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ORDINANCE NO. F-0116

AN ORDINANCE AMENDING THE TEXT OF THE
WHEATON ZONING ORDINANCE -
ARTICLES II, III, XXIV AND
NEW ARTICLE XXVI, PERSONAL WIRELESS SERVICE FACILITIES

WHEREAS, the City of Wheaton, Illinois ("City") has determined it to be in the best interests of the City and its residents to consider certain amendments to the text of the City's Zoning Ordinance; and

WHEREAS, the Federal Telecommunications Act of 1996 reserves the authority of local government to make decisions regarding the placement, construction and modification of personal wireless service facilities provided such decisions do not unreasonably discriminate among providers and do not prevent the provision for personal wireless services; and

WHEREAS, the Wheaton City Council on July 15 1996, adopted an Ordinance establishing a Moratorium on Issuance of Building Permits for Wireless Communications Facilities for a period of six (6) months, allowing the City to consider the impact of personal wireless service facilities on the public's health, safety and welfare, and to provide appropriate regulations for the placement, construction, and modifications to wireless communications facilities; and

WHEREAS, Wheaton City Council finds that the relative location of properties zoned for manufacturing, commercial, and institutional uses in the City would enable providers of personal wireless service to provide services to the City without the need to locate any such facilities in residential zoning districts; and

WHEREAS, the Wheaton City Council further finds that the location of personal wireless facilities in the C-2 and C-4 zoning districts would not be consistent with the historic character of said districts; and

WHEREAS, the City desires that its ordinance reasonably promote the co-location of personal wireless services so as to minimize to the extent reasonable and practicable the visual and aesthetic impact of the erection of personal wireless service facilities; and

WHEREAS, pursuant to notice as required by the Illinois Municipal Code and the City Zoning Ordinance, a public hearing was conducted by the Wheaton Board of Zoning Appeals on December 10, 1996, January 14, 1997 and January 28, 1997 to consider the text amendment which the Wheaton Board of Zoning Appeals has recommended approval of by the City Council.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Wheaton, DuPage County, Illinois, pursuant to its home rule powers, as follows:

Section 1: The Wheaton Zoning Ordinance text is amended by deleting the words "antenna structure" and "parabolic dish antenna structure" as contained in Article II, and including the following:

"Antenna: Any system of wires, poles, rods, reflecting discs, or similar devices used for the wireless transmission or reception of electromagnetic communications signals when such system is either external to or attached to the exterior of a structure.

Dish Antenna: A dish-like antenna, also referred to as microwave antenna or microwave dish antenna, used to link communications sites together by wireless transmission of voice or data.

Personal Wireless Service: Defined in the same manner as in Title 47, United States Code, Section 332(c)(7)(C), as amended now or in the future.

Personal Wireless Service Facilities: Defined in the same manner as in Title 47, United States Code, Section 332(c)(7)(C), as amended now or in the future.

Tower: A monopole structure, erected on the ground, used primarily to support reception and transmission equipment including any accessory mechanical or electronic equipment attached to the supporting structure that is required for the operation of the reception or transmission equipment, but also including any accessory structures used solely for the housing of the equipment mounting structure and its accessory equipment. The definition of tower shall not include guyed or lattice towers."

Section 2: The Wheaton Zoning Ordinance text is amended by deleting and repealing Section 3.4B.3 in its entirety and replacing it with a new Section as follows:

"3. All equipment and facilities used in supplying gas, sewer, water, electric, communication or governmental services of any kind shall be permitted in accordance with the applicable district regulations, except communication equipment and facilities shall not include personal wireless service facilities as defined in Article XXVI of this Zoning Ordinance. All such uses shall require site plan and architectural approval. All wiring (including transmission, distribution and service lines) for the supply of electric and communication services shall be placed underground unless such wiring:

- a. Carries more than 15,000 volts, or
- b. Is for temporary service during periods of new construction, or
- c. Is relocated at the request of the City of Wheaton, or
- d. Is for minor repair of existing facilities, or
- e. Is lead-in or service wiring from existing poles to single-family dwellings."

