

THE VILLAGE CITY CODE

CHAPTER 7

TELECOMMUNICATION TOWERS  
& TELEPHONE EXCHANGES

- Art. I. Telecommunication Towers & Facilities §§7-251—7-260  
Art. II. Telephone Exchanges §§7-351—7-366

**ARTICLE I: TELECOMMUNICATION TOWERS AND FACILITIES**

**Sec. 7-251. Purpose.**

The purposes of these regulations are:

- 1) To facilitate the provision of telecommunications services throughout the city;
- 2) To enhance the ability to provide telecommunications services to the community quickly, effectively, and efficiently;
- 3) To encourage the location of towers in non-residential zone districts;
- 4) To minimize the total number of towers in the community;
- 5) To encourage the joint use of new and existing tower locations;
- 6) To ensure that towers are located in areas that minimize adverse impacts;
- 7) To ensure towers and antennas are configured in a way that minimizes adverse visual impacts by careful design, appropriate siting, landscape screening, and innovative camouflaging techniques;
- 8) To encourage the attachment of antennas to existing structures;
- 9) To consider public health and safety of telecommunications facilities;
- 10) To avoid damage to adjacent properties from tower failure through careful engineering and locating of tower structures; and
- 11) To protect residential areas and lands by minimizing adverse impacts of towers.

**Sec. 7-252. Definitions.**

- (a) *Accessory support facilities* shall mean support buildings, structures and equipment cabinets for telecommunications facilities containing electrical and mechanical

## THE VILLAGE CITY CODE

equipment and devices used for the reception of or transmission of voice, data, image, graphic and video programming information between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite, or similar facilities.

- (b) *Alternative tower structure* shall mean manmade trees, clock towers, bell steeples, building structures or building equipment normally maintained above the roofline of a structure, light poles, and similar alternative design mounting structures. An alternative tower structure must be compatible with the natural setting and surrounding structures and must camouflage or conceal the presence of antennas and/or towers. This term also includes any antenna or antenna array attached to the alternative tower structure.
- (c) *Antenna* shall mean any exterior transmitting or receiving devices mounted on a tower, building or structure and used in communications that radiate or capture electromagnetic waves, digital signals, analog signals, radio frequencies (excluding radar signals), wireless telecommunications signals or other communication signals.
- (d) *Backhaul network* shall mean the lines that connect a provider's tower/cell sites to one or more cellular telephone switching offices, and/or long-distance providers, or the public switched telephone network.
- (e) *FAA*: Federal Aviation Administration.
- (f) *FCC*: Federal Communications Commission.
- (g) *Telecommunications facilities* shall mean the plant, equipment, and property, including but not limited to, cables, wires, conduits, ducts, pedestals, antennae, towers, alternative tower structures, electronics and other appurtenances used to transmit, receive, distribute, provide, or offer telecommunications services.
- (h) *Telecommunications service* shall mean the providing or offering for rent, sale, or lease, or in exchange for other value received, of the transmittal of voice, data, image, graphic and video programming information between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite, or similar facilities, with or without benefit or any closed transmission medium.
- (i) *Tower* shall mean a self-supporting monopole structure designed and constructed primarily for the purpose of supporting one or more antennas. Tower shall not include self-supporting lattice towers or guy towers. The term includes radio and television transmission towers, microwave towers, common carrier towers, cellular telephone towers, and other similar structures. This term also includes any antenna or antenna array attached to the tower structure.
- (j) *Tower Height* shall mean, when referring to a tower or other alternative tower structure, the distance measured from the lowest point within ten (10) feet of the

## THE VILLAGE CITY CODE

structure to the highest point on the tower or other alternative tower structure, including the base pad and any antenna.

### **Sec. 7-253. Permit Required.**

Telecommunications facilities shall be regulated and permitted pursuant to this Ordinance and the zoning ordinances of the City.

- (1) A telecommunications facility shall obtain a permit as a condition for the siting, construction, or operation of the telecommunications facility.
- (2) These regulations shall apply to all towers and antennas as defined, except:
  - (a) Any tower, or antenna, not more than seventy (70) feet in height, owned and operated by a federally licensed amateur radio station operator if it is used exclusively as a receive only facility.
  - (b) Any antenna co-located on an existing telecommunications facility, except as expressly provided by this Article.
  - (c) A telecommunications facility located or co-located on property, which is owned or leased by the City and designated by the City as a site suitable for location of a telecommunications facility.
- (3) Any violation of this Article is hereby declared to be a Class A Offense and every day that a violation continues to exist shall be deemed a separate offense. In addition to any other relief or penalty provided by law, the City may apply to district court for an injunction to prohibit the continuation of any violation of this Article.

