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## CHAPTER 12: STREETS AND SIDEWALKS

### Article 1 - General Provisions

**Sec. 12.101 Supervision:** All maintenance and repair of public streets, alleys, sidewalks and other public ways shall be under the supervision of the superintendent of streets. He shall be charged with the enforcement of all ordinance provisions relating to such public places (except traffic ordinances) and is hereby authorized to enforce such ordinance.

**Sec. 12.102 Construction:** It shall be unlawful to construct or lay any pavement on any public street, sidewalk, alley or other public way, or to repair or remove the same, without having first secured a permit therefore. Applications for such permits shall be made to the Clerk, and shall state the location of the intended pavement or repair, the extent thereof, and the person or firm who is to do the actual construction work. No such permits shall be issued except where the work will conform to the ordinances of the Village.

**Sec. 12.103 Bond:** Each applicant shall file a bond in an amount set by the Village Council with surety to be approved by the Council conditioned to indemnify the Village for any loss or damage resulting from the work undertaken or the manner of doing the same.

**Sec. 12.104 Specifications:** All streets and sidewalk pavements shall be made in conformity with specifications laid down or approved from time to time by the Village Council.

**Sec. 12.105 Injury to New Pavements:** It shall be unlawful to walk upon or drive any vehicle or animal upon, or injure any newly laid street or sidewalk pavement while the same is guarded by a warning sign or barricade or to knowingly injure any soft or newly laid pavement.

**Sec. 12.106 Repairs:** All public street, alley, and sidewalk pavements shall be in good repair. Such repair work, whether done by the Village or by the abutting owner, shall be under the supervision of the superintendent of streets.

**Sec. 12.107 Defects:** It shall be the duty of every Village officer and employee becoming cognizant of any defect in any street, alley or sidewalk, or any obstruction thereof, to report the same to the superintendent of streets as soon as possible.

**Sec. 12.108 Obstructions:** It shall be unlawful for any person, firm, or corporation to cause, create or maintain any obstruction of any street, alley, sidewalk or other public way, except as may be specified by ordinance or by the superintendent of streets.

**Sec. 12.109 Barricades:** Any person, firm or corporation laying or repairing any pavement on a street, sidewalk, or other public place or making an excavation in the same, shall maintain suitable barricades to prevent injury of any person or vehicle by reason of the work. Such barricades shall be protected by a light at nighttime. Any defect in any such pavement shall be barricaded to prevent injury; and any person, firm, or corporation properly maintaining any opening or excavation, while the same remains open, shall guard the same with proper barricades and lights.

**Sec. 12.110 Disturbing Barricades:** It shall be unlawful to disturb or interfere with any barricade or lights lawfully placed to protect or mark any new pavement or excavation or opening in any public street, alley, or sidewalk.

**Sec. 12.111 Private Use:** It shall be unlawful for any person, firm or corporation to use any street, sidewalk, or other public place as space for the display of goods or merchandise for sale; or to write or make any sign or advertisement on any such pavement without having first secured permission from the President and Village Council.

**Sec. 12.112 Encroachments:** It shall be unlawful to erect or maintain any building or structure, which encroaches upon any public street or property.

**Sec. 12.113 Drains:** It shall be unlawful to obstruct any drain in any public street or property.

**Sec. 12.114 Poles and Wires:** Except for publicly dedicated utility easements, it shall be unlawful to erect any poles or wires or maintain any poles or wires over any public place, street, alley, or other public way without having first secured permission from the President and Village Council.

**Sec. 12.115 Gasoline Pumps:** It shall be unlawful to erect or maintain any gasoline pump on any public street or sidewalk in the Village.

**Sec. 12.116 Games:** It shall be unlawful to play any games upon any street, alley, or sidewalk or other public place, where such games cause unnecessary noise or interfere with traffic or pedestrians.

**Sec. 12.117 Openings:** It shall be unlawful to construct or maintain any opening or stairway in any public street or sidewalk or alley without a permit from the Village Council. All such lawfully maintained openings shall be guarded by a suitable strong cover or railing to the approval of the Village Council.

**Sec. 12.118 Deposits on Streets:** It shall be unlawful to deposit on any street any material, which may be harmful to the pavement thereof, or any waste material, or any glass, or other articles, which may do injury to any person, animal or property.

**Sec. 12.119 Deposits on Sidewalks:** It shall be unlawful to deposit on any public sidewalk any material, which may be harmful to the pavement thereof, or any waste material, or any glass or other articles, which might cause injury to persons, animals or property. Merchandise or other articles may be deposited on sidewalks preparatory to delivery, provided that the usable width of the sidewalk is not thereby reduced to less than four feet; and provided that no such article shall remain on such walk for more than one-half hour.

**Sec. 12.120 Burning Leaves and Rubbish:** It shall be unlawful for any person, firm or corporation to burn leaves, paper, rubbish or other substances upon any of the public streets, sidewalks, or alleys of the Village. It shall be unlawful for any person, firm or corporation to burn anything other than ordinary yard waste within the Village limits.

**Sec. 12.121 Penalty:** Any person, firm or corporation violating any provisions of this ordinance shall be fined not less than seventy-five dollars (\$75.00) nor more than five hundred dollars (\$500.00) for each offense and a separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

## Article 2 - Excavations

**Sec. 12.201 Permit Required:** It shall be unlawful for any person, firm or corporation to tunnel under or to make any excavation in any street, alley or other public place in the Village without having obtained a permit as is herein required, or without complying with the provisions of this Article or in violation of a variance from the terms of any such permit.

**Sec. 12.202 Applications:** Applications for such permits shall be made to the Clerk, and shall describe the location of the intended excavation or tunnel, the size thereof, the purpose therefore, and the person, firm or corporation for whom or which the work is being done, and shall contain an agreement that the applicant will comply with all ordinances and laws relating to the work to be done.

**Sec. 12.203 Fees:** The fee for such permit shall be twenty-five dollars (\$25.00).

**Sec. 12.204 Bond - Unless Waived by the Village Council:** No such permit shall be issued unless and until the applicant therefore has filed with the Village Clerk a bond in the sum of Twenty Five Thousand Dollars (\$25,000.00) conditioned to indemnify the Village for any loss, liability or damage that may result or accrue from or because of the making, existence or manner of guarding or constructing any such tunnel or excavation. Such bond shall have as surety a corporation licensed to do business in the state as a surety company.

**Sec. 12.205 Deposit:** No such permit shall be issued unless and until the applicant therefore has deposited with the Clerk a cash deposit in the sum of one thousand dollars (\$1000.00) to insure the proper restoration of the ground and laying of the pavements if any. From this deposit shall be deducted the expense to the Village of relaying the surface of the ground of pavement and of making the refill if this is done by the Village or at its expense, and the balance shall be returned to the applicant without interest after the tunnel or excavation is completely refilled and the surface or pavement is restored.

**Sec. 12.206 Manner of Excavation:** It shall be unlawful, to make any such excavation or tunnel in any way contrary to or at variance with the terms of the permit therefore. Proper bracing shall be maintained to prevent the collapse of adjoining ground; and in excavations the excavation shall not have anywhere below the surface any portion which extends beyond the opening at the surface. No injury shall be done to any pipes, cables or conduits in the making of such excavations or tunnels; and notice shall be given to the persons maintaining any such pipes, cables or conduits or to the Village department or officer charged with the care thereof, which are or may be endangered or affected by the making of any such excavation or tunnel before such pipes, cables or conduit shall be disturbed. No unnecessary damage or injury shall be done to any tree or shrub or the roots thereof.

**Sec. 12.207 Sidewalks:** If any sidewalk is blocked by any such work a temporary sidewalk shall be constructed or provided which shall be safe for travel and convenient for users.

