

CHAPTER 37
TELECOMMUNICATIONS TOWERS AND ANTENNAS

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Sec. 37-01: Legislative Findings. The Communications Act of 1934 as amended by the Telecommunications Act of 1996 ("the Act") grants the Federal Communications Commission (FCC) exclusive jurisdiction over the regulation of the environmental effects of radio frequency (RF) emissions from telecommunications towers, antennas and/or related equipment; and the regulation of radio signal interference among users of the RF spectrum. The City of Kankakee's (herein after "City's") regulation of telecommunications towers, antennas and/or related equipment in the City will not have the effect of prohibiting any person from providing wireless telecommunications services in violation of the Act.

Sec. 37-02: Purpose. The purpose of these regulations are to regulate the placement, construction, and modification of telecommunications towers, antennas and/or related equipment in order to protect the health, safety, and general welfare of the public, while at the same time not unreasonably interfering with the development of the competitive wireless telecommunications marketplace in the City.

Specifically, the purposes of these regulations are:

- A. To regulate the location of new telecommunications towers, antennas and/or related equipment in the City;

- B. To protect residential areas and other land uses from potential adverse impact of siting of new telecommunications towers, antennas and/or related equipment;
- C. To minimize the adverse visual impact of new telecommunications towers, antennas and/or related equipment through careful design, siting, and landscaping;
- D. To promote and encourage the shared-use or “co-location” of existing towers and alternative support structures or buildings as a “primary” option rather than construction of additional new telecommunications towers;
- E. To promote and encourage utilization of technological designs that may eliminate or reduce the need for erection of new telecommunications towers, antennas and/or related equipment;
- F. To avoid potential damage to property caused by telecommunications towers, antennas and/or related equipment by ensuring that such structures are soundly and carefully designed, constructed, modified, maintained, and removed when no longer used or are determined to be structurally unsound; and,
- G. To ensure that new telecommunications towers, antennas and/or related equipment are compatible with surrounding land uses.

Sec. 37-03: Definitions. The following words, terms, and phrases, when used in this Section, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

Antenna means any exterior apparatus designed for telephonic, radio, data, Internet, or television communications through the sending or receiving of electromagnetic waves, and including related equipment attached to a tower, structure or building, for the purposes of providing such service.

Alternative Support Structure means any structure or building, other than a tower, which can be used for the location of telecommunications antennas and/or related equipment.

Applicant means any service provider or person, partnership, or company, who files an application for any permit or approval necessary to install, maintain, modify or remove a telecommunications tower, antenna and/or related equipment.

Application means the process by which an applicant submits a request to construct, build, modify, or erect a telecommunications tower, antenna and/or related equipment upon a parcel of land within the City, and shall include all written documentation, verbal statements, and representations, in whatever form or forum, made by an applicant to the City concerning such a request.

Co-Location means the shared-use of a tower or alternative support structure or building by more than one (1) wireless telecommunications service provider.

Disguised Support Structure (or Tower) means any telecommunications support structure or building, tower, antenna and/or related equipment which is designed to enhance compatibility with adjacent land

uses, including, but not limited to, architecturally screened roof or wall mounted antennas, antennas integrated into architectural elements, and towers designed to look other than like a tower.

Engineer means any engineer licensed by the State of Illinois.

FAA means the Federal Aviation Administration

FCC means the Federal Communications Commission.

Person is any natural person, firm, partnership, association, corporation, company, or other legal entity, private or public, whether for profit or not for profit.

Service Provider means any corporation, company, association, firm, partnership, limited liability corporation, other entity or individual or person which provides wired or wireless telecommunications services licensed by the FCC.

Telecommunications Antenna means any cables, wires, lines, wave guides, and any other related equipment or devices (including equipment shelters, enclosures or cabinets) that are associated with the transmission or reception of wireless telecommunications which a person or service provider seeks to locate or has installed upon or near a tower or alternative support structure or building.

Tower means any structure, including self-supporting lattice, guyed, or monopole structures, that is designed and constructed primarily for the purpose of supporting one (1) or more wireless telecommunications antennas and/or related equipment.

Tower Height means the vertical distance measured from the average grade of the base of the structure, including the main tower and base pad, at ground level to its highest point, excluding all attachments thereto that do not exceed the main tower height by more than ten (10') feet.

Tower Site (or "Compound") means a tract or parcel of land, including any leased portion thereof, upon which contains or is proposed to contain wireless telecommunications service towers, antennas and/or related equipment, including support structures or buildings, and accessory buildings or shelters, and may include other uses associated with and ancillary to telecommunications services.

Sec. 37-04: Recognition of Established Industry Site Selection Criteria. The City recognizes that in establishing new tower sites, the wireless telecommunications industry requires a location that is technologically compatible with the service providers established telecommunications system or network. Generally an area is identified, based upon engineering constraints and the desired area of service, and specific locations within the identified area are evaluated by the service providers using criteria that typically includes, but is not limited to: (1) the topography as it relates to line of sight transmissions for optimum efficiency, (2) the availability of physical access to the site, including access to electric power and land based telephone lines or micro-wave link capability, (3) the availability of leaseable lands, and landlords who want such towers, antennas and/or related equipment to be located on their properties, (4) the screening potential of existing vegetation, structures and topographic features, (5) compatibility with adjacent land uses, (6) the least number of sites to cover the desired area, (7) the greatest amount of coverage, consistent with physical requirements, (8) the availability of opportunities to mitigate possible visual impact, and (9) the viability of suitable existing towers and alternative support structures or buildings for telecommunication antennas and/or related equipment mounting or “co-location.”

