

VILLAGE OF HINSDALE

ORDINANCE NO. O2022-06

AN ORDINANCE AMENDING VARIOUS SECTIONS OF THE VILLAGE CODE OF THE VILLAGE OF HINSDALE RELATIVE TO THE PERMITTING, REGULATION AND DEPLOYMENT OF SMALL WIRELESS FACILITIES, UTILITY NOISE AND CONSTRUCTION OF UTILITY FACILITIES IN THE RIGHT OF WAY

WHEREAS, Public Act 100-585, known as the Small Wireless Facilities Deployment Act (50 ILCS 840/1 et seq.), acts to impose certain additional requirements on municipalities, including the Village of Hinsdale (the "Village"), 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 Village; and

WHEREAS, the President and Board of Trustees of the Village of Hinsdale have previously made certain amendments to the Village Code of Hinsdale, as amended, by adopting, in Ordinance No. O2018-38 (the "Small Wireless Facilities Ordinance"), a new Chapter 13-8 (Small Wireless Facilities) relative to the design, permitting, location, construction, deployment, regulation, operation, maintenance, repair and removal of small wireless facilities both within the public rights-of-way and in certain other locations within the jurisdiction of the Village; and

WHEREAS, since the enactment of the Small Wireless Facilities Ordinance, there has been extensive public discussion about small wireless facilities and how best to design, permit, locate, construct, deploy, regulate, operate, maintain, repair and remove small wireless facilities within the Village; and

WHEREAS, the Small Wireless Facilities Deployment Act was originally scheduled to sunset on June 1, 2021. Public Act 102-0009, the relevant portions of which became effective on June 3, 2021, extended that sunset date to December 31, 2024, and made other clarifying and substantive changes to the Act. The Act was subsequently amended and reenacted in Public Act 102-0021; and

WHEREAS, as a result of such public discussions, and the clarifying and substantive amendments made in Public Act 102-0009 and Public Act 102-0021, various amendments to the Small Cell Ordinance, as well as the Village's chapter on construction of utility facilities in the right-of-way (collectively, the "Code Amendments"), have been proposed and have been discussed at Regular Meetings of the President and Board of Trustees of the Village of Hinsdale held on February 15, 2022 and March 1, 2022; and

WHEREAS, the President and Board of Trustees of the Village of Hinsdale make the following findings in regard to the Code Amendments:

- A. The Village of Hinsdale is a municipal corporation duly organized and existing under the laws of the State of Illinois; and
- B. The public rights-of-way within Village limits are used to provide essential public services to Village residents and businesses. The public rights-of-way within the Village are a limited public resource held by the Village for the benefit of its citizens, and the Village 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
- C. 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
- D. The Village 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
- E. The Village is further authorized to adopt the proposed Code 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
- F. The Village 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 Village; and
- G. On April 12, 2018, Illinois Public Act 100-585, known as the Small Wireless Facilities Deployment Act (the "Act"), was enacted with an effective date of June 1, 2018, and imposed certain additional requirements on municipalities, including the Village, 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 Village; and
- H. The Act, which was originally scheduled to sunset on June 1, 2021, has now been amended by Public Act 102-0009, the relevant portions of which

became effective on June 3, 2021. Public Act 102-0009 extended the sunset date of the Act to December 31, 2024, and made other clarifying and substantive changes to the Act. The Act was subsequently amended and reenacted in Public Act 102-0021; and

- I. In conformance with the requirements of the Act, and in response to certain amendments to the Act made in Public Act 102-0009 and Public Act 102-0021, 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 Village, the Village President and Board of Trustees specifically find that it is in the best interests of the public health, safety and general welfare of the Village to adopt the Code Amendments below in order to enhance and supplement the previously adopted generally applicable standards enacted consistent with the Act 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 Village so as to, among other things: (i) prevent interference with the facilities and operations of the Village utilities and of other utilities lawfully located in public rights-of-way or in other locations within the Village; (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 Village; and (vi) ensure that the placement of small wireless facilities does not negatively impact public safety and the Village's public safety technology; and

WHEREAS, in order to incorporate the clarifying and substantive changes made to the Act by Public Act 102-0009 and Public Act 102-0021, and to make other changes, and pursuant to the authority granted to the Village by the applicable provisions of the Illinois Municipal Code (65 ILCS 5/ *et seq.*), including Article 11, Division 80 of the Illinois Municipal Code (65 ILCS 5/11-80-1 *et seq.*), Article VII, Section 7 of the Illinois Constitution of 1970, and Public Act 100-585 (the Small Wireless Facilities Deployment Act), the President and Board of Trustees of the Village of Hinsdale find that the below Code Amendments are in the best interests of the Village, its residents, property owners, business owners and the public, and they approve the Code Amendments as set forth below.

BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF HINSDALE, COOD AND DUPAGE COUNTIES, ILLINOIS:

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

SECTION 2: Section 13-8-4 of Chapter 13-8 (Small Wireless Facilities) of the Village Code of Hinsdale the Village Code of Hinsdale is amended to read in its entirety as follows:

13-8-4: ZONING:

A. Permitted Uses: 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:

O-3 General Office Zoning District.

B. Prohibited Locations: Small wireless facilities shall be prohibited uses outside of the rights-of-way in the following zoning districts, except as otherwise required by applicable law:

R-1 Single-Family Residential District

R-2 Single-Family Residential District

R-3 Single-Family Residential District

R-4 Single-Family Residential District

R-5 Multiple Family Residential District

R-6 Multiple Family Residential District

OS Open Space District (only collocations on existing utility poles or structures permitted; no new poles)

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

SECTION 3: Section 13-8-5 (Permits; Application Process) of Chapter 13-8 (Small Wireless Facilities) of the Village Code of Hinsdale is amended to read in its entirety as follows:

13-8-5: PERMITS; APPLICATION PROCESS: Unless otherwise specifically exempted in this chapter, a permit to collocate a small wireless facility within the Village 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 Village 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 Village 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, that includes addressing the acceptability of the site for factors such as pole loading from existing utility equipment and conductors as well as the small wireless facility, and that specifically includes evaluations pursuant to American National Standards Institute (ANSI) standards relating to heavy loads and wind;

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. To the extent commercially available, technologically compatible with the local network system, and already used in its national or regional wireless network system, the wireless provider is required to install small wireless facilities with antenna and other equipment that have the smallest visual profile;

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

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

78. Copies of all licenses, permits and approvals required by or from the Village (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

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

10. Information on whether a pre-application review was conducted by or with Village staff. It is recommended that applicants arrange a review of the proposed location and design of small wireless facilities and new wireless support structures with the Village's director of public services or his or her designee and other applicable staff prior to application. Such review does not constitute approval, but is instead designed to promote administrative efficiency by identifying existing utility conflicts, consideration of possible alternative locations, and other issues that might be readily identified and/or resolved by communication between the applicant and Village staff.

11. Certification from a radio engineer that the small wireless facility will operate within all applicable FCC standards, including, but not limited to radio frequency emissions, as well as technical data such as the frequencies in use, power output levels and antenna specifications, reasonably necessary to evaluate compliance with maximum permissible exposure levels set by the FCC, as well as a monitoring plan for the applicant's facility capable of tracking and recording the daily amounts or levels of radio frequency emissions produced by the equipment, in order to verify on an ongoing basis that the small wireless facility will not exceed applicable FCC radio frequency emissions. In addition, a baseline test of the radio frequency emissions of a small wireless facility shall be performed by the wireless provider, at its sole cost and expense, at the time of initial activation, and the results provided to the Village's director of public services or his or her designee. In addition, when a radio transceiver or antennas are replaced or added to an existing small wireless facility, the wireless provider shall provide certification from a radio engineer that the continuing operation of the small wireless facility complies with all applicable FCC standards, including, but not limited to, radio frequency emissions.

12. Proof of all applicable licenses or other approvals required by the FCC, including but not limited to information showing the small wireless facility has received any required review (e.g., environmental assessment and review) by the FCC pursuant to the National Environmental Policy Act ("NEPA"), or is exempt from such requirements. If the applicant claims the small wireless facility is exempt, it must state the basis for the

exemption and provide proof, including supporting documents that establish that the facility meets such exemption.