Section 3: The Wheaton Zoning Ordinance text is amended by deleting and repealing Section 24.5.5 in its entirety and replacing it with a new Section as follows:

"24.5.5. Dish antennas greater than forty (40) inches in diameter shall not be mounted on or over, bracketed, or guyed to any single family or single family accessory structure. Dish antennas shall not exceed one hundred and forty-four (144) inches in diameter. Dish antennas shall not be located in any front or side yard abutting a street and shall be constructed and maintained in compliance with the applicable building codes and the manufacturer's specifications for support; if a conflict exists between the applicable building codes and the manufacturer's specifications, the more restrictive regulation shall apply. A maximum of one (1) dish antenna shall be allowed per single family zoning lot. All such uses must also maintain a side and rear yard of at least ten (10) feet and shall require the installation of landscape plantings, a minimum of six (6) feet in height to screen the use from view.

Dish antennas forty (40) inches or less in diameter, and radio and television antennas with a maximum dimension whether height or length of one hundred and forty-four (144) inches may be attached to a single family or accessory single family structure. The maximum number of dish, radio, and/or television antennas shall be two for each single family zoning lot."

Section 4: The Wheaton Zoning Ordinance text is amended by adding Article XXVI, Personal Wireless Service Facilities, as follows:

"26.1 **Purpose.** The purpose of this Article is to establish general guidelines for the siting of towers, antennas, and personal wireless service facilities. The goal of this Article is to encourage the location of towers in non-residential areas and minimize the total number of towers throughout the community; encourage strongly the joint use of new and existing tower sites; encourage users of the towers and antennas to locate them, to the extent possible, in areas where the adverse impact on the community is minimal; encourage users of towers and antennas to configure them in a manner that minimizes the adverse visual impact of the towers and antennas; and enhance the ability of the providers of telecommunications services to provide such services to the community quickly, efficiently and effectively.

26.2 **Applicability.** No personal wireless service facilities shall be erected or installed except in compliance with the provisions of this Article. The provisions of this Article apply to all personal wireless service facilities, whether such facilities are used as a principal use or as an accessory use. Personal wireless service facilities located on property owned, leased or otherwise controlled by the City shall be exempt from the requirements of this Article provided a lease or license authorizing such personal wireless service facilities has been approved by City Council. This Article shall not govern any tower or installation of any antenna that does not exceed twelve (12) feet in height which is owned and operated by a Federally licensed amateur radio station operator as part of the Amateur Radio Service, citizens band radio, or is used exclusively for receive only antennas. Where conflicts exist between this Article and the remainder of the Zoning Ordinance, the provisions of this Article shall govern.

26.3 General guidelines and performance standards.

26.3.1 Additional use permitted on lot. Antennas and towers may be considered either principal or accessory uses. A different existing use or an existing structure on

the same lot shall not preclude the installation of an antenna or tower on such lot. For purposes of determining whether the installation of a tower or antenna complies with district bulk regulations, including but not limited to set-back and lot requirements, the dimensions of the entire zoning lot shall control, even though the antennas or towers may be located on leased property within such zoning lot(s).

26.3.2 Federal requirements. All personal wireless service facilities shall meet or exceed the current standards and regulations of the Federal Aviation Administration, Federal Communications Commission, and any other agency of the federal government with the authority to regulate personal wireless service facilities. If such standards and regulations are changed, then the owner(s) of the personal wireless service facilities shall bring such facilities into compliance with such revised standards and regulations within six (6) months of the effective date of such standards and regulations, unless a more stringent compliance schedule is mandated by the controlling federal agency, or unless personal wireless service facilities are grandfathered by such revised standard. Failure to bring such facilities into compliance with such revised standards and regulations shall constitute grounds for the removal of the wireless service facilities at the owner's expense.

26.3.3 Measuring Height of Personal Wireless Service Facilities. The measurement of the height of personal wireless service facilities shall include antenna, basepad, and other apparatuses and shall be measured from the crown of the of nearest improved right-of-way.

26.3.4 Lighting. No signals or lights or illumination shall be permitted on a personal wireless service facility unless required by the Federal Communications Commission, the Federal Aviation Administration or the City.

