

6/25/2018

78-O-18

AN ORDINANCE

Amending Title 7, Chapter 16 and Related Portions of the Evanston City Code, "Small Wireless Facilities," Providing for the Regulation and Application for Small Wireless Facilities

NOW BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EVANSTON, COOK COUNTY, ILLINOIS, THAT:

SECTION 1: Legislative Statement. The Illinois General Assembly enacted Public Act 100-0585, known as the Small Wireless Facilities Deployment Act ("Act"), which became effective on June 1, 2018. The City of Evanston is an Illinois municipality in accordance with the Constitution of the State of Illinois of 1970. The City is authorized, under existing state and federal law, to enact appropriate regulations and restrictions relative to small wireless facilities, distributed antenna systems and other personal wireless telecommunication facility installations in the public right-of-way as long as it does not conflict with state and federal law. The Act sets forth the requirements for the collocation of small wireless facilities by local authorities.

The City Council determines that it is in the best interest of the City of Evanston to amend the Evanston City Code to conform to the Small Wireless Facilities Deployment Act. This Ordinance updates and revises Title 7, Chapter 16, "Personal Wireless Telecommunication Facilities," in its entirety to conform to the Act.

Article VII, Section (6)a of the Illinois Constitution of 1970, states that the "powers and functions of home rule units shall be construed liberally," and was written "with the intention that home rule units be given the broadest powers possible." *Scadron*

v. *City of Des Plaines*, 153 Ill.2d 164 (1992). Pursuant to 65 ILCS 5/1-2-1, the City may make all rules and regulations to carry into effect the powers granted to the City, such is the broad and general grant of authority complementing the City's home rule powers. At meetings held in compliance with the provisions of the Illinois Open Meetings Act (5 ILCS 120/1 *et seq.*), the City Council considered this Ordinance, heard public comment, and made findings. It is well-settled law in Illinois that the legislative judgment of the City Council must be considered presumptively valid and is not subject to courtroom fact-finding. See *Glenview State Bank v. Village of Deerfield*, 213 Ill.App.3d 747 (2d Dist. 1991); *National Paint & Coating Ass'n v. City of Chicago*, 45 F.3d 1124 (7th Cir. 1995).

SECTION 2: Title 7, Chapter 16 of the Evanston City Code of 2012, as amended ("City Code"), is hereby deleted and amended in its entirety and shall read as follows:

CHAPTER 16 – SMALL WIRELESS FACILITIES

7-16-1: PURPOSE AND SCOPE.

- (A) *Purpose.* The purpose of this Chapter is to establish regulations, standards and procedures for the siting and collocation of small wireless facilities on rights-of-way within the City's jurisdiction, or outside the rights-of-way on property zoned by the City exclusively for commercial or industrial use, in a manner that is consistent with the Act.
- (B) *Conflicts with Other Ordinances.* This Chapter 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 Chapter, the wireless provider shall comply with the requirements of this Chapter to the maximum extent possible without violating federal or state laws or regulations.

7-16-2: DEFINITIONS.

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

<i>ANTENNA.</i>	Communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of wireless services.
<i>APPLICABLE CODES.</i>	Uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or local amendments to those codes, including the National Electrical Code.
<i>APPLICANT.</i>	Any person who submits an application and is a wireless provider.
<i>APPLICATION.</i>	A request submitted by an applicant to the City 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.
<i>COLLOCATE OR COLLOCATION.</i>	To install, mount, maintain, modify, operate, or replace wireless facilities on or adjacent to a wireless support structure or utility pole.
<i>COMMUNICATIONS SERVICE.</i>	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.
<i>COMMUNICATIONS SERVICE PROVIDER.</i>	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.
<i>FCC.</i>	The Federal Communications Commission of the United States.
<i>FEE.</i>	A one-time charge.
<i>HISTORIC DISTRICT OR HISTORIC LANDMARK.</i>	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 City 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.
<i>LAW.</i>	A federal or state statute, common law, code, rule, regulation, order, or local ordinance or resolution.
<i>MICRO WIRELESS FACILITY.</i>	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.
<i>MUNICIPAL UTILITY POLE.</i>	A utility pole owned or operated by the City in public rights-of-way.
<i>PERMIT.</i>	A written authorization required by the City to perform an action or initiate, continue, or complete a project.
<i>PERSON.</i>	An individual, corporation, limited liability company, partnership, association, trust, or other entity or organization.
<i>PUBLIC SAFETY AGENCY.</i>	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.
<i>RATE.</i>	A recurring charge.
<i>RIGHT-OF-WAY.</i>	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 City-owned aerial lines.

