



AGENDA ITEM EXECUTIVE SUMMARY

Agenda Item number: IB

Title: Recommendation to approve a new City Code Ordinance “Section 13.24 – Small Wireless Facilities” - Related to Illinois Public Act 100-585 – 5G Small Cell Antenna Deployment and Modification of Section 13.22 – Construction of Utility Facilities in the Rights-of-Way

Presenter: Tom Bruhl

Meeting: City Council

Date: July 16, 2018

Proposed Cost: \$NA

Budgeted Amount: \$NA

Not Budgeted:

Executive Summary *(if not budgeted please explain):*

Earlier this year, the Illinois Legislature passed, and the Governor signed, Public Act 100-585. The act intends to streamline the process for wireless carriers to deploy 5G throughout the state by setting a common set of rules for the installation of antennas in the public right-of-way. Public Works and Community Development contracted with Klein, Thorpe, and Jenkins, LTD to review existing City Code and make recommendations for changes so that our ordinances were both compliant with the Public Act, and provide the City with allowed regulation of permitting and placement of the antennas in the public rights-of-way.

Within Title 13 “Public Utilities”, section “13.24 – Small Wireless Facilities”, is recommended as a new City Code Ordinance section.

Additionally, a small modification to section 13.22 – Construction of Utility Facilities in the Rights-of-Way is being recommended to standardize the spacing requirements for ground mounted equipment.

Michael Marrs from Klein, Thorpe, and Jenkins, LTD will make a short presentation on the law and the need for the proposed changes, and will briefly explain the recommended ordinance provisions.

Attachments *(please list):*

Ordinance with new 13.24 – Small Wireless Facilities and new 13.22.015 – Ground- Mounted Equipment Spacing Requirements

Recommendation/Suggested Action *(briefly explain):*

Approve proposed Ordinance with Revisions to Title 13 – Public Utilities incorporating new section “13.24 – Small Wireless Facilities” and new subsection 13.22.015 – Ground-Mounted Equipment Spacing Requirements

**AN ORDINANCE AMENDING THE MUNICIPAL CODE OF THE CITY OF ST.
CHARLES RELATIVE TO THE PERMITTING, REGULATION AND DEPLOYMENT OF
SMALL WIRELESS FACILITIES**

ORDINANCE NO. _____

WHEREAS, the City of St. Charles (“City”) is a municipal corporation duly organized and existing under the laws of the State of Illinois; and

WHEREAS, the public rights-of-way within City limits are used to provide essential public services to City 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; and

WHEREAS, growing demand for personal wireless telecommunications services has resulted in increasing requests nationwide and locally from the wireless industry to place small cell antenna facilities, distributed antenna systems, and other small wireless telecommunication facilities on utility and street light poles and other structures both within the public rights-of-way and in other locations; and

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

WHEREAS, the City is further authorized to adopt the amendments contained herein pursuant to its authority to regulate the public right-of-way under Article 11, Division 80 of the Illinois Municipal Code (65 ILCS 5/11-80-1 *et seq.*); and

WHEREAS, the City is authorized, under existing State and federal law, to enact appropriate regulations and restrictions relative to small cell antenna facilities, distributed antenna systems, and other small personal wireless telecommunication facility installations both within the public rights-of-way and in other locations within the jurisdiction of the City; and

WHEREAS, Public Act 100-585, known as the Small Wireless Facilities Deployment Act, approved by the Governor on April 12, 2018, with an effective date of June 1, 2018, acts to impose certain additional requirements on municipalities, including the City, regarding the permitting, construction, deployment, regulation, operation, maintenance, repair and removal of certain defined small wireless facilities both within public rights-of-way and in other locations within the jurisdiction of the City; and

WHEREAS, the City is uniquely situated compared to many municipalities in that it operates its own electric utility and maintains its own electric utility poles. Such

operation and maintenance requires special consideration by the City and wireless providers relative to the placement of small wireless facilities on City-owned and maintained electric utility poles; and

WHEREAS, in conformance with the requirements of the Small Wireless Facilities Deployment Act, and in anticipation of a continued increased demand for placement of small wireless facilities of the type regulated by the Small Wireless Facilities Deployment Act both within the public rights-of-way and in other locations within the jurisdiction of the City, the Mayor and City Council finds that it is in the best interests of the public health, safety and general welfare of the City to adopt the code amendments below in order to establish generally applicable standards consistent with the Small Wireless Facilities Deployment Act (Public Act 100-585) for the design, permitting, location, construction, deployment, regulation, operation, maintenance, repair and removal of such small wireless facilities both within the public rights-of-way and in certain other locations within the jurisdiction of the City so as to, among other things: (i) prevent interference with the facilities and operations of the City's electric and other City utilities, and of other utilities lawfully located in public rights-of-way or in other locations within the City; (ii) preserve the character of the neighborhoods in which such small wireless facilities are installed; (iii) minimize any adverse visual impact of small wireless facilities and prevent visual blight in the neighborhoods in which such facilities are installed; (iv) ensure the continued safe use and enjoyment of private properties adjacent to small wireless facilities; (v) provide appropriate aesthetic protections to designated areas and historic landmarks or districts within the City; and (vi) ensure that the placement of small wireless facilities does not negatively impact public safety and the City's public safety technology.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF ST. CHARLES, DUPAGE AND KANE COUNTIES, ILLINOIS:

SECTION 1: The recitals above shall be and are incorporated in this Section 1 as if fully restated herein.

