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125-O-16

AN ORDINANCE

Amending Title 7 of the Evanston City Code, "Public Ways," by Adding Chapter 16 Regulating Personal Wireless Telecommunication Facilities

SECTION 1: Legislative Statement. The City uses the public rights-of-way within its City limits to provide essential public services to its residents and businesses. The public rights-of-way within the City are a limited public resource held by the City for the benefit of its citizens and the City has a custodial duty to ensure that the public rights-of-way are used, repaired and maintained in a manner that best serves the public interest. The City Council previously adopted regulations, Title 7, "Public Ways," of the City of Evanston Code ("City Code"), in order to establish generally applicable standards for construction, installation, use, maintenance and repair of utility facilities on, over, above, along, upon, under, across, or within the public rights-of-way of the City.

Growing demand for personal wireless telecommunications services has resulted in increasing requests nationwide and locally from the wireless industry to place small cell distributed antenna systems and other personal wireless telecommunication facilities on utility and street light poles and other structures in the public rights-of-way. The City of Evanston (the "City") is a home-rule municipality pursuant to Article VII of the Illinois Constitution of 1970. As a home rule unit of government, the City has the authority to adopt ordinances and to promulgate rules and regulations that protect the public health, safety, and welfare of its residents. While

State and federal law limit the authority of local governments to enact laws that prohibit or have the effect of prohibiting the provision of telecommunications services, the City does have the power, under existing State and federal law, to approve appropriate regulations and restrictions relative to small cell, distributed antenna systems and other personal wireless telecommunication facility installations in the public rights-of-way.

In light of the anticipated continuation of increased demand for placement of small cell facilities, distributed antenna system facilities and other personal wireless telecommunication facility installations within the public rights-of-way, the City Council finds that it is in the best interests of the public health, safety and general welfare of the City to adopt the amendments below to Title 7, "Public Ways," of the City Code, as amended, in order to establish generally applicable standards for construction, installation, use, maintenance and repair of such facilities and installations within the public rights-of-way of the City so as to, among other things: (i) prevent interference with the facilities and operations of the City's utilities and of other utilities lawfully located in public rights-of-way or property, (ii) provide specific regulations and standards for the placement and siting of personal wireless telecommunication facilities within public rights-of-way in the City, (iii) preserve the character of the neighborhoods in which facilities are installed, (iv) minimize any adverse visual impact of personal wireless telecommunication facilities and prevent visual blight, (v) facilitate the location of personal wireless telecommunication facilities in permitted locations within the public rights-of-way in the City, and (vi) assure the continued safe use and enjoyment of private properties adjacent to personal wireless telecommunication facilities locations.

SECTION 2: Title 7 of the Evanston City Code of 2012, is hereby amended to add Chapter 16 which shall read as follows:

CHAPTER 16 - PERSONAL WIRELESS TELECOMMUNICATION FACILITIES

7-16-1. – Definitions.

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

ALTERATIVE ANTENNA STRUCTURE	An existing pole or other structure within the public right-of-way that can be used to support an antenna and is not a utility pole or a City-owned infrastructure.
ANTENNA	Communications equipment that transmits or receives electromagnetic radio signals used in the provision of any type of wireless communications services.
APPLICANT	Any person or entity submitting an application to install personal wireless telecommunication facilities within a public right-of-way.
CITY-OWNED INFRASTRUCTURE	Infrastructure including, but not limited to, streetlights, traffic signals, towers or buildings owned, operated or maintained by the City.
DISTRIBUTED ANTENNA SYSTEM (DAS)	A type of personal wireless telecommunication facility consisting of a network of spatially separated antenna nodes connected to a common source via a transport medium that provides wireless service within a geographic area.
LANDSCAPE SCREENING	The installation at grade of plantings, shrubbery, bushes or other foliage intended to screen the base of a personal wireless telecommunication facility from public view.
MONOPOLE	A structure composed of a single spire, pole or tower designed and used to support antennas or related equipment and is not a utility pole or a City-owned infrastructure.
PERSONAL WIRELESS TELECOMMUNICATION ANTENNA	An antenna that is part of a personal wireless telecommunications facility.
PERSONAL WIRELESS TELECOMMUNICATION EQUIPMENT	Equipment, exclusive of an antenna, that is part of a personal wireless telecommunications facility.
PERSONAL WIRELESS TELECOMMUNICATIONS FACILITY	An antenna, equipment, and related Improvements used, or designed to be used, to provide wireless transmission of voice, data, Images, or other information including, but not limited to, cellular phone service, personal communication service, paging, and

