

Ordinance

DT-O-0037-18

AN ORDINANCE AMENDING THE DU PAGE COUNTY CODE RELATIVE TO  
WIRELESS TELECOMMUNICATION FACILITIES IN COUNTY RIGHTS-OF-WAY

WHEREAS, the County of DuPage (“County”) is empowered to take and have the care and custody of all real estate owned by the County including the roadways and the trail systems pursuant to 55 ILCS 5/5-1015; and

WHEREAS, the County is empowered to consent to the use of its rights-of-way by public utility companies and others pursuant to 605 ILCS 5/9-113; and

WHEREAS, telecommunications providers have placed, or from time to time may request to place, certain telecommunication facilities in the County Highway rights-of-way; and

WHEREAS, on February 28, 2006, the DuPage County Board enacted ODT-0001-06 and first amendment thereto on March 23, 2010, the DuPage County Highway Rights-of-Way Permit and Fee Ordinance; in order to establish generally applicable standards for construction, installation, use, maintenance and repair of utility facilities on, over, above, along, upon, under, across, or within, the County Highway rights-of-way; and

WHEREAS, while State and federal law limit the authority of local governments to enact laws that prohibit or have the effect of prohibiting telecommunications services, the County has the power, under existing State and federal law, to approve appropriate regulations and restrictions relative to small cell, distributed antenna systems and other wireless telecommunication facility installations in the public rights-of-way as long as these regulations and restrictions are consistent with recently enacted Public Act 100-0585, known as the Small Wireless Facilities Deployment Act (“the Act”); and

WHEREAS, in light of the anticipated increased demand for placement of small cell facilities, distributed antenna system facilities and other wireless telecommunication facility installations within the public rights-of-way, the County Board finds and determines that it is necessary to and in the best interests of the public health, safety and general welfare to adopt the Ordinance below in order to establish generally applicable standards for construction, installation, use, maintenance and repair of such facilities and installations within the County Highway rights-of-way, so as to, among other things, (i) prevent interference with the facilities and operations of the County’s infrastructure and of other utilities lawfully located in public rights-of-way or property, (ii) provide specific regulations and standards for the placement and siting of wireless telecommunication facilities within County rights-of-way, (iii) preserve the character of the areas in which facilities are installed, (iv) minimize any adverse visual impact of wireless telecommunication facilities and prevent visual blight, (v) facilitate the location of wireless telecommunication facilities in permitted locations within the County Highway rights-of-way, and (vi) assure the continued safe use and enjoyment of properties adjacent to wireless telecommunication facilities locations.

Ordinance

DT-O-0037-18

NOW, THEREFORE, BE IT ORDAINED by the County Board, DuPage County, Illinois as follows:

The foregoing recitals are incorporated into this Ordinance by this reference as findings of the County Board; and

BE IT FURTHER ORDAINED that the DuPage County Code is amended by adding a new Ordinance, Chapter 19, Article IV (Wireless Telecommunication Services and Facilities), to read in its entirety as follows:

19-51:

**A. TITLE:**

This Ordinance shall be known and may be referred to as the “WIRELESS TELECOMMUNICATION FACILITIES ORDINANCE.”

**B. ENABLING STATUTE:**

The legislature passed Public Act 100-0585, the Small Wireless Facilities Deployment Act (hereinafter “the Act”), enabling DuPage County to pass an ordinance to adopt rates, fees and terms which comply with the Act for the collocation of small wireless facilities within the County’s rights-of-way. All definitions, terms and conditions of the Act are incorporated herein and made a part hereof without the necessity of repeating all definitions, terms and conditions. To implement a clear, simplified permitting process, the County is reiterating some, but not all, of the provisions from the Act. The fact that a provision from the Act is not specifically listed in this Ordinance does not impact its legal effect. 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.

Since the DuPage County Highway Rights-of-Way and Fee Ordinance does not sufficiently address the collocation of small wireless facilities, and the legislature has enacted specific terms which apply only to small wireless companies who request to locate small wireless facilities within the County rights-of-way, the County is enacting this new ordinance, the Wireless Telecommunication Facilities Ordinance.