SECTION 2: Title 13 (Public Utilities) of the Municipal Code of the City of St. Charles is amended by adding a new Chapter 13.24 (Small Wireless Facilities), to read in its entirety as follows:

13.24 – Small Wireless Facilities

- 13.24.001 – Purpose**
- 13.24.002 – Interaction with other code provisions and laws**
- 13.24.003 – Definitions**
- 13.24.004 – Zoning**
- 13.24.005 – Permits; application process**
- 13.24.006 – Construction**
- 13.24.007 – Permit duration**
- 13.24.008 – Height limitations**

- 13.24.009 – General requirements**
- 13.24.010 – Stealth, concealment and design standards**
- 13.24.011 – Reservation of city utility pole space**
- 13.24.012 – Applicability of existing agreements**
- 13.24.013 – Collocation on city owned infrastructure**
- 13.24.014 – Notice of sale or transfer**
- 13.24.015 – Abandonment**
- 13.24.016 – Dispute resolution**
- 13.24.017 – Indemnification**
- 13.24.018 – Insurance**
- 13.24.019 – Maintenance of small wireless facilities**
- 13.24.020 – Revocation of permit**
- 13.24.021 – Exceptions to applicability**

13.24.001 - Purpose

Consistent with the requirements of the Small Wireless Facilities Deployment Act (Public Act 100-585), and in anticipation of a continued increased demand for placement of small wireless facilities of the type regulated by the Act both within the public rights-of-way and in other locations within the jurisdiction of the City, the City Council has found it to be in the best interests of the public health, safety and general welfare of the City to adopt the code amendments set forth in this chapter in order to establish generally applicable standards for the design, permitting, location, construction, deployment, regulation, operation, maintenance, repair and removal of such small wireless facilities both within the public rights-of-way and in other locations within the jurisdiction of the City so as to, among other things:

- A. Prevent interference with the facilities and operations of the City's electric and other City utilities, and of other utilities lawfully located both within public rights-of-way and in other locations within the jurisdiction of the City;
- B. Preserve the character of the neighborhoods in which such small wireless facilities are installed;
- C. Minimize any adverse visual impact of small wireless facilities and prevent visual blight in the neighborhoods in which such facilities are installed;
- D. Ensure the continued safe use and enjoyment of private properties adjacent to small wireless facilities;
- E. Provide appropriate aesthetic protections to any designated historic landmarks or districts within the City; and
- F. Ensure that the placement of small wireless facilities does not negatively impact public safety and the City's public safety technology.

13.24.002 - Interaction with other code provisions and laws

A. Other Code Provisions. The provisions of this chapter are intended to supplement general requirements and standards relative to the siting of telecommunication facilities and generally applicable requirements for construction within public rights-of-way set forth elsewhere within this code, including but not limited to the regulations set forth in chapter 13.22 (Construction of Utility Facilities in the Rights-of-Way) and chapter 13.08 (Electricity). In the event of a conflict, however, the provisions of this chapter shall control in all matters involving small wireless facilities, as defined below.

B. State and Federal Laws. In the event that applicable federal or State laws or regulations conflict with the requirements of this chapter, a wireless provider shall comply with the requirements of this chapter to the maximum extent possible without violating such federal or State laws or regulations.

13.24.003 - Definitions

As used in this chapter, the following terms shall have the following meanings:

“Act” means the Small Wireless Facilities Deployment Act (Public Act 100-585).

"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 local 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 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.

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

“City” means the City of St. Charles, DuPage and Kane Counties, Illinois.

"City utility pole" means a utility pole owned or operated by the City 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, whether existing or new.

"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.

"Fee" means a one-time charge.

"Historic district" or "historic landmark" means 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.

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

"Micro wireless facility" means a small wireless facility that is not larger in dimension than twenty-four (24) inches in length, fifteen (15) inches in width, and twelve (12) inches in height and that has an exterior antenna, if any, no longer than eleven (11) inches.

"Permit" means a written authorization required by the City or other permitting authority 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 an authority.

"Public safety agency" means 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.

"Public Utility" shall have the same meaning as set forth in Section 3-105 of the Public Utilities Act, 220 ILCS 5/3-105.

"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 authority-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 six (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 six (6) cubic feet; and (ii) all other wireless equipment attached directly to a utility pole associated with the facility is cumulatively no more than twenty-five (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.

"Structural Engineer" means a person licensed under the laws of the State of Illinois to practice structural engineering.

"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 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.