Sec. 37-05: Radio Frequency Emissions. The City, in recognizing that the Act gives the Federal Communications Commission (FCC) sole jurisdiction of the field of regulation of radio frequency (RF) emissions and does not allow the City to condition or deny, on the basis of RF impacts, the approval of any telecommunications antennas and/or related equipment (whether mounted on towers or alternative support structures or buildings) which meet FCC standards. Applicants may however be required, upon request of the City, to submit technical information on the proposed power density of their proposed telecommunications antenna and/or related equipment in order to demonstrate how it meets FCC standards.

Sec. 37-06: General Requirements. The following provisions shall govern the placement, construction, and modification of telecommunications towers, antennas and/or related equipment:

- A. Principal or Accessory Use. Telecommunications towers, antennas and/or related equipment may be considered a principal use in all zoning districts where permitted, or an accessory use to existing industrial, commercial, governmental, public utility or other non-residential uses, subject to compliance with these regulations.
- B. Shared-Use. No new telecommunications tower shall be built, constructed, or erected in the City unless such tower is capable of supporting or “co-locating” another person's operating telecommunications antennas and/or related equipment comparable in weight, size, and surface area to the telecommunications antennas and/or related equipment installed by the applicant on the tower within six (6) months of the completion of the tower construction.
- C. Setbacks. Setback requirements for approved telecommunications towers shall be measured from the base of the tower to the property line of the parcel of land on which it is to be located. Where adjacent to non-residentially used property, towers shall be setback a minimum distance equal to the height of the proposed tower. Towers located on parcels adjacent to property used for residential purposes shall be setback a minimum distance of two times or twice the height of the proposed tower.

- D. Separation. Separation distances between telecommunications towers shall be measured by drawing or following a straight line between the base of the existing tower or structure and the base of the proposed tower or structure. Proposed tower structures shall be separated by a minimum of fifteen hundred (1,500') feet from all other existing towers, whether monopole, self-supporting lattice, or guyed, or towers which have been issued a building or Conditional use permit but are not yet constructed at the time the building or Conditional use permit is granted.
- E. Structural Integrity. All telecommunications towers shall be designed and certified by an Engineer to be structurally sound and, at minimum, in conformance with the building and other applicable codes adopted by the City, and any other standards outlined in these regulations.
- F. Design. All new towers shall be of a self-supporting mono-pole type design. Guyed or lattice towers shall be prohibited.
- G. Height. Telecommunications towers shall be exempt from the maximum height restrictions, if applicable, of the zoning districts where located. All such towers shall be permitted to a maximum height of one hundred (100') feet in residential zoning districts, one hundred and fifty (150') feet in commercial zoning districts or a height of two hundred (200') feet in industrial zoning districts.
- H. Signs and Advertising. The placement of signs or other forms of advertising on telecommunications towers, structures or equipment shelters regulated by the provisions of these regulations, other than one (1) identification sign not exceeding one (1) square foot in size, shall be prohibited.
- I. Lighting. Telecommunications towers shall not be artificially lighted except as may be required by the Federal Aviation Administration (FAA) or other State or Federal agencies having jurisdiction over the field of regulation of lighting. If such lighting is required, a description of the required lighting scheme shall be made a part of the application to install, build or modify the tower or telecommunications antenna and/or related equipment. For security purposes, equipment enclosures, cabinets or shelters may have lighting if the design chosen will cause the least disturbance to surrounding property.
- J. Fencing and Landscaping. All telecommunications sites or compounds, including towers and equipment enclosures, shall be surrounded by a minimum six (6') foot high fence. Such fencing shall be of residential quality, such as wood-privacy fencing, or if chain-link fencing is to be used, it shall be screened by evergreen vegetation, with an ultimate height of six (6') feet and a planted height of at least thirty-six (36") inches. The City may require landscaping in excess of the requirements of this Subsection in order to enhance compatibility with adjacent land uses.
- K. Access. A minimum of one (1) paved vehicular parking space, for periodic maintenance and service, shall be provided on-site. Vehicle or outdoor storage shall be prohibited.

Sec. 37-07: Site Location Preferences. In siting new telecommunications towers, all applicant's shall be required, and shall demonstrate by substantive evidence, that due consideration has been given to the "co-location" of the applicant's telecommunications antenna and/or related equipment on existing towers or suitable alternative support structures or buildings, subject to the "order of preference" as follows:

- A. First Preference. The “co-location” of telecommunications antennas and/or related equipment on existing towers that are (1) Owned by the City or other governmental agency or public utility, or (2) Privately-owned, if “co-location” is not technologically or economically feasible on existing towers owned by the City or other governmental agency or public utility.
- B. Second Preference. The “co-location” of telecommunications antennas and/or related equipment on existing alternative support structures or buildings that are (1) Owned by the City or other governmental agency or public utility, if “co-location” is not technologically or economically feasible on existing towers, or (2) Privately-owned, if “co-location” is not technologically or economically feasible on existing towers or alternative support structures or buildings owned by the City or other governmental agency or public utility.
- C. Third Preference. The location of new towers on land located within “industrial” zoning districts that are (1) Owned by the City or other governmental agency or public utility, if “co-location” on existing towers or alternative support structures or buildings is not technologically or economically feasible, or (2) Privately-owned, if “co-location” on existing towers or alternative support structures or buildings owned by the City or other governmental agency or public utility is not technologically or economically feasible
- D. Fourth Preference. The location of new towers on land located within “commercial” zoning districts that are (1) Owned by the City or other governmental agency or public utility, if “co-location” on existing towers or alternative support structures or buildings, or the location of new towers, on land located within industrial zoning districts, is not technologically or economically feasible, or (2) Privately-owned, if “co-location” on existing towers or alternative support structures or buildings, or the location of new towers, on land located within industrial zoning districts, owned by the City or other governmental agency or public utility, is not technologically or economically feasible.
- E. Other Location Preferences. The location of new towers on land located within “residential” zoning districts that are (1) City-owned or owned by other governmental agencies or public utilities, if “co-location” on existing towers or alternative support structures or buildings, or the location of new towers, on land located within industrial or commercial zoning districts, is not technologically or economically feasible, or (2) Privately-owned, if “co-location” on existing towers or alternative support structures or buildings, or the location of new towers, on land located within industrial or commercial zoning districts, owned by the City or other governmental agency or public utility, is not technologically or economically feasible.

Sec. 37-08: Exemptions. Subject to compliance with the applicable provisions of these regulations, the following shall be considered “exempt” telecommunications towers, antennas and/or related equipment and shall be a permitted use of land in all zoning districts:

- A. The routine maintenance or repair of existing telecommunications towers, antennas and/or related equipment (excluding structural work or changes in height or dimensions of towers, antennas, buildings or enlargement of existing tower sites or compounds) provided that compliance with the standards of these regulations are maintained;

- B. Television and/or citizens band radio antennas subject to compliance with the applicable provisions of Chapter 4 of the Kankakee Zoning Ordinance/1995, as amended;
- C. The placement of dual-polar panel antennas on wooden or steel utility poles that do not to exceed forty (40') feet in height, provided that all related equipment is contained within a cabinet; and
- D. Other alternative telecommunications antennas and/or related equipment that “technologically” does not require the use of new towers, such as cable micro-cell equipment using multiple low-powered transmitters/receivers, as may be approved by the City.

Sec. 37-09: Permitted Uses. Subject to compliance with these regulations and the provisions of Section 37-07 (Site Location Preferences), the following shall be a permitted use of land in all zoning districts:

- A. The installation or attachment of additional, or replacement of, telecommunications equipment, including antennas and equipment shelters, to any existing tower, including, but not limited to, water and high-voltage transmission towers, existing on the effective date of these regulations or subsequently approved in accordance with these regulations, shall be permitted provided that any additional equipment shelters are located within the existing tower site or compound area.
- B. The installation or mounting of any telecommunications antennas and/or related equipment, which is not attached to a tower, shall be permitted on any alternative support structure or building that is at least fifty (50) feet in height, and provided that: (1) the height from grade of the attached antenna and/or related equipment does not exceed the height from grade of the alternative support structure or building by more than twenty-five (25%) percent; and (2) any telecommunications equipment and their appurtenances which are located above the primary roof of an alternative support structure or building shall be set back a minimum of one (1) foot from the edge of the primary roof for each one (1) foot in height above the primary roof of the alternative support structure or building. This setback requirement shall not apply to telecommunications antennas and/or related equipment which are located above the primary roof of an alternative support structure or building if such equipment is appropriately screened from view through the use of architectural panels, walls, fences, or other such screening techniques.

These setback requirements shall not apply to “disguised” telecommunications towers, antennas and/or/or related equipment which are mounted to the exterior of an alternative support structure or building below the primary roof line, but which do not protrude more than two (2') feet from the side of such alternative support structure or building.

Telecommunications antennas and/or related equipment proposed for location on alternative support structures or buildings that are less than fifty (50) feet in height or which will exceed the height from grade of the alternative support structure or building by more than twenty-five (25%) percent, may be permitted subject to the approval of a Conditional use permit as provided in Section 37-11 (Variation from General Requirements) of these regulations.

- C. The installation of telecommunications antennas and/or related equipment or the construction of a new tower on any land or building owned by the City, regardless of the zoning district in which

such land is located, following the approval of a lease or other such agreement by the Mayor and City Council.

- D. The one (1) time replacement of any tower lawfully existing on the effective date of these regulations or subsequently approved in accordance with these regulations provided that such replacement tower is (1) designed to accommodate the shared-use or “co-location” of the tower or site, (2) is located on-site and within fifty (50) feet of the original tower, (3) is replaced by a self-supporting monopole type tower only, (4) does not exceed the height of the original tower by more than twenty-five (25%) percent. Subsequent replacements or proposed replacement towers that will exceed the requirements of this Subsection, may be permitted subject to the approval of a Conditional use permit as provided in Section 37-11 (Variation from General Requirements) of these regulations.
- E. Towers erected and maintained for a period of not more than thirty (30) days shall be permitted in all zoning districts for the purpose of replacing an existing tower, testing an existing or proposed telecommunications system or network, or special events requiring mobile towers.

Sec. 37-10: Conditional Use Permit Required. All proposals to install, build or modify a tower not exempted or otherwise permitted in Section 37-08 (Exemptions) or Section 37-09 (Permitted Uses) of these regulations, or any proposals requiring a variation from these requirements as provided in Section 37-11 (Variation from General Requirements) of these regulations, including, but not limited to, tower height, setbacks from property lines, and tower separation distances, shall require the approval of a conditional use permit following a duly advertised public hearing by the Planning Board. Applications for Conditional use permits shall be filed and processed subject to the manner provided in Chapter 12 of the Kankakee Zoning Ordinance/1995, as amended.

