, permits shall not be issued unless such work is determined to be an emergency repair or other work considered necessary and unforeseen before the time of the reconstruction or unless a pavement cut is necessary for a J.U.L.I.E. locate.

(5) Encasement.

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

b. The venting, if any, of any encasement shall be in compliance with IDOT Section 35-202(f), or the current standard for venting as provided for by IDOT. No aboveground vent pipes shall be located in the area established as a clear zone for that particular section of the highway.

c. In the case of water main or service crossing, encasement shall be furnished between bore pits unless continuous pipe or city approved jointed pipe is used under the roadway. Casing may be omitted only if pipe is installed prior to highway construction and carrier pipe is continuous or mechanical joints are of a type approved by the city. All installations shall be in accordance with the Standard Specifications for Water and Sewer Construction in Illinois.

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

e. In the case of gas pipelines or petroleum products pipelines with installations of more than 60 psig, encasement may be eliminated only if:

(i) Extra heavy pipe is used that precludes future maintenance or repair; and

(ii) Cathodic protection of the pipe is provided.

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

(6) Minimum cover of underground facilities. Cover shall be provided and maintained at least in the amount specified in the following table for minimum cover for the type of facility or as provided for by the Standard Specifications for Water and Sewer Construction in Illinois:

<u>TYPE OF FACILITY</u>	<u>MINIMUM COVER</u>
<u>Electric line</u>	<u>30 inches (0.8 m)</u>
<u>Communication, Cable or Video Service Lines</u>	<u>18 to 24 Inches (0.6 m, as determined by the City)</u>
<u>Gas or Petroleum Products</u>	<u>30 Inches (0.8 m)</u>

<u>Water Line</u>	<u>60 inches in depth or sufficient Cover to Provide Freeze Protection – 48 inches may be allowed with the written approval of the public works director</u>
<u>Sanitary Sewer, Storm Sewer, or Drainage Line</u>	<u>60 inches in depth or sufficient Cover to Provide Freeze Protection – 48 inches may be allowed with the written approval of the public works director</u>

In the event of a conflict between this subsection and the Standard Specifications for Water and Sewer Construction in Illinois, the Standard Specifications for Water and Sewer Construction in Illinois shall control.

(B) Standards and requirements for particular types of facilities.

(1) Electric power or communication lines.

a. Code compliance. Electric power or communications facilities within city rights-of-way shall be constructed, operated and maintained in conformity with the provisions of Title 83 § 305 of the Illinois Administrative Code (ILL. ADMIN. CODE tit. 83 § 305 (2003) (formerly General Order 160 of the ICC) titled "Rules for Construction of Electric Power and Communications Lines" and the National Electrical Safety Code.

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

c. Underground facilities.

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

(ii) If a crossing is installed by boring or jacking, encasement shall be provided between jacking or bore pits. Encasement may be eliminated only if:

1. The crossing is installed by the use of "moles," "whip augers" or other approved methods which

compress the earth to make the opening for cable installation; or

2. The installation is by the open trench method, which is only permitted prior to roadway construction.

(iii) Cable shall be grounded in accordance with the National Electrical Safety Code.

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

(2) Underground facilities other than electric power or communication lines. Underground facilities, other than electric power or communication lines, may be installed by:

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

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

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

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

(3) Gas transmission, distribution and service. Gas pipelines within rights-of-way shall be constructed, maintained and operated in a city approved manner and in conformance with the Federal Code of the Office of Pipeline Safety Operations, Department of Transportation, Part 192 - Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards (49 C.F.R. § 192 (2000)), IDOT's "Standard Specifications for Road and Bridge Construction" and all other applicable laws, rules and regulations.

(4) Petroleum products pipelines. Petroleum products pipelines within rights-of-way shall conform to the applicable sections of ANSI Standard Code for pressure piping. (Liquid Petroleum Transportation Piping Systems ANSI-B 31.4).