<i>SMALL WIRELESS FACILITY.</i>	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.
<i>STRUCTURAL ENGINEER.</i>	A person licensed under the laws of the State of Illinois to practice structural engineering, as defined in Section 4 of the Structural Engineering Practice Act of 1989, 225 ILCS 340/4.
<i>UTILITY POLE.</i>	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.
<i>WIRELESS FACILITY.</i>	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.
<i>WIRELESS INFRASTRUCTURE PROVIDER.</i>	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 City.
<i>WIRELESS PROVIDER.</i>	A wireless infrastructure provider or a wireless services provider. Wireless services – any services provided to the general public, including a particular class of customers, and made available on a nondiscriminatory basis using licensed or unlicensed spectrum, whether at a fixed location or mobile, provided using wireless facilities.
<i>WIRELESS SERVICES PROVIDER.</i>	A person who provides wireless services.
<i>WIRELESS SUPPORT STRUCTURE.</i>	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.

7-16-3: REGULATION OF SMALL WIRELESS FACILITIES.

- (A) *Permitted Use.* Small wireless facilities shall be classified as permitted uses and subject to administrative review, except as provided in City Code Section 7-16-3(C)(9) regarding Height Exceptions or Variances, but not subject to zoning review or approval if they are collocated (i) in rights-of-way in any zoning district, or (ii) outside rights-of-way in property zoned exclusively for commercial or industrial use.
- (B) *Permit Required.* An applicant shall obtain one or more permits from the City to collocate a small wireless facility. An application shall be received and processed, and permits issued shall be subject to the following conditions and requirements:

1. *Application Requirements.* A wireless provider shall provide the following information to the City, together with the City's Small Cell Facilities Permit Application, as a condition of any permit application to collocate small wireless facilities on a utility pole or wireless support structure:
 - a. Site specific structural integrity and, for a municipal utility pole, make-ready analysis prepared by a structural engineer;
 - b. The location where each proposed small wireless facility or utility pole would be installed and photographs of the location and its immediate surroundings depicting the utility poles or structures on which each proposed small wireless facility would be mounted or location where utility poles or structures would be installed. This should include a depiction of the completed facility;
 - c. Specifications and drawings prepared by a structural engineer 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 the Collocation Requirements and Conditions contained herein, 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 City, the wireless provider shall provide legally competent evidence of the consent of the owner of such pole to the proposed collocation.

2. *Application Process.* The City shall process applications as follows:
 - a. The first completed application shall have priority over applications received by different applicants for collocation on the same utility pole or wireless support structure.
 - b. An application to collocate a small wireless facility on an existing utility pole or wireless support structure, or replacement of an existing utility pole or wireless support structure shall be processed on a nondiscriminatory basis and shall be deemed approved if the City fails to approve or deny the application within ninety (90) days after the submission of a completed application.

However, if an applicant intends to proceed with the permitted activity on a deemed approved basis, the applicant shall notify the City in writing of its intention to invoke the deemed approved remedy no sooner than seventy-five (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 City. The receipt of the deemed approved notice shall not preclude the City's denial of the permit request within the time limits as provided under this Ordinance.

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

However, if an applicant intends to proceed with the permitted activity on a deemed approved basis, the applicant shall notify the City in writing of its intention to invoke the deemed approved remedy no sooner than one hundred five (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 City. The receipt of the deemed approved notice shall not preclude the City's denial of the permit request within the time limits as provided under this Chapter.