**Sec. 12.208 Restoring surface:** Any person, firm or corporation making any excavation or tunnel in or under any public street, alley, or other public place in the Village shall restore the surface to its original condition if there is no pavement there. Refills shall be properly tamped down, and any bracing in such tunnel or excavation shall be left in the ground. Any opening in a paved or improved portion of a street shall be repaired and the surface re-laid by the applicant, in compliance with the ordinances of the Village and under the supervision of the superintendent of streets.

**Sec. 12.209 Supervision:** The superintendent of streets shall from time to time inspect or cause to be inspected, all excavations and tunnels being made in or under any public street, alley, or other public place in the Village to see to the enforcement of the provisions of this Article. Notice shall be given to him at least ten hours before the work of refilling any such tunnel or excavation commences.

**Sec. 12.210 Tunneling Required:** It shall be unlawful to make any excavation in any portion of a street or sidewalk in the Village, which is paved with a concrete or asphalt paving. Where necessary, and where a proper permit has been secured, tunnels may be driven or excavated under such pavement provided that upon completion of the work involved the tunnel shall be backfilled with compacted sand.

**Sec. 12.211 Protective Measures and Routing of Traffic:** It shall be the duty of every person cutting or making an excavation in or upon any public place, to place and maintain barriers and warning devices necessary for safety of the general public. Barriers, warning signs, lights, etc., shall conform to the requirements of the Village Council. Warning lights shall be flares, torches, lanterns, electrical markers or flashers used to indicate a hazard to traffic from sunset of each day to sunrise of the next day.

Electrical markers or flashers shall emit light at sufficient intensity and frequency to be visible at a reasonable distance for safety. Reflectors or reflecting material may be used to supplement, but not replace, light sources. The Village Council may restrict the use of lanterns or open flame devices in fire hazard areas.

The permittee shall take appropriate measures to assure that during the performance of the excavation work, traffic conditions as near normal as possible shall be maintained at all times so as to minimize inconvenience to the occupants of the adjoining property to the general public.

When traffic conditions permit the Village Council may permit the closing of streets and alleys to all traffic for a period of time prescribed by it, if it is necessary. Such approval by the Village Council may require that the permittee give notification to the general public. In such cases, approval by the Village Council shall not be valid until such notice is given.

Warning signs shall be placed far enough in advance of the construction operation to alert traffic within a public street and cones or other approved devices shall be placed to channel traffic, in accordance with the instructions of the Village Council. These signs shall be placed in accordance with the Illinois Department of Transportation standards.

**Sec. 12.212 Clearance For Vital Structures:** The excavation work shall be performed and conducted so as not to interfere with access to fire hydrants, fire stations, valve housing structures, and all other vital equipment as designated by the superintendent of streets.

**Sec. 12.213 Relocation and Protection of Utilities:** The permittee shall not interfere with any existing facility without the written consent of the Village Council and the owner of the facility. If it becomes necessary to relocate an existing facility this shall be done by its owner. No facility owned by the Village shall be moved to accommodate the permittee unless the cost of such work be borne by the permittee. The cost of moving privately owned facilities shall be similarly borne by the permittee, unless it makes other arrangements with the person owning the facility. The permittee shall support and protect all pipes, conduits, poles, wires, or other apparatus, which may be in any way affected by the excavation work. The permittee shall secure approval of method of support and protection from the owner of the facility. In case any facility shall be damaged the permittee shall promptly notify the owner of the facility thereof. All damaged facilities shall be repaired by the owner and the expense of such repairs shall be charged to the permittee. It is the intent of this paragraph that permittee shall assume all liability for damage to facilities and any resulting damage or injury to anyone because of

such facility damage and such assumption of liability is a contractual obligation of the permittee. The only exception will be such instances where damage is exclusively due to the negligence of the owning utility. The Village shall not be made a party to any action because of this section. The permittee shall inform itself as to the existence and location of all underground facilities and protect the same against damage.

**Sec. 12.214 Care of Excavated Material:** All material excavated from trenches and piles adjacent to the trench or in any street shall be piled, and maintained in such manner as not to endanger those working in the trench, pedestrians or users of the streets, and so that as little inconvenience as possible is caused to those using streets and adjoining property. Where the confines of the area being excavated are too narrow to permit the piling of excavated material beside the trench, the superintendent of streets shall have the authority to require that the permittee haul the excavated material to a storage site and then rehaul it to the trench site at the time of backfilling. It shall be the permittee's responsibility to secure the necessary permission and make all necessary arrangements for all required storage and disposal sites.

**Sec. 12.215 Clean-up:** As the excavation work progresses, all streets shall be thoroughly cleaned of all rubbish, excess earth, rock and other debris resulting from such work. All clean-up operations at the location of such excavation shall be accomplished at the expense of the permittee and shall be completed to the satisfaction of the superintendent of streets. After completion of said work, the permittee shall, at his or its own expense, clean-up and remove all refuse and unused materials of any kind resulting from said work, and upon failure to do so within 24 hours after having been notified to do so by the superintendent of streets, said work may be done by the superintendent of streets and the cost thereof charged to the permittee, and the permittee shall also be liable for the cost thereof under the surety bond provided hereunder.

**Sec. 12.216 Protection of Water Courses:** The permittee shall maintain all gutters free and unobstructed from the full depth of the adjacent curb and for at least one foot in width from the face of such curb at the gutter line. Wherever a gutter crosses an intersecting street, an adequate waterway shall be provided and at all times maintained.

The permittee shall make provisions to take care of all surplus water, muck, silt, stickings or other run-off pumped from excavations or resulting from sluicing or other operations and shall be responsible for any damage resulting from it as a failure to so provide.

**Sec. 12.217 Breaking Through Pavement:**

- (1) The Village Council may prohibit heavy-duty pavement breakers when the use endangers existing substructures or other property.
- (2) Saw cutting of Portland cement concrete may be required when the nature of the work or the condition of the street warrants. When required, the depth of the cut shall be not less than one inch in depth; however, the superintendent of public works may require depth greater than one inch when circumstances warrant. Saw cutting may be required by the Village Council outside the limits of the excavation over cave-outs, overbreaks and small floating sections.
- (3) Approved cutting of bituminous pavement surface ahead of excavations may be required by the Village Council to confine pavement damages to the limits of the trench.
- (4) Sections of sidewalk shall be removed to the nearest score line or joint.
- (5) Unstable pavement shall be removed over cave-outs and overbreaks and the subgrade shall be treated as the main trench.
- (6) Pavement edges shall be trimmed to a vertical face and neatly aligned with the center of the trench.
- (7) Cutouts outside of the trench lines must be normal or parallel to the trench line.

- (8) Bowing or other methods to prevent cutting of new pavement may be required by the Village Council.
- (9) Permittee shall not be required to repair pavement damage existing prior to the excavation unless his cut results in small floating sections that may be unstable, in which case permittee shall remove and pave the area.

**Sec. 12.218 Backfilling:**

- (A) In excavating through pavement, fine material, free from lumps and stone, selected from the soil, shall be thoroughly compacted around and under the substructure to the upper level of such substructure, backfill material shall consist of sand and shall be placed to the subgrade of the pavement.
- (B) In excavating through areas where no pavement exists, fine material , free from lumps and stone, selected from the spoil, shall be thoroughly compacted around and under the substructure to the upper level of such substructure. Above the upper level of the substructure, backfill material shall be placed to the level of the surface in lifts consistent with the type of soil involved and the degree of consolidation specified by the Village Council.

Broken pavement, large stones, roots and other debris shall not be used in the backfill.

**Sec. 12.219 Prompt Completion of Work:** After the excavation is commenced, the permittee shall prosecute with diligence and expedition all excavation work covered by the excavation permit and shall promptly complete such work and restore the street to its original condition, or as near as may be, so as not to obstruct the public place or travel thereon more than is reasonably necessary.

**Sec. 12.220 Emergency-Action:** Nothing in this Ordinance shall be construed to prevent the making of such excavation as may be necessary for the preservation of life or property or for the location of trouble in conduit or pipe, or for making repairs, provided that the person making such excavation shall apply to the Village Clerk for such permit on the first working day after such work is commenced.

