

ORDINANCE NO. 18 - _____

AN ORDINANCE AMENDING SECTION 2 (DEFINITIONS) OF ARTICLE A (GENERAL PROVISIONS), SECTION 4 (DETERMINATION BY THE CITY) OF ARTICLE B (PRIVATE USE), SECTION 10 (LOCATION OF FACILITIES OF ARTICLE B (PRIVATE USE), SECTION 16 (RENEWAL APPLICATIONS) OF ARTICLE B (PRIVATE USE), SECTION 21 (GRANTEE INSURANCE) OF ARTICLE B (PRIVATE USE) AND SECTION 24 (COORDINATION OF CONSTRUCTION ACTIVITIES) OF ARTICLE B (PRIVATE USE), SECTION 2 (APPLICATION AND GENERAL PLAN REVIEW FEE) OF ARTICLE E (FEES, COSTS, AND COMPENSATION) AND SECTION 5 (ANNUAL FEES) OF ARTICLE E (FEES, COSTS, AND COMPENSATION) OF CHAPTER 1 (STREETS AND SIDEWALKS) OF TITLE 9 (PUBLIC WAYS AND PROPERTY) OF THE NAPERVILLE MUNICIPAL CODE

WHEREAS, the Mayor and the City Council of the City of Naperville, Illinois, have the authority to adopt ordinances and to promulgate rules and regulations that pertain to its government and affairs and protect the public health, safety and welfare of its citizens; and

WHEREAS, the City of Naperville supports the goal of ensuring reliable wireless services in our communities and the advancement of technology in the telecommunications industry; and

WHEREAS, the City of Naperville desires to use its municipal authority to regulate the use of its right-of-ways, which it holds in trust for its residents; and

WHEREAS, the City of Naperville desires to enact an ordinance that updates its codes to address the Small Wireless Facilities Deployment Act, which went into effect on June 1, 2018;

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF NAPERVILLE, DUPAGE AND WILL COUNTIES, ILLINOIS, in the exercise of its home rule powers that:

SECTION 1: Section 2 (Definitions) of Article A (General Provisions) of Chapter 1 (Streets and Sidewalks) of Title 9 (Public Ways and Property) of the Naperville Municipal Code is hereby amended by adding the underlined language and deleting the stricken language as follows:

9-1A-2: - DEFINITIONS:

For the purpose of this Chapter, and the interpretation and enforcement thereof, and notwithstanding any inconsistent definitions contained elsewhere in this Code, the following words and phrases shall have the following meanings, unless the context of the sentence in which they are used shall indicate otherwise:

AFFILIATE through CELL-ON-WHEELS: * * *

<u>COLLOCATION</u>	<u>To install, mount, maintain, modify, operate, or replace wireless facilities on or adjacent to infrastructure.</u>
COMMUNICATIONS FACILITIES through PUBLIC WAY:	* * *
SMALL SITEMIRELESS FACILITY: CELL	<p>An umbrella term for low-powered radio access nodes, including those that operate in licensed spectrum and unlicensed carrier-grade Wi-Fi. Types of small cells include femtocells, picocells and microcells broadly increasing in size from femtocells (smallest) to microcells (largest). <u>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.</u></p>
STATE through UTILITY FACILITIES	* * *
<u>VERTICAL INFRASTRUCTURE OR INFRASTRUCTURE</u>	Includes City-owned or operated utility poles, street lights, monopoles and any other vertical structure existing or placed in the public right-of-way. Traffic signals and poles are excluded from having wireless equipment installed on them.
WIRELESS COMMUNICATIONS FACILITY	<u>Equipment at a fixed location that enables wireless communications between user equipment and a communications network, including: (i) equipment associated</u>