26.3.5 Signage. No commercial advertising shall be allowed on any personal wireless service facility.

26.3.6 Compatibility with Structure. Omnidirectional, whip, directional, dish or panel antennas when mounted on a building or structure shall be of a material or color which matches the exterior of the building or structure. Dish, directional, or panel antennas when mounted on a building, structure or rooftop shall be located or screened in an aesthetically acceptable manner so as not to be visible from the adjacent properties and/or right of way. The Director of Planning shall determine whether dish, directional, or panel antennas mounted on a building, structure, or rooftop matches the building, structure, or rooftop and is screened from adjacent right-of-way(s) and/or properties. Dish antennas attached to a tower shall not exceed forty (40) inches in diameter.

26.3.7 Abandonment. In the event the use of any personal wireless service facility has been discontinued for a period of one hundred and eighty (180) consecutive days, the personal wireless service facilities shall be deemed to be abandoned. Determination of the date of abandonment shall be made by the Director of Planning who shall have the right to request documentation and/or affidavits from the personal wireless service facilities' owner/operator regarding the issue of the personal wireless

service facilities' use. Upon such abandonment, the owner/operator of the personal wireless service facilities shall have an additional ninety (90) days within which to: 1) reactivate the use of the facilities or transfer the facilities to another owner/operator who makes actual use of the facilities, or 2) dismantle and remove the facilities. At the earlier date of either two hundred and seventy (270) days from the date of abandonment without reactivation or upon completion of dismantling and removal, any special exception and/or variance approval for the personal wireless service facility shall automatically expire.

26.3.8 Equipment. Mobile or immobile equipment not used in direct support of a personal wireless service facility shall not be stored or parked on the site of a personal wireless service facility unless repairs to such facility are being made. Backup generators shall only be operated during power outages and for testing and maintenance purposes. Noise attenuation measures shall be included to reduce noise levels. Testing and maintenance of generators shall only take place on weekdays between the hours of 8:30 a.m. and 4:30 p.m.

26.3.9 Substantial written evidence of denial. In the course of reviewing any request for any approval required under this Article, the Zoning Board of Appeals or the City Council, as the case may be, shall act within a reasonable period of time after the request is duly filed, taking into account the nature and scope of the request, and any decision to deny such a request shall be in writing and supported by substantial evidence contained in a written record.

26.3.10 Petition for amendment. Should the application of this Article have the effect of prohibiting a person or entity from providing personal wireless service to all or a portion of the City, such provider may petition the City Council for an amendment to this Article. The City Council, upon receipt of such a petition, shall promptly undertake review of the petition and shall make a determination on the petition within a reasonable period of time, taking into account the nature and scope of the petition and any decision to deny such a petition shall be in writing and supported by substantial evidence contained in a written record.

26.3.11 Nonconformities. Any personal wireless service facility installed and operating prior to the enactment of this Article, which would be prohibited by this Article, shall be considered a lawful existing non-conforming use and/or structure, as the case may be, and shall be subject to the rules on Existing Non-Conforming Uses and Existing Non-conforming Buildings provided in Article 4 of the Zoning Ordinance.

26.3.12 Independent technical expert. The Director of Planning is explicitly authorized to employ on behalf of the City an independent technical expert to review any technical materials submitted including, but not limited to, those required under this Article. The applicant shall pay all reasonable costs of said review, including any administrative costs incurred by the City. Hourly rates charged by the independent technical expert shall not exceed those hourly rates customarily charged by technical experts within the radio engineering industry. Any proprietary information disclosed to the City or the expert hired shall remain confidential and shall not be disclosed to any third party.

26.4 Administrative Approvals.

26.4.1 General.

(1) The Director of Planning may administratively approve the uses listed in this Section 26.4. Nevertheless, all such uses shall comply with Section 26.3 of this Article and all other applicable ordinances.

(2) Each applicant for administrative approval shall apply to the Director of Planning, providing the information set forth in Sections 26.5.2 and 26.5.4 of this Article.

(3) The Planning Department shall respond to each such application within thirty (30) days after receiving it by either approving or denying the application. If the Planning Department fails to respond to the applicant within said thirty (30) days, then the applicant shall be deemed to be approved.

(4) If an administrative approval is denied, the applicant may appeal said denial in accordance with the provisions of the Zoning Ordinance concerning appeals of administrative decisions.

