

TITLE 6

PUBLIC WAYS AND PROPERTY

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CHAPTER 1

SIDEWALK CONSTRUCTION

SECTION:

- 6-1-1: Compliance With Chapter And State Law
- 6-1-2: Construction Specifications
- 6-1-3: Quality Of Work

6-1-1: **COMPLIANCE WITH CHAPTER AND STATE LAW:**

- A. Compliance With Chapter: All sidewalks hereafter constructed within the village, unless otherwise especially provided by ordinance, shall be constructed in accordance with the provisions of this chapter and not otherwise. (1995 Code ch. 15 § 1)
- B. Compliance With State Law: In the construction of sidewalks in the village, in addition to the mode authorized by law, either general or special, the village may proceed under and in accordance with the Illinois municipal code. (1995 Code ch. 15 § 3; amd. 2009 Code)

6-1-2: **CONSTRUCTION SPECIFICATIONS:**

- A. General Requirements:
 - 1. All proposed locations of sidewalks will be graded to a proper level and filled with gravel where necessary.
 - 2. In residential districts, the sidewalks shall be forty eight inches (48") wide.
 - 3. All sidewalks shall contain at least four inches (4") of concrete with two (2) continuous three-eighths inch ($\frac{3}{8}$ ") reinforcement rods placed two inches (2") deep, eight inches (8") from each edge of the sidewalk.

- B. Concrete: The concrete must contain five and one-half ($5\frac{1}{2}$) bags of Portland cement per cubic yard of concrete. The sand and gravel used must meet the approval of the village.
- C. Finish: The wearing surface must be troweled to a smooth finish. The side shall be edged and troweled smooth with the surface.
- D. Joints: The sidewalk shall be properly cut along the joints into blocks as nearly uniform in size as practicable. (1995 Code ch. 15 § 2)

6-1-3: **QUALITY OF WORK:** All work shall be done in a workmanlike manner. (1995 Code ch. 15 § 2)

CHAPTER 2

TREES AND SHRUBS

SECTION:

- 6-2-1: Permits To Plant And Remove
- 6-2-2: Utility Wires And Poles
- 6-2-3: Protection During Excavations
- 6-2-4: Prohibited Acts
- 6-2-5: Tree Board
- 6-2-6: Penalty

6-2-1: **PERMITS TO PLANT AND REMOVE:**

- A. Planting Permit: It shall be unlawful to plant any tree or shrub in any public street or parkway or other public place without having first secured a permit therefor. Applications for such permits shall be made to the village clerk and shall be referred by him to the mayor and village board of trustees. All trees and shrubs so planted shall be placed subject to the direction and approval of the committee on streets and alleys. (1995 Code ch. 16, art. I § 1)
- B. Removal Permit: It shall be unlawful to remove or cut down any tree or shrub in any street, parkway or other public place without having first secured a permit therefor. Applications for such permits shall be made to the village clerk and shall be referred by him to the mayor and board of trustees for approval before permission shall be granted. (1995 Code ch. 16, art. I § 2)

6-2-2: **UTILITY WIRES AND POLES:** Any person or company given the right to maintain poles and wires in the streets, alleys or other public places in the village shall, in the absence of provision in the franchise concerning the subject, keep such wires and poles free from and away from any trees or shrubs in such places so far as may be possible and shall keep all such trees and shrubs properly trimmed subject to the supervision of the superintendent of public works so that no injury shall be done to the poles or wires or shrubs and trees by contact. (1995 Code ch. 16, art. I § 5)

6-2-3: **PROTECTION DURING EXCAVATIONS:** In making excavations in streets or other public places, proper care shall be taken to avoid injury to the roots of any tree or shrub wherever possible. (1995 Code ch. 16, art. I § 6)

6-2-4: **PROHIBITED ACTS:**

- A. Injury: It shall be unlawful to injure any tree or shrub planted in any public place. (1995 Code ch. 16, art. I § 3)
- B. Posting Advertisements Or Notices: It shall be unlawful to attach any sign, advertisement or notice to any tree or shrub in any street, parkway or public place. (1995 Code ch. 16, art. I § 4)
- C. Attaching Wires Or Ropes: It shall be unlawful to attach any wire or other rope to any tree in any public place without permission of the mayor and board of trustees. (1995 Code ch. 16, art. I § 5)

6-2-5: **TREE BOARD:**

A. Definitions:

STREET TREES: "Street trees" are herein defined as trees, shrubs, bushes, and all other woody vegetation on land lying between property lines on either side of all streets, avenues, or ways within the Village.

PARK TREES: "Park trees" are herein defined as trees, shrubs, bushes, and all other woody vegetation in public parks having individual names, and all areas owned by the Village, or to which the public has free access as a park.