(5) *Waterlines, sanitary sewer lines, storm water sewer lines or drainage lines.* Water lines, sanitary sewer lines, storm sewer lines, and drainage lines within rights-of-way shall meet or exceed the recommendations of the current "Standard Specifications for Water and Sewer Main Construction in Illinois." If a waterline is struck or damaged during the construction and said line is composed of lead or other dangerous metal or is galvanized, the permittee shall be required to replace the entire water line running from the main to the property. The use of lead pipes or other dangerous pipes is strictly prohibited. All pipes shall be replaced with type K copper, unless otherwise approved by the Public Works Director. Compliance with all federal and state laws is required.

(6) *Ground-mounted appurtenances.* Ground-mounted appurtenances to overhead or underground facilities, when permitted within a right-of-way, shall be provided with a vegetation-free area extending one foot (305 mm) in width beyond the appurtenance in all directions. The vegetation-free area may be provided by an extension of the mounting pad, by heavy duty plastic or by similar material approved by the public works director or designee. With the approval of the public works director or designee, shrubbery surrounding the appurtenance may be used in place of a vegetation-free area. The housing for ground-mounted appurtenances shall be painted a neutral color to blend with the surroundings. All ground mounted appurtenances shall comply with the City's zoning code and all other applicable codes.

(C) *Materials.*

(1) *General standards.* The materials used in constructing facilities within rights-of-way shall be those meeting the accepted standards of the appropriate industry, the applicable portions of the current edition of IDOT's "Standards Specifications for Road and Bridge Construction," the requirements of the ICC or the standards established by other official regulatory agencies for the appropriate industry.

(2) *Material storage on a right-of-way.* No material shall be stored on a right-of-way without the prior written approval of the public works director or designee. When such storage is permitted, all pipe, conduit, wire, poles, cross arms or other materials shall be distributed along the right-of-way prior to and during installation in such a manner so as to minimize hazards to the public, obstacles to right-of-way maintenance and damage to the right-of-way and other property. If material is to be stored on a right-of-way, prior approval must be obtained from the city.

(3) *Hazardous materials.* The plans submitted by the utility to the city shall identify any hazardous materials that may be involved in the construction of the new facilities or removal of any existing facilities. The City reserves the right to consult with the fire department, fire marshal, federal or state

environmental protection agencies, other applicable entity or regulatory agency and/or qualified city appointed or retained officer or consultant and may ultimately deny the use of said materials if there is a risk posed to the public.

(D) *Operational restrictions.*

(1) Construction operations on rights-of-way may, at the discretion of the city, be required to be discontinued when such operations would create hazards to traffic or the public health, safety and welfare. Such operations may also be required to be discontinued or restricted when conditions are such that construction would result in extensive damage to the right-of-way or other property.

(2) These restrictions may be waived by the public works director or designee when emergency work is required to restore vital utility services.

(3) Unless otherwise permitted by the city, the hours of construction shall be consistent with the restrictions in Section 666.02, prohibited noises.

(E) *Location of existing facilities.* Any utility proposing to construct facilities in the city shall contact J.U.L.I.E. and ascertain the presence and location of existing aboveground and underground facilities within the rights-of-way to be occupied by its proposed facilities. The city will make its permit records available to a utility for the purpose of identifying possible facilities. When notified of an excavation or when requested by the city or by J.U.L.I.E., a utility shall locate and physically mark its underground facilities within 48 hours, excluding weekends and holidays, in accordance with the Illinois Underground Utility Facilities Damage Prevention Act (220 ILCS 50/1, *et seq.*)

Section 1010.17 *Vegetation control.*

(A) *Generally.* All utilities, contractors, subcontractors or permittees shall comply with all city ordinances related to vegetation control during construction and the utility shall maintain and conduct all vegetation control necessary to comply with city code and to ensure the safety and welfare of the general public.

(B) *Electric utilities – Compliance with state laws and regulations.* An electric utility shall conduct all tree-trimming and vegetation control activities in a right-of-way in accordance with applicable Illinois Laws and Regulations, and additionally, in accordance with such local franchise or other agreement with the city as permitted by law.

(C) *Other utilities—Tree trimming permit required.* Tree trimming that is done by any other utility with facilities in a right-of-way and that is not performed pursuant to applicable Illinois Laws and Regulations specifically governing the same, shall not be

considered a normal maintenance operation, but shall require the application for and the issuance of a permit, in addition to any other permit required under the city code.