Where the conditions imposed by any provisions of this Ordinance regarding the siting and installation of wireless telecommunication facilities are more restrictive than comparable conditions imposed elsewhere in any other local law, ordinance, resolution, rule or regulation, the regulations of this Ordinance shall govern.

**C. DEFINITIONS:**

All terms from the DuPage County Highway Rights-of-Way Permit and Fee Ordinance shall be applicable to this Ordinance unless otherwise stated. In the event there is a conflict between the Wireless Telecommunication Facilities Ordinance and the DuPage County Highway Rights-of-Way Permit and Fee Ordinance, the Wireless Telecommunication Facilities Ordinance shall govern. As used in this Ordinance, the subsequent terms shall have the following meanings:

Ordinance

DT-O-0037-18

“ALTERNATIVE ANTENNA STRUCTURE” means an existing pole or other structure within the public right-of-way that can be used to support an antenna and is not a County-owned infrastructure.

“COUNTY-OWNED INFRASTRUCTURE” means streetlights and traffic signals owned, operated and maintained by the County and within the public right-of-way.

“DISTRIBUTED ANTENNA SYSTEM (DAS)” means a type of wireless telecommunication facility consisting of a network of spatially separated antenna nodes connected to a common source via a transport medium that provides wireless service within a geographic area.

“LANDSCAPE SCREENING” means the installation at grade of plantings, shrubbery, bushes or other foliage intended to screen ground mounted wireless telecommunication equipment from public view.

“PROVIDER” excludes any person who is providing service to or for a private niche market.

“STRUCTURAL ENGINEER” means a person licensed in the State of Illinois as a professional structural engineer, as that term is defined in Section 4 of the Structural Engineering Practice Act of 1989.

“STRUCTURE” includes alternative antenna structure and County-owned infrastructure as herein defined, collectively.

“TOWER” means any structure that is designed and constructed primarily for the purpose of supporting one or more antennas, including self-supporting lattice towers, guy towers, or monopole towers.

“VARIANCE” means a grant of relief by the County Engineer or designee from specific limitations of this Ordinance.

“WIRELESS TELECOMMUNICATION ANTENNA” means an antenna that is part of a wireless telecommunications facility.

“WIRELESS TELECOMMUNICATION EQUIPMENT” means equipment, exclusive of an antenna, that is part of a wireless telecommunications facility.

“WIRELESS TELECOMMUNICATION FACILITY” means an antenna, equipment, and related improvements used, or designed to be used, to provide publicly accessible wireless transmission of voice, data, images, or other information including, but not limited to, cellular phone service, personal communication service, paging, and Wi-Fi antenna service.

“WIRELESS SERVICES” means any services provided to the general public, including a particular class of customers, and made available on a non-discriminatory basis using licensed or unlicensed spectrum, whether at a fixed location or mobile, provided using wireless facilities.

“WIRELESS SERVICES PROVIDER” means a person who provides wireless services.

Ordinance

DT-O-0037-18

**D. REGULATIONS AND STANDARDS:**

Wireless telecommunication facilities shall be permitted to be placed in public rights-of-way as attachments to existing alternative antenna structures or County-owned infrastructure or as an attachment to a new alternative antenna structure subject to the following regulations:

1. Siting of wireless telecommunication facilities: When deciding where to install wireless telecommunication facilities, wireless services providers shall take into consideration the surrounding and adjacent land uses and make every effort to avoid siting wireless telecommunication facilities at or near properties with high frequency outdoor usage such as parks, schools, recreational facilities, etc.
2. New Alternative Antenna Structures: With respect to the application for the installation of a wireless telecommunication facility on a new alternative antenna structure, the County may propose that the wireless telecommunication facility be collocated on an existing alternative antenna structure within one hundred (100) feet of the proposed installation, which the applicant will accept if it has the right to use the alternate antenna structure on reasonable terms and conditions and the alternate location and structure does not impose technical limits or unreasonable additional material costs as determined by the applicant. The applicant shall provide a written certification describing any property rights, technical limits or material costs as reasons that the alternate location does not satisfy the criteria in this paragraph.
3. Signage: Identification signage shall be affixed onto each wireless telecommunication facility identifying the wireless services provider, contact phone number and unique identifier. Installation of other signs on a wireless telecommunication facility shall be prohibited, unless they are for warning labels or otherwise are required by law or regulations.
4. Frequency Interference: The wireless services provider's operation of the wireless telecommunication facilities in the rights-of-way shall not interfere with the frequencies used by the County's public safety or roadway facility communications, including, but not limited to, streetlight and traffic signal transmissions. In the event that an interference with the frequencies used by the County's public safety or roadway facility communications is detected, at any time, the wireless services provider is required to, at its own expense, either: (i) reconfigure or filter its antenna system's transmissions or frequency; or (ii) cease transmitting/receiving from said unit; or (iii) remove the entirety of the installation immediately upon notification of said interference. In the event a relocation is required, the wireless services provider will be required to apply for a new wireless telecommunication facilities permit under the terms of this Ordinance.
5. Attachment Limitations: No wireless telecommunication antenna or facility shall be attached to an alternative antenna structure or County-owned infrastructure unless all the following conditions are satisfied:

## Ordinance

DT-O-0037-18

- a. Height Requirements: The maximum height of a wireless telecommunication antenna attached to a structure is limited to ten (10) feet above the structure on which the wireless telecommunication antenna is collocated. The height of a new or replacement structure on which wireless telecommunication facilities are collocated shall be limited to the higher of:
1. Ten (10) feet in height above the tallest existing structure, other than a tower supporting only wireless facilities, that is in place on the date the application is submitted to the County, that is located within three-hundred (300) feet of the new or replacement structure and that is in the same rights-of-way within the jurisdictional boundary of the County; or
  2. Forty-five (45) feet above ground level.
- b. Antenna Size: The wireless telecommunication antenna, including antenna panels, whip antennas or dish-shaped antennas, shall be located inside an enclosure of no more than six (6) cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than six (6) cubic feet. Applicant shall provide written proof by way of design drawings and details at time of application submittal that show the volume limitation has been met.
- c. Equipment Volume of Above-Ground Wireless Telecommunication Facility: The total combined volume of all above-ground equipment and appurtenances comprising a wireless telecommunication facility, exclusive of the antenna itself, shall not cumulatively exceed twenty-five (25) cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meter, concealment elements, telecommunication demarcation box, ground-based enclosures, grounding equipment, power transfer switch, cut-off switch, and vertical cable runs for the connection of power and other services. Applicant shall provide written proof by way of design drawings and details at time of application submittal that show the volume limitation has been met.
- d. Mounting Requirements: The base of the equipment, antenna or appurtenances of a wireless telecommunication facility collocated on a 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 Disabilities Act (ADA) 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 County-owned infrastructure shall also not interfere with or obscure existing traffic control devices including signal heads and signage. For traffic signals or street lights, no elements of a wireless telecommunication facility shall be mounted onto the signal mast arm or lighting luminaire arm.

## Ordinance

DT-O-0037-18

- e. Landscape Screening: In the event that a wireless telecommunication facility is proposed to be installed at grade, landscape screening shall be installed to minimize the visibility of the wireless telecommunication facility, at the discretion of the County.
- f. 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 serving 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 written sign-off by each owner/operator that a proposed collocation will not adversely impact their existing facilities. Said sign-offs must be provided at the time of application submittal.
- g. Grounding: The wireless telecommunication facility shall be grounded in accordance with the requirements of the most current edition of the National Electrical Code currently in effect.
- h. Guy Wires: No guy or other support wires shall be used in connection with a wireless telecommunication facility unless the facility is proposed to be attached to an existing structure that incorporated guy wires prior to the date that an applicant has applied for a permit.
- i. Pole Extensions: Extensions to structures utilized for the purpose of collocating a wireless telecommunication antenna and its related wireless telecommunication equipment shall be fabricated from material similar to the structure, and shall have a degree of strength capable of supporting the antenna and any related appurtenances and cabling and capable of withstanding wind forces and ice loads in accordance with the structural loading standards set forth as noted below. An extension shall be securely bound to the structure in accordance with applicable engineering standards for the design and attachment of such extensions.
- j. Structural Loading: The wireless telecommunication facility, including the antenna, pole extension and all related equipment shall be 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, Rule 250-B and 250-C standards governing wind, ice, and loading forces on structures, 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. The applicant shall provide the County with a structural evaluation of each specific location affirming that the proposed installation passes the standards described above. The evaluation shall be prepared by a professional structural engineer licensed in the State of Illinois.