- A. General Requirements. Any applicant proposing to construct a new telecommunications tower shall be required to demonstrate that (1) the tower must be located at the proposed site to satisfy its function in the applicant’s telecommunications system or network, (2) the proposed height of the tower is the minimum height necessary to fulfill the towers function, and (3) the design of the proposed tower is such that it can provide for the “co-location” of at least one (1) other service providers telecommunications antennas and/or related equipment.

Applicants shall also demonstrate that they have made a diligent effort to “co-locate” their telecommunications antennas and/or related equipment on existing towers or usable alternative support structures or buildings, and to locate the proposed tower, in accordance with the “order of preference” requirements as established in Section 37-07 (Site Location Preferences) of these regulations, and that due to physical constraints and economic or technological feasibility, that “co-location” is not feasible and no other appropriate location for the proposed tower is available.

All applications for a Conditional use permit to construct a new telecommunications tower shall be considered by the City only upon the applicant having demonstrated that it is an FCC licensed telecommunications service provider or that it has agreements with an FCC licensed telecommunications service provider for use or lease of the proposed tower.

- B. Required Submittals. In addition to any information required for applications for Conditional use permits, pursuant to the provisions of Chapter 12 of the Kankakee Zoning Ordinance/1995, as amended, applicants for a Conditional use permit to construct a new telecommunications tower shall be required to submit the following:
1. A detailed site plan (based on a boundary survey or plat of the parcel and any leased portion thereof, if applicable) clearly indicating all existing and proposed improvements including, but not limited to (a) the location, type, and height of the proposed tower, (b) on-site land uses and zoning classification, (c) adjacent land uses and zoning classification, (d) proposed means of access, (e) setbacks from property lines, (f) proposed method of fencing and landscaping, showing specific landscape and fencing materials, (g) elevation drawings of the proposed tower and any other structures (h) topography, (i) parking, (j) method of lighting, if applicable or required under FAA regulations, and (k) other information that may be deemed by the Planning Board or City Council to be necessary to assess compliance with the provisions of these regulations;
 2. A map of the general area to be served by the proposed tower, indicating its relationship to other existing towers, structures or buildings, which are at least seventy-five (75%) of the proposed design height of the tower, located within a one-half (½) mile radius of the proposed tower site, which, from a location standpoint, could potentially provide a part of the applicant's telecommunications system or network.
 3. Written "technical" evidence attesting to the fact that in order to satisfy its function in the applicant's telecommunications system or network, the proposed tower, antenna and/or related equipment must be located at the proposed site and that it cannot be installed or "co-located" on another person's tower or usable alternative support structure or building located within a one-half (½) mile radius of the proposed tower site;
 4. Written "technical" evidence attesting to the fact the proposed height of the tower, antenna and/or related equipment is the minimum height necessary to fulfill its function in the applicant's telecommunications system or network;
 5. Written "technical" evidence attesting to the fact the proposed tower, antenna and/or related equipment meets the shared-use ("co-location"), structural integrity, and design requirements as set forth in Section 37-06 (General Requirements) of these regulations;

6. A written statement attesting to the fact that the applicant has made diligent, but unsuccessful, efforts to obtain permission to install or “co-locate” the applicant’s telecommunications antenna and/or related equipment on existing towers or potentially usable alternative support structures or buildings, which are at least seventy-five (75%) of the proposed design height of the tower, located within a one-half (½) mile radius of the proposed tower site.
7. A written statement attesting to the fact that the applicant has given due consideration to the possibility of “co-locating” their telecommunications antenna and/or related equipment on existing towers or alternative support structures or buildings, subject to the “order of preference” as established in Section 37-07 (Site Location Preference) of these regulations, and that due to physical, economic or technological constraints, that “co-location” is not feasible.
8. A written statement, by the applicant or tower owner, committing to make the proposed tower (in the event the tower is erected) available for use by other telecommunications service providers subject to “reasonable” technological and financial terms. The statement shall include a provision that the applicant or tower owner is fully aware that the willful and knowing failure of the applicant or tower owner to agree to shared-use or ”co-location” or to negotiate in good faith with potential users shall be unlawful and shall, among other remedies of the City, be cause for the withholding of the requested conditional use permit or any such future conditional use or building permits to the same applicant or tower owner to install, build or modify telecommunications towers within the City.
9. A general description of how the proposed tower is in compliance with the standards set forth in these regulations and all applicable Federal, State or local laws, and that the construction and use of the proposed tower will not interfere with public safety communications and the usual and customary transmission or reception of radio, television, or other communications services enjoyed by adjacent properties.
10. In order to assist in evaluating visual impact, the applicant shall submit photo simulations showing the proposed site of the tower with a photo-realistic representation of the proposed tower as it would appear as viewed from the closest residential property and from adjacent public rights-of-way.
11. The Planning Board or City Council may require an applicant to supplement any information that it considers inadequate or that the applicant has failed to supply. A conditional use permit may be denied on the basis that the applicant has not satisfactorily supplied the information required in this Section.

