ORDINANCE NO 5707

AN ORDINANCE PROVIDING FOR THE REGULATION OF AND APPLICATION FOR SMALL WIRELESS FACILITIES

WHEREAS, the Illinois General Assembly has recently enacted Public Act 100-0585, known as the Small Wireless Facilities Deployment Act ("the Act"), which became effective on June 1, 2018; and

WHEREAS, the Village of Downers Grove ("the Village") is an Illinois municipality in accordance with the Constitution of the State of Illinois of 1970; and

WHEREAS, the Village is authorized, under existing State and federal law, to enact appropriate regulations and restrictions relative to small wireless facilities, distributed antenna systems and other personal wireless telecommunication facility installations in the public right-of-way as long as it does not conflict with State and federal law; and

WHEREAS, the Act sets forth the requirements for the collocation of small wireless facilities by local authorities.

NOW, THEREFORE, be it ordained by the corporate authorities of the Village of Downers Grove as follows:

Section 1. Purpose and Scope.

Purpose. The purpose of this Ordinance is to establish regulations, standards and procedures for the siting and collocation of small wireless facilities on rights-of-way within the Village's jurisdiction, or outside the rights-of-way on property zoned by the Village exclusively for commercial or industrial use, in a manner that is consistent with the Act.

Conflicts with Other Ordinances. This Ordinance supersedes all Ordinances or parts of Ordinances adopted prior hereto that are in conflict herewith, to the extent of such conflict.

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

Section 2. Definitions.

All definitions set forth in Section 10 of the Act are incorporated herein and made a part hereof without the necessity of repeating all definitions.

Section 3. Regulation of Small Wireless Facilities.

Permitted Use. Small wireless facilities shall be classified as permitted uses and subject to administrative review, except as provided in the paragraph below regarding Height Exceptions or Variances, but not subject to zoning review or approval if they are collocated (i) in rights-of-way in any zoning category, or (ii) outside rights-of-way in property zoned exclusively for commercial or industrial use.

Permit Required. An applicant shall obtain one or more permits from the Village to collocate a small wireless facility. An application shall be received and processed, and permits issued shall be subject to the following conditions and requirements:

(1) Application Requirements. A wireless provider shall provide the following information to the Village, together with the Village's Small Cell Facilities Permit Application, as a condition of any permit application to collocate small wireless facilities on a utility pole or wireless support structure:

a. Site specific structural integrity and, for a Village-owned 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, including but not limited to showing that the small wireless facility, including the antenna, pole extension if applicable, and all related equipment has been designed to withstand wind forces and ice loads in accordance with applicable standards established in Chapter 25 of the National Electric Safety Code for structures, in Rule 250-B and 250-C standard governing wind, ice and loading forces on structure, 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 structures and the applicable industry standard for other existing structures.

b. The location where each proposed small wireless facility or utility pole would be installed and photographs, taken within six (6) months of application submission, 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. This should include a depiction of the completed facility;

c. 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;

d. A line-of-sight analysis to ensure that the small wireless facility, either pole or ground mounted, does not obscure the safe visibility of/by motorists, bicyclists or pedestrians;

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

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

g. Certification that the collocation complies with the Collocation Requirements and Conditions contained herein, to the best of the applicant's knowledge.

h. In the event that the proposed small wireless facility is to be attached to an existing pole owned by an entity other than the Village, the wireless provider shall provide legally competent evidence of the consent of the owner of such pole to the proposed collocation.

(2) Completeness of Application. Within thirty (30) days after receiving an application, the Village shall determine whether the application is complete and notify the applicant. If an

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

Processing deadlines are tolled from the time the Village sends the notice of incompleteness to the time the applicant provides the missing information.

(3) Application Process. The Village shall process applications as follows:

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

b. An application to collocate a small wireless facility on an existing utility pole or wireless support structure, or replacement of an existing utility pole or wireless support structure, shall be processed on a nondiscriminatory basis and shall be deemed approved if the Village fails to approve or deny the application within ninety (90) days after the submission of a completed application.

However, 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 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 Village. The receipt of the deemed approved notice shall not preclude the Village's denial of the permit request within the time limits as provided under this Ordinance.

c. An application to collocate a small wireless facility that includes the installation of a new utility pole shall be processed on a nondiscriminatory basis and deemed approved if the Village fails to approve or deny the application within one hundred twenty (120) days after the submission of a completed application.

