



AGENDA SECTION: Second Reading – ZPS

SUBJECT: Consideration of a Resolution to amend or repeal the Small Wireless Facility Deployment Act to return control of local right-of-ways to municipalities, and a Resolution to support Federal Bills for the same purpose

MEETING DATE: March 3, 2020

FROM: Kathleen A. Gargano, Village Manager

Recommended Motions

Approve a Resolution Calling for an Amendment of the Illinois Small Wireless Facility Deployment Act to Return Control of Local Right-of Ways to Local Municipalities or, in the Alternative, Repeal of the Act; **and**

Approve a Resolution Supporting Federal Bills H.R. 530 and S. 2012 to Restore Local Control in 5G/Broadband Deployment

Background

Public Act 100-585 known as the Illinois Small Wireless Facilities Deployment Act (50 ILCL 840/1 et seq.) and the Federal Communications Commission on September 26, 2018 adopted a Declaratory Ruling and Third Report and Order in the matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Investment (“the FCC Declaratory Ruling”). Both the Illinois Small Wireless Facility Deployment Act as well as the FCC Declaratory Ruling severely limit municipal authority to regulate small wireless antennas located on the municipal rights-of-way.

Discussion & Recommendation

Staff recommends the Board approve a Resolution advocating changes to the Illinois Small Wireless Facilities Act and the Declaratory Act that would allow for greater local control of wireless facilities and structures located within municipalities and on public rights-of-ways.

Budget Impact

N/A

Village Board and/or Committee Action

At their meeting of February 18, 2020, the Board directed that certain language in the resolutions be reviewed and corrected.

Documents Attached

1. Resolution Supporting amending the IL Small Wireless Facility Deployment Act Returning Local Control (Red line version and final document)
2. Resolution Supporting Federal Bills H.R. 530 and S. 2012 to Restore Local Control (Red line version and final document)

RESOLUTION NO. _____

A RESOLUTION CALLING FOR AN AMENDMENT OF THE ILLINOIS SMALL WIRELESS FACILITY DEPLOYMENT ACT TO RETURN CONTROL OF LOCAL RIGHT-OF-WAYS TO LOCAL MUNICIPALITIES OR, IN THE ALTERNATIVE, REPEAL OF THE ACT

WHEREAS, the Village of Hinsdale (the "Village"), an Illinois non-home rule municipality, supports the goal of ensuring reliable cellular coverage throughout our community, and supports technological enhancements, such as "smart" technology and 5G wireless communications, as long as the local impacts of such technology are not detrimental to the aesthetics of the Village or undermine the Village's use of its rights of way or impact the number of trees in parkway areas or reduce the tree canopy areas or present the potential negative impacts on the health, welfare and safety of Village residents, property owners, businesses and the public; and

WHEREAS, Public Act 100-585, known as the Illinois Small Wireless Facilities Deployment Act (50 ILCS 840/1 et seq.) (the "Act"), acts to impose certain limitations, restrictions and 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

~~**WHEREAS**, the Act permits private business entities to take and use public property without reasonable regulation or fair compensation, amounting to an illegal taking that is an unprecedented use of public property with no basis in law; and~~

WHEREAS, the Act usurps traditional municipal zoning authority, mandating that installations in all rights-of-way and in certain zoning districts be permitted uses, setting

an unusual and troubling precedent for future legislation relative to local government control; and

WHEREAS, the Act usurps traditional municipal proprietary control over its own infrastructure, by allowing private business entities to attach to Village utility poles and other Village infrastructure of the business entities choosing, over which the Village had previously maintained proprietary control, at State-capped rates, and with little ability for the Village to say no, thereby setting another ~~which also sets an~~ unusual and troubling precedent for future legislation relative to local government control; and

WHEREAS, allows wireless providers to locate equipment where it may potentially interfere with critical municipal systems used by police, firefighting, water, and other critical local operations, and, without enhanced local regulations, there will be a negative impact on the number of trees in parkway areas and reductions in the tree canopy areas. Further, the Act's failure to mandate collocation of equipment on existing utility poles and light poles in public rights of way will lead to a unanticipated proliferation of new poles within public rights of way that will have an extremely detrimental impact on the aesthetics within residential areas of the Village and may cause property values to decline; and

~~**WHEREAS**, the Act fails to provide municipalities with adequate recourse to address unsafe installations or dangerous equipment; and~~

WHEREAS, the Act creates an automatic approval timeline, which is one-sided and detrimental to the public, presuming that municipalities are negligent and providers are ~~not when a permit is incomplete or inadequate~~; and

~~WHEREAS, the Act provides unfettered and unsupervised access to commercial entities that have only their own profitability as their guide, going against a critical public interest to assure that wireless facilities are installed and maintained in a way that safeguards the public's connection to the wireless world in an era of heightened awareness of cyber security risks; and~~