### **Sec. 7-254. Co-location Requirements.**

- (1) All applicants for a telecommunications facility permit shall co-locate on an existing facility if it is feasible to do so. An existing facility shall be deemed to be available to the applicant for co-location if: the facility is within the search ring of the applicant or within a reasonable distance so as to fit into the applicant's design, space is available on the facility, and the facility owner will lease space to applicant at a reasonable market rate.
  - (a) If the applicant finds that co-location is not feasible, it shall submit to the City a written statement of the reasons for the unfeasibility. The City may retain a technical expert in the field of radio frequency (RF) engineering to determine whether co-location at the site is feasible. The cost for such a technical expert will be at the expense of the applicant.

## THE VILLAGE CITY CODE

- (b) The City may deny the permit unless the applicant demonstrates to the City by substantial evidence that existing telecommunications facilities cannot accommodate the applicant's proposed antenna.
- (2) A telecommunications tower shall not be permitted unless the owner of the proposed tower certifies to the City that the tower is available for use by other telecommunications service providers on a reasonable and nondiscriminatory basis. Towers shall be designed and built to accommodate a minimum of three telecommunications facilities.
- (3) To facilitate co-location and coordination of telecommunication sites, all telecommunication service providers within the city shall, within ninety (90) days of the publication of this ordinance, provide the City with their respective master antenna plans. Said plans shall include detailed maps, showing the locations of all telecommunications towers serving any portion of the City and indicating coverage areas for current and, to the extent possible, future telecommunications towers.
- (4) Providers shall also provide the City with any updates to the above documents within ninety (90) days of their creation.

### **Sec. 7-255. Telecommunication Facility Standards.**

- (1) **ATTRACTIVE NUISANCE.** No tower may be located closer than 250 feet from a playground, ball field, or other area used for active recreation within a park or school. Where such locations are well suited for placement of towers on municipal property, special fencing or other safety barriers shall be required.
- (2) **COMPATIBILITY.** Telecommunication facilities shall either maintain a galvanized steel finish or, subject to applicable standards of the FAA, be painted, so as to reduce visual obtrusiveness. Dish antennas will be of a neutral, non-reflective color with no logos. The exterior of equipment buildings and/or metal equipment cabinets visible from residential areas or public rights-of-way must have a neutral aggregate finish or be painted to reflect the color and character of adjoining structures or blend with adjacent landscaping and other surroundings.
- (3) **DESIGN.** At the telecommunications facility, the design of the buildings and related structures used in conjunction with telecommunications facilities shall, to the extent possible, use materials, colors, textures, screening, and landscaping that will blend the telecommunications facilities to the natural setting and the built environment.
- (4) **HEIGHT.** Tower height shall be restricted as follows:
  - (a) Single user tower - not more than one-hundred and fifty (150) feet;

## THE VILLAGE CITY CODE

- (b) Two or more users -- not more than one hundred ninety-five (195) feet.
- (5) **INTERFERENCE.** Applicants shall be required to demonstrate that the planned telecommunications facility will not cause radio frequency interference with other existing or planned equipment. Such interference is prohibited.
- (6) **LANDSCAPING.** Landscaping of telecommunication facilities shall include a five (5) foot landscaped buffer outside the perimeter of the telecommunication facilities compound. Said buffer shall be planted with trees and shrubs so as to adequately screen the facilities from public view. Applicant shall be required to submit a landscaping plan for review and approval by the city.
- (7) **LIGHTING.** Illumination of towers is prohibited except as required by the FAA. Strobes shall not be used for nighttime lighting. Any required lighting shall be directed upward and away from adjoining properties. In addition, the ground level security lighting shall not be more than 20 feet in height.
- (8) **PARKING AND INGRESS/EGRESS.** Applicant shall provide one (1) off street parking space for each provider using the telecommunications facility. Ingress/egress to the facility shall be via approved access points. All off-street parking and ingress/egress drives shall be paved with an all-weather surface such as asphalt or concrete and which shall be designed to carry the loads of the vehicles/equipment to which said pavement shall be subjected.
- (9) **SCREENING/SECURITY.** The base of the tower and any accessory support facilities shall be screened from view with a solid, six-foot high sight-proof, security fence. The materials of the fence shall be compatible with the primary uses of the surrounding property.
- (10) SETBACKS AND FALL ZONES.**
- (a) If the tower is located on residentially zoned property, the setback from the abutting residentially zoned property shall be (1) foot of setback for every foot in height of the tower, or the set back of the zoning district, whichever is greater.
- (b) If the tower is located on residentially zoned property, the setback from abutting commercially zoned property shall be one hundred (100) feet plus an additional one (1) foot of setback for every foot of tower height over one hundred and fifty (150) feet.
- (c) If the tower is located on commercially zoned property, the setback from the abutting residentially zoned property shall be one (1) foot setback for every foot in height, or the set back of the zoning district, whichever is greater.

THE VILLAGE CITY CODE

(d) If the tower is located on commercially zoned property, the setback from the abutting commercially zoned property shall be one hundred (100) feet plus an additional one (1) foot of setback for every foot of tower height over one hundred and fifty (150) feet. Upon the written consent of the abutting commercial property owner or owners and upon the recommendation of the Planning & Zoning Commission, the City Council may reduce the minimum setback of a tower from said abutting commercial property.

