

TITLE 7

PUBLIC WAYS AND PROPERTY

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CHAPTER 1

STREETS AND PUBLIC PROPERTY

SECTION:

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7-1-1: CITY DATUM:

There is established and fixed a base or datum plane in and for the City for determining, measuring and describing elevations and grades in the City, which base or datum plane shall be known under the style and name of "Genoa City Datum". The Genoa City Datum shall be and the same is established as an imaginary horizontal plane one hundred feet (100') below a copper bolt in the northeast corner of the east door step of the Genoa City Hall situated on lot 4, block 2 Merriman's Addition to the Village (now City) of Genoa, DeKalb County, Illinois. (1978 Code §3.13)

7-1-2: AUTHORITY TO REGULATE:

No street, alley, public ground or place shall be altered, repaired, disturbed or improved except under authority, control and regulation of the Council. (1978 Code §5.02)

7-1-3: WIDTH OF STREETS AND ALLEYS:

All streets hereafter laid out, platted or opened within the City shall, unless otherwise provided by the City Council, be sixty feet (60') wide and all alleys hereafter laid out, platted or opened in the City shall, unless otherwise provided by the Council, be not less than eighteen feet (18') wide. (1978 Code §5.01)

7-1-4: DISTURBING MONUMENTS:

No person shall change or remove any stake, post, stone, marker or monument placed or set to designate or show the corner or line of any line or lot, street, alley or public place or the grade of any street, alley, sidewalk or public place unless lawfully authorized so to do. (1978 Code §5.04)

7-1-5: OPENING IN STREETS:

A. Permit and Bond:

1. Permit Required: No street, alley, public ground or place shall be disturbed or opened nor shall any material, excavation or thing be placed or kept therein unless a permit so to do is first obtained from the Superintendent of Streets.

2. Bond Requirements: Before any such permit is issued, the person desiring the same shall file a good and sufficient bond, payable to the City, with surety approved by the City, conditioned that such person shall faithfully observe the ordinances of the City and shall make and repair such openings and place and shall save and keep harmless the City from all costs arising in any manner or way from the granting of such permit. The bond shall be in an amount determined by the Superintendent of Streets to be sufficient for the purposes described above, but in every case, the costs to be covered are to be calculated at a minimum rate of one hundred dollars (\$100.00) per linear foot for blacktop and gravel surfaces and two hundred fifty dollars (\$250.00) per linear foot for cement surfaces measured from the back side of the surface forward. When such work is done by the City, no bond shall be required.

3. Cash Deposit: The posting of a surety bond shall constitute compliance with this Section; except, that cash must be deposited in the amount of two hundred dollars (\$200.00) if no pavement is involved and five hundred dollars (\$500.00) if the

excavation is in a paved area, to cover the initial cost to the City of restoring the surface if the applicant fails to restore the surface. Upon satisfactory restoration, the balance of the deposit is to be refunded.

4. Plumbers Exempt: So long as the provisions of the ordinances concerning plumbers and the doing of the work by them shall remain in force and are complied with by any plumber, such plumber need not in addition comply with the provisions hereof.

B. Method of Work: It shall be the duty of every person disturbing or opening any street, alley, public ground or place or placing or keeping any material, excavation or thing therein to do the same in such a manner as to be safe to persons and property. Such person shall do such work under the direction and to the satisfaction of the Superintendent of Streets. (1978 Code §5.03)

7-1-6: TREE BORDERS:

A. Planting Grass or Trees Permitted: The owner of any property adjacent to any street, alley, public ground or place may, upon first receiving permission from the Superintendent of Streets so to do, maintain a grass plat or tree bank between the sidewalk and curb or curb line under the supervision of the Superintendent of Streets and plant trees therein. All such trees shall be planted nine feet (9') from the lot line and shall be at least twenty feet (20') apart. All such trees shall, at all times, be properly attended to and kept trimmed by such adjacent owner, and the boughs, branches or parts thereof shall not be permitted to be nearer than ten feet (10') above any street or sidewalk.

B. Protection of Tree Borders: No person shall injure, cut or break any tree, shrub or plant in any street, alley, public ground or place in the City. Whenever any person or lawful authority seeks to place wires, conduits, poles or other similar things in any such place, he must first have a permit in writing from the Superintendent of Streets to disturb, cut, break or tear any such tree, shrub or plant interfering with any such wires, conduits, poles or other similar things in any such place. This subsection shall not apply to the City in the maintenance of any street or place. (1978 Code §5.05)

7-1-7: ENCROACHMENTS AND OBSTRUCTIONS:

A. Definitions: When used in this Section, the following words and terms shall have the meanings ascribed to them as follows:

ENCROACHMENT: Any building, fence, sign or any other structure or object of any kind (with the exception of utilities and public road signs) which is placed, located or maintained in, on, under or over any portion of the roadway right of way.

ROADWAY RIGHT OF WAY: Those areas existing or acquired by dedication or by fee simple for highway purposes; also, the areas acquired by temporary easement during the time the easement is in effect.

B. Encroachment Prohibited: It shall be unlawful for any person to erect or cause to be erected, to retain or cause to be retained an encroachment as defined in subsection A of this Section within the limits of the roadway right of way. (1978 Code §5.09)

C. Nuisance Provisions: Every encroachment upon or obstruction in any street, alley, public ground or place is declared to be a nuisance, and any taking, holding, keeping or using of any such street, alley, public ground or place for a private purpose or use is declared to be a nuisance. Every such nuisance shall be abated and removed by the Mayor or the Council or any person under their direction and supervision. No person shall cause, suffer or permit any such nuisance. (1978 Code §5.09)

7-1-8: USE BY VENDORS:

Any licensed vendor of merchandise desiring to make a temporary stopping place in any street to sell or vend such merchandise or advertise the same shall first obtain a permit from the Mayor to do so, and if the public interest shall in no way be disturbed thereby, the Mayor may grant permission to such licensed vendor to occupy the particular portion of the street designated for a period not exceeding three (3) hours at any one time. If, after the giving of such permission, the licensee violates any ordinance of the City or the public interests are shown to be disturbed, the Mayor shall have the power to revoke any such permission so granted. (1978 Code §5.08)

7-1-9: PROHIBITED ACTS AND CONDITIONS:

A. Refuse in Streets:

1. It shall be unlawful for any person to throw, place or deposit any foreign matter in any street, alley, gutter, sidewalk, drain, public ground or place in the City.