**Sec. 12.221 Preservation of Monuments:** Any monument set for the purpose of locating or preserving the lines of any street or property, subdivision, or a precise survey reference point, or a permanent survey bench mark within the City, shall not be removed or disturbed or caused to be removed or disturbed without first obtaining permission in writing, from the Village Council so to do. Permission to remove or disturb such monuments, reference points or bench marks shall only be granted upon condition that the person applying for such permission shall pay all expenses incident to the proper replacement of this monument by the Village.

**Sec. 12.222 Inspections:** The superintendent of streets shall make such inspections as are reasonably necessary in the enforcement of this Ordinance.

**Sec. 12.223 Penalty:** Any person, firm or corporation violating any of the provisions of this Ordinance shall be fined not less than seventy-five dollars (\$75.00) nor more than five hundred dollars (\$500.00) for each offense and a separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

### **Article 3 - Trees and Shrubs**

**Sec. 12.301 Creation of Tree Board:** There is hereby created and established a village tree and environmental board of Deer Creek, Illinois, which shall consist of a minimum of three members, citizens and residents of the Village, who shall be initially appointed by the Village President with the approval of the Village Council. Members of this board shall serve without compensation.

**Sec. 12.302 Terms of Office:** The terms of the persons to be appointed to the Tree and Environmental Board shall be three years, except that the term of one of the members appointed to the first board shall be for one year. The remaining members of the first board shall serve a term of two years and three years respectively. In the event that a vacancy shall occur during the term of any member, the tree board shall appoint the successor with the approval of the Village President and Council.

**Sec. 12.303 Applicability:** This article provides full power and authority over all trees, plants and shrubs located within street rights-of-way, parks and public places of the Village and areas heretofore described.

**Sec. 12.304 Certification:** It shall be unlawful on public property for any person receiving remuneration to engage in the business of planting, cutting, trimming, pruning, removing, spraying or otherwise treating trees, shrubs or vines within the village without first producing evidence of certification before the tree board.

**Sec. 12.305 Insurance:** Before any permit shall be issued, each applicant shall first file evidence of possession of liability insurance in the minimum amounts of \$500,000 for bodily injury or death and \$300,000 property damage indemnifying the village or any person injured or damaged resulting from the pursuit of such endeavor as herein described.

**Sec. 12.306 Landscaping:** In new subdivisions or when the development of commercial property occurs, the tree board will review landscaping plans and will require street trees to be planted in any of the parkways, parking lots, parks and other public places abutting lands henceforth developed or subdivided. The tree board may also require designated "green areas". This will be accomplished by establishing an escrow account that the developer puts money into and the village purchases the trees from. Specifications for planting as follows:

1. The tree board will provide a list of recommended species.
2. No species can make up more than 20% of the planting stock.
3. Trees will be a minimum of 2 inches in diameter.
4. The planting location must have acceptable clearance around utilities and a sight line of sight at intersections.
5. Trees planted in the parkway shall be a minimum of one tree per lot and on corner lots or parks, one tree per fifty feet of frontage.

**Sec. 12.307 Tree Planting, Maintenance and Removal:**

1. Tree species – The tree board develops and maintains a list of desirable trees for planting along streets in three size classes: small, medium and large. A list of trees not suitable for planting will also be created and enforced by the tree board.
2. Spacing – The spacing of street trees will be in accordance with the three species size classes listed in this ordinance, and no trees may be planted closer together than the following: small trees, 30 feet; medium trees, 40 feet; and large trees, 50 feet.
3. Size – No tree selected for planting will be less than two inches in diameter in accordance with

the American Nurseryman's Association standards.

4. Utilities – No street trees other than those species listed herein as small trees may be planted under or within ten lateral feet of any overhead utility wire, sewer line, transmission line or other utility.
5. Topping – It shall be unlawful as a normal practice for any person, firm or village department to top any street tree, park tree, or other tree on public property. Topping is defined as the severe cutting back of limbs to stubs within the tree's crown to such a degree so as to remove the normal canopy and disfigure the tree. Trees severely damaged by storms or other causes, or certain trees under utility wires or other obstructions where other pruning practices are impractical may be exempted from this ordinance at the determination of the tree board.

**Sec. 12.308 Adjacent Landowner Responsibility:** No person shall plant, remove, cut above the ground, change grade levels or disturb any tree on any street, park, or other public place without first filing an application and procuring a permit from the tree board. The person receiving the permit shall abide by the standards set forth in this ordinance.

**Sec. 12.309 Tree Protection:** The tree board shall have as one of its duties the location selection, and identification of any public tree(s) or private tree(s) at the request of the owner which qualify as a "landmark" tree. A tree may qualify as a landmark tree if it meets one or more of the following: species rarity, old age, association with an historical event or person, abnormality, scenic enhancement, or other qualification as determined by the tree board. If a tree has been awarded "landmark" status, it will be unlawful to:

1. Affix any sign to the tree.
2. Construct anything in the tree.
3. Attach a fence to the tree.
4. Place anything in such a manner as to obstruct the growth of the tree.
5. Affix any bolts, nails, screws, or hardware of any nature unless it is in the best interest or necessary to the well being of the tree.

**Sec. 12.310 Private Trees:** The tree board or an official designee or an Illinois Department of Natural Resources Forester has the authority to enter onto private property with the consent of the property owner for the purpose of evaluating a suspected hazard tree, shrub, plant or plant part which is suspected to be a public nuisance as follows:

1. Any tree with an infectious disease or insect problem
2. Dead or dying trees.
3. A tree or limb(s) that obstruct streetlights, traffic signs, the free passage of pedestrians or vehicles.
4. A tree that poses a threat to safety.

The private party involved will be notified in writing as to the result of the evaluation. Terms and conditions for rectifying the problem will be described in the written notice.

**Sec. 12.311 Permits:** A permit will be required to perform any tree care or removal on public property. Homeowner performing maintenance tasks adjacent to their property must obtain a permit except for fertilizing and watering or pruning limbs less than two inches in diameter. There will be no fee for this permit. Contractors must show proof of certification and insurance to the tree board before a permit will be issued or work may begin.

**Sec. 12.312 Enforcement:** The tree board shall have the power to promulgate and enforce rules, regulations, and specifications concerning the trimming, spraying, removal, planting, pruning and protection of trees, shrubs, vines, hedges and other plants upon the right-of-way of any street, alley, sidewalk, or other public place in the village.

**Sec. 12.313 Injury:** It shall be unlawful to injure any tree or shrub planted in any public place.

**Sec. 12.314 Advertisements or Notices:** It shall be unlawful to attach any sign, advertisement or notice to any tree or shrub in any street, parkway or other public place.

**Sec. 12.315 Dangerous Trees:** Any tree or shrub which overhangs any sidewalk street or other public place in the Village in such a way as to impede or interfere with traffic or travel on such public places or which obstructs any street lamp, shall be trimmed by the owner of the abutting premises on which such tree or shrub grows so that the obstruction shall cease.

**Sec. 12.316 Wires:** It shall be unlawful to attach any wire to any tree located on village-owned property without permission of the Village Council. Any person or company given the right to maintain poles and wires in the streets, alleys or other public places in the Village shall, in the absence of provisions in the franchise concerning the subject, keep such wires and poles free from and away from any trees or shrubs in such places so far as may be possible and shall keep all such trees and shrubs properly trimmed and subject to the supervision of the Village Council so that no injury shall be done to the poles or wires or shrubs and trees by contact.

