



Board of Commissioners of Cook County

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Chicago, IL

Legislation Text

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PROPOSED ORDINANCE AMENDMENT

COOK COUNTY PUBLIC WAY REGULATORY ORDINANCE

PROPOSED ORDINANCE AMENDMENT

DIVISION 1. - GENERALLY

Sec. 66-50. - Short title.

This article shall be known as the "Cook County Public Way Regulatory Ordinance."

Sec. 66-51. - Purposes.

The purposes of this article are to: provide policies and procedures for the regulation of the use of County public ways for the construction, reconstruction, ownership, replacement, relocation, modification, maintenance, upgrading, operation and removal of facilities, including but not limited to public utility, pipeline, telecommunication, cable television, electric, gas, water, wastewater, petroleum product facilities, driveways, curb cuts, and other facilities; and provide for recovery of costs incurred by the County for licensing, permitting, inspecting, monitoring and regulating such uses of the public ways in order to provide for the public safety and interest.

Notwithstanding the foregoing, the use of public ways under the jurisdiction or control of the County and located within the City of Chicago shall be licensed, permitted and regulated by the City of Chicago and governed by the fee structure of the City of Chicago. However, the provisions in Section 66-127, relating to overweight and oversized vehicles, shall apply to public ways under the jurisdiction or control of the County and located within the City of Chicago where the City of Chicago has not issued a permit authorizing excess vehicle weight or excess vehicle size.

This article regulates the use of the public ways only and does not supersede or waive any right of the County to enter into a franchise agreement with a grantee for the provision of services to residents of unincorporated Cook County, nor does this article take the place of any tax now or hereafter applicable to grantees and relating to the provision of services or use of the public ways.

A portion of the fines collected pursuant to this Chapter shall be deposited into an account, which the Department of Revenue administers, for the purpose of defraying additional costs which the Department of Revenue will incur in the enforcement of this Chapter; such additional costs may include, but are not limited to, collection and audits.

Sec. 66-52. - Definitions.

The following terms, phrases, words and their derivations shall have the meaning given herein. Capitalization or lack of capitalization shall not affect the meaning of a term defined below. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

Applicant means the person that is required to apply for any license or permit, which shall be the person that will

own the facility or facilities or, in the case of work in the public way which will not result in a facility being constructed, the person on whose behalf such work is performed.

Board means the Cook County Board of Commissioners.

Construction permit means a type of permit described in Section 66-66.

County means the County of Cook and, in appropriate circumstances, its commissioners, officers, employees and agents.

Director means the Director of the Real Estate Management ~~Division~~ Department of the County of Cook.

Effective date means the date which is 30 days after adoption of this article.

Emergency means any event which poses immediate danger to persons or property, or which causes interruption of utilities and similar public services, such as, but not limited to, cable television.

Excavation means any operation in which earth, rock, or other material in or under the ground is moved, removed, or otherwise displaced by means of any tools, power equipment or explosives, and includes, without limitation, grading, trenching, digging, ditching, drilling, angoring, boring, tunneling, scraping, exploratory probing, cable or pipe plowing, and driving.

Facility or facilities means all structures, devices, objects, and materials, including track and rails, pavement, curbs, sidewalks, wires, ducts, fiber optic cable, communications and video cables and wires, poles, conduits, foundations, grates, covers, mains, hydrants, manholes, meters, valves, pumps, lift stations, pipes, cables, and appurtenances thereto or any portion thereof, located on, in, over, above, along, upon, under, across, or within public ways under this article, except those owned by the County.

Grantee means the person granted a license or a permit under this article and its lawful successor, transferee or assignee.

Hazardous materials means any substance or material which, due to its quantity, form, concentration, location, or other characteristics, poses an unreasonable and imminent risk to the life, health or safety of persons or property or to the ecological balance of the environment, including, but not limited to explosives, radioactive materials, petroleum or petroleum products or gases, poisons, etiology (biological) agents, flammables, corrosives or any substance determined to be hazardous or toxic under any Federal or State law, statute or regulation.