(Ord.No. 603 §1, 05-02-2005) Note: This section has been renumbered from 18-5 (10) (d) to 7-255 (10) (d).

(e) If the tower is located on commercially zoned property the setback from the abutting commercially zoned property shall be one-hundred (100) feet plus an additional one (1) foot of setback for every foot of tower height over one hundred and fifty (150) feet; provided however, if the tower is designed to fold instead of falling horizontally when structural failure occurs, the setback from the abutting commercially zoned property shall be twenty-five (25) feet. (2014 Code)

(f) If the tower is located adjacent to or separated by a public right of way from property zoned residential, the setback from the abutting residentially zoned property shall be (1) foot setback for every foot in height of the tower, less one half the width of the abutting street right-of-way.

(g) If the tower height is greater than the required setback, an applicant shall submit an engineer's certificate that the tower is designed to fall within the area used or leased for the telecommunications facilities, should the tower fail. Pursuant to this section, applicant shall provide liability insurance in the event of a failure or other condition arising out of the use of the property for a telecommunications facility. The limits of coverage shall be as follows:

<u>Coverages</u>	<u>Limits of Liability</u>
Bodily Injury Liability	\$500,000.00 each occurrence \$1,000,000.00 aggregate.
Property Damage Liability	\$500,000.00 each occurrence \$500,000.00 aggregate.
Excess Umbrella Liability	\$5,000,000.00 each occurrence.

(11) **SIGNS.** Signs on telecommunication towers shall be limited to four (4) square feet in area and shall only display the following information

## THE VILLAGE CITY CODE

- (a) The name, registration number and emergency contact number of the tower owner;
  - (b) Warning or safety instructions;
  - (c) Any other information required to be posted by the FCC or other federal or state regulatory agency.
- (12) **SPACING.** No tower shall be closer than five (500) hundred feet from another tower, such distance being measured as a horizontal from tower to tower. Any new telecommunications tower in excess of one hundred eighty feet (180' or 55m) in height must be located a minimum of one (1) mile (1.6 km) from any existing tower in excess of one hundred eighty feet (180' or 55m) in height.
- (13) **SUPPORT FACILITIES.** Support facilities can be no more than three hundred and fifty (350) square feet of gross floor area or be more than twelve (12') feet in height. Minimum setback requirements of the applicable zoning district shall apply to accessory support facilities. All support facilities shall be attached to a permanent foundation and shall be constructed of at least 65% exterior masonry material as defined by Section 6-202 of this code.

### **Sec. 7-256. Alternative Structures Standards.**

- (1) A telecommunications facility may be permitted on an alternative tower structure at least thirty (30) feet tall under the following conditions which shall be in addition to the requirements of Sections 18-5 and 18-7 herein:
- (a) The facility and its accessory support facilities shall comply with all zoning requirements applicable to the alternate structure and the provisions of Section 18-5 of this Article
  - (b) If the facility or an accessory support facility is located upon the roof of a structure, each such facility shall be set back a distance at least equal to the height of the telecommunications facility unless the facilities are screened or camouflaged in a manner that is compatible with the surrounding property. The top of the antenna or other facility shall not be more than thirty percent (30%) of the height of the alternate structure, or seventy-five feet (75'), whichever is less.
  - (c) The alternative structure must be similar in color, scale, and character to adjoining buildings or structures or blend with the landscaping and other surroundings immediately adjacent to them so as to generally avoid the creation of unique visual objects that stand out in the environment and
  - (d) Prior to the installation of any building/roof mounted telecommunications facility, the applicant shall furnish to the City an engineer's certification that the structure will

## THE VILLAGE CITY CODE

support and not be adversely affected by the proposed antenna and accessory support facility or equipment.

### **Sec. 7-257. Specific Standards.**

- (1) **FEDERAL AND STATE STANDARDS.** All telecommunications facilities shall be erected and operated in compliance with current Federal Communication Commission (FCC) and Federal Aviation Administration (FAA) rules and regulations and other applicable federal, state, and local standards.
  - (a) The tower owner shall provide documentation that all equipment proposed for a personal wireless service facility shall be authorized per the FCC Guidelines for Evaluating the Environmental Effects of Radio frequency Radiation.
  - (b) An applicant shall provide a copy of its FCC license or, if the applicant is not an FCC license holder, a copy of at least one letter of commitment from an FCC license holder to locate at least one (1) antenna on the applicant's tower.