However, 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 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 Village. The receipt of the deemed approved notice shall not preclude the Village's denial of the permit request within the time limits as provided under this Ordinance.

d. The Village shall deny an application which does not meet the requirements of this Ordinance.

If the Village determines that applicable codes, ordinances or regulations that concern public safety, or the Collocation Requirements and Conditions contained herein 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 provider.

If the Village determines that the application does not meet the requirements of this Ordinance, and is therefore denying the application, the Village shall document the basis for the denial, including the specific code provisions or application conditions on which the denial is based, and send the documentation to the applicant on or before the day the Village denies the application.

The applicant may cure the deficiencies identified by the Village 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 Village shall approve or deny the revised application within thirty (30) days after the applicant resubmits the application or it is deemed approved. The applicant must notify the Village in writing of its intention to proceed with the permitted activity on a deemed approved basis, which may be submitted with the 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.

Failure to resubmit a revised application within thirty (30) days of the notice of denial shall require the applicant to submit a new application with applicable fees, and the Village's review period shall recommence.

e. Pole Attachment Agreement. Within thirty (30) days after an approved permit to collocate a small wireless facility on a Village-owned utility pole, the Village and the applicant shall enter into a Master Pole Attachment Agreement, provided by the Village, for the initial collocation on a Village-owned utility pole. For subsequent approved permits to collocate a small wireless facility on a Village-owned utility pole, the Village and the applicant shall enter into a License Supplement to the Master Pole Attachment Agreement.

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

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

(5) Tolling. The time period for applications may also be tolled by:

a. An express written agreement between the applicant and the Village; or

b. A local, State or federal disaster declaration or similar emergency that causes the delay.

(6) Means of Submitting Applications. Applicants shall submit applications, supporting information and notices to the Village by personal delivery at the Village's designated place of business, by regular mail postmarked on the date due or by any other commonly used means, including electronic mail.

(7) Duration of Permits. The duration of a permit shall be for a period of not less than five (5) years, and the permit shall be renewed for equivalent durations unless the Village makes a finding that the small wireless facility or the new or modified utility pole do not comply with the applicable Village codes or any provision, condition or requirement contained in this Ordinance.

If the Act is repealed as provided in Section 90 therein, renewals of permits shall be subject to the applicable Village code provisions or regulations in effect at the time of renewal.

Collocation Requirements and Conditions.

(1) Installation and Maintenance. The wireless provider shall install, maintain, repair and modify its small wireless facilities in safe condition and good repair and in compliance with the requirements and conditions of this Ordinance. The wireless provider shall ensure that its employees, agents or contractors that perform work in connection with its small wireless facilities are adequately trained and skilled in accordance with all applicable industry and governmental standards and regulations.

(2) Public Safety Space Reservation. The Village may reserve space on Village-owned utility poles for future public safety uses, for the Village's electric utility uses, or both, but a reservation of space may not preclude the collocation of a small wireless facility unless the Village reasonably determines that the Village-owned utility pole cannot accommodate both uses.

(3) 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.

A wireless provider shall 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 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.

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 remedy the interference 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 Village may terminate a permit for a small wireless facility based on such interference if the wireless provider is not in compliance with the Code of Federal Regulations cited in the previous paragraph. Failure to remedy the interference as required herein shall constitute a public nuisance.

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

(4) The wireless provider shall not collocate small wireless facilities on Village-owned 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-owned 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 subparagraph, 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.

(5) Alternate Placements. Except as provided in this Collocation Requirements and Conditions Section, a wireless provider shall not be required to collocate small wireless facilities on any specific utility pole, or category of utility poles, or be required to collocate multiple antenna systems on a single utility pole. However, with respect to an application for the collocation of a small wireless facility associated with a new utility pole, the Village may propose that the small wireless facility be collocated on an existing utility pole or existing wireless support structure within one hundred (100) feet of the proposed collocation, which the applicant shall accept if it has the right to use the alternate structure on reasonable terms and conditions, and the alternate location and structure do not impose technical limits or additional material costs as determined by the applicant.

If the applicant refuses an alternate location proposed by the Village, the applicant shall provide written certification describing the property rights, technical limits or material cost reasons the alternate location does not satisfy the criteria in this paragraph.