WHEREAS, it is the responsibility of local authorities to protect the public health, safety, and welfare of its citizens, and the Act undermines this responsibility; and

WHEREAS, it is vital that local authorities be able to hold ~~for-profit, commercial~~private business entities to an appropriate standard of responsibility for their use of a public asset; and

WHEREAS, Illinois municipalities are diverse and each one must be given a chance to develop reasonable regulations that will protect their community's specific needs; and

WHEREAS, the President and Board of Trustees of the Village of Hinsdale make the following findings and statements:

A. The President and Board of Trustees oppose the Act and encourages the Illinois Legislature and Governor to amend the Act to return control of the local right-of-ways to local municipalities or, in the alternative, to repeal the Act; and

B. The President and Board of Trustees encourage the telecommunications industry to look to alternative methods of deploying small wireless facilities in a manner that better protects the rights of local governments in their own infrastructure and public property; and

C. The President and Board of Trustees are committed to developing reasonable regulations for the deployment of wireless technology and is eager to work with all interested parties and stakeholders to develop regulations that ensure reliable cellular coverage while preventing the unfettered ~~taking and~~ use of public property by private business concerns.

NOW, THEREFORE, BE IT RESOLVED by the President and Board of Trustees of the Village of Hinsdale, DuPage and Cook Counties and State of Illinois, as follows:

SECTION 1: Each of the recitals in the Whereas paragraphs set forth above are incorporated into Section 1 of this Resolution.

SECTION 2: The President and Board of Trustees of the Village of Hinsdale find that it is in the best interests of the Village and its residents, property owners, businesses and the public to express its opposition to the Act as approved, to urge its amendment or repeal, and to work with all interested parties and stakeholders to develop regulations that ensure reliable cellular coverage while preventing the unfettered ~~taking and~~ use of public property by private business concerns.

SECTION 3: This Resolution shall be in full force and effect from and after its passage and approval.

ADOPTED this _____ day of _____, 2020,
pursuant to a roll call vote as follows:

AYES: _____

NAYS: _____

ABSENT: _____

APPROVED by me this _____ day of _____, 2020,
and attested to by the Village Clerk this same day.

Thomas K. Cauley, Jr., Village President

ATTEST:

Christine M. Bruton, Village Clerk

VILLAGE OF HINSDALE

RESOLUTION NO. _____

A RESOLUTION CALLING FOR AN AMENDMENT OF THE ILLINOIS SMALL WIRELESS FACILITY DEPLOYMENT ACT TO RETURN CONTROL OF LOCAL RIGHT-OF-WAYS TO LOCAL MUNICIPALITIES OR, IN THE ALTERNATIVE, REPEAL OF THE ACT

WHEREAS, the Village of Hinsdale (the “Village”), an Illinois non-home rule municipality, supports the goal of ensuring reliable cellular coverage throughout our community, and supports technological enhancements, such as “smart” technology and 5G wireless communications, as long as the local impacts of such technology are not detrimental to the aesthetics of the Village or undermine the Village’s use of its rights of way or impact the number of trees in parkway areas or reduce the tree canopy areas or present the potential negative impacts on the health, welfare and safety of Village residents, property owners, businesses and the public; and

WHEREAS, Public Act 100-585, known as the Illinois Small Wireless Facilities Deployment Act (50 ILCS 840/1 et seq.) (the “Act”), acts to impose certain limitations, restrictions and 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

WHEREAS, the Act usurps traditional municipal zoning authority, mandating that installations in all rights-of-way and in certain zoning districts be permitted uses, setting an unusual and troubling precedent for future legislation relative to local government control; and

WHEREAS, the Act usurps traditional municipal proprietary control over its own infrastructure by allowing private business entities to attach to Village utility poles and other Village infrastructure of the business entities choosing, over which the Village had previously maintained proprietary control, at State-capped rates, and with little ability for the Village to say no, thereby setting another unusual and troubling precedent for future legislation relative to local government control; and

WHEREAS, allows wireless providers to locate equipment where it may potentially interfere with critical municipal systems used by police, firefighting, water, and other critical local operations, and, without enhanced local regulations, there will be a negative impact on the number of trees in parkway areas and reductions in the tree canopy areas. Further, the Act's failure to mandate collocation of equipment on existing utility poles and light poles in public rights of way will lead to a unanticipated proliferation of new poles within public rights of way that will have an extremely detrimental impact on the aesthetics within residential areas of the Village and may cause property values to decline; and

WHEREAS, the Act creates an automatic approval timeline, which is one-sided and detrimental to the public, presuming that municipalities are negligent and providers are not; and

WHEREAS, it is the responsibility of local authorities to protect the public health, safety, and welfare of its citizens, and the Act undermines this responsibility; and

WHEREAS, it is vital that local authorities be able to hold private business entities to an appropriate standard of responsibility for their use of a public asset; and

WHEREAS, Illinois municipalities are diverse and each one must be given a chance to develop reasonable regulations that will protect their community's specific needs; and

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A. The President and Board of Trustees oppose the Act and encourages the Illinois Legislature and Governor to amend the Act to return control of the local right-of-ways to local municipalities or, in the alternative, to repeal the Act; and

B. The President and Board of Trustees encourage the telecommunications industry to look to alternative methods of deploying small wireless facilities in a manner that better protects the rights of local governments in their own infrastructure and public property; and

C. The President and Board of Trustees are committed to developing reasonable regulations for the deployment of wireless technology and is eager to work with all interested parties and stakeholders to develop regulations that ensure reliable cellular coverage while preventing the unfettered use of public property by private business concerns.