(1) Application for tree trimming permit. Applications for tree trimming permits shall include an assurance that the work will be accomplished by competent workers with supervision who are experienced in accepted tree pruning practices. Tree trimming permits shall designate an expiration date in the interest of assuring that the work will be expeditiously accomplished.

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

(D) Specimen trees or trees of special significance. The city may require that special measures be taken to preserve specimen trees or trees of special significance. The required measures may consist of higher poles, side arm extensions, covered wire or other means.

(E) Chemical use.

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

(2) Spraying of any type of brush-killing chemicals will not be permitted on rights-of-way unless the utility demonstrates, to the satisfaction of the public works director or designee, that such spraying is the only practicable method of vegetation control.

Section 1010.18 Removal, relocation, or modifications of utility facilities.

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

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

(1) Upon expiration or termination of the permittee's license or franchise, unless otherwise permitted by applicable law;

(2) If the facility was constructed or installed without the prior grant of a license or franchise, if required;

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

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

(C) Emergency removal or relocation of facilities. The city retains the right and privilege to cut or move any facilities located within the rights-of-way of the city, as the city may determine to be necessary, appropriate or useful in response to any public health or safety emergency. If circumstances permit, the 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) Abandonment of facilities. Upon abandonment of a facility within a right-of-way of the city, the utility shall notify the city within ninety (90) calendar days. Following receipt of such notice, the city may direct the utility to remove all or any portion of the facility if the public works director or designee determines that such removal will be in the best interests of the public health, safety and welfare. In the event that the city does not direct the utility that abandoned the facility to remove it, by giving notice of abandonment to the city, the abandoning utility shall be deemed to consent to the alteration or removal of all or any portion of the facility by another utility, entity or person.

Section 1010.19 Clean-up and restoration.

The utility shall remove all excess material and restore all turf and terrain and other property within ten calendar days after any portion of a right-of-way is disturbed, damaged or destroyed due to construction or maintenance by the utility, 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 public works director or designee. Such cleanup and repair may be required to consist of backfilling, regrading, reseeding, resodding or any other requirement to restore the right-of-way to a condition substantially equivalent to that which existed

prior to the commencement of the project. The time period provided in this section may be extended by the public works director or designee for good cause shown.

Section 1010.20 Maintenance and emergency maintenance.

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

(B) Emergency maintenance procedures. Emergencies may justify non-compliance with normal procedures for securing a permit:

(1) If an emergency creates a hazard on the traveled portion of a right-of-way, the utility shall take immediate steps to provide all necessary protection for traffic on the highway or the public on the right-of-way including the use of signs, lights, barricades or flaggers. If a hazard does not exist on the traveled way, but the nature of the emergency is such as to require the parking on the shoulder of equipment required in repair operations, adequate signs and lights shall be provided. Parking on the shoulder in such an emergency will only be permitted when no other means of access to the facility is available.

(2) In an emergency, the utility shall, as soon as possible, notify the public works director or his or her duly authorized agent of the emergency, informing him or her as to what steps have been taken for protection of the traveling public and what will be required to make the necessary repairs. If the nature of the emergency is such as to interfere with the free movement of traffic, the Berwyn Police shall be notified immediately.

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

(C) Emergency repairs. The utility must file in writing with the city a description of the repairs undertaken in the right-of-way within 48 hours after an emergency repair.

Section 1010.21 Variances.

(A) Request for a variance. A utility requesting a variance from one or more of the provisions of this chapter must do so in writing to the public works director or designee as a part of the permit application. The request shall identify each provision of this chapter from which a variance is requested and the reasons why a variance should be granted.

(B) Authority to grant variances. The public works director or designee shall decide, on an individual basis, whether a variance is authorized for each provision of this chapter identified in the variance request.

(C) Conditions for granting a variance. The public works director or designee may authorize a variance only if the utility requesting the variance has demonstrated that:

(1) One or more conditions not under the control of the utility (such as terrain features or an irregular right-of-way line) create a special hardship that would make enforcement of the provision unreasonable, given the public purposes to be achieved by the provision; and

(2) All other designs, methods, materials, locations or facilities that would conform with the provision from which a variance is requested are impracticable in relation to the requested approach.

