



AGENDA
VILLAGE OF ROSELLE
VILLAGE BOARD COMMITTEE OF THE WHOLE
June 25, 2018
Following Village Board Meeting

Meeting Chaired by Mayor Andy Maglio

1. Roll Call

2. Approval of Prepared Agenda

3. Citizen Comments/Questions

Residents who wish to address the Board, please come to the podium, state your name and address, and limit your comments to three minutes.

4. Small Wireless Facilities Deployment Act

Documents:

[SMALL WIRELESS FACILITIES DEPLOYMENT ACT.PDF](#)

5. Executive Session

- A. Executive Session Minutes
- B. Collective Bargaining
- C. Litigation
- D. Personnel
- E. Real Property
- F. Security Procedures
- G. Risk Management

6. Citizen Comments/Questions

Residents who wish to address the Board, please come to the podium, state your name and address, and limit your comments to three minutes.

7. Other Business

8. Adjourn

In compliance with the Americans with Disabilities Act, any person with a disability requiring a reasonable accommodation to participate in the meeting should contact Jason Bielawski, ADA Compliance Officer, 8:30 a.m. to 5:00 p.m. Monday through Friday, telephone: 630-671-2810, email jbielawski@roselle.il.us.

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AGENDA ITEM # 4

**AGENDA ITEM EXECUTIVE SUMMARY
Committee of the Whole Meeting
June 25, 2018**

Item Title: **Small Wireless Facilities Deployment Act**

Staff Contact: Patrick N. Watkins, Community Development Director

COMMITTEE OF THE WHOLE ACTION

Discussion regarding the proposed ordinance providing for the regulation and application for small wireless facilities including design standards for new small cell wireless facilities within the Town Center and residential areas.

Executive Summary:

The Village Board was provided a memo from the Village Attorney on the newly enacted State Act titled the “Small Wireless Facilities Deployment Act.” The Act creates state-wide regulations and a process for the permitting and deploying of new small cell wireless facilities in the public right-of-way. The Act determines fees, a permitting process, and restrictions on height, and placement that wireless providers and local governments must follow. The Act requires municipalities adopt an ordinance that makes available to wireless providers the rates, fees and terms for the attachment of small wireless facilities on municipal utility poles by August 1, 2018, or wireless providers can install such facilities and utility poles on their own accord. Overall, the Act doesn’t provide municipalities with much control over the process.

The Act, however, does allow for a municipality to create “written design standards that are generally applicable for decorative utility poles, or reasonable stealth, concealment, and aesthetic requirements.” Staff, with guidance from the Village Attorney, has drafted ideas for design standards that the Village Attorney believes will comply with the Act. Staff recommends adding these additional design standards in two specific area – the Town Center Zoning District and residential areas. Attached are some examples of decorative poles utilized to minimize the aesthetics of small cells.

Recommendation

Following are the staff recommended design standards to be imposed:

1. Town Center (B-3 District): For any new or replacement poles for small cell wireless facilities in the B-3 Town Center Zoning District, the wireless provider must construct and use a decorative pole that matches the decorative light poles utilized in the Town Center.

2. Residential: For any poles in residential areas that would require a wireless provider to construct a new or replacement pole within the right of way where utility poles are not available, small cell applicants must install an architecturally approved residential decorative light pole.

Implications:

Is this item budgeted? The Act permits the Village to charge fees to the wireless providers as part of the application process as well as collect an annual fee for any wireless facilities located on a Village owned pole.

Any other implications to be considered? 1) Currently, the Village has been approached by one wireless provider that wants to install small cell facilities at the intersection of Nerge and Plum Grove. The provider is awaiting the approval of the Village's ordinance prior to submitting an application. 2) Staff is preparing a press release and other information that will be used to inform residents about the new State Law, the Village's ordinance, and the probable impacts on areas where the small cell installations will occur that the Village will no longer be able to control.

Attachments:

Design Examples

Draft Ordinance

Proposed Acceptable Facilities



AN ORDINANCE PROVIDING FOR THE REGULATION OF AND APPLICATION FOR SMALL WIRELESS FACILITIES

WHEREAS, the Illinois General Assembly has recently enacted Public Act 100-0585, known as the Small Wireless Facilities Deployment Act, which becomes effective on June 1, 2018;

WHEREAS, the Village of Roselle (the Village) is an Illinois municipality in accordance with the Constitution of the State of Illinois of 1970;

WHEREAS, the Village is authorized under the Illinois Municipal Code (65 ILCS 5/1-1-1 *et seq.*) and Illinois law to adopt ordinances pertaining to the public health, safety and welfare;