2. Any person violating this subsection shall promptly remove such foreign matter. (1978 Code §5.06)

B. Ball Playing: It shall be unlawful for any person to play ball in or upon any street in the City. (1978 Code §5.07)

7-1-10: PENALTY:

Any person violating any provision of this Chapter shall be fined not less than twenty five dollars (\$25.00) nor more than five hundred dollars (\$500.00) for each offense, and

a separate offense shall be deemed committed for each and every day during which a violation exists or continues. (1978 Code §5.26)

CHAPTER 2 SIDEWALKS

SECTION:

- 7-2-1: Authority to Control and Regulate**
- 7-2-2: Sidewalk Construction Requirements and Specifications**
- 7-2-3: Sidewalk Construction Costs**
- 7-2-4: Sidewalk Vaults**
- 7-2-5: Private Use; Basement Entrances**
- 7-2-6: Encroachments**
- 7-2-7: Dangerous Sidewalks**
- 7-2-8: Prohibited Acts and Conditions**
- 7-2-9: Penalty**

7-2-1: AUTHORITY TO CONTROL AND REGULATE:

All sidewalks, crossings, spaces beneath sidewalks and areaways shall at all times be subject to the control and regulation of the City. (1978 Code §5.22)

7-2-2: SIDEWALK CONSTRUCTION REQUIREMENTS AND SPECIFICATIONS:

A. Supervision: All sidewalks and crosswalks hereafter constructed in any street, alley, public ground or place shall be constructed under the supervision of, and the material and workmanship thereof shall be subject to the approval of, the Superintendent of Streets.

B. Compliance With Standards: The City may remove any sidewalk constructed or laid at a different grade or level than that provided for or constructed of a material or in a manner contrary to the provisions of this Chapter or the directions of the Superintendent of Streets. In all cases where the building adjacent to any sidewalk is constructed to the lot line, such sidewalk shall be constructed to such building and be flush therewith. (1978 Code §5.10; amd. 1993 Code)

C. Width: Any sidewalk hereafter built, laid or constructed within the fire limits ⁷⁰ shall be at least six feet (6') wide and where the same are so built, laid or constructed in front of property used in whole or in part for business purposes, shall extend from the lot line to the curb line. All such sidewalks hereafter laid, built or constructed in the City outside of

the fire limits shall be at least four feet (4') wide. Any such sidewalks in streets or alleys less than fifty feet (50') in width may be less than four feet (4') wide, but of such width as shall be fixed by the City Council. All such sidewalks shall commence at the lot line and extend toward the street. (1978 Code §5.11)

D. Grades: Whenever any grade is established in any street, alley, public place or ground, no person shall lay, build or construct any such sidewalk therein except by conformity therewith. Such sidewalk shall be so constructed that the outer edge of the top surface thereof at the curb line shall coincide with such established grade. In all cases where there is no established grade, any such sidewalk shall be constructed in accordance with the direction of and subject to the approval of the Superintendent of Streets. (1978 Code §5.13)

E. Sidewalk Ramps: Where sidewalks are constructed or replaced at street intersections and other crosswalks adjacent to barrier, mountable or roll-type curb, a sidewalk ramp for the handicapped shall be provided in accordance with the requirements outlined by the Public Works Director. (1978 Code §5.10.05)

7-2-3: SIDEWALK CONSTRUCTION COSTS:

A. New Sidewalks; Sidewalk Extensions: Where there is no existing sidewalk, the City will pay twenty five percent (25%) per square foot. The Director of Public Works shall determine the dollar amount for reimbursement, not to exceed twenty five percent (25%) of the City-bid document. There will be no payment for sidewalks when it is the developer's responsibility to provide sidewalks or where workmanship is not done to the City's satisfaction or specifications. Authorization for extension of sidewalk or installation of sidewalks where none exist must receive approval of the City Council.

B. Sidewalk Replacement And Repair:

1. Where any sidewalk located within the City is in need of repair, and it is determined by the City that it is advisable to replace the sidewalk, the City will pay to the owner of the property fifty percent (50%) of the total cost. The Director of Public Works shall determine the dollar amount for reimbursement, not to exceed fifty percent (50%) of the City-bid document. Said payment shall be a portion of the total cost for sidewalk removal, any fill that may be needed to bring the subgrade to the proper elevation and the placing of the new sidewalk. The new sidewalk shall be constructed in accordance with the standards established in this Chapter.

The City will not pay any reimbursement for sidewalk installation or replacement in the following cases:

a. Where it is the developer's responsibility to provide the sidewalk.

b. Where damage to the sidewalk is caused primarily by the acts of property owners or their agents or employees adjoining the premises abutting the sidewalks.

c. Where the sidewalks are less than five (5) years old.

d. Where the sidewalks have been damaged by the installation of underground utilities.

e. Where foundation walls or footings need to be built or repaired in the process of replacing or constructing the new sidewalk, the City will reimburse based only on the surface area of the sidewalk as measured and computed by the City.

f. Where the workmanship is not done to the City's satisfaction or specifications.

g. Where the sidewalk is replaced for solely cosmetic reasons.

2. There is hereby established a sidewalk program to provide for the construction, repair and replacement of sidewalks in the City. The dollar amount allocated for the sidewalk program shall be approved by the City Council and is subject to the adoption of the City's annual budget. The director of Public Works shall give to the City Clerk for distribution to the City Council members a list of recommendations for sidewalk projects to be completed in the fiscal year. The list so provided shall give priority to sidewalks necessary to abate dangerous conditions, sidewalks in disrepair, and new sidewalks where necessary to provide for the safety of pedestrians. The Director of Public Works shall not expend funds allocated for the sidewalk program until the City Council has approved the sidewalk program projects for the fiscal year.