Ordinance

DT-O-0037-18

- k. Electrical Disconnect: The wireless telecommunication facility shall include an electrical service disconnect switch to allow County personnel and agents to shut off power in the event of an incident or other abnormal conditions. The switch shall be located a minimum of ten (10) feet from the wireless telecommunication facility and accessible to County and emergency response personnel without restriction.

**E. PERMITTING REQUIREMENTS:**

Applications for the collocation or installation of wireless telecommunication facilities shall be required to include the following.

1. General Permitting Requirements:

- a. A site specific structural integrity analysis prepared by a professional structural engineer licensed in the State of Illinois.
- b. An exhibit showing the location where each proposed wireless telecommunication facility would be installed.
- c. A line-of-sight analysis to ensure that wireless telecommunications equipment, either pole or ground mounted, does not obscure the safe visibility of/by motorists, bicyclists or pedestrians.
- d. Photographs taken within six (6) months of application submittal of the location and its immediate surroundings depicting the land uses and structure(s) on which each proposed wireless telecommunication facility would be mounted.
- e. Specifications and drawings prepared by a structural engineer, for each proposed wireless telecommunication facility covered by the application as it is proposed to be installed, with height and offset dimensions shown as well as volumetrics (cubic feet) of each of the wireless telecommunication facility components.
- f. A proposed schedule for the installation and completion of each wireless telecommunication facility covered by the application, if approved.
- g. Certification that the collocation complies to the best of the applicant's knowledge, with the frequency interference requirements in section D. (4).
- h. Restoration - Upon completion of the work authorized by permit under this Ordinance, all disturbed or damaged areas of the right-of-way shall be restored to their original condition or better. Said restoration shall include, but is not limited to, repairs to shoulders, ditches, parkways, curbs, and pavements and/or any special landscaping, hardscaping, or enhanced areas that existed in the rights-of-way prior to the commencement of the permitted work. The County shall bear no responsibility for costs associated with such

## Ordinance

DT-O-0037-18

restoration. The applicant shall provide a Performance Bond in the amount of twenty thousand (\$20,000.00) dollars or one hundred ten percent (110%) of the engineer's estimate of probable cost, whichever is greater. An engineer's estimate of probable cost shall be submitted to the County for approval prior the provision of a bond.

- i. 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 wireless telecommunication facility and are installed within County rights-of-way beyond the physical pole or structure require additional and separate permits. These types of connections shall be applied for concurrently by the respective utility provider providing that service or connection.

### 2. County-Owned Infrastructure:

- a. Pole Attachment Agreement - In addition to the required permit, a separate pole attachment agreement between the wireless services provider and the County is required prior to the County authorizing the placement of wireless telecommunication facilities on County-owned infrastructure.
- b. Replacement of County-Owned Infrastructure - If the County determines that applicable codes or public safety requires the County's infrastructure to be replaced to support the requested collocation, the County shall require the wireless services provider to replace the County's infrastructure at no cost to the County. If the proposed installation requires replacement of the County's infrastructure, no property rights will be conferred on the applicant by the replacement of such infrastructure.
- c. Make Ready Analysis - When a wireless services provider is seeking a permit to collocate a wireless telecommunication facility on County-owned infrastructure a Make Ready Analysis prepared by a professional structural engineer licensed in the State of Illinois shall be required.