### **(2) ENVIRONMENTAL STANDARDS.**

- (a) Telecommunication facilities shall not be permitted in any wetland or floodplain and disturbance to wetland buffer areas shall be minimized.
  - (b) Ground-mounted equipment for personal wireless service facilities shall not generate noise in excess of fifty (50) decibels at the property line. Roof-mounted or side-mounted equipment for personal wireless service facilities shall not generate noise in excess of fifty (50) decibels at ground level at the base of the building closest to the antenna.
- (3) **STRUCTURAL STANDARDS.** Telecommunications tower structures must conform to the most current revision of EIA 222 standards. Guyed telecommunications towers shall be designed and located such that, if the structure should fall, it will avoid habitable structures and public ways. Telecommunications facilities shall be designed and engineered to withstand wind loadings and other design standards as defined by the building codes adopted by the City. An engineer's certification of the structural integrity of the tower and all associated equipment shall be required.

### **Sec. 7-258. Permit Conditions.**

- (1) **ABANDONMENT.** A telecommunications service provider shall post a bond or other security sufficient to pay for the removal of any abandoned facility. No owner or occupant of property within the City shall permit, leave or cause to be left on said property any telecommunications facility, which has been abandoned or discontinued for use. The provider shall remove its facility within ninety (90) days of the date that it



## THE VILLAGE CITY CODE

discontinues its use of the facility. If the provider fails to remove the facility within the required time, the facility shall be deemed to be abandoned. The City shall have authority to enter the premises and remove the abandoned facilities. All costs of removal that exceed the amount of the bond or security posted for that purpose shall be collected from the provider or property owner in the manner provided for summary abatement of nuisances. This requirement shall apply to co-located facilities unless the co-location agreement provides for the removal of abandoned facilities by the tower operator.

- (2) **DEFECTIVE FACILITIES.** Defective or unsafe antennas, telecommunication towers or telecommunication facilities shall be repaired or removed within six (6) months at the owner or operator's expense. If the facilities are not operated for a continuous period of twenty (24) four months, they shall be considered abandoned and must be removed within ninety (90) days. If not removed, the City may remove at the expense of the owner or operator.
- (3) **NON-CONFORMING USE.** Existing towers that do not comply with the new regulations may continue. They may not be expanded or replaced unless they meet the new regulations. If they are damaged or destroyed, they may be repaired or restored to their former use, location, and physical dimensions without complying with the new regulations. The existing tower may replace, repair, rebuild and/or expand to accommodate co-located antennas or facilities, or to upgrade the facilities to current engineering, technological or communications standards by obtaining zoning approval.

### **Sec. 7-259. Permit Approval Process.**

- (1) **PUBLIC NOTICE.** Except for a proposed telecommunications facility, which will co-locate on an existing tower, the applicant for a telecommunications facility permit shall notify all property owners within three hundred (300) feet of the outer boundary of the property proposed for location of the facility. Such notice shall describe the boundaries of the property included in the application, explain the character and dimensions of the proposed telecommunications facility, and give an address for the property owners to submit written comments to the applicant. The notice shall include a drawing or other representation of the visual aspects of the proposed facility. The notice shall also contain the date, which shall be not less than fifteen (15) days after the mailing date, set for consideration of the application by the City.
- (2) **PLANNING COMMISSION REVIEW/COUNCIL APPROVAL:**
  - (a) No permit shall be approved until the plans for the proposed telecommunication facility is reviewed by the Planning & Zoning Commission. The Planning & Zoning Commission shall make recommendations to the City Council as to whether the proposed facility meets all criteria required for the issuance of a permit.

## THE VILLAGE CITY CODE

- (b) No permit shall be issued by the city until the plans for the proposed telecommunication facility are approved by the City Council.
- (3) **PLANS, MAPS & INVENTORIES.** Applicant shall be required to submit to the city:
  - (a) An inventory and contour map of existing facilities that are within the City and within at least five (5) miles from the City line, including specific information about the location, height, coverage and capacity zones, and design of each telecommunications facility, telecommunications tower, and antenna
  - (b) Identification of the applicant's backhaul providers and the method (wired or wireless) of providing backhaul with annual updates
  - (c) A vicinity map and scaled set of plans identifying impacts on the surrounding built environment and showing the location of all facilities, ingress/egress drives, parking, landscaping, fencing, buffer zones, setbacks from existing structures, streets, public ways, and adjoining zoning district boundaries.
  - (d) An engineer's report, certifying that the proposed telecommunications facility is compatible for co-location by a minimum of three (3) users.
  - (e) Documentation from the tower owner that the equipment proposed for a wireless service facility is authorized per the FCC Guidelines for Evaluating the Environmental Effects of Radio frequency Radiation.
  - (f) An engineer's report, certifying that the proposed telecommunications facility will not create interference with other telecommunication signals or other telecommunication facilities.
  - (g) If applicable, an engineer's report, certifying that the proposed telecommunication tower is designed to fall within the leased area.
  - (h) A copy of FCC licenses, or a commitment letter from a license holder to locate an antenna on an existing tower
  - (i) A permit-processing fee in the amount of five hundred (\$500.00) dollars.
  - (j) Insurance certificates for insurance as may be required pursuant to the permit and
  - (k) A security bond in an amount sufficient to guarantee the removal of abandoned towers and facilities at the applicant's expense.