Highway Department means the Cook County Department of Transportation and Highways ~~Highway Department~~.

Law means any and all laws, statutes, ordinances, codes, rules and regulations promulgated or enacted by any Federal, State or local governmental entity or agency, and specifically include this article.

License means the nonexclusive privileges granted under a license agreement pursuant to this article to construct, own, replace, relocate, modify, maintain, operate and remove facilities on, in, under, over, above, along, upon, under, across, or within specified public ways or other property under the jurisdiction or control of the County.

License agreement means a written agreement between the County and a grantee pursuant to this article, as further described in Division 2.

Maintenance and repair permit means a permit of the type described in Section 66-67.

Permit means a written permission from the County to do work in the public way issued pursuant to Division 3.

Person means an individual, firm, corporation, cooperative, association, partnership, joint venture, limited liability company, governmental unit, or other legally recognized entity.

Proprietary information has the meaning set forth in Section 66-55.

Public way means the surface, the air space above the surface and the area below the surface of any public right-of-way, including any public street, highway, lane, path, alley, sidewalk, boulevard, drive, bridge, park, parkways, and other public rights-of-way under the jurisdiction or control of the County, which entitle the County and a grantee to the use thereof for the purpose of installing and maintaining public streets and other facilities. No reference herein, or in any

license agreement or previously issued franchise, or in any permit, to the "public way" shall be deemed to be a representation or guarantee by the County that its title to any property or jurisdiction or control is sufficient to permit use of such property for such purpose and the grantee shall, by its use of such terms, be deemed to gain only such rights to use property as the County may have the undisputed right and power to give. Notwithstanding the foregoing, for purposes of this article, the term "public way" shall not include any public ways owned or controlled by the County and located within the City of Chicago.

Superintendent means the Superintendent of the Cook County ~~Highway~~ Department of Transportation and Highways

Tree trimming permit means a permit of the type described in Section 66-68.

Sec. 66-53. - Conflicts with State and Federal laws.

In the event that applicable laws conflict with the requirements of this article, a grantee shall comply with the requirements of this article to the maximum extent possible without violating laws.

Sec. 66-54. - General provisions regarding fees and payments.

All fees, interest and other sums payable by a grantee under this article shall be paid to the County Revenue Department, which shall advise the Director of Real Estate Management and the Superintendent of Transportation and Highways of any untimely or deficient payments. In the event that any payment is not made on or before the applicable dates herein specified, interest shall be charged from such due date at the rate stated in the Cook County Uniform Penalty, Interest and Procedure Ordinance; provided, however, that no interest shall be charged on penalties assessed pursuant to Section 66-91. The payments shall be in addition to any other money that may be owed by the grantee to the County and shall not be construed as a payment in lieu of any such money. The types of fees and charges and the initial amounts of such fees and charges are set forth in Section 66-103. Such fees and charges may be amended from time to time, and shall be imposed in the amounts in effect at the time of such imposition.

Sec. 66-55. - General provisions regarding submission or certain information.

When information is required to be provided to the County, the following general provisions shall apply:

- (a) *Drawings, plans and specifications.* In any instance where drawings, plans or specifications are required to be provided by an applicant or grantee, such information should, if feasible, be provided in an electronic format compatible with the County's geographical information system in use at the time such information is required to be provided or compatible with the County's CADD system in use at such time. In addition, such information shall also be provided in hard copy, if requested by the County.
- (b) *Description of facilities and locations.* In all instances where a description of any facility is required under this article or a license, such description shall include (i) all dimensional details such as diameter, thickness or pipe walls, materials used, and all other details necessary to fully describe the facility and (ii) three-dimensional coordinates and all information necessary to describe both the horizontal and vertical location of the facility.
- (c) *Proprietary information.* Information provided to the County is subject to disclosure as a public record pursuant to the Illinois Freedom of Information Act (5 ILCS 140/1 et seq.) If any information required to be provided to the County under this article is reasonably considered by grantee to include trade secrets, commercial or financial information where the trade secrets or information are proprietary, privileged or confidential, or where disclosure of the trade secrets or information may cause competitive harm, or which information would otherwise be exempt from disclosure pursuant to Section 7 of the Illinois Freedom of Information Act (5 ILCS 140/7, 2006) or if the disclosure of such information could, in the reasonable judgment of a grantee, impair security of facilities operated by such grantee in providing utilities or other services essential to public health or