C. Findings. Findings relating to a proposal to install, build or significantly modify a telecommunications tower shall be made by the Planning Board, as provided in this Subsection, and no Conditional use permit for a new tower shall be approved by the City Council unless the applicant has clearly demonstrated, by substantive evidence, that due

consideration has been given to “co-locate” the applicant’s telecommunications antenna and/or related equipment on existing towers or alternative support structures or the placement of the proposed tower on property owned by the City or other governmental agency or public utility, in accordance with the “order of preference” requirements established in Section 37-07 (Site Location Preferences) of these regulations, and that such alternatives are not technologically or economically feasible. Current or emerging industry standards and practices, among other information, may be considered by the Council in determining feasibility.

In consideration of the issuance of a Conditional use permit to install, build or significantly modify a telecommunications tower, the Planning Board shall base it’s recommendation and the City Council shall base it’s decision upon the applicant having demonstrated, by substantive evidence, the following:

1. That in siting the proposed tower, the applicant has given due consideration to the “order of preference” as established in Section 37-07 (Site Location Preferences) of these regulations,
2. That no existing towers, structures or buildings located within the necessary geographic area of the proposed tower meets the applicant’s engineering requirements considering the height, structural strength, resulting signal interference, feasibility of retrofitting or of redesigning the applicant’s or service providers telecommunications system or network, or other limiting conditions that may render any potentially useable towers, structures or buildings, existing within the applicant’s required geographic area, technologically unsuitable.
3. That the fees, costs, or contractual provisions required by the land or tower owner in order to share or “co-locate” on an existing tower or alternative support structure or building or to adopt an existing tower for shared-use or “co-location” are economically unreasonable.
4. That no land, buildings or structures owned by the City or other governmental agency or public utility is available and economically and technologically suitable for locating the proposed tower;
5. That an alternative technology, that does not require the use of new towers, is technologically or economically unsuitable.
6. That the proposed tower meets the shared-use or “co-location” requirements established in Section 37-06 (General Requirements), of these regulations.

If any one, but not more than one (1), of the above determinations is not satisfied, approval of the Conditional use permit may be granted only upon a finding of unique circumstances otherwise necessitating approval to satisfy the purposes of these regulations.

Sec. 37-11: Variation from General Requirements. Notwithstanding the requirements provided in these regulations, a variation from these requirements, including, but not limited to, tower height, setbacks from property lines, and tower separation distances, may be approved by the City Council upon recommendation of the Planning Board, as a conditional use, in accordance with the requirements of this Section and the provisions of Chapter 12 of the Kankakee Zoning Ordinance/1995, as amended.

A. Required Submittals. In addition to the application requirements for a Conditional use permit and the required submittals for a new tower, if applicable, applications for a variation from the requirements of these regulations shall also include the following:

1. A description of how the proposed variation addresses any adverse impact that might occur as a result of approving the variation.
2. A description of any off-site or on-site factors which may mitigate any adverse impacts which might occur as a result of approving the variation.
3. Written “technical” evidence that documents and supports the information submitted by the applicant upon which the request for variation is based. The technical evidence shall be certified by an Engineer and shall document the existence of the facts related to the proposed variation(s) and it’s relationship to surrounding rights-of-way and properties.

B. Findings. The Planning Board and City Council shall consider an application for a variation from the requirements of these regulations based upon the following determinations:

1. That the proposed tower, antenna or telecommunications equipment, as it differs from the requirements of these regulations, will be compatible with and not adversely impact the character and integrity of surrounding properties; and
2. That off-site or on-site conditions exist which will mitigate the adverse impacts, if any, created by the proposed variation;

In addition to the requirements of this Subsection, in the following cases, the applicant must also demonstrate the following.

- a. That in the case of a requested variation from the “setback” requirements of Section 37-06 (General Requirements) for new towers, that the setback requirement cannot be met on the parcel of land upon which the tower is proposed to be located and the alternative for the applicant is to locate the tower at another site which is closer in proximity to residentially used land.
- b. That in the case of a request for variation from the “tower separation” requirements of Section 37-06 (General Requirements), the applicant has provided technical evidence that the proposed telecommunications tower, antenna and/or related equipment must be located at the proposed site in order to meet the coverage requirements of the applicant’s

telecommunications system or network, and that the applicant is willing to create approved landscaping and other such buffers to adequately screen the tower from neighboring property.

- c. That in the case of a request for variation from the “height” limitation requirements of Section 37-06 (General Requirements) for new towers, that the height variation is necessary to meet the coverage requirements of the applicant’s telecommunications system or network, and the height of the proposed tower is the minimum height required to function satisfactorily.
- d. That in the case of a request for variation from the “height” limitation requirements of Section 37-09 (Permitted Uses) for telecommunications antennas and/or related equipment, proposed for location above the roof line of an alternative support structure or building, the height variation is necessary to facilitate the shared-use or “co-location” of telecommunications antennas and/or equipment in order to avoid construction of a new tower.

The Board or Council may include conditions on the site where the telecommunications tower, antenna and/or related equipment is to be located if such conditions are deemed necessary to preserve the character and integrity of the neighboring properties affected by the proposal and to mitigate any adverse impacts which may arise in connection with the approval of the variation.

Sec. 37-12: Certifications and Inspections. All towers shall be certified by an Engineer to be structurally sound and in conformance with the requirements of the building codes adopted by the City and all other construction standards set forth by Federal and State law. For new towers, such certification shall be submitted upon completion of construction of the tower, and every five (5) years thereafter. For existing towers, certification shall be submitted within one hundred and eighty (180) days of the effective date of these regulations and then every five (5) years thereafter. The tower owner may be required by the City to submit more frequent certifications should there be reason to believe that the structural and/or electrical integrity of the tower is jeopardized.