- B. Creation and Establishment of a Village Tree Board: There is hereby created and established a Village Tree Board for the Village of Shabbona, State of Illinois, which shall consist of seven members, citizens and residents of this Village, who shall be appointed by the Mayor with the approval of the Board of Trustees. Of said members, a member will be elected to the office of Chairman, Vice Chairman and Secretary of the Village Tree Board. The Village of Shabbona shall reimburse the Village Tree Board for any supplies purchased by the Village Tree Board.

- C. Term of Office: The term of the five persons to be appointed by the Mayor shall be three years except that the term of two of the members appointed to the first board shall be for only one year and the term of two members of the first board shall be for two years. In the event that a vacancy shall occur during the term of any member, his or her successor shall be appointed for the unexpired portion of the term.
- D. Compensation: Members of the Village Tree Board shall serve without compensation.
- E. Duties and Responsibilities: It shall be the responsibility of the Village Tree Board to study, investigate, counsel and develop and/or update annually, and administer a written plan for the care, preservation, pruning, planting, replanting, removal or disposition of trees and shrubs in parks, along streets and in other public areas. Such plan will be presented annually to the Village Board of Trustees and upon their acceptance and approval shall constitute the official comprehensive village tree plan for the Village of Shabbona, State of Illinois. The Village Tree Board, when requested by the Village Board of Trustees, shall consider, investigate, make finding, report, and recommend upon any special matter of question coming within the scope of its work.
- F. Operation: The Village Tree Board shall choose its own officers, make its own rules and regulations, and keep a journal of its proceedings. A majority of the members shall be a quorum for the transaction of business.
- G. Street Tree Species to be Planted: The following list constitutes the official Street Tree species for Shabbona, Illinois.

No species other than those included in this list may be planted as Street Trees without written permission of the Village Tree Board.

SMALL TREES	MEDIUM TREES	LARGE TREES
Miyabe Maple Apple Serviceberry Allegheny Serviceberry American Hornbeam Eastern Redbud Corneliancherry Dogwood Thornless Cockspur Hawthorn Red Jewel Crabapple Sargent's Crabapple Zumi Crabapple China Snow® Peking Lilac Ivory Silk Japanese Tree Lilac (all good under utility wires)	River Birch European Hornbeam Turkish Hazelnut Kentucky Coffeetree Ironwood American Sentry Linden Sterling Silver™ Silver Linden Accolade Elm Prospector Wilson's Elm Commendation Elm Green Mountain® Sugar Maple * Ohio Buckeye * Ginkgo, Male only * Moraine Sweetgum * Swamp White Oak * Village Green Japanese Zelkova * * medium to large	Northern Catalpa Hackberry Chinkapin Oak Regal Elm Triumph™ Elm Northern Red Oak Tulip Tree * Beech * * can get very large

- H. Spacing: The spacing of Street Trees will be in accordance with the three species size classes listed in subsection G of this Ordinance, and no trees may be planted closer together than the following: Small Trees, twenty-five feet (25'); Medium Trees, thirty-five feet (35'); and Large Trees, forty-five feet (45'); except in special plantings designed or approved by a landscape architect.
- I. Distance from Curb and Sidewalk: The distance trees may be planted from curbs or curb lines and sidewalks will be in accordance with the three species size classes listed in subsection G of this Ordinance, and no trees may be planted closer to any curb or sidewalk than the following: Small Trees, two feet (2'); Medium Trees, three feet (3'); and Large Trees, four feet (4').
- J. Distance from Street Corners and Fireplugs: No Street Tree shall be planted closer than twenty feet (20') of any street corner, measured from the point of nearest intersecting curbs or curb lines. No Street Tree shall be planted closer than ten feet (10') of any fireplug.
- K. Utilities: No Street Trees other than those species listed as Small Trees

in subsection G of this Ordinance may be planted under or within ten lateral feet (10') of any overhead utility wire, or over or within five lateral feet (5') of any underground water line, sewer line, transmission line, or other utility.

- L. **Public Tree Care:** The Village shall have the right to plant, prune, maintain, and remove trees, plants, and shrubs within the lines of all streets, alleys, avenues, lanes, squares, and public grounds, as may be necessary to ensure public safety or to preserve or enhance the symmetry and beauty of such public grounds.

The Village Tree Board may remove or cause or order to be removed, any tree or part thereof which is in an unsafe condition or which by reason of its nature is injurious to sewers, electric power lines, gas lines, water lines, or other public improvements, or is affected with any injurious fungus, insect, or other pest. This section does not prohibit the planting of Street Trees by adjacent property owners providing that the selection and location of said trees is in accordance with subsections G through K of this Ordinance.