**Sec. 12.317 Penalty:** Any person, firm or corporation violating this Article shall be fined not less than seventy five dollars (\$75.00) nor more than five hundred dollars (\$500.00) for each offense. A separate offense shall be deemed committed on each day during or on which a violation occurs or continues. The cost of the result of injury, mutilation, or death of a tree, shrub or other plant located on village-owned property, if it is caused, will be borne by the party or parties responsible. The replacement cost of repair or replacement of such tree, shrub or other plant shall be determined in accordance with the latest revision of "A Guide to the Professional Evaluation of Landscape Trees, Specimen Shrubs, and Evergreens," as published by the International Society of Arboriculture. In the event that a nuisance is not abated by the date specified in the notice, the tree board is authorized to cause the abatement of said nuisance with the approval of the Village Council. The reasonable cost of such abatement shall be a lien upon the premises. Whenever a bill for such charges remains unpaid for thirty days after it has been rendered, the Clerk may file with the Recorder of Deeds of the County in which the property is located a statement of lien claim.

#### **Article 4 – Construction of Utility Facilities in the Public Rights-of-Way**

**Sec. 12.401 Purpose and Scope:**

a) Purpose. The purpose of this Article is to establish policies and procedures for constructing facilities on rights-of-way within the Village's jurisdiction, which will provide public benefit consistent with the preservation of the integrity, safe usage, and visual qualities of the Village rights-of-way and the Village as a whole.

b) Facilities Subject to This Article. This Article applies to all facilities on, over, above, along, upon, under, across, or within the public rights-of-way within the jurisdiction of the Village. A facility lawfully established prior to the effective date of this Article 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.

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

d) 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 Village, 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 Article and the provisions of any franchise, license or similar agreement between the Village and any telecommunications provider, the provisions of such franchise, license or similar agreement shall govern and control during the term of such agreement and any lawful renewal or extension thereof.

e) Conflicts with Other Articles. This Article supersedes all Articles or parts of Articles adopted prior hereto that are in conflict herewith, to the extent of such conflict.

f) Conflicts with State and Federal Laws. In the event that applicable federal or State laws or regulations conflict with the requirements of this Article, the utility shall comply with the requirements of this Article to the maximum extent possible without violating federal or State laws or regulations.

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

**Sec. 12.402 Definitions:** As used in this Article and unless the context clearly requires otherwise, the words and terms listed shall have the meanings ascribed to them in this Section. Any term not defined in this Section shall have the meaning ascribed to it in 92 Ill. Adm. Code 530.30, unless the context clearly requires otherwise.

1. "AASHTO" American Association of State Highway and Transportation Officials.
2. "ANSI" American National Standards Institute.
3. "Applicant" A person applying for a permit under this Article.
4. "ASTM" American Society for Testing and Materials.
5. "Backfill" The methods or materials for replacing excavated material in a trench or pit.
6. "Bore" or "Boring" To excavate an underground cylindrical cavity for the insertion of a pipe or electrical conductor.
7. "Carrier Pipe" The pipe enclosing the liquid, gas or slurry to be transported.
8. "Casing" A structural protective enclosure for transmittal devices such as: carrier pipes, electrical conductors, and fiber optic devices.
9. "Clear Zone" The total roadside border area, starting at the edge of the pavement, available for safe use by errant vehicles. This area may consist of a shoulder, a recoverable slope, a non-recoverable slope, and a clear run-out area. The desired width is dependent upon the traffic volumes and

speeds, and on the roadside geometry. Distances are specified in the AASHTO Roadside Design Guide.

10. "Coating" Protective wrapping or mastic cover applied to buried pipe for protection against external corrosion.
11. "Code" The Municipal Code of the Village of Deer Creek
12. "Conductor" Wire carrying electrical current.
13. "Conduit" A casing or encasement for wires or cables.
14. "Construction" or "Construct" The installation, repair, maintenance, placement, alteration, enlargement, demolition, modification or abandonment in place of facilities.
15. "Cover" The depth of earth or backfill over buried utility pipe or conductor.
16. "Crossing Facility" A facility that crosses one or more right-of-way lines of a right-of-way.
17. "Director of Public Works" The Village Street Superintendent.
18. "Disrupt the Right-of-Way" For the purposes of this Article, any work that obstructs the right-of-way or causes a material adverse effect on the use of the right-of-way for its intended use. Such work may include, without limitation, the following: excavating or other cutting; placement (whether temporary or permanent) of materials, equipment, devices, or structures; damage to vegetation; and compaction or loosening of the soil, and shall not include the parking of vehicles or equipment in a manner that does not materially obstruct the flow of traffic on a highway.
19. "Emergency" Any immediate maintenance to the facility required for the safety of the public using or in the vicinity of the right-of-way or immediate maintenance required for the health and safety of the general public served by the utility.
20. "Encasement" Provision of a protective casing.
21. "Engineer" The Village Engineer or his or her designee.
22. "Equipment" Materials, tools, implements, supplies, and/or other items used to facilitate construction of facilities.
23. "Excavation" The making of a hole or cavity by removing material, or laying bare by digging.
24. "Extra Heavy Pipe" Pipe meeting ASTM standards for this pipe designation.
25. "Facility" All structures, devices, objects, and materials (including track and rails, wires, ducts, fiber optic cable, communications and video cables and wires, poles, conduits, grates, covers, pipes, cables, and appurtenances thereto) located on, over, above, along, upon, under, across, or within rights-of-way under this Article, except those owned by the Village.
26. "Freestanding Facility" A facility that is not a crossing facility or a parallel facility, such as an antenna, transformer, pump, or meter station.
27. "Frontage Road" Roadway, usually parallel, providing access to land adjacent to the highway where it is precluded by control of access on highway.
28. "Hazardous Materials" Any substance or material which, due to its quantity, form, concentration, location, or other characteristics, is determined by the Village Engineer or Street Superintendent to pose an unreasonable and imminent risk to the life, health or safety of persons or property or to the ecological balance of the environment, including, but not limited to explosives, radioactive materials, petroleum or petroleum products or gases, poisons, etiology (biological) agents, flammables, corrosives or any substance determined to be hazardous or toxic under any federal or state law, statute or regulation.
29. "Highway Code" The Illinois Highway Code, 605 ILCS 5/1-101 et seq., as amended from time to time.
30. "Highway" A specific type of right-of-way used for vehicular traffic including rural or urban roads or streets. "Highway" includes all highway land and improvements, including roadways, ditches and embankments, bridges, drainage structures, signs, guardrails, protective structures and appurtenances necessary or convenient for vehicle traffic. "IDOT" - Illinois Department of Transportation.

31. "ILCC" Illinois Commerce Commission.
32. "Jacking" Pushing a pipe horizontally under a roadway by mechanical means with or without boring.
33. "Jetting" Pushing a pipe through the earth using water under pressure to create a cavity ahead of the pipe.
34. "Joint Use" The use of pole lines, trenches or other facilities by two or more utilities.
35. "Major Intersection" The intersection of two or more major arterial highways.
36. "Occupancy" The presence of facilities on, over or under right-of-way.
37. "Parallel Facility" A facility that is generally parallel or longitudinal to the centerline of a right-of-way.
38. "Parkway" Any portion of the right-of-way not improved by street or sidewalk.
39. "Pavement Cut" The removal of an area of pavement for access to facility or for the construction of a facility.
40. "Permittee" That entity to which a permit has been issued pursuant to Sections 12.404 and 12.405 of this Article.
41. "Practicable" That which is performable, feasible or possible, rather than that which is simply convenient.
42. "Pressure" The internal force acting radially against the walls of a carrier pipe expressed in pounds per square inch gauge (psig).
43. "Petroleum Products Pipelines" Pipelines carrying crude or refined liquid petroleum products including, but not limited to, gasoline, distillates, propane, butane, or coal-slurry.
44. "Prompt" That which is done within a period of time specified by the Village. If no time period is specified, the period shall be 30 days.
45. "Public Entity" A legal entity that constitutes or is part of the government, whether at local, state or federal level.
46. "Restoration" The repair of a right-of-way, highway, roadway, or other area disrupted by the construction of a facility.
47. "Right-of-Way" Any street, alley, other land or waterway, dedicated or commonly used for utility purposes, including utility easements in which the Village has the right and authority to authorize, regulate or permit the location of facilities other than those of the Village. "Right-of-way" shall not include any real or personal Village property that is not specifically described in the previous two sentences and shall not include Village buildings, fixtures, and other structures or improvements, regardless of whether they are situated in the right-of-way.
48. "Roadway" That part of the highway that includes the pavement and shoulders.
49. "Sale of Telecommunications at Retail" The transmitting, supplying, or furnishing of telecommunications and all services rendered in connection therewith for a consideration, other than between a parent corporation and its wholly owned subsidiaries or between wholly owned subsidiaries, when the gross charge made by one such corporation to another such corporation is not greater than the gross charge paid to the retailer for their use or consumption and not for sale.
50. "Sanitary Sewer" Any sewer constructed or used for the purpose of carrying waterborne wastes to a treatment facility.
51. "Security Fund" That amount of security required pursuant to Sec. 12.410.
52. "Shoulder" 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.
53. "Storm Sewer" A sewer constructed or used for carrying storm water or sub-surface water to a storm water outlet.
54. "Telecommunications" This term includes, but is not limited to, messages or information transmitted through use of local, toll, and wide area telephone service, channel services, telegraph