The annual budget for the city as approved by ordinance may include provisions for the payment of the expenses of the sidewalk program from revenue derived from the collection of the utility tax. (Amd. Ord. 2006-02, 02-07-2006)

The Aldermen in each of the City's wards shall agree between themselves on an annual priority list of projects eligible for funding under this sidewalk repair program. Repair projects within each ward shall be started and completed in the order specified on the priority list, unless both Aldermen agree to amend the list. (Ord. 98-37-2-r, 6-2-1998)

7-2-4: SIDEWALK VAULTS:

A. Permit To Use Vaults: No person shall occupy or use any open space in any street under any sidewalk in the City unless permitted so to do by the Council. Such permit shall specify the purpose for which the space is to be used, the extent thereof and the materials and manner of construction, and the permit shall be issued only on condition that the person receiving the same shall build, maintain and keep in repair the walls of such space and the sidewalk extending over the same in such manner so as to conform to the ordinances of the City at all times. Every person receiving such permit and

building or constructing any such space thereunder shall take such permit subject to the conditions that the same may be revoked at any time upon giving thirty (30) days' notice to the owner or person in possession of the premises abutting thereon or lying opposite the same. If the owner or such person cannot be found in the City, such notice may be posted on the property thirty (30) days before the date of such revocation. (1978 Code §5.16)

B. Access To Vault From Sidewalk:

1. Authorization Required: Any person desiring to have an opening through a sidewalk into such space thereunder for the purpose of passing coal or other articles shall first obtain permission to make and maintain any such hole from the Council. No permit shall be granted for more than one hole in each ten (10) lineal feet of sidewalk, nor for a larger hole than one and one-half feet (1 1/2') in diameter. Such permit shall be issued and accepted only upon the condition that such hole or opening shall be constructed and covered with a suitable iron cover so that the strength of the sidewalk including the hole shall not be impaired nor fall below the strength herein fixed for such sidewalk to carry a load of one hundred fifty (150) pounds per square foot, and on the further condition that the owner of the abutting land or land opposite such sidewalk shall maintain the hole cover in good condition and shall be liable for all damages or injuries occasioned to persons or property in consequence of the making and maintenance of the hole and covering. It shall be unlawful for any person to uncover such hole or suffer or permit the same to be uncovered, open or exposed except at such times when open for use, and then only when a person is in attendance, or the hole is so protected as not to endanger persons or property.

2. Prohibited Uses: No boilers, steam shaft, furnace or steam pipe shall be constructed or located for use or used in any such space nor shall any explosive or inflammable substance or oil be stored or kept therein nor shall any aperture or ventilating hole be placed therein at the sides unless protected in such manner as to be safe to the public and subject to the approval of the Mayor. (1978 Code §5.17)

7-2-5: PRIVATE USE; BASEMENT ENTRANCES:

No part of any public sidewalk shall be taken or held for any private use. Entrances to areas and basements may be constructed from such sidewalk in such a manner; provided, however, that the open space in front of the same at the sidewalk line shall lead directly to the stairway, and that part of it not leading directly to the stairway shall be protected by a suitable iron railing, and the whole maintained at all times in such a manner as to be safe to persons using such sidewalk. (1978 Code §5.15, 5.22)

7-2-6: ENCROACHMENTS:

A. Gates: All gates opening upon any sidewalk shall be so swung and constructed that no part thereof shall obstruct such sidewalk or swing or be over the sidewalk. (1978 Code §5.18)

B. Awnings: Awnings of cloth or other light or pliable material, when securely attached to the building and properly supported by iron or other metallic fastenings and supports, may, for temporary purposes, be hung over any sidewalk but only in such a manner that the lowest part thereof shall be at least seven feet (7') above such sidewalk and shall not extend more than ten feet (10') into the public way. Such awnings shall have no posts, supports or any other part thereof upon any sidewalk. (1978 Code §5.19)

C. Trees and Shrubs :

1. It shall be unlawful for any person to suffer the branches or parts of any tree, shrub or vine hanging over any sidewalk to be nearer than ten feet (10') above the sidewalk surface.

2. It shall be unlawful for any person to grow corn, sunflowers or any grain over two feet (2') high within thirty feet (30') from the sidewalk line. (1978 Code §5.20)

7-2-7: DANGEROUS SIDEWALKS:

A. It shall be unlawful to maintain sidewalks in a dangerous condition in front of, adjacent to or upon any premises.

B. Whenever the owner or occupant of any premises in the City is notified by the Public Works Director that the sidewalk in front of, adjacent to or upon said premises is dangerous, it shall be the duty of such owner or occupant to raise, lower or replace said sidewalk as specified by the Public Works Director so as to end said dangerous condition in the time prescribed by the Director ⁷⁴. (1978 Code §5.10.03)

7-2-8: PROHIBITED ACTS AND CONDITIONS:

A. Damaging or Obstructing Sidewalks : It shall be unlawful for any person to injure, break, deface or destroy any sidewalk in the City or to obstruct or encumber the same or store or place or keep thereon any merchandise or property that will prevent such sidewalk from being free and open at all times to public use and travel. (1978 Code §5.12)

B. Vehicles on Sidewalks: It shall be unlawful for any person to drive any motor vehicle upon or along any sidewalk . (1978 Code §5.14)

C. Sledding: No person shall ride or drive any sled or other similar thing for the purpose of coasting or coast upon any sidewalk. (1978 Code §5.21)

CHAPTER 3 RAILROADS

SECTION:

- 7-3-1: Grades at Crossings; Planking Required**
- 7-3-2: Maintenance of Areas Adjacent to Tracks**
- 7-3-3: Obstruction of Streets or Crossings**
- 7-3-4: Requirements for Safety**
- 7-3-5: Trespassing Prohibited**

7-3-1: GRADES AT CROSSINGS; PLANKING REQUIRED:

Railroad companies shall raise or lower their railroad tracks lying within the limits of the City so as to conform to any grade which may, at any time, be established for any street, alley or highway by ordinance of the City Council. Where tracks run across or lengthwise of any street, alley or highway, they shall keep their railroad tracks on a level with the surface and keep such streets in good order so that such tracks may be crossed at any place in such street, alley or highway and where they cross any street, they shall keep the same planked between rails. (1978 Code §38.01)