WHEREAS, the Village is further authorized to adopt the amendments contained herein pursuant to its authority to regulate the public right-of-way under section 11-80-1 *et seq.*, of the Illinois Municipal Code; and

WHEREAS, the Village uses the public right-of-way within its Village limits to provide essential public services to its residents and businesses. The public right-of-way within the Village is a limited public resource held by the Village for the benefit of its citizens and the Village has a custodial duty to ensure that the public right-of-way is used, repaired, and maintained in a manner that best serves the public interest; and

WHEREAS, the Village is authorized, under existing State and federal law, to enact appropriate regulations and restrictions relative to small cell facilities, distributed antenna systems, and other personal wireless telecommunication facility installations in the public right-of-way.

NOW, THEREFORE, BE IT ORDAINED by the Corporate Authorities of the Village of Roselle, DuPage and Cook Counties, Illinois; as follows:

SECTION 1: That Chapter 18 “Streets and Sidewalks” of the Code of Ordinances of the Village of Roselle, Illinois, is hereby amended by the addition of an Article VIII to be entitled “Small Wireless Facilities in Rights-of-Way”, Sections 18-120 through 18-145, which shall read as follows:

Article VIII: SMALL WIRELESS FACILITIES IN RIGHTS-OF-WAY

Section 18-120. Purpose and Scope.

a) Purpose. The purpose of this Ordinance is to establish regulations, standards, regulations 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 the Small Wireless Facilities Deployment Act, Public Act 100-0585.

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.

Section 18-121. Definitions.

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

Act – Illinois Small Wireless Facilities Deployment Act (P.A.100-0585) and as may be amended from time to time.

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 an authority 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.

Authority – a unit of local government that has jurisdiction and control for use of public rights-of-way as provided by the Illinois Highway Code for placements within public rights-of-way or has zoning or land use control for placements not within public rights-of-way.

Authority utility pole – a utility pole owned or operated by an authority in public rights-of-way.

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 service – 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 authority 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 in dimension 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.

Permit – a written authorization required by the Village to perform an action or initiate, continue, or complete a project.

Permitted Use – a small wireless facility applied for installed and operated in full conformance with the Small Wireless Facilities Deployment Act and this Ordinance.

Person – an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization, including an authority.

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 authority-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 authority.

Wireless provider – a wireless infrastructure provider or a wireless services provider. This does not include and expressly excludes any person or who is providing service to or for a private niche market.

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.

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.

Village – the Village of Roselle.

Section 18-122. Permitted Use. Small wireless facilities are permitted uses and subject to administrative review, except as provided in paragraph (4) regarding height exceptions or variances, but not subject to zoning review or approval if they are collocated (i) in rights-of-way in any zone, or (ii) outside rights-of-way in property zoned exclusively for commercial or industrial use, (iii) compatible use easements.

Section 18-123. Permit Required. An applicant shall obtain one or more permits from the Village to collocate a small wireless facility. An application received and processed, and permits issued shall be subject to all terms, conditions and requirements of the Act and this Ordinance.

Section 18-124. Completeness of Application. Within 30 days after receiving an application, the Village must determine whether the application is complete and notify the applicant. If an application is incomplete, the Village shall 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 when 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.

Section 18-125. Application Process. The Village shall process applications as follows:

- a. Multiple applications by different applicants for collocation on the same utility or wireless support structure shall be processed based on a first fully complete application, first served basis.

- b. An application to collocate a small wireless facility on an existing utility pole or wireless support structure shall be processed on a nondiscriminatory basis and deemed approved if the Village fails to approve or deny the application within 90 days.

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 in 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.

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 not meeting the requirements of this Ordinance.

If the Village determines that applicable codes, ordinances or regulations that concern public safety, or the Requirements of paragraph (5) 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 was 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 a new application, new full application fee 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 resubmitted application.

Any review of a revised application shall be limited to the deficiencies cited in the denial. However, this revised application cure 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.

Section 18-126. Tolling. The time period for applications may be further tolled by:

- a. The express agreement in writing by both the applicant and the Village; or
- b. A local, State or federal disaster declaration or similar emergency that causes the delay.

Section 18-127. 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. Each consolidated application shall provide all the information required by Section 2 a-g of this ordinance for each small wireless facility at each location. 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.

Section 18-128. **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 an authority 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.

Section 18-129. **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 codes or local code provisions or this Ordinance.

Section 18-130. **Repeal.** If PA 100-0585 is repealed or found unconstitutional by a court of competent jurisdiction, all permits granted by the Village under this Chapter shall terminate at the end of their current term.