The City or its agents shall have authority to enter onto the property upon which a tower is located, between the inspections and certifications required above, to inspect the tower for the purpose of determining whether it complies with the City’s adopted building codes and all other construction standards adopted by the City, and all applicable Federal and State laws. The City shall reserve the right to conduct such inspections at any time, upon reasonable notice to the tower owner. All expenses related to such inspections by the City shall be borne by the tower owner.

Sec. 37-13: Maintenance. Tower owners shall at all times employ ordinary and reasonable care and shall install and maintain in use nothing less than commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public. Towers, telecommunications antennas and/or equipment, including wires, cables, fixtures, and other equipment shall be maintained in substantial compliance with the requirements of the National Electric Code (NEC) and all Federal, State, and local regulations, and in such manner that will not interfere with the use of

other property, and, shall at all times be kept and maintained in good condition, order, and repair so that the same shall not menace or endanger the life or property of any person.

Sec. 37-14: Abandonment. In the event that the use of a tower is discontinued, the tower owner shall provide written notice to the City of its intent to discontinue use not less than ten (10) days from the date when

the use will be discontinued. Upon discontinuance of the use of the tower, the tower owner shall, within ninety (90) days, dismantle and remove the tower. If it is determined by the City any tower has ceased to be used for a period of three hundred and sixty-five (375) consecutive days, and the tower owner has not notified the City of the discontinuance of use, as required in this Section, the City shall notify the tower owner that the site will be subject to a determination that such site has been abandoned. The tower owner shall have thirty (30) days from receipt of said notice to show, by a preponderance of the evidence that the tower has been in use or under repair during the period. If the tower owner fails to show that the tower has been in use or under repair during the period, the City shall issue a final determination of abandonment for the site. Upon issuance of the final determination of abandonment, the tower owner shall, within ninety (90) days, dismantle and remove the tower. (Ord. 2001-60 8-21-2001)

Chapter 37: Small Wireless Facilities:

A wireless facility that meets both of the following qualifications: (i) each antenna is located inside an enclosure of no more than 6 cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than 6 cubic feet; and (ii) all other wireless equipment attached directly to a utility pole associated with the facility is cumulatively no more than 25 cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meter, concealment elements, telecommunications demarcation box, ground-based enclosures, grounding equipment, power transfer switch, cut-off switch, and vertical cable runs for the connection of power and other services.

37-15 Purpose and Scope.

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

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

37-16 Definitions. For the purposes of this chapter, the following terms shall have the following meanings:

Antenna – Communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of wireless services.

Applicable codes – Uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or local amendments to those codes, including the National Electric Safety Code.

Applicant – Any person who submits an application and is a wireless provider.

Application – A request submitted by an applicant to the City for a permit to collocate small wireless facilities, and a request that includes the installation of a new utility pole for such collocation, as well as any applicable fee for the review of such application.

Collocate or collocation – To install, mount, maintain, modify, operate, or replace wireless facilities on or adjacent to a wireless support structure or utility pole.

Communications service – Cable service, as defined in 47 U.S.C. 522(6), as amended; information service, as defined in 47 U.S.C. 153(24), as amended; telecommunications service, as defined in 47 U.S.C. 153(53), as amended; mobile service, as defined in 47 U.S.C. 153(53), as amended; or wireless service other than mobile service.

Communications service provider – A cable operator, as defined in 47 U.S.C. 522(5), as amended; a provider of information service, as defined in 47 U.S.C. 153(24), as amended; a telecommunications carrier, as defined in 47 U.S.C. 153(51), as amended; or a wireless provider.

FCC – The Federal Communications Commission of the United States.

Fee – A one-time charge.

Historic district or historic landmark – A building, property, or site, or group of buildings, properties, or sites that are either (i) listed in the National Register of Historic Places or formally determined eligible for listing by the Keeper of the National Register, the individual who has been delegated the authority by the federal agency to list properties and determine their eligibility for the National Register, in accordance with Section VI.D.1.a.i through Section VI.D.1.a.v of the Nationwide Programmatic Agreement codified at 47 CFR Part 1, Appendix C; or (ii) designated as a locally landmarked building, property, site, or historic district by an ordinance adopted by the City pursuant to a preservation program that meets the requirements of the Certified Local Government Program of the Illinois State Historic Preservation Office or where such certification of the preservation program by the Illinois State Historic Preservation Office is pending.

Law – A federal or State statute, common law, code, rule, regulation, order, or local ordinance or resolution.

Micro wireless facility – A small wireless facility that is not larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height and that has an exterior antenna, if any, no longer than 11 inches.

Municipal utility pole – A utility pole owned or operated by the City in the public right-of-way.

Permit – A written authorization required by the City to perform an action or initiate, continue, or complete a project.

Person – An individual, corporation, limited liability company, partnership, association, trust, or other entity or organization.

Public safety agency – The functional division of the federal government, the state, a unit of local government, or a special purpose district located in whole or in part within the state, that provides or has authority to provide firefighting, police, ambulance, medical, or other emergency services to respond to and manage emergency incidents.

Rate – A recurring charge.

Right-of-way – The area on, below, or above a public roadway, highway, street, public sidewalk, alley, or utility easement dedicated for compatible use. Right-of-way does not include City-owned aerial lines.