7-3-2: MAINTENANCE OF AREAS ADJACENT TO TRACKS:

Railroad companies shall make and keep open and keep in repair ditches and side drains, sewers and culverts along and under their railroad tracks so that filthy, stagnant water cannot stand on their grounds or right of way and in such manner that the natural drainage of the adjacent property shall not be impeded. (1978 Code §38.01)

7-3-3: OBSTRUCTION OF STREETS OR CROSSINGS:

No railway company or employees shall cause or allow any locomotive engine, car or cars or train of cars to stop in or remain upon any street or railroad crossing within the City for a longer period than ten (10) minutes at any one time. Should any street or railroad crossing in the City be and remain occupied and obstructed, in whole or in part, by any train of railroad cars for and during the period of ten (10) minutes, it shall be the duty of the railroad company upon whose line of road such obstruction may occur, its agents or employees, on or before the expiration of said ten (10) minutes, when, from

any cause, the entire train cannot be removed, to cause such cars as may be on or near said crossing to be uncoupled and moved so as to leave the street entirely free and unobstructed. (1978 Code §38.02)

7-3-4: REQUIREMENTS FOR SAFETY:

A. Lights: Every locomotive engine, railroad car or train of cars running in the nighttime on any railroad track in the City shall have and keep, while so running, a brilliant and conspicuous light on the forward end of such locomotive engine, car or train of cars. If such engine or train is backing, it shall have a conspicuous light on the rear car or engine so as to show in the direction the car is moving. (1978 Code §38.03)

B. Bell: The bell of each locomotive engine shall be run continually while such engine is in motion within the City. (1978 Code §38.04)

7-3-5: TRESPASSING PROHIBITED:

No person shall get upon or cling to any railroad car or locomotive, whether in motion or standing still, or loiter in or about any premises of a railroad company unless in the performance of his legitimate business or duty. (1978 Code §38.05)

CHAPTER 4 TREES, SHRUBS AND OTHER PLANTS

SECTION:

- 7-4-1: Definitions**
- 7-4-2: Permits**
- 7-4-3: Regulations**
- 7-4-4: Public Nuisances**
- 7-4-5: Arborist License and Bond**
- 7-4-6: Interference with Director of Public Works**
- 7-4-7: Violation and Penalty**

7-4-1: DEFINITIONS:

As used within this Chapter, the following terms shall have the meanings set forth in this Section:

ARBORICULTURAL SPECIFICATIONS AND STANDARDS OF PRACTICE FOR GENOA, ILLINOIS (hereinafter, "Arboricultural Specifications Manual"): A manual prepared by the Tree Board pursuant to Ordinance 868 containing regulations and standards for the planting, maintenance, and removal of trees, shrubs, and other plants upon City-owned property .

CITY-OWNED PROPERTY: Property within the City limits of Genoa, Illinois and: 1) owned by the City in fee simple absolute, or 2) implied or expressly dedicated to the public for present or future use for purposes of vehicular or pedestrian traffic, or for public easements.

DBH: Diameter breast height, measured at four and five-tenths feet (4.5') above ground.

LARGE TREES: Those trees attaining a height of forty five feet (45') or more.

MEDIUM TREES: Those trees attaining a height of thirty feet (30') to forty five feet (45').

PARK: All public parks having individual names.

PRINCIPAL THOROUGHFARE: Any street upon which trucks are not prohibited.

PROPERTY LINE: The outer edge of a street or highway.

PROPERTY OWNER: The record owner or contract purchaser of any parcel of land.

PUBLIC PLACES: All other grounds owned by the Municipality of Genoa, County of DeKalb, State of Illinois.

PUBLIC TREES: All shade and ornamental trees now or hereafter growing on any street or any public areas where otherwise indicated.

SMALL TREES: Those attaining a height of twenty feet (20') to thirty feet (30').

STREET or HIGHWAY: The entire width of every public way or right of way when any part thereof is open to the use of the public, as a matter of right, for purposes of vehicular and pedestrian traffic.

TOPPING: The severe cutting back of limbs to stubs larger than three inches (3") in diameter within the tree's crown to such a degree so as to remove the normal canopy and disfigure the tree.

TREEBANK: That part of a street or highway, not covered by sidewalk or other paving, lying between the property line and that portion of the street or highway usually used for vehicular traffic. (Ord. 867, 7-12-94)

7-4-2: PERMITS:

A. Permit Required: No person except the Director of Public Works or his designee or the regulated electrical utility and their authorized agents or contractors may plant, spray, remove, cut below ground or otherwise damage any tree on any street or City-owned property without first filing an application and procuring a permit from the City Clerk or otherwise specified Municipal authority. The person receiving the permit shall abide by the "Arboricultural Specifications Manual".

B. Application for Permit: Application for permits must be made at the office of the City Clerk.

1. An application must be signed by the applicant and submitted to the Director of Public Works detailing the location, number, size, and species of trees, shrubs, or other plants that will be affected by such acts, setting forth the purpose of such acts and the methods to be used and presenting any additional information that the Director of Public Works may find reasonably necessary; and

2. The applicant agrees to perform the work for which the permit is sought in accordance with the provisions of this Chapter, the Urban Forestry Plan and regulations and standards set forth in the "Arboricultural Specifications Manual"; and

3. The applicant certifies that he or she has read and understands those provisions of the Urban Forestry Plan, this Chapter and of the "Arboricultural Specifications Manual" which are pertinent to the work for which the permit is sought; and

4. If the work for which a permit is issued entails the felling of any tree or part thereof, located on private property, which, as a result of such felling reasonably may be expected to fall upon City-owned property, and if such felling is done by one other than the owner of the property on which such felling is done, then the applicant shall agree to indemnify and to hold the City harmless for all damages resulting from work conducted pursuant to the permit and shall deposit with the City Clerk a liability insurance policy in the amount of one hundred thousand dollars (\$100,000.00) per person/three hundred thousand dollars (\$300,000.00) per accident for bodily injury liability and fifty thousand dollars (\$50,000.00) aggregate for property damage liability, which policy shall name the City as an additional insured.