	<p><u>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. A type of Communications Facility consisting of antenna, transmission equipment (as defined by the Federal Communications Commission's regulations), towers, base stations, and related improvements used, or designed to be used, to provide wireless transmission of voice, data, video streams, images, or other information including, but not limited to, cellular phone service, Personal communication service, paging, and Wi-Fi antenna service. Different types of wireless Communications Facility include Small Cells, Distributed Antenna System, and Facilities used for larger coverage radius such as towers, faux trees, and antennas on buildings and water tanks.</u></p>
<p><u>WIRELESS PROVIDER</u></p>	<p><u>Any person authorized to provide telecommunications service in the State that builds or installs wireless communication transmission equipment, wireless facilities, wireless support structures, or utility poles and that is not a wireless services provider but is acting as an agent or a contractor for a wireless services provider for the application submitted to the authority or a person who provides wireless services. This does not include and expressly excludes any person or who is providing service to or for a private niche market.</u></p>

SECTION 2: Section 4 (Determination By The City) of Article B (Private Use) of Chapter 1 (Streets and Sidewalks) of Title 9 (Public Ways and Property) of the Naperville Municipal Code is hereby amended by adding the underlined language and deleting the stricken language as follows:

9-1B-4: - DETERMINATION BY THE CITY:

The City shall process applications as follows:

1. Small Wireless Facility Applications.

1.1. 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. 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.

1.2. Tolling. The time period for applications may be further tolled by an express written agreement by both the applicant and the City; or a local, State or federal disaster declaration or similar emergency that causes the delay.

1.3. The first completed application shall have priority over applications received by different applicants for collocation on the same utility pole or wireless support structure.

1.4. 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 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.

1.5. An application to collocate a small wireless facility on an existing City-Owned pole shall be processed on a nondiscriminatory basis and shall be deemed approved if the City fails to approve or deny the application within 90 days after the submission of a completed application.

1.5.1. An applicant that intends to proceed with the permitted activity on a deemed approved basis shall notify the City in writing of its intention to invoke the deemed approved remedy no sooner than 75 days after the submission of a completed application.

The application 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.

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

1.6.1. An applicant that 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 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 Ordinance.

1.7. 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.

1.8. 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.

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.

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

1.10. The City shall deny an application which does not meet the requirements of this Title.

If the City determines that applicable codes, ordinances or regulations that concern public safety, or the requirements contained in this Ordinance 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 wireless provider.

The City shall document the basis for a denial, including the specific provisions or application conditions on which the denial is based, and send 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.

2. Other Applications.

2.1. Within ninety (90) days after receiving a complete application under Section 9-1B-3 of this Article, the Corporate Authorities shall issue a written determination granting or denying the application in whole or in part, applying the following standards; provided however, the Corporate Authorities may extend the deadline for a written determination when reasonably necessary to protect the public interest. If the application is denied, the written determination shall include the reasons for denial.

2.1.1. The financial and technical ability of the applicant to provide the services permitted and perform its obligations under the license agreement and applicable laws and ordinances.

2.1.2. The legal ability of the applicant to provide the services permitted and perform its obligations under the license agreement and applicable laws and ordinances.

2.1.3. The capacity of the Public Ways or other City property to accommodate the applicant's proposed Facilities.

2.1.4. The capacity of the Public Ways to accommodate additional Facilities and/or utilities if the license is granted.

2.1.5. The damage or disruption, if any, of public or private Facilities, improvements, service travel or landscaping if the license is granted.

2.1.6. The public interest in minimizing the cost and disruption of construction within the Public Ways.

2.1.7. The service that applicant will provide to the community and region.

2.1.8. The effect, if any, on public health, safety and welfare if the license is granted.

2.1.9. The availability of alternate routes and/or locations for the proposed Facilities.

2.1.10. Applicable Federal and State telecommunications laws, regulations and policies.

2.1.11. Lack of a mutually agreeable license agreement.

2.1.12. Such other factors as may demonstrate that the grant to use the Public Ways will serve the community interest.

SECTION 3: Section 10 (Location of Facilities) of Article B (Private Use) of Chapter 1 (Streets and Sidewalks) of Title 9 (Public Ways and Property) of the Naperville Municipal Code is hereby amended by adding the underlined language and deleting the stricken language as follows:

9-1B-10: - LOCATION OF FACILITIES:

Unless otherwise specified in a license agreement, all Facilities shall be constructed, installed and located in accordance, with the following terms and conditions:

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6. Communications Facilities, including ~~Small Cell Sites~~ small wireless facilities, may be permitted in the right-of-way within the City’s jurisdiction subject to the following regulations:

6.1. City-Owned Infrastructure. Communications Facilities may be located on City-Owned Infrastructure (e.g. utility poles, streetlights, traffic lights) in the right-of-way provided that the provisions in this Title are adhered to. ~~shall only be mounted to City-owned streetlights if authorized by a license or other agreement between the grantee and the City. The following City-owned infrastructure are not eligible for locating Communications Facilities unless, in the City’s sole discretion, the grantee has exhausted all other options and has provided clear and convincing evidence that locating the Communications Facilities on said infrastructure is necessary to close a significant coverage or capacity gap in the grantee’s services or to otherwise provide adequate services to customers:~~

~~6.1.1. Historic or decorative streetlights;~~

~~6.1.2. Utility Poles; and~~

~~6.1.3. Traffic lights including combination traffic signal mast arm and streetlight poles.~~

6.2. through 6.3.

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6.4. Alternate Placements. With respect to an application for the collocation of Communication Facilities associated with a new City-Owned or Non-City-Owned Infrastructure, the City may propose that the Communication Facilities be collocated on an existing infrastructure or other support structures within 100 feet of the proposed collocation, which the grantee 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 grantee.

If the grantee refuses a co-location proposed by the City it shall provide written certification describing the property rights, technical limits or material cost reasons why the alternate location does not satisfy the criteria in this paragraph. It shall be the burden of the grantee by presentation of legally

competent evidence, to establish that the City's alternative proposed co-location imposes technical limits or additional material costs that render the alternative co-location unreasonable.

- 6.5. ~~6.4~~ New Poles. When existing City-owned or non-City-owned infrastructure has been exhausted for Communications Facilities, the City may require that the grantee provide new infrastructure such as a street light, on which the Facilities may be installed. In such cases, the new infrastructure has a primary purpose other than as Communications Facilities and communications will be the secondary use. No new monopole or tower with a primary purpose of Communications Facilities is permitted to be installed in the right-of-way in the jurisdiction of the City unless, in the City's sole discretion, has provided clear and convincing evidence that locating the Communications Facilities on a new monopole or tower in the right-of-way is necessary to close a significant coverage or capacity gap in the grantee's services or to otherwise provide adequate services to customer, and the proposed new monopole or other tower within the right-of-way is the least intrusive means to do so.
- 6.6. ~~6.5~~. Number Limitation and Co-Location. Up to four (4) communications antennas will be permitted on a City-owned infrastructure in the public right-of-way subject to the Director's sole discretion.
- 6.7. ~~6.6~~. Separation and Clearance Requirements. Communications Facilities may be attached to City-owned or non-City-owned infrastructure only where such pole, structure or infrastructure is located no closer than a distance equal to two hundred (200%) percent of the height of such facility to any residential building and no closer than one ~~three~~ hundred (3100) feet from any other Communications Facilities. A separation or lesser clearance may be allowed by the Director or his/her designee as an administrative variance to this Section when the grantee establishes that the lesser separation or clearance is necessary to close a significant coverage or capacity gap in the grantee's services or to otherwise provide adequate services to customers, and the proposed antenna or facility is the least intrusive means to do so within the right-of-way.
- 6.8. ~~6.7~~. Design Standards. No Communications Facilities within the right-of-way shall be installed or attached to City-owned or non-City-owned infrastructure unless all the following standards are met:
- 6.8.1. ~~6.7.1~~. Size of Communication Facilities Equipment: The total combined volume of all equipment and appurtenances comprising Communications Facilities, exclusive of the antenna, cannot exceed ~~seventeen (17)~~ twenty-five (25) cubic feet.