- M. **Tree Topping:** It shall be unlawful as a normal practice for any person, firm, or Village department to top any Street Tree, Park Tree, or other tree on public property. Topping is defined as the severe cutting back of limbs to stubs 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. Trees severely damaged by storms or other causes, or certain trees under utility wires or other obstructions where other pruning practices are impractical may be exempted from this Ordinance at the determination of the Village Tree Board.
- N. **Pruning, Corner Clearance:** Every owner of any tree overhanging any street or right-of-way within the Village shall prune the branches so that such branches shall not obstruct the light from any street lamp or obstruct the view of any street intersection and so that there shall be a clear space of fourteen feet (14') above the surface of the street or sidewalk. Said owners shall remove all dead, diseased or dangerous trees, or broken or decayed limbs, which constitute a menace to the safety of the public. The Village shall have the right to prune any tree or shrub on private property when it interferes with the proper spread of light along the street from a street light or interferes with visibility of any traffic control device or sign.

- O. **Dead or Diseased Tree Removal on Private Property:** The Village shall have the right to cause the removal of any dead or diseased trees on private property within the Village, when such trees constitute a hazard to life and property, or harbor insects or disease which constitute a potential threat to other trees within the Village. The Village Tree Board will notify in writing the owners of such trees. Removal shall be done by said owners at their own expense within sixty (60) days after the date of service of notice. In the event of failure of owners to comply with such provisions, the Village shall have the authority to remove such trees and charge the cost of removal to the owner and such charge may stand as a lien against the owner's property.
- P. **Removal of Stumps:** 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.
- Q. **Interference with Village Tree Board:** It shall be unlawful for any person to prevent, delay, or interfere with the Village Tree Board, or any of its agents, while engaging in and about the planting, cultivating, mulching, pruning, spraying, or removing of any Street Trees, Park Trees, or trees on private grounds, as authorized in this Ordinance.
- R. **Arborists License and Bond:** It shall be unlawful for any person or firm to engage in the business or occupation of pruning, treating, or removing street or park trees within the Village without first applying for and procuring a license. No license shall be required of any public service company or Village employee doing such work in the 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 \$500,000 for Workman's Compensation insurance, \$1,000,000 for bodily injury, and \$1,000,000 for property damage indemnifying the Village or any person injured or damaged resulting from the pursuit of such endeavors as herein described.
- S. **Review by Village Board of Trustees:** The Village Board of Trustees shall have the right to review the conduct, acts, and decisions of the Village Tree Board. Any person may appeal from any ruling or order of the Village Tree Board to the Village Board of Trustees who may hear the matter and make final decision. (Ord. 2015-03-23(b), 3-23-2015)

6-2-6: **PENALTY:** Any person, firm or corporation violating any provision of this chapter shall be fined as provided in section 1-4-1 of this code for each offense, and a separate offense shall be deemed committed on each day during or on which a violation occurs or continues. (1995 Code ch. 16, art. I § 7; amd. Ord. 2001-3, 7-23-2001; 2009 Code; amd. Ord. 2015-03-23(b), 3-23-2015)

CHAPTER 3

RESPONSIBILITY FOR SNOW REMOVAL

SECTION:

- 6-3-1: Property Owner Responsibility for Snow and Ice Removal
 6-3-2: Designation of Pedestrian Safety Routes
 6-3-3: Snow and Ice Removal From Pedestrian Safety Routes

6-3-1: PROPERTY OWNER RESPONSIBILITY FOR SNOW AND ICE REMOVAL:

- A. Definitions: The Following definitions shall apply in the interpretation and enforcement of this Section:

PEDESTRIAN SAFETY ROUTES are those sidewalks which serve as principal walkways for school children or serve the Village's commercial zoning districts. (1991 Ord.)

6-3-2: DESIGNATION OF PEDESTRIAN SAFETY ROUTES:
 Pedestrian safety routes shall be along the following routes:

<u>STREET ROUTE</u>	<u>DIRECTION</u>
Navaho from Illini to Nokomis	south side of street
Comanche (Route 30) from Illini to Nokomis	north and south side of street
Comanche (Route 30) Nokomis to Shabbona Road	south side of street
Cherokee from Illini to Shabbona Road	north side of street
Illini from Navaho to Comanche (Route 30)	west side of street
Nokomis from Navaho to Cherokee	west side of street
Shabbona Road from Cherokee (Route 30) to High School Drive	east side of street

(Ord., 2015-10-26(A), 10-26-2015)