services, teletypewriter service, computer exchange service, private line services, specialized mobile radio services, or 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. Unless the context clearly requires otherwise, "telecommunications" shall also include wireless telecommunications as defined in the Illinois Telecommunications Infrastructure Maintenance Fee Act, 35 ILCS 635/1 et seq. "Telecommunications" shall not include value added services in which computer processing applications are used to act on the form, content, code, and protocol of the information for purposes other than transmission. "Telecommunications" shall not include purchase of telecommunications by a telecommunications service provider for use as a component part of the service provided by him or her to the ultimate retail consumer who originates or terminates the end-to-end communications. Retailer access charges, right of access charges, charges for use of intercompany facilities, and all telecommunications resold in the subsequent provision and used as a component of, or integrated into, end-to-end telecommunications service shall not be included in gross charges as sales for resale. "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. Sections 521 and following) as now or hereafter amended or cable or other programming services subject to an open video system fee payable to the Village through an open video system as defined in the Rules of the Federal Communications Commission (47 C.D.F. 76. 1550 and following) as now or hereafter amended.

55. "Telecommunications Provider" Means any person that installs, owns, operates or controls facilities in the public right-of-way used or designed to be used to transmit telecommunications in any form.
56. "Telecommunications Retailer" Means and includes every person engaged in making sales of telecommunications at retail as defined herein.
57. "Trench" A relatively narrow open excavation for the installation of an underground facility.
58. "Utility" The individual or entity owning or operating any facility as defined in this Article.
59. "Vent" A pipe to allow the dissipation into the atmosphere of gases or vapors from an underground casing.
60. "Village" The Village of Deer Creek
61. "Water Lines" Pipelines carrying raw or potable water.
62. "Wet Boring" Boring using water under pressure at the cutting auger to soften the earth and to provide a sluice for the excavated material.

**Sec. 12.403 Annual Registration Required:** Every utility that occupies right-of-way within the Village shall register on January 1 of each subsequent year with the Village Clerk, 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 such person, and evidence of insurance as required in Sec. 12.408 of this Article, in the form of a certificate of insurance. A telecommunications provider that has registered under this Section shall be deemed to have satisfied the registration requirement under Sec. 12.403 of this Article.

#### **Sec. 12.404 Permit and Application**

a) Permit Required. No person shall construct (as defined in this Article) any facility on, over, above, along, upon, under, across, or within any Village right-of-way which (1) changes the location of the facility, (2) adds a new facility, (3) disrupts the right-of-way (as defined in this Article), or (4) materially increases the amount of area or space occupied by the facility on, over, above, along, under across or within the right-of-way, without first filing an application with the Village and obtaining a

permit from the Village therefore, except as otherwise provided in this Article. No permit shall be required for installation and maintenance of service connections to customers' premises where there will be no disruption of the right-of-way.

b) Permit Application. All applications for permits pursuant to this Article shall be filed on a form provided by the Village and shall be filed in such number of duplicate copies as the Village may designate. The applicant may designate those portions of its application materials that is 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 and address and telephone and telecopy numbers;
- 2) The applicant's name and address, if different than the utility, its telephone, telecopy numbers, e-mail address, and its interest in the work;
- 3) The names, addresses and telephone and telecopy numbers and e-mail addresses of all professional consultants, if any, advising the applicant with respect to the application;
- 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;
- 5) Evidence that the utility has placed on file with the Village:

A written traffic control plan demonstrating the protective measures and devices that will be employed consistent with the Illinois Manual on Uniform Traffic Control Devices, to prevent injury or damage to persons or property and to minimize disruptions to efficient pedestrian and vehicular traffic; and an emergency contingency plan which shall specify the nature of potential emergencies, including, without limitation, construction and hazardous materials emergencies, and the intended I response by the applicant. The intended response shall include notification to the Village and shall promote protection of the safety and convenience of the public. Compliance with ILCC regulations for emergency' contingency plans constitutes compliance with this Section unless the Village finds that additional information or assurances are needed;

- 6) Drawings, plans and specifications showing the work proposed, including the certification of a license professional engineer who is licensed in the State of Illinois that such drawings, plans, and specifications comply with applicable codes, rules, and regulations;
- 7) Evidence of insurance as required in Sec. 12.408 of this Article;
- 8) Evidence of posting of the security fund as required in Sec. 12.410 of this Article;
- 9) Any request for a variance from one or more provisions of this Article (See Sec. 12.421); and
- 10) Such additional information as may be reasonably required by the Village

d) Supplemental Application Requirements for Specific Types of Utilities. In addition to tin 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 new electric power, communications or natural gas distribution system installation, evidence that any "Certificate of Public Convenience and Necessity" has been issued by the ILCC that the applicant is required by law, or has elected, to obtain;

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

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;

4) In the case of sanitary sewer line installations, indicate that the land and water pollution requirements of the Illinois Environmental Protection Agency, Division of Water Pollution Control and in the case of a storm sewer line the Illinois Department of Transportation 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 Village within thirty (30) days after the change necessitating the amendment.

#### **Sec. 12.405 Action on Permit Applications:**

a) Village Review of Permit Applications. Completed permit applications, including but not limited to IEPA and/or IDOT permits, containing all required documentation, shall be examined by the Village Engineer within a reasonable time after filing. If the application does not conform to the requirements of all applicable ordinances, codes, laws, rules, and regulations, the Village shall reject such application in writing, stating the reasons therefore. If the Village Engineer and Superintendent of Streets is satisfied that the proposed work conforms to the requirements of this Article and all applicable ordinances, codes, laws, rules, and regulations, the Village Superintendent of Streets shall issue a permit therefore as soon as practicable.

b) Additional Village Review of Applications of Telecommunications Retailers.

1) Pursuant to Section 4 of the Telephone Company Act, 220 ILCS 65/4, a telecommunications retailer shall notify the Village that it intends to commence work governed by this Article for facilities for the provision of telecommunications services. Such notice shall consist of plans, specifications, and other documentation sufficient to demonstrate the purpose and intent of the facilities, and shall be provided by the telecommunications retailer to the Village not less than ten (10) days prior to the commencement of work requiring no excavation and not less than thirty (30) days prior to the commencement of work requiring excavation. The Village Superintendent of Streets 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 Village Superintendent of Streets fails to provide such specification of location to the telecommunications retailer within either (i) ten (10) days after service of notice to the Village by the telecommunications retailer in the case of work not involving excavation for new construction or (ii) twenty-five (25) days after service of notice by the telecommunications retailer in the case of work involving excavation for new construction, the telecommunications retailer may commence work without obtaining a permit under this Article.

3) Upon the provision of such specification by the Village, where a permit is required for work pursuant to Sec. 12.404 of this Article the telecommunications retailer shall submit to the Village an application for a permit and any and all plans, specifications and documentation available regarding the facility to be constructed. Such application shall be subject to the requirements of Subsection (a) of this Section.