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

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

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

The applicant may cure the deficiencies identified by the City and resubmit the revised application once within thirty (30) days after notice of denial is sent to the applicant without paying an additional application fee. The City shall approve or deny the revised application within thirty (30) days after the applicant resubmits the application or it is deemed approved. Failure to resubmit the revised application within thirty (30) days of denial shall require the applicant to submit a new application with applicable fees, and recommencement of the City's review period.

The applicant must notify the City in writing of its intention to proceed with the permitted activity on a deemed approved basis, which may be submitted with the revised application.

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

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

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

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

- 4. *Tolling.* The time period for applications may be further tolled by:
 - a. An express written agreement by both the applicant and the City; or

b. A local, State or federal disaster declaration or similar emergency that causes the delay.

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

If an application includes multiple small wireless facilities, the City 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 City may issue separate permits for each collocation that is approved in a consolidated application.

6. *Duration of Permits.* The duration of a permit shall be for a period of not less than five (5) years, and the permit shall be renewed for equivalent durations unless the City makes a finding that the small wireless facilities or the new or modified utility pole do not comply with the applicable City codes or any provision, condition or requirement contained in this Chapter.

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

7. *Means of Submitting Applications.* Applicants shall submit physical applications, supporting information and notices to the City by personal delivery to the City's Community Development Department at the City's designated place of business.

(C) Collocation Requirements and Conditions.

1. *Public Safety Space Reservation.* The City may reserve space on municipal utility poles for future public safety uses, for the City's electric utility uses, or both, but a reservation of space may not preclude the collocation of a small wireless facility unless the City reasonably determines that the municipal utility pole cannot accommodate both uses.
2. *Installation and Maintenance.* The wireless provider shall install, maintain, repair and modify its small wireless facilities in safe condition and good repair and in compliance with the requirements and conditions of this Chapter. The wireless provider shall ensure that its employees, agents or contractors that perform work in connection with its small wireless facilities

are adequately trained and skilled in accordance with all applicable industry and governmental standards and regulations.

3. *No interference with public safety communication frequencies.* The wireless provider's operation of the small wireless facilities shall not interfere with the frequencies used by a public safety agency for public safety communications.

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

Unacceptable interference will be determined by and measured in accordance with industry standards and the FCC's regulations addressing unacceptable interference to public safety spectrum or any other spectrum licensed by a public safety agency.

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

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

4. The wireless provider shall not collocate small wireless facilities on City 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 City 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, the terms "communications space", "communication worker safety zone", and "electric supply zone" have the meanings given to those terms in the adopted National Electrical Code as published by the Institute of Electrical and Electronics Engineers.

5. The wireless provider shall comply with all applicable codes and local code provisions or regulations that concern public safety.

6. The wireless provider shall comply with written design standards that are generally applicable for decorative utility poles, or reasonable stealth, concealment and aesthetic requirements that are set forth in this City Code, written policy adopted by the City, a comprehensive plan or other written design plan that applies to other occupiers of the rights-of-way, including on a historic landmark or in a historic district.
7. *Alternate Placements.* Except as provided in this Collocation Requirements and Conditions Section, a wireless provider shall not be required to collocate small wireless facilities on any specific utility pole, or category of utility poles, or be required to collocate multiple antenna systems on a single utility pole. However, with respect to an application for the collocation of a small wireless facility associated with a new utility pole, the City may propose that the small wireless facility be collocated on an existing utility pole or existing wireless support structure within 100 feet of the proposed collocation, which the applicant shall accept if it has the right to use the alternate structure on reasonable terms and conditions, and the alternate location and structure does not impose technical limits or additional material costs as determined by the applicant.

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

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

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

- a. Ten (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 City, 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 City, provided the City 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. Forty-five (45) feet above ground level.
9. *Height Exceptions or Variances.* If an applicant proposes a height for a new or replacement pole in excess of the above height limitations on which the small wireless facility is proposed for collocation, the applicant

shall submit to Design and Project Review a Small Cell Height Waiver Request in conformance with procedures, terms and conditions set forth in Title 4, Chapter 14, "Design and Project Review (DAPR)," of the Evanston City Code.