6-3-3: SNOW AND ICE REMOVAL FROM PEDESTRIAN SAFETY ROUTES: If the owner, agent or occupant of a lot whose front yard or corner side yard abuts a public sidewalk designated as a Pedestrian Safety Route, fails to effectively remove ice and snow from that sidewalk within thirty-six (36) hours of the onset of a snow event exceeding two (2) inches of snow, sleet or freezing rain, that owner, agent or occupant will be liable for fine penalties and the cost of the summary abatement of snow and ice from the public sidewalk areas adjacent to his property. The Village shall authorize the summary removal of the ice and snow through any available public agency or by contract with private persons and the cost of such abatement shall be charged against the real estate in question and shall be a lien upon such real estate. Alternatively, the village reserves the right to commence a civil action to recover the costs of such abatement. The Village may authorize a Village official to issue property maintenance fines to their property owners, agents or occupants, for the willful disregard of their responsibility to maintain public sidewalk areas free of ice and snow. A record of such fines, including the name of the property owners and property locations, shall be kept on file by the Village and included in the monthly code enforcement report to the City Council. Fines shall be in the discretion of the Village, not less than twenty-five dollars (\$25.00) nor more than one hundred dollars(\$100.00) for each such offense and every day said condition is allowed to exist shall be deemed a separate offense. (1991 Ord.)

CHAPTER 4

REGULATION OF AND APPLICATION FOR SMALL WIRELESS FACILITIES

SECTION:

- 6-4-1: Purpose and Scope
- 6-4-2: Definitions
- 6-4-3: Regulation of Small Wireless Facilities
- 6-4-4: Dispute Resolution
- 6-5-5: Indemnification
- 6-5-6: Insurance

6-4-1: **PURPOSE AND SCOPE:**

- A. Purpose: The purpose of this Ordinance is to establish regulations, standards and procedures for the siting and collocation of small wireless facilities on rights-of-way within the Village's jurisdiction, or outside the rights-of-way on property zoned by the Village exclusively for commercial or industrial use, in a manner that is consistent with the Act.
- B. Conflicts with Other Ordinances: This Ordinance supersedes all Ordinances or parts of Ordinances adopted prior hereto that are in conflict herewith, to the extent of such conflict.
- C. Conflicts with State and Federal Laws: In the event that applicable federal or State laws or regulations conflict with the requirements of this Ordinance, the wireless provider shall comply with the requirements of this Ordinance to the maximum extent possible without violating federal or State laws or regulations.

6-4-2: DEFINITIONS:

For the purposes of this Chapter, the following terms shall have the following meanings:

ANTENNA:	Communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of wireless services.
APPLICABLE CODES:	Uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or local amendments to those codes, including the National Electric Safety Code.
APPLICANT:	Any person who submits an application and is a wireless provider.
APPLICATION:	A request submitted by an applicant to the Village for a permit to collocate small wireless facilities, and a request that includes the installation of a new utility pole for such collocation, as well as any applicable fee for the review of such application.
COLLOCATE or COLLOCATION:	To install, mount, maintain, modify, operate, or replace wireless facilities on or adjacent to a wireless support structure or utility pole.
COMMUNICATIONS SERVICES:	Cable service, as defined in 47 U.S.C. 522(6), as amended; information service, as defined in 47 U.S.C. 153(24), as amended; telecommunications service, as defined in 47 U.S.C. 153(53), as amended; mobile service, as defined in 47 U.S.C. 153(53), as amended; or wireless service other than mobile service.
COMMUNICATIONS SERVICE PROVIDER:	A cable operator, as defined in 47 U.S.C. 522 (5), as amended, a provider of information service, as defined in 47 U.S.C. 153(24), as amended; a telecommunications carrier, as defined in 47 U.S.C. 153(51), as amended; or a wireless provider.

FCC:	The Federal Communications Commission of the United States.
FEE:	A one-time charge.
HISTORIC DISTRICT OR HISTORIC LANDMARK:	A building, property, or site, or group of buildings, properties, or sites that are either (i) listed in the National Register of Historic Places or formally determined eligible for listing by the Keeper of the National Register, the individual who has been delegated the authority by the federal agency to list properties and determine their eligibility for the National Register, in accordance with Section VI.D.1.a.i through Section VI.D.1.a.v of the Nationwide Programmatic Agreement codified at 47 CFR Part 1, Appendix C; or (ii) designated as a locally landmarked building, property, site, or historic district by an ordinance adopted by the Village pursuant to a preservation program that meets the requirements of the Certified Local Government Program of the Illinois State Historic Preservation Office or where such certification of the preservation program by the Illinois State Historic Preservation Office is pending.
LAW:	A federal or State statute, common law, code, rule, regulation, order, or local ordinance or resolution.
MICRO WIRELESS FACILITY:	A small wireless facility that is not larger than 24 inches in length, 15 inches in width, and 12 inches in height and that has an exterior antenna, if any, no longer than 11 inches.
MUNICIPAL UTILITY POLE:	A utility pole owned or operated by the village in public rights-of-way.
PERMIT:	A written authorization required by the Village to perform an action or initiate, continue, or complete a project.
PERSON:	An individual, corporation, limited liability company, partnership, association, trust, or other entity or