(5) The Director of Planning may refer an application for administrative approval that meets all of the standards contained herein to be approved as required by Section 26.5 if the Director of Planning determines that the location of the proposed wireless facility is in close proximity to a principal residential structure in a residentially zoned district and that the public interest would be furthered by requiring a Special Use Permit to construct the wireless facility in question.

26.4.2 Specific administratively approved uses. The following uses shall be approved by the Planning Department after conducting an administrative review unless the Director of Planning concludes that the public interest would be furthered by requiring a special use permit in conformance with Section 26.4.1(5) of this Article.

(1) Personal wireless service facilities installed on a tower, including the placement of buildings or other supporting equipment in connection with said facilities, in any M-1 Manufacturing or C-5 Planned Commercial zoning district provided that a tower shall not exceed a height of one hundred five (105) feet and shall be set back from the closest adjacent residential structure a distance equal to the height of the tower and further provided:

(a) A tower exceeding fifty (50) feet in height shall not be located within one-quarter mile from any existing tower that is over fifty (50) feet in height.

(b) The separation requirement of Section 26.4.2(1)(a) may be waived by the Director of Planning for the M-1 Manufacturing or C-5 Commercial zoning district provided that the applicant establishes:

- (i) No other site or current technology could be used to provide intended services to the residents of the City; and
- (ii) A denial of a permit for the proposed site would create a gap in providing intended services to the residents of the City; and
- (iii) The issuance of the permit for the proposed site would minimize the appearance that towers are clustered within a quarter-mile area by allowing for co-location.

If one or more of the foregoing factors do not exist the Director of Planning shall inform the applicant that it may request a Special Use Permit in conformance with Section 26.5 of this Article.

(2) Personal wireless service facilities on an existing structure, or replacement structure which is substantially similar, in any nonresidential district, the R-7 and R-6 districts, and any nonresidential structure (such as a building, sign, water tower, light pole or other free-standing structure) in a residentially zoned district (school, park, or church existing structure) other than a tower.

(3) Personal wireless service facilities on any existing tower of any height including the placement of additional buildings or other supporting equipment used in connection with said facility, so long as the addition of said facilities adds no more than twenty (20) feet to the height of said existing tower.

26.5 Special Use Permits.

26.5.1 General. The following provisions shall govern the issuance of special use permits.

(1) If personal wireless service facilities (excluding guyed or lattice tower facilities) are not permitted to be approved administratively pursuant to Section 26.4 of this Article, then a special use permit shall be required for the construction of personal wireless service facilities in all zoning districts except R-1, R-2, R-3, R-4, R-5, C-2 and C-4, where such facilities are prohibited unless otherwise approved administratively pursuant to Section 26.4.2(2) of this Article.

(2) In granting a special use permit, conditions may be imposed to the extent that the Board of Zoning Appeals and/or City Council concludes are necessary to minimize any adverse effect of the proposed personal wireless service facilities on adjoining properties.

(3) In recommending or granting a special use permit, the Board of Zoning Appeals and/or City Council may express a condition requiring that the applicant allow, on a commercially reasonable and technologically feasible basis, a minimum of one other provider of personal wireless services to co-locate additional personal wireless service facilities on a tower which is part of the applicant's proposed personal wireless service facility.

(4) Any information of an engineering nature that the applicant submits, whether civil, mechanical, or electrical shall be certified by a licensed professional engineer.

26.5.2 *Information required.* Each applicant requesting a special use permit under this Article shall submit an alternative site analysis which identifies all reasonable technically feasible alternative sites which would provide the proposed services; a scaled site plan and a scaled elevation view and other supporting drawings, calculations, and documentation, signed and sealed by appropriate licensed professionals, showing the location and dimensions of all improvements, including topography, radio frequency coverage, tower height requirements, setbacks, drives, parking, fencing, landscaping, adjacent uses; and other information reasonably deemed by the Director of Planning to be necessary to assess compliance with this Article.