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

"Wireless services" means any services provided to the general public, including a particular class of customers, and made available on a nondiscriminatory basis using licensed or unlicensed spectrum, whether at a fixed location or mobile, provided using wireless facilities.

"Wireless services provider" 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.

13.24.004 – Zoning

Small wireless facilities shall be classified as permitted uses and shall not be subject to zoning review, if collocated in rights-of-way in any zoning district, or outside rights-of-way in the following zoning districts:

BL Local Business District;

BC Community Business District;

BR Regional Business District;

O-R Office/Research District;

M-1 Special Manufacturing District; and

M-2 Limited Manufacturing District.

In all other zoning districts, the City's normal zoning approvals, processes and restrictions shall apply, if zoning approval, processes or restrictions are required by the City's zoning ordinance.

13.24.005 - Permits; Application Process

Unless otherwise specifically exempted in this chapter, a permit to collocate a small wireless facility within the City is required in all cases. Permits are subject to the following:

A. Permit Applications: Permit applications for the collocation of small wireless facilities shall be made on a form provided by the City for such purpose. In addition to any generally applicable information required of other communications service providers or for other installations in the public right-of-way, applicants must, when requesting to collocate small wireless facilities on a utility pole or wireless support structure, provide the following information:

1. Site specific structural integrity and, for a City utility pole, make-ready analysis prepared by a structural engineer, as that term is defined in Section 4 of the Structural Engineering Practice Act of 1989;

2. The location where each proposed small wireless facility or utility pole would be installed and digital 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. The photographs shall include a digital photo simulation of the proposed location providing “before and after” views demonstrating the true visual impact of the proposed small wireless facilities on the surrounding environment;

3. Specifications and drawings prepared by a structural engineer, as that term is defined in Section 4 of the Structural Engineering Practice Act of 1989, for each proposed small wireless facility covered by the application as it is proposed to be installed;

4. The equipment type and model numbers for the antennas and all other equipment associated with the small wireless facility;

5. A proposed schedule for the installation and completion of each small wireless facility covered by the application, if approved;

6. Certification that, to the best of the applicant’s knowledge, the collocation complies with the written design standards established by the City, and with the various other requirements set forth in this chapter and code;

7. Copies of all licenses, permits and approvals required by or from the City (i.e. zoning approval, where required), other agencies and units of government with jurisdiction over the design, construction, location and operation of said small wireless facility. The applicant shall maintain such licenses, permits and approvals in full force and effect and provide evidence of renewal or extension thereof when granted; and

8. In the event the small wireless facility is proposed to be attached to an existing utility pole or wireless support structure owned by an entity other than the City,

legally competent evidence of the consent of the owner of such pole or wireless support structure to the proposed collocation.

B. Means of Submission: Permit applications, along with all supporting information, for the collocation of small wireless facilities shall be submitted by personal delivery or by other means approved by the City.

C. Multiple Applications for Same Location: Multiple applications for collocation on the same utility pole or wireless support structure shall be processed based on a first fully complete application, first-served basis.

D. Permit Application Fees: All applications for collocation of small wireless facilities shall be accompanied by a nonrefundable application fee in the following amounts:

Request to collocate a small wireless facility that includes the installation of a new utility pole	\$1,000.00
Request to collocate a single small wireless facility on an existing utility pole or wireless support structure	\$650.00
Request to collocate multiple small wireless facilities on existing utility poles or wireless support structures addressed in a single application	\$350.00 per small wireless facility

E. Permit review timelines:

1. Completeness of Application: Requests for the collocation of small wireless facilities shall be reviewed for conformance with the requirements of the Act, this chapter, and other applicable provisions of this code. Within thirty (30) days after receiving an application, the City must determine whether the application is complete and notify the applicant. If an application is incomplete, the City must specifically identify the missing information. Processing deadlines are tolled from the time the City sends a notice of incompleteness to the time the applicant provides the missing information.

An application shall be deemed complete if the City fails to provide notification to the applicant within thirty (30) days of the date when all documents, information, and fees specifically enumerated in the City's permit application form are submitted by the applicant to the City.

2. Existing Pole or Wireless Support Structure: Requests for the collocation of small wireless facilities on an existing utility pole or wireless support structure shall be processed on a nondiscriminatory basis and either approved or denied within ninety (90) days of submission of a completed application. A permit application shall be deemed approved if the City fails to approve or deny the application within ninety (90) days, subject to the following: 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 later of the ninetieth (90th) day after submission of the completed application, or the tenth (10th) day after receipt of the deemed approved notice by the City. Receipt of a deemed approved notice by the City shall not preclude the City from denying the permit within the allowed time limit.

3. New Utility Pole: Requests for the collocation of small wireless facilities that include the installation of a new utility pole shall be processed on a nondiscriminatory basis and either approved or denied within one hundred and twenty (120) days of submission of a completed application. A permit application shall be deemed approved if the City fails to approve or deny the application within one hundred twenty (120) days, subject to the following: 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 later of the one hundred twentieth (120th) day after submission of the completed application, or the tenth (10th) day after receipt of the deemed approved notice by the City. Receipt of a deemed approved notice by the City shall not preclude the City from denying the permit within the allowed time limit.