C. Standard of Issuance: The City Clerk or designee shall issue the permit provided for herein within fourteen (14) days if, in the judgement of the Director of Public Works, the proposed work is desirable and the proposed method and workmanship thereof are of a satisfactory nature. Any permit granted shall contain a definite date of expiration, and the work shall be completed in the time allowed on the permit and in the manner as therein described. Any permit shall be void if its terms are violated.

D. Notice of Completion: Notice of completion shall be given within five (5) working days to the Director of Public Works for his inspection. (Ord. 867, 7-12-94)

7-4-3: REGULATIONS:

A. Improper Planting: Whenever any tree shall be planted or set out in conflict with the provisions of this Section, it shall be lawful for the Director of Public Works to remove or cause removal of the same, and the exact cost thereof shall be assessed to the owner as provided by law in the case of assessments.

B. Removal, Replanting, and Replacement:

1. Whenever it is necessary to remove a tree or trees from a treebank in connection with the replacement of a sidewalk, or the paving or widening of the portion of a street or highway used for vehicular traffic, the Municipality shall replant such trees or replace them. Provided that conditions prevent planting on treebanks, this requirement will be satisfied if any equivalent number of trees of the same size and species as provided for in the arboricultural specifications are planted in an attractive manner on the adjoining property if conditions allow.

2. No person or property owner shall remove a tree from the treebank for the purpose of construction, or for any other reason, without first filing an application and procuring a permit from the City Clerk and without replacing the removed tree or trees in accordance with the adopted arboricultural specifications. Such replacement shall meet the standards of size, species, and placement as provided for in a permit issued by the City Clerk. The person or property owner shall bear the cost of removal and replacement of all trees removed.

3. All stumps of street and park trees shall be removed below the surface of the ground so that the top of the stump shall not project above the surface of the ground.

C. Obstruction; Trees Pruned:

1. Owner Responsibility: It shall be the duty of any person or persons owning or occupying real property bordering on any street upon which property there may be trees, to prune such trees in such manner that they will not obstruct or shade the street lights, obstruct the passage of pedestrians on sidewalks, obstruct vision of traffic signs, or obstruct view of any street or ally intersection. The minimum clearance of any overhanging portion thereof shall be ten feet (10') over sidewalks, and fourteen feet (14') over all streets.

2. Notice to Prune: Should any person or persons owning real property bordering on any street fail to prune trees as hereinabove provided, the Director of Public Works shall order such person or persons, within ten (10) working days after receipt of written notice, to so prune such trees.

3. Order Required: The order required herein shall be served by mailing a copy of the order to the last known address of the property owner, by certified mail.

4. Failure to Comply: When a person to whom an order is directed shall fail to comply within the specified time, it shall be lawful for the Municipality to prune such trees, and the exact cost thereof shall be assessed to the owner as provided by law in the case of special assessments.

D. Abuse or Mutilation of Public Trees:

1. Unless specifically authorized by the Director of Public Works, no person shall intentionally damage, cut, carve, transplant, top, or remove any tree; attach any rope, wire, nails, advertising posters, or other contrivance to any tree; allow any gaseous liquid or solid substance which is harmful to such trees to come in contact with them; or set fire or permit any fire to burn when such fire or the heat thereof will injure any portion of any tree. Trees severely damaged by storms or other obstructions, where pruning techniques other than topping are impractical, may be exempted from this Chapter by the determination of the Director of Public Works.

E. Protection of Trees:

1. All trees on any street or other publicly owned property near any excavation or construction of any building, structure, or street work, shall be guarded with a good substantial fence, frame, or box not less than four feet (4') high and eight feet (8') square, or at a distance in feet from the tree equal to the diameter of the trunk in inches breast diameter height, whichever is greater, and all vehicles, construction equipment, building materials, dirt, or other debris shall be kept outside the barrier.

2. No person shall excavate any ditches, tunnels, trenches, or lay any drive within a radius of ten feet (10') from any public tree without first obtaining a written permit from the Director of Public Works.

F. Public Utility Companies:

1. Public utility companies shall notify the Director of Public Works prior to pruning any tree located on City-owned property for the purpose of maintaining safe line clearance and shall carry out all such work in accordance with accepted arboricultural standards. If accepted arboricultural standards are not followed, the Director of Public Works will immediately file a formal complaint with the State utility regulatory agency.

G. Placing Materials on Public Property:

1. No person shall deposit, place, store, or maintain upon any public place of the Municipality, any stone, brick, sand, concrete or other materials which may impede the free passage of water, air, or fertilizer to the roots of any tree growing therein, except by written permit of the Director of Public Works. (Ord. 867, 7-12-94)

7-4-4: PUBLIC NUISANCES:

A. Definition: The following are hereby declared public nuisances under this Chapter:

1. Any dead or dying tree, shrub, or other plant, whether located on City-owned property or on private property;
2. Any otherwise healthy tree, shrub, or other plant, whether located on City-owned property or on private property which harbors insects or diseases which reasonably may be expected to injure or harm any tree, shrub, or other plant;
3. Any tree, shrub, or other plant or portion thereof whether located on City-owned property or on private property which by reason of location or condition constitutes an imminent danger to the health, safety, or welfare of the general public;
4. Any tree, shrub, or other plant or portion thereof whether located on City-owned property or on private property which obstructs the free passage of pedestrian or vehicular traffic or which obstructs a street light;
5. Any tree, shrub, or other plant or portion thereof whether located on City-owned property or on private property which dangerously obstructs the view in the "sight-distance triangle" as such may be determined by the City Engineer pursuant to this Chapter.

B. Right to Inspect:

1. The Tree Board may recommend to the Director of Public Works the removal of any tree or part thereof which is in an unsafe condition or which by reason of its nature is injurious to sewers, electric lines, gas lines, water lines, or other public improvements, or is infested with any injurious fungus, insect, or other pest. The officers, agents, servants, and employees of the City have the authority to enter onto private property whereupon there is located a tree, shrub, or plant part that is suspected to be a public nuisance.