- 6.8.2. ~~6.7.2.~~ Size of Antenna: Communications Facilities antennas, including antenna panels, whip antennas or dish-shaped antennas, shall be the smallest possible volume, but in no case, shall the cumulative size of all antennas associated with Communications Facilities be greater than ~~four (4)~~ six (6) cubic feet.
- 6.8.3. ~~6.7.3.~~ Priorities for Locating Communication Facilities: Communication Facilities shall be located in the City's right-of-way based on the following priorities: 1) Major arterial; 2) Minor arterial; 3) Collector street; 4) Neighborhood collector street; 5) Local street.
- 6.8.4. ~~6.7.4.~~ Location of Communication Facilities: All Communications Facilities shall be installed below grade except for the antennas and any necessary ancillary equipment (e.g. remote radio units and diplexers), including wiring and cabling. Upon good cause shown, as determined in the sole discretion of the Director, said Communications Facilities equipment may be located at grade, ~~but in no case, shall said Communications Facilities equipment be~~ or attached to a pole.
- 6.8.5. ~~6.7.5.~~ Communication Facilities Equipment Mounted at Grade: If Communications Facilities equipment or appurtenances are allowed to be installed at grade, screening must be installed to minimize the visibility of said equipment or appurtenances. Screening must be installed at least three (3) feet from the equipment or appurtenances installed at grade and eight (8) feet from a roadway.

If screening is required, it must be natural landscaping material or a fence subject to the approval of the Director and must comply with all regulations of the City. Appropriate landscaping must be located and maintained and must provide the maximum achievable screening, as determined by the Director, from view of adjoining properties and public or private streets. Notwithstanding the foregoing, no such screening shall obstruct vision of drivers of motor vehicles.

- 6.8.6. ~~6.7.6.~~ Minimum Antenna Mounting Height: No portion of any antenna shall be mounted at a height of less than eighteen feet, six inches (18'6") above grade.

- 6.8.7. ~~6.7.7.~~ Maximum Antenna Height Limitations:

- 6.8.7.1. ~~No portion of any antenna shall be mounted at a height of more than five feet (5') above the highest point of the existing City-Owned or non-City-owned infrastructure upon which it is mounted. If necessary, the replacement or new infrastructure located within the public right-of-way may be no more than five feet (5') higher than existing poles adjacent to the replacement~~

pole or new pole or infrastructure. The maximum height of a small wireless facility shall be no more than ten (10) feet above the vertical infrastructure on which the small wireless facility is collocated.

6.8.7.2. New or replacement utility poles or wireless support structures on which small wireless facilities are collocated may not exceed the higher of ten (10) feet in height above the tallest existing vertical infrastructure, other than a pole supporting only communication facilities, that is in place on the date the application is submitted to the City, that is located within three hundred (300) feet of the proposed Communication Facilities 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 Communication Facilities shall control the height limitation for such facility or forty-five (45) feet above ground level.

6.8.7.3. If a grantee proposes a height more than the limitations set forth in Section 6.8.7.1 or Section 6.8.7.2, the grantee shall apply for an exception in conformance with procedures, terms and conditions set forth in Section 9-1B-10:9 of this Code.

6.8.8. ~~6.7.8.~~ Color: Communications Facilities, including all related equipment and appurtenances, must be a color that blends 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.

6.8.9. ~~6.7.9.~~ Antenna Panel Covering: Communications Facilities antennas may include a radome, cap or other antenna panel covering or shield, to the extent such covering would not result in a larger or more noticeable facility and, if proposed, such covering must be of a color that blends with the color of the pole, structure, tower or infrastructure on which it is mounted.

6.8.10. ~~6.7.10.~~ Wiring and Cabling: Communications Facilities wires and cables must run its conduit inside the pole unless, in the City's sole discretion, the Grantee has provided clear and convincing evidence that locating the Communications Facilities wires and cables inside the pole or inside a new pole is not feasible. Underground entry into the pole through the foundation is required. Wires and cables connecting the antenna to the remainder of the facility must be installed in accordance with the electrical code currently in effect. 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.