F. Tolling: The time limitations for approval or denial of applications shall be tolled by notice to an applicant that its application is incomplete as set forth above, upon mutual agreement of the parties, or by a local, State or federal disaster declaration or similar emergency that causes a delay.

G. Pole Replacement: Permit approval shall be conditioned on the replacement of a utility pole or wireless support structure at the applicant's sole cost where such replacement is deemed necessary for compliance with the requirements of this chapter or code relative to the siting of small wireless facilities, or other applicable codes and regulations that concern public safety.

H. Denial: The City shall deny an application that does not meet the requirements of this chapter. The reasons for any denial of a permit shall be provided in a written notice

of denial sent to the applicant, and shall include the specific code provisions or application conditions on which the denial is based.

I. Resubmittal After Denial: In the case of a permit denial, an applicant may cure the deficiencies identified in the notice of denial and resubmit a revised application once within thirty (30) days after the notice of denial is sent without payment of an additional application fee. The City shall have thirty (30) days to approve or deny the resubmitted application or it is deemed approved, if the applicant has notified the City of its intention to proceed with the permitted activity on a deemed approved basis, which notification may be submitted with the resubmitted application. Review of a resubmitted application is limited to the deficiencies cited in the original notice of denial. This subsection does not apply if a revised application is not resubmitted within thirty (30) days, or curing any deficiencies in the original application requires review of a new location, new or different structure for collocation, new antennas, or other wireless equipment associated with the small wireless facility. In such cases, a new application and application fee are required.

J. Consolidated Applications: Consolidated applications for small wireless facilities for the collocation of up to twenty-five (25) small wireless facilities shall be allowed if the collocations each involve substantially the same type of small wireless facility and substantially the same type of structure. Each consolidated application shall provide all the information required by this chapter for each small wireless facility at each location. If such an application includes incomplete information for one or more small wireless facility collocations, or includes requests for small wireless facilities that do not qualify for consolidated treatment, or that are otherwise denied, the City may remove such collocation requests from the application and treat them as separate requests. Separate permits may be issued for each collocation approved in a consolidated application.

K. Alternate Locations: If an applicant is seeking to install a new utility pole as part of its application, the City may propose that the small wireless facility be located on an existing utility pole or existing wireless support structure within one hundred (100) feet of the proposed collocation. The applicant shall accept the proposed alternate location so long as it has the right to use the location on reasonable terms and conditions, unless the alternate location imposes technical limits or additional material costs as determined by the applicant. If the applicant refuses an alternate location based on the foregoing, the applicant shall provide legally competent evidence in the form of a written certification, under oath, describing the property rights, technical limits or material cost reasons that prevent the alternate location from being utilized.

L. Exemptions: No application, permit approval or fee shall be required from a communications service provider authorized to occupy the right-of-way when the work in question is for:

1. Routine maintenance not requiring replacement of wireless facilities if the wireless provider notifies the City in writing at least forty-eight hours prior to the planned 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 City in writing at least ten (10) days prior to the planned replacement and includes equipment specifications, including (i) equipment type and model numbers, for the replacement of equipment consistent with the equipment specifications information required on a permit application for original installation; and (ii) information sufficient to establish that the replacement is substantially similar. The wireless provider shall provide all information necessary and requested by the City to establish that the replacement is substantially similar. The City has the sole right and responsibility to determine if a proposed small wireless facility is substantially similar to the existing small wireless facility; 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.

The foregoing shall not exempt communications service providers from City permitting requirements where traffic patterns are affected or lane closures are required.

13.24.006 – Construction

Collocations for which permits are approved shall be completed within one hundred eighty (180) days of issuance of the permit, unless the City agrees to extend the period or a delay is caused by make-ready work for a City utility pole or by the lack of commercial power or backhaul availability at the site, provided the applicant 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. Permits that are not completed within applicable timelines shall be void absent an extension granted in writing by the City.

13.24.007 - Permit Duration

Permits issued for small wireless facilities pursuant to this chapter shall be valid for a period of five (5) years. Permits are subject to renewal at the end of the five (5) year permit period for a successive five (5) year term so long as the installation complies with the applicable code provisions in force at the time of renewal. A finding by the City at the time of a request for renewal that an installation does not comply with the applicable code provisions in force at the time of the renewal request shall be in writing. If the Act is repealed or found unconstitutional by a court of competent jurisdiction, all permits granted by the City under this chapter shall terminate at the end of their current term.

13.24.008 - Height Limitations

A. Antenna Installations: The maximum permitted height of a small wireless facility is ten (10) feet above the utility pole or wireless support structure on which the small wireless facility is collocated.