### 3. Alternative Antenna Structure:

- a. Permission to Use Alternative Antenna Structure - When the applicant of a wireless telecommunication facility submits an application, the applicant shall submit to the County a copy of the approval from the owner of an alternative antenna structure, to mount the wireless telecommunication facility on that specific alternative antenna structure. Approval by the alternative antenna structure owner to allow the installation of a wireless telecommunication facility shall also include a guarantee by the alternative antenna structure owner that it will either remove abandoned equipment in accordance with section (K) below or cause the removal of the equipment. Approval by the alternative antenna structure owner shall also include a determination by the alternative antenna structure owner that the alternative antenna structure is structurally capable of supporting the wireless telecommunication facility.



Ordinance

DT-O-0037-18

**F. PERMIT FEES:**

1. Permits for placement of wireless telecommunication facilities are required. Except as otherwise provided in this Ordinance, the procedures for the application for, approval of and revocation of such a permit shall be those required in the DuPage County Highway Rights-of-Way and Fee Ordinance and/or Small Wireless Facilities Deployment Act. All applications shall demonstrate compliance with the requirements of this Ordinance. All applications for permits pursuant to this Ordinance shall be accompanied by a non-refundable application fee according to the following schedule:
  - a. Single wireless telecommunication facility on an existing structure - six hundred and fifty (\$650.00) dollars
  - b. Multiple wireless telecommunication facilities (maximum 25) included in a single application to collocate on existing structures - three hundred and fifty (\$350.00) dollars each
  - c. Wireless telecommunication facility that includes the replacement or installation of a new structure or tower- one thousand (\$1,000.00) dollars each
2. Annual Recurring Rate: The wireless services provider shall pay to the County an annual recurring rate for each permitted location of two hundred (\$200.00) dollars per year or an amount equal to the County's direct costs, whichever is greater, to collocate telecommunication facilities on County-owned infrastructure. Initial payment shall be received prior to permit issuance by the County. Thereafter, payment shall be received annually beginning on the second March 1<sup>st</sup> following the initial payment. (Example: If initial payment is on January 1, 2019, the next payment is March 1, 2020, and the third payment is March 1, 2021.).
3. Penalties: Any person who violates any provision of this Ordinance or fails to comply with any requirements thereof, or who constructs, alters, repairs, disconnects, removes any facility within the County Highway rights-of-way in violation of an approved plan or directive of the County Engineer or his designee, or fails to apply for or obtain a permit issued under the provisions of this Ordinance shall be guilty of an offense punishable by a fine equal to the greater of:
  - a. Seven hundred and fifty (\$750.00) dollars; or
  - b. Twice the assessed application fees under this Ordinance; or
  - c. An amount sufficient to correct any deficiencies or maintain the proper movement and safety of the County Highway users.

Each day that a violation continues shall be deemed a separate offense. The imposition of any fine shall not exempt the offender from compliance with the requirements of this Ordinance.

Ordinance

DT-O-0037-18

**G. ADJUSTMENTS OR RELOCATIONS OF WIRELESS TELECOMMUNICATION FACILITIES:**

The wireless services provider shall be responsible for making adjustments, relocations and/or removal of its facilities within the County rights-of-way due to highway construction, reconstruction or maintenance work within ninety (90) calendar days of receipt of written notification as directed by the County Engineer or the duly authorized designee. If such facility is not removed or relocated as directed within ninety (90) days of such notice, the County may remove or cause the removal of such facility through whatever actions are provided by law for removal and cost recovery.

**H. DAMAGE TO WIRELESS TELECOMMUNICATIONS FACILITY:**

If the structure or attached wireless telecommunications facility is damaged, the wireless telecommunications facility operator shall make the equipment safe or clear the equipment from the right-of-way within one (1) hour of notification to the wireless services provider designee.

**I. DAMAGE TO COUNTY INFRASTRUCTURE OR PROPERTY:**

The wireless services provider shall be financially responsible for any damage to County infrastructure or property caused by the installation, maintenance, or operation of wireless telecommunication facilities.