26.5.3 *Factors considered in granting special use permits.* In addition to the standards identified in Section 5.9.4 of the Zoning Ordinance, the following factors may be considered in determining whether to issue a special use permit:

- (1) Height of the proposed tower;
- (2) Proximity of the tower to residential structures and residential district boundaries;
- (3) Nature of uses on adjacent and nearby properties;
- (4) Surrounding topography;
- (5) Surrounding tree coverage and foliage;
- (6) Design of the tower, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness; and
- (7) Demonstrated ability for co-location of antennas by more than one personal wireless service carrier on the facility proposed to be constructed. Demonstrated ability shall include, but not be limited to, landlord approval if proposed tower site is to be leased, commercially reasonable sublease agreement, facility constructed to structurally accept co-locations, and tower site of sufficient size to accept co-locations.
- (8) Availability of suitable existing towers and other structures as set forth in Section 26.5.4 of this Article.

26.5.4 *Availability of suitable existing towers or other structures.* No new tower shall be permitted unless the applicant demonstrates to the reasonable satisfaction of the Board of Zoning Appeals and/or City Council that no existing tower or structure can accommodate the applicant's proposed antenna. Evidence submitted to demonstrate that no existing tower or structure can accommodate the applicant's proposed antennas may consist of the following:

(1) No existing towers or structures are located within the geographic area required to meet applicant's engineering requirements.

(2) Existing towers or structures are not of sufficient height to meet applicant's engineering requirements.

(3) Existing towers or structures do not have sufficient structural strength to support applicant's proposed antenna and related equipment.

(4) The applicant's proposed antenna would cause electromagnetic interference with the antenna on the existing towers or structures, or the antenna on the existing towers or structures would cause interference with the applicant's proposed antenna.

(5) The fees, costs, or contractual provisions required by the owner in order to share an existing tower or structure or to adapt an existing tower or structure for sharing are unreasonable. Costs exceeding new tower development are presumed to be unreasonable.

(6) The applicant's demonstration that there are other limiting factors that render existing towers and structures unsuitable.

26.5.5 Setbacks and separation. The following setbacks and separation requirements shall apply to all towers and antennas for which a special use permit is required. The standard setbacks and separation requirements may be reduced if in the opinion of the Zoning Board of Appeals and/or City Council the goals of this Article would be better served thereby.

(1) Towers shall be set back from the closest adjacent residential principal structure a distance equal to the height of the tower or twenty percent (20%) of the height of the tower from the adjacent property line, whichever is greater.

(2) Towers and accessory facilities must satisfy the minimum zoning district setback requirements.

(3) Towers over fifty (50) feet in height shall not be located within one-quarter of a mile from any existing tower that is over fifty (50) feet in height. To minimize adverse visual impacts associated with the proliferation and clustering of personal wireless service facilities, installing personal wireless service facilities with the demonstrated ability for co-location of antennas by more than one personal wireless service carrier on an existing or new tower; and/or technical evidence acceptable to the Director of Planning concluding no other site or latest technology could be used to provide the intended services, and denial of the proposed site would create a gap in providing services to the residents of the City shall eliminate the separation requirement.

26.5.6 Landscaping. The following requirements shall govern the landscaping surrounding personal wireless service facilities requiring a special use permit.

(1) Personal wireless service facilities shall be landscaped with a buffer of plant materials that effectively screens the view of the compound from adjacent property. The standard buffer shall consist of a landscaped strip at least fifteen (15) feet wide from the edge of the compound. In some cases, such as facilities sited on large, wooded lots, natural growth around the property perimeter may be a sufficient buffer.

(2) In locations where the visual impact of the facility would be minimal, the landscaping requirement may be reduced or waived.

(3) Provisions of Section 6.11, Tree Preservation."

Section 5: All ordinances or parts of ordinances in conflict with these provisions are repealed.

Section 6: This ordinance shall become effective from and after its passage, approval, and publication in pamphlet form in the manner prescribed by law.

ATTEST:

Emily M. Connelley
City Clerk

James Carr
Mayor

Ayes:

Roll Call Vote:

Councilwoman Davenport
Councilman Eckhoff
Mayor Carr
Councilman Gresk
Councilwoman Johnson
Councilman Gerig

Nays:

None

Absent:

Councilman Mork

Motion Carried Unanimously

Passed: March 3, 1997

Published: March 4, 1997