(6) Height Limitations. The maximum height of a small wireless facility shall be no more than ten (10) feet above the utility pole or wireless support structure on which the small wireless facility is collocated.

New or replacement utility poles or wireless support structures on which small wireless facilities are collocated may not exceed the higher of:

a. Ten (10) feet in height above the tallest existing utility pole, other than a utility pole supporting only wireless facilities, that is in place on the date the application is submitted to the Village, that is located within three hundred (300) feet of the new or replacement utility pole or wireless support structure and that is in the same right-of-way within the jurisdictional boundary of the Village, provided the Village may designate which intersecting right-of-way within three hundred (300) feet of the

proposed utility pole or wireless support structures shall control the height limitation for such facility; or

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

(7) Height Exceptions or Variances. If an applicant proposes a height for a new or replacement pole in excess of the above height limitations on which the small wireless facility is proposed for collocation, the applicant shall apply for an administrative variance in conformance with the following procedures:

a. Request for Variance. A wireless provider requesting a variance from one or more of the provisions of this Ordinance must do so in writing to the Village Manager as a part of the permit application. The request shall identify each provision of this Ordinance from which a variance is requested and the reasons why a variance should be granted.

b. Authority to Grant Variances. The Village Manager or designee shall decide whether a variance is authorized for each provision of this Ordinance identified in the variance request on an individual basis.

c. Conditions for Granting of Variance. The Village Manager or designee may authorize a variance only if the wireless provider requesting the variance has demonstrated that: 1) One or more conditions not under the control of the wireless provider create a special hardship that would make enforcement of the provision unreasonable, given the public purposes to be achieved by the provision; and 2) All other designs, methods, materials, locations or facilities that would conform with the provision from which a variance is requested are impracticable in relation to the requested approach.

d. Additional Conditions for Granting of a Variance. As a condition for authorizing a variance, the Village Manager or designee may require the wireless provider requesting the variance to meet reasonable standards and conditions that may or may not be expressly contained within this Ordinance but which carry out the purposes of this Ordinance.

e. Right to Appeal. Any wireless provider aggrieved by any order, requirement, decision or determination, including denial of a variance, made by the Village Manager or designee under the provisions of this Ordinance shall have the right to appeal to the Village Council, or such other board or commission as it may designate. The application for appeal shall be submitted in writing to the Village Clerk within thirty (30) days after the date of such order, requirement, decision or determination. The Village Council shall commence its consideration of the appeal at the Council's next regularly scheduled meeting occurring at least seven (7) days after the filing of the appeal. The Village Council shall timely decide the appeal.

(8) Mounting Requirements. The base of the equipment, antenna or appurtenances of a small wireless facility collocated on a utility pole or wireless support structure shall be located no lower than ten (10) feet above grade and at a location and height that meets the requirements of the American with Disabilities Act and the clearances set forth in the Public Rights-of-Way Accessibility Guidelines (PROWAG) or the subsequent regulations on accessibility in public rights-of-way. Collocation on Village's owned infrastructure shall also not interfere

with or obscure existing traffic control devices including signal heads and signage. For traffic signal or street lights, no elements of a small wireless facility shall be mounted onto the signal mast arm or lighting luminaire arm.

(9) Signage. A wireless provider shall affix a 2 x 4 inch identification sign onto each small wireless facility identifying the wireless services provider, contact phone number and unique identifier. Installation of other signs on a small wireless facility are prohibited, unless they are for warning labels or are otherwise required by law or regulations.

(10) Contractual Design Requirements. The wireless provider shall comply with requirements that are imposed by a contract between the Village and a private property owner that concern design or construction standards applicable to utility poles and ground-mounted equipment located in the right-of-way.

(11) Ground-mounted Equipment Spacing. The wireless provider shall comply with applicable spacing requirements in applicable codes and ordinances concerning the location of ground-mounted equipment located in the right-of-way if the requirements include a waiver, zoning or other process that addresses wireless provider requests for exception or variance and do not prohibit granting of such exceptions or variances.

(12) Landscape Screening. In the event that a wireless provider proposes to install a small wireless facility or any equipment or appurtenances in connection therewith at grade, the wireless provide shall install landscape screening to minimize the visibility of the facility, equipment or appurtenances, at the direction of the Village.