public safety (such information being referred to as "proprietary information"), then grantee may delete such proprietary information from the information to be provided, so long as the information provided is adequate, in the reasonable judgment of the Superintendent to inform the County of the nature and location of the facilities for its regulatory purposes, and so long as the grantee provides a written certification, signed by an officer of grantee, identifying the type of information deleted and the reason for such deletion. Grantee shall cooperate with the Highway Department to assure that the information provided is adequate to meet the County's requirements.

Sec. 66-56. - Reserved.

DIVISION 2. - LICENSING REQUIREMENTS AND PROCEDURE

Sec. 66-57. - License requirements.

In situations where the applicant (i) has or proposes to have facilities in a significant portion of the public ways as determined by the Highway Department (for example, a utility company) (such license applicant being sometimes referred to as a "major user"), or (ii) has or proposes to have facilities that require continued regulation (for example, a pipeline operator), as determined by the Highway Department, but do not occupy a significant portion of the public ways (such license applicant being sometimes referred to as an "other user"), then the applicant shall be required to obtain a license from the County. The license agreement shall be in a form provided by the County and will include payment of a license fee, obligations of the grantee to indemnify the County, furnish insurance, and such other terms and provisions as are determined by the Director to be appropriate in any instance.

Sec. 66-58. - General requirements and provisions.

Any license granted pursuant to this article creates a license only and does not create an interest or estate of any kind whatsoever in the public way by virtue of this article, a license agreement, or grantee's use of the public way.

- (a) *Existing facilities.* In the event that any person is operating facilities in the public way under a license, easement or similar agreement with the County, this article shall apply only to the extent it is not inconsistent with such license, easement or similar agreement during the term of such license, easement or similar agreement. Notwithstanding the foregoing, this article, including but not limited to permitting requirements of this article, shall govern any maintenance, repair, replacement, removal, relocation, reconstruction, upgrading, modification or extension of any existing facilities, and all the provisions of this article shall apply to installation of any new facilities in the public ways not covered by such agreement. Persons having facilities located in the public ways as of the effective date for which a license is required under Section 66-57, and as to which no license, easement or similar written agreement is currently in effect, shall comply with the licensing requirements set forth herein by filing an application for a license for such existing facilities within 60 days after the effective date. The effective date of such license agreement shall be July 1, 2007. If a person having existing facilities with no such agreement in place fails to timely apply for or diligently pursue a license agreement, then the County may exercise the rights and remedies described in this article, including assessment of penalties and requiring removal of such person's facilities. In addition, the County may refuse to process any applications or grant any permits until such license agreement is executed.
- (b) *Ordinance 85-O-18.* On February 4, 1985, the Board adopted Ordinance No. 85-0-18, which granted to Illinois Bell Telephone Company, and its successors, the non-exclusive right to use certain public ways in Cook County in exchange for certain benefits granted to the County, under the terms set forth in such Ordinance. For so long as such Ordinance is in full force and effect, the grantee or its successors under Ordinance 85-O-18, as amended, including as amended by Ordinance 07-O-27, shall be required to apply for a license within 60 days after the effective date of this article as to public ways and shall be required to comply with all permit requirements set forth in Division 3, except that license fees and permit fees shall be waived to the extent provided in Ordinance 85-O-18, as amended by Ordinance 07-O-27 and as further amended.
- (c) *License nonexclusive.* No license shall be exclusive. Every license shall be deemed to reserve to the County the right to grant other licenses to use and occupy the public ways or other property of the County for any other

purpose on such terms as the County may deem appropriate.

- (d) *License subject to County use.* All licenses shall be subject to the County's use of its public ways, including the widening of County highways, roads, streets and bridges. Any removal, relocation or modification of a grantee's facilities necessitated by the County's use of its public ways shall be at the grantee's cost, and shall be governed by Section 66-81

Sec. 66-59. - License application.