Section 18-131-. **Means of Submitting Applications.** Applicants shall submit applications, supporting information, and notices by personal delivery to the Community Development window at the Village Hall located at 31 S. Prospect Street, Roselle, Illinois, or as otherwise required by the Village.

Section 18-132. Application Fees. Application fees are hereby imposed as follows:

- a. Applicant shall pay an application fee of \$650 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 an application to collocate more than one small wireless facility on existing utility poles or wireless support structures.
- b. Applicant shall pay an application fee of \$1,000 for each small wireless facility addressed in an application that includes the installation of a new utility pole or wireless support structure for such collocation.
- c. 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.
- d. 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:
 1. routine maintenance;
 2. 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 the requirements of (2)a-g under the subsection titled Application Requirements; or
 3. the installation, placement, maintenance, operation, or replacement of micro wireless facilities that are suspended on cables that are strung between existing utility poles in compliance with applicable safety codes.
- e) Wireless providers shall secure a Village permit to work within rights-of-way for activities that affect traffic patterns or require lane closures.

Section 18-133. Application Requirements. A wireless provider shall provide the following information to the Village as a material 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 an authority 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;
- c. 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;
- d. The equipment type and model numbers for the antennas and all other wireless equipment associated with the small wireless facility;
- e. A proposed schedule for the installation and completion of each small wireless facility covered by the application, if approved; and
- f. Certification that the collocation complies with paragraph (5), Requirements, to the best of the applicant's knowledge.
- g. 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.

Section 18-134. Public Safety Space Reservation. The Village Administrator, after review and consultation with the Public Works, Fire, and Police Departments, shall reserve space on Village owned utility poles for future public safety uses of the **Village**. Such reservation may preclude collocation of small wireless facilities if the Village reasonably determines that any such reserved Village utility poles cannot accommodate both uses.

Section 18-135. Alternate Placements. 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 co-location proposed by the Village it shall provide written certification describing the property rights, technical limits or material cost reasons the alternate location does not satisfy the criteria in this paragraph. It shall be the burden of the applicant, by presentation of legally competent evidence, to establish that the Village's alternative proposed co-location imposes technical limits or additional material costs that render the alternative co-location unreasonable.

Section 18-136. Height Limitations. The Village 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.

If an applicant proposes a height in excess of 10 feet above a utility pole or wireless support structure on which the small wireless facility is proposed for installation the applicant shall apply for a variation. The variation application shall require public notice as set forth in Section 13(c) of Appendix A "Zoning" of the Roselle Zoning Ordinance and a public hearing. All publication costs shall be born by the applicant. Hearing of the variation application shall be set before the Village Board. It shall be the burden of the applicant requesting the variation to establish that the proposed variation in height:

- 1) is technically necessary to provide service;
- 2) is not merely for the convenience of the applicant;
- 3) is due to unique circumstances or that the variation, if granted, will not alter the essential character of the locality;
- 4) is due to the particular physical surroundings, shape, or topographical conditions of the proposed location which would bring a particular hardship upon the applicant if the height variation is not granted;
- 5) has not been the result of conditions created by the applicant;
- 6) will not be detrimental to the public welfare or injurious to other property improvements in the neighborhood in which the property is located; and
- 7) will not endanger the public safety of substantially diminish or impair property values within 100 feet of the proposed height variation.

The variation hearing shall be heard by the Village Board and may be continued from time to time to allow a thorough exposition of evidence associated with the variation standards described herein. A variance when granted shall limit the height of any proposed wireless facility to 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.

Section 18-137. Requirements.

- a. 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. 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.

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 Village or public safety agency, the wireless provider, at its own expense, shall remedy the problem 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 complying with the Code of Federal Regulations cited above. The burden to establish the good faith effort shall be on the wireless provider which shall timely deliver to the Village all information necessary to determine its efforts to resolve the interference consistent with the sections of the Codes of Federal Regulations cited above. Failure to remedy the problem as required herein shall constitute a public nuisance and violation of this section subjecting the wireless provider to injunctive relief as well as fines consistent with the Village Code.

- b. The wireless provider shall comply with requirements that are imposed by a contract between the City 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.
- c. 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.

- d. 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.
- e. The wireless provider shall comply with generally applicable standards that are consistent with PA 100 0585 and adopted by an authority for construction and public safety in the rights-of-way, including, but not limited to, reasonable and nondiscriminatory wiring and cabling requirements, grounding requirements, utility pole extension requirements and signage limitations; and shall comply with reasonable nondiscriminatory requirements that are consistent with PA 100-0585 and adopted by an authority regulating the location, size, surface area and height of small wireless facilities, or the abandonment and removal of small wireless facilities.
- f. 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 subparagraph (f), 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.