#### **Sec. 12.406 Effect of Permit:**

a) Authority Granted; No Property Right or Other Interest Created. A permit from the Village authorizes a permittee to undertake only certain activities in accordance with this Article on Village rights-of-way, and does not create a property right or grant authority to the permittee to impinge upon

the rights of others who may have an interest in the public rights-of-way.

b) Compliance with All Laws Required. The issuance of a permit by the Village does not excuse the permittee from complying with other requirements of the Village and all applicable statutes, laws, ordinances, rules, and regulations.

**Sec. 12.407 Revised Permit Drawings:** In the event that the actual locations of any facilities deviate in any material respect from the locations identified in the plans, drawings and specifications submitted with the permit application, the permittee shall submit a revised set of drawings or plans to the Village within ninety (90) days after the completion of the permitted work. The revised drawings or plans shall specifically identify where the locations of the actual facilities deviate from the locations approved in the permit. If any deviation from the permit also deviates from the requirements of this Article, it shall be treated as a request for variance in accordance with Sec. 12.421 of this Article. If the Village denies the request for a variance, then the permittee shall either remove the facility from the right-of-way or modify the facility so that it conforms to the permit and submit revised drawings or plans therefore.

**Sec. 12.408 Insurance:**

a) Required Coverages and Limits. Unless otherwise provided by franchise, license, or similar agreement, each utility occupying right-of-way or constructing any facility in the right-of-way shall secure and maintain the following liability insurance policies insuring the utility as named insured and naming the Village, and its elected and appointed officers, officials, agents, and employees as additional insured's on the policies listed in paragraphs 1 and 2 below:

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

- i) Five million dollars (\$5,000,000) for bodily injury or death to each person;
- ii) Five million dollars (\$5,000,000) for property damage resulting from any one accident; and
- iii) Five million dollars (\$5,000,000) for all other types of liability;

2) Automobile liability for owned, non-owned and hired vehicles with a combined single limit of one million dollars (\$1,000,000) 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 one million dollars (\$1,000,000) per employee and per accident.

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 Village within ten (10) days following receipt of a written request therefore from the Village.

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 the intention not to renew be stated until thirty (30) days after receipt by the Village, by registered mail or certified mail, return receipt requested, of a written notice addressed to the Village Clerk of such intent to cancel or not to renew.

Within ten (10) days after receipt by the Village of said notice, and in no event later than ten (10) days prior to said cancellation, the utility shall obtain and furnish to the Village 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 for the naming of additional insureds under Subsection a), or the requirements of Subsections b), c) and d) of this Section. A utility that elects to self-insure shall provide to the Village evidence sufficient to demonstrate its financial ability to self-insure the insurance coverage and limit requirements required under Subsection a) of this Section, such as evidence that the utility is a “private self insurer under the Workers Compensation Act.

f) Effect of Insurance and Self-Insurance on Utility’s Liability. The legal liability of the utility to the Village and any person for any of the matters that are the subject of the insurance policies or self-insurance required by this Section shall not be limited by such insurance policies or self-insurance or by the recovery of any amounts thereunder.

**Sec. 12.409 Indemnification:** By occupying or constructing facilities in the right-of-way, a utility shall be deemed to agree to defend, indemnify and hold the Village and its elected and appointed officials and officers, employees, agents and representatives harmless from and against any and all injuries, claims, demands, judgments, damages, losses and expenses, including reasonable attorney’s 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 Article 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 Article by the Village, its officials, officers, employees, agents or representatives.

**Sec. 12.410 Security:**

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 the requirements of this Article;
- 2) Any expenditure, damage, or loss incurred by the Village occasioned by the permittee’s failure to comply with any codes, rules, regulations, orders, permits and other directives of the Village issued pursuant to this Article; and the payment by permittee of all liens and all damages, claims, costs, or expenses that the Village may pay or incur by reason of any action or non-performance by permittee in violation of this Article including, without limitation, any damage to public property or restoration work the permittee is required by this Article to perform that the Village must perform itself or have

completed as a consequence solely of the permittee's failure to perform or complete, and all other payments due the Village from the permittee pursuant to this Article or any other applicable law.

b) Form. The permittee shall provide the Security Fund to the Village in the form, at the permittee's election, of cash, a surety bond in a form acceptable to the Village, or an unconditional letter of credit in a form acceptable to the Village. Any surety bond or letter of credit provided pursuant to this Subsection shall, at a minimum:

- 1) Provide that it will not be canceled without prior notice to the Village and the permittee;
- 2) Not require the consent of the permittee prior to the collection by the Village of any amounts covered by it; and
- 3) Shall provide a location convenient to the Village 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 to at least as good a condition as that existing prior to the construction under the permit, as determined by the Village Engineer, and may also include reasonable, directly related costs that the Village estimates are likely to be incurred if the permittee fails to perform such restoration. Where the construction of facilities proposed under the permit will be performed in phases in multiple locations in the Village, with each phase consisting of construction of facilities in one location or a related group of locations, and where construction in another phase will not be undertaken prior to substantial completion of restoration in the previous phase or phases, the Village Street Superintendent 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.

d) Withdrawals. The Village, upon fourteen (14) 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 Village for such amount within the fourteen (14) 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 paid;
- 3) Fails to reimburse the Village for any damages, claims, costs or expenses which the Village has been compelled to pay or incur by reason of any action or non-performance by the permittee; or
- 4) Fails to comply with any provision of this Article that the Village determines can be remedied by expenditure or any amount in the Security Fund.

e) Replenishment. Within fourteen (14) days after receipt of written notice from the Village that any amount has been withdrawn from the Security Fund, the permittee shall restore the Security Fund to the amount specified in Subsection 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 Village, upon written request for said withdrawal to the Village, provided that any such withdrawal does not reduce the Security Fund below the minimum balance required in Subsection c) of this Section.

g) Closing and Return of Security Fund. Upon completion of the work authorized under the permit, the permittee shall be entitled to the return of the Security Fund, or such portion thereof as remains on

deposit, within a reasonable time after account is taken for all offsets necessary to compensate the Village for failure by the permittee to comply with any provisions of this Article or other applicable law. In the event of any revocation of the permit, the Security Fund, and any' and all accrued interest therein, shall become the property of the Village to the extent necessary! to cover any reasonable costs, loss or damage incurred by the Village as a result of said revocation, provided that any amounts in excess of said costs, loss or damage shall be refunded to the permittee.

h) Rights Not Limited. The rights reserved to the Village with respect to the Security Fund I are in addition to all other rights of the Village, whether reserved by this Article or otherwise authorized by law, and no action, proceeding or exercise of right with respect to said Security Fund shall affect any other right the Village may have. Notwithstanding the foregoing, the Village shall not be entitled to a double monetary recovery with respect to any of its rights, which may be infringed or otherwise violated.

**Sec. 12.411 Permit Suspension and Revocation:**

a) Village Right to Revoke Permit. The Village may revoke or suspend a permit issued pursuant to this Article 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 Article;
- 3) Permittee's physical presence or presence of permittee's facilities on, over, above, along, upon, under, across, or within the public rights-of-way presents a direct or imminent threat to the public health, safety, or welfare; or
- 4) Permittee's failure to construct the facilities substantially in accordance with the permit and approved plans.

b) Notice of Revocation or Suspension. The Village shall send written notice of its intent to revoke or suspend a permit issued pursuant to this Article stating the reason or reasons for the revocation or suspension and the alternatives available to permittee under this Sec. 12.411.

c) Permittee Alternatives Upon Receipt of Notice of Revocation or Suspension. Upon receipt of a written notice of revocation or suspension from the Village, the permittee shall have the following options:

- 1) Immediately provide the Village with evidence that no cause exists for the revocation or suspension;
- 2) Immediately correct, to the satisfaction of the Village, the deficiencies stated in the written notice, providing written proof of such correction to the Village within five (5) working days after receipt of the written notice of revocation; or
- 3) Immediately remove the facilities located on, over, above, along, upon, under, across, or within the public rights-of-way and restore the rights-of-way to the satisfaction of the Village providing written proof of such removal to the Village within ten (10) days after receipt of the written notice of revocation.