13. A written report that analyzes acoustic levels for the small wireless facility and all associated equipment including, but not limited to, temporary or permanent backup generators, in order to demonstrate compliance with applicable Village noise regulations, including, but not limited to, Section 9-12-2 of the Village Code. The acoustic analysis must be prepared and certified by an engineer and include an analysis of the manufacturers' specifications for all noise-emitting equipment, and a depiction of the proposed equipment relative to all adjacent property lines. In lieu of a written report, the applicant may submit evidence from the equipment manufacturer that the ambient noise emitted from all the proposed equipment, including equipment underground, will not, both individually and cumulatively, exceed the applicable limits.

14. A written description and/or map identifying the geographic service area for the small wireless facility.

15. For work in the public right-of-way, evidence of posting of the security fund as required in Section 7-1G-10 of this code.

16. Where installation is proposed in a right-of-way, as defined in this chapter, that consists of an "easement for compatible use", a certified copy of the original easement documents and other supporting documentation demonstrating that the applicant has the right to install, mount, maintain and remove a small wireless facility and associated equipment in or on the easement for the length of the permit. If the applicant is claiming access to the easement as an assignee or successor in interest, the applicant shall, in addition, provide documents demonstrating that its assigned or successor rights in the easement are sufficient to allow it to install, mount, maintain and remove the small wireless facility and associated equipment for the length of the permit.

17. A master plan which identifies the location of the proposed small wireless facility in relation to all existing and potential locations in the Village that are reasonably anticipated for construction within two (2) years of submittal of the application.

18. The name of the applicant, the name of the wireless service provider on whose behalf the proposed installation is being performed, and any additional parties proposed to be involved in the installation.

19. A sample of the proposed notice to be mailed pursuant to subsection B, below, and a list of intended recipients (including content and mailing envelope).

B. Notice: Within three (3) business days of submission of an application containing all information required by this chapter and any associated regulations, an applicant, at

its sole cost and expense, shall provide written notice, by first class United States mail, to the owners and occupants of all real property at the addresses on file with the United States Postal office, and the residential manager for any multi-family dwelling unit that includes ten (10) or more units at the manager's business mailing address, any part of which is located within a two hundred and fifty (250) foot radius of the location of the applicant's proposed small wireless facility. Such notice shall be in a form provided by the Village, as may be revised from time to time, and shall be clearly marked as a notification of proposed small wireless facility installation, identify the applicant and wireless provider(s) who will utilize the facility, and include a plain language description of the proposed facility, the exact location of the proposed facility, photo simulations or illustrations depicting the proposed wireless facility, and the address where comments may be sent to the wireless provider within fifteen (15) calendar days of the date of the notice. In addition, the applicant shall post a sign measuring at least nine (9) inches by twelve (12) inches in a conspicuous location at each proposed location of a small wireless facility installation. Such signs shall be in a form provided by the Village, and shall include an image of the proposed small wireless facility. The applicant shall supplement its application with proof of mailing of required notices no less than two (2) calendar days after mailing of the notices, and an affidavit attesting to the posting of the required signs no less than two (2) days after posting. The applicant shall supplement its application with copies of all email, letter and other written communications received in response to the mailed notice within seventeen (17) days of mailing;

C. Means of Submission; Multiple Applications for Same Location: 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 Village. 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.

~~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	\$650.00

pole or wireless support structure	
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 Village must determine whether the application is complete and notify the applicant. If an application is incomplete, the Village must specifically identify the missing information. Processing deadlines are tolled from the time the Village sends a notice of incompleteness to the time the applicant provides the missing information.

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

2. **Existing Utility 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 Village 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 Village 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 Village. Receipt of a deemed approved notice by the Village shall not preclude the Village 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 Village 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 Village 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 Village. Receipt of a deemed approved notice by the Village shall not preclude the Village 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 Village 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 Village shall have thirty (30) days to approve or deny the resubmitted application or it is deemed approved, if the applicant has notified the Village 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 Village 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 small wireless facility associated with a new utility pole as part of its application, the Village may propose that the small wireless facility be located on an existing utility pole or existing wireless support structure within two hundred (200) ~~one hundred (100)~~ feet of the proposed collocation. Where an existing utility pole is proposed for collocation, the entity owning the utility pole shall provide access for that purpose, and the fee charged to the applicant shall be the lowest rate charged by the entity for other wireless providers and shall not exceed the entity's actual costs, as required by Section 11-80-24 of the Act. 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 Village in writing at least forty-eight (48) 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 Village 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. To the extent commercially available, technologically compatible with the local network system, and already used in