**Sec. 7-260. Annual Inspection Fee.**

The owner or operator of any telecommunications facility permitted pursuant to this Article shall pay an annual inspection fee to the city in the amount of two hundred and fifty (\$250.00) dollars. Annual inspection fees shall be due no later than July 1 of each year. Annual inspection fees shall be prorated monthly in the first year.

(Ord. No. 566 §2, 3-6-01)

**Secs. 7-261—7-350 Reserved.**

**ARTICLE II. TELEPHONE SERVICES.**

**Sec. 7-351. Definitions.**

The following words, terms, and phrases, when used in this Article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning and except where otherwise defined by federal or state law:

*Annual gross revenues* mean the total income received by Grantee during the calendar year derived from telephone system operations originating or terminating within The Village. Annual gross revenues shall not include sales taxes or other taxes collected by Grantee.

*Telephone System or Exchange* means a set of transmission paths and associated signal generation, reception and control equipment that is designed to provide telephone communication services to residential and commercial customers within the City. It shall include, without limitation, all of the components, physical operation, and programming elements of a network of telephone, electrical and electronic equipment, designed, constructed, wired, or used for the purpose of producing, receiving, amplifying, and transmitting by coaxial cable, fiber optics, or by other means, voice, data, fax, or other related electronic signal impulses in either analog or digital format.

*Grantee* means any person or group of persons who have been granted a permit by the City to construct and operate upon the rights-of-way of the city, a telephone system or exchange pursuant to the terms and conditions of this Article.

*Public way* means the surface, air space above the surface and the area below the surface of any public street, sidewalk, alley, utility easement or other public way in the City.

(Ord. No. 530 §1, 9-17-96; Ord. No. 736, §1, 03-05-2018)

**Sec. 7-352. Rights reserved by city.**

(a) The right is hereby reserved to the City or the City Council to adopt, in addition to the provisions contained herein and in existing ordinances, such additional regulations of general applicability as it shall find necessary in the exercise of its lawful powers. Such regulations shall be reasonable and not in conflict with the rights herein granted, or any applicable federal or state law.

(b) The City shall have the right to inspect the books, records, maps, plans, federal and state income tax returns, and other like materials pertaining directly or indirectly to any permit granted under this Article upon reasonable notice to Grantee and during normal business hours.

(c) The City shall have the right, during the term of any permit to install and maintain free of charge upon the poles of Grantee any wire and pole fixtures that do not interfere with the telephone system operations of Grantee.

(d) The City shall have the right to inspect all construction or installation work performed by Grantee pursuant to the issuance of a permit. In the event any such inspection reveals that the Grantee has failed, in the city's judgment, to fulfill its obligation under the terms of this Article, the City shall notify Grantee, in writing, of its specific deficiencies. Absent commencement of corrective action by Grantee within forty-eight (48) hours of receipt of said notification, the City, upon the direction of the City Council, may undertake the necessary repairs or restoration and be promptly compensated or reimbursed in the event the City pays any monies under this provision.

(e) Upon the termination or cancellation of a permit, as provided herein, the Grantee shall have six (6) months from the date it ceases operation to remove, at its own expense, all portions of its system from all public ways within the City and to restore said public ways to a condition satisfactory to the City.

**Sec. 7-353. Maps, plats, and reports.**

(a) Upon request, Grantee shall file with the City Engineer maps or plats of all existing and proposed installation. Grantee shall, simultaneously with the acceptance of the permit, file a map of the City showing the proposed construction schedule of Grantee.

(b) Grantee shall, upon request, submit to the City financial information applicable to its operations under its permit during the preceding twelve (12) month period, as well as a statement of its properties devoted to telephone system operations within The Village, and the total number of each class of subscribers within the City. The financial information shall be sufficiently detailed to document calculation of Grantee's Annual Gross Revenues. This

## THE VILLAGE CITY CODE

financial information shall be prepared or certified by Grantee's chief financial officer or by a certified public accountant.

(Ord. No. 530 §1, 9-17-96)

### **Sec. 7-354. Payments to City.**

(a) Grantee shall pay to the City annually an amount equal to two (2%) percent of that portion of the Annual Gross Revenues attributable to the operations of its telephone system within the City. Payment due under this provision shall be payable forty-five (45) calendar days after the end of each calendar year, or at such other time as may be agreed to in writing by the City and Grantee.

(b) The fee levied herein shall compensate the city for the expense incurred and services rendered incident to the exercise of its police power, supervision, police regulation, and police control of the construction of lines and equipment of the telephone system or exchange in the City.

(c) Except as may otherwise be provided herein, the fee levied herein shall be in lieu of all concessions, charges, excise, franchise, license, privilege and permit fees, or taxes or assessments, provided however, said fee shall not be in lieu of ad valorem taxes.

