

ORDINANCE NO F-1324

AN ORDINANCE AMENDING THE WHEATON ZONING ORDINANCE BY CREATING A NEW ARTICLE XXX, ABOVE GROUND SERVICE FACILITIES

WHEREAS, the City of Wheaton, Illinois ("City") is an Illinois home-rule municipality pursuant to provisions of Article VII, Section 6, of the Illinois Constitution, and as such the City may exercise any power and perform any function pertaining to its government and affairs; and

WHEREAS, the City has the authority to adopt ordinances pertaining to the public health, safety and welfare regulating private and public property; and

WHEREAS, the City received applications for permits for ground mounted installation of certain facilities which are significantly larger than any prior facility installed within the City; and

WHEREAS the regulation of the ground mounted service facilities is analogous to the regulation of accessory use structures erected on private property and controlled by the City's Zoning Ordinance; and

WHEREAS, in conformance with said authority, the Corporate Authorities of the City approved Ordinance No. F-1151, an Ordinance Establishing a Temporary Moratorium on the Construction of Certain Ground Mounted Utility Installations, to allow for time to thoroughly evaluate the significantly larger ground mounted facilities to determine reasonable and adequate regulation of those facilities in such manner as will protect the zoning, public health, safety and welfare of the City's residents; and

WHEREAS, the City has concluded after evaluating certain ground mounted service facilities that it is reasonable and appropriate that they be regulated, for among other reasons, to protect the residential character of residential zoning districts, limit their aesthetic impact in all zoning districts, and provide for special use review where their impacts on the public are likely to be the greatest; and

WHEREAS, the City finds it appropriate to establish reasonable and adequate regulation for the siting and control of above ground facilities on private property.

NOW THEREFORE BE IT ORDAINED by the Mayor and City Council of the City of Wheaton, DuPage County, Illinois that the Wheaton Zoning Ordinance is hereby amended as follows.

SECTION 1: A new Article 30 entitled "Above Ground Service Facilities" is hereby added to the Wheaton Zoning Ordinance which shall read as follows:

"ARTICLE XXX

ABOVE GROUND SERVICE FACILITIES

30.1 Purpose.

The purpose of this Article is to establish general guidelines for the siting of above ground service facilities ("Service Facilities"), as defined herein. The goal of this Article is to encourage the location of Service Facilities in non-residential areas and minimize the total number of Service Facilities throughout the community; encourage users of Service Facilities to locate them, to the greatest extent possible, in areas where the adverse impact on the community is minimal; encourage users of Service Facilities to configure them in a manner that minimizes the adverse visual impact ; and provide the owners of Service Facilities the ability to provide such services to the community.

30.2 Applicability.

No Service Facility shall be erected or installed except in compliance with the provisions of this Article. 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, franchise or other written agreement is entered into after adoption of this ordinance, or where a license authorizing such Service Facilities has been approved by City Council. Where conflicts exist between this Article and the remainder of the Zoning Ordinance, the provisions of this Article shall govern.

30.3 General definitions, guidelines and performance standards.

1. **Definitions.** As used in this Article and unless the context clearly requires otherwise, the words and terms listed shall have the meaning ascribed to them in this Section.
 - a.) **Above Ground Service Facility** – An above ground structure, used by a Service Entity to provide Service to the public, which has a volume above ground surface of greater than 24 cubic feet, a linear size greater than four (4) feet in any one dimension, or a footprint in square feet of greater than five percent (5%) of the maximum lot coverage for the lot.
 - b.) **Service Entity** – The individual or entity owning or operating any above ground mounted Service Facility as defined in this Article.
2. **Additional use permitted on lot.** For purposes of determining whether the installation of a Service Facility 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 Service Facility may be located on leased property within such zoning lot(s).