Applications for a license shall be submitted to the Director on application forms promulgated by the Director. The application form shall request facts and information the County deems appropriate, including the specific location of the Facilities as provided in Section 66-55. Applicants applying for a license for facilities existing prior to the effective date, shall include drawings, plans and specifications fully describing such existing facilities and the location of such facilities as required by Section 66-55. The Director may agree to accept the foregoing information after issuance of a license for good cause shown. In determining whether to issue the license prior to receiving all such information, the Director shall take into consideration the extent of the grantee's facilities in the public way and the burden on the grantee of providing the information within the required time. If a license as to all the public ways is requested, the information as to the current locations of facilities shall nevertheless be required. The Director may request additional information from the applicant at any time during the application process.

- (a) *Review process.* The Director shall coordinate any necessary review of the application by all interested County Departments, which may include Highway, Building and Zoning and Risk Management. If the foregoing review indicates that the license may be issued, then based upon the application and such information as may be obtained during the review process, the Director shall prepare a license agreement for execution by the applicant, setting forth the terms and conditions upon which the Director is prepared to recommend issuance of a license.
- (b) *Execution by applicant.* Upon execution of the license agreement, applicant shall submit the annual license fee for the first year of the term. Such annual license fee shall be refunded if the license agreement is not approved and executed by the Board. No provision of this article shall be deemed or construed as to require the Board to grant a license. The Board may consider any relevant facts and circumstances, including the qualifications of the applicant, in determining whether to grant a license.
- (c) *Term of license agreement.* The term of a license agreement shall commence on the date the license agreement is executed by the County ("effective date"), and shall expire on June 30 of the calendar year in which the tenth anniversary of the effective date occurs, such that all licenses shall expire on June 30, unless sooner terminated in accordance with the terms of the license agreement; provided, however, that a license agreement issued to a person having existing facilities as described in Section 66-58(a) shall be effective as of July 1, 2007, regardless of the date executed.

Sec. 66-60. - Annual requirements.

- (a) A grantee is required to provide the following documentation to the Director prior to each July 1 falling within the term, or as set forth below:
- (1) A current certificate of insurance, or other evidence acceptable to the Director of Risk Management, evidencing all insurance required to be maintained by grantee under Section 66-62~~7~~, must be on file with the Director at all times; therefore, an updated certificate of insurance must be provided to the Director upon expiration and renewal of any policies required under the license agreement.
 - (2) The annual license fee in effect from time to time.
 - (3) A certified report of current facilities and their locations, including plans, drawings or such other material as is necessary to fully describe the facilities and their locations, as provided in Section 66-55, or a statement

certified by an authorized representative of the grantee stating that there has been no change to the facilities since the prior annual report or the issuance of the license, in the case of the first such certified report.

(4) Such other documentation and information reasonably requested by the Director.

(b) *Failure to fulfill annual requirements.* If grantee fails to fulfill the annual requirements by July 1, grantee shall be subject to penalties as set forth in Section 66-91 and, in addition, the Director may revoke the license at any time thereafter by terminating the license agreement as set forth below; provided, however, that if grantee provides the certificate or other acceptable evidence of insurance and pays the annual fee within 15 days after receipt of notice from the County of failure to comply with the annual requirements (which shall constitute a violation notice under Section 66-87), grantee may request an extension as to Section 66-60(a)(3) and the Director may grant such extension as the Director deems appropriate (which shall constitute additional time to cure pursuant to Section 66-88 (c)). If such extension is granted, no penalties will accrue and the County will not be entitled to revoke the license if the requirement is fulfilled prior to the expiration of the extension period. If grantee fails to provide the annual report within the extension period, then penalties shall be assessed retroactively to the date which is five days after receipt of the County's notice, and the Director may, in his or her discretion, revoke the license. If the Director deems it advisable to revoke the license as allowed under this Section 66-60(b), the Director shall notify the grantee in writing not less than 30 days prior to the effective date of such revocation, which notice shall be ineffective if the grantee fulfills all requirements prior to the effective date set forth in the notice. If a grantee fails to fulfill the annual requirements as provided herein, then the County may exercise the rights and remedies described in this article, including assessment of penalties and requiring removal or deactivation of such person's facilities. In addition, the County may refuse to process any applications or grant any permits until such license agreement is executed.