10. *Contractual Design Requirements.* 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.
11. *Ground-mounted Equipment Spacing.* The wireless provider shall comply with applicable spacing requirements in applicable codes and ordinances concerning the location of ground-mounted equipment located in the right-of-way if the requirements include a waiver, zoning or other process that addresses wireless provider requests for exception or variance and do not prohibit granting of such exceptions or variances.
12. *Undergrounding Regulations.* The wireless provider shall comply with local code provisions or regulations concerning undergrounding requirements that prohibit the installation of new or the modification of existing utility poles in a right-of-way without prior approval if the requirements include a waiver, zoning or other process that addresses requests to install such new utility poles or modify such existing utility poles and do not prohibit the replacement of utility poles.
13. *Collocation Completion Deadline.* Collocation for which a permit is granted shall be completed within one hundred eighty (180) days after issuance of the permit, unless the City and the wireless provider mutually agree to extend this period or a delay is caused by make-ready work for a municipal utility pole or by the lack of commercial power or backhaul availability at the site, provided the wireless provider has made a timely request within sixty (60) days after the issuance of the permit for commercial power or backhaul services, and the additional time to complete installation does not exceed three hundred sixty (360) days after issuance of the permit. Otherwise, the permit shall be void unless the City grants an extension in writing to the applicant.

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

1. Applicant shall pay an application fee of six hundred fifty dollars (\$650.00) for an application to collocate a single small wireless facility on an existing utility pole or wireless support structure, and three hundred fifty dollars (\$350.00) for each small wireless facility addressed in a consolidated application to collocate more than one small wireless facility on existing utility poles or wireless support structures.

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

(E) *Exceptions to Applicability.* Nothing in this Chapter authorizes a person to collocate small wireless facilities on:

1. property owned by a private party or property owned or controlled by the City 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 Chapter shall be construed to relieve any person from any requirement (a) to obtain a franchise or a State-issued authorization to offer cable service or video service or (b) to obtain any required permission to install, place, maintain, or operate communications facilities, other than small wireless facilities subject to this Ordinance.

- (F) *Pre-Existing Agreements.* Existing agreements between the City 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 City utility poles, that are in effect on June 1, 2018, remain in effect for all small wireless facilities collocated on the City's utility poles pursuant to applications submitted to the City before June 1, 2018, subject to applicable termination provisions contained therein. Agreements entered into after June 1, 2018, shall comply with this Chapter.

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

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

If the City has not billed the wireless provider actual and direct costs, the fee shall be two hundred dollars (\$200.00) payable on the first day after the first

annual anniversary of the issuance of the permit or notice of intent to collocate, and on each annual anniversary date thereafter.

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

The notice shall be sent by certified or registered mail, return receipt requested, by the City to the owner at the last known address of the wireless provider. If the small wireless facility is not removed within ninety (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 municipal utility poles or through whatever actions are provided for abatement of nuisances or by other law for removal and cost recovery.

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

7-16-4: DISPUTE RESOLUTION.

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

7-16-5: INDEMNIFICATION.

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

7-16-6: INSURANCE.

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

- (A) Property insurance for its property's replacement cost against all risks;
- (B) Workers' compensation insurance, as required by law; or
- (C) Commercial general liability insurance with respect to its activities on the City infrastructure, improvements or rights-of-way, including coverage for bodily injury and property damage, with limits not less than:
 1. Five million dollars (\$5,000,000.00) for bodily injury or death to each person;
 2. Five million dollars (\$5,000,000.00) for property damage resulting from any one accident;
 3. Five million dollars (\$5,000,000.00) for all other types of liability; and
 4. Workers' compensation insurance as required by law.

The wireless provider shall include the City and its officers, officials, employees, agents, or volunteers as additional insureds on the commercial general liability policy and provide certification and documentation of inclusion of the City and its officers, officials, employees, agents, or volunteers in a commercial general liability policy to the City prior to the collocation of any wireless facility, and shall keep updated certificates and proof of inclusion on file with the City at all times that the wireless provider maintains small wireless facilities within the City.