C. Abatement: The following are the prescribed means of abating public nuisances under this Chapter:

1. Any public nuisance under this Chapter which is located on City-owned property shall be pruned, removed, or otherwise treated by the Director of Public Works in whatever fashion is required to cause the abatement of the nuisance within ten (10) days after its discovery;
2. Any public nuisance under this Chapter which is located on private-owned property shall be pruned, removed, or otherwise treated by the property owner or his/her agent in whatever fashion is required to cause the abatement of the nuisance. No property

owner may be found guilty of violating this provision unless and until the following requirements of notice have been satisfied:

- a. The Director of Public Works shall cause a written notice to be personally serviced or sent by registered mail to the person to whom was sent the tax bill for the general taxes for the last preceding year;
- b. Such notice shall describe the kind of tree, shrub, or other plant or plant part which has been declared to be a public nuisance; its location on the property; the reason for declaring it a nuisance;
- c. Such notice shall describe by legal description, or by street address, the premises;
- d. Such notice shall state the actions that the property owner may undertake to abate the nuisance;
- e. Such notice shall require the elimination of the nuisance no less than ten (10) days after the notice is delivered or sent to the person to whom was sent the tax bill for the general taxes for the last preceding year;
- f. Such notice shall cite this Chapter.

In the event that the nuisance is not abated by the date specified in the notice, the Director of Public Works is authorized to cause the abatement of said nuisance. The reasonable cost of such abatement shall be filed as a lien against the property on which the nuisance was located. In addition, the property owner of the property upon which the nuisance is located shall be subject to prosecution under Section 7-4-7 of this Chapter. Nothing in this provision shall be construed to exempt any person from the requirements of obtaining permits under Section 7-4-2 of this Chapter.

3. The Director of Public Works is empowered to cause the immediate abatement of any public nuisance provided that the nuisance is determined by the Director of Public Works to be an immediate threat to any person or property.
4. The Director of Public Works is hereby empowered to seek from any court of competent jurisdiction an order directing immediate abatement of any public nuisance.
5. This Section is enforceable under Title 4, Chapter 1 of City Code of the City of Genoa. (Ord. 867, 7-12-94)

7-4-5: ARBORIST LICENSE AND BOND:

It shall be unlawful for any person to engage in the business or occupation of pruning, treating, or removing street or park trees within the City without first applying for and

procuring a license. The license fee shall be twenty five dollars (\$25.00) annually in advance; provided, however, that no license shall be required of any public service company including electric utilities and their agents or contractors or City employees doing such work in pursuit of their public service endeavors. Before any license shall be issued, each applicant shall first file evidence of possession of liability insurance in the minimum amounts of three hundred thousand dollars (\$300,000.00) for bodily injury and one hundred thousand dollars (\$100,000.00) property damage indemnifying the City or any person injured or damaged resulting from the pursuit of such endeavors as herein described. (Ord. 867, 7-12-94)

7-4-6: INTERFERENCE WITH DIRECTOR OF PUBLIC WORKS:

No person shall unreasonably hinder, prevent, delay, or interfere with the Director of Public Works or his/her agents while engaged in the execution or enforcement of this Chapter. (Ord. 867, 7-12-94)

7-4-7: VIOLATION AND PENALTY:

Any person who violates any provision of this Chapter or who fails to comply with any notice issued pursuant to the provisions of this Chapter, upon being found guilty of violation, shall be subject to a fine of not less than twenty five dollars (\$25.00) and not more than five hundred dollars (\$500.00) for each separate offense; each day during which any violation of the provisions of this Chapter shall occur or continue shall be a separate offense. If, as the result of a violation of any provision of this Chapter, the injury, mutilation, or death of a tree, shrub, or other plant located on City-owned property is caused, the cost of repair or replacement of such tree, shrub, or other plant shall be borne by the party in violation. The replacement value of trees and shrubs shall be determined in accordance with the latest revision of "Valuation of Landscape Tree, Shrubs and Other Plants", as published by the International Society of Arboriculture. (Ord. 867, 7-12-94)

CHAPTER 5

TELECOMMUNICATIONS INFRASTRUCTURE MAINTENANCE FEE

SECTION:

- 7-5-1: Definitions**
- 7-5-2: Registration of Telecommunications Providers**
- 7-5-3: Municipal Telecommunications Infrastructure Maintenance Fee**

- 7-5-4: Collection, Enforcement, and Administration of Telecommunications Infrastructure Maintenance Fees**
- 7-5-5: Compliance with Other Laws**
- 7-5-6: Existing Franchises and Licenses**
- 7-5-7: Penalties**
- 7-5-8: Enforcement**
- 7-5-9: Severability**
- 7-5-10: Conflict**
- 7-5-11: Waiver and Fee Implementation**

7-5-1: DEFINITIONS:

As used in this Chapter, the following terms shall have the following meanings:

GROSS CHARGES: The amount paid to a telecommunications retailer for the act or privilege of originating or receiving telecommunications within the City, and for all services rendered in connection therewith, valued in money whether paid in money or otherwise, including cash, credits, services, and property of every kind or nature, and shall be determined without any deduction on account of the cost of such telecommunications, the cost of the materials used, labor or service costs, or any other expense whatsoever. In case credit is extended, the amount thereof shall be included only as and when paid. "Gross charges" for private line service shall include charges imposed at each channel point within the City, charges for the channel mileage between each channel point within the City, and charges for that portion of the interstate interoffice channel provided within the City. However, "gross charges" shall not include:

A. Any amounts added to a purchaser's bill because of a charge made under: 1) the fee imposed by this Chapter, 2) additional charges added to a purchaser's bill under section 9-221 or 9-222 of the Public Utilities Act, 3) amounts collected under 65 Illinois Compiled Statutes 5/8-11-17, 4) the tax imposed by the Telecommunications Excise Tax Act, 5) 911 surcharges, or 6) the tax imposed by section 4251 of the Internal Revenue Code;

B. Charges for a sent collect telecommunication received outside the City;

C. Charges for leased time on equipment or charges for the storage of data or information or subsequent retrieval or the processing of data or information intended to change its form or content. Such equipment includes, but is not limited to, the use of calculators, computers, data processing equipment, tabulating equipment, or accounting equipment and also includes the usage of computers under a time-sharing agreement;

