



ADDENDUM REGULAR VILLAGE BOARD MEETING

September 24, 2019

7:00 PM

6. CONSENT AGENDA

- I. Consideration to adopt Ordinance No. 3631 amending Title 3, Chapter 25, Small Wireless Facilities to comply with state right-of-way regulations and requirements.

(The Village approved a new chapter to the Village Code regulating Small Wireless Facilities on May 22, 2018, which was amended on July 17, 2018.

(Small cell technology and infrastructure is still new and evolving, and the Village's existing design standards require an update to meet their purpose of protecting Village infrastructure and aesthetics.

(This ordinance amends the Village's regulations on Small Wireless Facilities by removing the codified design standards and creating a separate and more comprehensive Design Standards Manual, which can be updated to reflect ongoing trends in small cell technology.)

In compliance with the Americans with Disabilities Act and other applicable Federal and State laws, the meeting will be accessible to individuals with disabilities. Persons requiring auxiliary aids and/or services should contact the Village Clerk, preferably no later than five days before the meeting.

ORDINANCE NO. _____

AN ORDINANCE AMENDING TITLE 3, CHAPTER 25, SMALL WIRELESS FACILITIES TO COMPLY WITH STATE RIGHT-OF-WAY REGULATIONS AND REQUIREMENTS

BE IT ORDAINED by the Mayor and Board of Trustees of the Village of Elk Grove Village, Counties of Cook and DuPage, Illinois as follows:

Section 1: That Title 3, Chapter 25, Small Wireless Facilities of the Elk Grove Village Code be amended in its entirety and shall read as set forth in Exhibit A, attached hereto and by this reference incorporated herein.

Section 2: Severability. In the event that any section, clause, provision, or part of this ordinance shall be found and determined to be invalid by a court of competent jurisdiction, all valid parts that are severable from the invalid parts shall remain in full force and effect. If any part of this ordinance is found to be invalid in any one or more of its several applications, all valid applications that are severable from the invalid applications shall remain in effect.

Section 3: Repeal and Savings Clause. All ordinances or parts of ordinances in conflict herewith are hereby repealed; provided, however, that nothing herein contained shall affect any rights, actions or causes of action which shall have accrued to the Village of Elk Grove Village prior to the effective date of this ordinance.

Section 4: That this Ordinance shall be in full force and effect from and after its passage, approval and according to law.

VOTE: AYES: _____ NAYS: _____ ABSENT: _____

PASSED this _____ day of _____ 2019.

APPROVED this _____ day of _____ 2019.

APPROVED:

Mayor Craig B. Johnson
Village of Elk Grove Village

ATTEST:

Loretta M. Murphy, Village Clerk

EXHIBIT A

CHAPTER 25

SMALL WIRELESS FACILITIES

3-25-1 Definitions. When used in this Chapter, the following words and terms shall have the meanings ascribed to them in this Section:

"Antenna" means communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of wireless services.

"Applicable codes" means uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or Village amendments to those codes, including the National Electric Safety Code.

"Applicant" means any person who submits an application and is a wireless provider.

"Application" means a request submitted by an applicant to the Village for a permit to collocate small wireless facilities as well as any applicable fee for the review of such application.

"Authority" means the Village of Elk Grove Village 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" means a utility pole owned or operated by the Village in public rights-of-way.

"Collocate" or "collocation" means to install, mount, maintain, modify, operate, or replace wireless facilities on or adjacent to a wireless support structure or utility pole.

"Communications service" means 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(33), as amended; or wireless service other than mobile service.

"Communications service provider" means 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" means the Federal Communications Commission of the United States.

"FCC Order" means the FCC's Declaratory Ruling and Third Report and Order, WT Docket No. 17-79, WC Docket No. 17-84, FCC-18-133, released September 27, 2018, which is incorporated herein by this reference.

"*Fee*" means a one-time charge.

"*Law*" means a federal or State statute, common law, code, rule, regulation, order, or Village ordinance or resolution.

"*Micro wireless facility*" means 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*" means a written authorization required by the Village to perform an action or initiate, continue, or complete a project.

"*Person*" means an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization, including the Village.

"*Public Act 100-0585 or Act*" means the State of Illinois, Small Wireless Facilities Deployment Act, which is incorporated herein by this reference.

"*Rate*" means a recurring charge.

"*Right-of-way*" means the area on, below, or above a public roadway, highway, street, public sidewalk, alley, or utility easement dedicated for compatible use. "Right-of-way" does not include Village-owned aerial lines.

"*Small wireless facility*" means a wireless facility that meets both of the following qualifications: (i) each antenna is located inside an enclosure of no more than 3 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 associated with the facility is cumulatively no more than 28 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.

"*Unacceptable Interference*" means any level of radio frequency (RF) interference from a source outside of the Village's public safety communications network that has the effect of partially or completely impeding aural and/or visual signals received or transmitted by Village personnel. Any RF interference from a wireless provider as defined by this Ordinance and state law, shall be measured, corrected, and eliminated in accordance with the requirements of Section 15(d)(6)(A) of Public Act 100-0585.

"*Utility pole*" means 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" means 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" means any person, including a 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, but that is not a wireless services provider.