- 6.8.11. ~~6.7.11.~~ Grounding: Communications Facilities must be grounded in accordance with the requirements of the electrical code currently in effect in the City.
- 6.8.12. ~~6.7.12.~~ Guy Wires: No guy or other support wires will be used in connection with Communications Facilities in the public right-of-way.
- 6.8.13. ~~6.7.13.~~ Pole Extensions: Extensions to City-owned or non-City-owned infrastructure utilized for connecting Communications Facilities antennas and related equipment and appurtenances must have a degree of strength capable of supporting the antenna and any related equipment and appurtenances and cabling and be capable of withstanding wind forces and ice loads in accordance with the applicable structural integrity standards as set forth in Section 6.7.13 below. An extension must be securely bound in accordance with applicable engineering standards for the design and attachment of such extensions.
- 6.8.14. ~~6.7.14.~~ Structural Integrity: Communications Facilities, including the antennas, poles, and all related equipment and appurtenances must be designed to withstand a wind force and ice loads in accordance with applicable standards established in the National Electric Code (NFPA 70), Chapter 25 of the National Electric Safety Code for utility poles, Rule 250-B and 250-C standards governing wind, ice, and loading forces on utility poles, in the American National Standards Institute (ANSI) in TIA/EIA Section 222-G established by the Telecommunications Industry Association (TIA) and the Electronics Industry Association (EIA) for steel wireless support structures and the applicable industry standard for other existing structures. For any facility attached to City-owned or non-City-owned infrastructure, the grantee of the Communications Facilities must provide the City with a structural evaluation of each specific location containing a recommendation that the proposed installation passes the standards described above. Said evaluation must be prepared by a professional structural engineer licensed in the State of Illinois.
- 6.8.15. ~~6.7.15.~~ All Communications Facilities equipment and appurtenances installed by the grantee shall be labeled by the grantee with the grantee's name, equipment identification number, and phone number.
- 6.8.16. Special Areas of Control. Communication Facilities located in the Historic District and in any rights-of-way abutting properties zoned B4 or B5, and any portion of the Riverwalk that is deemed as a public right-of-way shall be subject to the design standards as further described in this section:

- 6.8.16.1. Communications Facilities shall be installed below grade except for the antennas and any necessary ancillary equipment (e.g. remote radio units and diplexers), including wiring and cabling. Upon good cause shown, as determined in the sole discretion of the Director, said Communications Facilities equipment may be located inside a pole which design shall be subject to the approval of the Director.
- 6.8.16.2. Antennas and any necessary ancillary equipment shall be hidden within the vertical infrastructure or appear like an original part of the infrastructure.
- 6.8.16.3. Any new or replacement infrastructures shall comply with all applicable design standards for the designated area and shall match the design of the same type of infrastructures in the vicinity.
- 6.8.16.4. If the grantee proposes any deviation from the design standards in this section, the grantee shall apply for an exception in conformance with procedures, terms and conditions set forth in Section 9-1B-10:9 of this Code.

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~~9. Additional restrictions or conditions may be imposed by the Director for new Facilities within the City's I-88 Technology Corridor, downtown area, and historic district.~~Exception:

9.1. Authority: The City Council may vary the regulations of Section 9-1B-10:6.8.7 and Section 9-1B-10:6:8:16 through approval of an exception if it finds that the exception requested is in harmony with their general purpose and intent and complies with all of the standards for exceptions established herein.

9.2. Standards For Exceptions: Any decision by the City Council shall be predicated on evidence and finding that:

9.2.1. The exception is in harmony with the general purpose and intent of this Title;

9.2.2. The exception, if granted, will not undermine the safety of all users of the right-of-way including but not limited to pedestrian and drivers.

9.2.3. The exception, if granted, will not alter the essential character of the neighborhood and will not be a substantial detriment to adjacent property.

9.3. Procedure: A petition for an exception shall be processed in accordance with the provisions below:

9.3.1. Initiation Of A Petition: An exception may be proposed by petition submitted by the grantee seeking to installing Communications Facilities in the right-of-way.

9.3.2. Petitions: The petitioner shall file the required petition forms, as provided by the City, as well as all supporting documents required by the City. Upon the Director's determination that the petition is complete, it shall be forwarded to the City Council for consideration at a public meeting.

9.3.3. Withdrawal Of A Petition: A petition may be withdrawn by the grantee at any time prior to its approval by City Council. Such withdrawal shall be deemed final and shall not affect the petitioner's responsibility for payment of fees required by this Code.