The Village may, in its discretion, 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 Village 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 Village or its designee may, at the option of the Village: (1) correct the deficiencies; (2) upon not less than twenty (20) days notice to the permittee, remove the subject facilities or equipment; or (3) after not less than thirty (30) days notice to the permittee of failure to cure the non-compliance, deem them abandoned and property of the Village. The permittee shall be liable in all events to the Village for all costs of removal.

**Sec.12.412 Change of Ownership or Owner’s Identity or Legal Status:**

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

b) Amended Permit. A new owner shall request that any current permit be amended to show current ownership. If the new owner fails to have a new or amended permit issued in its name, the new owner shall be presumed to have accepted, and agreed to be bound by, the terms and conditions of the permit if the new owner uses the facility or allows it to remain on the Village’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.

**Sec. 12.413 General Construction Standards:**

a) Standards and Principles. All construction in the right-of-way shall be consistent with applicable ordinances, codes, laws rules and regulations, and commonly recognized and accepted traffic control and construction principles, sound engineering judgment and, where applicable, the principles and standards set forth in the following IDOT publications:

- 1) Standard Specifications for Road and Bridge Construction;
- 2) Supplemental Specifications and Recurring Special Provisions;
- 3) Highway Design Manual;
- 4) Highway Standards Manual;
- 5) Standard Specifications for Traffic Control Items;
- 6) Illinois Manual on Uniform Traffic Control Devices (92 Ill. Adm. Code 545);
- 7) Flagger’s Handbook; and
- 8) Work Site Protection Manual for Daylight Maintenance Operations.

b) Interpretation of Municipal Standards and Principles. If a discrepancy exists between one or more among differing principles and standards required by this Article, the Village Engineer shall determine, in the exercise of sound engineering judgment, which principles apply and such decision shall be final. If requested, the Village Engineer shall state which standard or principle will apply to the construction, maintenance, or operation of a facility in the future.

**Sec. 12.414 Traffic Control:**

a) Minimum Requirements. The Village’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, meeting all applicable federal, state, and local requirements for protection of the public and the utility’s workers when

performing any work on the public 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 forty-eight (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 Sec. 12.420 of this Article, the utility shall provide such notice as is practicable under tin 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 Village.

### **Sec. 12.415 Location of Facilities:**

#### a) 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:

i) Lines are located as near as practicable to the right-of-way line and as near<sup>13</sup> parallel to the right-of-way line as reasonable pole alignment will permit;

ii) 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;

iii) 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;

iv) No pole is located in the ditch line of a highway; and

v) 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. Underground parallel facility may be located within the right-of-way lines of a highway only if:

i) The facility is located as near the right-of-way line as practicable and not more than eight (8) feet (2.4 m) from and parallel to the right-of-way line;

ii) 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 existing conduit without disrupting the pavement); and

iii) In the case of an underground power or communications line, the facility shall be located as near the right-of-way line as practicable and not more than five (5) 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.

#### b) Facilities Crossing Highways.

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

2) Cattle Passes, Culverts, or Drainage Facilities. Crossing facilities shall not be located in cattle passes, culverts, or drainage facilities.

3) 90-Degree Crossing Required. Crossing facilities shall cross at or as near to a ninety (90) degree angle to the centerline as practicable.

4) Overhead Power or Communication Facility. An overhead power or communication facility may cross a highway only if:

- i) It has a minimum vertical line clearance as required by ILCC's rules entitled, "Construction of Electric Power and Communication Lines" (83 III. Adm. Code 305);
- ii) 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
- iii) 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:

- i) The design materials and construction methods will provide maximum maintenance-free service life; and
- ii) Capacity for the utility's foreseeable future expansion needs is provided in the initial installation.

6) Markers. The Village [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 phone number. Markers may also be eliminated as provided in current Federal regulations. (49 C.F.R.192.707 (1989)).

c) Facilities to be Located Within Particular Rights-of-Way. The Village may require that facilities be located within particular rights-of-way that are not highways, rather than within particular highways.

d) Freestanding Facilities.

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

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

e) Appearance Standards.

1) The Village may prohibit the installation of facilities in particular locations in order to preserve visual quality.

2) A facility may be constructed only if its construction does not require extensive removal or alteration of trees or terrain features visible to the highway user or impair the aesthetic quality of the lands being traversed.

f) Above Ground Installation. Above ground 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.

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.

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:

- i) The type, volume, pressure or voltage of the commodity to be transmitted and are evaluation of the resulting risk to persons and property in the event of damage to or failure of the facility;
- ii) The type, length, value, and relative importance of the highway structure in the transportation system;
- iii) The alternative routings available to the utility and their comparative practicability;
- iv) The proposed method of attachment;
- v) The ability of the structure to bear the increased load of the proposed facility;
- vi) The degree of interference with bridge maintenance and painting;
- vii) The effect on the visual quality of the structure; and
- viii) The public benefit expected from the utility service as compared to the risk involved.

#### **Sec. 12.416 Construction Methods and Materials:**

##### a) Standards and Requirements for Particular Types of Construction Methods.

###### 1) Boring or Jacking.

i) Pits and Shoring. Boring or jacking under rights-of-way shall be accomplished from pits located at a minimum distance specified by the Village Engineer from the edge of their 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.

ii) Wet Boring or Jetting. Wet boring or jetting shall not be permitted under the roadway.

iii) Borings with Diameters Greater Than 6 Inches.

Borings over six inches (0.15 m) in diameter shall be accomplished with an auger and following pipe, and the diameter of the auger shall not exceed the outside diameter of the following pipe by more than one inch (25 mm).

iv) Borings with Diameters 6 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.

v) Tree Preservation. Any facility located within the drip line of any tree designated by the Village to be preserved shall be bored under or around the root system.

2) Trenching. Trenching for facility installation, repair, or maintenance on rights-of-way shall be done in accord with the applicable portions of Section 603 of IDOT's "Standard Specifications for Road and Bridge Construction."

i) Length. The length of open trench shall be kept to the practicable minimum consistent with requirements for pipeline testing. Only one-half of any intersection may have an open trench at any time unless special permission is obtained from the Village Engineer.

ii) Open Trench and Excavated Material. Open trench and windrowed excavated material shall be protected as required by Article 6 of the Illinois Manual on Uniform Traffic Control Devices. Where practicable, the excavated material shall be deposited between the roadway and the trench as added

protection. Excavated material shall not be allowed to remain on the paved portion of the roadway. Where right-of-way width does not allow for windrowing excavated material off the paved portion of the roadway, excavated material shall be hauled to an off-road location.

iii) The utility shall not trench within the drip line of any tree designated by the Village to be preserved.

### 3) Backfilling.

i) 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.

ii) For a period of three years from the date construction of a facility is completed, the utility shall be responsible to remove and restore any backfilled area that has settled due to construction of the facility. If so ordered by the Street Superintendent, the utility, at its expense, shall remove any pavement and backfill material to the top of the installed facility, place and properly compact new backfill material, and restore new pavement, sidewalk, curbs, and driveways to the proper grades, as determined by the Street Superintendent.

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 paragraph 4) is permitted under Sec. 12.421, the following requirements shall apply:

i) Any excavation under pavements shall be backfilled as soon as practicable with granular material of CA-6 or CA-b gradation, as designated by the Engineer [Director of Public Works].

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

iii) All saw cuts shall be full depth.

iv) For all rights-of-way which have been reconstructed with a concrete surface/base in the last seven (7) years, or resurfaced in the last three (3) years, permits shall not be issued unless such work is determined to be an emergency repair or other work considered necessary and unforeseen before the time of the reconstruction or unless a pavement cut is necessary for a J.U.L.I.E. locate.