- g. For installations on Village traffic signals or street lighting equipment, the wireless provider shall accept all maintenance responsibility of the Village's traffic signal or street lighting equipment for the duration of the installation activity. The transfer of maintenance shall be to a qualified contractor that is prequalified by IDOT in the Electrical category. All traffic signal maintenance activity shall be completed by personnel certified by IMSA as a Level II Traffic Signal Technician. Any subsequent routine maintenance and/or modification to the wireless telecommunications facility may require a maintenance transfer of the Village's traffic signal or lighting equipment at the discretion of Village Engineer or his/her duly authorized designee.
- h. The wireless provider shall comply with all applicable codes and local code provisions or regulations that concern public safety.

- i. The wireless provider shall comply with written design standards for decorative utility poles or reasonable stealth, concealment and aesthetic requirements being set forth in Appendix A which is incorporated herein as if fully set forth.
- j. Subject to the subsection titled Permitted Use, and except for facilities excluded from evaluation for effects on historic properties under 47 CFR 1.1307(a)(4), the Village requires reasonable, technically feasible and non-discriminatory design or concealment measures in a historic district or historic landmark.
- k. Any such design or concealment measures, including restrictions on a specific category of poles, may not have the effect of prohibiting any provider's technology. Such design and concealment measures shall not be considered a part of the small wireless facility for purposes of the size restrictions of a small wireless facility. Any applicant who maintains that the stealth effect of these design standards prohibit its technology shall have the burden of providing legally competent evidence that the effect of the regulations is to prohibit that provider's technology. The availability of stealth or design technology in the general marketplace, consistent with the standards set forth in Appendix A, shall be prima facie evidence that the design and concealment measures required by this section are commercially reasonable and do not prohibit a provider's technology. The provider, however, shall have the right to refute the prima facie conclusion of reasonableness by clear and convincing evidence.

Section 18-138. 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.

Section 18-139. Existing Agreements Grandfathered for Existing Locations. 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 authority 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.

Section 18-140. 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 per year, per pole 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 licensee actual direct and reasonable costs the fee shall be \$200 payable on the first day after the first annual anniversary of the issuance of the permit or notice of intent to occupy and on each annual anniversary date thereafter. Late payments shall carry simple interest of six percent (6%) per month, non-prorated.

Rates for collocation on Village utility poles located outside of a right-of-way are not subject to these limitations.

Section 18-141. Aerial Facilities. For Village utility poles that support aerial facilities used to provide communications services or electric service, wireless providers shall comply with the process for make ready work under 47 U.S.C. 224 and its implementing regulations.

Section 18-142. Abandonment. A small wireless facility that is not operated for a continuous period of 12 months shall be considered abandoned and 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 City may remove or cause the removal of such facility pursuant to the terms of its pole attachment agreement for authority utility poles or through whatever actions are provided for abatement of nuisances or by other law for removal and cost recovery.

Village 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.

Section 18- 143. Dispute Resolution.

The Circuit Court of Eighteenth Judicial District, DuPage County, Illinois has 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

Village 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 per year per Village utility pole, with rates to be determined upon final resolution of the dispute.

Section 18- 144. 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 authority 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 Small Wireless Facilities Deployment 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.

Section 18-145. 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 authority improvements or rights-of-way to afford minimum protection limits consistent with its requirements of other users of authority 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 its co-location of any wireless facility. The wireless provider shall disclose all self-insured retentions.

SECTION 2: That if any provision of this ordinance is in conflict with any other ordinance or part of an ordinance, then this ordinance shall control.

SECTION 3: That if any provision of this ordinance or application thereof to any person or circumstance is ruled unconstitutional or otherwise invalid, such invalidity shall not affect other provisions or application of this ordinance that can be given effect without the invalid application or provision, and each invalid provision or invalid application of this ordinance is severable.

SECTION 4: That the findings and recitals herein are declared to be prima facie evidence of the law of the Village and shall be received in evidence as provided by the Illinois Compiled Statutes and the courts of the State of Illinois.

SECTION 5: That this Ordinance shall be in full force and effect as of its passage, approval, and publication in pamphlet form.

PASSED AND APPROVED THIS _____ day of _____, 2018.

AYES:

NAYS:

ABSTENTIONS:

ABSENT:

Village President

ATTEST:

Village Clerk

DRAFT