9.3.4. Effective Period Of Exception:

9.3.4.1. No exception shall be valid for a period longer than two (2) years from the date of the ordinance granting the exception unless a building permit is obtained within such period and the installation of the Communication Facilities is started or the use is commenced within such period.

9.3.4.2. If the Communications Facilities for which the exception was granted are destroyed or damaged by fire, collapse, explosion, traffic accident or other casualty or act of God, the exception shall be valid only if such restoration is started within six (6) months from the date of destruction and restoration proceeds and does not cease for a period of sixty (60) days and completion is accomplished within twenty-four (24) months from the date of destruction.

SECTION 4: Section 16 (Renewal Applications) of Article B (Private Use) of Chapter 1 (Streets and Sidewalks) of Title 9 (Public Ways and Property) of the Naperville Municipal Code is hereby amended by adding the underlined language and deleting the stricken language as follows:

9-1B-16: - RENEWAL APPLICATIONS:

A grantee that desires to renew its license under this Chapter, except for small wireless facilities, shall, not more than one hundred fifty (150) days, nor less than sixty (60) days before expiration of the current license, file an application with the City for renewal, which shall include the following information:

1. The information required pursuant to Section 9-1B-4 of this Article.
2. Any information required pursuant to the license agreement between the City and the grantee.

SECTION 5: Section 21 (Grantee Insurance) of Article B (Private Use) of Chapter 1 (Streets and Sidewalks) of Title 9 (Public Ways and Property) of the Naperville Municipal Code is hereby amended by adding the underlined language and deleting the stricken language as follows:

9-1B-21: - ~~GRANTEE INSURANCE:~~

1. Wireless Provider. The wireless provider shall carry, for small wireless facilities, at the wireless provider's own cost and expense, property insurance for its property's replacement cost against all risks; workers' compensation insurance, as required by law; or commercial general liability insurance with respect to its activities on the City improvements or rights-of-way to afford minimum protection limits consistent with its requirements of other users of City 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 provide certification and documentation of inclusion of the City in a commercial general liability policy prior to the collocation of any wireless facility.

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 for the name of 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.

2. ~~4.~~ Other Grantees. Unless otherwise provided in a license agreement, each grantee, other than wireless providers for small wireless facilities, shall, as a condition of the grant, secure and maintain the following liability insurance policies

insuring both the grantee and the City, and its elected and appointed officers, officials, agents and employees as coinsureds:

2.1. Comprehensive general liability insurance with limits not less than:

2.1.1. Five million dollars (\$5,000,000.00) for bodily injury or death to each Person;

2.1.2. Five million dollars (\$5,000,000.00) for property damage resulting from any one accident; and

2.1.3. Five million dollars (\$5,000,000.00) for all other types of liability.

2.2. Automobile liability for owned, nonowned and hired vehicles with a limit of three million dollars (\$3,000,000.00) for each Person and three million dollars (\$3,000,000.00) for each accident.

2.3. Workers' compensation within statutory limits and employer's liability insurance with limits of not less than one million dollars (\$1,000,000.00).

2.4. Comprehensive form premises-operations, explosions and collapse hazard, underground hazard and products completed hazard with limits of not less than three million dollars (\$3,000,000.00).

2.5. The liability insurance policies required by this Section shall be maintained by the grantee throughout the term of the license, and such other period of time during which the grantee is operating without a license hereunder, or is engaged in the removal of its Facilities. Each such insurance policy shall contain the following endorsement:

It is hereby understood and agreed that this policy may not be canceled nor the intention not to renew be stated until ninety (90) days after receipt by the City, by registered mail of a written notice addressed to the City Manager of such intent to cancel or not to renew.

2.6. Within sixty (60) days after receipt by the City of said notice, and in no event later than thirty (30) days prior to said cancellation, the grantee shall obtain and furnish to the City replacement insurance policies meeting the requirements of this Section. The termination or expiration of insurance without replacement insurance as provided herein, shall automatically terminate the grantee's license.