its national or regional wireless network system, the wireless provider is required to, when replacing such small wireless facilities, install wireless facilities with antenna and other equipment that have the smallest visual profile. The wireless provider shall provide all information necessary and requested by the Village to establish that the replacement is substantially similar. Wireless facilities that vary significantly in design, or increase power output, frequency, bandwidth or performance, or change the location of the small wireless facility upon the utility pole or wireless support structure, or increase signal strength, or make other modifications in other key components, are not substantially similar, and are subject to standard application processes, permitting requirements, and fees. The Village has the sole right and responsibility to determine if a proposed small wireless facility is substantially similar to the existing small wireless facility. In addition, when a radio transceiver or antennas are replaced or added to an existing small wireless facility, and regardless of whether an application or permit are required, the wireless provider shall provide certification to the Village from a radio engineer that the continuing operation of the small wireless facility complies with all applicable FCC standards, including, but not limited to, radio frequency emissions; 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 Village permitting requirements where traffic patterns are affected or lane closures are required.

SECTION 4: The reference to "Village Engineer" in the first sentence of subsection C. in Section 13-8-8 (Height Limitations) of Chapter 13-8 (Small Wireless Facilities) shall be replaced with "Village's director of public services."

SECTION 5: Section 13-8-9 (General Requirements) of Chapter 13-8 (Small Wireless Facilities) of the Village Code of Hinsdale is amended to read in its entirety as follows:

13-8-9: 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 Village 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 Village 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 title 13 (Telecommunications) or chapter 7-1G (Construction of Utility Facilities in Rights of Way) of this code, or other applicable regulations set forth in or adopted by this code, 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 Village 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, if any, as set forth in chapter 7-1G (Construction of Utility Facilities in Rights of Way) of this code.

E. Undergrounding:

1. The wireless provider shall comply with Village 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 variance from the Village's director of public services~~village engineer~~ or his or her designee pursuant to the procedures set forth in section 7-1G-21 (Variances) of chapter 7-1G (Construction of Utility Facilities in Rights of Way) of this code, to allow a small wireless facility to be located above ground in an area where Village ordinances or regulations prohibit or restrict above ground facilities if, in addition to demonstrating the conditions of section 7-1G-21 have been established, 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 Village 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 Village. In the event that such a utility pole has a

collocated small wireless facility in place at the time of such a decision, the Village 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 within the communication worker safety zone of the pole or the electric supply zone of the pole on Village 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 Village 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.

H. Radio Frequency Compliance: Wireless providers shall comply with the FCC's radio frequency emissions standards at all times. Wireless providers are required to perform on-going monitoring of small wireless facilities to ensure all equipment continues to operate within allowable FCC radio frequency emission ranges and shall, on a quarterly basis, provide to the Village a certification with supporting information confirming whether all of the wireless provider's small wireless facilities within the Village operated in compliance with all FCC radio frequency emission limits during the quarterly reporting period. The certified report for each quarter shall be delivered to the village manager no later than April 30 (for quarter ending March 31), July 31 (for quarter ending June 30), October 31 (for quarter ending September 30), and January 31 (for quarter ending December 31). A wireless provider shall, upon request of the Village at any time, perform radio frequency testing of all or specific small wireless facilities, provide such testing results to the Village, and shall promptly respond to all Village requests for information