(Ord. No. 530 §1, 9-17-96; Ord. No. 736, §1, 03-05-2018)

### **Sec. 7-355. Indemnification and insurance.**

(a) Except in the event of the city's employees' or agents' negligence, the Grantee shall pay all damages and penalties, which the City may legally be required to pay as a result of the granting of a permit to Grantee. The damages and penalties shall include, but shall not be limited to, any and all claims and suits for damages or other relief filed by third parties, arising out of copyright infringements and all other damages arising out of installation, operation or maintenance of the telephone system authorized herein, whether or not any act or omission complained of is authorized, allowed, or prohibited by the permit or by this Article.

(b) Except in the event of the city's employees' or agents' negligence, the acceptance of a permit for the construction and operation of a telephone system within the City shall constitute an agreement by Grantee to indemnify and save the City harmless from any and all claims, demands, actions, damages, loss, liability, attorney fees, costs and other expense resulting from the construction, operation, or maintenance by Grantee of a telephone system, or any part thereof, in the City or occasioned wholly or in part by any act or omission of Grantee, its agents, employees or contractors.

(c) Commencing with any work on the installation of a telephone system in the City, Grantee shall maintain throughout the term of any permit, liability insurance insuring the

## THE VILLAGE CITY CODE

City and Grantee and their officers, private subcontractors, agents and employees whether elected or appointed, against any and all claims, injury or damage to person or property, both real and personal, caused by or resulting directly or indirectly from the construction, erection, operation or maintenance of any aspect of the telephone system. The amount of such insurance shall not be less than the following:

(1) General liability insurance, which is in an amount equal to the limit found in 51 O.S. § 154 A, as amended to wit:

(a) Twenty-Five Thousand Dollars (\$25,000.00) for any claim or claimant who has more than one claim for loss of property arising out of a single accident or occurrence.

(b) One Hundred Thousand Dollars (\$100,000.00) to any claimant for his claim for any other loss arising out of a single accident or occurrence.

(c) One Million Dollars (\$1,000,000.00) for any number of claims arising out of a single occurrence or accident.

(2) Automobile insurance:

(a) Bodily injury per person, three hundred thousand dollars (\$300,000.00)

(b) Bodily injury per occurrence, five hundred thousand dollars (\$500,000.00)

(c) Property damage per occurrence, five hundred thousand dollars (\$500,000.00)

(3) Worker's compensation insurance shall also be provided as required by state law for all of Grantee's employees to be engaged in any work pursuant to a permit issued by the City.

(4) Grantee shall have the City named as an additional insured under said General Liability and Property Damages Insurance policies.

(5) All insurance coverage shall provide a ten-day notice to the City Clerk in the event of material alteration or cancellation of any coverage afforded in said policies prior to the date said material alteration or cancellation shall become effective. In the event Grantee fails to maintain any insurance as required herein, the City, may, at its option, either terminate the permit or obtain and keep such insurance in full force and effect and the Grantee shall promptly reimburse the City for such insurance costs.

(6) A certificate for all insurance policies required hereunder shall be furnished to and filed with the City Clerk and shall be on file with the City Clerk at all times during which such insurance is required hereunder to be maintained by Grantee.

(Ord. No. 530 §1, 9-17-96)

**Sec. 7-356. Further agreement and waiver by Grantee.**

Grantee shall abide by all provisions of this Article, and shall agree that it will not at any future time set up, as against the City or the City Council, the claim that the provisions of this Article are unreasonable, arbitrary, or void or where any such provision is preempted by federal or state law.

(Ord. No. 530 §1, 9-17-96)

**Sec. 7-357. General regulations pertaining to pole agreements and occupancy of public ways.**

(a) All transmission and distribution structures, and equipment erected by Grantee within the City shall be so located as not to create traffic hazards, not to cause drainage problems, to cause minimum interference with the proper use of streets, alleys and other public ways and places and to cause minimum inconvenience to property owners and residents of the City.

(b) It shall be the responsibility of Grantee to obtain the necessary pole attachment agreements from the City and/or private utility companies using poles within the City. All pole attachment agreements obtained from private utility companies shall, upon request, be filed with the City Clerk. The City will follow the policy of attempting to assist Grantee in the securing of the necessary pole attachment agreements.

(c) All pole attachment agreements with the City shall be negotiated with the City Manager and approved by the City Council.

(d) If, at any time during the term of the permit the City shall lawfully elect to alter or change the grade of any street, sidewalk, alley, or other public way, Grantee, upon reasonable notice by the City, shall remove, relay, and relocate its poles, wires, telephones, underground conduits, manholes, and other fixtures at its own expense; provided, however, to the extent such removal, relay and/or relocation is due to the City's efforts to accommodate an unrelated third party, the expense of such removal, relay and/or relocation shall be paid by the person requesting the same.

(e) Any poles, wires, telephones, conduits, manholes or other fixtures placed in any public way by Grantee shall be placed in such a manner as not to interfere with the usual travel on such public way.