(13) Undergrounding Regulations. The wireless provider shall comply with local code provisions or regulations concerning undergrounding requirements that prohibit the installation of new, or the modification of existing, utility poles in a right-of-way without prior approval if the requirements include a waiver, zoning or other process that addresses requests to install such new utility poles or modify such existing utility poles and do not prohibit the replacement of utility poles.

(14) Design Standards. The wireless provider shall comply with written design standards that are generally applicable for decorative utility poles, or reasonable stealth, concealment and aesthetic requirements that are set forth in a Village ordinance, written policy adopted by the Village, a comprehensive plan or other written design plan that applies to other occupiers of the rights-of-way, including on a historic landmark or in a historic district. In the event there are no other above ground facilities in the location proposed by the wireless provider, then the wireless provider shall propose an alternate location. The wireless provider shall comply with design standards and aesthetics of the surrounding area.

(15) Wiring and Cabling. Wires and cables connecting the antenna to the remainder of the facility shall be installed in accordance with the version of the National Electric Code and National Electrical Safety Code in effect at the time of application. In no event shall wiring and cabling service the facility interfere with any wiring or cabling installed by a cable television or video service operator, electric utility or telephone utility. The applicant shall be required to provide, at the time of application submission, written sign-off by each owner/operator that a proposed collocation will not adversely impact their existing facilities. If the Village later discovers that the applicant failed to obtain and/or submit a sign-off by an owner/operator, then the wireless provider shall either submit said sign-off or remove the small wireless facility within thirty (30) days' notice from the Village.

(16) Grounding. The small wireless facility shall be grounded in accordance with the requirements or the most current edition of the National Electrical Code at the time of application.

(17) Pole Extensions. Extensions to structures utilized for the purpose of collocating a small wireless facility and related equipment shall be fabricated from material similar to the existing structure, and shall have a degree of strength capable of supporting the small wireless facility and related equipment. An extension shall be securely bound to the structure in accordance with applicable engineering standard for the design and attachment of such extensions.

(18) Electrical Disconnect. The small wireless facility installed on a Village-owned pole or structure shall include an electrical service disconnect switch to allow Village personnel and agents to shut off 0power in the event of an incident or other abnormal conditions. The switch shall be located a minimum of ten (10) feet from the small wireless facility and accessible to Village and emergency response personnel without restriction.

(19) Collocation Completion Deadline. Collocation for which a permit is granted shall be completed within 180 days after issuance of the permit, unless the Village and the wireless provider agree to extend this period or a delay is caused by make-ready work for a Village-owned utility pole or by the lack of commercial power or backhaul availability at the site, provided the wireless provider has made a timely request within sixty (60) days after the issuance of the permit for commercial power or backhaul services, and the additional time to complete installation does not exceed 360 days after issuance of the permit. Otherwise, the permit shall be void unless the Village grants an extension in writing to the applicant.

(20) Restoration. Upon completion of the work authorized by permit under this Ordinance, the applicant, at its sole cost and expense, shall restore all disturbed or damaged areas of the right-of-way to their original condition. Said restoration shall include, but not be limited to, repairs to shoulders, ditches, parkways, curbs, and pavement and/or any special landscaping, hardscaping, or enhanced areas that existed in the rights-of-way prior to the commencement of the permitted work.

With respect to grassy areas, the applicant shall comply with the following:

Disturbed grass areas shall be restored with sod, unless otherwise approved. The sod shall be placed and rolled on the prepared surface with the edges in close contact and alternate courses staggered. The sod shall be placed only when the air temperature is less than 90 degrees Fahrenheit. All sod delivered to the site shall be kept moist and protected from exposure to the sun, wind, and freezing conditions until it is to be placed on topsoil of a minimum 6" depth. After the disturbed grass areas designated for sodding have been topsoiled, the topsoil shall be carefully fine raked and covered with the sod. Starter fertilizer shall be installed at a rate in accordance with IDOT's "Standard Specifications for Road and Bridge Construction." The permittee shall maintain the sod on a daily basis and water as needed for a period of ten (10) consecutive days. The permittee shall contact the Village's Public Works Department to request inspection of the sod. The Public Works Department shall evaluate the sod at the end of the ten day watering period for acceptance. Should the sod not survive the ten days after being laid, the permittee shall remove and replace the sod, and water again for the same time period. After the ten day watering period, the new sod shall be reevaluated by the Public Works Department for

acceptance. The permittee shall continue to maintain the sod until acceptance by the Public Works Department.