	Wi-Fi antenna service.
SMALL CELL ANTENNA	A Personal Wireless Telecommunications Facility consisting of an antenna and related equipment either installed singly <i>or</i> as part of a network to provide coverage or enhance capacity in a limited defined area.
TOWER	Any structure that is designed and constructed primarily for the purpose of supporting one or more antennas, including self-supporting lattice towers, guy towers, or monopole towers. Except as otherwise provided for by this Subsection, the requirements for a tower and associated antenna facilities must be those required in this Subsection and Code.
UTILITY POLE	An upright pole designed and used to support electric cables, telephone cables, telecommunication cables , cable service cables, or to provide lighting, traffic control, signage, or a similar function.
VARIANCE or VARIATION	A grant of relief by the City Manager or his/her designee from specific limitations of this section.
WI-FI ANTENNA	An antenna used to support Wi-Fi broadband Internet access service based on the IEEE 802.11 standard that typically uses unlicensed spectrum to enable communication between devices.

7-16-2. – Standards and Regulations.

Personal wireless telecommunication facilities will be permitted to be placed in rights-of-way as attachments to existing utility poles, alternative antenna structures, or City-owned infrastructure subject to the following regulations:

- (A) *Number Limitation.* Only one personal wireless telecommunication facility can be located on a single utility pole.
- (B) *Separation and Clearance Requirements.* Personal wireless telecommunication facilities may be attached to a utility pole, alternative antenna structure, monopole, or City-owned infrastructure only where such pole, structure or infrastructure is located no closer than twenty-five (25) feet to any residential building and no closer than five hundred feet (500) feet from any other personal wireless telecommunication facility. A lesser clearance may be allowed by the City Manager or his/her designee as a minor variance to this Subsection when the Applicant establishes that the lesser clearance is necessary to close a significant coverage or capacity gap in the Applicant's services or to otherwise provide adequate services to customers, and the proposed antenna or facility is the least intrusive means to do so.
- (C) *Co-Location.* Unless otherwise authorized by the City Manager or his/her designee as a variance for good cause shown, only one personal wireless telecommunications facility is allowed on each utility pole, alternative antenna structure, or single unit of City-owned infrastructure for the use of a single

personal wireless telecommunications facility operator. This Subsection does not preclude or prohibit collocation of personal wireless telecommunication facilities on towers or monopoles that meet the requirements as set forth elsewhere in this Subsection or as required by federal law.