Small wireless facility – A wireless facility that meets both of the following qualifications: (i) each antenna is located inside an enclosure of no more than 6 cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than 6 cubic feet; and (ii) all other wireless equipment attached directly to a utility pole associated with the facility is cumulatively no more than 25 cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meter, concealment elements, telecommunications demarcation box, ground-based enclosures, grounding equipment, power transfer switch, cut-off switch, and vertical cable runs for the connection of power and other services.

State – The State of Illinois.

Utility pole – A pole or similar structure that is used in whole or in part by a communications service provider or for electric distribution, lighting, traffic control, or a similar function.

Wireless facility – Equipment at a fixed location that enables wireless communications between user equipment and a communications network, including: (i) equipment associated with wireless communications; and (ii) radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration. Wireless facility includes small wireless facilities. Wireless facility does not include: (i) the structure or improvements on, under, or within which the equipment is collocated; or (ii) wireline backhaul facilities, coaxial or fiber optic cable that is between wireless support structures or utility poles or coaxial, or fiber optic cable that is otherwise not immediately adjacent to or directly associated with an antenna.

Wireless infrastructure provider – Any person authorized to provide telecommunications service in the State that builds or installs wireless communication transmission equipment, wireless facilities, wireless support structures, or utility poles and that is not a wireless services provider but is acting as an agent or a contractor for a wireless services provider for the application submitted to the City.

Wireless provider – A wireless infrastructure provider or a wireless services provider.

Wireless services – Any services provided to the general public, including a particular class of customers, and made available on a nondiscriminatory basis using licensed or unlicensed spectrum, whether at a fixed location or mobile, provided using wireless facilities.

Wireless services provider – A person who provides wireless services.

Wireless support structure – A freestanding structure, such as a monopole; tower, either guyed or self-supporting; billboard; or other existing or proposed structure designed to support or capable of supporting wireless facilities. Wireless support structure does not include a utility pole.

37-17 Regulation of Small Wireless Facilities.

A. Permitted Use. Small wireless facilities shall be classified as permitted uses and subject to administrative review, except as provided in Section 7-11-3(c)(9) regarding Height Exceptions or Variances, but not subject to zoning review or approval if they are collocated (i) in the right-of-way in any zoning district, or (ii) outside the right-of-way in property zoned exclusively for commercial or industrial use.

B. Permit Required. An applicant shall obtain one or more permits from the City 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 City, together with the City'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 City 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;

b. The location where each proposed small wireless facility or utility pole would be installed and 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. 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. The equipment type and model numbers for the antennas and all other wireless equipment associated with the small wireless facility;

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

f. Certification that the collocation complies with the collocation requirements and conditions contained in this Chapter to the best of the applicant's knowledge.

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

(2) Application Process. The City 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 City fails to approve or deny the application within 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 City in writing of its intention to invoke the deemed approved remedy no sooner than 75 days after the submission of a completed application.

The 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 City. The receipt of the deemed approved notice shall not preclude the City's denial of the permit request within the time limits as provided under this chapter.

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 City fails to approve or deny the application within 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 City in writing of its intention to invoke the deemed approved remedy no sooner than 105 days after the submission of a completed application.

The permit shall be deemed approved on the latter of the 120th day after submission of the complete application or the 10th day after the receipt of the deemed approved notice by the City. The receipt of the deemed approved notice shall not preclude the City's denial of the permit request within the time limits as provided under this chapter.

d. The City shall deny an application which does not meet the requirements of this chapter.

If the City determines that applicable codes, ordinances or regulations that concern public safety, or the collocation requirements and conditions contained in this chapter 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 applicant.

The City shall document the basis for a 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 City denies an application.

The applicant may cure the deficiencies identified by the City and resubmit the revised application once within 30 days after notice of denial is sent to the applicant without paying an additional application fee. The City shall approve or deny the revised application within 30 days after the applicant resubmits the application or it is deemed approved. Failure to resubmit the revised application within 30 days of denial shall require the applicant to submit a new application with applicable fees, and recommencement of the City's review period.

The applicant must notify the City in writing of its intention to proceed with the permitted activity on a deemed approved basis, which may be submitted with the revised application.

Any review of a revised application shall be limited to the deficiencies cited in the denial. However, this revised application does not apply if the cure requires the review of a new location, new or different structure to be collocated upon, new antennas, or other wireless equipment associated with the small wireless facility.

e. Pole Attachment Agreement. Within 30 days after an approved permit to collocate a small wireless facility on a City utility pole, the City and the applicant shall enter into a master pole attachment agreement, provided by the City for the initial collocation on a City utility pole by the application. For subsequent approved permits to collocate on a small wireless facility on a City utility pole, the City and the applicant shall enter into a license supplement of the master pole attachment agreement.

(3) Completeness of Application. Within 30 days after receiving an application, the City shall determine whether the application is complete and notify the applicant. If an application is incomplete, the City must specifically identify the missing information. An application shall be deemed complete if the City fails to provide notification to the applicant within 30 days after all documents, information and fees specifically enumerated in the City's permit application form are submitted by the applicant to the City. Processing deadlines are tolled from the time the City sends the notice of incompleteness to the time the applicant provides the missing information.

(4) Tolling. The time period for applications may be further tolled by:

- a. An express written agreement by both the applicant and the City; or
- b. A local, state or federal disaster declaration or similar emergency that causes the delay.