	organization.
PUBLIC SAFETY AGENCY:	The functional division of the federal government, the State, a unit of local government, or a special purpose district located in whole or in part within this State, that provides or has authority to provide firefighting, police, ambulance, medical, or other emergency services to respond to and manage emergency incidents.
RATE:	A recurring charge.
RIGHT-OF-WAY:	The area on, below, or above a public roadway, highway, street, public sidewalk, alley, or utility easement dedicated for compatible use. Right-of-way does not include Village-owned aerial lines.
SMALL WIRELESS FACILITY:	A wireless facility that meets both of the following qualifications: (i) each antenna is located inside an enclosure of no more than 6 cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than 6 cubic feet; and (ii) all other wireless equipment attached directly to a utility pole associated with the facility is cumulatively no more than 25 cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meter, concealment elements, telecommunications demarcation box, ground-based enclosures, grounding equipment, power transfer switch, cut-off switch, and vertical cable runs for the connection of power and other services.
UTILITY POLE:	A pole or similar structure that is used in whole or in part by a communications service provider or for electric distribution, lighting, traffic control, or a similar function.
WIRELESS FACILITY:	Equipment at a fixed location that enables wireless communications between user equipment and a

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

**WIRELESS
INFRASTRUCTURE
PROVIDER:**

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

WIRELESS PROVIDER:

A wireless infrastructure provider or a wireless services provider.

WIRELESS SERVICES:

Any services provided to the general public, including a particular class of customers, and made available on a nondiscriminatory basis using licensed or unlicensed spectrum, whether at a fixed location or mobile, provided using wireless facilities.

**WIRELESS SERVICES
PROVIDER:**

A person who provides wireless services.

APPLICABLE CODES:

Uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or local amendments to those codes, including the National Electric Safety Code.

**WIRELESS SUPPORT
STRUCTURE:**

A freestanding structure, such as a monopole; tower, either guyed or self-supporting; billboard; or other existing or proposed structure designed to support or capable of supporting wireless facilities. Wireless support structure does not include a utility pole.

6-4-3: REGULATION OF SMALL WIRELESS FACILITIES:

- A. Permitted Use: Small wireless facilities shall be classified as permitted uses and subject to administrative review, except as provided in Section 6-4-3(C)(9) regarding Height Exceptions or Variances, but not subject to zoning review or approval if they are collocated (i) in rights-of-way in any zoning district, or (ii) outside rights-of-way in property zoned exclusively for commercial or industrial use.
- B. Permit Required: An applicant shall obtain one or more permits from the Village to collocate a small wireless facility. An application shall be received and processed, and permits issued shall be subject to the following conditions and requirements:
 - 1. Application Requirements. A wireless provider shall provide the following information to the Village, together with the Village's Small Cell Facilities Permit Application, as a condition of any permit application to collocate small wireless facilities on a utility pole or wireless support structure:
 - a. Site specific structural integrity and, for a municipal utility pole, make-ready analysis prepared by a structural engineer, as that term is defined in Section 4 of the Structural Engineering Practice Act of 1989;
 - b. The location where each proposed small wireless facility or utility pole would be installed and photographs of the location and its immediate surroundings depicting the utility poles or structures on which each proposed small wireless facility would be mounted or location where utility poles or structures would be installed. This should include a depiction of the completed facility;
 - c.

- d. Specifications and drawings prepared by a structural engineer, as that term is defined in Section 4 of the Structural Engineering Practice Act of 1989, for each proposed small wireless facility covered by the application as it is proposed to be installed;
 - e. The equipment type and model numbers for the antennas and all other wireless equipment associated with the small wireless facility;
 - f. A proposed schedule for the installation and completion of each small wireless facility covered by the application, if approved;
 - g. Certification that the collocation complies with the Collocation Requirements and Conditions contained herein, to the best of the applicant's knowledge; and
 - h. In the event that the proposed small wireless facility is to be attached to an existing pole owned by an entity other than the Village, the wireless provider shall provide legally competent evidence of the consent of the owner of such pole to the proposed collocation.
2. Application Process. The Village shall process applications as follows:
- a. The first completed application shall have priority over applications received by different applicants for collocation on the same utility pole or wireless support structure.
 - b. An application to collocate a small wireless facility on an existing utility pole or wireless support structure, or replacement of an existing utility pole or wireless support structure shall be processed on a nondiscriminatory basis and shall be deemed approved if the Village fails to approve or deny the application within 90 days after the submission of a completed application.