A wireless provider may self-insure all or a portion of the insurance coverage and limit requirement required by the City. A wireless provider that self-insures is not required, to the extent of the self-insurance, to comply with the requirement that the City and its officers, officials, employees, agents or volunteers be named additional insureds under this Section. A wireless provider that elects to self-insure shall provide to the City evidence sufficient to demonstrate its financial ability to self-insure the insurance coverage limits required by the City.

7-16-7: SEVERABILITY.

If any provision of this Chapter or application thereof to any person or circumstances 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 Chapter is severable.

SECTION 3: City Code Subsection 4-14-1(C), "Elements Examined," of the Evanston City Code of 2012, as amended, is hereby further amended and shall read as follows:

(C) Elements Examined. In carrying out the purpose of Design and Project Review, the following are examples of elements which are examined:

1. Parking arrangement.
2. Circulation.
3. Traffic access.
4. Building location on the site.
5. Landscaping.
6. Signage.
7. Drainage.
8. Exterior building design and materials.
9. Emergency phone structure, as defined in City Code Section 6-18-3.
10. Small Cell Height Waiver Requests, as required in City Code Subsection 7-16-3(C)(9).

SECTION 4: City Code Subsection 4-14-2(A) of the Evanston City Code of 2012, as amended, is hereby further amended and shall read as follows:

(A) The following are developments requiring Design and Project Review approval prior to issuance of building permits for the development:

1. Construction of a new building or structure, or modifications to the exterior of an existing structure (including additions) for any land use requiring a building permit.
2. Developments requiring a zoning variation.
3. Developments requiring a zoning ordinance text or map amendment.
4. All planned developments.
5. All municipal or other public developments.
6. Any proposed developments for which parking is to be located off-site.
7. All development proposals for which public and/or quasi-public financial assistance has been requested.
8. Emergency phone structures, as defined in City Code Section 6-18-3.
9. Small Cell Height Waiver Requests, as required in City Code Subsection 7-16-3(C)(9).
10. Any other use or development as determined by the Director of Community Development.

SECTION 5: City Code Section 7-2-10, "Poles and Wires; Erection; Maintenance," of the Evanston City Code of 2012, as amended, is hereby further amended and shall read as follows:

7-2-10: POLES AND WIRES; ERECTION; MAINTENANCE.

No poles for the carrying of electric, other wires or cables, or small wireless facilities shall be erected in any street or alley of the City without the written permission of the Director of Public Works or his/her designee. All permits issued to erect such poles in any streets or alleys in the City shall provide that the City may use the poles to be erected for the purpose of attaching thereto such necessary crossarms, wires or other electrical appliances as may be deemed necessary by the City authorities for the fire and police signal service of the City.

Before the Director of Public Works or his/her designee shall issue any permit for the setting or replacing of poles for the support or accommodation of electric conductors of any description whatsoever, or for the opening of any trench for underground construction, the applicant shall pay fees that, in the sole determination of the Director of the Public Works or his/her designee, are reasonably related to the project to the City.

Provided, that nothing herein contained shall be construed as exacting a fee for replacing a pole broken by accident or storms, or for shifting poles from one position to another under orders issued by the Director of Public Works or his/her designee.

SECTION 6: All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 7: This ordinance must be in full force and effect after its passage, approval, and publication in a manner provided by law.


SECTION 8: If any provision of this ordinance or application thereof to any person or circumstance is held unconstitutional or otherwise invalid, such invalidity must 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.

Introduced: July 23, 2018

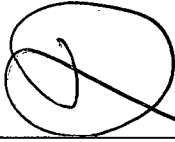
Adopted: July 23, 2018

Approved:

August 13, 2018

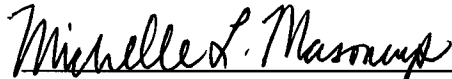

Stephen H. Hagerly, Mayor

Attest:



Devon Reid, City Clerk

Approved as to form:



Michelle L. Masoncup, Corporation
Counsel