### 5) Encasement.

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

ii) The venting, if any, of any encasement shall extend within one foot (0.3 m) of the right-of-way line. No above-ground vent pipes shall be located in the area established as clear zone for that particular section of the highway.

iii) In the case of water main or service crossing, encasement shall be furnished between bore pits unless continuous pipe or Village approved jointed pipe is used under the roadway. Casing may be omitted only if pipe is installed prior to highway construction and carrier pipe is continuous or mechanical joints are of a type approved by the Village. Bell and spigot type pipe shall be encased regardless of installation method.

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

v) In the case of gas pipelines or petroleum products pipelines with installations of more than 60 psig, encasement may be eliminated only if: (1) extra heavy pipe is used that precludes future maintenance or repair and (2) cathodic protection of the pipe is provided;

vi) 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:

TYPE OF FACILITY	MINIMUM COVER
Power or Communication Line (In General)	30 inches(0.8m)
Communication Line Installed by the Plowed Method	24 inches(0.6m)
Gas or Petroleum Products	30 inches(0.8m)
Water Line	sufficient cover to provide freeze protection
Sanitary Sewer, Storm Sewer, or Drainage Line	sufficient cover to provide freeze protection

b) Standards and Requirements for Particular Types of Facilities.

1) Electric Power or Communication Lines.

i) Code Compliance. Electric power or communications facilities within Village rights-of-way shall be constructed, operated, and maintained in conformity with the provisions of 83 Ill. Adm. Code 305 (formerly General Order 160 of the Illinois Commerce Commission) entitled “Rules for Construction of Electric Power and Communications Lines,” and the National Electrical Safety Code.

ii) 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.

iii) Underground Facilities. (1) Cable may be installed by trenching or plowing, provided that special consideration is given to boring in order to minimize damage when crossing improved entrances and side roads. (2) If a crossing is installed by boring or jacking, encasement shall be provided between jacking or bore pits. Encasement may be eliminated only if: (a) the crossing is installed by the use of “moles,” “whip augers,” or other approved method which compress the earth to make the opening for cable installation or (b) the installation is by the open trench method which is only permitted prior to roadway construction. (3) Cable shall be grounded in accordance with the National Electrical Safety Code.

2) Underground Facilities Other than Electric Power or Communication Lines. Underground facilities other than electric power or communication lines may be installed by:

i) The use of “moles,” “whip augers,” or other approved methods which compress the earth to move the opening for the pipe;

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

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

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

3) Gas Transmission. Distribution and Service. Gas pipelines within rights-of-way shall be constructed, maintained, and operated in a Village approved manner and in conformance with the Federal Code of the Office of Pipeline Safety Operations, Department of Transportation, Part 192 - Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards (49 CFR 192), IDOT’s “Standard Specifications for Road and Bridge Construction,” and all other applicable laws, rules, and regulations.

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

5) 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.”

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, or by heavy-duty plastic or similar material approved by the Street Superintendent. With the approval of the Street Superintendent, shrubbery surrounding the appurtenance may be used in place of vegetation-free area. The housing for ground-mounted appurtenances shall be painted a neutral color to blend with the surroundings.

c) Materials.

1) General Standards. The materials used in constructing facilities within rights-of-way shall be those meeting the accepted standards of the appropriate industry, the applicable portions of IDOT’s “Standards Specifications for Road and Bridge Construction,” the requirements of the Illinois Commerce Commission, or the standards established by other official regulatory agencies for the appropriate industry.

2) Material Storage on Right-of-Way. All pipe, conduit, wire, poles, cross arms, or other materials shall be distributed along the right-of-way prior to and during installation in a manner to minimize hazards to the public or an obstacle to right-of-way maintenance or damage to the right-of-way and other property. If material is to be stored on right-of-way, prior approval must be obtained from the Village.

3) Hazardous Materials. The plans submitted by the utility to the Village shall identify any hazardous materials that may be involved in the construction of the new facilities or removal of any existing facilities.

d) Operational Restrictions.

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

2) These restrictions may be waived by the Engineer when emergency work is required to restore vital utility services.

3) Unless otherwise permitted by the Village, the hours of construction shall be from 6 a.m. until 6 p.m. Monday thru Friday.

e) Location of Existing Facilities. Any utility proposing to construct facilities in the Village 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 Village 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 Village 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 Facilities Damage Prevention Act (220 ILCS 50/1 et seq.)

**Sec. 12.417 Vegetation Control:**

a) Tree Trimming Permit Required. Tree trimming shall not be considered a normal maintenance operation, but shall require the application for, and the issuance of, a permit, in addition to any other permit required under this Article.

1) Application for Tree Trimming Permit. Applications for tree trimming permits shall include

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

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

b) **Specimen Trees or Trees of Special Significance.** The Village may require that special measures be taken to preserve specimen trees or trees of special significance. The required measures may consist of higher poles, side arm extensions, covered wire or other means.

c) **Chemical Use.** 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 Engineer and Street Superintendent that such spraying is the only practicable method of vegetation control.

#### **Sec. 12.418 Removal, Relocation, or Modifications of Utility Facilities:**

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

b) **Removal of Unauthorized Facilities.** Within thirty (30) days following written notice from the Village, any utility that owns, controls, or maintains any unauthorized facility or related appurtenances within the public rights-of-way shall, at its own expense, remove all or any part of such facilities or appurtenances from the public rights-of-way. A facility is unauthorized and subject to removal in the following circumstances:

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

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

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

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

c) **Emergency Removal or Relocation of Facilities.** The Village retains the right and privilege to cut or move any facilities located within the rights-of-way of the Village, as the Village may determine to be necessary, appropriate or useful in response to any public health or safety emergency. If circumstances permit, the municipality 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 the public rights-of-way of the Village, the utility shall notify the Village within ninety (90) days. Following receipt of such notice the

Village may direct the utility to remove all or any portion of the facility if the Village Engineer determines that such removal will be in the best interest of the public health, safety and welfare. In the event that the Village does not direct the utility that abandoned~ the facility to remove it, by giving notice of abandonment to the Village, the abandoning utility 1 shall be deemed to consent to the alteration or removal of all or any portion of the facility by another utility or person.

**Sec. 12.419 Cleanup and Restoration:** Upon completion of all construction or maintenance of facilities, the utility shall remove all excess material and restore all turf and terrain in a timely manner and to the satisfaction of the Village. This includes restoration of entrances and side roads. Restoration of roadway surfaces shall be made using materials and methods approved by the Village Engineer. 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.

**Sec. 12.420 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 Village and at the utility's 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 the 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 Village Engineer or his or her duly authorized agent of the emergency, informing him or her as to what steps have been taken for protection of the traveling public and what will be required to make the necessary repairs. If the nature of the emergency is such as to interfere with the free movement of traffic, the Village police shall be notified immediately.

3) In an emergency, the 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 Village of a description of the repairs undertaken in the right-of-way within 48 hours after an emergency repair.

**Sec. 12.421 Variances:**

a) Request for Variance. A utility requesting a variance from one or more of the provisions of this Article must do so in writing to the Village Street Superintendent as a part of the permit application. The request shall identify each provision of this Article from which a variance is requested and the reasons why a variance should be granted.

b) Authority to Grant Variances. The Village Street Superintendent after consulting with the Village Engineer shall decide whether a variance is authorized for each provision of this Article identified in the variance request on an individual basis.

c) Conditions for Granting of Variance. The Village Street Superintendent 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 of a Variance. As a condition for authorizing a variance, the Village Street Superintendent may require the utility requesting the variance to meet reasonable standards and conditions that may or may not be expressly contained within this Article but which carry out the purposes of this Article.

**Sec. 12.422 Penalties:**

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

**Sec. 12.423 Enforcement:**

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

**Sec. 12.424 Severability:** If any section, subsection, sentence, clause, phrase or portion of this Article 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.