"Wireless provider" means a wireless infrastructure provider or a wireless services provider.

"Wireless services" means any services provided using licensed or unlicensed spectrum, whether at a fixed location or mobile, provided using wireless facilities.

"Wireless services provider" means a person who provides wireless services.

"Wireless support structure" means 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.

3-25-2 Permit Required. It shall be unlawful to place, install or utilize a small wireless facility in the Village without a permit as herein provided.

3-25-3 Permit Application.

- A. Required Information – The following information shall be provided as part of a permit application to collocate Small Wireless Facilities on an existing Utility Pole, and for the installation of a new Utility Pole serving Small Wireless Facilities.
 - 1. The operator of a Small Wireless Facility must verify to the Village that it has received all concurrent 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 within the corporate limits of the Village.
 - 2. The operator of a Small Wireless Facility must submit to the Village written copies of the legal authority from the owner for placement of the Small Wireless Facility on the utility pole prior to issuance of the permit.

3. A site-specific structural integrity analysis; and, for Utility Poles, a make-ready analysis prepared by a structural engineer licensed in the State of Illinois shall be provided.
 4. A map and site drawing showing the location of each Small Wireless Facility and Utility Poles, including photographs of its location and immediate surroundings depicting the utility pole or structure on which each Small Wireless Facility would be mounted, or location where Wireless Support Structures would be installed.
 5. Specifications and drawings prepared by a structural engineer licensed in the State of Illinois for each Small Wireless Facility.
 6. The equipment type and model numbers for the antennas and all other wireless equipment associated with the Small Wireless Facility.
 7. A proposed schedule for the installation and completion of each Small Wireless facility, if approved; and
 8. Certification that the collocation complies with section 3-25-4 C referenced herein regarding interference.
 9. Photographic “before and after” simulations of the proposed location of the Small Wireless Facility
 10. Certification of compliance with applicable FCC regulations. This includes a non-ionizing radiation electromagnetic radiation (NIER) report for the small wireless facility equipment type and model endorsed by a radiofrequency engineer licensed in the State of Illinois, including a certification and the network node complies with all radiation and electromagnetic standards. The report shall specify approach distances to the general public and occupational workers at the ground and antenna centerline levels. The report shall include instructions regarding powering off the equipment or contact information for a person who can power off the equipment.
- B. Completeness of Permit 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 must specifically identify the missing information.
- C. Permit Application Process - The Village shall process applications as follows:
1. The Village shall approve an application unless the application does not meet the requirements of this Ordinance. If the Village determines that applicable codes, local code provisions or regulations that concern public safety, or the Permit Application Requirements require that the utility pole or wireless support structure be replaced before the requested collocation, approval may be

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

The Village must 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.

However, 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 subsequent review 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.

D. Tolling – Small Wireless Facility shot clocks are reset, not just tolled, if the Village notifies the applicant within 30 days after submission that the application is incomplete. For subsequent determinations of incompleteness, the shot clock would toll – not reset – if the Village provides written notice within 30 days that the supplemental submission did not provide the requested information. The time period for applications may be further tolled by:

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

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

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

- F. Design Standards Manual – In addition to the application requirements above, the application must conform with the design guideline requirements as specified in the Village’s Small Cell Design Standards Manual, which are incorporated herein by this reference.
- G. 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.
- H. Means of Submitting Applications - When submitting documentation required for Permits for placement of wireless telecommunication facilities, the applicant is required to submit six (6) packets of the application as well as all required and supporting documentation for the application, to the Village.
- I. Routine Maintenance of Installed Equipment - 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 3-25-3-A; 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.

However, the Village may require a permit to work within rights-of-way for activities that affect traffic patterns or require lane closures.

3-25-4 General Standards and Regulations – Rights of Way

Small Wireless Facilities are permitted to be placed in a Right-of-way subject to compliance with the Illinois Small Wireless Facilities Deployment Act, the FCC Order, the Elk Grove Village Design Standards Manual, and to administrative staff review for each site to ensure compliance with the following regulations. Detailed aesthetic requirements for all zones of the Village can be found in the Small Cell Design Standards Manual.