D. Charges for customer equipment, including such equipment that is leased or rented by the customer from any source, wherein such charges are disaggregated and separately identified from other charges;

E. Charges to business enterprises certified under section 9-222.1 of the Public Utilities Act to the extent of such exemption and during the period of time specified by the City;

F. Charges for telecommunications and all services and equipment provided in connection therewith between a parent corporation and its wholly owned subsidiaries or between wholly owned subsidiaries, and only to the extent that the charges between the parent corporation and wholly owned subsidiaries or between wholly owned subsidiaries represent expense allocation between the corporations and not the generation of profit other than a regulatory required profit for the corporation rendering such services;

G. Bad debts ("bad debt" means any portion of a debt that is related to a sale at retail for which gross charges are not otherwise deductible or excludable that has become worthless or uncollectible, as determined under applicable Federal income tax standards; if the portion of the debt deemed to be bad is subsequently paid, the retailer shall report and pay the tax on that portion during the reporting period in which the payment is made);

H. Charges paid by inserting coins in coin-operated telecommunications devices; or

I. Charges for telecommunications and all services and equipment provided to the City.

PUBLIC RIGHT OF WAY: Any Municipal street, alley, water or public right of way dedicated or commonly used for utility purposes, including utility easements wherein the City has acquired the right and authority to locate or permit the location of utilities consistent with telecommunications facilities. "Public right of way" shall not include any real or personal City property that is not specifically described in the previous sentence and shall not include City buildings and other structures or improvements, regardless of whether they are situated in the public right of way.

RETAILER MAINTAINING A PLACE OF BUSINESS IN THIS STATE (Or Any Like Term): Means and includes any retailer having or maintaining within the State of Illinois, directly or by a subsidiary, an office, distribution facilities, transmission facilities, sales office, warehouse, or other place of business, or any agent or other representative operating within this State under the authority of the retailer or its subsidiary, irrespective of whether such place of business or agent or other representative is located here permanently or temporarily, or whether such retailer or subsidiary is licensed to do business in this State.

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.

SERVICE ADDRESS: The location of telecommunications equipment from which telecommunications services are originated or at which telecommunications services are received. If this is not a defined location, as in the case of wireless telecommunications, paging systems, maritime systems, air-to-ground systems, and the like, "service address" shall mean the location of the customer's primary use of the telecommunications equipment as defined by the location in Illinois where bills are sent.

TELECOMMUNICATIONS: 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 services, 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 hereinafter defined. "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 USC section 521 and following) as now or hereafter amended or cable or other programming services subject to an open video system fee payable to the City through an open video system as defined in the Rules of the Federal Communications Commission (47 CDF 76.1550 and following) as now or hereafter amended.

TELECOMMUNICATIONS PROVIDER: A. Any telecommunications retailer; and

B. Any person that is not a telecommunications retailer that installs, owns, operates or controls equipment in the public right of way that is used or designed to be used to transmit telecommunications in any form.

TELECOMMUNICATIONS RETAILER OR RETAILER OR CARRIER: Means and includes every person engaged in the business of making sales of telecommunications at retail as defined in this Section. The City may, in its discretion, upon application, authorize the collection of the fee hereby imposed by any retailer not maintaining a place of business within this State, who, to the satisfaction of the City, furnishes adequate security to ensure collection and payment of the fee. When so authorized, it shall be the duty of such retailer to pay the fee upon all of the gross charges for telecommunications in the same manner and subject to the same requirements as a retailer maintaining a place of business within the City.

WIRELESS TELECOMMUNICATIONS: Includes cellular mobile telephone services, personal wireless services as defined in section 704(C) of the Telecommunications Act of 1996 (Public Law No. 104-104), 42 USC section 332(c)(7), as now or hereafter amended, including all commercial mobile radio services, and paging services. (Ord. 97-32-1, 11-18-1997)

7-5-2: REGISTRATION OF TELECOMMUNICATIONS PROVIDERS:

A. Every "telecommunications provider" as defined by this Chapter shall register with the City within thirty (30) days after the effective date hereof or becoming a telecommunications provider, whichever is later, on a form to be provided by the City, provided, however, that any telecommunications retailer that has filed a return pursuant to subsection 7-5-4C of this Chapter shall be deemed to have registered in accordance with this Section.

B. Every telecommunications provider who has registered with the City pursuant to subsection A of this Section has an affirmative duty to submit an amended registration form or current return as required by subsection 7-5-4C of this Chapter, as the case may be, to the City within thirty (30) days from the date of the occurrence of any changes in the information provided by the telecommunications provider in the registration form or most recent return on file with the City. (Ord. 97-32-1, 11-18-1997)

7-5-3: MUNICIPAL TELECOMMUNICATIONS INFRASTRUCTURE MAINTENANCE FEE:

A. A City telecommunications infrastructure maintenance fee is hereby imposed upon all telecommunications retailers in the amount of one percent (1%) of all gross charges charged by the telecommunications retailer to service addresses within the City for telecommunications originating or received in the City.

B. Upon the effective date of the infrastructure maintenance fee authorized in this Chapter, the City infrastructure maintenance fee authorized hereunder shall be the only fee or compensation for the use of all public rights of way within the City by telecommunications retailers. Imposition of the infrastructure maintenance fee provided under this Chapter does not, however, serve as a limitation on the levying of any taxes or imposition of any fees otherwise authorized by law.

C. The City telecommunications infrastructure maintenance fee authorized by this Section shall be collected, enforced, and administered as set forth in Section 7-5-4 of this Chapter. (Ord. 97-32-1, 11-18-1997)

7-5-4: COLLECTION, ENFORCEMENT, AND ADMINISTRATION OF TELECOMMUNICATIONS INFRASTRUCTURE MAINTENANCE FEES:

A. A telecommunications retailer shall charge to and collect from each customer an additional charge in an amount equal to the City infrastructure maintenance fee attributable to that customer's service address.