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3. Number of Service Facilities. Only one Service Facility shall be located on any zoning lot.
4. Lighting and Color. No visible or audible signals or lights or illumination shall be permitted on a Service Facility. Service Facilities shall be of earth tone colors and be maintained in good condition including but not limited to being free of peeling paint, and graffiti.
5. Signage. No signs, advertising, or information shall be allowed on any Service Facility, other than a plaque no larger than four inches (4") by six inches (6") identifying the Service Entity.
6. Compatibility with Structure. When included as part of an existing building or structure, the Service Facility shall be of a material and color which substantially matches the exterior of the building or structure and shall be located or screened in an aesthetically acceptable manner so as not to be visible from any adjacent property and/or right of way. The Director of Planning & Economic Development shall determine whether the material and color of a Service Facility 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.
7. Abandonment. In the event the use of any Service Facility has been discontinued for a period of one hundred and eighty (180) consecutive days, the Service Facility shall be deemed to be abandoned. Determination of the date of abandonment shall be made by the Director of Planning & Economic Development who shall have the right to request documentation and/or affidavits from the Service Entity regarding the issue of the Service Facility's use. Upon the Director's determination and written notification to the Service Entity of such abandonment, the Service Entity shall: have an additional ninety (90) days within which to:
1) reactivate the actual use of the Service Facility or transfer the Service Facility to another Service Entity which makes actual use of the Service Facility, or 2) dismantle and remove the Service Facility, and notify the Director in writing of the completion of such removal. At the earlier date of either two hundred and seventy (270) days from the date of discontinuance without reactivation or upon completion of dismantling and removal, any special exception and/or variance approval for the Service Facility shall automatically expire without further action by the Director.
8. Equipment and Non Interference. Mobile or immobile equipment not used in direct support of a Service Facility shall not be stored or parked on the site of a Service Facility unless and while repairs to such facility are being made. Backup generators shall only be operated during power outages and for testing and maintenance purposes and shall not be placed on site except when in use or where integrated within the Service Facilities cabinet. Noise attenuation measures shall be included to reduce noise levels to satisfy applicable state and city performance standards. Testing and maintenance of generators shall only take

place on weekdays between the hours of 8:30 a.m. and 4:30 p.m. Service Facilities shall not physically interfere with access to existing structures or utilities.

9. Substantial written evidence of denial. In the course of reviewing any request for any approval required under this Article, the Planning and Zoning Board 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.
10. Petition for amendment. Should the application of this Article have the effect of prohibiting a person or entity from providing services 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 and shall take 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.
11. Nonconformities. Any Service Facility installed and operating prior to April 3, 2006 (adoption of Ordinance No. F-1151, An Ordinance Establishing A Temporary Moratorium on the Construction of Certain Ground Mounted Utility Installations), which would be otherwise prohibited by or subject to 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.
12. Independent technical expert. The Director of Planning & Economic Development is explicitly authorized to employ on behalf of the City an independent technical expert to review any technical materials submitted by the Service Entity or by other participants submitting an application or petition, including, but not limited to, those materials required under this Article. The applicant or petitioner 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 similar technical experts within the engineering industry. Any confidential, proprietary or other such information exempted from disclosure by the Illinois Freedom of Information Act and disclosed to the City or the expert hired shall remain confidential and exempted from public disclosure in accordance with the Illinois Freedom of Information Act.

30.4 Administrative Approvals.

1. General.

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- a. The Director of Planning & Economic Development may administratively approve the uses listed in this Section 30.4. Nevertheless, all such uses shall comply with Section 30.3 of this Article and all other applicable ordinances.
- b. Each applicant for administrative approval shall apply to the Director of Planning & Economic Development, providing the information set forth in Sections 30.5.2 and 30.5.3 of this Article.
- c. The Planning & Economic Development Department shall respond to each such application within thirty (30) days after receiving it, providing that the application contains all information necessary for processing, by either approving, approving with conditions, denying the application or requesting additional information. If the Planning & Economic Development Department fails to respond to the applicant within said thirty (30) days, or such additional time as is reasonably necessary to obtain the additional information from the applicant and review it, then the application shall be deemed to be denied.
- d. 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.
- e. The Director of Planning & Economic Development may refer an application for administrative approval that otherwise meets the standards contained herein to be considered and approved as required by Section 30.5 if the Director of Planning & Economic Development determines in writing that the public interest would be furthered by requiring a Special Use Permit to construct the Service Facility in question.
- f. Except as provided in Section 2 b (3) the landscaping requirements of Section 30.6 (3) of this article shall apply to Service Facilities granted an administrative permit.

2. Specific administratively approved uses. The following uses shall be approved by the Planning & Economic Development Department after conducting an administrative review unless the Director of Planning & Economic Development concludes that the public interest would be furthered by requiring a special use permit in conformance with Section 30.4.1(e) of this Article.

- a. Service Facilities installed within the rear yard in any zoning district provided the Service Facility is set back three feet (3') from the side and five feet (5') rear property lines and further provided:
 - (1) A Service Facility shall not be located within a two hundred and fifty feet (250') radius from any existing or approved Service Facility.
 - (2) The separation requirement of Section 30.4.2(a)(1) may be waived by the Director of Planning & Economic Development for the M-1 Manufacturing or C-5 Commercial zoning district provided that the applicant establishes:
 - (a) No other site or current technology could be used to provide intended services to the residents of the City; and
 - (b) A denial of a permit for the proposed site would create a gap in providing intended services to the residents of the City.