B. New Poles: The maximum permitted height of new or replacement utility pole or wireless support structure on which a small wireless facility is collocated is the higher of:

1. 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, and that is located within three hundred (300) feet of the new or replacement utility pole or wireless support structure and that is in the same right-of-way within the City. The City may designate which intersecting right-of-way within three hundred (300) feet of the proposed utility pole or wireless support structures shall control the height limitation for such facility; or

2. Forty-five (45) feet above ground level.

C. Waiver Process:

A Wireless provider may receive a waiver from the Director of Public Works from the maximum permitted height of a new pole set forth in this section, if the wireless provider can establish that:

1. Because of a particular unusual condition, a particular hardship or practical difficulty to the wireless provider would result, as distinguished from a mere inconvenience, and such hardship or difficulty has not been created by the wireless provider; and

2. Existing utility poles or wireless support structures, or a new utility pole at the maximum permitted height for a new pole allowed by this section cannot accommodate the wireless facility at a height necessary to function effectively, under reasonable terms and conditions; and

3. The use of existing utility poles or other wireless support structures, or a new utility pole at the maximum permitted height for a new pole allowed by this section, is not technically feasible.

13.24.009 - General Requirements

A. Public Safety Technology: A wireless provider's operation of a small wireless facility may not interfere with the frequencies used by a public safety agency for public safety communications. A wireless provider must 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 is 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 licenses 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 take all reasonable steps necessary to correct and eliminate the interference, including, but not limited to, powering down the small wireless facility and later powering up the small wireless facility for intermittent testing, if necessary. The City may terminate a permit for a small wireless facility based on such interference if the wireless provider is not making a good faith effort to remedy the problem in a manner consistent with the abatement and resolution procedures for interference with public safety spectrum established by the FCC, including 47 CFR 22.970 through 47 CFR 22.973 and 47 CFR 90.672 through 47 CFR 90.675. The burden to establish the good faith effort shall be on the wireless provider, which shall timely deliver to the City all information necessary to demonstrate its efforts to resolve the interference consistent with the Code of Federal Regulations sections cited above. Failure to remedy the interference as required herein shall constitute a public nuisance and the small wireless facility may be abated through the procedures for abatement of such nuisances set forth in this code.

B. A wireless provider shall not construct or maintain any small wireless facility that:

1. Obstructs, impedes or hinders the usual travel or public safety on a right-of-way;
2. Obstructs the legal use of right-of-way by utility users;
3. Violates nondiscriminatory applicable codes;
4. Violates or conflicts with chapter 13.22 (Construction of Utility Facilities in the Rights-of-way) or other applicable regulations set forth in this code or otherwise adopted by the City, except to the extent such chapters, sections or regulations may be modified by the provisions of this chapter; or
5. Violates the federal Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 *et seq.*)

C. Contractual Requirements: Wireless providers shall comply with all requirements imposed by a contract between the City and any private property owner that concern design or construction standards applicable to utility poles and ground-mounted equipment located in the right-of-way.

D. Ground-Mounted Equipment: Wireless providers shall comply with the ground mounted equipment spacing requirements within rights-of-way as set forth in chapter 13.22 (Construction of Utility Facilities in the Rights-of-Way) of this code, including subsection 13.22.015.I. E. Undergrounding:

1. The wireless provider shall comply with City code provisions or regulations concerning undergrounding requirements, if any, that prohibit the installation of new or the modification of existing utility poles or equipment in the right-of-way.

2. A Wireless Provider may receive a waiver from the Director of Public Works to allow small wireless facilities to be located above ground in an area where City ordinances or regulations prohibit or restrict above ground facilities if the wireless provider can establish that:

a. Underground equipment is not technically feasible and there is no reasonable alternative or location that is more aesthetically favorable to adjacent property owners and to effective use and management of the right-of-way; and

b. An above ground small wireless facility at the proposed location is necessary at the proposed location to provide coverage in a specified area; and

c. An above ground small wireless facility at the proposed location will not disrupt traffic or pedestrian circulation or constitute a safety hazard; and

d. An above ground small wireless facility at the proposed location will not interfere with public safety uses or frequencies; and

e. Space exists within the public right-of-way to accommodate the above ground small wireless facility at the proposed location; and

f. An above ground small wireless facility at the proposed location will not create a safety hazard; and

g. The above ground small wireless facility is located and designed in such a way so as to minimize its visual impact on adjacent properties; and

h. In any historical area, that the above ground small wireless facility will not detrimentally affect the historical nature of the area.

3. Screening for Ground Mounted Facilities. Where a ground-mounted facility is allowed, such equipment shall be screened around the perimeter in accordance with a landscape plan sealed by a professional landscape engineer. Plant materials shall include a mixture of deciduous and coniferous planting materials. The owner or wireless provider shall be responsible for maintenance of all landscaping as provided in the approved landscape plan.