B. Unless otherwise approved by the City the infrastructure maintenance fee shall be remitted by the telecommunications retailer to the City not later than the last day of the month subsequent to the month in which a bill is issued to the customer; provided, however, that the telecommunications retailer may retain an amount not to exceed two percent (2%) of the City infrastructure maintenance fee collected by it to reimburse itself for expenses incurred in accounting for and remitting the fee.

C. Remittance of the Municipal infrastructure fee to the City shall be accompanied by a return, in a form to be prescribed by the City, which shall contain such information as the City may reasonably require.

D. Any infrastructure maintenance fee required to be collected pursuant to this Chapter and any such infrastructure maintenance fee collected by such telecommunications retailer shall constitute a debt owed by the telecommunications retailer to the City. The charge imposed under subsection A of this Section by the telecommunications retailer pursuant to this Chapter shall constitute a debt of the purchaser to the telecommunications retailer who provides such services until paid and, if unpaid, is recoverable at law in the same manner as the original charge for such services.

E. If it shall appear that an amount of infrastructure maintenance fee has been paid that was not due under the provisions of this Chapter, whether as a result of a mistake of fact or an error of law, then such amount shall be credited against any infrastructure maintenance fee due, or to become due, under this Chapter, from the telecommunications retailer who made the erroneous payment; provided, however, the City may request, and telecommunications retailer shall provide, written substantiation for such credit. However, no claim for such credit may be made more than three (3) years after the date of the erroneous payment unless: 1) the credit is used only to offset a claim of underpayment made by the City within the applicable statutory period of limitations, and 2) the credit derives from an overpayment made by the same telecommunications retailer during the applicable statutory period of limitations.

F. Amounts paid under this Chapter by telecommunications retailers shall not be included in the tax base under any of the following acts as described immediately below:

1. "Gross charges" for purposes of the Telecommunications Excise Tax Act;

2. "Gross receipts" for purposes of the municipal utility tax as prescribed in 65 Illinois Compiled Statutes 5/8-11-2;

3. "Gross charges" for purposes of the municipal telecommunications tax as prescribed in 65 Illinois Compiled Statutes 5/8-11-17;

4. "Gross revenue" for purposes of the tax on annual gross revenue of public utilities prescribed in section 2-202 of the Public Utilities Act.

G. The City shall have the right, in its discretion, to audit the books and records of all telecommunications retailers subject to this Chapter to determine whether the telecommunications retailer has properly accounted to the City for the City infrastructure maintenance fee. Any underpayment of the amount of the City infrastructure maintenance fee due to the City by the telecommunications retailer shall be paid to the City plus five percent (5%) of the total amount of the underpayment determined in an audit, plus any costs incurred by the City in conducting the audit, in an amount not to exceed five percent (5%) of the total amount of the underpayment determined in an audit. Said sum shall be paid to the City within twenty one (21) days after the date of issuance of an invoice for same.

H. The City, or its designee, may promulgate such further or additional regulations concerning the administration and enforcement of this Chapter, consistent with its provisions, as may be required from time to time and shall notify all telecommunications retailers that are registered pursuant to Section 7-5-2 of this Chapter of such regulations. (Ord. 97-32-1, 11-18-1997)

7-5-5: COMPLIANCE WITH OTHER LAWS:

Nothing in this Chapter shall excuse any person or entity from obligations imposed under any law, including, but not limited to:

A. Generally applicable taxes; and

B. Standards for construction on, over, under, or within, use of or repair of the public rights of way, including standards relating to freestanding towers and other structures upon the public rights of way, as provided; and

C. Any liability imposed for the failure to comply with such generally applicable taxes or standards governing construction on, over, under, or within, use of or repair of the public rights of way; and

D. Compliance with any ordinance or provision of this Code concerning uses or structures not located on, over, or within the right of way. (Ord. 97-32-1, 11-18-1997)

7-5-6: EXISTING FRANCHISES AND LICENSES:

Any franchise, license, or similar agreements between telecommunications retailers and the City entered into before the effective date hereof regarding the use of public rights of way shall remain valid according to and for their stated terms except for any fees, charges or other compensation to the extent waived. (Ord. 97-32-1, 11-18-1997)

7-5-7: PENALTIES:

Any telecommunications provider who violates, disobeys, omits, neglects or refuses to comply with any of the provisions of this Chapter shall be subject to fine in accordance with the general penalty provisions of this Code. (Ord. 97-32-1, 11-18-1997)

7-5-8: ENFORCEMENT:

Nothing in this Chapter shall be construed as limiting any additional or further remedies that the City may have for enforcement of this Chapter. (Ord. 97-32-1, 11-18-1997)

7-5-9: SEVERABILITY:

If any section, subsection, sentence, clause, phrase or portion of this Chapter 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. (Ord. 97-32-1, 11-18-1997)

7-5-10: CONFLICT:

This Chapter supersedes all chapters or parts of chapters adopted prior hereto which are in conflict herewith, to the extent of such conflict. (Ord. 97-32-1, 11-18-1997)

7-5-11: WAIVER AND FEE IMPLEMENTATION:

A. The City hereby waives all fees, charges, and other compensation that may accrue, after the effective date of the waiver, to the City by a telecommunications retailer pursuant to any existing City franchise, license, or similar agreement with a telecommunications retailer during the time the City imposes the telecommunications infrastructure maintenance fee. This waiver shall only be effective during the time the infrastructure maintenance fee provided for in this Chapter is subject to being lawfully imposed on the telecommunications retailer and collected by the telecommunications retailer from the customer.

B. The City Clerk shall send a notice of the waiver by certified mail/return receipt requested to each telecommunications retailer with whom the City has a franchise.

C. The City infrastructure maintenance fee provided for in this Chapter shall become effective and imposed on the first day of the month not less than ninety (90) days after the City provides written notice by certified mail to each telecommunications retailer with whom the City has an existing franchise, license, or similar agreement that the City waives all compensation under such existing franchise, license, or similar agreement during such time as the fee is subject to being lawfully imposed and collected by the retailer and remitted to the City. The infrastructure maintenance fee shall apply to gross charges billed on or after the effective date as established in the preceding sentence. (Ord. 97-32-1, 11-18-1997)