(21) Service Connections. Other related improvements, including, but not limited to, buried electrical service and buried fiber optic or cable connections that are needed to service the small wireless facility and are installed within the rights-of-way beyond the physical pole or structure require additional and separate permits.

(22) Bonds. The wireless provider shall comply with all applicable Village bond requirements.

(23) Adjustments or Relocations of Small Wireless Facilities. The wireless provider shall be responsible for making adjustments, relocations and/or removal of its facilities within the Village rights-of-way due to road construction, reconstruction or maintenance work within ninety (90) calendar days of receipt of written notification as directed by the Public Works Director or designee. If such facility is not removed or relocated as directed within ninety (90) days of such notice, the Village may remove or cause the removal of such facility through whatever actions are provided by law for removal and cost recovery.

(24) Damage to Small Wireless Facility. If the structure or attached small wireless facility is damaged, the wireless provider shall make the equipment safe or clear the equipment from the right-of-way within twelve (12) hours of the notification from the Village to the wireless provider.

Application Fees. Application fees are imposed as follows:

(1) Applicant shall pay an application fee to the Village of $650 for an application to collocate a single small wireless facility on an existing utility pole or wireless support structure, and $350 for each small wireless facility addressed in a consolidated application to collocate more than one small wireless facility on existing utility poles or wireless support structures.

(2) Applicant shall pay an application fee of $1,000 for each small wireless facility addressed in an application that includes the installation of a new utility pole for such collocation.

(3) Notwithstanding any contrary provision of State law or local ordinance, applications pursuant to this Section shall be accompanied by the required application fee. Application fees shall be non-refundable.

(4) The Village shall not require an application, approval or permit, or require any fees or other charges, from a communications service provider authorized to occupy the rights-of-way, for:

a. routine maintenance;

b. the replacement of wireless facilities with wireless facilities that are substantially similar, the same size, or smaller if the wireless provider notifies the Village at least ten (10) days prior to the planned replacement and includes equipment specifications for the replacement of equipment consistent with subsection d. under the Section titled Application Requirements; or

c. the installation, placement, maintenance, operation or replacement of micro wireless facilities suspended on cables that are strung between existing utility poles in compliance with applicable safety codes.

(5) Wireless providers shall secure a permit from the Village to work within rights-of-way for activities that affect traffic patterns or require lane closures.

Exceptions to Applicability. Nothing in this Ordinance authorizes a person to collocate small wireless facilities on:

(1) property owned by a private party or property owned or controlled by the Village or another unit of local government that is not located within rights-of-way, or a privately owned utility pole or wireless support structure without the consent of the property owner;

(2) property owned, leased, or controlled by a park district, forest preserve district, or conservation district for public park, recreation or conservation purposes without the consent of the affected district, excluding the placement of facilities on rights-of-way located in an affected district that are under the jurisdiction and control of a different unit of local government as provided by the Illinois Highway Code; or

(3) property owned by a rail carrier registered under Section 18c-7201 of the Illinois Vehicle Code, Metra Commuter Rail or any other public commuter rail service, or an electric utility as defined in Section 16-102 of the Public Utilities Act, without the consent of the rail carrier, public commuter rail service, or electric utility. The provisions of this Ordinance do not apply to an electric or gas public utility or such utility's wireless facilities if the facilities are being used, developed and maintained consistent with the provisions of subsection (i) of Section 16-108.5 of the Public Utilities Act.

For the purposes of this subsection, "public utility" has the meaning given to that term in Section 3-105 of the Public Utilities Act. Nothing in this Ordinance shall be construed to relieve any person from any requirement (a) to obtain a franchise or a State-issued authorization to offer cable service or video service or (b) to obtain any required permission to install, place, maintain, or operate communications facilities, other than small wireless facilities subject to this Ordinance.

Pre-Existing Agreements. Existing agreements between the Village and wireless providers that relate to the collocation of small wireless facilities in the right-of-way, including the collocation of small wireless facilities on Village-owned utility poles, that are in effect on June 1, 2018, remain in effect for all small wireless facilities collocated on the Village's utility poles pursuant to applications submitted to the Village before June 1, 2018, subject to applicable termination provisions contained therein. Agreements entered into after June 1, 2018, shall comply with this Ordinance.