- (D) *City-Owned Infrastructure.* Personal wireless telecommunication facilities can only be mounted to City-owned infrastructure including, but not limited to, streetlights, traffic signal, towers or buildings, if authorized by a license agreement between the owner and the City.
- (E) *New Towers.* No new monopole or other tower to support personal wireless telecommunication facilities is permitted to be installed on right-of-ways within the corporate limits of the City unless specifically authorized by the City Council.
- (F) *Attachment Limitations.* No personal wireless telecommunication antenna or facility will be attached to a utility pole, alternative antenna structure, or City-owned infrastructure unless all of the following conditions are satisfied:
 1. *Surface Area of Antenna:* The personal wireless telecommunication antenna, including antenna panels, whip antennas or dish-shaped antennas, cannot have a surface area of more than seven (7) cubic feet in volume.
 2. *Size of Above-Ground Personal Wireless Telecommunication Facility:* The total combined volume of all above-ground equipment and appurtenances comprising a personal wireless telecommunication facility, exclusive of the antenna itself, cannot exceed seventeen (17) cubic feet.
 3. *Personal Wireless Telecommunication Equipment:* The operator of a personal wireless telecommunication facility must, whenever possible, locate the base of the equipment or appurtenances at a height of no lower than eight (8) feet above grade.
 4. *Personal Wireless Telecommunication Services Equipment Mounted at Grade:* In the event that the operator of a personal wireless telecommunication facility proposes to install a facility where equipment or appurtenances are to be installed at grade, screening must be installed to minimize the visibility of the facility.
 5. *Height:* The top of the highest point of the antenna cannot extend more than seven (7) feet above the highest point of the utility pole, alternative antenna support structure, or City-owned infrastructure. If necessary, the replacement or new utility pole, alternative support structure or City-owned infrastructure located within the public rights-of-way may be no more than seven (7) feet higher than existing poles adjacent to the replacement or new pole or structure, or no more than fifty (50) feet in height overall, whichever is less.
 6. *Color:* A personal wireless telecommunication facility, including all related equipment and appurtenances, must be a color that blends with the surroundings of the pole, structure or infrastructure on which it is mounted and use non-reflective materials which blend with the materials and colors of the surrounding area and structures. Any wiring must be covered with an appropriate cover.

7. **Antenna Panel Covering:** A personal wireless telecommunication antenna must include a radome, cap or other antenna panel covering or shield, to the extent such covering would not result in a larger or more noticeable facility and, if proposed, such covering must be of a color that blends with the color of the pole on which it is mounted.
8. **Wiring and Cabling:** Wires and cables connecting the antenna to the remainder of the facility must be installed in accordance with the version of the National Electric Code and National Electrical Safety Code adopted by the City and in force at the time of the installation of the facility. No wiring and cabling serving the facility will be allowed to interfere with any wiring or cabling installed by a cable television or video service operator, electric utility or telephone utility.
9. **Grounding:** The personal wireless telecommunication facility must be grounded in accordance with the requirements of the most current edition of the National Electrical Code adopted by the City and in force at the time of the installation of the facility.
10. **Guy Wires:** No guy or other support wires will be used in connection with a personal wireless telecommunication facility unless the facility is to be attached to an existing utility pole, alternative antenna support structure or City-owned infrastructure that incorporated guy wires prior to the date that an applicant has applied for a permit.
11. **Pole Extensions:** Extensions to utility poles, alternative support structures and City-owned infrastructure utilized for the purpose of connecting a personal wireless telecommunications antenna and its related personal wireless telecommunications equipment must have a degree of strength capable of supporting the antenna and any related appurtenances and cabling and capable of withstanding wind forces and ice loads in accordance with the applicable structural integrity standards as set forth in Subsection 12 below. An extension must be securely bound to the utility pole, alternative antenna structure or City-owned infrastructure in accordance with applicable engineering standards for the design and attachment of such extensions.
12. **Structural Integrity:** The personal wireless telecommunication facility, including the antenna, pole extension and all related equipment must be designed to withstand a wind force forces and ice loads in accordance with applicable standards established in Chapter 25 of the National Electric Safety Code for utility poles, in TIA/EIA Section 222-G established by the Telecommunications Industry Association (TIA) and the Electronics Industry Association (EIA) for steel wireless support structures and the applicable industry standard for other existing structures. For any facility attached to City-owned infrastructure or, in the discretion of the City, for a utility pole or alternative antenna structure, the operator of the facility must provide the City with a structural evaluation of each specific location containing a recommendation that the proposed installation passes the standards described above. The evaluation must be prepared by a professional structural engineer licensed in the State of Illinois.