- A. *Separation and Clearance Requirements.* With respect to applications for the collocation of Small Wireless Facilities associated with a new Utility Pole, the Village, at its discretion, may require that the Small Wireless Facility be collocated on an existing Utility Pole, or an existing Wireless Support Structure within 100 feet of the proposed collocation. If the applicant determines the alternate location imposes technical limits, the applicant shall provide written certification specifically describing the technical limitations.
- B. *Height Limitations.* The maximum permitted height of Small Wireless Antennas shall be not greater than 10 feet above an existing Utility Pole or Wireless Support Structure on which the Small Wireless Facility is collocated. Unless otherwise authorized by the Village Board, the height of a new or replacement Utility Pole or Wireless Support Structure on which the Small Wireless Facility is collocated is permitted to be the higher of (i) 10 feet in height above the tallest pole, other than utility poles supporting only Small 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 of the Villages jurisdictional boundary; or (ii) 45 feet above ground level.
- C. *Interference.* The Small Wireless Facility shall not interfere with the frequencies used by a public safety agency for public safety communications. A Wireless Provider shall only install Small Wireless Facilities of the type and frequency that will not cause Unacceptable Interference with public safety agencies communication equipment.
- D. *Contracts.* The Wireless Provider shall comply with requirements imposed by a contract between the Village and private owner concerning design or construction standards applicable to utility poles and ground mounted equipment in the right of way.
- E. *Spacing.* Unless otherwise authorized by the Village Board, the Wireless provider shall comply with applicable spacing requirements for ground-mounted equipment located in the right of way.
- F. *Underground Utilities.* Small Wireless Facility provider must comply with Village code provisions concerning undergrounding utilities.
- G. *Public Safety.* The Wireless Provider shall comply with all applicable regulations concerning public safety. It is important to note that Small Wireless Facilities must not result in human exposure to radio frequency radiation in excess of applicable safety standards specified in 47 CFR Rule 1.1307(b).
- H. *Term.* The duration of a permit for Small Wireless facilities shall be five (5) years. The permit may be renewed for additional five (5) year periods unless the Village makes a finding that the Small Wireless Facility does not comply with applicable codes.
- I. *Design Standards.* The design of the Small Wireless Facility must conform with the design guideline requirements as specified in the Village's Small Cell Design Standards Manual.

- J. *License Agreement.* Wireless Providers locating Small Wireless Facilities on Village owned property shall be required to enter into a license agreement with the Village; subject to approval by the Village Board. For Small Wireless Facilities located on property not owned by the Village, the Wireless Provider shall provide proof of a license agreement, lease or similar document demonstrating legal authority to locate Small Wireless Facilities on property owned by the applicable government agency or private property owner.
- K. *Insurance.* The Wireless Provider shall carry, at the Wireless Providers own cost and expense, (i) Property Insurance for its property's replacement cost against all risk; (ii) Workman's Compensation Insurance as required by law; and (iii) Commercial Liability Insurance with respect to its activities and facilities maintained on the village rights of way.
- L. *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 PA 100-0585. 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.
- M. *Attachment Limitations.* No Small Wireless Facility and antenna within the right-of-way will be attached to a non-Village Utility Pole, a Village Utility Pole or Wireless Support Structure, unless all of the following conditions are satisfied:
1. Surface Area of Antenna: Each antenna shall be located inside an enclosure of no more than 3 cubic feet in volume, or in the case of an antenna that has exposed elements, the antenna and all its exposed elements must fit within an imaginary enclosure of no more than 6 cubic feet.
 2. Size of Equipment, other than antenna: The total combined volume of all aboveground equipment and appurtenances comprising a Small Wireless Facility, exclusive of the antenna itself, cannot exceed 28 cubic feet.
 3. Location of Wireless Telecommunication Equipment: The operator of a Small Wireless 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. Color: A Small Wireless Facility, including all related equipment and appurtenances, must comply with the applicable aesthetic standards regarding color of equipment to blend with the surrounding area and structures for construction in the Village right of way. The color shall blend with the surroundings of the pole, structure tower 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.

5. Antenna Panel Covering: A small wireless antenna may include a radome, cap or other antenna panel covering or shield. Such covering must be of a color that blends with the color of the pole on which it is mounted.
6. Wiring and Cabling: Wires and cables connecting the antenna to the remainder of the facility must be installed in accordance with the Village Code. 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.
7. Grounding: The Small Wireless Facility must be grounded in accordance with the requirements of the Village Code.
8. Signage: Other than signs required by federal law or regulations or identification and location markings, installation of signs on a personal wireless telecommunication facility is prohibited.
9. Equipment Location: Small Wireless Utilities located on a Utility Pole shall not be installed within the communication worker safety zone of the pole or the electric supply zone of the pole. Small Wireless Facilities may be located in the communication space and on top of the Utility Pole if space is otherwise not available in accordance with applicable codes.

3-25-5 Design Standards – All Zoning Districts

Design standards within Elk Grove Village vary dependent on the zoning classification of the prospective new pole or collocation application. These can be found in the Elk Grove Village Small Cell Design Standards Manual and are subject to change at the sole discretion of Village staff.

3-25-6 Abandonment and Removal. Any Small Wireless Facility that is not operated for a continuous period of twelve (12) months shall be considered abandoned and the owner of the facility must remove same within ninety (90) days of receipt of written notice from the Village notifying the owner of such abandonment. Such notice shall be sent by certified or registered mail, return-receipt-requested, by the village to such owner at the last known address of such owner. In the case of personal wireless telecommunication facilities attached to Village-owned infrastructure, if such facility is not removed within ninety (90) days of such notice, the Village 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.

3-25-7 – Fees. Permit fees for Small Wireless Facilities shall be as follows:

New Utility Pole: \$1,000 for each Small Wireless Facility addressed in an application that includes a new Utility Pole.

Collocation: \$500 for a single up-front application that includes up to five Small Wireless Facilities, with an additional \$100 for each Small Wireless Facility beyond five.

Annual Rate: \$270 per Small Wireless Facility per year is the annual recurring rate to collocate a Small Wireless Facility on an authority utility pole located in a right-of-way.