However, if an applicant intends to proceed with the permitted activity on a deemed approved basis, the

applicant shall notify the Village in writing of its intention to invoke the deemed approved remedy no sooner than 75 days after the submission of a completed application.

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

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

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

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

- d. The Village shall deny an application which does not meet the requirements of this Ordinance.

If the Village determines that applicable codes, ordinances, or regulations that concern public safety, or the Collocation Requirements and Conditions contained herein require that the utility pole or wireless support structure be replaced before the requested collocation, approval shall be conditioned on the replacement of the

utility pole or wireless support structure at the cost of the provider.

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

The applicant may cure the deficiencies identified by the Village and resubmit the revised application once within 30 days after notice of denial is sent to the applicant without paying an additional application fee. The Village shall approve or deny the revised application within 30 days after the applicant resubmits the application or it is deemed approved. Failure to resubmit the revised application within 30 days of denial shall require the application to submit a new application with applicable fees, and recommencement of the Village's review period. The applicant must notify the Village in writing of its intention to proceed with the permitted activity on a deemed approved basis, which may be submitted with the revised application.

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

- e. Pole Attachment Agreement. Within 30 days after an approved permit to collocate a small wireless facility on a municipal utility pole, the Village and the applicant shall enter into a Master Pole Attachment Agreement, provided by the Village for the initial collocation on a municipal utility pole by the application. For subsequent approved permits to collocate on a small wireless facility on a municipal utility pole, the Village and the applicant shall enter into a License Supplement of the Master Pole Attachment Agreement.

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

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

4. Tolling. The time period for applications may be further tolled by:
 - a. An express written agreement by both the applicant and the Village; or
 - b. A local, State or federal disaster declaration or similar emergency that causes the delay.

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

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

6. Duration of Permits. The duration of a permit shall be for a period of not less than 5 years, and the permit shall be renewed for equivalent durations unless the Village makes a finding that the small wireless facilities or the new or modified utility pole do not

comply with the applicable Village codes or any provision, condition or requirement contained in this Ordinance.

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

7. Means of Submitting Applications. Applicants shall submit applications, supporting information and notices to the Village by personal delivery at the Village's designated place of business, by regular mail postmarked on the date due or by any other commonly used means, including electronic mail.

C. Collocation Requirements and Conditions:

1. Public Safety Space Reservation. The Village may reserve space on municipal utility poles for future public safety uses, for the Village's electric utility uses, or both, but a reservation of space may not preclude the collocation of a small wireless facility unless the Village reasonably determines that the municipal utility pole cannot accommodate both uses.
2. Installation and Maintenance. The wireless provider shall install, maintain, repair and modify its small wireless facilities in safe condition and good repair and in compliance with the requirements and conditions of this Ordinance. The wireless provider shall ensure that its employees, agents, or contracts that perform work in connection with its small wireless facilities are adequately trained and skilled in accordance with all applicable industry and governmental standards and regulations.
3. No interference with public safety communication frequencies. The wireless provider's operation of the small wireless facilities shall not interfere with the frequencies used by a public safety agency for public safety communications.

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

Unacceptable interference will be determined by and measured in accordance with industry standards and the FCC's regulations

addressing unacceptable interference to public safety spectrum or any other spectrum licensed by a public safety agency.

If a small wireless facility causes such interference, and the wireless provider has been given written notice of the interference by the public safety agency, the wireless provider, at its own expense, shall remedy the interference in a manner consistent with the abatement and resolution procedures for interference with public safety spectrum established by the FCC including 47 CFR 22.970 through 47 CFR 22.973 and 47 CFR 90.672 through 47 CFR 90.675.

The Village may terminate a permit for a small wireless facility based on such interference if the wireless provider is not in compliance with the Code of Federal Regulations cited in the previous section. Failure to remedy the interference as required herein shall constitute a public nuisance.

4. The wireless provider shall not collocate small wireless facilities on Village utility poles that are part of an electric distribution or transmission system within the communication worker safety zone of the pole or the electric supply zone of the pole.

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

For purposes of this subsection, the terms "communications space," "communication worker safety zone," and "electric supply zone," have the meanings given to those terms in the National Electric Safety Code as published by the Institute of Electrical and Electronics Engineers.

5. The wireless provider shall comply with all applicable codes and local code provisions or regulations that concern public safety.
6. The wireless provider shall comply with written design standards that are generally applicable for decorative utility poles, or reasonable stealth, concealment and aesthetic requirements that are set forth in a Village ordinance, written policy adopted by the

Village, a comprehensive plan or other written design plan that applies to other occupiers of the rights-of-way, including on a historic landmark or in a historic district.