(5) Consolidated Applications. An applicant seeking to collocate small wireless facilities within the jurisdiction of the City shall be allowed, at the applicant's discretion, to file a consolidated application and receive a single permit for the collocation of up to 25 small wireless facilities if the collocations each involve substantially the same type of small wireless facility and substantially the same type of structure. If an application includes multiple small wireless facilities, the City may remove small wireless facility collocations from the application and treat separately small wireless facility collocations for which incomplete information has been provided or that do not qualify for consolidated treatment or that are denied. The City may issue separate permits for each collocation that is approved in a consolidated application.

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

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

(7) Means of Submitting Applications. Applicants shall submit applications, supporting information and notices to the City by personal delivery at the City Hall, by regular mail postmarked on the date due or by any other commonly used means, including electronic mail.

C. Collocation Requirements and Conditions.

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

(2) 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 chapter. 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.

(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 City 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.

(4) The wireless provider shall not collocate small wireless facilities on City 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 a City 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) The wireless provider shall comply with all applicable codes and City code provisions or regulations that concern public safety.

(6) 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 City ordinance, written policy adopted by the City, 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.

(7) Alternate Placements. Except as provided in this chapter, 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 City may propose that the small wireless facility be collocated on an existing utility pole or existing wireless support structure within 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 does not impose technical limits or additional material costs as reasonably determined by the applicant.

If the applicant refuses a collocation proposed by the City, 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 section.

(8) Height Limitations. The maximum height of a small wireless facility shall be no more than 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. 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 City, that is located within 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 City, provided the City may designate which intersecting right-of-way within 300 feet of the proposed utility pole or wireless support structures shall control the height limitation for such facility; or

b. 45 feet above ground level.

(9) 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 a variance in conformance with procedures, terms and conditions set forth in the City's zoning ordinance.

(10) Contractual Design Requirements. The wireless provider shall comply with requirements that are imposed by a contract between the City 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) **Undergrounding Regulations.** The wireless provider shall comply with the City's 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.

(13) **Collocation Completion Deadline.** Collocation for which a permit is granted shall be completed within 180 days after issuance of the permit, unless the City and the wireless provider agree to extend this period or a delay is caused by make-ready work for a City 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 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 City grants an extension in writing to the applicant.

37-18 **Application Fees.** Application fees are imposed as follows:

A. Applicant shall pay an application fee of \$650.00 for an application to collocate a single small wireless facility on an existing utility pole or wireless support structure, and \$350.00 for each small wireless facility addressed in a consolidated application to collocate more than one small wireless facility on existing utility poles or wireless support structures.

B. Applicant shall pay an application fee of \$1,000.00 for each small wireless facility addressed in an application that includes the installation of a new utility pole for such collocation.

C. Notwithstanding any contrary provision of state law or this chapter, applications pursuant to this section shall be accompanied by the required application fee. Application fees shall be non-refundable.

D. The City 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:

1. routine 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 City at least 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
3. 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.

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

37-19 **Exceptions to Applicability.** Nothing in this chapter authorizes a person to collocate small wireless facilities on:

A. property owned by a private party or property owned or controlled by the City 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;

B. 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

C. 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 chapter 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 chapter 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 chapter.

37-20 Annual Recurring Rate. A wireless provider shall pay to the City an annual recurring rate to collocate a small wireless facility on a City 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 City utility pole.

If the City 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.

37-21 Abandonment. A small wireless facility that is not operated for a continuous period of 12 months shall be considered abandoned. The owner of the facility shall remove the small wireless facility within 90 days after receipt of written notice from the City notifying the wireless provider of the abandonment.

The notice shall be sent by certified or registered mail, return receipt requested, by the City to the owner at the last known address of the wireless provider. If the small wireless facility is not removed within 90 days of such notice, the City may remove or cause the removal of such facility pursuant to the terms of its pole attachment agreement for City 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 City if it sells or transfers small wireless facilities within the jurisdiction of the City. Such notice shall include the name and contact information of the new wireless provider.

37-22 Dispute Resolution. The Circuit Court of Kankakee 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 City utility poles within the right-of-way, the City shall allow the collocating person to collocate on its poles at annual rates of no more than \$200.00 per year per City utility pole, with rates to be determined upon final resolution of the dispute.

37-23 Indemnification. A wireless provider shall indemnify and hold the City 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 City 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 chapter 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 City or its employees or agents. A wireless provider shall further waive any claims that they may have against the City with respect to consequential, incidental, or special damages, however caused, based on the theory of liability.

37-24 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; and
- (ii) workers' compensation insurance, as required by law; or
- (iii) commercial general liability insurance with respect to its activities on the City improvements or rights-of-way to afford minimum protection limits consistent with its requirements of other users of City improvements or rights-of-way, including coverage for bodily injury and property damage.

The wireless provider shall include the City as an additional insured on the commercial general liability policy and provide certification and documentation of inclusion of the City in a commercial general liability policy prior to the collocation of any wireless facility.

A wireless provider may self-insure all or a portion of the insurance coverage and limit requirement required by the City. A wireless provider that self-insures is not required, to the extent of the self-insurance, to comply with the requirement for the name of additional insureds under this Section. A wireless provider that elects to self-insure shall provide to the City evidence sufficient to demonstrate its financial ability to self-insure the insurance coverage limits required by the City. (Ord. 2018-33 8-6-2018)