4. Future Undergrounding: The City may, from time to time, make a decision to eliminate above-ground utility poles of a particular type generally, such as electric utility poles, in all or a significant portion of the City. In the event that such a utility pole has a

collocated small wireless facility in place at the time of such a decision, the City shall either:

a. Continue to maintain the utility pole, or install and maintain a reasonable utility pole or wireless support structure for the collocation of the small wireless facility; or

b. Offer to sell the utility pole to the wireless provider at a reasonable cost, or allow the wireless provider to install its own utility pole so it can maintain service from that location.

F. Collocation Limits: Wireless providers 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 subsection, the terms "communications space", "communication worker safety zone", and "electric supply zone" have the meanings given to those terms in the National Electric Safety Code as published by the Institute of Electrical and Electronics Engineers.

G. Code Compliance: Wireless providers shall comply with applicable codes and local code provisions or regulations that concern public safety.

13.24.010 - Stealth, Concealment and Design Standards

Every small wireless facility installation shall comply with the following standards:

A. General Stealth, Concealment and Design Standards: Installations shall comply with any stealth, concealment, design and aesthetic standards applicable to utility installations in the public right-of-way, as set forth in chapter 13.22 (Construction of Utility Facilities in the Rights-of-Way) of this code, as well as any written design standards that are generally applicable for decorative utility poles, or reasonable stealth, concealment, design and aesthetic requirements that are otherwise identified by the City in an ordinance, written policy adopted by the City Council, in the City's comprehensive plan, or in a written design plan that applies to other occupiers of the rights-of-way, including on a historic landmark or in a historic district.

B. Historic Districts and Landmarks: For areas designated as historic districts, or on buildings or structures designated as historic landmarks pursuant to chapter 17.32

(Historic Preservation) of this code, in addition to the stealth, concealment and design requirements referenced above, the following additional restrictions/conditions apply to the installation of small wireless facilities:

1. Small wireless facilities and wireless support structures shall be comprised of materials that are consistent with the surrounding elements so as to blend architecturally with any buildings or structures designated as historic landmarks or located within a designated historic district, and shall be designed to blend with the surrounding historical landmarks and/or district in design and color.

2. No ground-mounted equipment enclosures shall be permitted within a designated historic district except as approved by the City as stealth installations.

3. Small wireless facilities shall be mounted on high mast poles within designated historic district, if available, as opposed to on City-owned ornamental street lights.

4. Small wireless facilities shall not be mounted upon City-owned ornamental street lights except in cases where the equipment enclosure is concealed within the base of the ornamental street light, and the antenna and its related shroud is incorporated in a seamless enclosure on the top of the ornamental street light, pursuant to applicable City design standards and as approved by the Director of Public Works.

C. Historic District or Landmark Limitations:

1. Any stealth, concealment and design standards in a historic district or on a historic landmark, including restrictions on a specific category of utility poles, may not have the effect of prohibiting any provider's technology. Such stealth, concealment and design measures shall not be considered a part of the small wireless facility for purposes of the size restrictions of a small wireless facility.

2. This subsection shall not be construed to limit the City's enforcement of historic preservation in conformance with the requirements adopted pursuant to the Illinois State Agency Historic Resources Preservation Act or the National Historic Preservation Act of 1966, 54 U.S.C. Section 300101 *et seq.*, and the regulations adopted to implement those laws.

13.24.011 - Reservation of City Utility Pole Space

The City may reserve space on City-owned utility poles for future public safety uses or for City electric utility uses. Such reservation may preclude collocation of small wireless facilities if the City reasonably determines that the City's utility pole cannot accommodate both uses.

13.24.012 - Applicability of Existing Agreements

A. Existing Installations: Subject to any applicable termination provisions, where an existing agreement is in place between the City and a wireless provider relating to the collocation of small wireless facilities on City utility poles on June 1, 2018, such agreement may, in the discretion of the City, remain in effect for all small wireless facilities collocated on the City's utility poles pursuant to applications submitted prior to June 1, 2018.

B. Applications Received Between June 1, 2018 and June 1, 2020: Subject to any applicable termination provisions, where an existing agreement is in place between the City and a wireless provider relating to the collocation of small wireless facilities on City utility poles on June 1, 2018, such agreement may, in the discretion of the City, remain in effect for all small wireless facilities collocated on the City's utility poles pursuant to applications submitted after June 1, 2018, but prior to June 1, 2020, until June 1, 2020 or receipt by the City from the wireless provider of a notice that it is opting to accept the rates, fees and terms of this chapter and the Act received after June 1, 2020, whichever is later.

C. Applications Received After June 1, 2020: Subject to any applicable termination provisions, where an existing agreement is in place between the City and a wireless provider relating to the collocation of small wireless facilities on City utility poles on June 1, 2018, such agreement shall remain in effect for all small wireless facilities collocated on the City's utility poles pursuant to applications submitted after June 1, 2020, until receipt by the City of a notice from the wireless provider that it is accepting the rates, fees, terms and conditions of this chapter.

13.24.013 - Collocation on City Owned Infrastructure

A. Fee: The annual fee to collocate a small wireless facility on a City-owned utility pole located in a right-of-way shall be the higher of:

1. \$200/year per small wireless facility; or

2. The actual, direct, and reasonable costs related to the wireless providers use of space on the pole.

B. Exception: Small wireless facilities collocated on City-owned utility poles located outside of public right-of-way are not subject to the rate limitations in this section.