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RESOLUTION NO. _____

**A RESOLUTION SUPPORTING FEDERAL BILLS H.R. 530 AND S. 2012 TO
RESTORE LOCAL CONTROL IN 5G/BROADBAND DEPLOYMENT**

WHEREAS, the Village of Hinsdale (the "Village"), an Illinois non-home rule municipality, supports the goal of ensuring reliable cellular coverage throughout our community, and supports technological enhancements, such as "smart" technology and 5G wireless communications, as long as the local impacts of such technology are not detrimental to the aesthetics of the Village or undermine the Village's use of its rights of way or impact the number of trees in parkway areas or reduce the tree canopy areas or present the potential for negative impacts on the health, welfare and safety of Village residents, property owners, businesses and the public; and

WHEREAS, the Federal Communications Commission, on September 26, 2018, adopted a Declaratory Ruling and Third Report and Order in the matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment and Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment ("the FCC Declaratory Ruling"); and

WHEREAS, the FCC Declaratory Ruling favors wireless providers by specifically limiting the ability of local governments to negotiate or regulate in the public interest in key areas regarding small wireless facility deployment. Such limitations include, but are not limited to, the imposition of shot clocks, restrictions on fees, and the imposition on limitations on local governments to act in a proprietary capacity in controlling their own infrastructure; and

~~WHEREAS, the FCC Declaratory Ruling provides unfettered and unsupervised access to commercial entities that have only their own profitability as their guide, going against a critical public interest to assure that wireless facilities are installed and maintained in a way that safeguards the public's connection to the wireless world in an era of heightened awareness of cyber security risks; and~~

WHEREAS, it is the responsibility of local authorities to protect the public health, safety, and welfare of its citizens, and the FCC Declaratory Ruling undermines this responsibility; and

WHEREAS, it is vital that local authorities be able to hold ~~for-profit, commercial~~private business entities to an appropriate standard of responsibility for their use of ~~a~~public assets and infrastructure; and

WHEREAS, on January 14, 2019, Representative Anna Eshoo (D-CA) introduced H.R. 530, Accelerating Broadband Development by Empowering Local Communities Act of 2019, which would nullify the FCC Declaratory Ruling and therefore help restore local control in 5G/broadband deployment; and

WHEREAS, on June 27, 2019, Senator Dianne Feinstein (D-CA), introduced a companion bill to H.R. 530 in the Senate, S. 2012, Restoring Local Control Over Public Infrastructure Act of 2019, which would similarly nullify the FCC Declaratory Ruling and therefore help restore local control in 5G/broadband deployment; and

WHEREAS, the President and Board of Trustees of the Village of Hinsdale make the following findings and statements:

A. The President and Board of Trustees support H.R. 530, Accelerating Broadband Development by Empowering Local Communities Act of 2019, and S. 2012, Restoring Local Control Over Public Infrastructure Act of 2019, which would nullify the FCC Declaratory Ruling and therefore help restore local control in 5G/broadband deployment; and

B. The President and Board of Trustees encourage its residents, property owners, businesses and the public and state and federal representatives to support this proposed legislation and other similar efforts to return control of local right-of-ways to municipalities; and

C. The President and Board of Trustees are committed to developing reasonable regulations for the deployment of wireless technology and is eager to work with all interested parties and stakeholders to develop regulations that ensure reliable cellular coverage while preventing the unfettered ~~taking and~~ use of public property by private business concerns.

NOW, THEREFORE, BE IT RESOLVED by the President and Board of Trustees of the Village of Hinsdale, DuPage and Cook Counties and State of Illinois, as follows:

SECTION 1: Each of the recitals in the Whereas paragraphs set forth above are incorporated into Section 1 of this Resolution.

SECTION 2: The President and Board of Trustees of the Village of Hinsdale find that it is in the best interests of the Village and its residents, property owners, businesses and the public to support H.R. 530, Accelerating Broadband Development by Empowering Local Communities Act of 2019, and S. 2012, Restoring Local Control Over Public Infrastructure Act of 2019, and to continue to work with all interested parties

and stakeholders to develop regulations that ensure reliable cellular coverage while preventing the unfettered ~~taking and~~ use of public property by private business concerns.

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