(f) Grantee shall, on the request of any persons holding a building moving permit issued by the City, temporarily raise, or lower its wires to permit the moving of buildings.

## THE VILLAGE CITY CODE

The expense of such temporary removal or raising or lowering of wires to permit the moving of building shall be paid by the person requesting the same, and Grantee shall have the authority to require such payment in advance. Grantee shall be given not less than forty-eight (48) hours advance notice to arrange for such temporary wire changes.

(g) Grantee shall have the authority to trim trees upon and overhanging streets, alleys, sidewalks, and public ways and places of the City so as to prevent the branches of such trees from coming in contact with the wires and telephones of Grantee, except that at the option of the City, such trimming may be done by the City or under its supervision and direction at the expense of Grantee.

(h) In all sections of the City where public utilities are placed underground, Grantee shall place its telephone, wires, or other like facilities underground.

(Ord. No. 530 §1, 9-17-96)

### **Sec. 7-358. Permit.**

No person or persons shall construct or operate a telephone system or exchange in the City without first obtaining a permit from the City Council. Under such permit, Grantee thereof shall have the right and privilege to construct, erect, operate and maintain, in, upon, along, across, above, over and under the streets, alleys, public ways and public places in the City, poles, wires, telephones, fiber, underground conduits, manholes, and other telephone conductors and fixtures necessary for the maintenance and operation in the City of such telephone system or exchange.

(Ord. No. 530 §0, 9-17-96)

### **Sec. 7-359. Term.**

Any permit and the rights, privileges and authority granted under this Article shall take effect and be in full force from and after approval thereof by the City Council. Any such permit shall be subject to formal review every five years. Should Grantee be found, upon review, to be in non-compliance with the material provisions of the permit and this Article, Grantee will be given six (6) months to correct those areas of non-compliance.

(Ord. No. 530 §1, 9-17-96)

### **Sec. 7-360. Compliance with telephone laws and ordinances.**

(a) Any permit granted under this Article shall be subject to all applicable telephone provisions of the laws of the United States, the State of Oklahoma, and to the extent not inconsistent with this Article, City ordinances and any amendments thereto. In the event



## THE VILLAGE CITY CODE

of any conflict or inconsistency between the terms of this Article or any state, local or federal law, federal law shall govern.

(b) Grantee shall fully comply with all applicable telephone laws, ordinances, and regulations in the conduct of its telephone system operations and business within the City.

(c) Plans of the proposed telephone system including overhead cables, underground telephones, and head end tower shall in be accordance with the National Electrical Safety Code and the National Electric Code. Any tower constructed for use in grantee's telephone system shall comply with the standards contained in Structural Standards for Steel Antenna Towers and Antenna Supporting Structures, EIA Standards RS-222A, as published by the Engineering Department of the Electronic Industries Association, 2201 "I" Street NW, Washington, DC 20006.

(d) Grantee shall obtain building permits for all buildings to be constructed, pay all building permit fees, tap charge fees, and all other fees as required by the ordinances of the City and at the rates that are in full force and effect at the time the building permits are applied for.

(e) Any and all pavement cuts of permanent or nonpermanent pavement shall be approved by the City Engineer and shall be shown on the plans submitted to the City Engineer prior to the commencement of construction. Grantee shall obtain any permit required by the ordinances of the City prior to making any pavement cut.

(Ord. No. 530 §1, 9-17-96)

### **Sec. 7-361. Transfer.**

Grantee shall not assign or transfer its permit to another person without prior written approval of the City Council, which approval shall not be unreasonably withheld, provided that Grantee may upon thirty (30) days prior written notice to the Council, transfer this permit to an entity controlling, controlled by or under common control with Grantee. Any such transferee shall be bound by all provisions of this Article and subsequent amendments hereto and other applicable ordinances of the City.

(Ord. No. 530 §1, 9-17-96)

### **Sec. 7-362. Forfeiture.**

(a) In addition to all other rights and powers reserved to the City hereunder, and subject to subsection (e) below, the City shall have the right to terminate and cancel any permit and all rights and privileges of Grantee thereunder in the event that Grantee:

## THE VILLAGE CITY CODE

(1) Willfully violates any material provision of this Article or any rule, order, or determination of the City Council made pursuant to its permit, except where such violation is without fault or not through neglect;

(2) Becomes insolvent, or unable to pay its lawful debts, or is adjudged bankrupt;

(3) Willfully violates or attempts to evade any of the material provisions of its permit or practices any fraud or deceit upon the City or its citizens;

(4) Fails to secure all necessary documents, including but not limited to pole use agreements, within twelve (12) months after obtaining a permit from the city, or fails to complete construction of the telephone system in a timely manner.