C. Attachment Agreement: An attachment agreement in a form approved by the City is required for any collocation upon any City owned utility pole or wireless support structure.

13.24.014 - Notice of Sale or Transfer

A wireless provider shall, prior to any sale or transfer of ownership or control of a small wireless facility located within the jurisdiction of the City, provide written notice to the City of such sale or transfer of control. Such notice shall include the name and contact information of the new wireless provider. Small wireless facilities shall be relabeled within six (6) months of sale or transfer with updated ownership and contact information.

13.24.015 - Abandonment

A. A 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 shall remove the small wireless facility within ninety (90) days after receipt of written notice from the City notifying it of the abandonment. The notice shall be sent by certified or registered mail, return receipt requested, by the City to the owner at its last known address. If the small wireless facility is not removed within ninety (90) days after receipt of such notice, such wireless facility shall be deemed to be a nuisance and the City may remove or cause the removal of such facility, and recover or place a lien for its costs, pursuant to the terms of its pole attachment or other agreement for City utility poles or through the procedures for abatement of nuisances set forth in this code.

B. In the event the City suspects that the wireless provider is no longer using the small wireless facilities to provide wireless service, it may send the wireless provider written notice that requires the wireless provider to remove the small wireless facility or provide proof that the small wireless facility is operational and still being used within thirty (30) days, and informs the wireless provider that failure to provide proof or to remove the small wireless facility will result in the City removing the small wireless facility at the wireless provider's cost.

13.24.016 - Dispute Resolution

The Circuit Court of Kane County shall have exclusive jurisdiction to resolve all disputes arising under the Act. Pending resolution of a dispute concerning rates for collocation of small wireless facilities on City 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 \$200 per year per pole, with rates to be determined upon final resolution of the dispute.

13.24.017 – Indemnification

Other than for liabilities and losses due to or caused by the sole negligence of the City or its employees or agents, 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 infrastructure or improvements, or right-of-way associated with such infrastructure or improvements by the wireless provider or its employees, agents, or contractors arising out of the rights and

privileges granted under this chapter and the Act. A wireless provider proceeding under this chapter waives any claims it may have against the City with respect to consequential, incidental, or special damages, however caused, based on the theory of liability.

13.24.018 – Insurance

At all times during the period in which a wireless provider's facilities are located on City infrastructure, improvements or in right-of-way, the wireless provider shall, at its own sole cost and expense, carry the following insurance coverages with limits in conformance with the City's standard insurance requirements for all contractors:

- A. Property insurance for its property's replacement cost against all risks;
- B. Workers' Compensation insurance within statutory limits as required by law; and
- 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.

The wireless provider shall include the City as an additional insured on the commercial general liability policy and shall provide certificates of insurance and proof of inclusion of the City in a commercial general liability policy to the City prior to the collocation of any small wireless facility, and shall keep updated certificates and proof of inclusion on file with the City at all times that the provider maintains small wireless facilities within the City.

- D. A wireless provider may self-insure all or a portion of the insurance coverage and limits 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 be named an additional insured. A wireless provider that self-insures shall provide to the City evidence sufficient to demonstrate its financial ability to self-insure the insurance limits required by the City.

13.24.019 - Maintenance of Small Wireless Facilities

- A. A wireless provider shall maintain all small wireless facilities installed within the City in a condition that maintains the safety, integrity and aesthetics of such facilities. Small wireless facilities shall not appear to be unkempt. In the event of a failure to properly maintain such facilities, the City shall notify the wireless provider, in writing, who shall have thirty (30) days to correct the identified maintenance violation. If not corrected within such period, the City reserves the right to take such action as it deems necessary, including revocation of the permit. Maintenance and replacement of small wireless facilities shall be performed by the wireless provider at the wireless provider's sole cost and expense.

B. In the event of an emergency involving an imminent threat to life or property, the City may take corrective action to eliminate such emergency at the wireless provider's expense.

13.24.020 - Revocation of Permit

A. A permit to collocate a small wireless facility may be revoked for one or more of the following reasons:

1. The wireless provider obtained approval by means of fraud or made a misrepresentation of a material fact with respect to the permit application, or any required documentation or submittal.

2. The wireless provider failed to construct the small wireless facility in accordance with the approved plans.

3. The wireless provider failed to comply within any material condition of a permit issued.

4. The wireless provider substantially expanded or altered the use or the structure of the small wireless facility beyond what was requested in the permit application or approved, without the approval of the City.

5. The wireless provider failed to notify the City of the replacement of small wireless facilities as required by this chapter.

6. A substantial change of law has occurred affecting the wireless provider's authority to occupy or use the property upon which the small wireless facility is located.

7. The small wireless facility interferes with vehicular or pedestrian use of the public right of way.

8. The wireless provider has failed to make a safe and timely restoration of the right-of-way or the property upon which the small wireless facility is located.