7. Alternate Placements. Except as provided in this Collocation Requirements and Conditions Section, a wireless provider shall not be required to collocation small wireless facilities on any specific utility pole, or category of utility poles, or be required to collocate multiple antenna systems on a single utility pole. However, with respect to an application for the collocation of a small wireless facility associated with a new utility pole, the Village may propose that the small wireless facility be collocated on an existing utility pole or existing wireless support structure within 100 feet of the proposed collocation, which the applicant shall accept if it has the right to use the alternate structure on reasonable terms and conditions, and the alternate location and structure does not impose technical limits or additional material costs as determined by the applicant.

If the applicant refuses a collocation proposed by the Village, the applicant shall provide written certification describing the property rights, technical limits, or material cost reasons the alternate location does not satisfy the criteria in this section.

8. Height Limitations. The maximum height of a small wireless facility shall be no more than 10 feet above the utility pole or wireless support structure on which the small wireless facility is collocated.

New or replacement utility poles or wireless support structures on which small wireless facilities are collocated may not exceed the higher of:

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

shall control the height limitation for such facility; or

b. 45 feet above ground level.

9. Height Exceptions or Variances. If an applicant proposes a height for a new or replacement pole in excess of the above height limitations on which the small wireless facility is proposed for collocation, the applicant shall apply for a variance in conformance with procedures, terms, and conditions set forth in Chapter 4 of the Village of Shabbona Zoning Ordinance.
10. Contractual Design Requirements. The wireless provider shall comply with requirements that are imposed by a contract between the Village and a private property owner that concern design or construction standards applicable to utility poles and ground-mounted equipment located in the right-of-way.
11. Ground-mounted Equipment Spacing. The wireless provider shall comply with applicable spacing requirements in applicable codes and ordinances concerning the location of ground-mounted equipment located in the right-of-way if the requirements include a waiver, zoning, or other process that addresses wireless provider requests for exception or variance and do not prohibit granting of such exceptions or variances.
12. Undergrounding Regulations. The wireless provider shall comply with local code provisions or regulations concerning undergrounding requirements that prohibit the installation of new or the modification of existing utility poles in a right-of-way without prior approval if the requirements include a waiver, zoning, or other process that addresses requests to install such new utility poles or modify such existing utility poles and do not prohibit the replacement of utility poles.
13. Collocation Completion Deadline. Collocation for which a permit is granted shall be completed within 180 days after issuance of the permit, unless the Village and the wireless provider agree to extend this period or a delay is caused by make-ready work for a municipal utility pole or by the lack of commercial power or backhaul availability at the site, provided the wireless provider has made a timely request within 60 days after the issuance of the permit for commercial power or backhaul services, and the

additional time to complete installation does not exceed 360 days after issuance of the permit. Otherwise, the permit shall be void unless the Village grants an extension in writing to the applicant.

D. Application Fees: Application fees are imposed as follows:

1. Applicant shall pay an application fee of \$650.00 for an application to collocate a single small wireless facility on an existing utility pole or wireless support structure, and \$350 for each small wireless facility addressed in a consolidated application to collocate more than one small wireless facility on existing utility poles or wireless support structures.
2. Applicant shall pay an application fee of \$1,000.00 for each small wireless facility addressed in an application that includes the installation of a new utility pole for such collocation.
3. Notwithstanding any contrary provision of State law or local ordinance, applications pursuant to this Section shall be accompanied by the required application fee. Application fees shall be non-refundable.
4. The Village shall not require an application, approval or permit, or require any fees or other charges, from a communications service provider authorized to occupy the rights-of-way, for:
 - a. routine maintenance;
 - b. the replacement of wireless facilities with wireless facilities that are substantially similar, the same size, or smaller if the wireless provider notifies the Village at least 10 days prior to the planned replacement and includes equipment specifications for the replacement of equipment consistent with subsection d. under the Section titled Application Requirements; or
 - c. the installation, placement, maintenance, operation, or replacement of micro wireless facilities suspended on cables that are strung between existing utility poles in compliance with applicable safety codes.
5. Wireless providers shall secure a permit from the Village to work

within rights-of-way for activities that affect traffic patterns or require lane closures.