If one or more of the foregoing factors do not exist the Director of Planning & Economic Development shall inform the applicant that it may request a Special Use Permit in conformance with Section 30.5 of this Article.

- b. Service Facilities installed within the side yard in any nonresidential district, the R-7 and R-6 districts, and in any residential zoning lot that maintains a nonresidential principal use and/or structure (school, park, or church) and further provided:
 - (1) The Service Facility is set back three feet (3') from the side property line.
 - (2) A Service Facility shall not be located within two hundred and fifty feet (250') radius of any existing or approved Service Facility.
 - (3) A Service Facility shall be landscaped with an evergreen and/or deciduous hedge equal in height at the time of planting to the Service Facility, and installed and maintained in accordance with Article 6.3 of this Ordinance.

30.5 Prohibited use. Service Facilities are prohibited in the front yard, corner side yard, or corner side yard as extended to the rear property line of any lot used for residential purposes within the R-1,R-2,R-3, R-4 and R-5 zoning districts

30.6 Special Use Permits.

1. General.

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

- a. Service Facilities not permitted to be approved administratively pursuant to Section 30.4 of this Article and not otherwise prohibited by Section 30.5 of this Article, shall require a special use permit. Special use applications for Service Facilities shall be processed and heard in conformance with the requirements of the Zoning Ordinance.. Where located in a front yard the special use permit shall require that the Service Facility be no closer than five feet (5') inside a front lot line or five feet (5') inside a side yard lot line abutting a street. or such greater distance as determined by the City Counsel.
- b. In granting a special use permit, conditions may be imposed to the extent the City Council determines necessary to minimize any adverse effect of the proposed Service Facilities.
- c. Any information of an engineering nature that the applicant submits, whether civil, mechanical, or electrical shall be certified by a professional engineer licensed in the State of Illinois.

2. 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 recommend or issue a special use permit:

- a. Size of proposed Service Facility;
- b. Proximity of the Service Facility to residential district boundaries;
- c. Nature and intensity of uses on adjacent and nearby properties;
- d. Topography of site and surrounding areas;
- e. Surrounding tree coverage and foliage; and

- f. Design of the Service Facility, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness.
- g. The physical relationship between the Service Facility and existing structures and utilities.

3. Landscaping/Screening. The following requirements shall govern the landscaping surrounding Service Facilities requiring a special use permit.

- a. A Service Facility shall be landscaped/screened with a variety of plant materials that effectively screens the view of the Service Facility from adjacent property and public right-of-way on a year round basis in accordance with the design criteria set forth in Article 6.4 of this Ordinance. In some cases, such as a Service Facility sited on a large, wooded lot, natural growth around the property perimeter may be a sufficient buffer.
- b. In locations where the visual impact of the Service Facility would be and is likely to remain minimal for the foreseeable future, the landscaping requirement may be reduced or waived.
- c. Provisions of Section 6.11, Tree Preservation shall apply."

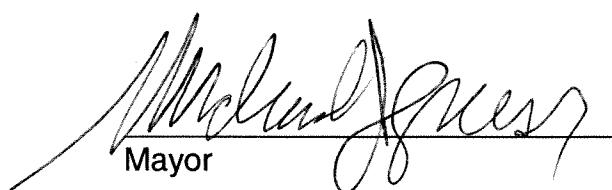
SECTION 2: All Ordinances and parts of Ordinances in conflict with or inconsistent with the provisions of this Ordinance are hereby repealed to the extent of any such conflict or inconsistency.

SECTION 3: That if any part of part or portion of this Ordinance is declared invalid by a court of competent jurisdiction, such partial invalidity shall not affect the remainder of this Ordinance.

SECTION 4: This Ordinance shall be in full force and effect from and after its passage, approval, and publication in pamphlet form in a manner prescribed by law.

Attested by:


Cindy M. Condarco
City Clerk


Michael J. Gress
Mayor

Roll Call Vote:

Ayes: Councilman Prendiville
Councilman Suess
Councilwoman Corry
Councilman Johnson
Mayor Gresk
Councilman Mouhelis

Nays: None

Absent: Councilman Levine

Motion Carried Unanimously

Passed: December 3, 2007

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