SECTION 6: Section 24 (Coordination of Construction Activities) of Article B (Private Use) of Chapter 1 (Streets and Sidewalks) of Title 9 (Public Ways and Property)

of the Naperville Municipal Code is hereby amended by adding the underlined language and deleting the stricken language as follows:

9-1B-24: - COORDINATION OF CONSTRUCTION ACTIVITIES:

All grantees are required to cooperate with the City and each other. To the maximum extent possible and as permitted by law, a grantee shall design and schedule its work so as to coordinate with other Persons installing, constructing, or maintaining Facilities in the public right-of-way.

- 1. through 6. * * *

- 7. Each license or franchise grantee may be required when installing, constructing, or maintaining Facilities in the public right-of-way, except for small wireless facilities, in the sole discretion of the Director, to also install conduit, inner duct, and Fiber optic cable (“underground communications infrastructure”) on behalf of the City. A grantee is required to obtain confirmation in writing from the City about whether the City requires the installation of underground communications infrastructure for areas located within the grantee’s proposed construction plan.

7.1 through 7.6. * * *

- 8. * * *

SECTION 7: Section 2 (Application and General Plan Review Fee) of Article E (Fees, Costs and Compensation) of Chapter 1 (Streets and Sidewalks) of Title 9 (Public Ways and Property) of the Naperville Municipal Code is hereby amended by adding the underlined language and deleting the stricken language as follows:

9-1E-2: - APPLICATION AND GENERAL PLAN REVIEW FEE:

Unless otherwise provided in a license agreement, prohibited by preemptive law or otherwise provided in this Code, 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 infrastructure, and three hundred fifty (\$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 infrastructure.

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 pole for such collocation.

~~3.1. Any other applicant for a license pursuant to this Chapter shall pay a fee of one thousand five hundred dollars (\$1,500.00)~~

~~4.2. The application and general plan review fee shall be deposited with the City as part of the application filed pursuant to Article C of this Chapter.~~

~~5.3. Application fees for small wireless facilities are non-refundable. Any other applicant whose license application has been withdrawn or abandoned shall, within sixty (60) days of the withdrawal or abandonment of its application, be refunded the balance of its deposit under this Section, less:~~

~~5.1. 3.1. Two hundred fifty dollars (\$250.00); and~~

~~5.2. 3.2. All ascertainable costs and expenses incurred by the City in connection with the application.~~

SECTION 8: Section 5 (Annual Fees) of Article E (Fees, Costs and Compensation) of Chapter 1 (Streets and Sidewalks) of Title 9 (Public Ways and Property) of the Naperville Municipal Code is hereby amended by adding the underlined language and deleting the stricken language as follows:

9-1E-5: - ANNUAL FEES:

1. A wireless provider shall pay to the City an annual recurring rate to collocate a small wireless facility on a City-owned pole that equals (i) \$200.00 per year or (ii) the actual, direct, and reasonable costs related to the wireless provider's use of space on the City owned pole.

2. 4. Unless otherwise provided in a license agreement, prohibited by preemptive law or otherwise provided in this Code, each license grantee shall pay an annual license fee of one dollar fifty cents (\$1.50) per each linear foot of the facilities which consisted of new construction, laying, boring, poling or the like, except for excess or surplus facilities not being used, but required under this Chapter, located in the City's public streets, public ways, or other City property, and an annual license fee of fifty cents (\$0.50) per each linear foot of the facilities being located in existing excess or surplus facilities in the City's public streets, public ways, or other City

property. Any discrepancy in linear footage actually installed will be reconciled by the parties upon submission of as built drawings at the conclusion of the project.

Such annual fee shall serve as reimbursement for the City's costs in connection with reviewing, inspecting and supervising the use and occupancy of the public streets, property and ways on behalf of the public and existing or future users.

SECTION 9: This Ordinance shall be in full force and effect upon its passage and approval.

PASSED this _____ day of _____, 2018.

AYES:

NAYS:

ABSENT:

APPROVED this _____ day of _____, 2018.

Steve Chirico
Mayor

ATTEST:

Pam Gallahue, Ph.D.
City Clerk