E. Exceptions to Applicability: Nothing in this Ordinance authorizes a person to collocate small wireless facilities on:

1. property owned by a private party or property owned or controlled by the Village or another unit of local government that is not located within rights-of-way, or a privately-owned utility pole or wireless support structure without the consent of the property owner;
2. property owned, leased, or controlled by a park district, forest preserve district, or conservation district for public park, recreation or conservation purposes without the consent of the affected district, excluding the placement of facilities on rights-of-way located in an affected district that are under the jurisdiction and control of a different unit of local government as provided by the Illinois Highway Code; or
3. property owned by a rail carrier registered under Section 18c-7201 of the Illinois Vehicle Code, Metra Commuter Rail or any other public commuter rail service, or an electric utility as defined in Section 16-102 of the Public Utilities Act, without the consent of the rail carrier, public commuter rail service, or electric utility. The provisions of this Ordinance do not apply to an electric or gas public utility or such utility's wireless facilities if the facilities are being used, developed and maintained consistent with the provisions of subsection (i) of Section 16-108.5 of the Public Utilities Act.

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

F. Pre-Existing Agreements: Existing agreements between the Village and wireless providers that relate to the collocation of small wireless facilities

in the right-of-way, including the collocation of small wireless facilities on Village utility poles, that are in effect on June 1, 2018, remain in effect for all small wireless facilities collocated on the Village's utility poles pursuant to applications submitted to the Village before June 1, 2018, subject to applicable termination provisions contained therein. Agreements entered into after June 1, 2018, shall comply with this Ordinance.

A wireless provider that has an existing agreement with the Village on the effective date of the Act may accept the rates, fees, and terms that the Village makes available under this Ordinance for the collocation of small wireless facilities or the installation of new utility poles for the collocation of small wireless facilities that are the subject of an application submitted two or more years after the effective date of the Act by notifying the Village that it opts to accept such rates, fees, and terms. The existing agreement remains in effect, subject to applicable termination provisions, for the small wireless facilities the wireless provider has collocated on the Village's utility poles pursuant to applications submitted to the Village before the wireless provider provides such notice and exercises its option under this section.

- G. Annual Recurring Rate: A wireless provider shall pay to the Village an annual recurring rate to collocate a small wireless facility on a Village utility pole located in a right-of-way that equals (i) \$200.00 per year or (ii) the actual, direct, and reasonable costs related to the wireless provider's use of space on the Village utility pole.

If the Village has not billed the wireless provider actual and direct costs, the fee shall be \$200.00 payable on the first day after the first annual anniversary of the issuance of the permit or notice of intent to collocate, and on each annual anniversary date thereafter.

- H. Abandonment: A small wireless facility that is not operated for a continuous period of 12 months shall be considered abandoned. The owner of the facility shall remove the small wireless facility within 90 days after receipt of written notice from the Village notifying the wireless provider of the abandonment.

The notice shall be sent by certified or registered mail, return receipt requested, by the Village to the owner at the last known address of the wireless provider. If the small wireless facility is not removed within 90 days of such notice, the Village may remove or cause the removal of such facility pursuant to the terms of its pole attachment agreement for

municipal utility poles or through whatever actions are provided for abatement of nuisances or by other law for removal and cost recovery.

A wireless provider shall provide written notice to the Village if it sells or transfers small wireless facilities within the jurisdiction of the Village. Such notice shall include the name and contact information of the new wireless provider.

6-4-4: DISPUTE RESOLUTION:

The Circuit Court DeKalb County shall have exclusive jurisdiction to resolve all disputes arising under the Small Wireless Facilities Deployment Act. Pending resolution of a dispute concerning rates for collocation of small wireless facilities on municipal utility poles within the right-of-way, the Village shall allow the collocating person to collocate on its poles at annual rates of no more than \$200.00 per year per municipal utility pole, with rates to be determined upon final resolution of the dispute.

6-4-5: INDEMNIFICATION:

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

6-4-6: INSURANCE:

The wireless provider shall carry, at the wireless provider's own cost and expense, the following insurance:

- (i) property insurance for its property's replacement cost against all risks;
- (ii) workers' compensation insurance, as required by law;

OR

(iii) commercial general liability insurance with respect to its activities on the Village improvements or rights-of-way to afford minimum protection limits consistent with its requirements of other users of Village improvements or rights-of-way, including coverage for bodily injury and property damage.

The wireless provider shall include the Village as an additional insured on the commercial general liability policy and provide certification and documentation of inclusion of the Village in a commercial general liability policy prior to the collocation of any wireless facility.

A wireless provider may self-insure all or a portion of the insurance coverage and limit requirement required by the Village. A wireless provider that self-insures is not required, to the extent of the self-insurance, to comply with the requirement for the name of additional insureds under this Section. A wireless provider that elects to self-insure shall provide to the Village evidence sufficient to demonstrate its financial ability to self-insure the insurance coverage limits required by the Village. (Ord. 2018-08-27(A), 8-27-2018)