(D) Additional conditions for granting a variance. As a condition for authorizing a variance, the public works director or designee may require the utility requesting the variance to meet reasonable standards and conditions that may or may not be expressly contained within this chapter, but which carry out the purposes of this chapter.

(E) Right to appeal. Any utility aggrieved by any order, requirement, decision or determination, including the denial of a variance, made by the public works director or designee under the provisions of this chapter shall have the right to appeal to the city council, or such other board or commission as may be designated by the city council. The application for appeal shall be submitted in writing to the city clerk within 30 calendar days after the date of such order, requirement, decision or determination. The city council shall commence its consideration of the appeal at the city council's next regularly scheduled meeting occurring at least seven calendar days after the filing of the appeal. The city council shall timely decide the appeal.

Section 1010.22 Penalties.

Any person who violates, disobeys, omits, neglects or refuses to comply with any of the provisions of this chapter shall be subject to a fine or fines in accordance with the penalty provisions of this Code. There may be times when the city will incur delay or other costs, including third party claims, because the utility will not or cannot perform its duties under its permit and this chapter. Unless the utility shows that another allocation of the cost of undertaking the requested action is appropriate, the utility shall bear the city's cost of damages and its costs for installing, maintaining, modifying, relocating or removing the facility that is the subject of the permit. No other administrative agency or commission may review or overrule a permit related cost apportionment of the city. Sanctions may be imposed upon a utility that does not pay the costs apportioned to it.

Section 1010.23 Enforcement and severability.

Enforcement. Nothing in this chapter shall be construed as limiting any additional or further remedies that the city may have for enforcement of this chapter.

Severability. If any chapter, subsection, sentence, clause, phrase or portion of this section is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

Section 3.01 Other Actions Authorized.

The officers, employees and/or agents of the City shall take all action necessary or reasonably required to carry out, give effect to and consummate the amendments contemplated by this Ordinance and shall take all action necessary in conformity therewith. The officers, employees and/or agents of the City are specifically authorized and directed to draft and disseminate any and all necessary forms to be utilized regarding this amendment.

**ARTICLE III.
HEADINGS, SAVINGS CLAUSES, PUBLICATION,
EFFECTIVE DATE**

Section 4.00 Headings.

The headings of the articles, sections, paragraphs and subparagraphs of this Ordinance are inserted solely for the convenience of reference and form no substantive part of this Ordinance nor should they be used in any interpretation or construction of any substantive provision of this Ordinance.

Section 5.00 Severability.

The provisions of this Ordinance are hereby declared to be severable and should any provision of this Ordinance be determined to be in conflict with any law, statute or regulation by a court of competent jurisdiction, said provision shall be excluded and deemed inoperative, unenforceable and as though not provided for herein and all other provisions shall remain unaffected, unimpaired, valid and in full force and effect.

Section 6.00 Superseder.

All code provisions, ordinances, resolutions, rules and orders, or parts thereof, in conflict herewith are, to the extent of such conflict, hereby superseded.

Section 7.00 Publication.

A full, true and complete copy of this Ordinance shall be published in pamphlet form or in a newspaper published and of general circulation within the City as provided by the Illinois Municipal Code, as amended.

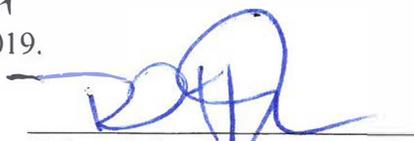
Section 8.00 Effective Date.

This Ordinance shall be effective ten (10) calendar days after its passage and approval in accordance with Illinois law.

ADOPTED by the City Council of the City of Berwyn, Cook County, Illinois on this 13th day of August, 2019, pursuant to a roll call vote, as follows:

	YES	NO	ABSENT	PRESENT
Lennon	✓			
Ramirez	✓			
Reardon	✓			
Fejt	✓			
Santoy	✓			
Ruiz	✓			
Avila	✓			
Nowak	✓			
(Mayor Lovero)				
TOTAL	8	0	0	0

APPROVED this 14th day of August, 2019.


 Robert J. Lovero
 MAYOR

ATTEST:


 Margaret Paul
 CITY CLERK