- (G) *Signage.* Other than signs required by federal law or regulations or identification and location markings, a personal wireless telecommunication facility cannot have signs installed on it.
- (H) *Screening.* If screening is required under Subsection 6 above, it must be natural landscaping material or a fence subject to the approval of the City and must comply with all regulations of the City. Appropriate landscaping must be located and maintained and must provide the maximum achievable screening, as determined by the City, from view of adjoining properties and public or private streets. Notwithstanding the foregoing, no such screening is required to extend more than nine (9) feet in height. Landscape screening when permitted in the right-of-way, must be provided with a clearance of three (3) feet in all directions from the facility. The color of housing for ground-mounted equipment must blend with the surroundings. For a roof-mounted facility, the maximum reasonably achievable screening must be provided between such facility and the view from adjoining properties and public or private streets. In lieu of the operator installing the screening, the City, at its sole discretion, may accept from the operator of the facility a fee of one thousand five hundred dollars (\$1,500) for the acquisition and installation of landscaping material by the City.
- (I) *Permission to Use Utility Pole or Alternative Antenna Structure.* The operator of a personal wireless telecommunication facility must submit to the City written copies of the approval from the owner of a utility pole, or an alternative antenna structure, to mount the personal wireless telecommunication facility on that specific pole, or structure, prior to issuance of the City permit.
- (J) *Licenses and Permits.* The operator of a personal wireless telecommunication facility must verify to the City that all licenses and permits required by other agencies and governments with jurisdiction over the design, construction, location and operation of said facility have been obtained and will be maintained.
- (K) *Variance Requirements.* Each location of a personal wireless telecommunication facility within a right-of-way must meet all of the requirements of this Section, unless a variance has been obtained in accordance with this Chapter or City Code Section 7-17-22.
- (L) *Abandonment and Removal.* Any personal wireless telecommunication facility located within the corporate limits of the City that is not operated for a continuous period of twelve (12) months, must be considered abandoned and the owner of the facility must remove same within ninety (90) days of receipt of written notice from the City notifying the owner of such abandonment. Such notice must be sent by certified or registered mail, return-receipt-requested, by the City to such owner at the last known address of such owner. In the case of personal wireless telecommunication facilities attached to City owned Infrastructure, if such facility is not removed within ninety (90) days of such notice, the City may remove or cause the removal of such facility through the terms of the applicable license agreement or through whatever actions are provided by law for removal and cost recovery.

7-16-3. – Governmental Wireless Telecommunication Facilities.

This Chapter will not apply to personal wireless telecommunication facilities owned by the City.

7-16-4. – Permits and Application Fees.

Permits for placement of personal wireless telecommunication facilities are required. Except as otherwise provided for by this Chapter, the procedures for the application for, approval of and revocation of such a permit must be those required in City Code Sections 7-17-5. Any applications must demonstrate compliance with the requirements of this section. Unless otherwise provided by franchise, license, or similar agreement, or federal, State or local law, all applications for permits pursuant to this section must be accompanied by a fee in the amount established in City Code Section 7-17-5. The application fee will reimburse the City for regulatory and administrative costs with respect to the work being performed.

7-16-5. – Conflict of Laws.

Where the conditions imposed by any provisions of this Chapter regarding the siting and installation of personal wireless telecommunication facilities are more restrictive than comparable conditions imposed elsewhere in this Title, Code or in any other local law, ordinance, resolution, rule or regulation, the regulations of this section will govern.

SECTION 3: All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 4: 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 applications 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 5: The findings and recitals herein are declared to be prima facie evidence of the law of the City and shall be received in evidence as provided by the Illinois Compiled Statutes and the courts of the State of Illinois.

SECTION 6: That this Ordinance 125-O-16 shall be in full force and effect on November 1, 2016, nunc pro tunc.

Introduced: October 24, 2016

Adopted: November 14, 2016

Approved:

November 16, 2016

Elizabeth B. Tisdahl
Elizabeth B. Tisdahl, Mayor

Attest:

Rodney Greene
Rodney Greene, City Clerk

Approved as to form:

Michelle L. Maroney
W. Grant Farrar, Corporation Counsel