9. The wireless provider has failed to properly maintain the small wireless facility as required by this chapter.

10. The wireless provider has failed to abate interference with public safety communications 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.

11. The small wireless facility has been abandoned and the wireless provider has failed to remove the small wireless facility as provided in this chapter.

B. Written notification of the permit revocation shall be sent by certified mail or shall be personally delivered to the wireless provider setting forth the basis for the revocation. The wireless provider shall, within fourteen days of the notice of revocation, file a written response with the Director of Public Works setting forth the reasons why the permit should not be revoked along with such evidence in opposition to the revocation as the wireless provider determines necessary. Failure to file a response with the Director of Public Works shall be deemed an admission of the facts set forth in the notification of written notification and shall result in automatic revocation of the permit. The Director of Public Works shall render findings and a decision within twenty-one days of the date of receipt of the wireless provider's response, if any.

C. If the Director of Public Works revokes the permit, the wireless provider may file a written notice of appeal with the City Clerk within twenty-one (21) days of notification of the permit revocation. Such notice shall contain a response to the decision of the Director of Public Works. The City Council shall hear the revocation appeal and render a decision on such appeal.

13.24.021 - Exceptions to Applicability

Nothing in this chapter authorizes the collocation of small wireless facilities on:

A. Property owned by a private party without the written consent of the property owner;

B. Property owned or controlled by a unit of local government that is not located within rights-of-way (local governments are, however, required to authorize the collocation of small wireless facilities on utility poles owned or controlled by the local government or located within rights-of-way to the same extent the local government permits access to utility poles for other commercial projects or uses);

C. A privately-owned utility pole or wireless support structure, without the consent of the property owner;

D. 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 (605 ILCS 5/1-101 *et seq.*);

E. Property owned by a rail carrier registered under Section 18c-7201 of the Illinois Vehicle Code (625 ILCS 5/18c-7201), 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 (220 ILCS 5/16-102), without the consent of the rail carrier, public commuter rail service, or electric utility;

F. Facilities of 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; or

G. Small wireless facilities owned by the City.

SECTION 3: Section 13.22.015 (Location of Facilities) of Title 13 (Public Utilities), Chapter 13.22 (Construction of Utility Facilities in the Rights-of-way) of the Municipal Code of the City of St. Charles is amended by adding a new subsection (I) (Ground-Mounted Equipment Spacing Requirements), to read in its entirety as follows:

I. Ground-Mounted Equipment Spacing Requirements. Ground-mounted equipment, where necessary, shall be sited in locations approved by the Director of Public Works, in a manner that will most effectively minimize public impact, optimize safety, and incorporate aesthetic concerns.

SECTION 4: All ordinances or parts of ordinances in conflict with this Ordinance are hereby expressly repealed.

SECTION 5: Except as to the Code amendments set forth above in this Ordinance, all Chapters and Sections of the City Code, as amended, shall remain in full force and effect.

SECTION 6: Each section, paragraph, clause and provision of this Ordinance is separable, and if any provision is held unconstitutional or invalid for any reason, such decision shall not affect the remainder of this Ordinance, nor any part thereof, other than that part affected by such decision.

SECTION 7: This Ordinance shall be in full force and effect after its passage, approval and publication in pamphlet form as provided by law.

ADOPTED this _____ day of _____, 2018, pursuant to a roll call vote as follows:

AYES: _____

NAYS: _____

ABSENT: _____

APPROVED by me this _____ day of _____, 2018, and attested to by the City Clerk this same day.

MAYOR

ATTEST:

CITY CLERK

STATE OF ILLINOIS)
COUNTY OF DUPAGE) SS
COUNTY OF KANE)

CLERK'S CERTIFICATE

I, Charles Amenta, Clerk of the City of St. Charles, in the Counties of DuPage and Kane and State of Illinois, do hereby certify that the attached and foregoing is a true and correct copy of that certain Ordinance now on file in my Office, entitled:

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE MUNICIPAL CODE OF THE CITY OF ST. CHARLES RELATIVE TO THE PERMITTING, REGULATION AND DEPLOYMENT OF SMALL WIRELESS FACILITIES

which Ordinance was passed by the City Council of the City of St. Charles at a Regular City Council Meeting on the ___ day of _____, 2018, at which meeting a quorum was present, and approved by the Mayor of the City of St. Charles on the ___ day of _____, 2018.

I further certify that the vote on the question of the passage of said Ordinance by the City Council of the City of St. Charles was taken by Ayes and Nays and recorded in the minutes of the City Council of the City of St. Charles, and that the result of said vote was as follows, to-wit:

AYES: _____

NAYS: _____

ABSENT: _____

I do further certify that the original Ordinance, of which the foregoing is a true copy, is entrusted to my care for safekeeping, and that I am the lawful keeper of the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the City of St. Charles, this ___ day of _____, 2018.

City Clerk

[SEAL]