(5) Fails to begin construction and proceed with the same in a reasonable, diligent, and workmanlike manner under its permit within ninety (90) days after receipt of all necessary documents, including but not limited to pole attachment agreements, FCC waivers and FAA approvals;

(b) Upon the occurrence of any event in this section or any other section providing for termination, the City Manager shall notify the Grantee in writing of the alleged default. Unless the City shall otherwise provide in instances of immediate threat to the public safety, health and welfare, the Grantee shall have thirty (30) days from the receipt of a written notice of default to: (a) respond contesting the alleged assertion of default, or (b) cure such default or, in the event that, by nature of the default, such default can not be cured within the thirty (30) day period, institute reasonable steps to remedy such default and notify the City of the steps being taken and the projected date of compliance.

(c) In the event the Grantee contests the assertion of a default or fails to respond to a notice of default, or the alleged default is not remedied, nor remedy commenced within the time required, the Council may schedule a hearing to investigate the default. The Council shall provide the Grantee with at least thirty (30) days notice of the time and place of such hearing and provide Grantee with an opportunity to be heard.

(d) At such hearing, the City Council shall, after notice, hear any persons interested therein, including the Grantee, and shall determine, in its discretion, after due consideration of any and all evidence presented, whether or not any failure, refusal or neglect by the Grantee constitutes cause for revocation of the permit. Subject to applicable federal and state law, in the event the City, after such hearing, determines that Grantee is in default of any provision of this Article, the City may:

1. Order that the Grantee cure such default within a reasonable period of time,
2. Commence an action at law for monetary damage or seek other equitable relief,

3. Declare the permit to be terminated effective sixty (60) days following the declaration; or

4. Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages or termination of the permit.

(e) The Grantee shall not be held in default with any provision of its permit or this Article, nor suffer an enforcement penalty relating thereto, where such alleged default is caused by acts of nature, power outages, labor disputes, equipment failures, or other events reasonably beyond the power of the Grantee to control.

(Ord. No. 530 §1, 9-17-96)

**Sec. 7-363. City's right of intervention.**

Grantee shall not oppose intervention by the City in any suit or proceeding to which Grantee is a party.

(Ord. No. 530 §1, 9-17-96)

**Sec. 7-364. Erection, removal, and common use of poles.**

(a) No poles or other wire-holding structures shall be erected by Grantee without prior approval of the City Engineer with regard to location, height, type, and any other pertinent aspect. However, no location of any pole or wire-holding structure of the Grantee shall be a vested interest and such poles or structures shall be removed or modified by Grantee at its own expense whenever the City Engineer determines that the public convenience would be enhanced thereby.

(b) Where poles or other wire-holding structures already existing for use in serving the City are available for use by the Grantee, but it does not make arrangements for such use, the City may require Grantee to use such structures, if it determines that the public convenience would be enhanced thereby and the terms for the use available to Grantee are just and reasonable.

(c) Where a public utility serving the City desires to make use of the poles or other wire-holding structures of Grantee, but agreement therefore with Grantee cannot be reached, the City Council may require Grantee to permit such use for such consideration and upon such terms as the City Council shall determine to be just and reasonable, if the Council determines that the use would enhance the public convenience and would not unduly interfere with Grantee's operations.

(d) Grantee shall comply with the pole attachment agreement provisions in Section 21-56.

(Ord. No. 530 §1, 9-17-96)

**Sec. 7-365. Safety requirements.**

(a) Grantee shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices for preventing failure and accidents which are likely to cause damage, injuries, or nuisances to the public.

(b) Grantee shall install and maintain its wires, cables, fixtures, and other equipment in accordance with the requirements of the National Electrical Safety Code and the National Electrical Code, as adopted by the City and all applicable state and local laws and in such a manner that they will not interfere with any installation of the City or of a public utility serving the City.

(c) All structures and all lines, equipment, and connections in, along, across, over, under and upon the streets, sidewalks, alleys, or public ways or places of the City, wherever situated or located, shall at all times be kept and maintained in a safe, suitable, substantial condition, and in good order and repair.

(Ord. No. 530 §1, 9-17-96)

**Sec. 7-366. Voice over Internet Protocol (VoIP) Service Fee Adopted.**

(a) A 9-1-1 service fee is hereby adopted by the Council of the City of The Village upon Interconnected Voice over Internet Protocol telephony service customers whose businesses or residences are located within the City limits of The Village at the rate of fifty cents (\$0.50) per month for each VoIP service user, pursuant to the provisions of Title 63, O.S. (2006), Section 2851 et seq.

(b) All VoIP carriers having customers within the City of The Village shall provide an annual census of customers to the City no later than sixty (60) days after the first day of each calendar year.

**Sec. 7-367. Penalty.**

Any Grantee who fails to comply with or violates any material provision of this Article shall be guilty of a Class B offense punishable by a fine of two hundred (\$200.00) dollars. Each day that the noncompliance or violation exists shall be a separate offense. (Editor's note: This section was renumbered from 7-366 to 7-367 to correct a conflict with Ordinance 625, which adopted a new 7-366.)