A wireless provider that has an existing agreement with the Village on the effective date of the Act may accept the rates, fees and terms that the Village makes available under this Ordinance for the collocation of small wireless facilities or the installation of new utility poles for the collocation of small wireless facilities that are the subject of an application submitted two or more years after the effective date of the Act by notifying the Village that it opts to accept such rates, fees and terms. The existing agreement remains in effect, subject to applicable termination provisions, for the small wireless facilities the wireless provider has collocated on the Village's utility poles pursuant to applications submitted to the Village before the wireless provider provides such notice and exercises its option under this paragraph.

Annual Recurring Rate. A wireless provider shall pay to the Village an annual recurring rate to collocate a small wireless facility on a Village-owned utility pole located in a right-of-way that equals (i) $200 per year or (ii) the actual, direct and reasonable costs related to the wireless provider's use of space on the Village-owned utility pole.

If the Village has not billed the wireless provider actual and direct costs, the fee shall be $200 payable on the first day after the first annual anniversary of the issuance of the permit or notice of intent to collocate, and on each annual anniversary date thereafter.

Abandonment. A small wireless facility that is not operated for a continuous period of twelve (12) months shall be considered abandoned. The owner of the facility shall remove the small wireless facility within ninety (90) days after receipt of written notice from the Village notifying the wireless provider of the abandonment.

The notice shall be sent by certified or registered mail, return receipt requested, by the Village to the owner at the last known address of the wireless provider. If the small wireless facility is not removed within ninety (90) days of such notice, the Village may remove or cause the removal of such facility pursuant to the terms of its pole attachment agreement for Village-owned utility poles or through whatever actions are provided for abatement of nuisances or by other law for removal and cost recovery.

A wireless provider shall provide written notice to the Village if it sells or transfers small wireless facilities within the jurisdiction of the Village. Such notice shall include the name and contact information of the new wireless provider.

Section 4. Dispute Resolution.

The Circuit Court of DuPage County shall have exclusive jurisdiction to resolve all disputes arising under the Act. Pending resolution of a dispute concerning rates for collocation of small wireless facilities on Village-owned utility poles within the right-of-way, the Village shall allow the collocating person to collocate on its poles at annual rates of no more than $200 per year per village-owned utility pole, with rates to be determined upon final resolution of the dispute.

Section 5. Indemnification.

A wireless provider shall indemnify and hold the Village harmless against any and all liability or loss from personal injury or property damage resulting from or arising out of, in whole or in part, the use or occupancy of the Village improvements or right-of-way associated with such improvements by the wireless provider or its employees, agents, or contractors arising out of the rights and privileges granted under this Ordinance and the Act. A wireless provider has no obligation to indemnify or hold harmless against any liabilities and losses as may be due to or caused by the sole negligence of the Village or its employees or agents. A wireless provider shall further waive any claims that they may have against the Village with respect to consequential, incidental, or special damages, however caused, based on any theory of liability.

Section 6. Insurance.

The wireless provider shall carry, at the wireless provider's own cost and expense, the following insurance:

(i) property insurance for its property's replacement cost against all risks;

(ii) workers' compensation insurance, as required by law;

OR

(iii) commercial general liability insurance with respect to its activities on the Village improvements or rights-of-way to afford minimum protection limits consistent with its requirements of other users of Village improvements or rights-of-way, including coverage for bodily injury and property damage.

The wireless provider shall include the Village as an additional insured on the commercial general liability policy and provide certification and documentation of inclusion of the Village 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 Village. 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 Village evidence sufficient to demonstrate its financial ability to self-insure the insurance coverage limits required by the Village.

Section 7. Severability.

If any provision of this Ordinance or application thereof to any person or circumstances is ruled unconstitutional or otherwise invalid, such invalidity shall not affect other provisions or applications of this Ordinance that can be given effect without the invalid application or provision, and each invalid provision or invalid application of this Ordinance is severable.

Section 8. That all ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

Section 9. That this ordinance shall be in full force and effect on July 17, 2018.

Mayor

Passed: July 17, 2018
Published: July 18, 2018
Attest: _____
Village Clerk

I:\mw\ord.18\Small Cell