and/or cooperation with respect to any of the foregoing. Village staff may, at the Village's option, accompany the wireless provider or its agents in the performance of such testing. Any small wireless facility found not to comply with FCC radio frequency emission standards shall be immediately reported by the wireless provider to the FCC, with a copy of such report sent at the same time to the village manager, and shall be powered-down, adjusted, repaired, and/or replaced, or shut off and/or removed by the wireless provider within three (3) calendar days of the provider becoming aware of the violation. Small wireless facilities that exceed the FCC's radio frequency emissions standards are declared a public nuisance, and may be summarily abated by the Village. Failure by a wireless provider to cure a violation of the FCC radio frequency emission standards within three (3) calendar days shall result in a revocation of the applicable small wireless facility permit, and/or a citation for maintaining a public nuisance with a fine in the amount of seven hundred and fifty dollars (\$750), with each day of continued operation without cure being a separate violation. In the event the Village determines that a small wireless facility is not in compliance with any legal requirements or conditions related to radio frequency, the wireless provider shall, in addition to the foregoing, be responsible for all costs and expenses incurred by the Village in connection with the investigation, enforcement and/or remediation of such noncompliance.

I. Annual Certification: In January of each year, a wireless provider shall submit an affidavit to the Village which shall list, by location, all small wireless facilities it owns within the Village, and shall certify: (1) each such installation remains in use; (2) such in-use facility remains covered by required insurance; and (3) each such installation which is no longer in use. Any small wireless facility that is no longer in use shall be removed by the wireless provider within ninety (90) calendar days of delivery of the affidavit.

SECTION 6: Section 13-8-10 (Stealth, Concealment and Design Standards) of Chapter 13-8 (Small Wireless Facilities) of the Village Code of Hinsdale is amended to read in its entirety as follows:

13-8-10: 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 this title and title 7, chapter 1, article G, "Construction Of Utility Facilities In 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 Village in an ordinance, written policy adopted by the Village Board of Trustees, in the

Village'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, including but not limited to the Village's National Register Downtown Historic District and the Robbins Park Historic District, or on buildings or structures designated as historic landmarks pursuant to title 14, "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 shall not be mounted on any Village-owned ornamental street lights in any Historic District;

2. Small wireless facilities shall not be mounted on any historic landmark or on contributing structures in any Historic District;

3. Small wireless facilities and wireless support structures may not be located in the right-of-way in front of any historic landmark or in front of any contributing structure in areas designated as historic districts, including but not limited to the Village's National Register Downtown Historic District and the Robbins Park Historic District.

34. Small wireless facilities within the right-of-way or on private property in any designated Historic District shall utilize stealth technology and be designed in such a manner so as to preserve the character of district, ensure consistency with the surrounding elements, 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.

5. Small wireless facilities within historic districts may, at the discretion of the village manager, be forwarded to the Historic Preservation Commission for advisory review as to design, location and impact on the District's landmark status, subject to any permit review timelines as specified in Section 13-8-5.E. of the Village Code.

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 section shall not be construed to limit the Village'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 USC section 300101 et seq., and the regulations adopted to implement those laws. (Ord. O2018-38, 9-4-2018)

SECTION 7: Section 13-8-15 (Abandonment) of Chapter 13-8 (Small Wireless Facilities) of the Village Code of Hinsdale is amended to read in its entirety as follows:

13-8-15: 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 and any associated wireless support structure or utility pole within ninety (90) days after receipt of written notice from the Village notifying it of the abandonment. The requirement that a wireless support structure or utility pole associated with an abandoned small wireless facility be removed does not apply if the owner of the facility does not own or otherwise have the right to remove the structure or pole, and does not apply to Village-owned utility poles unless requested by the Village. The notice shall be sent by certified or registered mail, return receipt requested, by the Village to the owner at its last known address. If the small wireless facility and associated wireless support structure or utility pole, if any, is not removed within ninety (90) days after receipt of such notice, such wireless facility and associated structure or pole shall be deemed to be a nuisance and the Village may remove or cause the removal of such facility, structure or pole and recover or place a lien for its costs, pursuant to the terms of its pole attachment or other agreement for Village utility poles or through the procedures for abatement of nuisances set forth in this code.

B. In the event the Village 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 and associated wireless support structure or utility pole 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, and any associated wireless support structure or utility pole will result in the Village removing the small wireless facility, structure or pole at the wireless provider's cost.

SECTION 8: Section 13-8-20 (Revocation of Permit) of Chapter 13-8 (Small Wireless Facilities) of the Village Code of Hinsdale is amended to read in its entirety as follows:

13-8-20: 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 Village.