Sec. 66-61. - Annual license fee.

A grantee shall pay to the County an annual license fee at the rate in effect from time to time, prorated on a daily basis if the license commences on a date other than July 1 or terminates on a date other than June 30 (other than a termination due to breach by grantee). The annual license fee for the first year of the term shall be paid upon presentation of the license agreement to the Director of Real Estate Management, executed by the applicant, and shall be refunded if the license is not issued. All succeeding annual license fee payments shall be made on or before July 1 of every year during the term of the license agreement.

Sec. 66-62. - Insurance requirements.

At all times during the term of a license, and at all times until the removal of facilities is completed, as provided for herein, a grantee shall maintain insurance as provided in the license agreement. Failure to comply with insurance requirements shall be a violation of this article and subject grantee to the penalties provided in Section 66-91.

Sec. 66-63. - License renewal.

A grantee shall be solely responsible for requesting the County, in writing, to renew a license for any subsequent ten-year term. Such a request shall be made to the Director not less than six months prior to the then current license expiration date, unless a later date is agreed to in writing by the Director.

(a) Request for license renewal shall be made in accordance with the requirements set forth in Section 66-59 of this article for a new license; however, Board authorization shall not be required for license renewals, which may be approved by the Director. If a grantee having existing facilities fails to timely apply for or diligently pursue a renewal of a license, then the County through the Director may exercise the rights and remedies described in this article, including assessment of penalties and requiring removal of such person's facilities.

(b) Notwithstanding the fact that the ~~County~~ Director may determine that a grantee has been in reasonable

compliance with the terms and conditions imposed by this article and the license agreement, the ~~County~~ Director shall have no obligation to renew the license. If the ~~County~~ Director does not renew the license, the ~~County~~ Director shall have the option to require the removal of all grantee's facilities and other property located within the licensed area, at the grantee's expense, in accordance with Section 66-80. Should the Director not renew a license following an application to renew, the annual license fee accompanied with accompanying the renewal application shall be refunded. No provision of this article shall be deemed or construed as to require the Board or Director to grant a license. The Director may consider any relevant facts and circumstances, including the qualifications of the applicant and compliance with the license agreement in the past, in determining whether to grant or renew a license. The Director shall inform the Board within 30 days of any renewal license applications denied by the Director. The Director shall provide a report to the Board during the first quarter of any year in which license renewals will occur listing all licenses expiring in that year. The Director shall in addition provide a report by the end of each such year setting forth all licenses renewed by the Director, any licenses which the Director declined to renew, and any which the licensee declined to renew.

Sec. 66-64. - Transfer of license.

Neither a license nor a license agreement shall be assigned, transferred, sold or disposed of, in whole or in part, by voluntary sale, sale and leaseback, merger, including merger by operation of law, consolidation or otherwise or by forced or involuntary sale (any of the foregoing being hereinafter referred to as a "transfer"), without written notice to the Director which shall be signed by both the original grantee and the party accepting the transfer (the "transferee"). Such notice shall be given no later than ten days after the transfer occurs, and shall include an assumption by the transferee of all the grantee's obligations under the license agreement, together with evidence of transferee's insurance and a replacement bond or letter of credit provided by transferee as required under the license agreement.

- (a) *Transfer in violation.* Any sale, transfer or assignment not made according to the procedures set forth in this article shall render the license and the license agreement voidable at the option of the County. In addition, such sale shall subject grantee to the penalties set forth in Section 66-91. The sale, transfer or assignment in bulk of the major part of the tangible assets of the grantee shall be considered an assignment and shall be subject to the provisions of this section.

Effective date: This ordinance shall be in effect immediately upon adoption.