**J. VARIANCE REQUIREMENTS:**

Each location of a wireless telecommunication facility within County right-of-way shall meet all of the requirements of the Ordinance. The decision of the Division of Transportation to deny a permit application may be appealed to the County Engineer or authorized designee. The County Engineer or authorized designee shall hear the request for a variance within fourteen (14) calendar days following receipt of notice, and the decision shall be the final action of the County with respect to the request for a variance. Any request for a variance shall be made in writing to the County c/o the Division of Transportation, 421 N. County Farm Road, Wheaton, Illinois 60187-2553 within fourteen (14) calendar days of receipt of a decision by the County.

**K. ABANDONMENT AND REMOVAL:**

Any wireless telecommunication facility located within the right-of-way of a County Highway that is not operated for a continuous period of twelve (12) months, shall be considered abandoned and the owner of the facility shall remove same within ninety (90) days of receipt of written notice from the County notifying the owner of such abandonment. Such notice shall be sent by certified or registered mail, return-receipt-requested, by the County to such owner at the last known address of such owner. In the case of wireless telecommunication facilities attached to County-owned infrastructure, if such facility is not removed within ninety (90) days of such notice, the County may remove or cause the removal of such facility through the terms of the applicable pole attachment agreement or through whatever actions are provided by law for removal and cost recovery.

Ordinance

DT-O-0037-18

**L. COUNTY WIRELESS TELECOMMUNICATION FACILITIES:**

This Ordinance shall not apply to wireless telecommunication facilities owned by the County.

**M. NO IMPLIED WARRANTIES:**

As to County-owned infrastructure onto which wireless telecommunications facilities are to be considered for installation upon, no implied or expressed warranty is given, granted, inferred, etc. as to its capability to accept, support, etc. and/or provide for the needs of the wireless telecommunication facility installation. The complete responsibility for assuring the support element's ability will rest and lie entirely with the permit applicant. In the event the permit applicant's selected County-owned infrastructure is deemed inadequate by the permit applicant or the applicant's consultant, the County will be under no obligation to augment or create a new element for the installation of the wireless telecommunication facility.

**N. HOLD HARMLESS AGREEMENT:**

It is recognized that the system being created by the wireless telecommunication facilities network requires an interconnection and complete coverage for the system to function. It is also recognized that during events, weather conditions, traffic accidents and maintenance and construction operations sometimes cause damage to roadway facilities within rights-of-way including County-owned infrastructure. Although replacement, reconstruction or re-installation of this infrastructure is typically accomplished in as efficiently, timely and economically a manner as possible, there is no defined timeframe in which this repair work is completed. In the event such incidents occur causing damage to County-owned infrastructure which have wireless telecommunication facilities mounted or otherwise attached to them, and in the event such accidents or occurrences cause elements of or the complete wireless telecommunication facility to be incapacitated, rendered inoperable, made irreparable, or destroyed, the County and its affiliated and associated Departments and Divisions, elected and appointed officials, employees, and agents shall be held harmless and under no obligation to replace, reconstruct or re-install the roadway facilities within a certain time frame or to the same configuration or condition, nor shall there be any obligation by the County to repair, reconfigure or replace any elements of the wireless telecommunication facility. Such duties and responsibilities for the repair, reconfiguration or replacement of the wireless telecommunication facility shall rest solely and at the expense of the wireless services provider.

**O. SEVERABILITY:**

In the event that any portion or section of this Ordinance is determined to be invalid, illegal or unconstitutional by a court of competent jurisdiction, such decision shall in no manner affect the remaining portions or sections of the Ordinance, which shall remain in full force and effect.

**P. EFFECTIVE DATE:**

This Ordinance shall be effective upon its adoption.

; and

Ordinance

DT-O-0037-18

BE IT FURTHER ORDAINED that the County Clerk is directed to publish notice hereof in a newspaper of general circulation within DuPage County and the DuPage County Clerk shall submit a copy of this Ordinance to the codifier for publication.

Enacted and approved this 26th day of June, 2018 at Wheaton, Illinois.

\_\_\_\_\_  
DANIEL J. CRONIN, CHAIRMAN  
DU PAGE COUNTY BOARD

Attest: \_\_\_\_\_  
PAUL HINDS, COUNTY CLERK