5. The wireless provider failed to notify the Village 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.

12. The small wireless facility is found to have been in violation of FCC radio frequency emission standards and the wireless provider, after becoming aware of such violation, fails to shut-down or otherwise cure the violation within three (3) calendar days.

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 Village's director of public services~~village engineer~~ or his or her

designee 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 Village's director of public services~~village engineer~~ or his or her designee 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 Village's director of public services~~village engineer~~ or his or her designee 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 Village's director of public services~~village engineer~~ or his or her designee revokes the permit, the wireless provider may file a written notice of appeal with the Village Clerk within twenty-one (21) days of notification of the permit revocation. Such notice shall contain a response to the decision of the Village's director of public services~~village engineer~~ or his or her designee. The Village Board shall hear the revocation appeal and render a decision on such appeal.

SECTION 9: Subsection D. of Section 7-1G-4 (Permit Required; Applications and Fees) of Chapter 7-1G (Construction of Utility Facilities in Rights of Way) of the Village Code of Hinsdale is amended to read in its entirety as follows:

D. Supplemental Application Requirements For Specific Types Of Utilities: In addition to the requirements of subsection C of this section, the permit application shall include the following items, as applicable to the specific utility that is the subject of the permit application:

1. In the case of the installation of a new electric power, communications, telecommunications, cable television service, video service or natural gas distribution system, evidence that any "certificate of public convenience and necessity" or other regulatory authorization that the applicant is required by law to obtain, or that the applicant has elected to obtain, has been issued by the ICC or other jurisdictional authority;

2. In the case of natural gas systems, state the proposed pipe size, design, construction class, and operating pressures;

3. In the case of water lines, indicate that all requirements of the Illinois Environmental Protection Agency, Division of Public Water Supplies, have been satisfied;

4. In the case of sewer line installations, indicate that the land and water pollution requirements of the Illinois Environmental Protection Agency, Division of Water Pollution Control, and other local or State entities with jurisdiction, have been satisfied; or

5. In the case of petroleum products pipelines, state the type or types of petroleum products, pipe size, maximum working pressure, and the design standard to be followed; or

6. In the case of small wireless facilities and associated utility poles or wireless support structures in the right-of-way, demonstrated conformance with the Village's adopted General Guidelines and Small Wireless Facility Design, Aesthetic, Stealth and Concealment Standards, where applicable, as such standards may be amended from time to time.

SECTION 10: A new subsection G. of Section 9-12-2 (Limitations on Noise) of the Village Code of Hinsdale is added, to read in its entirety as follows:

F. Utility equipment in rights of way: Utility equipment located in the public right-of-way and in residentially zoned districts shall be operated in such a manner so as to minimize any possible disruption to residents and occupants of nearby buildings caused by noise. Backup generators, if needed, shall only be operated during periods of power outages, and for no more than one weekly testing period not to exceed fifteen (15) minutes, and shall not be tested on weekends or holidays, or between the hours of 5:00 p.m. and 7:00 a.m. Except during periods of construction, power outages, or during authorized backup testing conforming to the time limitations in this subsection, at no time shall any utility facility, or group of ground or pole-mounted utility facilities, in a residentially zoned area be permitted to exceed 40 dBA at a ground level distance of twenty feet (20') as measured from the pole base or ground-mounted equipment, as applicable, or exceed any other applicable noise levels imposed by codes adopted by the Village.

SECTION 11: All ordinances or parts of ordinances in conflict with this Ordinance are hereby expressly repealed.

SECTION 12: Except as to the Code amendments set forth above in this Ordinance, all Chapters and Sections of the Village Code, as amended, shall remain in full force and effect.

SECTION 13: 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 14: This Ordinance shall be in full force and effect after its passage, approval and publication in the manner provided by law.

ADOPTED this 1st day of March, 2022, pursuant to a roll call vote as follows:

AYES: Trustees Posthuma, Stifflear, Fisher, Byrnes, Banke

NAYS: None

ABSENT: Trustee Haarlow

APPROVED by me this 1ST day of March, 2022, and attested to by the Village Clerk this same day.



ATTEST:

Thomas K. Cauley, Jr., Village President

Christine M. Bruton
Christine M. Bruton, Village Clerk